

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Request for
Amendment of Permit Conditions by Elk
Creek Solar, LLC for the 160 MW Elk Creek
Solar Project in Rock County, Minnesota

REPORT TO COMMISSION

This matter came before Administrative Law Judge Ann C. O'Reilly for public comment hearings on February 12 and 13, 2024. The comment period closed on February 26, 2024.

Jeremy Duehr, Fredrikson & Byron, P.A., appeared on behalf of Elk Creek Solar, LLC (Applicant). Marc Morandi, Project Manager, appeared on behalf of National Grid Renewables, LLC. Erika Wilder, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce Energy, Environmental Review, and Analysis (DOC-EERA). Staff member Sam Lobby appeared on behalf of the Minnesota Public Utilities Commission (PUC or Commission).

In an Order Approving Site Permit Amendment Process, dated October 10, 2023, the Commission requested that an Administrative Law Judge from the Office of Administrative Hearings conduct an in-person public hearing in the Project area and provide the Commission with a written summary of the comments received.

In compliance with the Commission's Order, the Administrative Law Judge respectfully submits the following:

SUMMARY

I. Procedural History

In 2019, Elk Creek Solar, LLC (Elk Creek or Applicant) filed applications for a Certificate of Need (CN) and site permit for an 80 megawatt (MW), 976-acre solar energy

generating system in Rock County, Minnesota (Project).¹ The Commissioner granted the CN and site permit for the Project in December 2020.²

On June 2, 2023, Elk Creek submitted an application for a site permit amendment under Minn. R. 7850.4900 (2023).³ The amendment would double the nameplate capacity of the Project from 80 MW to 160 MW and increase the site area for the Project by nearly 200 percent (from 546 acres, as originally approved, to 1,522 acres).⁴

Both the DOC-EERA and the Minnesota Department of Natural Resources (DNR) filed comments on the application and proposed amendment process.⁵

The DOC-EERA recommended that the Commission treat the request as an application for a site permit application for a new solar project, which would include full environmental review, public scoping meetings, and public hearings.⁶ The DOC-EERA expressed concern that the 10-day comment period provided for in the site permit amendment process would not be sufficient to obtain adequate public input or undertake adequate environmental review.⁷

The DNR noted that the amended proposed Project would have greater impact on natural resources due to the larger size and capacity of the proposed Project.⁸ Like the DOC-EERA, the DNR recommended a “thorough evaluation” to assess potential natural resource impacts.⁹ It also urged the Commission to require the Applicant to more specifically identify the additional, nearly 1,000 acres that will be affected in the amended Project to improve clarity of impacts.¹⁰

The Minnesota Department of Agriculture did not provide comments with respect to the amendment application.

After receiving the comments of the DOC-EERA and DNR, the Commission met and decided to implement the site permit amendment process set forth in Minn. R. 7850.4900, with certain modifications, rather than require the Applicant to file for a new

¹ See e.g., Notice of Site Permit Application Under Alternative Permitting Process (Jul. 31, 2019) (eDocket No. 20197-154859-01).

² Order Adopting Findings of Fact, Conclusions of Law, and Recommendations, Granting Certificate of Need and Issuing Site Permit (Dec. 31, 2020) (eDocket No. 202012-169454-02).

³ Site Permit Amendment Application (Jun. 2, 2023) (eDocket No. 20236-196370-02).

⁴ *Id.*

⁵ DOC-EERA Comments and Recommendations on Application for Amendment of Permit Conditions (Jun. 21, 2023) (eDocket No. 20236-196723-01); DOC-EERA Comments (Aug. 30, 2023) (eDocket No. 20238-198608-01); DNR Comments (Jun. 28, 2023) (eDocket No. 20236-196970-01); DNR Comments (Oct. 4, 2023) (eDocket No. 202310-199388-01).

⁶ DOC-EERA Comments and Recommendation on Application for Amendment of Permit Conditions (Jun. 21, 2023) (eDocket No. 20236-196723-01); DOC-EERA Comments (Aug. 30, 2023) (eDocket No. 20238-198608-01).

⁷ DOC-EERA Comments (Aug. 30, 2023) (eDocket No. 20238-198608-01).

⁸ DNR Comments (Jun. 28, 2023) (eDocket No. 20236-196976-01); DNR Comments (Oct. 4, 2023) (eDocket No. 202310-199388-01).

⁹ DNR Comments (Jun. 28, 2023) (eDocket No. 20236-196976-01).

¹⁰ DNR Comments (Oct. 4, 2023) (eDocket No. 202310-199388-01).

site permit.¹¹ In its Order Approving a Site Permit Amendment Process, dated October 10, 2023, the Commission imposed the following modifications to the process:¹²

- (1) Varying the 10-day decision deadline imposed by Minn. R. 7850.4900, subp. 3, to allow additional scrutiny of the proposed Project;
- (2) Requiring the Applicant to file an “updated standalone site permit application” that incorporates the amended application and modifications to the application, and file such application at the Rock County Soil & Water Conservation District Land Management Office by September 7, 2023, for public viewing;
- (3) Requesting that the DOC-EERA develop a supplement to the Environmental Assessment (EA) completed on the original Project, which addresses the impacts of the additional acreage of the proposed Project, its closer proximity to Elk Creek, the reduced row spacing proposed, and the different solar panels proposed; and
- (4) Appointing an Administrative Law Judge from the Office of Administrative Hearings to conduct a meeting or hearing in the Project area to take in-person comments from the public and local units of government and prepare a summary of those comments to the Commission.

A prehearing conference was held on November 13, 2023, via Microsoft Teams, to establish a schedule for the public hearings and set other deadlines in the proceeding, including the closing of the public comment period.¹³ Prehearing Orders set forth the pertinent deadlines, based upon the Commission’s directives.¹⁴

The participants and Commission agreed to hold two public hearings to collect public comments: an in-person public hearing in the Project area (Luverne, Minnesota) on February 12, 2024; and a virtual evening public hearing conducted by WebEx on February 13, 2024, to facilitate participation by anyone who was not able to attend the in-person hearing could attend the virtual hearing.¹⁵ A back-up in-person hearing was scheduled for February 15, 2024, in case the February 12, 2024 in-person hearing had to be cancelled due to inclement weather.¹⁶

¹¹ Order Approving Modified Site Permit Amendment Process to Review Proposed Changes to Elk Creek Solar Project (Oct. 10, 2023) (eDocket No. 202310-199493-01).

¹² *Id.*

¹³ See Order for Prehearing Conference (Nov. 7, 2023) (eDocket Nos. 202311-2000328-01; 202311-200356-01; 202311-200380-01).

¹⁴ Second Prehearing Order (Jan. 11, 2024) (eDocket No. 20241-202100-01). See *also*, First Prehearing Order (Nov. 21, 2023) (eDocket No. 202311-200660-01) and Amended First Prehearing Order (Dec. 5, 2023) (eDocket No. 202312-201004-01).

¹⁵ Second Prehearing Order (Jan. 11, 2024) (eDocket No. 20241-202100-01).

¹⁶ *Id.*

The DOC-EERA agreed to complete a supplement to the EA by January 29, 2024.¹⁷

On January 29, 2024, the Commission served and published a Notice of Public Hearings, Availability of Environmental Assessment, and Comment Period (Notice).¹⁸ The Notice was filed in eDockets, served on those listed on the Project service list, and published in the January 30, 2024 edition of the *EQB Monitor*.¹⁹ The Notice advised of the in-person public hearing at 1:00 p.m. on February 12, 2024; and the WebEx virtual hearing at 6:00 p.m. on February 13, 2024.²⁰ It also advised that the public comment period would close February 26, 2024, at 4:30 p.m.²¹

The supplement to the EA was served and filed, and made available to the public, on January 29, 2024.²²

In sum, 12 people offered oral comments at the public hearings and 53 written comments were submitted. The comments received are summarized below.

II. February 12, 2024 Public Hearing: Luverne, MN²³

An in-person public hearing was held on February 12, 2024, at the Grand Event Center in Luverne, Minnesota. The hearing commenced at 1:00 p.m. and continued until approximately 3:15 p.m. Approximately 30 people attended the public hearing and 12 people offered oral comments at the hearing. The Applicant, DOC-EERA, Commission, and Administrative Law Judge spoke. PowerPoint presentations made by the Applicant, DOC-EERA, and the Administrative Law Judge were filed in eDockets.²⁴ After all persons present who wished to comment were given an opportunity to speak, the hearing adjourned.

Jeff Cromberg

Jeff Cromberg of Magnolia, Minnesota, offered to speak first. Mr. Cromberg expressed significant concern about the impact to property values surrounding the Project. Specifically, Mr. Cromberg asserts that neighboring properties will decrease in

¹⁷ *Id.*

¹⁸ Notice of Public Hearings, Availability of Environmental Assessment, and Comment Period (Jan. 29, 2024) (eDocket No. 20241-202779-01).

¹⁹ *Id.*; Environmental Assessment Notice in EQB Monitor (Feb. 7, 2024) (eDocket No. 20242-203154-01); Affidavit of Publication (Feb. 27, 2024) (eDocket No. 20242-203876-01).

²⁰ Notice of Public Hearings, Availability of Environmental Assessment, and Comment Period (Jan. 29, 2024) (eDocket No. 20241-202779-01).

²¹ *Id.* A back-up in-person hearing was also noticed for February 15, 2024. Because the February 12, 2024 hearing went forward without incident, the back-up hearing on February 15, 2024, was cancelled.

²² See Supplemental Environmental Assessment (Jan. 29, 2024) (eDocket No. 20241-202784-01).

²³ Transcript of in-person hearing in Luverne, Minnesota on February 12, 2024 (Mar. 4, 2024) (eDocket No. 20243-204082-01).

²⁴ Handouts Elk Creek Hearing Presentation 2024 – In Person Hearing Presentation (Feb. 13, 2024) (eDocket No. 20242-203352-01); Handout- WebEx Presentation (Feb. 13, 2024) (eDocket No. 20242 203351-01).

value as a result of the Project. Mr. Cromberg asked if the Applicant plans to compensate affected landowners for the decrease in their property values.

Mr. Morandi, speaking on behalf of the Applicant, replied that the Applicant would not be compensating landowners unless their land was expressly used or leased for the Project. Mr. Morandi then referred the question to Ms. Wilder from the DOC-EERA.

Ms. Wilder explained that the EA and supplement to the EA addressed the impact to property values. According to the DOC-EERA, studies showed that there were both positive and negative impacts to surrounding properties. Therefore, the DOC-EERA concluded that there was no net negative impact to property values that would result from the proposed amended Project.

Mr. Cromberg concluded his comments by noting his opposition to the Project based upon the negative impact to nearby property values.

Jane Nelson

Jane Nelson of Magnolia stated that she owns property directly adjacent to the west and north of the amended Project site. She asserts that, at best, solar projects are only 20-percent efficient and convert none of the light that hits the panels. Instead, Ms. Nelson claims that the panels and facilities absorb heat and then radiate that heat back into the atmosphere directly around the Project, causing changes in climate in the Project area (such as more severe storms, tornados, etc.). Ms. Nelson referred to this as “black body radiation.”

Ms. Nelson expressed concern that her adjacent properties will suffer from more severe weather events, increased runoff and flooding, and noxious weed infestation, and that her family will be exposed to health hazards. She fears that her livestock will also suffer negative health effects from the heat generated by the Project.

Ms. Nelson questioned why the Commission and legislature do not require permitting and approval from adjacent property owners for a solar farm, like is required for feedlots.

Ms. Nelson noted that the industrial look of a solar farm (proposed to double in capacity and size) will negatively impact the aesthetic of the area, which has been historically agricultural. She asserts that the Project will be an eyesore and reduce property values.

Ms. Nelson asserts that she received an offer of \$1,300 per acre in yearly rent for her adjacent property from the Applicant. She refused the offer, noting that no amount of money would entice her to lease her land to the energy company because the land belongs to her family and will remain agricultural in use.

Ms. Nelson offered Exhibit A, an article supporting her comments.²⁵

Overall, Ms. Nelson voiced her strong opposition to the Project.

Ms. Wilder of the DOC-EERA responded to Ms. Nelson's comments by noting that the EA evaluated claims of atmospheric changes caused by solar farms and did not find any such evidence. Ms. Wilder stated that Ms. Nelson's adjacent properties would be unlikely to flood from runoff because the Project requires vegetation and planting to absorb runoff rainwater. Ms. Wilder asserts that water quality in the Project area will actually improve because the Project is taking out approximately 1,522 acres of agricultural farmland upon which chemicals were used for fertilization and weed/pest control. Ms. Wilder also explained that the PUC's site permit and site permit amendment process, which includes the opportunity for public comments, is the permitting and approval process implemented for solar projects.

Mr. Morandi also addressed Ms. Nelson's questions and comments. He stated that rain runoff will be addressed by the Project site permit and will not be a problem for adjacent landowners. Mr. Morandi dismissed any heat concerns noting that radiating/reflecting heat in the Project area will quickly rise and dissipate within 100 feet from the Project. He asserts that there is not a significant amount of heat created by solar projects and that the solar energy produced outweighs the environmental effects created. Mr. Morandi also noted that the Project will include a vegetation management plan, which includes spraying for noxious weeds, to prevent vegetation from invading nearby properties.

Mike Gangstad

Mike Gangstad of Springwater Township began his comments by asking about the efficiency of the amended proposed Project, which now has a proposed nameplate capacity of 160 MW. He inquired about how many megawatts of energy the Project will actually produce in a year, considering Minnesota has few and very short sunny days (due to its long winter) and that no energy production occurs during off-peak times (i.e., nighttime). Mr. Gangstad estimated that even on a perfect, sunny day, there would only be four to six hours of energy production and that there are not that many of those kinds of days in Minnesota. Mr. Gangstad asserts that solar is an "entirely unreliable" form of energy and that renewable energy requirements are going to cost rate payers substantially.

Mr. Gangstad questioned why the Commission even granted the certificate of need for this Project when it does not produce much energy at all.

Sam Lobby, a Commission staff member, responded by stating that he does not know of any solar projects that have been rejected in Minnesota. He also noted that recent legislation changes now exempt solar projects from requiring a certificate of need. Site or route permits are now all that is required for solar projects.

²⁵ Hearing Exhibit A (Jane Nelson) (Mar. 5, 2024) (eDocket No. 20242-204083-01).

Mr. Gangstad then asked about the toxicity of the solar panels and the disposal of solar panels after their lifespan. Mr. Morandi responded by stating that there are no hazardous materials used in the panels themselves and that the solar cells are shielded from exposure to the environment by protective glass.

Ms. Wilder noted that the DOC-EERA did not find toxic “leaching” to be an issue with solar panels. She noted that, as part of the site permit, the Commission would be requiring a decommissioning plan specifying the removal process for the panels/facilities at the end of the Project’s lifespan. Such plan would require remediation of the land back to agricultural use. Ms. Wilder reiterated that the DOC-EERA does not expect that there will be a problem with runoff caused by the solar panels, but if landowners later find that there is flooding, they may apply to the Commission for assistance with obtaining relief.

Mr. Lobby also confirmed that if a landowner encounters an issue caused by the Project, the landowner can seek review by, and assistance from, the Commission.

Mr. Gangstad continued that he believes that solar panels degrade quickly and lose their productivity after only a few years in use. He is also concerned about the “heat island effect” that Ms. Nelson described (environmental warming in the Project area that allegedly causes extreme weather changes).

More significantly, Mr. Gangstad is concerned about the economic impact to the region in removing productive agricultural land from use. He asserts that the tax benefit to the community is decreased by the Project as compared to rental of the land for agricultural use. Not measured by dollars is the aesthetic impact to the community of changing productive agricultural to commercial land. As a result, he believes the Project will negatively impact the property values of surrounding land. He noted that this Project is “partially taxpayer funded” through a Production Tax Credit, which makes solar projects the “cheapest” energy projects to build and operate.

Mr. Gangstad emphasized that the Project takes valuable and productive agricultural land out of use, thereby reducing food supply to the country and income to the local farmers who rent that land to grow crops. He urges the Commission to deny the amendment and preserve the productive farmland.

Eric Binford

Eric Binford, of Luverne, gave some background about the development of the Project. He stated that his family was approached by a Chicago company approximately 10 years ago about renting their property for use as a solar farm. Later, a more local company (Geronimo) approached the family about building a smaller solar project on the land. Mr. Binford noted that Elk Creek acquired the project from Geronimo and, due to financing provided by parent company National Grid, Elk Creek has now proposed to double the size and capacity of the original Project.

In short, Mr. Binford explained that this Project started as just a small solar farm, but it has now suddenly grown in size, capacity, and impact – after it was approved by the PUC as a small project. Mr. Binford believes that the Commission is not giving the

proper amount of critical review to the significant amendment. Instead, the necessary review and analysis was conducted on the original, much smaller Project. Now, through an amendment, the Project is doubling in size and capacity and has significantly more impact but little critical evaluation because it is being approved through the expedited site permit amendment process.

Like Mr. Gangstad, Mr. Binford is concerned about the economic impacts to the community caused by taking valuable and productive agricultural land out of use for decades and replacing it with a solar farm of questionable value. Mr. Binford emphasizes that the land used for the Project is “A-1 Prime” farmland that is not replaceable and cannot be simply replicated elsewhere. He believes that the highest and best use for the land is for agricultural production (farming) and the Project will take that away.

Mr. Binford expressed concern that there are too many “unknowns” with the project: health impacts, environmental effects, decommissioning plans, possible abandonment, etc.

Finally, Mr. Binford asserts that the majority of local residents oppose the Project, and he wants the Commission to understand and consider their viewpoints.

Nathan Runke

Nathan Runke, of Rochester, is a representative of the Local 49 Heavy Equipment Operators Union. He states that a large portion of the Local 49 members work in the energy sector. Mr. Runke stated that it is in the interest of his union that this Project be approved, so long as construction jobs are awarded to contractors using union labor.

Mr. Runke asked the Applicant how it intends to find its workforce for building and operating the Project. Mr. Morandi replied that it is too early to know which contractors will be selected and what the workforce will entail.

Mr. Runke urges the Commission to consider the benefits of using a local union workforce for this Project.

Loren Forrest

Loren Forrest has lived all of his 81 years in Luverne. He has done a good deal of research into renewable energy resources, including ethanol, solar, and wind. Mr. Forrest is concerned about the Electromagnetic Fields (EMFs) that many energy projects emit and the cancer risk they pose to people living in proximity to the projects. He believes EMFs cause cancer and damage to the DNA in human cells. He fears that solar panels may pose a similar risk to humans.

He believes that the Commission should require utility companies to provide remediation for those harmed by energy projects and hold companies responsible for damages. He urges the PUC to consider and investigate the health effects of this Project. He also believes that local county commissioners need to address this. Mr. Forrest wants

more information about the health risks posed by this Project and how they will be remediated.

Mr. Forrest offered Exhibit B, some scientific excerpts supporting his comments.²⁶

Paul Arends

Paul Arends, of Luverne, asked questions about the permit amendments; specially if the Applicant will update the original application. The Applicant explained that the amendment application updated costs and materials, as well as project specification. The Applicant further noted that the Magnolia substation updates (needed as part of this Project) are part of a separate PUC docket under review.

Mr. Arends then asked if the company has any Power Purchase Agreements (PPAs) negotiated or in place. The Applicant responded that the previous PPA it had for the original project “did not materialize” and that the company does not have any current PPAs in place or negotiated to sell the energy generated at the proposed facility.

Mr. Arends then inquired if the Applicant was “putting the cart before the horse” if the company has not obtained PPAs for the energy. The Applicant responded that it needs a site permit in place before it can obtain a PPA.

Mr. Arends next asked if the existing Magnolia substation and powerlines will be able to transport the energy that this amended Project can generate. The Applicant responded that the updates to the Magnolia line are not part of this Project but that interconnection agreements will require upgrades to the Magnolia system; such upgrades will be paid for by the Applicant. The Applicant stated that it was unaware of how the current upgrades to the Magnolia system were being funded.

Mr. Arends retorted that Xcel Energy is proposing a rate increase, in part, due to the updates and infrastructure upgrades required to the Magnolia substation and transmission system. Mr. Arends noted that ratepayers have to fund Xcel rate increases, and questioned whether ratepayers will end up subsidizing the proposed Project as well.

Mr. Arends then asked if there were incentives or subsidies going to be paid by the state of Minnesota for this Project. The Applicant responded that the proposed Project will not receive state incentives and that production tax credits are federal incentives.

Finally, Mr. Arends noted that surrounding properties are owned by generational farmers who will receive no benefit from the Project. Moreover, he notes that the Project will be using land leased to the Applicant by absentee (non-local) landowners. When land for the Project is removed from agricultural production, the farmers that formerly leased the land for crops or livestock are unable to find replacement land. Mr. Arends notes that most farmers cannot compete with energy companies to lease this land because the energy companies have more money to pay for rents. As a result, the land is removed from use by local farmers and local agricultural production decreases. Moreover, because

²⁶ Hearing Exhibit B (Loren Forrest) (Mar. 5, 2024) (eDocket No. 20242-204083-02).

the Applicant is willing to pay more in rent for the land, it pits neighbors against neighbors in a small community. Landowners want the most they can get in rent and are willing to rent to the Applicant, leaving local farmers without other options.

In sum, Mr. Arends opposes the Project.

Todd Sorter

Todd Sorter, of Murray County, represents the Local 563 Laborers Union, which has 11,000 members in Minnesota. He states that he supports the construction of the proposed Project so long as the Applicant uses trained union and local workers to construct it.

Craig Schilling

Craig Schilling, of Ellsworth, currently rents some of the agricultural land that the Applicant plans to use for the amended Project. He states that he is going to lose his lease and the income the land produces from his labor. He notes that such loss also negatively affects the community and that such indirect losses cannot be fully measured in dollars.

Will Thomssen

Will Thomssen, of Pipestone, is a representative of the Local 49 Union of heavy equipment operators. He notes that his union offers a good apprenticeship program. He states that the union supports the proposed Project so long as it is permitted correctly and local union labor is used for construction.

Grant Binford

Grant Binford, of Luverne, farms with his brother Eric Binford (comments summarized above). They operate a livestock feedlot. He states that he feels badly for the neighbors of the proposed Project. He explained that, in operating a feedlot, he is required to notify neighbors and allow them an opportunity to be heard in relation to his feedlot business. He explained that there are “lots of regulations” applicable to feedlots to protect adjacent property owners. But with a solar project, there is no recourse for neighboring landowners to stop the project or protect their properties.

Mr. Binford explained that living next to a small solar project, as was originally proposed, is much different from the Project that is now being proposed in the amendment. He feels like the Applicant has done a “bait and switch” with the Commission – got approval for a small project and then, without the opportunity for full evaluation and analysis, “amended” it to be a large project, doubling in size.

He urges the Commission to take into account the negative impact that will befall neighboring properties from the proposed Project, including the reduction in values and income loss to local, generational farming operations who currently rent the land.

Mr. Binford asserts that the land proposed for the Project is valuable farmland. He believes that there is a better place for the Project than on prime agricultural land.

Dick Remme

Dick Remme is a farmer from Luverne. He, too, notes that the proposed Project will be taking valuable, prime farmland out of production. He urges the Commission to consider the losses to the community that cannot be quantified in dollars, such as community continuity and economic health. Mr. Remme also notes that there is a lot of incidents of cancer in the area that may be associated with high voltage transmission lines and EMFs. Mr. Remme opposes the proposed Project.

III. February 13, 2024 Virtual Hearing²⁷

A virtual hearing was held on February 13, 2024, via WebEx teleconferencing. The virtual hearing commenced at 6:00 p.m. and ended at approximately 7:00 p.m. While approximately 17 people attended the public hearing, no one wished to speak or provide public comment. The Applicant, DOC-EERA, Commission, and Administrative Law Judge spoke. PowerPoint presentations made by the Applicant, DOC-EERA, and Administrative Law Judge were filed in eDockets.²⁸ After all persons present were offered an opportunity to speak, the hearing adjourned.

IV. Written Comments Submitted

The deadline for submitting written comments was 4:30 p.m. on February 26, 2024.²⁹ There were 53 written comments submitted.

Jeff Thorson³⁰

Jeff Thorson is a farmer who lives in Luverne, approximately five miles from the proposed Project site. Mr. Thorson is in favor of the Project and states that it is “good for the country.”

David Severtson³¹

David Severtson is a local resident whose comments contrasted the proposed Project with two other recent energy projects in the area: the Agri-Energy ethanol plant in Luverne and a local wind turbine project. Mr. Severtson notes that, unlike the proposed Project, the Agri-Energy plant and the wind turbine were community-based projects that provide real benefits to the local community. For example, the Agri-Energy ethanol plant purchases and uses corn produced within a 25-mile radius of the plant, grown by local farmers. That corn is then processed into ethanol (fuel), dry distillers grain (used as feed

²⁷ Transcript of WebEx hearing on February 13, 2024 (Mar. 5, 2024) (eDocket No. 20243-204082-02).

²⁸ Handout – WebEx Presentation (Feb. 13, 2024) (eDocket No. 20242-203351-01).

²⁹ Notice of Public Hearings, Availability of Environmental Assessment, and Comment Period (Jan. 29, 2024) (eDocket No. 20241-202779-01).

³⁰ Written comment from Jeff Thorson (Feb. 13, 2024) (eDocket No. 20242-203353-01).

³¹ Written comment from Dave Severtson (Feb. 26, 2024) (eDocket No. 20242-203833-01).

for local livestock operations), and carbon dioxide (for use in dry ice and carbonation for soft drinks). As a result, the Agri-Energy plant contributes to the local community. Similarly, the wind turbine project was funded by a local group of farmers and business owners, keeping the profits local.

In contrast, Mr. Severtson notes that Elk Creek is not a local company and will not contribute to the local community, its residents, or its economy. Instead, the proposed Project will remove 200,000 bushels of corn from production annually, as well as another 52,000 bushels of soybeans (assuming 50/50 rotation of the crops per year and 1,522 acres of land used for the Project).

Mr. Severtson asserts that the production of solar power is not continuous or constant like wind turbines or other more consistent and efficient sources of renewable energy. Mr. Severtson urges the Commission to realize that the proposed Project is not a “community project.”

Laborers’ International Union of North America (LiUNA!)³²

Kevin Pranis is the marketing manager for LiUNA! Minnesota and North Dakota. Mr. Pranis submitted comments on behalf of the union. LiUNA represents more than 14,000 construction workers in the state and region. Mr. Pranis notes that the proposed Project has the potential to help the state meet new renewable and carbon-free energy goals, while at the same time creating high-quality construction and maintenance jobs.

Mr. Pranis cites to recent state laws which mandate that utilities serving Minnesota customers deliver power that is at least 55 percent renewable by 2035 and 100 percent carbon-free by 2040. To meet those requirements, Mr. Pranis states that utilities will need to acquire a significant amount of renewable and clean energy from other sources. In addition, he asserts that the new “clean energy” laws urge regulators to maximize the use and creation of union jobs and labor when making planning, acquisition, and permitting decisions.

Mr. Pranis asserts that the proposed Project is “expected to create a significant number of jobs” but the amended application provides limited information about whether the company intends to maximize local employment or ensure creation of union jobs. In addition, Mr. Pranis asserts that Applicant is suggesting that local job opportunities may be constrained by state electrical licensing requirements, a claim that Mr. Pranis disputes.

He asks that the Applicant consider using local union labor on the Project. He further requests that the Applicant make clear whether the company will meet federal wage and apprenticeship standards tied to tax credits under the Inflation Reduction Act. He also questions whether the Applicant intends to comply with “new state requirements” that all large solar projects pay state prevailing wage rates to all construction workers.

³² Comments from Laborers’ International Union of North American (LiUNA!) (Feb. 26, 2024) (eDocket No. 20242-203835-01).

Mallory Nelson³³

Mallory Nelson, of rural Magnolia, states that she planned to return to Magnolia in the future but will not move back if the amended Project is approved. She is concerned about health risks associated with solar farms; specifically, “electromagnetic hypersensitivity.” She also fears that the Project will increase crime in the small community due to the influx of “illegal immigrants” as workers. Finally, Ms. Nelson is concerned about removing fertile farmland from production and the Project’s impact on the ecosystem and biodiversity. She urges the Commission to deny the amendment.

Chad Hoff³⁴

Chad Hoff, of Luverne, expressed his concern about converting productive agricultural farmland to solar energy generation. He notes that crops convert carbon dioxide (CO₂) into oxygen, an important environmental benefit. He suggests that the Commission focus its work on encouraging individual landowners to install their own solar panels for personal energy consumption. He asserts that taxpayer funding for renewable energy should remain local.

Cindy Frensko³⁵

Cindy Frensko, of Ivanhoe, claims that the project is an “overreach” of government. She asserts that farmland should not be used for the Project. She is against the Project.

Issac DeBoer³⁶

Issac DeBoer, of Luverne, is concerned with the lack of local planning and zoning input that has been received on the amended proposed Project. He understands that the original (much smaller) Project was subject to local review. However, he does not believe that the amendment is subject to the same scrutiny. He is concerned about the lack of transparency and local review/input. He urges the Commission to require, as a condition of approval, that the amended Project be subject to a local planning and zoning review, specifically as to impacts to feedlots and farming operations in the area.

Mr. DeBoer asserts that the “highest and best use” for the Project site is for agricultural production. He asks that the Commission carefully consider the voices of the people who live in the community and who will be primarily impacted by the Project.

Jane Nelson³⁷

Jane Nelson, who spoke at the February 12, 2024 hearing in Luverne, also submitted written comments. In her written comments, Ms. Nelson cites to various

³³ Comments of Mallory Nelson (Feb. 27, 2024) (eDocket No. 20242-203858-01).

³⁴ Comments of Chad Hoff (Feb. 27, 2024) (eDocket No. 20242-203857-01).

³⁵ Comments of Cindy Frensko (Feb. 27, 2024) (eDocket No. 20242-203856-01).

³⁶ Comments of Isaac DeBoer (Feb. 27, 2024) (eDocket No. 20242-203856-01).

³⁷ Comments of Jane Nelson (Feb. 27, 2024) (eDocket No. 20242-203843-01); Comments of Jane Nelson (Feb. 27, 2024) (eDocket No. 20242-203856-01).

sources recommending safe setbacks between farmland and residential land from solar farms. She asserts that the World Health Organization recommends a setback distance of two kilometers (approximately 1.2 miles) and cites to other sources that recommend setbacks of three kilometers.

Ms. Nelson's fourth generation family farm abuts the proposed Project on two sides. The proposed facility will be within 550 feet of her home and 590 feet of her livestock. Ms. Nelson's farm contains a feedlot. She notes that, for feedlots, Rock County does not allow construction of new homes within one-fourth mile of an existing home/feedlot and requires a waiver if within one-half mile. Ms. Nelson asserts that the Project violates Rock County ordinances related to new construction near feedlots.

Ms. Nelson notes that Rock County has the second highest land sale values in Minnesota and that the Project will impact prime farmland, taking it out of production. She questions how this Project is not in violation of Minn. R. 7850.4400, subp. 4 (2023), which provides:

Prime farmland exclusion.

No large electric power generating plant site may be permitted where the developed portion of the plant site, excluding water storage reservoirs and cooling ponds, includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, or where makeup water storage reservoir or cooling pond facilities include more than 0.5 acres of prime farmland per megawatt of net generating capacity, unless there is no feasible and prudent alternative. Economic considerations alone do not justify the use of more prime farmland.

Ms. Nelson also questions why the Commission has not allowed abutting property owners a "fair say" in the approval process. She is concerned about the impacts that the Project will have on the health of nearby residents and livestock, as well as to the properties and public waters nearby (specifically Elk Creek). Ms. Nelson cites to research regarding potential health risks associated with solar farms, including the risk of electromagnetic hypersensitivity and high-frequency radiation.

With respect to runoff, Ms. Nelson is concerned that runoff and erosion caused by the Project will impact her property, its crop production, and her livestock. She is also concerned with potential contaminants of surface and groundwaters, especially to Elk Creek, which is within 150 feet of the proposed Project.

Finally, Ms. Nelson asks why the Commission would approve the siting of a solar project on prime farmland when there are plenty of other areas in the state that are less valuable, less productive, and have less human settlement. In sum, Ms. Nelson notes: "There has to be a better location for this."

Josh Fick³⁸

Josh Fick is a farmer in Rock County. He articulates two main oppositions to the Project. First, he questions why the state would allow the Applicant to destroy “some of the best farmland in the state” for a “questionable” energy project. Second, he fears that, because the Applicant is willing to pay a high rate for rents to non-local landowners for the site, agricultural land rents in the area will increase. Moreover, by taking more land out of the rental market, the other farmland becomes more expensive to rent for local farmers, making it even harder for farmers to make a living. He ends by stating that there must be more suitable and less valuable land available for this Project.

Jason Fick³⁹

Jason questions why the Commission would approve the amendment application when it will take over 1,500 acres of prime farmland out of agricultural production. This not only impacts the farmers who use the land, but the agricultural retailers, equipment dealers, and other local businesses that rely on the farming industry. As a farmer, he notes that it is impossible to compete with the land rental rates that the energy companies will pay. Mr. Fick is also concerned with the negative impact the proposed Project will have on the values of the properties in close proximity to the Project.

Mr. Fick disputes the Applicant’s assertion that the Project will allow the land to “rest”. He explains that land which is continuously used for agricultural production is healthier than land that sits idle because farmers improve the soils with manure, fertilizers, crop cover, and crop rotation. When land sits idle, there is a loss of microbes necessary for soil health and to prevent erosion.

Finally, Mr. Fick is concerned with the Applicant’s decommissioning plan. He does not trust that the land will be returned to its original state – or even can be returned to its current state. He asserts that topsoil will be destroyed and will be forever changed. This is even more significant if excavation occurs and if concrete, rock, or gravel is introduced onto the property.

Overall, Mr. Fick opposes the proposed Project.

Lane Binford⁴⁰

Lane Binford, of Luverne, is in the 8th grade. He plans to farm with his father and uncle someday near their local farm. He worries that the Project will impact his ability to achieve that goal if farmland in the area becomes too expensive or unavailable for new farmers. He, too, questions why the Project cannot be located on non-agricultural land.

³⁸ Comments of Josh Fick (Feb. 23, 2024) (eDocket No. 20242-203756-01).

³⁹ Comments of Jason Fick (Feb. 27, 2024) (eDocket No. 20242-203856-01).

⁴⁰ Comments of Lane Binford (Feb. 27, 2024) (eDocket No. 20242-203856-01).

Levi Binford⁴¹

Levi Binford is a junior in high school from Luverne. He expressed his opposition to the Project. His family operates a farm in the area and currently rents some of the land that will be used for the proposed Project. He explains that the Project poses a threat to his ability to farm someday. Like Lane Binford, Levi believes that the Project should be sited on less valuable, non-agricultural land.

Marybeth Binford⁴²

Marybeth Binford is a retired farmer. Her two sons and their families operate farms in the area. She notes that when the Project was first proposed, it was to be a small solar farm. However, now it has doubled in capacity and will displace over 1,500 acres of farmland. She notes that the Project will have no benefit to, and will only harm, local farmers and the community. She explained that farms in the area already do not have enough corn to feed the local livestock, causing them to import feed. Removing 1,500 acres of prime cropland from production will only exacerbate the problem for local farmers. Ms. Binford worries about the future of farming in the area when primary resources are being taken away. She states that agriculture is the state's largest industry and must be protected. Accordingly, she implores the Commission to deny the amendment to the site permit.

Rebecca Binford⁴³

Rebecca Binford is a farmer in the Luverne area. Her farming operation also rents farmland in the area. She states that she will lose 400 acres of rented farmland if the Project amendment is approved. Those 400 acres would be rented, instead, by the Applicant and used for the Project. Ms. Binford objects to Minnesota legislation that prioritizes renewable energy projects above other industries, particularly agriculture. She argues that the more agricultural land that is taken out of use for renewable energy projects, the greater the threat is to the continuity of Minnesota farming.

Ms. Binford urges the Commission to follow the guidance of the Minnesota Department of Commerce, as published in its "Solar Energy Production and Prime Farmland – Guidance for Evaluating Prudent and Feasible Alternatives." In that document, the DOC recommends that solar projects be sited on low quality land and not be allowed to use more than one-half acre of prime farmland per megawatt of power produced. She opposes the Applicant's request for an exemption from this guidance and disputes the Applicant's rationale for exemption. She states that the land is not enriched with "rest" (i.e., removing the land from agricultural production for decades). Instead, she asserts that modern farming practices and technology ensure that agricultural land is enriched by continuous use for crops and livestock. Ms. Binford asks that the Commission

⁴¹ Comments of Levi Binford (Feb. 27, 2024) (eDocket No. 20242-203856-01).

⁴² Comments of Marybeth Binford (Feb. 27, 2024) (eDocket No. 20242-203856-01).

⁴³ Comments of Rebecca Binford (Feb. 27, 2024) (eDocket No. 20242-203856-01).

deny the amended site permit based upon Minn. R. 7850.4400, subp. 4 and DOC guidance intended to protect Minnesota's prime agricultural land.

Shari Binford⁴⁴

Shari Binford owns a local farming operation that will be directly impacted by the proposed Project. Like others, she objects to taking 1,522 acres of land out of agricultural production. She states that the loss will contribute to the increased need for farmers to import corn feed in the area. She notes that local farming operations contribute substantially to the local economy, a fact that needs to be considered by the Commission. She questions why the Project must use prime farmland when there are other options for placement in areas of less productive property.

She also has concerns about the proposed Project's impact on the ability for young people to start their own farming operations. Ms. Binford emphasized that this Project was approved because it was supposed to be a small solar farm with far less impact. The Site Permit Application is now being amended to allow a large project that has not had proper critical review. Ms. Binford warns of negative impacts to human health, wildlife, livestock, and water resources that could result from the Project, as well as negative impacts caused by improper decommissioning requirements.

Finally, Ms. Binford alerts the Commission to the problem of waste. She asserts that it is cheaper for companies to simply dispose of old panels rather than recycle them, resulting in hazardous and excessive waste in landfills. As a result, she asserts that the environmental benefits of renewable energy production are outweighed by the negative environmental effects of solar projects. Ms. Binford is strongly opposed to the proposed Project.

Susan Bullerman⁴⁵

Susan Bullerman and her family own land adjacent to the proposed Project. She notes that Rock County does not allow feedlots or homes to be built within one-fourth mile of existing homes or feedlots, and requires waivers for homes or feedlots proposed to be built within one-half mile of each other. She questions why the Applicant is not subject to the same county zoning requirements.

Ms. Bullerman cites to Minn. R. 7850.4400, subp. 4, which prohibits large electric power generating plants to be sited in areas where more than one-half acre of prime farmland will be taken for every megawatt of energy generated. She inquires why this rule does not apply to this solar project. She states that the same policy to protect Minnesota's valuable agricultural land should also apply to solar projects.

Ms. Bullerman reminds the Commission that Topeka shiner and plains topminnow fish species have been documented in Elk Creek. These species are federally-listed endangered and state-listed threatened species, respectively. Elk Creek is within 200 feet

⁴⁴ Comments of Shari Binford (Feb. 27, 2024) (eDocket No. 20242-203856-01).

⁴⁵ Comments of Susan Nelson-Bullerman (Feb. 27, 2024) (eDocket No. 20242-203856-01).

of the proposed Project. She asserts that runoff and contamination to the creek caused by the Project will harm these rare species.

Ms. Bullerman notes that the parties who support the Project do not live in Rock County and that the majority of landowners who are willing to lease their land to the Applicants are non-resident landowners. These individuals do not have to suffer the negative impacts of the Project, like those who live in the vicinity.

Like others, Ms. Bullerman is concerned about taking prime farmland out of production and its potential impact on future generations to continue farming in the area. Ms. Bullerman strongly opposes the proposed Project.

Valerie Downing⁴⁶

Valerie Downing opposes the proposed Project for “the mere fact [of] the untruths stated.”

Dustin Hubbling⁴⁷

Dustin Hubbling, of Luverne, owns a farm adjacent or in close proximity to the proposed amended Project. He believes the PUC and community have been given false information regarding the negative impacts the Project will have on surrounding property values. He is concerned about noise, glare, aesthetic impact, and potential health effects that the Project could have on his family and property. He notes that the land proposed for the Project is prime farmland and contains quartz. He believes that solar farms increase the risk of certain health conditions, including cancer, and emit electromagnetic radiation.

Mr. Hubbling notes that the Project would be “just feet away” from his home. He fears that it will ruin his serene, rural views, his family’s enjoyment of their land, and the wildlife that frequents his property. He is against the Project.

Amy Domagala⁴⁸

Amy Domagala, of Luverne, writes to state that she opposes the Project in her rural community. She asserts that the state and governor are not concerned about protecting rural, non-metro communities. She believes local permitting should be required for the Project to move forward.

Brad Lynn⁴⁹

Brad Lynn, of Lismore, owns and farms 450 acres near the proposed Project site. He is concerned about removing prime farmland from production when there are

⁴⁶ Comments of Valerie Downing (Feb. 27, 2024) (eDocket No. 20242-203856-01).

⁴⁷ Comments of Dustin Hubbling Parts 1 and 2 (Feb. 27, 2024) (eDocket Nos. 20242-203853-01 and 20242-203853-02).

⁴⁸ Comments of Amy Domagala (Feb. 27, 2024) (eDocket No. 20242-203849-01).

⁴⁹ Comments of Brad Lynn (Feb. 27, 2024) (eDocket No. 20242-203849-01).

alternative, less valuable land (prudent and feasible alternatives) available for the Project. He states that it will negatively affect local farmers and agricultural businesses in the area, and it will take away opportunities from the next generation of farmers.

Craig Schilling⁵⁰

Craig Schilling of Ellsworth states that if the amended Project is approved, he will be losing a quarter of his income due to the loss of farmland he currently rents. He opposes the use of prime farmland for the siting of a solar plant.

Shawn Feikema⁵¹

Shawn Feikema owns a third-generation farm in Rock County. Mr. Feikema believes that renewable energy mandates will not work in Minnesota, just as they have failed in California. He believes that such mandates do not rely on “good science or practicality” and leave a higher carbon footprint than other forms of energy production.

Mr. Feikema asserts that the Applicant is “lying” to the community, to the PUC, and to the DOC when it states that taking 1,522 acres of prime farmland will be beneficial because it will allow the land to “rest.” Rather, Mr. Feikema believes that the land is best used for continued agricultural production. Like others, Mr. Feikema notes that using prime farmland for an energy project is directly contrary to Minn. R. 7850.4400, subp. 4, and in conflict with DOC guidance. Mr. Feikema fears that no decommissioning plan will be sufficient and that the local community will be left with “an unsightly mess for the locals to deal with” when the Project reaches the end of its useful life.

Brad and Bonnie Meinerts⁵²

Brand and Bonnie Meinerts oppose the Project because it will reduce surrounding property values and negatively impact the quality of life in the area. They ask the PUC to “save the future of our farm ground and oppose this expansion from moving forward.”

Becky Feikema⁵³

Becky Feikema owns a third-generation family farm in the Luverne area, raising cattle and growing corn, soybeans, and small grains. Her family has become a leader in sustainable and regenerative agricultural practices, pioneering strip-till, no-till, and cover crop practices to improve soil health on large-scale farms. She notes that these sustainable farming practices are integral to the survival of the farming industry.

Ms. Feikema believes that the state is being shortsighted by permitting a large-scale solar farm on 1,522 acres of valuable and highly productive agricultural land. She asserts that while such a project may temporarily meet the state’s renewable energy

⁵⁰ Comments of Craig Schilling (Feb. 27, 2024) (eDocket No. 20242-203849-01).

⁵¹ Comments of Shawn Feikema (Feb. 27, 2024) (eDocket No. 20242-203849-01).

⁵² Comments of Brad and Bonnie Meinerts (Feb. 27, 2024) (eDocket No. 20242-203849-01).

⁵³ Comments of Becky Feikema (Feb. 27, 2024) (eDocket No. 20242-203849-01).

source goals, it will have long-term impacts on the state's more valuable agricultural resources. Ms. Feikema is in support of seeking alternative energy sources, but not at the expense of the state's need to protect its agricultural land, industry, and resources. She notes that the subject land and soil is best protected through conservation, erosion prevention, and nutrient management practices that the local farmers have developed over time. Ms. Feikema warns the Commission that the Project will have long-term ramifications to this valuable area of the state and urges the Commission to deny the amendment.

Curtis Hendel⁵⁴

Curtis Hendel, of Luverne, urges the Commission to “step back” and carefully review the Project amendment and the “irreparable impacts” it will have on the agricultural community in Rock County. Mr. Hendel is concerned that the Project is being rushed through the permitting process using the amendment process. As a result, a full and critical review of the impacts has not been undertaken. He believes that the public has not been given adequate notice of this Project or afforded full opportunity to oppose it because the site permit amendment process is being used.

Mr. Hendel wonders if the Commission has considered a possible 300,000-bushel corn shortage that will result, in part, from the loss agricultural land in the area. This shortage impacts livestock and ethanol production and has the potential to cancel feedlot permits needed by local farmers.

Like other local farmers, Mr. Hendel notes that the majority of landowners willing to lease their land to the Applicant for the Project are “absentee owners” who are looking only to benefit financially; whereas local farmers and residents will be the ones who suffer. Mr. Hendel urges the Commission to give more thought to the Project and conduct more research about the potential impacts of the amendment before approving it.

Grant Binford⁵⁵

In addition to his comments at the February 12, 2024 public hearing, Grant Binford, of Luverne, submitted a written comment. In his comments, he makes three arguments in opposition to the Project. First, Mr. Binford is concerned about the loss of local control over permitting of the Project. Like others, he refers to the local setback and zoning regulations applicable to feedlots, which he believes should apply to this Project. Second, he is concerned about the lack of economic benefit to the community caused by the removal of approximately 1,500 acres of prime farmland from production. Third, Mr. Binford questions why the PUC would approve the expanded Project in light of DOC guidance and Minn. R. 7850.4400, subp. 4, related to use of prime farmland for energy project siting. Like others, he asserts that the Applicant's claims about allowing the land to “rest” have no scientific bases and ignores modern farming methods that preserve soil

⁵⁴ Comments of Curtis Hendel (Feb. 27, 2024) (eDocket No. 20242-203843-01).

⁵⁵ Comments of Grant Binford (Feb. 27, 2024) (eDocket No. 20242-203843-01).

quality. Accordingly, he asserts that the Applicant's argument for exemption from Minn. R. 7850.4400. subp. 4, is without merit.

Jaxon Nelson⁵⁶

Jaxon Nelson is a young farmer in the area. He is concerned about radiation from the solar panels and potential impacts to humans, wildlife, crops, and livestock. He questions whether water sources feeding Elk Creek will be contaminated and harm cattle that drink from these sources. He opposes taking 1,522 acres of prime farmland out of production when there is a local need for the crops, particularly corn. He also believes that the Project will negatively impact local property values.

Joey Pick⁵⁷

Joey Pick is a young farmer who currently farms 430 acres in Rock County, 160 acres of which are part of the proposed, amended Project site. Like many local farmers, Mr. Pick rents land that he farms. Losing 160 acres of rented land to the Project will be catastrophic for his business. He states that removing 1,522 acres of agricultural land from production will not only harm him and other farmers, it will also negatively affect the local community, which is built upon the agricultural industry.

Matthew Binford⁵⁸

Matthew Binford recently graduated from school and started farming. He explains that it is hard for young people to start their own farming operations because it requires acquiring land, which is mostly rented at first. When there is no available local land to rent, it makes it impossible for new farmers to start businesses and make a living. Therefore, the removal of 1,522 acres of prime farmland from crop production in the area will only exacerbate the problems for young farmers in the community who want to make a start in the industry. He urges the Commission to deny the amended permit.

Seth Miller⁵⁹

Seth Miller's family owns a farm in the area. He is concerned that the proposed Project will be an "eye sore" to the rural community and drive property values down. He is opposed to removing 1,522 acres of prime farmland from agricultural production. Mr. Miller explains that it will take many years for that soil and tillable land to recover -- if it can even be recovered. He notes that solar projects have a heavy carbon footprint and, consequently, are not as "green" a form as energy they claim to be. He is concerned about decommissioning, including the removal/disposal of the solar panels and the remediation of the land. Finally, given Minnesota's harsh winters and short summers, he

⁵⁶ Comments of Jaxon Nelson (Feb. 27, 2024) (eDocket No. 20242-203843-01).

⁵⁷ Comments of Joey Pick (Feb. 27, 2024) (eDocket No. 20242-203843-01).

⁵⁸ Comments of Matthew Binford (Feb. 27, 2024) (eDocket No. 20242-203843-01).

⁵⁹ Comments of Seth Miller (Feb. 27, 2024) (eDocket No. 20242-203843-01).

believes that there are much better locations for solar farms than on prime Minnesota agricultural land.

Taylor Nelson⁶⁰

Taylor Nelson understands the importance of finding renewable energy sources but is opposed to this Project for five reasons: (1) the removal of fertile agricultural land from its most productive use; (2) the loss of biodiversity on the affected land (changes to wildlife, plant life, and the established ecosystem); (3) the irreversible loss of prime farmland and its cascading effect to the local economy; (4) the potential long-term health effects caused by solar panels, including the environmental impact from their disposal; and (5) the potential for increased crime as a result of an influx of non-local workers for the Project.

Caleb Binford⁶¹

Caleb Binford is a high school student and plans to be a fifth-generation family farmer. He is concerned that taking 1,522 acres of farmland out of agricultural use will make it even more difficult for young farmers in the area to start their own farming operations. In addition, Mr. Binford argues that it will add to the current deficient in available corn to feed livestock and will negatively impact local agricultural businesses.

Chad Nelson⁶²

Chad Nelson is concerned about the potential long-term health effects to people and animals related to solar panels, as well as to their effect on air quality. He notes that the landowners who have agreed to rent land to the Applicants are non-resident or “absentee” landowners who do not care about the local community. Mr. Nelson asks the PUC to consider who will benefit from the Project and who will suffer. He contends that non-local and out-of-state investors and businesses will profit from the Project, while local farmers and citizens will suffer from its harmful impacts. He urges the Commission to deny the amended permit application.

Eric Binford⁶³

In addition to oral comments presented at the February 12, 2024 public hearing, Eric Binford submitted two written comments.

In his first written comments, Mr. Binford expressed frustration about how this Project became exempted from the Rock County permit requirements applicable to other new construction in the county. Mr. Binford noted that his farming operation is subject to significant permitting requirements and that it is unjust that the Project is exempt from

⁶⁰ Comments of Taylor Nelson (Feb. 27, 2024) (eDocket No. 20242-203843-01).

⁶¹ Comments of Caleb Binford (Feb. 27, 2024) (eDocket No. 20242-203842-01).

⁶² Comments of Chad Nelson (Feb. 27, 2024) (eDocket No. 20242-203842-01).

⁶³ Comments of Eric Binford (Feb. 22, 2024) (eDocket No. 20242-203710-01); Comments of Eric Binford (Feb. 27, 2024) (eDocket No. 20242-203842-01).

those same requirements. He believes it is a “huge double standard” between the treatment of agricultural operations and energy projects in the state.

Mr. Binford noted that, in an area that must already import corn for livestock feed, the loss of another 1,522 acres of cropland will have a significant impact on the local agricultural economy. According to Mr. Binford, the “deck is already stacked against [young] farmers” when it comes to procuring enough land to farm. Taking prime farmland out of productive agricultural use just exacerbates the problems and the decline in the industry. He asks the Commission not to contribute to the “demise” of family farming.

Mr. Binford’s second written comments addressed the application of Minn. R. 7850.4400, subp. 4 (Prime Farmland Exception) and the DOC guidance document recommending against the use of prime agricultural land for utility siting.

Mr. Binford argues that, under the Prime Farmland Exception, the Project should be limited to just 80 acres maximum (0.5 acres per MW of energy production, assuming full production of the 160 MW nameplate capacity of the amended Project). He questions how the Commission can justify approving a Project that will take 1,522 acres of prime farmland out of agricultural use in light of the express directives of Minn. R. 7850.4400, subp. 4.

He notes that, under the Rule, the Applicant carries the burden to establish that there is no “feasible and prudent alternative” for the siting of the Project. Mr. Binford argues that the Applicant has presented no evidence showing a lack of prudent and feasible (non-agricultural) sites. The Rule makes clear that it is not enough to rely on economic arguments or the proximity to a substation or transmission lines (citing, “[e]conomic considerations alone do not justify the use of more prime farmland.”) Moreover, Mr. Binford asserts that there are no environmental benefits associated with the Project to justify the taking of prime agricultural land out of production.

According to Mr. Binford, the Applicant’s only argument for an exemption from the Rule is that “it will benefit” the land and soil to take it out of agricultural production and allow it to “rest.” Mr. Binford states that this is a blatantly false and scientifically unsupportable claim aimed at deceiving the Commission.

Mr. Binford reminds the DOC-EERA of its own guidance document related to the Prime Farmland Exclusion. He expects the DOC-EERA will stand behind its recommendations and argue for denial of the amended permit in this case.

Finally, Mr. Binford asks why neither the DOC-EERA nor the Commission staff addressed the Prime Farmland Exclusion and the DOC guidance documents during the two public hearings in this matter. He asserts that these are important facts that the public should be aware of in order to present their legal arguments against this Project.

In sum, based upon the application of the Prime Farmland Exclusion and the DOC guidance related to the same, Mr. Binford believes that there is no legal justification that the Commission can cite to justify the approval of the site permit amendment.

Jennifer Nelson⁶⁴

Jennifer Nelson lives to the south of the proposed Project site. Ms. Nelson wrote to express her “100%” opposition to the proposed Project. Ms. Nelson is concerned about the potential health effects that the Project may have on her, her family, and her pets. She wonders how the Commission could justify taking “beautiful, rich farmland and turn[ing] it into a science project.”

Jason Schutz⁶⁵

Jason Schutz is concerned about the detrimental effect the Project would have on the land and the environment. He asserts that it will destroy wildlife habitats and forever alter the rich agricultural soil of the land. By covering the property with solar panels and facilities, the land will not receive the sunlight and rain necessary to maintain the quality soil it now possesses. Instead of “rest” (as the Applicant contends), Mr. Schutz argues that the agricultural land will be forever changed and degraded. Mr. Nelson is also concerned about atmospheric warming that results from solar farms, which can alter weather patterns.

Madyson Miller⁶⁶

Madyson Miler’s family runs a farm in the Project area. She is concerned that the Project will reduce property values in the area and have long-lasting negative impacts to the community. Ms. Miller states that a solar farm has a much “larger carbon footprint” than agricultural use of the land. She believes that the residents of the affected community need to be heard by the Commission and that the amendment should be denied.

Randy Hudson⁶⁷

Randy Hudson, of Luverne, believes that taking 1,522 acres of prime farmland out of agricultural use is “ludicrous.” He states that the Project will take land from productive generational farmers only to enrich “a handful of bureaucratic people’s pockets.” Mr. Hudson proposes that the state of Minnesota give up some of its own land for a solar farm instead. He believes that the information provided by the Applicant is filled with “untruths” aimed at persuading landowners to rent their land or support the Project. He hopes that the Commission will stand up for the farmers and deny the amendment.

Robin Hudson⁶⁸

Robin Hudson questions how this Project could possibly benefit the community when it is taking 1,522 acres of prime farmland (currently used to produce food and support the local economy) and turning it into an industrial solar farm. She believes that

⁶⁴ Comments of Jennifer Nelson (Feb. 27, 2024) (eDocket No. 20242-203842-01).

⁶⁵ Comments of Jason Schutz (Feb. 27, 2024) (eDocket No. 20242-203842-01).

⁶⁶ Comments of Madyson Miller (Feb. 27, 2024) (eDocket No. 20242-203842-01).

⁶⁷ Comments of Randy Hudson (Feb. 27, 2024) (eDocket No. 20242-203842-01).

⁶⁸ Comments of Robin Hudson (Feb. 27, 2024) (eDocket No. 20242-203842-01).

the Project is just a “ploy” “to line the pockets of a few big corporate companies who have no interest in the people and . . . families of Rock County.” She asks the Commission to “do what is right” and deny the amendment application.

Stan Nelson⁶⁹

Stan Nelson’s family has farmed in the area for four generations, totaling 101 years. They own property adjacent to the proposed Project.

Mr. Nelson explained that the property proposed for the Project is owned by absentee landowners (landowners who do not reside in the community), who inherited the land from their relatives. These absentee landowners do not care how the property is used, nor do they contribute to the local community; they simply wish to maximize their profits in rent. Because Applicant can pay more in rent than local farmers, these “absentee landowners” are willing to sacrifice the land for this Project. But to local farmers, the land represents not just a way to earn a living, but a way of life -- a family tradition. Mr. Nelson states that farmers are the best stewards of land. They use the land to feed the world and support rural communities.

Mr. Nelson is concerned that the magnitude of the proposed amended Project will destroy the rural landscape and forever alter the agricultural land upon which it is built. He notes that 11 miles of gravel roads are proposed to be built for the Project in just three-square miles surrounding the Project. After decades of use as an industrial site, the land will not be able to be returned to rich and productive agricultural property. It will be forever degraded. This is particularly concerning in a time where more and more people rely on farming for food production and fewer and fewer farmers exist to produce such food.

Mr. Nelson notes that the Applicant has described the additional land needed for the Project as “negligible.” He urges the Commission to consider how “negligible” the 1,522 acres of land is to the generational farmers who will lose the ability to farm that land and the devastating impact it will have on their families and the community. Mr. Nelson reminds the Commission that agricultural land is a finite resource. It must be used wisely. Therefore, he implores the Commission to deny the amendment.

Tom Fick⁷⁰

Tom Fick wrote to alert the Commission to unsupported statements made by the Applicant regarding a benefit of the Project: allowing the agricultural land to “rest.” Mr. Fick, a longtime farmer, rejects this assertion and points out that the Applicant provides no scientific data in support of its claims. Indeed, Mr. Fick contends that there is no scientific data that would support the contention that leaving agricultural soil idle for an extended period of time improves or restores the quality of the land.

⁶⁹ Comments of Stan Nelson (Feb. 27, 2024) (eDocket No. 20242-203842-01).

⁷⁰ Comments of Tom Fick (Feb. 27, 2024) (eDocket No. 20242-203842-01).

In addition, Mr. Fick disputes Applicant's claims that taking 1,522 acres of land out of agricultural production will reduce nitrate levels in groundwater in southwestern Minnesota. He asks the Commission to carefully scrutinize the Applicant's unsupported claims and deny the amendment.

Corey Nelson⁷¹

Corey Nelson owns a farm in close proximity to the Project area. He inquires: "Why has this [Project] been kept a secret?" He asserts that the Commission and Applicant have not provided sufficient notice and information to the local public to allow the public to have sufficient input and organize against it. He believes it is "grossly unethical" that the state and regulators have failed to make better efforts to inform the community. He questions who the government intends to benefit with this Project. Mr. Nelson does not recognize any benefits -- and sees only detriments -- to the people who live in the proposed Project area.

Dave and Stacy Mente⁷²

Dave and Stacy Mente expressed their "displeasure" with using prime farmland to locate a solar farm. They note that "farmers are being pushed . . . beyond [their] limits" to produce crops on less and less land. The Mentes implore the Commission to force the Applicant to find an alternative location and use less valuable and less productive land for the Project.

Jeff Bowen⁷³

Jeff Bowen, of Luverne, opposes the Project, stating that prime farmland is too valuable for food production to waste on "a green energy boondoggle."

Jerry Reu⁷⁴

Jerry Reu asks the Commission: "[H]as anyone thought about the relatively short useful life span of [the] equipment and material used [for solar projects] compared to the amount of time this non-recyclable '[j]unk' will be sitting in landfills after these projects are 'decommissioned'?" He points to wind turbine projects as a prime example. He asks the Commission to "think down the road" and reject the amendment.

Ken Reverts⁷⁵

Ken Reverts is against a "massive solar farm" because it is "ugly". He also asks the Commission to think about what will happen to the solar panels at the end of their useful life.

⁷¹ Comments of Corey Nelson (Feb. 23, 2024) (eDocket No. 20242-203765-01).

⁷² Comments of Dave and Stacy Mente (Feb. 23, 2024) (eDocket No. 20242-203764-01).

⁷³ Comments of Jeff Bowen (Feb. 23, 2024) (eDocket No. 20242-203759-01).

⁷⁴ Comments of Jerry Reu (Feb. 23, 2024) (eDocket No. 20242-203758-01).

⁷⁵ Comments of Ken Reverts (Feb. 23, 2024) (eDocket No. 20242-203755-01).

Tom Remme⁷⁶

Tom Remme lives five miles from the proposed Project and offers four arguments against approval of the permit amendment: (1) it will remove productive cropland from food production; (2) it will increase property taxes per acre for local landowners; (3) it will increase field rental rates in the area for other farmers; and (4) it will completely change the landscape of the rural community.

Ron and Rosemary Tabbert⁷⁷

Ron and Rosemary Tabbert oppose the Project.

Thompsons, Chambers, Boardman, and Walters⁷⁸

Thompson and Michael Chambers (Chambers Family Farms, LLC); Peter Boardman, John Boardman, and Kate Walters (Boardman Family Farms, LLC), and Marina and Benjamin Thompson, together, submitted a comment in favor of the proposed Project.

These commenters appear to be the owners of all or a majority of the 1,522 acres proposed for the amended Project. They state that, historically, the land was used to grow grass/hay, corn, soybeans, and wheat. However, the families have chosen to allow the land to be used for the Project so that it can produce clean, renewable energy for the next 50+ years.

Without providing specifics, these commenters note that Elk Creek Solar is estimated “to avoid approximately 224,700 metric tons of carbon dioxide emissions annually during operations, an amount equivalent of taking an estimated 50,000 cars off the road each year.” In addition, they note that the Applicant has plans for vegetation and stormwater retention to help protect the land for future use.

Finally, the commenters assert that the Project will bring \$7.6 million of tax revenue to Rock County and Vienna/Magnolia Townships over the course of 20 years (approximately \$380,000 per year). They also mention an “education fund” associated with the Project, estimated to generate approximately \$800,000 over 20 years. It is unclear what the education fund entails.

These landowners ask the Commission to approve the Project amendment.

⁷⁶ Comments of Tom Remme (Feb. 23, 2024) (eDocket No. 20242-203751-01).

⁷⁷ Comments of Ron and Rosemary Tabbert (Feb. 28, 2024) (eDocket No. 20242-203888-01).

⁷⁸ Comments submitted by Klay Walinga on behalf of Chamber Family Farms, LLC, Thompson Chambers, Michael Chambers, Boardman Family Farms, LLC, Peter Boardman, John Boardman, Kate Walters, Marina Thompson, Benjamin Thompson (Feb. 23, 2024) (eDocket No. 20242-203754-01).

Department of Natural Resources⁷⁹

The DNR submitted written comments noting that it reviewed the supplemental EA and the draft Site Permit for the amended Project. It states that it supports the inclusion of the language in the draft Site Permit regarding security fencing requirements, as well as the inclusion of the following special conditions: 5.1 State-Listed Fish; 5.2 Facility Lighting; 5.3 Dust Control; and 5.4 Wildlife-Friendly Erosion Control. The DNR notes that any DNR permits or licenses required by the Applicant for the Project will not be granted until the PUC issues an approved amended site permit for this Project.

Department of Commerce Energy and Environmental Review and Analysis (EERA)⁸⁰

The DOC-EERA submitted comments, which consisted of recommended modifications to Applicant's draft decommissioning plan and to the site permit issued on December 31, 2020. The Department noted that the decommissioning plan partially meets EERA's expectations. It questioned whether the restoration goals identified by Applicant are achievable to restore and reclaim the site to pre-project conditions.

The DOC-EERA explained that the scheduled updates in the proposed amended site permit do not meet the Department's expectations. It recommends adding a section specifically addressing the schedule of updates to the permit, not just the costs of those updates. The Department requests that such updates occur every five years beginning immediately upon permitting. The EERA also recommends that the decommissioning plan be updated anytime there is a change in ownership.

With respect to the project description, the EERA recommends certain changes including: identifying the name of the permittee (not developer); a description of the final developed footprint; adding a map of the entire developed area; inserting references to past decommissioning plans, moving the term of the site permit and referring to the term in current language; and adding a short statement on land ownership.

The DOC-EERA explained that the "use of generation output" in the proposed site permit does not meet EERA expectations. It should include a statement of where the generation will be used, information on Power Purchase Agreements (PPAs) obtained (including the date of expiration of the PPAs), and information on the utility's own energy generation portfolio.

With respect to permits and notification, the DOC-EERA notes that the proposed amended site permit partially meets the Department's expectation. However, the Department suggests that the amended site permit should better clarify that notification to landowners must occur before the start of decommissioning; should include a list of

⁷⁹ Comments from Minnesota Department of Natural Resources (Feb. 20, 2024) (eDocket No. 20242-203583-01).

⁸⁰ Comments from Department of Commerce EERA (Feb. 26, 2024) (eDocket No. 20242-203806-01).

anticipated permits; and should identify which landowners and local governments will be notified.

As for the tasks and timing of decommissioning activities, the DOC-EERA recommends additional information, including adding text to describe how the project element will be removed; a short section discussing assumptions for disposition of project material after decommissioning; and details addressing the removal of all stormwater basins (not just permanent stormwater treatment facilities).

The DOC-EERA notes that the cost estimates provided by the Applicant in the proposed decommissioning plan do not meet the Department's expectations. It states that the EERA seeks a more detailed cost estimate that includes both gross and net costs, as well as assumptions for those costs. The Department notes that the salvage value and resale market for solar panels is currently speculative.

For financial assurances, the Department notes that the decommissioning plan does not identify a beneficiary of the financial assurances. The EERA notes that the company's financial assurances will fund decommissioning of the Project and restoration of the site. The financial assurances should be independent of the required surety bond, and that such bond should not be relied upon for funding decommissioning. In addition, the financial assurances should begin in year 10 and be fully funded prior to decommissioning. It notes that the funding should also be adjusted to match cost estimates provided by the Applicant and should be fully funded prior to the expiration of any PPA.

The Department notes that the Applicant's decommissioning plan anticipates leaving in place project-related infrastructure that is buried at a depth greater than four feet. However, the final site restoration requirements for a solar site in the site permit does not specify the depth of removal. The Department recommends that this inconsistency be cured.

Based upon its experience with solar projects, the DOC-EERA recommends several conditions be added to the amended site permit to minimize impacts to soil health, erosion, stormwater runoff, and site vegetation during and after construction and throughout operation. Because extracting underground components may result in significant disturbance to the site, the EERA recommends five-year updates for the decommissioning plan to allow for more flexibility.

Finally, the DOC-EERA notes that it originally included a draft site permit in Appendix D of the EA. However, with its comments, the Department included a marked up (revised) version of the draft permit with its comments (along with a summary table). The Department encourages the Commission to incorporate its suggestion in any amended site permit issued.

Minnesota Pollution Control Agency (MPCA)⁸¹

The Minnesota Pollution Control Agency (MPCA) submitted written comments addressing construction of stormwater basins. The Agency notes that the proposed amended Project site contains “a lot of stormwater basins.” The MPCA instructed that, if an area has 10 or more acres that drain to a common area, the Applicant will need to use a temporary sedimentation basin to treat water before it leaves the construction site or enters a surface water. This requirement changes to five acres if the site is draining into a special or impaired water.

The MPCA also advised that the 2023 construction stormwater permit requirements have changed and may impact solar farm sites with respect to vegetation. If the Applicant uses pollinator habitat or native vegetation during reestablishment of the landscape, the inspection frequency and inspection requirements have now changed.

The Agency reminds the Applicant that approval of the amended site permit does not obviate its obligations to obtain necessary permits from the MPCA.

This concludes the summary of the public comments received during the comment period.⁸²

Dated: March 7, 2024



ANN C. O'REILLY
Administrative Law Judge

Reported: Transcribed (Shaddix & Associates)

⁸¹ Comments from Minnesota Pollution Control Agency (MPCA) (Feb. 28, 2024) (eDocket No. 20242-203889-01).

⁸² On February 27, 2024, the Commission filed in eDockets comments it received prior to the end of the comment period. While those comments were not efiled until after the comment period ended (February 26, 2024), they are included in this Report. The Administrative Law Judge also included the MPCA comments, despite being filed untimely.

March 7, 2024

See Attached Service List

Re: *In the Matter of the Application of Elk Creek Solar, LLC for a Site Permit for the up to 160 MW Elk Creek Solar Project in Rock County, Minnesota*

**OAH 65-2500-39582
MPUC IP7009/GS-19-495**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **REPORT TO COMMISSION** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7857, nichole.helmuelle@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



NICHOLE HELMUELLER
Legal Assistant

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Application of Elk Creek Solar, LLC for a Site Permit for the up to 160 MW Elk Creek Solar Project in Rock County, Minnesota	OAH Docket No.: 65-2500-39582 MPUC IP7009/GS-19-495
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On March 7, 2024, a true and correct copy of the **REPORT TO COMMISSION** was served by eService, and United States mail, (in the manner indicated below) to the following individuals:

First Name	Last Name	Email	Company Name
Michael	Allen	michael.allen@allenergysolar.com	All Energy Solar
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC
Jeremy	Duehr	jduehr@fredlaw.com	Fredrikson & Byron, P.A.
Bret	Eknes	bret.eknes@state.mn.us	Public Utilities Commission
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce
Lucas	Franco	lfranco@liunagroc.com	LIUNA
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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD
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