

## Staff Briefing Papers

Meeting Date April 8, 2021

Agenda Item 1\*

Company Louise Solar Project, LLC

Docket No. **IP7039/CN-20-646**

**In the Matter of the Application of Louise Solar Project, LLC for a Certificate of Need for the 50 MW Louise Solar Project in Mower County, Minnesota**

**IP7039/GS-20-647**

**In the Matter of the Application of Louise Solar Project, LLC for a Site Permit for the 50 MW Louise Solar Project in Mower County, Minnesota**

Issues

1. Should the Commission accept the certificate of need application as substantially complete and authorize review using the Commission's informal process or refer the matter to the Office of Administrative Hearings for contested case proceedings?
2. Should the Commission accept the site permit application as substantially complete and authorize review under the alternative permitting process?
3. Should the Commission direct that the certificate of need and site permit applications be processed jointly (i.e. joint public information meetings, joint public hearings, and an environmental assessment in lieu of an environmental report)?
4. Should the Commission appoint an advisory task force for the siting of the proposed solar energy generating system?

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.



5. What actions should the Commission take concerning the public hearing process and procedures?
  
6. Should the Commission vary the time limits of certain rules related to the processing of the applications?

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**Relevant Documents****Date**

Notice of Intent to Submit a Site Permit Application under Alternative Permitting Process (docket# 20-647)	12/10/2020
Application for Certificate of Need for a Large Energy Facility (9 parts, docket# 20-646)	02/11/2021- 02/12/2021
Application for a Solar Generating System Site Permit (19 parts, docket# 20-647)	02/11/2021 – 02/12/2021
Notice of Comment Period (both dockets)	02/22/2021
Public Comment – G. Noterman (both dockets)	03/02/2021
DOC EERA – Comments and recommendations (docket# 20-647)	03/08/2021
LIUNA Minnesota & North Dakota Comments (both dockets)	03/08/2021
DOC DER Comments (docket# 20-646)	03/08/2021
Louise Solar Project, LLC – Reply Comments (docket# 20-646)	03/15/2021
Louise Solar Project, LLC – Reply Comments (docket# 20-647)	03/15/2021

**Attachments**

Attachment A – DOC EERA Conceptual Schedule

Attachment B – Sample Solar Permit

## I. Statement of the Issues

1. Should the Commission accept the certificate of need application as substantially complete and authorize review using the Commission's informal process or refer the matter to the Office of Administrative Hearings for contested case proceedings?
2. Should the Commission accept the site permit application as substantially complete and authorize review under the alternative permitting process?
3. Should the Commission direct that the certificate of need and site permit applications be processed jointly (i.e. joint public information meetings, joint public hearings, and an environmental assessment in lieu of an environmental report)?
4. Should the Commission appoint an advisory task force for the siting of the proposed solar energy generating system?
5. What actions should the Commission take concerning the public hearing process and procedures?
6. Should the Commission vary the time limits of certain rules related to the processing of the applications?

## II. Background

Louise Solar Project, LLC, (Louise Solar or Applicant) an affiliate of EDF Renewables, LLC, has filed with the Minnesota Public Utilities Commission (Commission) separate applications for a certificate of need and a site permit for 50-megawatt (MW) alternating current (AC) solar energy generating system on approximately 613 acres of land in Mower County. Based on preliminary design, Project facilities will cover approximately 325 acres of the Project Area (Preliminary Development Area). There are approximately 288 acres of the Project Area for which Louise Solar has site control but are currently not contemplated for occupation by solar facilities.

In addition to solar panels, the Project will consist of an electrical collection system, access roads, substation and interconnection facilities, an Operation and Maintenance (O&M) facility, and other infrastructure typical of a utility-scale solar facility. The Project will include a proposed approximately 700-1,000-foot long above-ground, 161-kV transmission line to interconnect the Project to the grid at ITC Midwest's Adams Substation located immediately adjacent to the eastern Project Area boundary. The proposed Project transmission line is planned to be a 161 kV line spanning less than 1,500 feet and thus does not require a Route Permit from the Commission.

The Applicant stated need for the project is to meet the growing commercial and industrial customer (C&I) demand for additional renewable energy resources, to accommodate the Solar

Energy Standard set forth in Minnesota Statutes and to meet other clean energy requirements in Minnesota and neighboring states. The Project will provide cost-effective solar energy and help meet the Minnesota Renewable Energy Objectives (Minnesota Statutes §216B.1691). The Applicant indicated it is working towards securing a Power Purchase Agreement (PPA) or Develop, Build, Sale (DBS) agreement for the output of the Project. The Applicant has executed a Generator Interconnection Agreement (GIA) with MISO dated February 22, 2019. This interconnection will provide sufficient outlet to accommodate all of the solar energy generation from the Project.

The Project construction timeline follows two possible commercial operation dates (COD) and subsequent schedules, Q4 2022 (Track 1) or Late Q3/early Q4 2023 (Track 2). The specific track to be taken will be determined by a number of factors including, but not limited to, timing and completion of power purchase agreement arrangements, interconnect facilities, equipment availability and permitting timelines.

### **III. Procedural History**

On August 5, 2020, Louise Solar Project, LLC filled a petition requesting exemption from certain certificate of need application content requirements.

On September 21, 2020, the Commission issued an order that approved exemptions to certain certificate of need data requirements.

On December 10, 2020, in accordance with Minn. R. 7850.2800, subp. 2, Louise Solar filed a notice of intent to submit a site permit application under the alternative permitting process.

On February 11 and 12, 2021, Louise Solar filed its certificate of need application for the 50 MW Louise Solar Project.

On February 11 and 12, 2021, Louise Solar filled its site permit application for the 50 MW Louise Solar Project.

On February 22, 2021 the Commission issued a notice requesting comments on: (1) whether the certificate of need application contains the information required under Minn. R. 7849.0220, subp. 1; (2) whether the site permit application contains the information required under Minn. R. 7850.3100; (3) whether the certificate of need and site permit applications should be evaluated using the Commission's informal process or referred to the Office of Administrative Hearings for contested case proceedings; (4) whether an advisory task force should be appointed for the site permit application; (5) whether the site permit application should be processed jointly with the certificate of need application (i.e., public meetings, environmental review, and public hearings); (6) whether there are any contested issues of fact with respect to the representations made in the applications. Initial comments were accepted until March 8, 2021 and reply comments were accepted until March 15, 2021.

By March 8, 2021, the Commission received comments from LIUNA Minnesota and North Dakota, DOC EERA, DOC DER, and a public comment from a resident in the area.

On March 15, 2021, the Commission received separate reply comments from Louise Solar in each the CN docket and the SPA docket.

#### IV. Statutes and Rules

##### A. Certificate of Need Applications

**Certificate of Need.** Under Minn. Stat. § 216B.243, subd. 2, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.

**Large Energy Facility.** The proposed Louise Solar Project is defined as a large energy facility under Minn. Stat. § 216B.2421, subd. 2(1), because it is a large electric power generating plant with a capacity of 50 megawatts.

**Certificate of Need Applications.** Under Minn. R. 7849.0220, an application for a certificate of need for a large energy facility must include all the information required by parts 7849.0240, 7849.0250, 7849.0270 to 7849.0320, and 7849.0340. The Commission may exempt certain data requirements pursuant to Minn. R. 7849.0200, subp. 6.<sup>1</sup> Under Minn. R. 7849.0200, subp. 5, the Commission must notify the applicant within 30 days of the receipt of an application if the application is not substantially complete. On notification, the applicant may correct any deficiency and may resubmit the application. If the revised application is substantially complete, the date of its submission is considered the application date.

**Procedural Treatment of Certificate of Need Application.** Under Minn. R. 7829.2500, subp. 9, the Commission can choose one of two procedural methods to evaluate an application for a certificate of need: 1) the informal process designated under part 7829.1200 (also known as the notice and comment process)<sup>2</sup>; or 2) referral to the Office of Administrative Hearings (OAH) for contested case proceedings under Minn. Stat. §§ 14.57 et seq., if there are material facts in dispute.

**Environmental Report.** Minn. R. 7849.1000 to 7849.2100, establishes the requirements concerning preparation of an environmental report for a large energy facility requiring a

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<sup>1</sup> The Commission authorized exemptions in its September 21, 2020 Order from the following data requirements: **Full exemption from data requirements:** 7849.0240, subp. 2 (B): Promotional Activities; 7849.0250 (B) 1, 2, 3, and 5: Description of Certain Alternatives; 7849.0250 (C) 1 to 6, 8 and 9: Availability of Alternatives to the Facility; 7849.0250 (C) 7: Effect of Project on Rates System-wide; 7849.0290: Conservation Programs; and 7849.0330: Alternatives Involving a LHVTL. **Conditional exemption from data requirement:** 7849.0250 (B) 4: Description of Certain Alternatives; 7849.0250 (D): Map of Applicant's System; 7849.0270: Peak Demand and Annual Consumption Forecast; 7849.0280: System Capacity; 7849.0300: Consequences of Delay—System; and 7849.0340: The Alternative of No Facility.

<sup>2</sup> The informal process still requires at least one public hearing to obtain public comment on the necessity of granting a certificate of need (Minn. R. 7829.2500, subp. 9).

certificate of need. The environmental report describes the human and environmental impacts of the proposed project associated with the size, type, and timing of the project, alternatives to the proposed project, and addresses measures to mitigate potential adverse impacts.

**Timing.** Under Minn. Stat. § 216B.243, subd. 5, the Commission shall approve or deny a certificate of need for a large energy facility within 12 months of the submission of an application. This time period may be extended by consent of the parties or by the Commission for good cause.

## **B. Site Permit Applications**

**Site Permit.** Under Minn. Stat. § 216E.03, subd. 1, no large electric power generating plant shall be sited or constructed in Minnesota without the issuance of a site permit by the Commission. In addition, pursuant to Minn. R. 7850.2700, subp. 3, the Commission shall not make a final decision on a site permit for a project that requires a certificate of need until after that approval has been granted.

**Large Electric Power Generating Plant.** The proposed Louise Solar Project is a large electric power generating plant under Minn. Stat. § 216E.01, subd. 5, because it is an electric generating facility designed for or capable of operation at a capacity 50 megawatts.

**Site Permit Applications.** Louise Solar filed its site permit application under the alternative permitting process set forth in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900. The proposed project is eligible for consideration under the alternative permitting process because it is a large electric power generating plant that is powered by solar energy.<sup>3</sup> Site permit applications considered under the alternative permitting process must include specific information about the proposed project as provided under Minn. R. 7850.3100. The Commission may accept an application as complete, accept an application as complete upon the filing of missing information, or reject an application and advise the applicant of the deficiencies. The date of the Commission's determination that an application is complete is considered the application review start date.

The alternative permit review process differs from the full permit review process in that:

- the applicant is not required to propose alternative sites in the permit application. However, if the applicant has examined and rejected alternative sites, it must include a discussion of those sites and the reasons for rejecting them in the permit application.
- the Commission has six months from the date an application is determined complete to reach a final site permit decision instead of one year under the full process. The six-month time period may be extended for up to three months for just cause or by agreement of the applicant.
- the preparation of an environmental assessment is required instead of an environmental impact statement; and

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<sup>3</sup> Minn. Stat. § 216E.04, subd. 2(8).

- a public hearing is conducted pursuant to the procedures found in Minn. R. 7850.3800, instead of a contested case hearing.

**Advisory Task Force.** Minn. R. 7850.3600, provides for Commission appointment of an advisory task force. The Commission must determine whether to appoint a task force as early in the process as possible but is not required to establish an advisory task force for every project. If the Commission does not establish an advisory task force, a member of the public may request one, and the Commission must promptly consider the request. Upon appointment of an advisory task force, the Commission must specify the charge to the task force and appoint its members in accordance with Minn. Stat. § 216E.08, subd. 1.

### C. Environmental Assessment

Minn. R. 7850.3700, requires preparation of an environmental assessment for projects being reviewed under the alternative permitting process. The Department of Commerce is responsible for preparing the environmental assessment for the Commission. The environmental assessment must provide information on the human and environmental impacts of the proposed project and of alternative sites or routes; the feasibility of each alternative site or route considered; and mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified.

### D. Public Hearing

Under Minn. R. 7850.3800, applications reviewed under the alternative permitting process require a public hearing upon completion of the environmental assessment. The rules provide for Commission appointment of a hearing examiner to facilitate factual record development and to ensure the record created at the public hearing is preserved. The Commission may request the hearing examiner provide a report and recommendations on the matter. The manner in which the public hearing must be conducted is outlined under Minn. R 7850.3800, subp. 3, as follows:

- the staff shall make a brief presentation to describe the project; explain the process to be followed; and introduce documents to be included in the record, including the application, the environmental assessment, and various procedural documents;
- the applicant shall introduce its evidence by way of testimony and exhibits; the public must be afforded an opportunity to make an oral presentation, present documentary evidence, or ask questions of the applicant and staff. Interested persons may also provide comments on the environmental assessment;
- the hearing examiner shall provide a period of not less than 10 days for the submission of written comments into the record from the date of the final hearing; and
- the hearing examiner shall transmit the complete record created at the hearing, including all written comments, to the Commission within five days of the close of the record, unless the hearing examiner has been requested by the Commission to prepare a report.

### **E. Joint Environmental Review**

Minn. R. 7849.1900, subps. 1 and 3, provide that in the event an applicant for a certificate of need for a large energy facility applies to the Commission for a site permit prior to the time the Department of Commerce (Department) completes the environmental report (ER) for the certificate of need, the Department may elect to prepare an environmental assessment (EA) in lieu of the required ER. If combining the processes would delay completion of the environmental review, the applicant and the Commission must agree to the combination. If the documents are combined, the Department must: (i) follow the procedures of parts 7850.3700 in conducting the environmental review; and (ii) include the analysis of alternatives required by Minn. R. 7849.1500.

### **F. Joint Public Hearings**

Minn. Stat. § 216B.243, subd. 4, requires joint hearings on siting and need unless it is determined by the Commission that joint proceedings are less efficient or not feasible. Also, Minn. R. 7849.1900, subp. 4, contemplates Commission approval of a joint hearing to consider both siting and certificate of need issues if it is feasible, more efficient, and would further public interest.

### **G. Rule Variances**

Under Minn. R. 7829.3200, subp. 1, the Commission is authorized to grant a variance to its rules if it determines that:

- 1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- 2) granting the variance would not adversely affect the public interest; and
- 3) granting the variance would not conflict with standards imposed by law.

## **V. Comments on Application Completeness and Review Process**

Initial comments on application completeness were accepted until March 8, 2021. The Commission received comments from LIUNA Minnesota and North Dakota, DOC EERA, DOC DER, and a public comment from Gene Noterman, a resident in the project area. Reply Comments were received from Louise Solar. Reply comments were accepted until March 15, 2021.

### **A. Initial Comments**

#### **1. Department of Commerce, Division of Energy Resources (DOC DER)**

On March 8, 2021, the DOC DER filed comments on its completeness review of Louise Solar's certificate of need application. Based on its review, DOC DER determined that Louise Solar needed to address the missing information from Section 7849.0250 (B) 4 in reply comments, and any associated discussion pursuant to Sections 7849.0250 (C), 7849.0310 and 7849.0320.



Once the missing information was filed, the Department anticipated recommending that the Commission find the Application to be complete.

Concerning the application review process, DOC DER recommended that the Commission use the comment and reply process (informal review process) because it did not anticipate significant disputed issues in the certificate of need proceeding. DOC DER also indicated it would not object to a Commission-ordered contested case if parties claim significant contested material facts and/or raise controversial issues and would participate to the best of its ability.

## 2. DOC EERA

On March 8, 2021, DOC EERA filed comments on the completeness of Louise Solar's site permit application, the use of joint environmental review, the procedural process, and the need for an advisory task force. DOC EERA's conclusions and recommendations are summarized below.

- DOC EERA reviewed the site permit application and determined that it generally meets the content requirements of Minn. R. 7850.1900. The Department reviewed the CN application pursuant to the requirements of Minn. R. 7849.0310 and believes that the environmental information combined with the information in the site permit are sufficient to begin the project review process providing that:
  - DOC EERA recommended that the Commission find the application substantially complete with the understanding that the applicant will file updates to its *Decommissioning Plan*<sup>4</sup> and Vegetation Management Plan. EERA staff believed that as long as the revised decommissioning plan is filed in the record prior to the hearing, there will still be sufficient opportunity for public comment on the decommissioning plan.
  - *The Vegetation Establishment Management Plan (VEMP)* provided in Appendix D of the application does not meet the VEMP Guidance that was prepared by MDNR, Minnesota Department of Agriculture and the Minnesota Board of Water and Soil Resources. EERA staff recommend the applicant revise the Vegetation Management Plan to be consistent with MDNR's VEMP Guidance. A revised plan should be submitted into the record prior to the hearing to allow for agency and public review.
  - *Prime Farmland Analysis*. The applicant provided a "constraints analysis" in the application that includes a discussion of prime farmland.<sup>5</sup> It is not clear if the Adams substation is the only point of interconnection (POI) to emerge from the screening exercise described in the application. If other POIs made it through the screening process, a discussion of how those POIs were eliminated would

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<sup>4</sup> EERA Staff provided a list of suggested areas of concern that would need to be addressed in a revised Decommissioning Plan. See DOC EERA Comments from March 8, 2021 at page 8.

<sup>5</sup> Site Permit Application at page 12.

complete the screening analysis provided. EERA staff recommended the applicant provide additional discussion of their review and elimination of any other POIs that emerged from screening along with the Adams substation.

- DOC EERA recommended the site permit and CN applications for the Louise Solar Project be processed jointly. DOC EERA staff believes combining the processes would provide for efficiencies, reduce confusion about the process, and highlight the interrelatedness of the permitting components.
- Pursuant to Minn. R. 7849.1900, DOC EERA recommended preparation of an environmental assessment in lieu of the environmental report required for a CN application. DOC EERA noted that this would lengthen the timeline for a site permit, but a site permit cannot be issued without a CN, so the difference is immaterial.
- DOC EERA is unaware of any contested issues of fact related to the Louise Solar site permit application.
- DOC EERA recommended that the Commission take no action on an advisory task force at this time. This recommendation was based upon: (1) the relatively small size of the solar installation (up to 60 MW) and land used for the project; (2) the low degree of complexity of solar site construction; (3) absence of known controversy regarding the solar project; and (4) the absence of sensitive resources in the proposed development area.<sup>6</sup>
- EERA recommended the Applicant to provide additional information as needed to prepare the EA.

### 3. **LIUNA Minnesota & North Dakota**

On March 8, 2021, LIUNA Minnesota & North Dakota (LIUNA) filed a letter indicating support for the Louise Solar Project. The letter also indicated support for the applicant's commitments to ensuring that skilled local workers are hired to build the projects. LIUNA indicated it believed that the certificate of need and site permit applications contain the information required under Minn. R. 7849.0220, subp. 1 and Minn. R. 7850.3100 and recommend that these applications be considered jointly through the informal review process. LIUNA indicated it was not aware of any contested issues of fact that would necessitate use of a formal contested case proceeding.

### 4. **Public Comment – Gene Noterman**

On March 2, 2021, Gene Noterman, a farmer from the City of Adams submitted comments about the potential impact of the fenced-off project on the abundance wildlife in the area such as deer and wild turkeys, which already eat and destroy much of the crops in the area, both soybeans and corn. His concern is that the project's fencing would result in a major redirection of traffic patterns of the deer footpaths and flight patterns of the turkeys in their search for

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<sup>6</sup> DOC EERA noted that nearly all of the project area is classified as prime farmland and, if permitted, the land would be taken out of agricultural production.

food. Mr. Noterman asked if this was a loss that he would have to bear with his farming operation, and if compensation would be provided.

## **B. Reply Comments**

### **1. Louise Solar Project, LLC**

On March 15, 2021 in reply comments in the CN docket, it addressed the comments from DOC DER and the process for the review of the CN Application. Responding to DOC DER's comment that Louise Solar should provide information to address options as of a different size project (larger and smaller), Louise Solar pointed to information in the CN Application at Sections 4.2.1, 5.1.1, and 5.2. Additionally, Louise Solar provided a discussion in the reply comments addressing those alternatives and concluded that a project of this size (50 MW of solar) is the optimal project size from economies of scale during procurement and construction, interconnection costs, as well as the marketability of the project to a wider range of potential customers, as not every potential customer has the capacity to purchase energy from a larger project, while many customers may find a 50 MW project ideal for their needs.

Louise Solar agreed with DOC-DER's assessment that a contested case proceeding is not warranted. Louise Solar respectfully requested that the Commission direct the joint review of Louise Solar's CN and Site Permit Applications (SPA). Louise Solar also agreed with the preparation of an environmental assessment in lieu of an environmental report for the Project in order to provide a more efficient and less confusing public review process. Louise Solar also agreed that it is useful to refer the matter to the Office of Administrative Hearings ("OAH") for a public hearing and preparation of a full administrative law judge report with recommendations.

Louise Solar provided a suggested schedule for completing the joint proceeding within the statutory timeframes, and in a manner that allows Louise Solar to complete construction in 2022.

On March 15, 2021, Louise Solar also submitted reply comments in the SPA docket. In the applicant's comments, it stated it agreed with DOC-EERA's recommendation that: the site permit be determined to be complete, but require the Applicant to provide additional information during the proceeding, as detailed in the DOC-EERA's comments above. Louise Solar agreed with DOC-EERA Staff's recommendation to accept the SP Application as substantially complete and allow this additional information to be submitted as part of the permit process. Louise Solar indicated it will provide the requested information in the timeframes suggested by DOC-EERA. With respect to the application review process, joint proceedings, and environmental review, Louise Solar provided the same comments as in its reply to DOC-DER described above.

Louise Solar expressed its concerns with the draft schedule that was provided with DOC-EERA's comments and requested that the Commission consider the alternate schedule included as Attachment A, indicating that Louise Solar's proposed schedule meets all procedural

requirements but does so in a timeframe that allows for completion of construction by the end of 2022. Louise Solar further elaborated that Solar construction is generally staged for a late-year (Q4) commercial operation date based on milestones set in finance and power purchase agreements. Minnesota winters and spring restrictions limit the pace of construction and activities that can take place during nearly half of the year. A late 2021 permitting decision allows equipment and contractor procurement and the finalization of plans in a manner that ensures an end of 2022 in-service date. Delaying a permit decision into 2022 could delay the in-service date by a full year, unnecessarily postponing local economic development, new jobs, and the climate benefits of this project.

## **VI. Staff Analysis**

### **A. Application Completeness**

#### **1. Certificate of Need Application**

Commission staff has reviewed the certificate of need application, the comments received from DOC-DER and reply comments with additional information on the alternatives analysis provided by the Applicant and agrees with DOC DER that the application contains the information required under Minn. R. 7849.0240 to 7849.0340.

#### **2. Site Permit Application**

Commission staff has reviewed the site permit application and agrees with DOC EERA that the application generally contains the information required under Minn. R. 7850.3100. Staff finds the Applicant's plan to provide the additional information as requested by DOC-EERA during the application review process to be acceptable and recommends that the Commission finds the application substantially complete for the purpose of beginning the review process.

### **B. Joint Review**

Staff agrees with DOC EERA that the Commission should approve joint public meetings, public hearings, and combined environmental review of the certificate of need and site permit applications to the extent practical. Staff has found that joint review is more easily understood and efficient for the public, local governments, and state and federal agencies, particularly with regards to meetings and comment periods. Additionally, Minn. Stat. § 216B.243, subd. 4, requires joint hearings on siting and need unless it is determined by the Commission that joint proceedings are less efficient or not feasible.

### **C. Advisory Task Force**

Staff agrees with DOC EERA that an advisory task force is not warranted in the Louise Solar project and recommends that the Commission take no action on an advisory task force at this time. In addition, no requests that the Commission establish a task force have been received. Staff believes that the alternative permitting process will provide sufficient opportunities for the public to identify issues and alternatives to be addressed in the environmental assessment.

However, should the Commission choose to appoint an advisory task force, staff recommends the Commission authorize DOC EERA to: (1) establish the task force; (2) develop a proposed structure and charge; and (3) appoint the members in accordance with Minn. Stat. § 216E.08, subd. 1.

#### **D. Public Hearing**

At least one public hearing is required for applications reviewed under the alternative permitting process. The hearing is not a contested case proceeding conducted under Minn. Stat. §§ 14.57-14.62 and Minn. R. 1405.0200 to 1405.2700, rather the procedural steps required to facilitate the alternative review hearing process are detailed in Minn. R. 7850.3800. Additionally, Minn. Stat. 216B.243, subd. 4 and Minn. R. 7829.2500, subp. 9 require the Commission to hold at least one public hearing related to the CN application. This hearing maybe held in conjunction with a site permit application hearing required under Minn. R. 7850.3800.

Staff agrees with DOC DER recommendation that the Commission should conduct at least one public hearing as prescribed in Minnesota rule and statute. DOC EERA also recommended conducting joint meetings and hearings to the extent possible. As noted above in section B, staff agrees that joint processing of the CN and site permit applications will be more easily understood by interested entities.

#### **E. Procedural Treatment of Certificate of Need Application**

Under Minn. R. 7829.2500, subp. 9, the Commission can choose one of two procedural methods to evaluate a certificate of need application: 1) the informal process designated under part 7829.1200 (also known as the notice and comment process); or 2) referral to the Office of Administrative Hearings (OAH) for contested case proceedings under Minn. Stat. § 14.57 et seq., if there are material facts in dispute.

Staff agrees with DOC DER that there are not significant disputes related to the need analysis anticipated in this proceeding and therefore recommend using the informal comment and reply comment process. The informal process will likely be sufficient in developing the issues in the Louise Solar Project.

#### **F. Procedural Treatment of Alternative Review of the Site Permit Application**

Historically, the Commission has chosen between two different types of alternative review as described below, either a Summary Report Process or a Summary Proceeding. The type of hearing process has typically depended on the controversy and complexity of the project being proposed.

**Summary Report Process** (less complex projects): An administrative law judge (ALJ) presides over the hearing pursuant to Minn. R. 7850.3800; provides a complete summary of the public comments received at hearing and during the public comment period; and transmits the complete hearing record, including all written comments, to the Commission within five days of the close of the record.

**Summary Proceeding** (more complex or controversial projects): An ALJ presides over the hearing pursuant to Minn. R. 7850.3800; provides findings of fact, conclusions, and recommendations; and transmits the complete hearing record, including all written comments, to the Commission within 30 days of the close of the record. The summary proceeding may also include some combination of prefiled testimony, initial briefs, response briefs, and an exception period.

Staff agrees with DOC EERA that the Commission should authorize a Summary Proceeding and request an ALJ to preside over the hearing and prepare findings of fact, conclusions and recommendations. Staff believes a full ALJ report reduces the burden on Commission staff and helps to ensure that the Commission has a robust record on which to base its decision.

### **G. Administrative Guidance**

To facilitate the review process, staff recommends that the Commission include the following additional items in the order issued in this matter:

- Delegate administrative authority to vary time periods to its Executive Secretary under Minn. R. 7829.1275.
- Provide the name, telephone number, and email address of the staff person designated as public advisor to facilitate citizen participation in the process.
- Request that DOC DER and DOC EERA continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a site permit.
- Require the applicant to facilitate in every reasonable way the continued examination of the issues by DOC DER, DOC EERA, and Commission staff.
- Require the applicant to place an electronic or hard copy of the applications for review in at least one government center or public library in each county where the proposed project and any alternatives are located.
- Direct the applicant to work with Commission staff and DOC staff to arrange for publication, in newspapers of general circulation, of the notice of public information meeting and of the notice of public hearing. Such notice must be in the form of visible display ads, and the applicant shall provide Commission staff with proof of publication.

### **H. Sample Solar Site Permit**

As with previous site permit dockets, staff proposes to introduce a sample solar site permit into the record of this docket. The intent of the sample permit is to provide interested persons and governmental agencies an opportunity, early in the process, to review standard permit language and provide suggestions for changes to the language or propose special conditions specific to the proposed project. Having a sample permit will allow for greater discussion and will provide a foundation to build on during the hearing process.

## **I. Commission Review of Alternative Sites in Scoping Decision**

Under Minn. R. 7850.3700, subp. 3, the scope of the environmental assessment must be determined by the commissioner of the Department of Commerce within 10 days after close of the public comment period. However, Minn. Stat. § 216E.04, subd. 5, anticipates that the Commission will have the opportunity to identify other sites for consideration prior to environmental review of a project.

The Commission should consider whether it should have alternative sites developed during the EA scoping process prior to issuance of the scoping decision by DOC EERA. Staff recommends, that, because of the site-specific nature of this project, its interconnection location and other factors identified in the application, that a review of alternative locations is unlikely to yield a feasible, less impactful or otherwise desirable alternative location for the project. Additionally, agency participation, environmental review and public hearing provide opportunities for mitigation measures to be considered. Moreover, staff points out that applications reviewed under the alternative review process are not required to include alternative site locations.

## **J. Rule Variances**

Staff recommends the Commission vary Minn. R. 7849.0200, subp. 5, which requires a completeness determination on a certificate of need application within 30 days from application filing. Although staff tried to review the application within the time periods identified in rule, it appears a timeline of 30 days does not allow sufficient time to review the applications, solicit comments, schedule a Commission meeting and prepare a written order. Therefore, to be in compliance with rule, staff believes there is good cause for the Commission to vary the 30-day time limit. Staff believes the conditions outlined in Minn. Rule 7829.3200, subp. 1, authorizing the Commission to grant a variance to its rules are met as follows:

- 1) Enforcing the 30-day time frame would impose an excessive burden upon the public and upon the Commission and the Department because it would not allow adequate time to review the application, schedule a Commission meeting, and prepare a written order;
- 2) Varying the 30-day time frame would not adversely affect the public interest. Varying the time frames would instead serve the public interest by allowing more time for public comment on, and Commission consideration of, the application; and
- 3) Varying the 30-day time frame would not conflict with any standards imposed by law.

## **VII. Decision Options**

### **A. Certificate of Need Application Completeness**

1. Accept the certificate of need application as substantially complete.
2. Reject the certificate of need application and indicate the specific deficiencies.
3. Take some other action deemed more appropriate.

### **B. Certificate of Need Review Process**

1. Direct that the certificate of need application be reviewed using the informal review process under Minn. Rule 7829.1200.
2. Refer the certificate of need application to the Office of Administrative Hearings for contested case proceedings.
3. Take some other action deemed more appropriate.

### **C. Site Permit Application Completeness and Review**

1. Accept the site permit application as substantially complete and authorize review under the alternative permitting process defined in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900.
2. Reject the site permit application and indicate the specific deficiencies.
3. Take some other action deemed more appropriate.

### **D. Joint Review of Applications**

1. Approve joint public meetings, joint public hearings, and combined environmental review of the certificate of need and site permit applications to the extent practical.
2. Request DOC EERA to prepare an EA in lieu of an ER pursuant to Minn. R. 7849.1900.
3. Take some other action deemed more appropriate.

### **E. Advisory Taskforce**

1. Authorize DOC EERA to establish an advisory task force and develop a proposed structure and charge for the task force.
2. Take no action on an advisory task force at this time.
3. Take some other action deemed more appropriate.



## **F. Public Hearing Process**

1. Appoint an ALJ to serve as the hearing examiner and request preparation of a summary report in general adherence to the timelines suggested by DOC EERA staff as provided in Table 1 of its March 8, 2021 Comments and Recommendations.
2. Appoint an ALJ to serve as the hearing examiner and request preparation of findings of fact, conclusions of law, and recommendation of a preferred site and permit conditions. Request that the ALJ determine the schedule for any testimony and post hearing briefing in consultation with interested parties, as necessary.
3. Appoint a staff member to serve as the hearing examiner.
4. Take no action on the appointment of a hearing examiner at this time.
5. Take some other action deemed more appropriate.

## **G. Administrative Guidance**

1. Delegate administrative authority, including timing issues, to the Executive Secretary.
2. Identify Michael Kaluzniak as the Commission's Public Advisor who will facilitate citizen participation in the process.
3. Request that DOC DER and DOC EERA continue to study the issues and indicate during the hearing process through testimony or comment its position on the reasonableness of granting a site permit.
4. Require the Applicant to facilitate in every reasonable way the continued examination of the issues requested by DOC DER, DOC EERA, and Commission staff.
5. Require the Applicant to place a copy of the certificate of need and site permit applications in the government center or public library located closest to the proposed project site.
6. Direct the Applicant to work with Commission staff and DOC staff to arrange for publication of the notices related to public information meetings and public hearings in newspapers of general circulation under the timelines prescribed in rule and statute, that such notice be in the form of visible display ads, and that proof of publication be obtained and provided to Commission staff.
7. Authorize Commission staff to file a sample site permit to the docket of this case.
8. Take some other action deemed more appropriate.

## H. Rule Variance

1. Grant a variance to Minn. R. 7849.0200, subp. 5, and extend the 30-day timeline.
2. Grant a variance to Minn. R. 7850.3700, subp. 3, and extend the 10-day timeline and request DOC EERA to present draft site alternatives to the Commission for its input prior to the issuance of the final scoping decision.
3. Take some other action deemed more appropriate.

**Staff Recommendation:** A1, B1, C1, D(1-2), E2, F2, G(1-7), H1

## Table 1 Comparison of Schedules

Timeframe	Project Day	Process Step	Entity
December-March 2020	—	10-day Notice	Applicant
		Application Filed	Applicant
		Application Completeness Comments	Agencies/Public
		Reply Comments	Applicant
April 2020		Consideration of Application Acceptance	Commission
Acceptance through Environmental Assessment			
May 2021	1	Application Acceptance Order	Commission
May 2021		Public/Scoping Meeting Notice	EERA/Commission
End of May 2021	20	Public Information/Scoping Meetings	EERA/Commission
June 2021	35	Scoping Comment Period Closes	EERA
June 2021	50	Scoping Summary to Commission	EERA
July 2021	70	Commission Consideration of Alternatives	Commission
July 2021	80	Scoping Decision Issued	Commerce
July 2021	200	EA Issued/Public Hearing Notice	EERA/Commission
Summary of Hearing*			
November 2021	215	Public Hearing	OAH
December 2021	230	Comment Period Closes	OAH
January 2022	235	ALJ Submits Hearing Transcript and Comments	OAH
January 2022	240	Draft Findings of Fact (FOF)	Applicant
January/March 2022	255	Comments on Draft FOF / Technical Analysis	EERA
		Response to Hearing Comments	Applicant
	275	ALJ Submits Summary of Hearing	OAH
March/April 2022	<b>320</b>	Consideration of Route Permit Issuance	Commission
Full ALJ Report**			
November 2021	215	Public Hearing	OAH
December 2021	230	Comment Period Closes	OAH
January 2022	235	ALJ Submits Hearing Transcript and Comments	OAH
January 2022	240	Draft FOF	Applicant
January /March 2022	255	Comments on Draft FOF / Technical Analysis	EERA
		Response to Hearing Comments	Applicant
April 2022	295	ALJ Issues Full Report, FOF and Recommendation	OAH
April 2022	305	Exceptions to ALJ Report	EERA, Applicant
May 2022	<b>325</b>	Consideration of Route Permit Issuance	Commission

\*A summary of hearing includes:

- The hearing process consists of a public hearing (or multiple hearings depending on the project) and one comment period (closing 10 days after the last public hearing).
- An ALJ presides over the public hearing.
- ALJ provides a summary of the public hearing and comments only.
- Applicant provides proposed findings of fact, conclusions and a recommendation.
- EERA responds to comments on the EA; provides technical analysis; and responds to the applicant's proposed findings.
- An exception period is not provided.

\*\* A Full ALJ Report includes:

- The hearing process is identical to the summary report process.
- An ALJ presides over the public hearing.  
The ALJ provides a summary and a factual analysis of the record, findings of fact, and recommendations on

**Attachment B**  
Sample Solar Site Permit

STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

SITE PERMIT FOR A  
SOLAR ENERGY GENERATING SYSTEM

IN

[COUNTY]

ISSUED TO

[PERMITTEE]

PUC DOCKET NO. [Docket Number]

In accordance with the requirements of Minnesota Statutes Chapter 216E and Minnesota Rules Chapter 7850 this site permit is hereby issued to:

[Permittee]

The Permittee is authorized by this site permit to construct and operate [Provide a description of the project authorized by the Minnesota Public Utilities Commission]. The solar energy generating system and associated facilities shall be built and operated within the site identified in this permit and as portrayed in the official site maps, and in compliance with the conditions specified in this permit.

This site permit shall expire [xx] years from the date of this approval.

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_

BY ORDER OF THE COMMISSION

---

Daniel P. Wolf,  
Executive Secretary

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email [consumer.puc@state.mn.us](mailto:consumer.puc@state.mn.us) for assistance.

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**ATTACHMENTS**

Attachment 1 – Complaint Handling Procedures for Permitted Energy Facilities

Attachment 2 – Compliance Filing Procedure for Permitted Energy Facilities

Attachment 3 – Site Maps

SAMPLE PERMIT

## 1 SITE PERMIT

The Minnesota Public Utilities Commission (Commission) hereby issues this site permit to [Permittee Name] (Permittee) pursuant to Minnesota Statutes Chapter 216E and Minnesota Rules Chapter 7850. This permit authorizes the [Permittee Name] to construct and operate [Provide a description of the project as authorized by the Minnesota Public Utilities Commission], and as identified in the attached site maps, hereby incorporated into this document.

### 1.1 Preemption

Pursuant to Minn. Stat. § 216E.10, this permit shall be the sole site approval required for the location, construction, and operation of the solar energy generating system and this permit shall supersede and preempt all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.

## 2 PROJECT DESCRIPTION

[Provide a description of the project as authorized by the Minnesota Public Utilities Commission]

### 2.1 Associated Facilities

### 2.2 Project Location

The project is located in the following:

County	Township Name	Township	Range	Section

## 3 DESIGNATED SITE

The site designated by the Commission for the [Project Name] is the site depicted on the site maps attached to this permit. [As applicable, provide a detailed description of the authorized site. Example: The site is generally described as follows...]

The layout represents the approximate location of photovoltaic tracker rows and associated facilities within the project boundary and identifies a layout that seeks to minimize the overall

potential human and environmental impacts of the project, which were evaluated in the permitting process. The project boundary serves to provide the Permittee with the flexibility to make minor adjustments to the layout to accommodate requests by landowners, local government units, federal and state agency requirements, and unforeseen conditions encountered during the detailed engineering and design process. Any modification to the location of a photovoltaic tracker row or other associated facility depicted in the preliminary layout shall be done in such a manner to have comparable overall human and environmental impacts and shall be specifically identified in the site plan pursuant to Section 8.3.

#### **4 GENERAL CONDITIONS**

The Permittee shall comply with the following conditions during construction and operation of the solar energy generating system and associated facilities over the life of this permit.

##### **4.1 Permit Distribution**

Within 30 days of permit issuance, the Permittee shall send a copy of the permit and the complaint procedures to any regional development commission, county auditor and environmental office, and city and township clerk in which any part of the site is located.

Within 30 days of permit issuance, the Permittee shall provide all affected landowners with a copy of this permit and the complaint procedures. In no case shall the landowner receive this site permit and complaint procedures less than five days prior to the start of construction on their property. An affected landowner is any landowner or designee that is within or adjacent to the permitted site.

##### **4.2 Access to Property**

The Permittee shall contact landowners prior to entering the property or conducting maintenance within the site, unless otherwise negotiated with the affected landowner.

##### **4.3 Construction and Operation Practices**

The Permittee shall comply with the construction practices, operation and maintenance practices, and material specifications described in the [Site Permit Application date and title], and the record of the proceedings unless this permit establishes a different requirement in which case this permit shall prevail.

#### **4.3.1 Field Representative**

The Permittee shall designate a field representative responsible for overseeing compliance with the conditions of this permit during construction of the project. This person shall be accessible by telephone or other means during normal business hours throughout site preparation, construction, cleanup, and restoration.

The Permittee shall file with the Commission the name, address, email, phone number, and emergency phone number of the field representative 14 days prior to commencing construction. The Permittee shall provide the field representative's contact information to affected landowners, residents, local government units and other interested persons 14 days prior to commencing construction. The Permittee may change the field representative at any time upon notice to the Commission, affected landowners, local government units and other interested persons.

#### **4.3.2 Site Manager**

The Permittee shall designate a site manager responsible for overseeing compliance with the conditions of this permit during the commercial operation and decommissioning phases of the project. This person shall be accessible by telephone or other means during normal business hours for the life of this permit.

The Permittee shall file with the Commission the name, address, email, phone number, and emergency phone number of the site manager 14 days prior to commercial operation of the facility. The Permittee shall provide the site manager's contact information to affected landowners, residents, local government units and other interested persons 14 days prior to commercial operation of the facility. The Permittee may change the site manager at any time upon notice to the Commission, affected landowners, local government units and other interested persons.

#### **4.3.3 Employee Training and Education of Permit Terms and Conditions**

The Permittee shall inform and educate all employees, contractors, and other persons involved in the construction and ongoing operation of the solar energy generating system of the terms and conditions of this permit.

#### **4.3.4 Public Services and Public Utilities**

During construction, the Permittee shall minimize any disruption to public services and public utilities. To the extent disruptions to public services or public utilities occur these will be temporary, and the Permittee will restore service promptly. Where any impacts to utilities have the potential to occur the Permittee will work with both landowners and local agencies to determine the most appropriate mitigation measures if not already considered as part of this permit.

The Permittee shall cooperate with county and city road authorities to develop appropriate signage and traffic management during construction.

#### **4.3.5 Temporary Work Space**

Temporary work space and equipment staging areas shall be selected to limit the removal and impacts to vegetation. Temporary work space shall not be sited in wetlands or native prairie as defined in sections 4.3.10 and 4.3.11. Temporary work space shall be sited to comply with standards for development of the shorelands of public waters as defined in Section 4.3.10. Temporary easements outside of the authorized site boundary will be obtained from affected landowners through rental agreements and are not provided for in this permit.

#### **4.3.6 Noise**

The Permittee shall comply with noise standards established under Minn. R. 7030.0100 to 7030.0080, at all times at all appropriate locations during operation of the facility. Construction and maintenance activities shall be limited to daytime working hours to the extent practicable to ensure nighttime noise level standards will not be exceeded.

#### **4.3.7 Aesthetics**

The Permittee shall consider input pertaining to visual impacts from landowners and land management agencies. Care shall be used to preserve the natural landscape, minimize tree removal and prevent any unnecessary destruction of the natural surroundings in the vicinity of the project during construction and operation.

#### **4.3.1 Topsoil Protection**

The Permittee shall implement measures to protect and segregate topsoil from subsoil on all lands unless otherwise negotiated with the affected landowner.

#### **4.3.2 Soil Compaction**

The Permittee shall implement measures to minimize soil compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.

#### **4.3.3 Soil Erosion and Sediment Control**

The Permittee shall implement erosion prevention and sediment control practices recommended by the Minnesota Pollution Control Agency (MPCA) Construction Stormwater Program. If construction of the facility disturbs more than one acre of land, or is sited in an area designated by the MPCA as having potential for impacts to water resources, the Permittee shall obtain a National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Construction Stormwater Permit from the MPCA that provides for the development of a Stormwater Pollution Prevention Plan (SWPPP) that describes methods to control erosion and runoff.

The Permittee shall implement reasonable measures to minimize erosion and sedimentation during construction and shall employ perimeter sediment controls, protect exposed soil by promptly planting, seeding, using erosion control blankets and turf reinforcement mats, stabilizing slopes, protecting storm drain inlets, protecting soil stockpiles, and controlling vehicle tracking. Contours shall be graded as required so that all surfaces provide for proper drainage, blend with the natural terrain, and are left in a condition that will facilitate re-vegetation and prevent erosion. All areas disturbed during construction of the facilities shall be returned to pre-construction conditions.

#### **4.3.4 Public Lands**

In no case shall photovoltaic tracker rows and associated facilities including foundations, access roads, underground cable, and transformers, be located in the public lands identified in Minn. R. 7850.4400, subp. 1, or in federal waterfowl production areas. Photovoltaic tracker rows and associated facilities shall not be located in the public lands identified in Minn. R. 7850.4400, subp. 3, unless there is no feasible and prudent alternative.

#### **4.3.5 Wetlands and Water Resources**

Photovoltaic tracker rows and associated facilities, including access roads, underground cable and transformers shall not be placed in public waters and public waters wetlands, as shown on the public water inventory maps prescribed by Minnesota Statutes Chapter 103G, except that

electric collector or feeder lines may cross or be placed in public waters or public waters wetlands subject to permits and approvals by the Minnesota Department of Natural Resources (DNR) and the United States Army Corps of Engineers (USACE), and local units of government as implementers of the Minnesota Wetlands Conservation Act. Photovoltaic tracker rows and associated facilities including foundations, access roads, underground cable and transformers, shall be located in compliance with the standards for development of the shorelands of public waters as identified in Minn. R. 6120.3300, and as adopted, Minn. R. 6120.2800, unless there is no feasible and prudent alternative.

Construction in wetland areas shall occur during frozen ground conditions to minimize impacts, to the extent feasible. When construction during winter is not possible, wooden or composite mats shall be used to protect wetland vegetation. Soil excavated from the wetlands and riparian areas shall be contained and managed in accordance with all applicable wetland permits. Wetlands and riparian areas shall be accessed using the shortest route possible in order to minimize travel through wetland areas and prevent unnecessary impacts.

Wetland and water resource areas disturbed by construction activities shall be restored to pre-construction conditions in accordance with the requirements of applicable state and federal permits or laws and landowner agreements. All requirements of the USACE, DNR, and local units of government shall be met.

#### **4.3.6 Native Prairie**

Solar panels and associated facilities including foundations, access roads, collector and feeder lines, underground cable, and transformers shall not be placed in native prairie, as defined in Minn. Stat. § 84.02, subd. 5, unless addressed in a prairie protection and management plan and shall not be located in areas enrolled in the Native Prairie Bank Program. Construction activities, as defined in Minn. Stat. § 216E.01, shall not impact native prairie unless addressed in a prairie protection and management plan.

The Permittee shall prepare a prairie protection and management plan in consultation with the DNR if native prairie, as defined in Minn. Stat. § 84.02, subd. 5, is identified within the site boundaries. The Permittee shall file the plan 30 days prior to submitting the site plan required by Section 8.3 of this permit. The plan shall address steps that will be taken to avoid impacts to native prairie and mitigation to unavoidable impacts to native prairie by restoration or management of other native prairie areas that are in degraded condition, by conveyance of conservation easements, or by other means agreed to by the Permittee, the DNR, and the Commission.

#### **4.3.7 Vegetation Removal**

The Permittee shall disturb or clear vegetation on the site only to the extent necessary to assure suitable access for construction, and for safe operation and maintenance of the project. The Permittee shall minimize the number of trees removed in selecting the site layout specifically preserving to the maximum extent practicable windbreaks, shelterbelts, living snow fences, and other vegetation, to the extent that such actions do not violate sound engineering principles or interfere with the operation of the facility.

#### **4.3.8 Beneficial Habitat**

The Permittee shall implement site restoration and management practices that provide for native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators; and improve soil water retention and reduce storm water runoff and erosion. To ensure continued management and recognition of beneficial habitat, the Permittee is encouraged to meet the standards for Minnesota's Habitat Friendly Solar Program by submitting project plans, seed mixes, a completed project planning assessment form, and any other applicable documentation used to meet the standard to the Board of Water and Soil Resources (BWSR). All documents required by BWSR for meeting Habitat Friendly Solar Certification and maintenance of that Certification should also be filed with the Commission.

#### **4.3.9 Vegetation Management Plan**

The Permittee shall develop a vegetation management plan using best management practices established by the DNR and BWSR. The vegetation management plan shall be prepared in coordination with the Department of Commerce, DNR, and BWSR. The vegetation management plan and documentation of the coordination efforts between the permittee and the coordinating agencies shall be filed at least 14 days prior to the preconstruction meeting. The Permittee shall provide all affected landowners with copies of the plan.

The vegetation management plan must include the following:

- Management objectives addressing short term (Year 0-3, seeding and establishment) and long term (Year 4 through the life of the permit) goals.
- A description of planned restoration and vegetation management activities, including how the site will be prepared, timing of activities, and how seeding will occur (broadcast, drilling, etc.), and the types of seed mixes to be used.
- A description of how the site will be monitored and evaluated to meet management goals.



- A description of the management tools used to maintain vegetation (e.g., mowing, spot spraying, hand removal, fire, grazing, etc.), including the timing and frequency of maintenance activity.
- Identification of the third-party responsible (e.g., consultant, contractor, site manager, etc.) for restoration, monitoring, and long-term vegetation management of the site.
- Identification of on-site noxious weeds and invasive species (native and non-native) and the monitoring and management practices to be utilized.
- A site plan showing how the site will be revegetated and that identifies the corresponding seed mixes. Best management practices should be followed concerning seed mixes, seeding rates, and cover crops.

#### **4.3.10 Application of Pesticides**

The Permittee shall restrict pesticide use to those pesticides and methods of application approved by the Minnesota Department of Agriculture, Minnesota Department of Natural Resources, and the U.S. Environmental Protection Agency. Selective foliage or basal application shall be used when practicable. All pesticides shall be applied in a safe and cautious manner so as not to damage adjacent properties including crops, orchards, tree farms, apiaries, or gardens. The Permittee shall contact the landowner or designee to obtain approval for the use of pesticide at least 14 days prior to any application on their property. The landowner may request that there be no application of pesticides on any part of the site within the landowner's property. The Permittee shall provide notice of pesticide application to affected landowners, and known beekeepers operating apiaries within three miles of the project site at least 14 days prior to such application.

#### **4.3.11 Invasive Species**

The Permittee shall employ best management practices to avoid the potential introduction and spread of invasive species on lands disturbed by project construction activities. The Permittee shall develop an Invasive Species Prevention Plan to prevent the introduction and spread of invasive species on lands disturbed by project construction activities and file with the Commission 30 days prior to the pre-construction meeting.

#### **4.3.12 Noxious Weeds**

The Permittee shall take all reasonable precautions against the spread of noxious weeds during all phases of construction. When utilizing seed to establish temporary and permanent vegetative cover on exposed soil the Permittee shall select site appropriate seed certified to be

free of noxious weeds. To the extent possible, the Permittee shall use native seed mixes. The Permittee shall consult with landowners on the selection and use of seed for replanting.

#### **4.3.13 Roads**

The Permittee shall advise the appropriate governing bodies having jurisdiction over all state, county, city or township roads that will be used during the construction phase of the project. Where practical, existing roadways shall be used for all activities associated with construction of the facility. Oversize or overweight loads associated with the facility shall not be hauled across public roads without required permits and approvals.

The Permittee shall locate all perimeter fencing and vegetative screening in a manner that does not interfere with routine road maintenance activities and allows for continued safe travel on public roads.

The Permittee shall construct the least number of site access roads it can. Access roads shall not be constructed across streams and drainage ways without the required permits and approvals. Access roads shall be constructed in accordance with all necessary township, county or state road requirements and permits.

The Permittee shall promptly repair private roads or lanes damaged when moving equipment or when accessing construction workspace, unless otherwise negotiated with the affected landowner.

#### **4.3.14 Archaeological and Historic Resources**

The Permittee shall make every effort to avoid impacts to identified archaeological and historic resources when constructing the facility. In the event that a resource is encountered, the Permittee shall consult with the State Historic Preservation Office (SHPO) and the State Archaeologist. Where feasible, avoidance of the resource is required. Where not feasible, mitigation must include an effort to minimize project impacts on the resource consistent with the SHPO and State Archaeologist requirements.

Prior to construction, workers shall be trained about the need to avoid cultural properties, how to identify cultural properties, and procedures to follow if undocumented cultural properties, including gravesites, are found during construction. If human remains are encountered during construction, the Permittee shall immediately halt construction and promptly notify local law

enforcement and the State Archaeologist. Construction at such location shall not proceed until authorized by local law enforcement or the State Archaeologist.

#### **4.3.15 Interference**

If interference with radio or television, satellite, wireless internet, GPS-based agriculture navigation systems or other communication devices is caused by the presence or operation of the project, the Permittee shall take whatever action is feasible to restore or provide reception equivalent to reception levels in the immediate area just prior to the construction of the project.

#### **4.3.16 Restoration**

The Permittee shall restore the areas affected by construction of the solar facility to the condition that existed immediately before construction began to the extent possible. The time period to complete restoration may be no longer than 12 months after the completion of construction, unless otherwise negotiated with the affected landowner. Restoration shall be compatible with the safe operation, maintenance and inspection of the project. Within 60 days after completion of all restoration activities, the Permittee shall advise the Commission in writing of the completion of such activities.

#### **4.3.17 Cleanup**

All waste and scrap that is the product of construction shall be removed from the site and all premises on which construction activities were conducted and properly disposed of upon completion of each task. Personal litter, including bottles, cans, and paper from construction activities shall be removed on a daily basis.

#### **4.3.18 Pollution and Hazardous Wastes**

All appropriate precautions to protect against pollution of the environment shall be taken by the Permittee. The Permittee shall be responsible for compliance with all laws applicable to the generation, storage, transportation, clean up and disposal of all wastes generated during construction and operation of the facility.

#### **4.3.19 Damages**

The Permittee shall fairly restore or compensate landowners for damage to crops, fences, private roads and lanes, landscaping, drain tile, or other damages sustained during construction.

#### **4.3.20 Public Safety**

The Permittee shall provide educational materials to landowners adjacent to the site and, upon request, to interested persons about the project and any restrictions or dangers associated with the project. The Permittee shall also provide any necessary safety measures such as warning signs and gates for traffic control or to restrict public access. The Permittee shall submit the location of all underground facilities, as defined in Minn. Stat. § 216D.01, subd. 11, to Gopher State One Call following the completion of construction at the site.

#### **4.3.21 Site Identification**

The solar site shall be marked with a visible identification number and or street address.

#### **4.4 Feeder Lines**

Feeder lines that carry power from an internal project interconnection point to the project substation or interconnection point on the electrical grid may be overhead or underground. Overhead and underground feeder lines that parallel public roads shall be placed within the public right-of-way or on private land immediately adjacent to the road. The Permittee shall obtain approval from the private landowner or government unit responsible for the affected right-of-way.

Feeder line locations shall be located in such a manner as to minimize interference with agricultural operations including, but not limited, to existing drainage patterns, drain tile, future tiling plans, and ditches. Safety shields shall be placed on all guy wires associated with overhead feeder lines. The Permittee shall submit the engineering drawings of all collector and feeder lines with the site plan pursuant to Section 8.3.

#### **4.5 Other Requirements**

##### **4.5.1 Safety Codes and Design Requirements**

The solar energy generating system and associated facilities shall be designed to meet or exceed all relevant local and state codes, Institute of Electrical and Electronics Engineers, Inc.

(IEEE) standards, the National Electric Safety Code (NESC), and North American Electric Reliability Corporation (NERC) requirements. The Permittee shall report to the Commission on compliance with these standards upon request.

#### 4.5.2 Other Permits and Regulations

The Permittee shall comply with all applicable state rules and statutes. The Permittee shall obtain all required permits for the project and comply with the conditions of those permits unless those permits conflict with or are preempted by federal or state permits and regulations. A list of the permits known to be required is included in the permit application. The Permittee shall submit a copy of such permits to the Commission upon request.

### 5 SPECIAL CONDITIONS

Special conditions shall take precedence over other conditions of this permit should there be a conflict.

[Describe any special conditions]

Examples of special conditions included in permits:

- Avian Mitigation Plan
- Environmental Control Plan
- Agriculture Mitigation Plan
- Vegetation Management Plan
- Property Restrictions
- Minnesota Department of Natural Resources Requirements
- Minnesota Pollution Control Requirements
- Minnesota State Historical Preservation Office Requirements
- Minnesota Department of Transportation Requirements

For example:

#### Landscaping Plan

The Permittee shall develop a site specific landscaping plan that considers local government ordinances and setbacks, and that mitigates to the extent practical the visual impacts to all adjacent residences. The landscaping plan shall be filed at least 14 days prior to the pre-

construction meeting. Within 14 days of approval of the final Landscaping Plan, the Permittee shall provide all affected landowners with copies of the plan.

### **Vegetation Management Plan**

The Permittee shall develop a vegetation management plan in consultation with the DNR to the benefit of pollinators and other wildlife, and to enhance soil water retention and reduce storm water runoff and erosion. The vegetation management plan shall be filed at least 14 days prior to the pre-construction meeting. Within 14 days of approval of the final Vegetation Management Plan, the Permittee shall provide all affected landowners with copies of the plan.

### **Security Fence**

The security fence surrounding the facility shall be designed to minimize the visual impact of the project. While maintaining compliance with the NESC, the Permittee shall install an eight-foot wood pole and woven wire fence, or substantially similar, around the perimeter of the facility. This type of fence is commonly referred to as a “deer fence” or “agricultural fence.” The permittee shall consult with the DNR to insure the design of the facilities preserves or replaces identified natural wildlife, wetland, woodland or other corridors.

### **Tree Removal Timetables**

Tree removal required by the project shall be done between October 1st and March 30th to mitigate negative impacts to the northern long-eared bat and to minimize potential impacts on migratory birds, unless other appropriate time limitations on tree clearing are determined in consultation with the U.S. Fish and Wildlife Service (USFWS). The Permittee shall file an account of that consultation 14 days prior to the pre-construction meeting.

### **Independent Inspector**

The Permittee shall retain an independent third-party inspector, which could include a local unit of government with the inspection authority. The selection of the inspector and scope of the inspection effort shall be approved by the Department of Commerce and Commission’s Executive Secretary. The inspector shall oversee the construction process and ensure that the project conforms to the site permit terms, conditions, and the specifications outlined in the record. The inspector shall file a report at 30-day intervals with the Commission addressing compliance during construction and the first 60 days of operation.

## **6 DELAY IN CONSTRUCTION**

If the Permittee has not commenced construction or improvement of the site within four years after the date of issuance of this permit the Permittee shall file a report on the failure to construct and the Commission shall consider suspension of the permit in accordance with Minn. R. 7850.4700.

## **7 COMPLAINT PROCEDURES**

Prior to the start of construction, the Permittee shall submit to the Commission the procedures that will be used to receive and respond to complaints. The procedures shall be in accordance with the requirements of Minn. R. 7829.1500 or Minn. R. 7829.1700, and as set forth in the complaint procedures attached to this permit.

Upon request, the Permittee shall assist the Commission with the disposition of unresolved or longstanding complaints. This assistance shall include, but is not limited to, the submittal of complaint correspondence and complaint resolution efforts.

## **8 COMPLIANCE REQUIREMENTS**

Failure to timely and properly make compliance filings required by this permit is a failure to comply with the conditions of this permit. Compliance filings must be electronically filed with the Commission.

### **8.1 Pre-Construction Meeting**

Prior to the start of any construction, the Permittee shall participate in a pre-construction meeting with the Department of Commerce and Commission staff to review pre-construction filing requirements, scheduling, and to coordinate monitoring of construction and site restoration activities. Within 14 days following the pre-construction meeting, the Permittee shall file with the Commission, a summary of the topics reviewed and discussed and a list of attendees. The Permittee shall indicate in the filing the construction start date.

### **8.2 Pre-Operation Meeting**

At least 14 days prior to commercial operation of the facility, the Permittee shall participate in a pre-operation meeting with the Department of Commerce and Commission staff to coordinate field monitoring of operation activities for the project. Within 14 days following the pre-

operation meeting, the Permittee shall file with the Commission, a summary of the topics reviewed and discussed and a list of attendees.

### **8.3 Site Plan**

At least 30 days prior to the pre-construction meeting, the Permittee shall provide the Commission, the Department, and the [Environmental department of the county where the site is located] with a site plan that includes specifications and drawings for site preparation and grading; specifications and locations of photovoltaic panels and other structures to be constructed including all electrical equipment, pollution control equipment, fencing, roads, and other associated facilities; and procedures for cleanup and restoration. The documentation shall include maps depicting the site boundary and layout in relation to that approved by this permit.

The Permittee may not commence construction until the 30 days has expired or until the Commission has advised the Permittee in writing that it has completed its review of the documents and determined that the planned construction is consistent with this permit. If the Permittee intends to make any significant changes to its site plan or the specifications and drawings after submission to the Commission, the Permittee shall notify the Commission at least five days before implementing the changes. No changes shall be made that would be in violation of any of the terms of this permit.

### **8.4 Status Reports**

The Permittee shall report to the Commission on progress during site construction. The Permittee need not report more frequently than monthly. Reports shall begin with the submittal of the site plan for the project and continue until completion of restoration. Reports shall describe construction activities and progress, and activities undertaken in compliance with this permit. Reports shall include text and photographs.

### **8.5 Labor Statistic Reporting**

The Permittee shall file quarterly reports with the Commission within 45 days of the end of the quarter regarding construction workers that participated in the construction of the project. The reports shall (a) detail the Permittee's efforts and the site contractor's efforts to hire Minnesota workers, and (b) provide an account of: (i) the gross number of hours worked by or full-time equivalent workers who are Minnesota residents, as defined in Minn. Stat. § 290.01, subd. 7; (ii) the gross number of hours worked by or full-time equivalent workers who are residents of



other states, but maintain a permanent residence within 150 miles of the project; and (iii) the total gross hours worked or total full-time equivalent workers. Permittee shall work with its contractor to determine the suitable reporting metric. The report may not include personally identifiable data.

#### **8.6 In-Service Date**

At least three days before the facility is to be placed into service, the Permittee shall notify the Commission of the date on which the facility will be placed into service and the date on which construction was completed.

#### **8.7 As-Builts**

Within 90 days after completion of construction, the Permittee shall submit copies of all final as-built plans and specifications developed during the project.

#### **8.8 GPS Data**

Within 90 days after completion of construction, the Permittee shall submit to the Commission, in the format requested by the Commission, geo-spatial information (e.g., ArcGIS compatible map files, GPS coordinates, associated database of characteristics) for all structures associated with the solar energy generating system.

#### **8.9 Project Energy Production**

The Permittee shall, by February 1st following each complete or partial year of project operation, file a report with the Commission on the monthly energy production of the facility including:

- (a) the installed nameplate capacity of the permitted facility;
- (b) the total daily energy generated by the facility in MW hours;
- (c) the total monthly energy generated by the facility in MW hours;
- (d) the monthly capacity factor of the facility;
- (e) yearly energy production and capacity factor for the facility;

- (f) the average monthly and average annual solar strength gradient measured in kWh/m<sup>2</sup>/Day observed at the facility;
- (g) the operational status of the facility and any major outages, major repairs, or performance improvements occurring in the previous year; and
- (h) any other information reasonably requested by the Commission.

This information shall be considered public and must be filed electronically.

### **8.10 Emergency Response**

The Permittee shall prepare an Emergency Response Plan in consultation with the emergency responders having jurisdiction over the facility prior to project construction. The Permittee shall submit a copy of the plan, along with any comments from emergency responders, to the Commission at least 14 days prior to the pre-construction meeting and a revised plan, if any, at least 14 days prior to the pre-operation meeting. The Permittee shall provide as a compliance filing confirmation that the Emergency Response Plan was provided to the emergency responders and Public Safety Answering Points (PSAP) with jurisdiction over the facility prior to commencement of construction. The Permittee shall obtain and register the facility address or other location indicators acceptable to the emergency responders and PSAP having jurisdiction over the facility.

### **8.11 Extraordinary Events**

Within 24 hours of discovery of an occurrence, the Permittee shall notify the Commission of any extraordinary event. Extraordinary events include but shall not be limited to: fires, solar panel collapse, acts of sabotage, collector or feeder line failure, and injured worker or private person. The Permittee shall, within 30 days of the occurrence, file a report with the Commission describing the cause of the occurrence and the steps taken to avoid future occurrences.

### **8.12 Wildlife Injuries and Fatalities**

The Permittee shall report any wildlife injuries and fatalities to the Commission quarterly.

## **9 DECOMMISSIONING AND RESTORATION**

### **9.1 Decommissioning Plan**

The Permittee shall submit a decommissioning plan to the Commission at least fourteen 14 days prior to the pre-operation meeting and provide updates to the plan every five years thereafter. The plan shall provide information identifying all surety and financial securities established for decommissioning and site restoration. The decommissioning plan shall provide an itemized breakdown of costs of decommissioning all project components, which shall include labor and equipment. The plan shall identify cost estimates for the removal of solar panels, racks, underground collection cables, access roads, transformers, substations, and other project components. The plan may also include anticipated costs for the replacement of panels or repowering the project by upgrading equipment.

The Permittee shall also submit the decommissioning plan to the local unit of government having direct zoning authority over the area in which the project is located. The Permittee shall ensure that it carries out its obligations to provide for the resources necessary to fulfill its requirements to properly decommission the project at the appropriate time. The Commission may at any time request the Permittee to file a report with the Commission describing how the Permittee is fulfilling this obligation.

### **9.2 Site Restoration**

Upon expiration of this permit or upon termination of operation of the project, the Permittee shall have the obligation to dismantle and remove from the site all solar panels, mounting steel posts and beams, inverters, transformers, overhead and underground cables and lines, foundations, buildings, and ancillary equipment. To the extent feasible, the Permittee shall restore and reclaim the site to pre-project conditions. Landowners may require the site be returned to agricultural production or may retain restored prairie vegetation, or other land uses as agreed to between the landowner and the Permittee. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. All such agreements between the Permittee and the affected landowner shall be submitted to the Commission prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within 18 months of termination.

### **9.3 Abandoned Solar Installations**

The Permittee shall advise the Commission of any solar facilities that are abandoned prior to termination of operation of the project. The project, or any equipment within the project, shall

be considered abandoned after one year without energy production and the land restored pursuant to Section 9.2 unless a plan is submitted to and approved by the Commission outlining the steps and schedule for returning the project, or any equipment within the project, to service.

## **10 COMMISSION AUTHORITY AFTER PERMIT ISSUANCE**

### **10.1 Final Boundaries**

After completion of construction the Commission shall determine the need to adjust the final site boundaries required for the project. This permit may be modified, after notice and opportunity for hearing, to represent the actual site boundary required by the Permittee to operate the project authorized by this permit.

### **10.2 Expansion of Site Boundaries**

No expansion of the site boundary described in this permit shall be authorized without the approval of the Commission. The Permittee may submit to the Commission a request for a change in the boundary of the site for the project. The Commission will respond to the requested change in accordance with applicable statutes and rules.

### **10.3 Periodic Review**

The Commission shall initiate a review of this permit and the applicable conditions at least once every five years. The purpose of the periodic review is to allow the Commission, the Permittee, and other interested persons an opportunity to consider modifications in the conditions of this permit. No modification may be made except in accordance with applicable statutes and rules.

### **10.4 Modification of Conditions**

After notice and opportunity for hearing this permit may be modified or amended for cause, including but not limited to the following:

- (a) violation of any condition in this permit;
- (b) endangerment of human health or the environment by operation of the project; or
- (c) existence of other grounds established by rule.

### **10.5 More Stringent Rules**

The issuance of this permit does not prevent the future adoption by the Commission of rules or orders more stringent than those now in existence and does not prevent the enforcement of these more stringent rules and orders against the Permittee.

### **10.6 Right of Entry**

The Permittee shall allow Commission designated representatives to perform the following, upon reasonable notice, upon presentation of credentials and at all times in compliance with the Permittee's site safety standards:

- (a) To enter upon the facilities easement of the property for the purpose of obtaining information, examining records, and conducting surveys or investigations.
- (b) To bring such equipment upon the facilities easement of the property as is necessary to conduct such surveys and investigations.
- (c) To sample and monitor upon the facilities easement of the property.
- (d) To examine and copy any documents pertaining to compliance with the conditions of this Permit.

## **11 PERMIT AMENDMENT**

This permit may be amended at any time by the Commission. Any person may request an amendment of the conditions of this permit by submitting a request to the Commission in writing describing the amendment sought and the reasons for the amendment. The Commission will mail notice of receipt of the request to the Permittee. The Commission may amend the conditions after affording the Permittee and interested persons such process as is required.

## **12 TRANSFER OF PERMIT**

The Permittee may request at any time that the Commission transfer this permit to another person or entity. The Permittee shall provide the name and description of the person or entity to whom the permit is requested to be transferred, the reasons for the transfer, a description

of the facilities affected, and the proposed effective date of the transfer. The person to whom the permit is to be transferred shall provide the Commission with such information as the Commission shall require to determine whether the new Permittee can comply with the conditions of the permit. The Commission may authorize transfer of the permit after affording the Permittee, the new Permittee, and interested persons such process as is required.

**13 REVOCATION OR SUSPENSION OF THE PERMIT**

The Commission may initiate action to revoke or suspend this permit at any time. The Commission shall act in accordance with the requirements of Minn. R. 7850.5100, to revoke or suspend the permit.

**14 EXPIRATION DATE**

This permit shall expire 30 years after the date this permit was approved and adopted.

SAMPLE PERMIT