



June 21, 2023

Mr. Will Seuffert
Executive Secretary
Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

RE: **Comments and Recommendations**
Application of Elk Creek Solar, LLC for an Amendment to Permit Conditions to the Elk
Creek Solar Project's Site Permit in Rock County, Minnesota
Docket No. IP-7009/GS-19-495

Dear Mr. Seuffert:

Attached are the comments and recommendations of the Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) staff on the following matter:

In the Matter of the Application of Elk Creek Solar, LLC for an Amendment to
Permit Conditions to the Elk Creek Solar Project's Site Permit in Rock County,
Minnesota

On June 12, 2023, the Commission release notice of a comment period on Elk Creek Solar, LLC's request for an amendment to the permit conditions to the Elk Creek Solar Project's Site Permit.

EERA recommends that the Applicant's filing be treated as a site permit application for a new solar project, and that the Applicant restructure and refile the document as a stand-alone site permit application pursuant to Minn. Stat. § 216E.04.

Staff is available for questions.

Sincerely,

William Cole Storm
Environmental Review Manager



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS COMMENTS AND RECOMMENDATIONS

In the Matter of the Application of Elk Creek Solar, LLC for an Amendment to Permit Conditions to the Elk Creek Solar Project's Site Permit in Rock County, Minnesota Docket No. IP-7009/GS-19-495

Date: July 21, 2023

Staff: William Cole Storm | bill.storm@state.mn.us | 651-539-1844

Issues Addressed: These comments and recommendations address the appropriate environmental review and permitting process for the project and the completeness of the project's application for a permit amendment.

Additional documents and information can be found on eDockets <https://www.edockets.state.mn.us/EFiling/search.jsp> (year="19" and either number "495")

This document can be made available in alternative formats, i.e., large print or audio tape by calling 651-539-1530.

Introduction and Background

On September 13, 2019, Elk Creek Solar, LLC (Applicant) submitted applications to the Commission for a certificate of need (CN) and a site permit for the Elk Creek Solar Project. The site permit application was reviewed under the alternative review provisions of Minnesota Rule Chapter 7850. The Commission issued Orders granting the CN and issuing the site permit on December 31, 2020, under Docket Nos. IP-7009/CN-19-351 and IP-7009/GS-19-495, respectively. The site permit authorized the permittee to construct and operate an up to 80 MW alternating current nameplate capacity solar energy conversion system and associated facilities on 976 acres in Vienna Township, Rock County, Minnesota.

On June 2, 2023, the Applicant submitted an application to the Minnesota Public Utilities Commission (Commission) requesting an *Amendment of Permit Conditions*, pursuant to Minnesota Rule Chapter 7850.4900, to the site permit previously issued for the Elk Creek Solar Project.

The Applicant is requesting Commission approval to increase the Elk Creek Solar project site boundary from 976 acres to 1,522 acres and the nameplate capacity of the project from 80 MW to 160 MW.

In its filing, the Applicant lays out three possible scenarios: 1) amendment of permit conditions; 2) a modified amendment process, which incorporates some elements of 7850.3700; and 3) treating the filing as a site permit application for a new project.

EERA conducted a review of the draft filing and provided comments to the Applicant on the environmental information contained within. EERA did not provide comments on the appropriate process for the environmental review and permitting of the project.

On June 12, 2023, the Commission issued notice of the Applicant's filing and requested comments on the appropriate environmental review and permitting process for the project.¹

Regulatory Process & Procedures – Amendment of Permit Conditions

The language in Minn. Rule 7850.4900 authorizes the Commission to “amend any of the conditions” in a site permit for large electric power generating plant facilities.² Neither the term “condition”, nor the scope of an amendment are defined in the rule.

The process for making such a request, requires that the person making the request submit an application to the Commission describing the amendment pursued and the reasons for the amendment. The Commission then issues a notice of the filing, along with notification of a minimum 10-day period for interested person to provide comments on the application or to request that the application be brought before the Commission for consideration.³

The Commission has 10-days following the close of the comment period to approve the amendment request or to bring the matter before the Commission for consideration. The Commission must notify the Applicant in writing of its decision.

Regulatory Process & Procedures – Site Permit

As with the original Elk Creek Solar [I] Project (976 acres, 80 MW) site, a new Elk Creek Solar [II] Project (546 acres, 80 MW) site would require a site permit from the Commission.⁴ Because the project would be powered by solar energy it qualifies for the alternative permitting process.⁵ The new project would also be exempt from certificate of need requirements because it is a solar energy generating system, as defined in section 216E.01, subdivision 9a and would be developed and permitted by an independent power producer, the Applicant, under chapter 216E.⁶

¹ Notice of Comment Period On Site Permit Amendment Request, June 12, 2023. Docket No. 20236-196477-01.

² Minn. Rule 7850.4900, subp.1.

³ Minn. Rule 7850.4900, subp.2.

⁴ Minn. Stat. 216E.03, subd. 1 and 2.

⁵ Minn. Stat. 216E.04, subd. 2(8).

⁶ On May 24, 2023, Governor Walz signed H.F. 2310 into law. H.F. 2310 amends Minn. Stat. Section 216B.243, subd. 8 to exempt projects permitted by independent power producers, such as Elk Creek, from certificate of need requirements. See H.F. 2310 lines 353.25- 355.14,

Application and Acceptance

Site permit applications must provide specific information.⁷ This includes, but is not limited to, information about the applicant, descriptions of the project and site, and discussion of potential human and environmental impacts and possible mitigation measures.⁸ Under the alternative permitting process, an applicant is not required to propose alternative sites; however, if alternative sites were evaluated and rejected, the application must describe these sites and reasons for rejecting them.⁹

Upon receiving a site permit application, the Commission may accept it as complete, reject it and advise the applicant of its deficiencies, or accept it as complete but require the applicant submit additional information¹⁰. If the Commission determines the application is complete, environmental review begins.

The Commission is required to make a permit decision within six months from the date an application is accepted.¹¹ This time limit may be extended up to three months for just cause or upon agreement of the applicant.¹²

Public Advisor

Upon acceptance of a site permit application the Commission must designate a public advisor.¹³ The public advisor answers questions about the permitting process but cannot provide legal advice or act as an advocate for any person.

Advisory Task Force

The Commission may appoint an advisory task force to aid in the environmental review process.¹⁴ An advisory task force would assist Energy Environmental Review and Analysis (EERA) staff in identifying additional sites or particular impacts to evaluate in the environmental assessment (EA) prepared for the project.¹⁵ If appointed, an advisory task force must include certain local government representatives.¹⁶ The advisory task force expires upon completion of its charge or issuance of the scoping decision.¹⁷

Appointment of an advisory task force is not required. In the event no advisory task force is appointed citizens may request one be created.¹⁸ If such a request is made, the Commission must make this determination at its next scheduled agenda meeting.¹⁹

⁷ Minn. Stat. 216E.04, subd. 3; Minn. R. 7850.3100.

⁸ Ibid.

⁹ Ibid.

¹⁰ Minn. R. 7850.3200.

¹¹ Minn. R. 7850.3900, subp. 1.

¹² Ibid.

¹³ Minn. R. 7850.3400.

¹⁴ Minn. Stat. 216E.08, subd. 1; Minn. R. 7850.3600, subp. 1.

¹⁵ Minn. R. 7850.2400, subp. 3.

¹⁶ Minn. Stat. 216E.08, subd. 1.

¹⁷ Minn. R. 7850.2400, subp. 4.

¹⁸ Minn. R. 7850.2400, at subp. 2.

¹⁹ Ibid.

The decision whether to appoint an advisory task force does not need to be made at this time; however, a decision should be made as soon as practicable to ensure an advisory task force could complete its charge prior to issuance of the scoping decision.

Environmental Review

The alternative permitting process requires completion of an environmental assessment (EA), which is prepared by EERA staff.²⁰ An EA contains an overview of the resources affected by the project and discusses potential human and environmental impacts and mitigation measures.²¹ Under the alternative permitting process an EA is the only required state environmental review document.

EERA conducts necessary public scoping meetings in conjunction with a public comment period to inform the content of the EA.²² The commissioner of the Department of Commerce issues the scope of the EA,²³ and may include alternative sites suggested during the scoping process if they would aid the Commission in making a permit decision.²⁴

Public Hearing

The alternative permitting process requires a public hearing be held in the project area upon completion of the EA²⁵ in accordance with the procedures outlined in Minnesota Rule 7850.3800, subpart 3. If the site permitting process and CN determination are proceeding concurrently, the commission may order that a joint hearing be held to consider both siting and need.²⁶

The hearing is typically presided over by an administrative law judge (ALJ) from the Office of Administrative Hearings (OAH). The Commission may request the ALJ provide a summary of the hearing (summary report), or request the ALJ provide findings of fact, conclusions of law, and recommendations regarding the site permit application (summary proceeding).

Requesting the ALJ to prepare findings, conclusions of law, and recommendations will extend the length of the permitting process.

Final Decision

The Commission is required to make a site permit decision within six months from the date an application is accepted.²⁷ This time limit may be extended up to three months for just cause or upon agreement of the applicant.²⁸

²⁰ Minn. Stat. 216E.04, subd. 5; Minn. R. 7850.3700, subp. 1.

²¹ Minn. Stat. 216E.04, subd. 5; Minn. R. 7850.3700, subp. 4.

²² Minn. R. 7850.3700, subp. 2.

²³ Id. at subp. 3.

²⁴ Id. at subp. 2.

²⁵ Minn. R. 7850.3800, subp. 1.

²⁶ Minn. Stat. 216B.243, subd. 4 (stating that unless a joint hearing is not feasible or more efficient, or otherwise not in the public interest, a joint hearing shall be held).

²⁷ Minn. R. 7850.3900, subp. 1.

²⁸ Ibid.

EERA Staff Analysis and Comments

As noted above, the Applicant, in its filing, has laid out three scenarios or options for the Commission's consideration. These scenarios are discussed here. The scenarios substantially overlap with the topics in the Commission's notice.

Option 1: Requested Amendment of Permit Conditions. This scenario is the preferred option of the Applicant and the first topic in the Commission's notice. EERA staff does not believe that Minnesota Rule 7850.4900, was designed for such large-scale changes to a permitted project. The proposed project would impact 546 additional acres and would double the capacity of the Elk Creek Project (from 80 MW to 160 MW). Changes of this scale constitute a new large electric power generating plant as defined in statute, therefore requiring a separate site permit, or at a minimum these changes to a project certainly warrant opening of scoping and other processes.

Option 2: Modified Amendment Process. To EERA staff's understanding, the purpose of the modified amendment process proposed by the Applicant is to save time. The Applicant estimates its modified amendment process would take 230 days to complete. The process focuses mainly on the environmental impacts of the additional land area. While EERA staff believes that stakeholders may have environmental concerns involving the additional land expansion, not all stakeholder concerns associated with solar development are land based (e.g., decommissioning) or even environmental for that matter (e.g., economic concerns). The modified process as laid out by the Applicant does not include a public scoping meeting or a public hearing, both of which are available under the Power Plant Siting Act, and thereby limits the participation these stakeholders could avail themselves to through the normal Alternative Review Process.

With respect to potential time savings, the anticipated timeline under the Alternative Review Process, if a summary of public testimony is requested from the Administrative Law Judge, is approximately 270 days, which is not substantially more than the estimated 230 days in the Applicant's modified amendment process.²⁹

Option 3: Treat the Filing as a Site Permit Application. As previously stated, EERA staff reviewed a draft of the filing. While the environmental information and content appear complete, staff did comment that the presentation – trying to “cover two bases at once” (application for an amendment and a site permit application combined) with the document's emphasis on comparisons to the permitted site – made it difficult for the reader (stakeholders and “downstream” permitting agencies) to follow.

A comparable example of what appears, to EERA staff, as a more stakeholder-friendly approach is that being proposed for the Sherco 3 Solar Project (Docket No. E-002/GS-23-217).³⁰ EERA staff is currently reviewing the draft Sherco 3 Solar Project Site Permit Application. The Sherco 3 site is a 250 MW solar site proposed next to the permitted Sherco 1 and Sherco 2 solar sites, and will share some infrastructure (connector lines, interconnect, etc.) with these sites, but will be reviewed and permitted as a separate,

²⁹ EERA Review and Comments Application Acceptance, November 12, 2021. eDocket No. 202111-179710-02.

³⁰ Xcel Energy Notice of Intent to File Site Permits Under the Alternative Process, June 16, 2023. eDocket No. 20236-196620-01.

solar project. To EERA staff's review, the Elk Creek [II] Project is substantially similar to the Sherco 3 Solar Project.

Beyond the appropriate process for the project, the Commission's notice also asked whether commenters were aware of any potential human/environmental impacts, mitigations, and other concerns associated with the Applicant's request. As anticipated, due to the proximity of the two sites, EERA found in its preliminary review of the draft filing that the environmental setting (land use, topography, hydrology, etc.) and human settlement (patterns, public services, demographics, aesthetics, recreation, and infrastructure, etc.) were very similar between the two sites. However, the very purpose of the Power Plant Siting Act and its processes (scoping meeting, scoping decision, development of the EA, and public hearing) are to ascertain and evaluate these potential issues and it may not be a realistic expectation to answer these questions in a 10-day comment period format.

EERA Staff Recommendations

EERA recommends that the Applicant's filing be treated as a site permit application for a new solar project, and that the Applicant restructure and refile the document as a stand-alone site permit application pursuant to Minn. Stat. § 216E.04.

No new analysis should be required. The application could of course include a section on the original permitted site with comparative information as background in that section.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Comments

Docket No. IP7009/GS-19-495

Dated this **21st** day of **June 2023**

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Michael	Allen	michael.allen@allenergysolar.com	All Energy Solar	721 W 26th st Suite 211 Minneapolis, Minnesota 55405	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-495_Official Service List 19-495
Jeremy	Duehr	jduehr@fredlaw.com	Fredrikson & Byron, P.A.	60 S Sixth St Ste 1500 Minneapolis, Minnesota 55402-4400	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Bret	Eknese	bret.eknes@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Lucas	Franco	lfranco@liunagroccom.com	LIUNA	81 Little Canada Rd E Little Canada, MN 55117	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Michael	Kaluzniak	mike.kaluzniak@state.mn.us	Public Utilities Commission	Suite 350 121 Seventh Place East St. Paul, MN 55101	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Jessica	Palmer Denig	jessica.palmer-Denig@state.mn.us	Office of Administrative Hearings	600 Robert St N PO Box 64620 St. Paul, MN 55164	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_19-495_Official Service List 19-495
Stephan	Roos	stephan.roos@state.mn.us	MN Department of Agriculture	625 Robert St N Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Melissa	Schmit	melissa@nationalgridrenewables.com	National Grid Renewables	8400 Normandale Lake Blvd Ste 1200 Bloomington, MN 55437	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-495_Official Service List 19-495
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	Yes	OFF_SL_19-495_Official Service List 19-495
William	Storm	bill.storm@state.mn.us	Department of Commerce	Room 500 85 7th Place East St. Paul, MN 551012198	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, Minnesota 55155-4040	Electronic Service	No	OFF_SL_19-495_Official Service List 19-495