



## Staff Briefing Papers

**Meeting Date** July 18, 2024

**Agenda Item \*\*1**

**Company** Xcel Energy

**Docket No.** ET-002/GS-23-217

**In the Matter of the Application of Northern States Power Co. d/b/a Xcel Energy for a Site permit for the up to 250 MW Sherco 3 Solar Energy Generating System in Sherburne County, Minnesota.**

- Issues**
1. Should the Commission find that the environmental assessment and the record created at the public hearings adequately address the issues identified in the scoping decision?
  2. Should the Commission issue a site permit for the 250-megawatt Sherco 3 Solar Energy Generating System?

**Staff** Jacques Harvieux      jacques.harvieux@state.mn.us      651-201-2233

### ✓ Relevant Documents

	<b>Date</b>
Xcel Energy – Application (10 parts)	August 08, 2023
Notice of Public Information and Environmental Assessment Scoping Meetings	October 20, 2023
Order Accepting Site Permit Application as Complete	October 23, 2023
Sample Site Permit	November 27, 2023
Xcel Energy – Reply Comments to Scoping Decision Comments	December 21, 2023
DOC EERA – Environmental Assessment Scoping Decision	January 24, 2024
OAH – First Prehearing Order	March 7, 2024
DOC EERA – Environmental Assessment (5 Parts)	April 22, 2024
Notice of Public Hearings and Availability of Environmental Assessment	April 23, 2024
Xcel Energy – Ellen Heine Direct Testimony (3 Parts)	April 30, 2024
Xcel Energy – Peter Gitzen Direct Testimony (2 Parts)	April 30, 2024
DOC EERA – Public Hearing Comments	May 22, 2024

## ✓ Relevant Documents

	<b>Date</b>
LIUNA – Comments	May 22, 2024
IUOE Local 49 and NCSRC – Comments	May 22, 2024
MNDNR – Comments	May 22, 2024
Mille Lacs Band of Ojibwe – Public Comment	May 22, 2024
Xcel Energy – Letter Reply to MLBO	May 24, 2024
Xcel Energy – Environmental Assessment Reply Comments	May 29, 2024
Xcel Energy – Proposed Findings of Fact and Exhibit List (2 Parts)	June 4, 2024
DOC EERA – Reply Comments, Proposed Findings, Revised Site Map, and Draft Compliance Table	June 18, 2024
OAH – ALJ Summary of Public Comments (Tentative to be filed)	June 28, 2024

## Attachments

Attachment 1: Proposed Site Permit

### I. STATEMENT OF ISSUES

1. Should the Commission find that the environmental assessment and the record created at the public hearings adequately address the issues identified in the scoping decision?
2. Should the Commission issue a site permit for the 250-megawatt Sherco 3 Solar Energy Generating System?

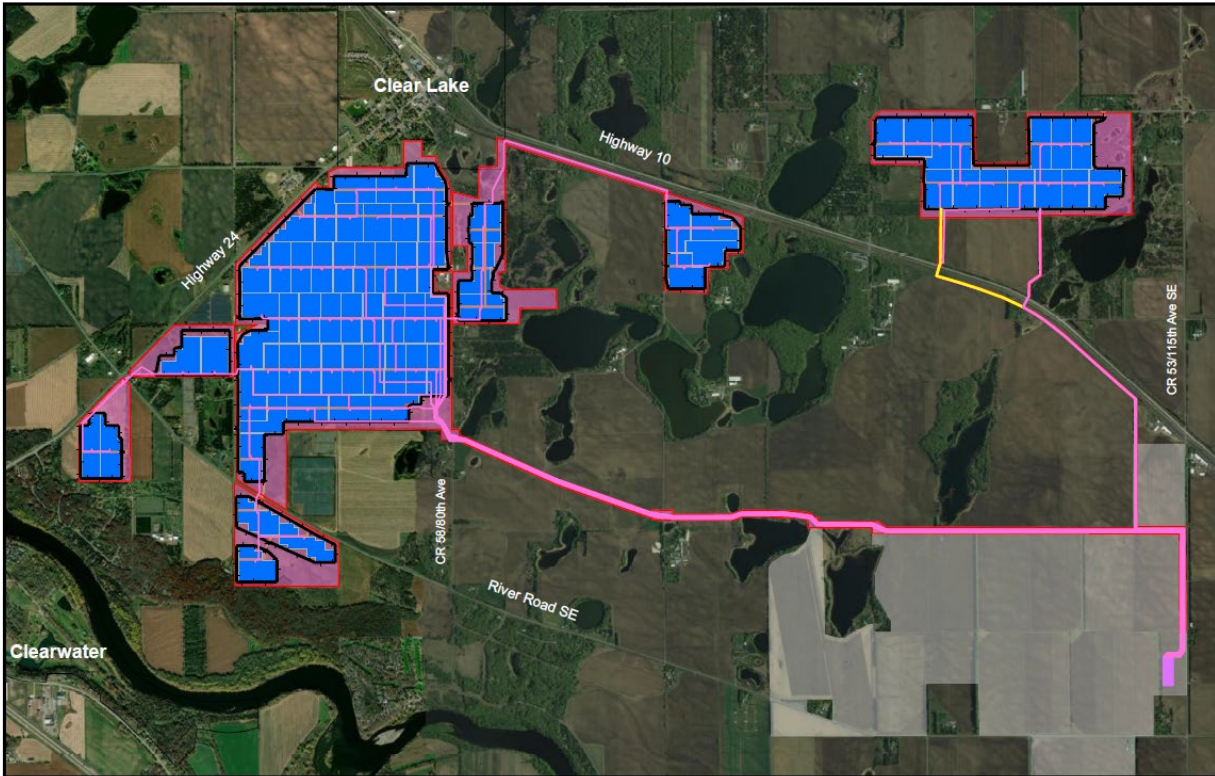
### II. PROJECT BACKGROUND

Northern States Power Co. d/b/a Xcel Energy (Xcel Energy, Applicant) has applied to the Minnesota Public Utilities Commission (Commission) for a site permit to construct the Sherco Solar 3 project, an up to 250 MW solar energy generating system to be located in Sherburne County, Minnesota (Project). The Project Area covers approximately 1,780 acres between U.S. Highway 10 and the Mississippi River near the city of Clear Lake and Clear Lake Township in Sherburne County, Minnesota.

The primary components of the solar facility would include bifacial photovoltaic panels affixed to a linear ground-mounted single-axis tracking system, solar inverters, an electrical collection system (belowground), access roads, security fencing, stormwater drainage basins, and eight weather stations.

As proposed, the Project will partially replace the energy production of the Sherco Generating Plant Unit 2, currently a coal-powered facility, which ceased operations in 2023. Based on the Company's capacity requirements under the Commission-approved 2020-2034 Upper Midwest Integrated Resource Plan, the Project is proposed to be placed into service in the fall of 2025.

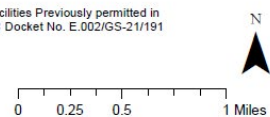
**Proposed Project Area**



**Sherco Solar 3**  
 Sherburne County, Minnesota

- Sherco Solar 3 Project Boundary
- Anticipated Facility Layout
- Perimeter Fence
- Inverter Block
- Trackers
- Feeder/Collector lines
- Unit 09 Collection Alt.
- Sherco Solar West Substation\*
- Sherco Solar - West Block\*

\* Facilities Previously permitted in PUC Docket No. E.002/GS-21/191



**III. STATUTES AND RULES**

**A. Site Permit**

Minn. Stat. § 216E.03, subd. 1, provides that no person may construct a large electric generating plant without a site permit from the Commission and that a large electric generating plant may be constructed only on a site approved by the Commission. The Sherco Solar 3 Project is a large electric power generating plant because it is a facility designed for and capable of operation at a capacity of 50-megawatts or more.

Minn. Stat. § 216E.02, subd. 1, requires that large electric power generating plants be located consistent with state policy and in a manner that minimizes adverse human and environmental impact while ensuring continuing electric power system reliability and integrity and ensuring that electric energy needs are met and fulfilled in an orderly and timely fashion.

In determining whether to issue a permit for a large electric power generating plant, the Commission must consider the factors contained under Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100. Under Minn. R. 7850.4600, the Commission may impose conditions in any site permit for a large electric power generating plant as it deems appropriate and that are supported by the record.

### **B. Environmental Document**

Minn. Stat. § 216E.04, subd. 5, requires preparation of an Environmental Assessment (EA) for projects being reviewed under the alternative permitting process. The Minnesota Department of Commerce is responsible for preparing the EA on behalf of the Commission. The EA 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.

### **C. Certificate of Need**

In the 2023 legislative session, the Minnesota legislature passed legislation affecting Minn. Stat. § 216B.243, subd. 8 creating an exemption for wind and solar projects from certificate of need requirements.

## **IV. PROCEDURAL HISTORY**

On August 8, 2023, Xcel Energy filed its Application for a Site Permit for the Sherco Solar 3 Project.

On October 23, 2023, the Commission issued its Order Accepting the Site Permit Application as Substantially Complete.

On November 7, 2023, Commission and Minnesota Department of Commerce Energy Environmental Review and Analysis (EERA) staff conducted an in-person public information and environmental assessment scoping meeting in Clear Lake Township, Minnesota. A remote-access public information and environmental assessment scoping meeting was held on November 8, 2023. A comment period was open through November 22, 2023, to receive comments on issues to be considered in the environmental assessment scoping decision.<sup>1</sup>

On January 24, 2024, EERA filed the Environmental Assessment Scoping Decision.

On April 22, 2024, EERA filed the Sherco Solar 3 Environmental Assessment. Among other things, the EERA included a proposed draft site permit for the project.

On April 30, 2024, Xcel Energy filed the direct testimony of Ellen Heine and Peter Gitzen.

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<sup>1</sup> The Commission issued a Notice of Public Information and Environmental Assessment Scoping Meeting on October 20, 2023.

On May 7, 2024, Administrative Law Judge (ALJ) Kristien R.E. Butler presided over a virtual public hearing. An in-person hearing was held on May 9, 2024, in Becker, Minnesota. A written comment period was open through May 22, 2024.

On June 4, 2024, Xcel Energy filed proposed findings of fact and exhibit list.

On June 18, 2024, EERA filed reply comments for proposed findings of fact, site map revisions, and draft compliance table.

On June 28, 2024, the ALJ filed a summary of public comments.

## V. COMMENTS

On May 7 and 9, 2024 the ALJ presided over public hearings regarding the site permit for the Sherco 3 Project. Written comments were also accepted until May 22, 2024.

Comments made by the public during this time largely raised concerns regarding impacts that are mitigated and addressed in the standard permit language. Landowners Patrick Hermus and Heidi Meisenheimer expressed concerns about impacts to their property value and requested a special permit condition that would require Xcel to either purchase their property for the price they paid for it or compensate them if for the difference between that price and what they are able to sell for.<sup>2</sup> There were no other notable public comments that requested special permit conditions.

The DNR submitted written comments asking that the following special permit conditions be added to the site permit application:

- The use of shielded and downward facing LED lighting to minimize the blue hue;
- The use of only non-chloride products for dust control; and
- The use of wildlife friendly erosion control.

EERA also filed comments recommending modifications to the Sherco 3 Project draft decommissioning plan and the accompanying draft site permit.<sup>3</sup> EERA also recommended revisions to the plan and asked for additional provisions to be included in the site permit application language. The additional provisions are addressed in the staff analysis section below.

Xcel Energy in its reply comments filed on May 29, 2023, explained that it will provide a revised plan to DOC-EERA prior to filing a final version of the decommissioning plan as a pre-

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<sup>2</sup> Comment by Jeanne Morris (May 22, 2024).

<sup>3</sup> EERA filed comments to the record on May 22, 2024. The comments addressed recommended changes to the proposed decommissioning plan and proposed special permit conditions addressing the return of pre-project conditions.

construction compliance filing.<sup>4</sup>

Xcel opposed Hermus and Meisenheimer's requested special permit condition, disputing their legal claims and arguing that this Commission proceeding is not the proper venue to resolve the alleged issue. However, Xcel stated it would work with the landowners to mitigate any impacts where possible.

## VI. STAFF ANALYSIS

The Commission has the following issues before it regarding Xcel's permit application:

- Whether the environmental assessment and the record created at the public hearing adequately addressed the issues identified in the scoping decision; and
- Whether to issue a site permit for the 250-megawatt Sherco 3 Solar Energy Generating System.

Based on the information in Xcel's Site Permit Application, the analysis provided in the Environmental Assessment, the ALJ Summary Report, and other evidence in the record, staff recommends that the Commission (i) find the Environmental Assessment complete; and (ii) issue the attached proposed Site Permit for the Sherco Solar 3 Project.

Staff believes the case record demonstrates that:

- the alternative permitting process was conducted in accordance with Minn. Stat. § 216E.04 and the operative rules Minn. R. 7850.2900 to 7850.3900;
- the environmental assessment included the items required by Minn. R. 7850.3700, subp. 4, was prepared in compliance with Minn. R. 7850.3700, and, in combination with the case record, addressed the issues identified in the Scoping Decision; and
- the permit factors set forth in Minn. Stat. § 216E.04, subd. 8 (referencing Minn. Stat. § 216E.03, subd. 7) and Minn. R. 7850.4100, have been considered and support issuing a site permit.

In addition to demonstrating that the permitting process and environmental analysis was conducted in accordance with the relevant rules and statutes, staff notes the following:

Numerous concerns were raised during the review process including aesthetics, noise, land use and zoning impacts, land-based economies, archeological, cultural, and historic resources, and

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<sup>4</sup> In Xcel Energy's reply comments filed on May 29, 2024, Xcel Energy noted that it will comply with EERA's recommendations to the Decommissioning Plan and make the recommended changes where applicable.

natural resources. The concerns raised were evaluated and discussed in the environmental assessment and in comments submitted by the applicant, and are mitigated or addressed in the standard permit language.

### **Whether to find the Environmental Assessment Complete.**

If the Commission finds the Environmental Assessment complete, it may proceed to the next decision regarding the Site Permit. If the Commission finds the Environmental Assessment incomplete, it must identify the reasons and request that it be revised or supplemented. In this case, a schedule for revising or supplementing the Environmental Assessment would need to be established, and the Commission would revisit its decisions once completed.

### **Whether to Issue a Site Permit.**

If the Commission determines that the Environmental Assessment is adequate, the Commission may issue a site permit that identifies a specific site and permit conditions, or it may deny the site permit and identify the reason(s) for the denial. Should the Commission decide to issue a site permit, staff has developed a proposed site permit, which is attached to these briefing papers and can be modified as is appropriate. The proposed permit for the Sherco 3 project was submitted by EERA as an Appendix to the April 22, 2024 Environmental Assessment and was updated by staff. Section 5 Special Conditions, includes the specific permit conditions proposed for the project.

### **ALJ Summary of Comments**

In the Sherco 3 permit review proceeding the Commission requested that the Administrative Law Judge provide a summary of public comments rather than a full ALJ Report with findings, conclusions, and a recommendation.

On June 28, 2024, the ALJ provided an extensive summary of the applicant, agency, and public comments received during the public hearing and the subsequent public comment period. Staff will not repeat the summary here and refers the Commission to the ALJ summary.

### **Findings of Fact**

The applicant filed proposed findings of fact on June 4, 2024. Those findings were reviewed and commented upon by the EERA and finalized by staff. The findings provide a summary of the procedures followed, the statutory and rule criteria addressed, and the information contained in the record. While the findings are comprehensive, staff does not recommend the Commission adopt them because they were not fully vetted by an administrative law judge.

## VII. COMMISSION DECISION OPTIONS

### Environmental Assessment

1. Determine that the Environmental Assessment and the record created in this matter address the issues identified in the Scoping Decision. (Xcel, EERA)

*[Or, if the Commission does not select Option 1, it must identify the reasons and request that the Environmental Assessment be revised or supplemented.]*

2. Determine that the Environmental Assessment and the record created in this matter do not address the issues identified in the Scoping Decision for the following reasons:  
*[identify the reasons]* **and**
3. Request that EERA prepare a supplement to the Environmental Assessment that addresses the identified deficiencies.

### Site Permit

4. Issue the Proposed Site Permit attached to these briefing papers as the Site Permit for the up to 250-megawatt Sherco Solar 3 project proposed in Sherburne County, Minnesota. (Xcel, EERA)
5. Issue the Proposed Site Permit attached to these briefing papers modified as follows: *[identify modifications]*
  - A. Add a special permit condition requiring the Permittee to either purchase the property owned by Patrick Hermus and Heidi Meisenheimer for \$500,000 or pay them the difference between \$500,000 and the price for which they are able to sell the property. (Hermus and Meisenheimer)
6. Do not issue a site permit and state the reasons for the denial.

### Administrative

7. Authorize Commission staff to update and modify the amended site permit to correct typographic and formatting errors, improve consistency, and ensure agreement with the Commission's final order in the matter.

Staff Recommendation: 1, 4, and 7