

## Staff Briefing Papers

Meeting Date February 24, 2022 Agenda Item \*4

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 find that the environmental assessment and the record created at the public hearing adequately address the issues identified in the scoping decision?
  2. Should the Commission grant a certificate of need for the 50- megawatt Louise Solar Project?
  3. Should the Commission adopt the administrative law judge's Findings of Fact, Conclusions of Law, and Recommendation?
  4. Should the Commission grant a site permit for the 50-megawatt Louise Solar Project?

Staff Cezar Panait Cezar.Panait@state.mn.us 651-201-2207

---

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.

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.

**Relevant Documents****Date**

Commission Order on Certificate of Need Exemptions Requests (20-646)	09/21/2020
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
Commission Order Accepting Applications as Complete, Authorizing Joint Review, and Taking Other Actions (both dockets)	05/07/2021
MN DNR Comments (20-647)	06/08/2021
MN DOT Comments (20-647)	06/09/2021
Louise Solar Comments (both dockets)	06/09/2021
DOC EERA Scoping Decision (both dockets)	06/22/2021
DOC EERA Environmental Assessment (2 parts, both dockets)	09/27/2021
DOC EERA Supplemental Information to the Environmental Assessment (both dockets)	10/22/2021
Louise Solar Appendix D Revised Vegetation Management Plan (both dockets)	10/22/2021
DOC DER Comments (20-646)	10/25/2021
MPCA Comments (both dockets)	10/28/2021
MN DNR Comments (20-646)	10/28/2021
Louise Solar Proposed Findings of Fact (both dockets)	10/29/2021
Louise Solar Reply Comments (both dockets)	11/02/2021
DOC EERA Draft Site Permit (both dockets)	11/09/2021
DOC EERA Comments on Findings of Fact (both dockets)	11/09/2021
OAH ALJ Report (both dockets)	12/09/2021
DOC EERA Exceptions to ALJ Report (both dockets)	12/21/2021
Louise Solar Exceptions to ALJ Report (both dockets)	12/21/2021
DOC EERA and Agency Partners (20-647)	02/11/2022

**Attachments**

Attachment 1: Findings of Fact

Attachment 2: Proposed Site Permit



## I. Statement of the Issues

1. Should the Commission find that the environmental assessment and the record created at the public hearing adequately address the issues identified in the scoping decision?
2. Should the Commission grant a certificate of need for the 50- megawatt Louise Solar Project?
3. Should the Commission adopt the administrative law judge's Findings of Fact, Conclusions of Law, and Recommendation?
4. Should the Commission grant a site permit for the 50-megawatt Louise Solar Project?

## II. Background

Louise Solar Project, LLC, (Louise Solar or Applicant) an affiliate of EDF Renewables, LLC, has proposed a 50-megawatt (MW) alternating current (AC) solar energy generating system on approximately 613 acres of land in Lodi and Adams Townships in Mower County, Minnesota (Louise Solar Project). 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 is not currently intending to use.

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 to 1,000-foot 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 Applicant's 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 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.

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

On February 11 and 12, 2021, Louise Solar filed separate applications for a certificate of need and a site permit for the Louise Solar Project.

On March 2, 2021, Gene Noterman, a farmer from Adams, MN 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 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.

On March 31, 2021, the Commission staff filed a Sample Solar Site Permit for public review.

On May 7, 2021, the Commission issued its *Order Accepting Applications as Substantially Complete, Authorizing Joint Review, and Taking Other Actions*. Among other administrative requirements, the order accepted the certificate of need application as substantially complete; accepted the site permit application as substantially complete; authorized review of the certificate of need application using the informal review process defined in Minn. R. 7829.1200, and review of the site permit application under the alternative permitting process defined in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 3900; approved joint public meetings, joint public hearings, and combined environmental review; requested preparation of an Environmental Assessment in lieu of an Environmental Report pursuant to Minn. R. 7849.1900; and referred the matter to the Office of Administrative Hearings (OAH) for the appointment of an administrative law judge and requested the preparation of findings of fact, conclusions of law, and recommendation of a preferred site and permit conditions.

On May 25, 2021, Commission staff and Department of Commerce Energy Environmental Review and Analysis (DOC EERA) staff conducted a virtual public information and environmental assessment scoping meeting. Comments on issues for consideration in the scoping decision were accepted through June 9, 2021. No members of the public or other interested parties participated in the on-line meeting.

On June 8, 2021, Minnesota Department of Natural Resources (DNR) filled a comment letter on June 8, 2021, on fencing of the site, the applicant's Vegetation Management Plan (VMP). DNR recommended a 10-foot fencing and deer egress areas for the project and indicated that DNR, along with other relevant state agencies expects to review the revised Vegetation Management Plan for the project prior to finalization.

On June 9, 2021, MnDOT provided comments regarding site access from TH 56, the agency's Utility Accommodation Policy, verifying stormwater run-off calculations for the project, prohibited access, temporary and permanent, to the project site from TH 56; and placement of electric collection lines by private parties near trunk highways.<sup>1</sup>

---

<sup>1</sup> MnDOT Scoping Letter (June 9, 2021) "MnDOT views solar generating projects as it would any other private commercial venture and does not consider a solar generating project to be a public utility for

MnDOT noted that “any MnDOT permits applied for as a part of these projects will not be issued until the PUC has issued an approved site permit for this project” and that all applicable permitting, traffic control and construction coordination efforts should be made through MnDOT’s District 6B Engineering Specialist.

On June 9, 2021, the Applicant submitted comments to further develop the record on prime farmland, decommissioning, and the vegetation management plan. Specifically, the applicant supplemented the record with additional information on the prime farmland analysis and decommissioning as requested during application acceptance and indicated a revised VMP will be available for review and comment prior to the hearing.

On June 22, 2021, DOC EERA filed its Environmental Assessment (EA) Scoping Decision. The Scoping Decision established the issues to be evaluated in the EA and the issues outside the scope of the EA, namely, site alternatives other than the site location presented by the applicant; system alternatives not specifically identified in the Scoping Decision; and landowner compensation. The Scoping Decision also indicated that the EA would include the information (*i.e.*, matters of size, type, and timing) that would have otherwise been required in an environmental report for a certificate of need under Minn. R. 7849.1500.

On September 27, 2021, DOC EERA filed the Combined Environmental Assessment and Environmental Report.

On September 27, 2021, the Commission issued a *Notice of Environmental Assessment, Public Hearings and Comment Period*. The notice requested comments on whether the Commission should grant a certificate of need and site permit for the project; if the project is needed and in the public interest; what are the human and environmental impacts of the project and how can these impacts be addressed in the site permit; and if a site permit is issued, what additional conditions or requirements should be included. Comments were accepted until October 27, 2021.

On October 12, 2021, Administrative Law Judge (ALJ), Barbara Case with the OAH presided over a public hearing held in LeRoy, MN. A second public hearing was conducted remotely on October 13, 2021. The hearing procedures included brief presentations by Commission staff to describe the permitting process and by Louise Solar to describe the proposed project; the introduction of documents to be included in the record; and an opportunity for members of the public to provide comments and ask questions. A court reporter was present to transcribe the public hearing. Following the public hearings, a written comment period was open through October 27, 2021.

---

transportation purposes. Any MnDOT land that Louise Solar may wish to occupy would need to be leased (in the areas where a lease is feasible). In addition, any associated electrical collection systems that run along a trunk highway right of way would need to be permitted through a municipal, cooperative or investor-owned electric service provider. MnDOT allows private parties to place connecting lines across trunk highway rights of way but does not allow private parties to place such facilities longitudinally along trunk highways.”

At the in-person hearing, one member of the public asked questions regarding fencing of the project and how the solar arrays operate and commented regarding the Project's potential impact on property taxes and property values. During the remote-access hearing, two local labor unions representatives expressed support for the Project because it would result in construction jobs in the region.

On October 22, 2021, DOC EERA filed Supplemental Information to the Environmental Assessment to correct information provided in Table 1 on page 13 of the EA indicating that Louise Solar will apply for a conditional use permit from Mower County for the construction of the 161 kV Transmission Line connecting the project to the Adams Substation.

On October 22, 2021, Louise Solar filed a Revised Vegetation Management Plan for the project.

On October 25, 2021, the Department of Commerce Division of Energy Resources (DOC DER) filed comments on Louise Solar's certificate of need application. DOC DER recommended that the Commission, after consideration of the Environmental Assessment, issue a certificate of need for the Louise Solar Project. These were only comments received on the merits of the certificate of need application.

On October 28, 2021, Minnesota Pollution Control Agency filed comments on the Environmental Assessment addressing potential impacts and mitigation measures on surface water. MPCA noted that the Projects drains into the Little Cedar River subwatershed and it also partially drains into an Unnamed Creek which has an impaired macroinvertebrate community. MPCA also noted that the EA acknowledges MPCA stormwater treatment requirements for solar facilities and general best management practices (BMP) requirements. However, there is not a reference to the National Pollutant Discharge Elimination System/State Disposal System General Construction Stormwater Permit (CSW Permit) requirements for sites within 1 mile of an impaired water and at least a portion of the site is within 1 mile from an unnamed stream that has construction related impairments which will require use of additional erosion and sediment control BMPs during construction.

MPCA noted that due to other waterbodies within the site, including wetlands, existing 50-foot buffers to the waterbodies must be preserved during construction or if that is not possible, the use of redundant (double) downgrade sediment controls must be utilized. This requirement applies to all surface waters, public or nonpublic. Lastly, due to the water impairment, if the Project will ultimately disturb 50 or more acres, the Stormwater Pollution Prevention Plan for the Project will require submittal to the MPCA for review and approval prior to obtaining CSW Permit coverage.

Also on October 28, 2021, Minnesota Department of Natural Resources filed Comments addressing Vegetation Management Plan, prairie, security fencing, recreational trail crossings, natural resources, and potential impacts and mitigation measures. In particular, DNR recommended a 10-foot-high fence around the facility to prevent deer from entering and deer egress areas in case some deer manage to get inside the facility. DNR stated that this guidance is being updated to reflect current best practices and specifications, and the 10-foot fencing



itself would nearly eliminate the possibility of deer getting in and would not require egresses. A 10-foot fence would improve safety for wildlife and prevent damage to the facility.

On October 29, 2021, Louise Solar filed its Proposed Findings of Fact, Conclusions of Law, and Recommendations.

On November 2, 2021, Louise Solar filed reply comments.

On November 9, 2021, DOC EERA filed a Draft Site Permit. Also on the same day, EERA filed comments on the Applicant's Finding of Fact.

On December 12, 2021, Administrative Law Judge filed her Findings of Fact, Conclusion of Law, and Recommendations Report (ALJS's Report).

On December 21, 2021, DOC EERA filed a letter indicating it supports the ALJ's findings.

On December 21, 2021, Louise Solar filed exceptions to the ALJ's Report.

On February 11, 2022, DOC EERA, on behalf of the Interagency Vegetation Management Planning Work Group (VMPWG), submitted comments on the Louise Solar Vegetation Management Plan (VMP).

#### **IV. Statutes and Rules**

##### **A. Certificate of Need**

Minn. Stat. § 216B.243, subd. 2, provides that no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission. The Louise Solar Project is defined as a large energy facility under Minn. Stat. § 216B.2421, subd. 2(1), because it is an electric power generating plant with a capacity of 50 megawatts or more with transmission lines interconnecting it to the transmission system and, therefore, requires a certificate of need.

In assessing the need for a proposed large energy facility, the Commission must consider the factors listed under each of the criteria set forth in Minn. Stat. § 216B.243, subd. 3, and Minn. R. 7849.0120.

##### **B. 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 Louise Solar Project is defined as a large electric power generating plant because it is a facility designed for and capable of operation at a capacity of 50 megawatts and, therefore, requires a site permit.

The proposed project is subject to Minnesota Statutes Chapter 216E which 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. 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.

### **C. Environmental Document**

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.

Minn. R. 7849.1000 to 7849.2100, establishes the requirements concerning preparation of an environmental report (ER) for a large energy facility requiring a certificate of need. The ER must describe 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.

As provided under Minn. R. 7849.1900, when there are concurrent applications for a certificate of need and a site permit, an EA may be prepared in lieu of the required ER. If the documents are combined, the procedures of parts 7850.3700 must be followed in conducting the environmental review; and the EA must include the analysis of alternatives required in the ER under Minn. R. 7849.1500.

### **V. MERITS OF THE CERTIFICATE OF NEED APPLICATION**

With the September 27, 2021, Notice of Environmental Assessment Availability, Public Hearings and Comment Period, the Commission requested comments on the merits of Louise Solar's certificate of need application. Comments were accepted until October 27, 2021. Initial comments were filed by DOC DER and reply comments, indicating agreement with DOC DER's recommendation, were filed by Louise Solar. These were the only comments received.

DOC DER's comments concluded that Louise Solar had met the criteria under Minn. R. 7849.0120 required to establish need for the project<sup>2</sup> and recommended that the Commission issue a certificate of need to Louise Solar upon considering the EA and determining that the project's benefits to society are compatible with protecting the natural environment,

---

<sup>2</sup> Minn. R. 7849.0120 A, Minn. R. 7849.0120 B, and Minn. R. 7849.0120 D.



socioeconomic environment, and human health.<sup>3</sup> Specifically, DOC DER recommended that the Commission find that:

- the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;
- a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence in the record; and
- the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

Rather than repeat DOC DER's full analysis in these briefing papers, staff refers the Commission to the DOC DER's October 25, 2021, Comments for its complete analysis.

## VI. ADMINISTRATIVE LAW JUDGE REPORT

The ALJ presented findings on each of the criteria under Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100, that must be considered when issuing a site permit for a large electric power generating plant. The ALJ recommended that the Commission issue a site permit to Louise Solar to construct and operate the 50-megawatt Louise Solar Project, and that the site permit include the amended permit conditions provided in Section III of the ALJ Report.<sup>4</sup> In making the recommendation, the ALJ, as summarized by staff, concluded that:

- The Commission and the Administrative Law Judge have jurisdiction over the Certificate of Need and Draft Site Permit applied for by Louise Solar for the up to 50 MW AC proposed Project pursuant to Minn. Stat. §§ 216B.243, 216E.02, and 216E.03.
- Louise Solar, EERA, and the Commission provided all notices required under Minnesota Statutes and Rules for a Certificate of Need and Draft Site Permit proceedings.
- EERA conducted an appropriate environmental analysis of the Project for purposes of the Certificate of Need and Draft Site Permit proceedings pursuant to Minn. R. 7849.1200 and 7850.3700.
- Public hearings were held on October 12, 2021 (in person), and October 13, 2021 (remote access). Proper notice of the public hearings was provided, and the public was given an opportunity to speak at the hearings and to submit written comments.

---

<sup>3</sup> Minn. R. 7849.0120 C.

<sup>4</sup> The ALJ was not required to provide Findings of Fact, Conclusions of Law, and Recommendation in the certificate of need matter because the Commission authorized review using the informal process.

However, the ALJ did document the actions taken to comply with the procedural requirements of Minn. R. 7829.1200 and 7829.2500 for review of a certificate of need application under the informal review process (ALJ Report at Findings 79-168).



- Louise Solar and the Commission have substantially complied with the procedural requirements of Minn. Stat. Ch. 216B, Minn. Stat. ch. 216E, and Minn. R. ch. 7829, 7849, and 7850.
- No party or person has demonstrated by a preponderance of the evidence that there is a more reasonable and prudent alternative to address the needs met by the Project.
- No conditions on the Certificate of Need are necessary.
- The Commission has the authority under Minn. Stat. § 216E.03 to place conditions in a LEPPG Draft Site Permit.
- The Draft Site Permit, with the permit conditions revised as set forth above, contain a number of important mitigation measures and other reasonable conditions.
- The Draft Site Permit as revised include a number of special conditions.
- There is no feasible or prudent alternative to the Project under Minn. R. 7850.4400, subp. 4.
- The record in this proceeding demonstrates that Louise Solar has satisfied the criteria for a Certificate of Need set forth in Minn. Stat. § 216B.243 and Minn. R. 7849.0120 and all other applicable legal requirements.
- The record in this proceeding demonstrates that Louise Solar has satisfied the criteria for a Site Permit as set forth in Minn. Stat. § 216E.03 and Minn. R. ch. 7850 and all other applicable legal requirements.
- The Project with the permit conditions revised as set forth in the ALJ Report, satisfies the site permit criteria for a large electric power generating plant in Minn. Stat. § 216E.03, and meets all other applicable legal requirements.
- The Project, with the permit conditions discussed above, does not present a potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act and/or the Minnesota Environmental Policy Act.

## VII. EXCEPTIONS TO ALJ REPORT

Under Minn. R. 7829.2700, exceptions to the ALJ Report must be filed within 15 days of the filing of the report for cases subject to statutory deadlines. The ALJ Report was filed on December 9, 2021, therefore, the filing deadline for exceptions was December 24, 2021.

Exceptions were filed by Louise Solar and DOC EERA, and were the only exceptions filed in this matter.

On December 21, 2021, DOC EERA filed a letter indicating it supports the ALJ's findings, and made the following proposed correction to finding 78 (P.16):

*78. Louise Solar deferred to ~~DER~~ EERA to address comments by the MPCA. It appears that section 5.2 of the Draft Site Permit addresses some of MPCA's concerns by addressing buffers around water bodies and sediment controls.*

Louise Solar submitted limited comments and exceptions regarding: (1) the special permit condition related to security fencing; (2) the special permit condition related to an independent third-party agency monitor; and (3) minor corrections to various findings in the ALJ Report.

**Security Fencing.** Louise Solar is proposing to install either a 6-foot chain-link fence with top guard angled out and upward at 45 degrees with 3-4 strands of smooth wire (no barbs), or 8-foot chain link fence. These options were designed in accordance with the Minnesota Department of Natural Resource's published Commercial Solar Siting Guidance (May 2016). Louise Solar argued that a 10-foot fence, as suggested by DNR, would increase visual impacts to adjacent residences, and members of the public.

Louise Solar further argued that a 10-foot fence would cost at least 25 percent more than the fencing currently proposed by Louise Solar. Based on recent estimates, a 10-foot fence would cost between \$200,000 - \$250,000 more than a 6-foot fence, representing an increase of approximately 0.3% of the total capital costs for the Project. Consequently, Louise Solar proposed the following revisions to the following findings in the ALJ Report:

246. Louise Solar has stated that it will implement MDNR 2016 guidance of wildlife-friendly fencing by installing either a 6-foot chain-link fence with top guard angled out and upward at 45 degrees with three to four strands of smooth wire (no barbs), or eight-foot chain link for security and safety purposes. At the request of MDNR, barbed wire will not be used around the perimeter of the Project. Louise Solar's proposed fencing was designed in accordance with MDNR's 2016 Guidance for Commercial Solar Projects. Louise Solar asserted that a ten-foot fence would cost at least 25 percent more than the fencing currently proposed. **Louise Solar also noted that a 10-foot fence would increase visual impacts to adjacent residences and would likely require larger/deeper foundations, thereby increasing soil disturbance.** Louise Solar also asserted that given balancing concerns related to deer mortality and potential visual impacts it believes its current proposal is most appropriate.

247. The MDNR is responsible for all wild animals in the state. ~~While~~ **However,** neither party provided data on deer fatalities in solar facilities, ~~MDNR is presumed to have greater knowledge of what is necessary to protect wildlife than does the applicant.~~ **Louise Solar provided additional estimates demonstrating the higher costs of a ten-foot fence. Moreover, the applicant's concern with the cost of a higher fence, while unsupported with specific data on the costs, seems likely to be relatively small when compared to the over 62-million-dollar cost of the Project.** Also, ~~while~~ Louise Solar raises visual concerns **that a 10-foot fence would increase visual impacts to adjacent residences. While** no member of the public **has** expressed concern about the visual impact of the project, **the fence options currently contemplated for the Project are six or eight feet tall. Members of the public may have concerns regarding the visual impacts of a ten-foot fence. Additionally, the concern that deer may be trapped within the fencing will be mitigated by the fact that operations and maintenance personnel will be onsite weekly and will be able to identify any wildlife within the fenced area and take appropriate action to safely remove any deer from the fenced area. Given the balance between addressing concerns related to deer mortality and movement with the higher cost and potential visual impacts of higher fencing, Louise Solar's**

~~proposed fencing options, designed in accordance with the MDNR's published Commercial Solar Siting Guidance (May 2016), are reasonable and supported by the record. It is possible that injured birds and animals, which MDNR is trying to prevent, would be more distressing to the surrounding community than fence height. Given that these concerns are speculative, the MDNR's expertise should be given deference and~~ **Special permit condition Section 5.5 of the Draft Site Permit should reflect the ten-foot-high fence recommended by MDNR that the fencing installed for the Project should be consistent with the MDNR's published Commercial Solar Siting Guidance (May 2016).**

Louise Solar proposed the following revision to special permit condition Section 5.5:

#### 5.5 Security Fencing

The security fence surrounding the facility shall be designed to minimize the visual impact of the project while maintaining compliance with the National Electric Safety Code. **The Permittee shall install a fence consistent with the MDNR's published Commercial Solar Siting Guidance (May 2016).** The Permittee shall coordinate with the MDNR to further refine the appropriate fence design, identify ways to preclude wildlife entanglement in the security fence, and to ensure adequate deer escape technology exists at the facility. The results of the coordination shall be submitted to the Commission with the site plan pursuant to Section 8.3.

#### **Independent Monitor**

Louise Solar stated they have no objections to the special permit condition Section 5.8 regarding an independent monitor but indicated the language in special permit condition Section 5.8 regarding the "scope of work" for the independent monitor to be specific to the Project – in other words, the scope of work on a large linear project will be different than the scope on a 50 MW solar project such as the Louise Solar Project.

#### **Minor Corrections to Draft Site Permit References**

Louise Solar reviewed the ALJ Report's findings and noted that minor corrections are needed to consistently reference the corrected and renumbered Draft Site Permit conditions. These corrections are listed in Attachment B of Louise Solar Exceptions<sup>5</sup> to ALJ's Report.

### **VIII. Staff Analysis**

**The Commission has the following issues before it regarding the proposed Louise Solar Project:**

- Whether to find the environmental assessment complete.
- Whether to grant a certificate of need and make specific findings.
- Whether to adopt the ALJ's Findings of Fact, Conclusions of Law, and Recommendation and grant a site permit.

---

<sup>5</sup> Louise Solar Exceptions to ALJ's Report, eDockets ID [202112-180907-02](#)



Based on information in Louise Solar's certificate of need and site permit applications, the analysis provided in the EA, public comments, the ALJ Report, exceptions received in this matter, and other evidence in the record, staff provides the discussion below.

### **A. Environmental Assessment**

An application for a certificate of need requires preparation of an ER, while an application for a site permit requires preparation of an EA. Because Louise Solar applied for both a certificate of need and a site permit, the Commission requested that an EA be prepared in lieu of an ER.

Accordingly, the EA was to be prepared following the procedures under Minn. R. 7850.3700 and was to include the analysis of alternatives required in an ER.

Staff has reviewed the EA and believes that DOC EERA conducted an appropriate environmental analysis of the project for purposes of these proceedings, and that the EA satisfies the requirements under Minn. R. 7850.3700 and Minn. R. 7849.1500.

- The EA did not identify any unique or significant environmental impacts from the construction and operation of the project that could not be properly mitigated.
- The EA discussed potential alternatives to the project such as 50-megawatt solar facility in a different location, a 50-megawatt large wind energy conversion system, and the no-build alternative.
- No information was submitted into the record that contested the information and analysis contained in the EA.
- The ALJ Report concluded that the EA and the record created at the public hearing addressed the issues identified in the scoping decision.

Therefore, staff recommends that the Commission, in accordance with Minn. R. 7850.3900, subp. 2, find that the EA and the supporting record adequately address the issues identified in the scoping decision.

If the Commission does not find the EA complete, it must identify the reasons it is not complete and request that the EA be revised or supplemented. In that case, a schedule for revising or supplementing the EA would need to be determined and the Commission would need to revisit its decisions after completion of the revised EA.

### **B. Certificate of Need**

The Commission directed that the certificate of need application be reviewed using the informal review process. Namely, the ALJ was not requested to prepare findings or make a recommendation.



Staff agrees with the recommendation of DOC DER that Louise Solar has demonstrated that the project meets the criteria set forth under Minn. R. 7849.0120 (A, B, and D). Staff further believes that based on a consideration of the factors set forth in Minn. R. 7849.0120 (C), the EA and evidence in the record demonstrates that the project will provide benefits to society in a manner compatible with protecting the natural environment, socioeconomic environment, and human health. Lastly, the procedural requirements for informal review of a certificate of need application were conducted in accordance with Minn. R. 7829.1200 and Minn. R. 7829.2500. Therefore, staff agrees with DOC DER that the Commission should issue a certificate of need to Louise Solar for the 50-megawatt solar facility to be located in Mower County, Minnesota.

If the Commission decides to issue a certificate of need it must make written findings with respect to the criteria set forth in Minn. R. 7849.0120. If the Commission denies the certificate of need application, it must state the reasons for the denial.

### **C. ALJ Report**

The Commission referred the site permit application to the OAH for the appointment of an ALJ and requested the preparation of findings of fact, conclusions of law, and recommendation of a preferred site and permit conditions.

Staff agrees with the findings, conclusions, and recommendations reached by the ALJ. Staff finds that the ALJ Report is a sound, comprehensive, and common sense ruling that is reflective of the case record. The ALJ Report documents that the procedural requirements were followed and presents findings of fact for each of the decision criteria that must be met for a site permit for a large electric generating plant. Therefore, staff recommends that the Commission approve the ALJ Report to the extent it is consistent with and necessary for the Commission's final decisions in these matters.

### **D. Proposed Site Permit**

Staff agrees with DOC EERA and the ALJ that the Commission should issue a site permit to Louise Solar for the 50-megawatt solar facility to be located in Mower County, Minnesota. Staff also agrees that the Draft Site Permit as modified by the ALJ, which includes the agencies concerns as special permit conditions in Section 5 should be issued as the site permit for the project. Should the Commission modify or propose additional permit conditions, staff will make the necessary modifications to ensure agreement with the Commission's final order in the matter.

## **IX. Decision Options**

### **1. Environmental Assessment**

- A. Determine that the Environmental Assessment and the record created in this matter address the issues identified in the Scoping Decision.
- B. Determine that the Environmental Assessment and the record created in this matter do not address the issues identified in the Scoping Decision and direct DOC EERA to prepare a supplement to the Environmental Assessment that addresses the identified deficiencies.

### **2. Certificate of Need**

- A. Grant a certificate of need for the 50-megawatt Louise Solar Project proposed in Mower County, Minnesota, finding that:
  - 1) the factors set forth in Minn. R. 7849.0120(A), have been met and that denying the application would likely have an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;
  - 2) the factors set forth in Minn. R. 7849.0120(B), have been met and that a more reasonable and prudent alternative to the project has not been demonstrated by a preponderance of the evidence in the record;
  - 3) the factors set forth in Minn. R. 7849.0120(C), have been met and that the preponderance of the evidence in the record demonstrates that the project will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health; and
  - 4) the factors set forth in Minn. R. 7849.0120(D), have been met and that the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the proposed facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.
- B. Deny a certificate of need for the 50-megawatt Louise Solar Project proposed in Mower County, Minnesota, and state the reasons for the denial.

### **3. ALJ Report**

- A. Approve and adopt the ALJ's Findings of Fact, Conclusions of Law, and Recommendation, to the extent it is consistent with and necessary for the Commission's final decisions, with the correction identified by EERA and the Applicant's proposed corrections to reference the corrected and renumbered Draft Site Permit conditions (attachment B of Louise Solar Exceptions to ALJ Report).



- B. Approve and adopt the ALJ's Findings of Fact, Conclusions of Law, and Recommendation with the revisions proposed by Louise Solar on December 21, 2021.
- C. If significant changes are necessary, amend the ALJ's Findings of Fact, Conclusions of Law, and Recommendation, as deemed appropriate.

**4. Site Permit**

- A. Issue the Proposed Site Permit attached to these briefing papers as the Site Permit for the 50-megawatt Louise Solar Project proposed in Mower County, Minnesota.
- B. Issue a site permit as proposed by DOC EERA on December 9, 2021, and include the revisions proposed by Louise Solar on December 21, 2021.
- C. Do not issue a site permit for the 50-megawatt Louise Solar Project and state the reasons for the denial.

**5. Administrative**

- A. Authorize Commission staff to modify the Proposed 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.A, 2.A(1-4), 3.A, 4.A, and 5.A