

## Staff Briefing Papers

Meeting Date August 18, 2022

Agenda Item \*2

Company Big Bend Wind, LLC

Docket No. **Docket No. IP-7013/CN-19-408, WS-19-619, and TL-19-621**

**In the Matter of the Application of Big Bend Wind, LLC for a Certificate of Need, a Site Permit for the up to 300 MW Large Wind Energy Conversion System and a Route Permit for the 161 kV Transmission Line in Cottonwood, Martin, and Watonwan Counties, Minnesota.**

### Issues

1. Should the Commission adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation?
2. 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?
3. Should the Commission grant a certificate of need for the up to 300 MW Big Bend Wind Project proposed in Cottonwood and Watonwan Counties, Minnesota?
4. Should the Commission grant a site permit for the up to 300 MW Big Bend Wind Project proposed in Cottonwood and Watonwan Counties, Minnesota?
5. Should the Commission issue a route permit for the 161 kV transmission line associated with both Big Bend Wind and Red Rock Solar Projects proposed in Cottonwood, Watonwan, and Martin Counties, Minnesota?

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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.



**Relevant Documents**

**Date**

Commission Order on Certificate of Need Exemptions (19-408)	9/24/2019
Application for Certificate of Need for a Large Energy Facility (6 parts) (19-408)	11/9/2020
Application for a Site Permit for the Big Bend Wind Project (27 parts) (19-619)	11/9/2020
Application for a Route Permit for a 161 kV Transmission Line (12 parts) (19-621)	11/9/2020
DOC DER Comments (19-408)	12/15/2020
DOC EERA Comments (19-408, 19-619, 19-621)	12/15/2020
Minnesota Historical Society Petition to Intervene (19-408, 19-619, 19-621)	12/15/2020
Southwest Regional Development Commission Comments (19-408, 19-619, 19-621)	12/21/2020
Lower Sioux Indian Community Comments (19-408, 19-619, 19-621)	12/22/2020
Big Bend Wind, LLC Reply Comments (19-408, 19-619, 19-621)	12/23/2020
DOC EERA Reply Comments (19-408, 19-619, 19-621)	12/24/2020
Order Accepting Applications as Complete, Establishing (19-408, 19-619, 19-621)	3/11/2021
Notice of Public Information and ER Scoping Meeting (19-408, 19-619, 19-621)	3/17/2021
Upper Sioux Indian Community Petition to Intervene (19-408, 19-619, 19-621)	4/1/2021
Minnesota Historical Society Comments (19-408, 19-619, 19-621)	4/29/2021
MNDNR Comments (19-619, 19-621)	4/29/2021
Lower Sioux Indian Community Comments (19-408, 19-619, 19-621)	4/30/2021
MnDOT Comments (19-408, 19-619, 19-621)	4/30/2021
DOC EERA – Public Comments Received on PDSP and EA Scoping (19-408, 19-619, 19-621)	5/03/2021
Big Bend Wind/Red Rock Solar Reply Comments (19-408, 19-619, 19-621)	5/5/2021
MnDOT Aeronautics Comments (19-408, 19-619, 19-621)	5/24/2021
DOC EERA – EA Scoping Summary and Recommendations (19-408, 19-619, 19-621)	5/24/2021
DOC EERA Comments, Recommendations and Preliminary Draft Site Permit (19-619, 19-621)	6/3/2021



**Relevant Documents**

**Date**

Order Identifying Additional Route Segment and Issuing Draft Site Permit (19-619, 19-621)	7/22/2021
LIUNA Petition to Intervene (19-408, 19-619, 19-621)	7/30/2021
DOC EERA - Environmental Assessment Scoping Decision (19-408, 19-619, 19-621)	8/24/2021
Big Bend Wind, LLC Settlement Agreement (8 parts) (19-408, 19-619, 19-621)	9/14/2021
Big Bend Wind, LLC Supplemental and Amended Site Permit Application (19-619) (43 parts)	9/20/2021
Applicants' Testimony – Ikkala Direct (2 parts) (19-408, 19-619, 19-621)	10/1/2021
DOC EERA Notice of Substantial Changes and Comment Period on the EA Scope (19-408, 19-619, 19-621)	10/15/2021
Big Bend/Red Rock Scoping Comments (19-408, 19-619, 19-621)	11/1/2021
Public Comment – Brad Hutchinson (19-408, 19-619, 19-621)	11/03/2021
DOC EERA Revised Environmental Assessment Scoping Decision (19-408, 19-619, 19-621)	11/5/2021
Upper Sioux Community Direct Testimony of Adam Savariego (19-408, 19-619, 19-621)	11/10/2021
Lower Sioux Community Direct Testimony of Robert Larsen (19-408, 19-619, 19-621)	11/10/2021
Minnesota Historical Society Direct Testimony of Kevin Maijala (19-408, 19-619, 19-621)	11/10/2021
LIUNA Direct Testimony of Lucas Franco (2 parts) (19-408, 19-619, 19-621)	11/10/2021 and 11/12/2021
Notice of EA Availability, Public Hearings and Comment Period (19-408, 19-619, 19-621)	11/14/2021
DOC EERA - Environmental Assessment (10 parts) (19-408, 19-619, 19-621)	1/18/2022
DOC EERA - Corrections to Environmental Assessment (19-408, 19-619, 19-621)	1/25/2022
DOC DER Comments (19-408)	1/26/2022
Ikkala Surrebutal Testimony Schedules (4 parts) (19-408, 19-619, 19-621)	1/31/2022
DOC EERA - Corrections to the Environmental Assessment 2-2-22 (19-408, 19-619, 19-621)	2/8/2022



**Relevant Documents**

**Date**

DOC EERA – Public Comments submitted during the PSDP and EA Scoping Comment Period (19-408, 19-619, 19-621)	2/8/2022
IUOP, Local 49 Comments (19-408, 19-619, 19-621)	2/14/2022
North Central States Reg Council of Carpenters Comments (19-408, 19-619, 19-621)	2/22/2022
MNDNR Comments (19-619, 19-621)	2/22/2022
Big Bend/Red Rock Post Hearing Comments (19-408, 19-619, 19-621)	2/22/2022
DOC EERA Public Hearing Comments (19-408, 19-619, 19-621)	2/22/2022
PUC Public Comment Batch 022022 (19-408, 19-619, 19-621)	2/23/2022
Big Bend/Red Rock Post Hearing Brief (19-408, 19-619, 19-621)	3/18/2022
Big Bend Red Rock Combined Proposed Findings of Fact, Conclusions of Law, and Recommendations (19-408, 19-619, 19-621)	3/18/2022
DOC EERA Reply Brief – Redlines of Applicant Proposed Finding of Fact (19-408, 19-619, 19-621)	4/1/2022
MHS, Lower Sioux, Upper Sioux Reply Brief – Redline of Applicant’s Proposed FOF (19-408, 19-619, 19-621)	4/1/2022
LIUNA Letter (19-408, 19-619, 19-621)	4/1/2022
OAH Report -Findings of Fact, Conclusion of Law, and Recommendation (19-408, 19-619, 19-621)	4/29/2022
PUC Letter to State Historic Preservation Office (8 parts) (19-408, 19-619, 19-621)	5/12/2022
Big Bend Wind/Red Rock Solar Letter (19-408, 19-619, 19-621)	5/16/2022
DOC EERA - Exceptions to ALJ Report (19-408, 19-619, 19-621)	5/16/2022
State Historic Preservation Office Comments (19-408, 19-619, 19-621)	6/27/2022
Big Bend Wind, LLC Response to DOC EERA Request for Wake Loss Analysis (19-408, 19-619, 19-621)	6/29/2022

**Attachments:**

- A. Proposed Large Wind Energy Conversion System Site Permit
- B. Proposed High Voltage Transmission Line Route Permit

## **I. Statement of the Issues**

1. Should the Commission adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation?
2. 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?
3. Should the Commission grant a certificate of need for the up to 300 MW Big Bend Wind Project proposed in Cottonwood and Watonwan Counties, Minnesota?
4. Should the Commission grant a site permit for the up to 300 MW Big Bend Wind Project proposed in Cottonwood and Watonwan Counties, Minnesota?
5. Should the Commission issue a route permit for the 161 kV transmission line associated with both Big Bend Wind and Red Rock Solar Projects proposed in Cottonwood, Watonwan, and Martin Counties, Minnesota?

## **II. Background**

Big Bend Wind, LLC (Big Bend Wind), filed applications for a certificate of need, a site permit, and a route permit for an up-to 300 megawatt (MW) large wind energy conversion system and an approximately 18-mile 161 kV transmission line (Big Bend Wind Project).

The Big Bend Wind Project will be located in portions of Cottonwood and Watonwan counties, Minnesota, with a Project footprint that spans 43,523 acres of land in Delton, Selma, Carson, and Midway Townships (Cottonwood County) and Butterfield Township (Watonwan County). The Project will have up to 300 MW of nameplate wind energy capacity. Big Bend Wind continues to assess its turbine options and is currently evaluating three wind turbine models with rated nameplate power outputs ranging from 5.8 MW to 6.0 MW, which would result in the construction and operation of up to 52 wind turbines.

In addition to the turbines and related equipment, the Big Bend Wind Project would also include: gravel access roads, underground and/or above ground electrical collection and communication lines, one operation and maintenance facility, a project substation, up to one meteorological tower, a Sonic Detection and Ranging or Light Detection and Ranging unit, up to four Aircraft Detection Lighting System radars, and, if needed, one temporary batch plant area.

The associated transmission line is needed to interconnect both Big Bend Wind Project and the Red Rock Solar Project to the transmission grid. The line will consist of approximately 18 miles of 161 kV transmission line located within Midway, Mountain Lake, Odin, and Cedar Townships in Cottonwood, Watonwan, and Martin counties and will interconnect the proposed Wind Project to a step-up substation before connecting to the existing Xcel Energy Crandall 345 kV switching station in Martin County.

The Big Bend Wind Project and Red Rock Solar Project have been proposed as a hybrid renewable energy generation project, which could generate up to a total of 335 MW of electricity. The Big Bend Wind Project could generate up to 300 MW of electricity, the Red Rock Solar Project could generate up to 60 MW of electricity

Depending on the total generation capacity approved, the amount of electricity generated at the Red Rock Solar Project, and at the Big Bend Wind Project will be adjusted not to exceed a total of 335 MW. This means that if the Red Rock Solar Project was permitted at 60 MW, the Big Bend Wind Project would be limited to 275 MW.

The applicant has indicated that the Red Rock Solar Project will not proceed without the construction and operation of the Big Bend Wind Project, because it would not be feasible as a “stand-alone” generation facility considering the cost and expenses associated with the construction and maintenance of the HVTL needed to connect to the grid.

The purpose of the hybrid project, as described by the applicants, is to produce renewable energy for purchase by electric utilities or other entities to satisfy Minnesota Renewable Energy Standard under Minn. Stat. § 216B.1691, or other clean energy standards and sustainability goals. The applicants have not secured a power purchase agreement for the sale of the energy at this time.

The applicant anticipates a commercial operation date as early as 2024, dependent on the completion of the interconnection process, permitting, and other development activities.

### **Procedural History**

On September 24, 2019, the Commission issued an Order Approving Exemptions to certain certificate of need filing requirements and conditional exemptions to other CN rule requirements.

On November 9, 2020, Big Bend, LLC filed separate applications for a certificate of need, site permit, and a route permit for its proposed 300 MW Big Bend Wind Project.

On December 15, 2020, DOC DER filed comments on the CN application completeness in the Big Bend Wind docket.

On December 15, 2020, DOC EERA filed comments on the Big Bend site and route permit applications.

On December 15, 2020, Minnesota Historical Society submitted a petition to intervene in the Big Bend Wind dockets.

On December 21, 2020, the Southwest Regional Development Commission provided comments in both Red Rock and Big Bend projects.

On December 22, 2020, Lower Sioux Indian Community submitted comments on the Big Bend Wind project.

On December 23, 2020, Big Bend Wind submitted separate reply comments on the Big Bend Wind and Red Rock Solar projects.

On December 24, 2020, DOC EERA provided comments to both projects.

On March 11, 2021, the Commission issued an order accepting applications as complete, establishing review procedures, granting variances, and notice of and order for hearing.

On March 17, 2021, the Commission issued a notice of public information and ER Scoping meeting.

On April 1, 2021, Commission staff and Department of Commerce Energy Environmental Review and Analysis (DOC EERA) staff conducted a remote access public information and environmental assessment scoping meeting. Comments on issues for consideration in the scoping decision were accepted through April 30, 2021.

On April 29, 2021, Minnesota Historical Society submitted comments in the Big Bend Wind dockets.

On April 29, 2021, Minnesota Department of Natural Resources (MDNR) provided comments in the site permits and the route permit for both projects.

On April 30, 2021, Lower Sioux Indian Community provided comments addressing the Big Bend Wind site permit application.

On April 30, 2021, Minnesota Department of Transportation (MnDOT) submitted comments addressing both site permits and the HVTL route permit.

On May 3, 2021, DOC EERA filed public comments received on the Preliminary Draft Site Permit and the scope of the Environmental Assessment.

On May 5, 2021, Big Bend Wind and Red Rock Solar provided reply comments.

On May 24, 2021, MnDOT Office of Aeronautics submitted comments addressing the requirement the new requirement that tall structures (in excess of 500 feet) need to be permitted by MnDOT, in addition to the FAA. MnDOT also provided a comment regarding the private runaway located on the Thiessen property.

On May 24, 2021, DOC EERA issued an EA Scoping Summary and recommendations.

On June 3, 2021, DOC EERA provided comments, recommendations and submitted a preliminary draft site permit for the Big Bend Wind Project.

On July 22, 2021, the Commission issued an Order Identifying Additional Route Permit and Issuing Draft Site Permit.

On August 24, 2021, DOC EERA issued its Environmental Assessment 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; and system alternatives not specifically identified in the Scoping Decision.

On September 14, 2021, Big Bend Wind submitted a Settlement Agreement between Big Bend Wind, LLC; Red Rock Solar, LLC; Apex Clean Energy Holdings, LLC; the Minnesota Historical Society, and the Lower Sioux Indian Community in the State of Minnesota, the Upper Sioux Community (September Settlement Agreement). The September Settlement Agreement affected turbine locations associated with the Big Bend Wind Project.

On September 20, 2021, Big Bend Wind submitted a supplemental and amended site permit application.

On October 1, 2021, the Applicant submitted Direct Testimony of Dylan Ikkala, Senior Development Manager, Apex Clean Energy, Inc.

On October 7, 2021, DOC EERA submitted a revised schedule for Environmental Assessment completion.

On October 15, 2021, DOC EERA filed a Notice of Substantial Changes and Substantial New Information and Comment Period on Re-evaluation of the Environmental Assessment Scope. This notice was issued due September Settlement Agreement. Comments were accepted until November 1, 2021.

On November 1, 2021, Big Bend Wind and Red Rock Solar submitted scoping comments for the revised EA.

On November 5, 2021, DOC EERA filed a revised EA Scoping Decision. DOC EERA received one comment during the written comment period, and it was to continue to evaluate an all-solar energy facility. DOC EERA believed this alternative was appropriate to move forward. DOC EERA also made changes to the scope of what would be evaluated regarding the Wind Project based on the September Settlement Agreement.



On November 10, 2021, Upper Sioux Community submitted Direct Testimony of Adam Savariego.

On November 10, 2021, Lower Sioux Indian Community submitted Direct Testimony of Robert Larsen.

On November 10, 2021, Minnesota Historical Society submitted Direct Testimony of Kevin Maijala

On November 10 and 11, 2021, LIUNA submitted Direct Testimony of Lucas Franco.

On November 14, 2021, the Commission issued a notice of EA availability, public hearings and comment period.

On January 18, 2022, DOC EERA issued a revised Environmental Assessment.

On January 25, 2022, DOC EERA issued corrections to Environmental Assessment.

On January 26 and 28, 2022, DOC DER submitted comments on the merits of the CN applications in the Big Bend Wind and Red Rock Solar projects, respectively.

On January 31, 2022, the Applicant submitted Ikkala Surrebutal Testimony Schedules.

On February 1 and 2, 2022, the Administrative Law Judge (ALJ) James E. LaFave with the Office of Administrative hearings presided over three public hearings. Two were held on February 1 in Windom, Minnesota. A virtual hearing was held on February 2. The hearing procedures included brief presentations by Commission staff and by Big Bend Wind and Red Rock Solar; 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 hearing, a written comment period was open through February 22, 2022.

On February 8, 2022, DOC EERA issued an *Environmental Assessment Errata* which includes the corrected versions of the EA Summary and Chapter 8 of the EA.<sup>1</sup>

On February 14, 2022, Local 49 Labor Union submitted comments.

On February 22, 2022, North Central States Regional Council of Carpenters, the MDNR, Big Bend Wind and Red Rock Solar, and DOC EERA submitted comments.

On February 23, 2022, Commission staff efiled public comments received.

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<sup>1</sup> DOC-DOC EERA. Other – Corrections to the Environmental Assessment 2-2-22. February 8, 2022, eDocket ID # [20222-182544-01](#).

On March 18, 2022, the Applicants submitted post hearing brief and combined proposed findings of fact, conclusions of law, and recommendations.

On April 1, 2022, DOC EERA submitted reply brief – redline of Applicants’ proposed findings of fact.

On April 1, 2022, MHS, Lower Sioux, Upper Sioux submitted reply brief – redline to the Applicants’ proposed FOF.

ON April 1, 2022, LIUNA submitted a letter indicating support for the Applicants’ proposed FOF Report.

On April 29, 2022, ALJ issued a Findings of Fact, Conclusions of Law, and Recommendation Report (ALJ’s Report).

On May 12, 2022, the Commission sent a letter to the State Historic Preservation Office requesting consultation and comments regarding the Big Bend Wind Project in the area of the Jeffers Petroglyphs.

On May 16, 2022, Big Bend Wind/Red Rock Solar filed a letter indicating no exceptions to the ALJ’s Report.

On May 16, 2022, DOC EERA submitted exceptions to ALJ’s report.

On June 26, 2022, Minnesota SHPO provided comments.

On June 29, 2022, Big Bend Wind submitted a response to DOC EERA’ request for a Wake Loss Analysis.

### **III. Statutes and Rules**

#### **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 CN by the Commission. The Big Bend Wind 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.

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.

**Procedural Treatment of Application.** The Commission directed use of the informal review process set forth under Minn. R. 7829.1200. The informal review process consists of an initial and reply comment period and a public hearing.<sup>2</sup>

**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.

**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 certificate of need. The environmental report is a document that describes the human and environmental impacts of a proposed large energy facility and alternatives to the project and methods to mitigate anticipated adverse impacts. At the time the Commission makes a final decision on the certificate of need application it must determine whether the environmental report and the record in the matter address the issues identified in the environmental report scoping decision.

### **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 Big Bend Wind 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 or more and, therefore, requires a site permit.

In deciding whether to issue a site permit for an LWECS, the Commission must determine that the project is compatible with environmental preservation, sustainable development, and the efficient use of resources.<sup>3</sup>

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.

### **Route Permit**

Minn. Stat. § 216E.03, subd. 2, provides that no high-voltage transmission line shall be sited or constructed in Minnesota without the issuance of a route permit by the Commission.

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<sup>2</sup> See also Minn. R. 7829.2500, subp.9.

<sup>3</sup> Minn. Stat. § 216F.03, and Minn. R. 7854.1000, subp. 3.

Under Minn. Stat. § 216E.01, subd. 4, a high-voltage transmission line is defined as a conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of 100 kilovolts or more and that is greater than 1,500 feet in length. The proposed project is a new 18-mile 161 kV single-circuit transmission line and, therefore, requires a route permit from the Commission.

The proposed project qualified for alternative review because it is a high-voltage transmission line between 100 and 200 kV. Under the alternative permitting process: (1) the applicant is not required to propose alternative routes in its application, but must identify other routes it examined and discuss the reasons for rejecting those routes; (2) an environmental assessment is prepared instead of an environmental impact statement; (3) a public hearing is conducted, but a contested case hearing is not required.

The proposed project is subject to Minn. Stat. Chapter 216E which requires that high-voltage transmission lines be routed in a manner consistent with the state's goals to conserve resources, minimize adverse human and environmental impacts, and other land use conflicts, and ensure the state's electric energy security and reliability through efficient, cost-effective power supply and electric transmission infrastructure. The statute also affords the Commission the authority to specify the design, route, right-of-way preparation, facility construction, and any other appropriate conditions it deems necessary when issuing a permit for a high-voltage transmission line. The operative rules for the review of high-voltage transmission line route permit applications are found in Minnesota Rules Chapter 7850.

The proposed transmission line is being reviewed under the alternative permitting process established in Minn. Stat. § 216E.04, because it is a high-voltage transmission lines of between 100 and 200 kilovolts.

Pursuant to Minn. R. 7850.3700, projects being reviewed under the alternative process require the preparation of an environmental assessment. 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 minimize, mitigate, or avoid any adverse impacts identified.

At the time the Commission makes a final decision on whether to issue a site or route permit, it must determine whether the environmental assessment and the record created at the public hearing addressed the issues identified in the scoping decision.

#### **IV. Comments on the Merits of the Certificate of Need Application**

On January 14, 2022, the Commission issued a Notice of Environmental Assessment, Public Hearings and Comment Period, which included the question whether the Commission should grant a certificate of need for the proposed Big Bend Wind Project, requesting comments by

February 22, 2022. Comments were filed by DOC DER, IUOP Local 49 Union, North Central States Regional Council of Carpenters, and from citizens living in the project area.

#### **A. Department of Commerce DER Comments and Analysis**

On January 26, 2022, DOC DER filled comments on the merits of the CN Application recommending that the Commission consider the impacts detailed in the Environmental Report, and, if the impacts are acceptable, grant the Certificate of Need.

Overall, the Department recommended that the Commission determine that Big Bend Wind has shown 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.

#### **B. International Union of Operating Engineers, Local 49**

On February 14, 2022, Local 49, a construction labor union, filed comments in support of the Big Bend Wind and Red Rock Projects. Local 49 indicated that many of its members on southwestern Minnesota, 255 of whom live within 50 miles of this project, make their livings building large scale infrastructure projects like Big Bend Wind. Local 49 appreciated that Big Bend Wind, LLC has identified using local labor as one of its development priorities and agree that this project should prioritize Minnesota workers for the construction of this project, as this would retain most of the project's benefits in the local economy.

#### **C. North Central States Regional Council of Carpenters**

On February 22, 2022, North Central States Regional Council of Carpenters filled comments in support of the Big Bend Wind and Red Rock Solar Projects, along with the route permit for the associated high-voltage transmission line.

#### **D. LIUNA**

On November 10, 2021, LIUNA filed testimony of Lucas Franco, including a report titled “Maximizing the Benefits of Clean Energy Development Through Local Construction Hiring: A Case Study of Big Bend Wind and Red Rock Solar”. The conclusion of the report was that the Big Bend Wind and Red Rock Solar project has the potential to create hundreds of family supporting jobs for Minnesota residents and inject millions of dollars into the region’s economy. LIUNA indicated that Apex Clean Energy’s commitment to local hiring and their plan to work with local labor unions and other stakeholders is a strong indication that this project will maximize the local socioeconomic benefits.

### **E. Public Comments**

Numerous public comments were received from citizens living in the area, including local elected officials. People living away from the project but having an interest in the area also commented. The majority of the comments received were in support of the project. Members of the public supporting the project spoke about the benefits for the county and townships in terms of property taxes, jobs and economic benefits, and lease payments to the participating landowners for hosting wind turbines and access roads. There were also comments from local unions talking about their support for the project and how important it is to use local labor.

Comments opposing the project were submitted by Brad Hutchinson, a resident in the area. Mr. Hutchinson commented<sup>4</sup> that climate change and greenhouse gases are the motivating force behind the push for more solar and wind power generation in Minnesota, but he commented that this project in particular (Big Bend Wind and Red Rock Solar) should be rejected, even if other wind and solar projects are deemed beneficial.

Mr. Hutchinson commented that our desire for lower greenhouse gases may be both good and commendable, but our current focus on wind and solar is causing more harm than any benefit we receive. Mr. Hutchinson argued that wind and solar fail to meet the conditions of Rule 7850 in a number of areas, including Chinese dependence and abuses during mining for the minerals needed for wind and solar materials, unreliability of wind and solar energy, large land use requirements, transmission lines required for these projects, environmental damage, loss in property value, sound and shadow flicker, and signal disruption for TV, Cellular and Internet.

Also expressing concerns about the proposed project was Davis Harder<sup>5</sup>. Mr. Harder is concerned about the impacts to the environmental resources that the proposed project would have, specifically the high-voltage transmission line impacts to the Mountain Lake Basin.

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<sup>4</sup> Public Comments – Batch 1 02222022, eDockets ID [20222-183074-02](#).

<sup>5</sup> Id, at page 12.

## **V. Public Information and Scoping Meeting**

On June 3, 2021, DOC EERA submitted initial comments and recommendations, including a summary of the public comments received at the April 1, 2021, Public Information Meeting held remotely. At the public meeting several members of the public made comments regarding the local economic development impacts, local support, environmental and animal impacts, property tax implications, the size of the wind turbines, eminent domain and routing in relation to the transmission line, (most comments were related to the wind farm), solar array collector line (underground or above ground). Two members of the Cottonwood County Commissioners stated their support for the project, including noting that the Cottonwood County Commission had taken a unanimous vote in support of the project.

In response to the agency and public comments received at the April 1, 2021, Public Information and EA Scoping Meeting and the subsequent comments period, DOC EERA proposed a Draft Site Permit for the Project, which included a number of revised sections and new special permit conditions in sections 5.3.8.1, 5.3.28, 5.6.2, 6.1, 7.5.1, 7.5.2, 7.5.4, and 11.1. Rather than listing DOC EERA's proposed revised permit language and new permit conditions in these briefing papers, Commission staff refers to DOC EERA's June 3, 2021 Draft Site Permit Comments and Recommendations.<sup>6</sup>

In addition to DOC EERA, Agency comment letters were provided by the Minnesota Department of Natural Resources (MN DNR), Minnesota Department of Transportation (MnDOT) – Office of Aeronautics, and MnDOT – Office of Land Management. Cottonwood County Commissioners provided comments at the Public Information and EA Scoping meeting. Comments were also received from intervening parties; Minnesota Historical Society (MNHS) and the Lower Sioux Indian Community. Several comments were provided by members of the public during the Public Information and EA Scoping meeting, and also submitted written comments. Commission staff refers to DOC EERA's June 3 Comments<sup>7</sup> for a complete summary of all the agency and public comments received.

## **Settlement Agreement**

After Big Bend filed its applications for the Project, the Minnesota Historical Society, Lower Sioux Indian Community in the State of Minnesota, and the Upper Sioux Community (together the "Intervenors") intervened in the Minnesota Public Utilities Commission's proceedings. Intervenors expressed concern regarding the proximity of the Project to the Jeffers Petroglyphs and the Red Rock Ridge.

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<sup>6</sup> DOC EERA Comments, Recommendations, and Preliminary Draft Site Permit, eDockets ID [20216-174802-01](#).

<sup>7</sup> DOC EERA Comments, Recommendations, and Preliminary Draft Site Permit, eDockets ID [20216-174802-01](#).



On September 14, 2021, Big Bend Wind and the intervening parties, Minnesota Historical Society, Lower Sioux Indian Community and the Upper Sioux Community entered into a settlement agreement<sup>8</sup> regarding the expressed concern of the proximity of the Project to the Jeffers Petroglyphs and the Red Rock Ridge.

The Applicant agreed to modify the proposed wind turbine layout reflected in its LWECS Application (the “Application Layout”) as follows. Big Bend Wind agreed to remove the eight wind turbines shown on the figure included in Exhibit A as T01, T04, T06, T11, T12, T13, T14, and T18 and seek alternative wind turbine locations that are at least seven miles from the Jeffers Petroglyphs Site. In addition, Big Bend Wind agreed that it will not construct one or both of the wind turbines shown on Exhibit A as T19 and T20 if the Commission grants a LWECS Site Permit that authorizes construction of one or more of the alternative wind turbine locations shown on Exhibit A as A01, A02, A03, A04, and A05 (the “Alternative Locations”). Big Bend Wind indicated its intent to construct all five Alternative Locations and not construct the wind turbines shown on Exhibit A as T19 and T20.

## **VI. Public Hearings**

Two in-person public hearings (2pm and 6pm) were held on February 1, 2022, in Windom, MN followed by a remote public hearing on February 2. The public hearings were conducted by Administrative Law Judge James LaFave and staff from DOC EERA and the Commission. At the public hearing sessions, members of the public offered comments and questions. The comments and questions included a broad range of topics, including agriculture; noise; property values; wildlife and their habitats; decommissioning; routing; effects of construction on roadways; intermittency of renewable generation; and economic development.

### **Big Bend Wind, LLC Reply Comments**

Big Bend Wind responded to the questions asked by members of the public during the public hearings and provided additional written responses in their post hearing comments filed on February 22, 2022. Big Bend Wind’s written responses addressed the following topics: (1) property taxes and property values; (2) questions concerning tax credits; (3) references to the Texas power grid; (4) sourcing of solar panel and wind turbine components; (5) conservation easements and initiatives; and (6) transmission line routing. Staff highlights a few areas below.

#### *Property taxes and values*

One commenter expressed a concern that property taxes in the vicinity of the Projects would go up, as well as a concern that property values would decrease; the comments generally related to the Wind Project. The commenter’s questions concerning property taxes were answered by a member of the Cottonwood County Commission at the public hearing, who

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<sup>8</sup> Big Bend Settlement Agreement and Exhibits A-C, September 14, 2021, eDockets ID [20219-177943-05](#).



explained that there is no reason to conclude that property taxes would go up as a result of the Projects. With respect to property values, the Environmental Assessment (“EA”) explained that data from other areas in Minnesota did not show negative property value impacts as a result of wind and solar projects.

### *Conservation easements and initiatives*

Two commenters expressed concern regarding the Projects’ potential effects on conservation in the vicinity, specifically in relation to the transmission line traversing an old lake bottom, and conservation easements generally. During the public hearing session, the Applicants provided information concerning the companies’ conservation initiatives and committed to reaching out to one of the commenters to provide more detail. A representative from the Applicants contacted that commenter on February 7, 2022, to discuss his concerns and provide further information. Further, with respect to the old lake bottom referenced by the commenters, Big Bend Wind has obtained a voluntary easement from the owner of that property, and, as explained in the EA, the property owner previously responded to similar comments during the scoping process. The EA states:

“Another commentor, the owner of the old lakebed, provided additional context to the potential to restore the old lakebed to wetland habitat. The owner indicated that previous surveys determined that restoration of the old lakebed would possibly lead to the backup of the City of Mountain Lake’s drainage resulting in the need for the installation and operation of a lift station for the City of Mountain Lake. The property owner also stated that the old lakebed area is highly productive for agriculture, even with the occasional flooding issues.”

### *Transmission line routing*

Several commenters discussed the transmission line route proposed by Big Bend Wind. Big Bend Wind has secured voluntary easements for the full length of the proposed transmission line route, and construction and operation of the transmission line will occur only in areas in which Big Bend Wind has permission to be. Big Bend Wind previously communicated with members of the Flohrs family, who declined to participate in the Project, and the proposed route avoids these properties. Big Bend Wind’s proposed route reflects the voluntary easements it has obtained for the proposed route, as well as consideration of the Commission’s routing criteria.

## **Minnesota Department of Natural Resources Reply Comments**

On February 22, 2022, MDNR<sup>9</sup> filed comments on the site permit and route permit applications for the Big Bend Wind Project.

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<sup>9</sup> Minnesota Department of Natural Resources Comments. February 22, 2022. Document ID: [20222-](#)

DNR's comments addressed topics including Native Prairie Protection Plan, Calcareous Fen Investigation, Henlow's Sparrow, routing of Turbine T35 Collector Line to avoid two river crossings, Vegetation Management Plan, and provided specific comments on the proposed transmission line routes. With regard to the use of transmission line avian flight diverters, MDNR indicated support for the permit condition in Section 5.3.15 (Avian Protection), which says that the permittee, in cooperation with the DNR, shall identify areas of the project where bird flight diverters will be incorporated into the transmission line design to prevent large avian collisions.

#### Specific HVTL route comments:

##### Applicant's Proposed Route

The Applicant's Proposed Route includes the red, yellow, and purple alternate route segments. The red and purple alternate route segments direct the transmission line farther from the South Fork of the Watonwan River. The benefit of the alternate red segment is that it would move the transmission line away from land under a Conservation Reserve Enhancement Program (CREP) easement. The alternate yellow route segment directs the transmission line closer to South Fork of the Watonwan River and requires two river crossings. Hence, DNR prefers the alternate purple route segment over the alternate yellow route segment.

If the Applicant's Proposed Route is selected, the DNR recommends that construction and pole structure placement along 50th Avenue in Martin County avoid impacts to Cedar 2-3, a site of moderate biodiversity significance, as well as adjacent native prairie.

If the Applicant's Proposed Route is selected, the DNR recommends that construction and pole placement along the Cottonwood/Watonwan County border avoid impacts to the existing CREP easement west of the Cottonwood/Watonwan County border.

##### Crandall Alternate Route

The Crandall Alternate Route avoids Cedar 2-3, a site of moderate biodiversity significance, and associated native prairie. The Crandall Alternate Route includes the Peaking Plant/Crandall alternate route segment, which crosses Cedar Creek and a public waters basin.

##### Peaking Plant Alternate Route

The Peaking Plant Alternate Route avoids Cedar 2-3, a site of moderate biodiversity significance, and associated native prairie. This route includes the alternate blue route segment. The DNR does not have a strong preference for the Peaking Plant Alternate Route or the alternate blue route segment.

## DOC EERA Reply Comments

On February 22, 2002, DOC EERA submitted post Public Hearing comments on the Draft Site Permit for the proposed Big Bend Wind Project and the settlement agreement that was filed on September 14, 2021. Additionally, DOC EERA provided corrected information regarding previously submitted public comments and the Environmental Assessment (EA) for the Big Bend Wind Project, Red Rock Solar Project, and Big Bend HVTL Project.

### *Settlement Agreement & Draft Site Permit*

The Commission issued a Draft Site Permit (DSP) for the Big Bend Wind Project on July 22, 2021.<sup>10</sup> Since the issuance of the DSP, the proposed turbine locations and associated infrastructure have changed, as identified in the Settlement Agreement between the Parties in this contested case.<sup>11</sup> The DSP issued by the Commission on July 22, 2021 no longer reflects the proposed Big Bend Wind Project, and numerous sections and conditions within the DSP need to be updated prior to Commission taking up the DSP for issuance of a final site permit.

DOC EERA reviewed the revised DSP filed in the Ikkala Surrebuttal Testimony, Schedule F.3 DOC EERA generally agrees with the Applicant's proposed revisions to the DSP, with the exception of the Applicant's suggested addition to DSP section 4.1 identified below:

*The Commission authorizes a variance of the wind access buffer setback for the following turbine locations; A01 and A02.*

DOC EERA noted that as of January 31, 2022, Big Bend Wind, LLC has not been able to secure good neighbor agreements for alternative turbine locations A01 and A02, so the Applicant continues to request a waiver of the wind access buffer setback for these alternative turbine locations.

If the Applicant is not able to secure the necessary good neighbor agreements for alternative turbine locations A01 and A02, DOC EERA indicated they do not recommend the Commission issue the waiver for the wind access buffer setback. Maintaining the 3 x 5 rotor diameter wind access buffer is important to maintain adequate setbacks from non-participating landowner parcels to avoid infringing on the wind rights of the non-participants. Additionally, the 3 x 5 rotor diameter turbine setbacks and internal turbine spacing gets to the importance of adequate turbine spacing to minimize wake loss and ensuring efficient generation is occurring at operating wind turbines. DOC EERA indicated that it is also important to note this is a new

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<sup>10</sup> Commission Order – Identifying Additional Route Segment and Issuing Draft Site Permit. July 22, 2021. eDocket# [20217-176400-03](#).

<sup>11</sup> Big Bend Wind, LLC. Other – 2021-09-14 Big Bend Settlement Agreement and Exhibits. September 14, 2021, eDocket # [20219-177943-02](#), [20219-177943-05](#), [20219-177943-08](#), [20219-177943-11](#), [20219-177943-14](#), [20219-177943-17](#), [20219-177943-20](#), [20219-177943-23](#).

project, so the Applicant is not restricted to existing turbine tower locations as may be the case with an existing wind project planning to repower turbines.

Additionally, DOC EERA has identified what they believe to be an error in the Applicant's language for the addition of DSP special condition 6.2:

*6.2 Independent Monitor*

*Prior to any construction, the Permittee shall propose a scope of work and identify one independent third party agency monitor on behalf of the Department of Commerce. The scope of work shall be developed in consultation with and approved by the Department of Commerce. This third-party monitor will report directly to and will be under the control of the Department of Commerce with costs borne by the Permittee. The Permittee shall file the with the Commission the scope of work 30 days prior to commencing construction and the name, address, email, phone number, and emergency phone number of the third-party monitor 14 days prior to commencing any construction or right-of-way preparation and upon any change that may occur during the construction of the project and restoration of the right-of-way.*

The language referring to the right-of-way, indicated above in red, would be appropriate in the Big Bend HVTL Project route permit, but should be deleted from the Big Bend Wind Project site permit.

DOC EERA recommended the addition of a special condition, 6.3 Settlement Agreement specific to the Jeffers Petroglyphs.

*6.3 Settlement Agreement Specific to the Jeffers Petroglyphs*

*The Permittee shall adhere to, and follow, the Settlement Agreement, fully executed on September 14, 2021, entered into by and among Big Bend Wind, LLC, Red Rock Solar, LLC, Apex Clean Energy Holdings, LLC, Minnesota Historical Society, Lower Sioux Indian Community in the State of Minnesota, and the Upper Sioux Community. The Settlement Agreement shall be followed, unless this permit establishes a different requirement in which case this permit shall prevail.*

DOC EERA is generally in support of removing all turbines proposed to be removed in the Settlement Agreement, and the appropriate micro-siting of T24 and T25. DOC EERA supports the use of alternative turbine locations A03, A04, A05, and A06.

As indicated earlier, DOC EERA only recommended the use of alternative turbine locations A01 and A02 if; Big Bend Wind, LLC is able to secure good neighbor agreements for the adjacent properties within the proposed turbine locations Wind Access Buffer areas.

Additionally, DOC EERA indicated it does not believe turbine locations T22 and T23 can be constructed if the proposed hybrid Big Bend Wind and Red Rock Solar Project is to be

constructed and operated. T22 and T23 turbine locations are within the proposed Red Rock Solar Project Area, and turbine construction would not be possible within the same area as the proposed solar project.

#### *Public Comment Submitted to DOC EERA*

During the public hearing on February 2, 2022, Mr. Davis Harder made DOC EERA staff aware that comments made by Mr. Harder on April 30, 2021, during the Environmental Assessment (EA) Scoping comment period were not filed in eDockets with the other public comments DOC EERA had received during that comment period. The omission of Mr. Harder's comments from the other public comments efiled following scoping was not intentional, and Mr. Harder's comments were taken into consideration as DOC EERA developed the EA Scoping Decision, the Revised EA Scoping Decision, and the EA.

DOC EERA has reviewed Mr. Harder's April 30, 2021, comments again, and has confirmed that issues identified in Mr. Harder's comments were considered in the EA Scoping Decision, Revised EA Scoping Decision, and/or the EA document itself. DOC EERA efiled an erratum on February 8, 2022 to ensure Mr. Harder's comments submitted during the EA scoping comment period are included in the record.<sup>12</sup>

#### **State Historic Preservation Office Comments**

##### ***Duties of the State in Regard to Historic Properties***

On May 12, 2022, the Commission sent a letter to SHPO, including 7 supporting attachments to consult with the State Historic Preservation Office regarding the Big Bend Wind Project in the area of the Jeffers Petroglyphs, as required under Minn. Stat. § 138.665.

On June 24, 2022, SHPO provided comments indicating that there are no National Register listed or State Register listed history-architecture properties that will be affected by the Red Rock Solar Project. Additionally, SHPO stated no archaeological resources would be impacted by the Red Rock Solar project.

SHPO also stated that with regard to the Big Bend Wind Project, the revised Wind Project design has lessened the anticipated visual impacts to the viewshed and setting of Jeffers Petroglyphs and is an improvement over the original design. SHPO indicated that they respect the September 2021 Settlement Agreement signed by the Lower Sioux Indian Community, the Upper Sioux Community, and the Minnesota Historical Society and therefore will agree that the currently proposed configuration of turbines is acceptable.

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<sup>12</sup> DOC-DOC EERA. Public Comment – Public Comments Submitted During the PDSP and EA Scoping Comment Period. February 8, 2022, eDocket ID # [20222-182545-05](#).

With regard to the Big Bend Transmission Line Project, SHPO indicated that it identified no significant archaeological resources will be affected by the Big Bend Transmission Line Project provided that archaeological site **21CO0095** is protected and avoided. If it is not feasible to avoid impacts to site 21CO0095, then additional Phase II evaluation will be needed to determine its eligibility for listing in the National Register of Historic Places.

## **VII. Administrative Law Judge Report**

As per the March 11, 2021, Order, the Commission authorized the certificate of need applications to be reviewed using the informal review process. The Commission referred the Big Bend Wind site permit application to the OAH for a contested case proceeding to examine only the potential impacts of the project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, related to cultural and archaeological impacts, including impacts to the Jeffers Petroglyph Site, and other issues that may be added at a future time.

The Commission referred the remaining Big Bend site permit and the Big Bend Wind route permit application to the OAH for review under the alternative permitting process and requested that the ALJ prepare findings of fact, conclusions of law, and recommendations.

The Commission authorized a joint review of the projects: Big Bend Wind site permit, route permit and certificate of need applications and Red Rock Solar site permit and certificate of need applications.

On April 29, 2022, the ALJ filed his Findings of Fact, Conclusion of Law, and Recommendation (ALJ Report). The ALJ Report included 622 findings of fact (findings), 23 conclusions of law and two recommendations. The ALJ Report included a summary of public comments received, information about the proposed project, a procedural history of the matter, and an analysis of the certificate of need, siting criteria, and routing criteria as applied to the proposed project. The ALJ report stated that the Draft Site Permit contain a number of mitigation measures and other reasonable conditions that adequately address potential impacts of the project on human and natural environments and that it is reasonable to amend the DSP to incorporate additional permit conditions.

The ALJ Report stated that Big Bend Wind has satisfied the criteria for a Certificate of Need, a LWECS Site Permit; the Route Permit; and all other legal requirements.

Based on the findings and conclusions identified in the report, the ALJ recommended that the Commission issue a Certificate of Need, Site Permit, and Route Permit to Big Bend Wind, LLC to construct and operate the Wind Project and associated facilities in Cottonwood, Martin and Watonwan Counties, with the conditions identified in the report.

In making the recommendation, the ALJ, as summarized by staff, concluded that:

- The Commission and the ALJ have jurisdiction over Big Bend Wind's Certificate of Need, Site Permit, and Route Permit Applications.
- The Commission, DOC EERA and Big Bend Wind have complied with the procedural requirements of Minnesota Statutes Chapter 216B, 216E, 216F and Minnesota Rules Chapter 7829, 7949, 7850, 7854.
- The ALJ conducted a public hearing near the project site. Proper notice of the public hearing was given. The public had an opportunity to speak at the hearing and to submit written comments.
- The EA prepared under Minn. R. 7849.1800, subp. 2 and Minn. R. 7850.3700, .3900, subp. 2 and the record created at the public hearing and associated public comment period, address the issues identified in the revised scoping decision.
- There is no feasible and prudent alternative to address those needs met by the Wind Project.
- The Commission has the authority under Minn. Stat. § 216E.04(d), to place conditions in a LWECS site permit.
- The Draft Site Permit contains a number of important mitigation measures and other reasonable conditions to address the potential impacts of the Wind Project on the human and natural environments.
- It is reasonable to amend the draft solar site permit as proposed by Big Bend Wind.

The ALJ recommended to issue a site permit that is consistent with and incorporates the terms and conditions contained in the Settlement Agreement.

### **VIII. Exceptions to the ALJ's Report**

Timely exceptions were filed by DOC EERA, which indicated that the Report provides a thorough analysis of the record; however, DOC EERA had exceptions to Finding No. 77 and Conclusion of Law No. 16, as follows:

#### **Finding No. 77**

DOC EERA's recommended that Finding No. 77 be revised to better reflect the Settlement Agreement entered into by the applicant and several intervenors. Under that agreement, the applicant agreed to remove proposed turbines from within 7 miles of the Jeffers site. The agreement further contemplates two new turbines labeled A1 and A2. To construct these turbines, however, the applicant will require a waiver from the Commission's wind access buffer requirements. As such, DOC EERA recommended that the finding be revised to reflect this requirement.

**Finding 77.** Big Bend Wind worked with landowners to secure sufficient land lease and wind easements/setback easement agreements to build the Wind Project. Land rights secured from each landowner vary, and may include, but are not limited to, the rights to construct wind turbines and Wind Project facilities, including access roads, rights to



wind and buffer easements, authorization to construct transmission feeder lines in public right-of-way, and rights to additional land, if any, required to mitigate, environmental impacts. Big Bend Wind currently leases 34,185 of the 43,523 acres within the Wind Project Area. All Wind Project facilities will be sited on leased land and the current leasehold is sufficient to accommodate the proposed facilities except Turbines A1 and A2, which require a waiver from the Commission's wind setback requirements; required buffers; and turbine placement flexibility needed to avoid natural resources, homes, and other sensitive features.

### **Conclusion of Law No. 16**

DOC EERA does not believe the Settlement Agreement provides adequate support for the requested wind access setback waiver. The project record does not have any data or quantification of potential impacts to the wind rights of non-participating landowners by Turbine A1 and Turbine A2. There is currently no way to evaluate the potential impacts of the proposed wind access buffer waivers on the neighboring non-participating landowners, as they compare to the minimized impacts of the Wind Project on the Jeffers Site by issuing the wind access buffer waivers for Turbine A1 and A2.

DOC EERA strongly recommended that the Commission require the applicant to submit a modeled wake loss analysis for Turbine A1 and A2 locations, so the potential impacts to wind rights of neighboring non-participating landowners is identified in the project record prior to considering the approval of the Applicant's wind access buffer waiver request. DOC EERA recommended that the Commission require the applicant to perform this analysis and make a filing prior to the Commission's final site permit decision.

**Conclusion 16.** Provided that the Applicant timely completes and files a modeled wake loss analysis that identifies and quantifies the potential impacts of the proposed wind access buffer waivers on the neighboring non-participating landowners, the record supports approving a Site Permit for the Wind Project that is consistent with and incorporates the terms and conditions contained in the Settlement Agreement. ~~because~~ if the Wind Project is permitted and constructed in accordance with the Settlement Agreement, the Wind Project will not have a significant adverse effect on the Jeffers Site and the Intervenor that cannot be avoided, and appropriate treatments will be in place to avoid and mitigate any adverse effects.



Big Bend Wind filed a letter indicating no exceptions to the Report and requesting that the Commission adopt the Report's recommendations.

On June 29, 2022, Big Bend Wind filed a response<sup>13</sup> letter to DOC EERA's request for wake loss analysis in which it provided a separate analysis for each of the two turbines. Big Bend Wind concluded that the actual land areas impacted are relatively small and any hypothetical turbines likely could not be sited within these buffers (regardless of the existence of the Big Bend Wind Project) because of other siting restrictions, such as restrictions related to residences and public roads for Turbine A01 and restrictions related to shoreland and public road setbacks and potential Northern Long-Eared Bat habitat in the buffer setback associated with Turbine A02.

## **IX. Staff Analysis**

Based on information in Big Bend Wind's certificate of need, site permit, and route permit applications, the analysis provided in the EA, recommendations from the DOC-DER, DOC EERA, the ALJ Report, and other evidence in the record; staff provides the following discussion and recommendations.

### **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 Big Bend Wind 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 a 335-megawatt solar facility, a 335-megawatt wind energy and solar facility hybrid in a different location, a 335-megawatt solar facility with battery storage in a different location, 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.

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<sup>13</sup> Big Bend Wind Response to DOC EERA Request for Wake Loss Analysis, June 29, 2022, eDocket ID [20226-186970-01](#).

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 and requested the ALJ to prepare findings of fact, conclusions of law, and recommendations.

Staff agrees with the recommendation of the DOC-DER and the ALJ that Big Bend Wind has demonstrated that the project meets the criteria set forth under Minn. Stat. §216B.243 and 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 and socioeconomic environments, including human health. Therefore, staff agrees with the Department and the ALJ Report that the Commission should issue a certificate of need to Big Bend Wind, LLC, for the up to 300 MW Big Bend Wind Project to be located in Cottonwood, and Watonwan, 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 application, it must state the reasons for the denial.

## **C. Administrative Law Judge Report**

Staff has examined the full record in this case and agrees with the ALJ's conclusions that the Commission has jurisdiction over the Project, that the applicant and the Commission have complied with all procedural requirements under statute and rule, that the Commission has the authority to place conditions in a site and route permit, that are reasonable and appropriate and that the draft site permit contains a number of important mitigation measures and other reasonable conditions.

Staff has also reviewed the exceptions to the ALJ Report filed by the DOC EERA. Staff takes no position with respect to the two exceptions proposed by the DOC EERA.

Staff agrees with the Applicant, the Department, and the intervening parties that a site permit and a route permit should be granted with the appropriate conditions for this project.

## **D. LWECS Site Permit Conditions**

After considering the entire record developed during the review process, staff agrees with the ALJ's recommended amendments to the draft site permit as identified in the report and as proposed by DOC EERA in the February 22, 2022 Post Hearing Comments.

#### **E. HVTL Route Permit**

Based on the information provided in the record, including the application of the routing factors/relative merits of all routing options as analyzed in the EA, Staff supports issuing a route permit for the Applicant's proposed route (green route) as the most feasible route. Using the red alternate route segment in conjunction with the Applicant's proposed route, as preferred by the DNR, may be beneficial because it has less impact on the Watonwan River and it moves the line away from land under a Conservation Reserve Enhancement Program (CREP) easement.

## Staff Briefing Papers

Meeting Date August 18, 2022

Agenda Item \*2

Company Red Rock Solar, LLC

Docket No. **Docket No. IP-7014/CN-19-486 and GS-19-620**

**In the Matter of the Application of Red Rock Solar, LLC, for a Certificate of Need and a Site Permit for the up to 60 MW Red Rock Solar Project in Cottonwood County, Minnesota.**

Issues

1. Should the Commission adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation?
2. 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?
3. Should the Commission grant a certificate of need for the up to 60 MW Red Rock Solar Project proposed in Cottonwood County, Minnesota?
4. Should the Commission grant a site permit for the up to 60 MW Red Rock Solar Project proposed in Cottonwood County, Minnesota?

Staff

Charley Bruce

[Charley.bruce@state.mn.us](mailto:Charley.bruce@state.mn.us)

651-201-2251



### Relevant Documents

Date

Commission Order on Certificate of Need Exemptions (19-486)

9/24/2019

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**

Application for Certificate of Need for a Large Energy Facility (6 parts) (19-486)	11/9/2020
Application for a Solar Generating System Site Permit (15 parts) (19-620)	11/9/2020 – 11/10/2020
DOC EERA Comments (19-486)	12/15/2020
DOC DER Comments (19-486)	12/15/2020
DOC EERA Comments (19-486, 19-620)	12/15/2020
MPCA Comments (19-620)	12/18/2020
Southwest Regional Development Commission Comments (19-486, 19-620)	12/21/2020
Red Rock Solar, LLC Reply Comments (19-486, 19-620)	12/23/2020
DOC EERA Reply Comments (19-486, 19-620)	12/24/2020
Red Rock Solar, LLC Appendix E Phase 1A Literature Review and NHIS Request (3 parts) (19-620)	1/14/2021
Order Accepting Applications as Complete, Establishing (19-486, 19-620)	3/11/2021
Notice of Public Information and ER Scoping Meeting (19-486, 19-620)	3/17/2021
MNDNR Comments (19-620)	4/29/2021
Lower Sioux Indian Community Comments (19-486, 19-620)	4/30/2021
MnDOT Comments (19-620)	4/30/2021
Big Bend Wind/Red Rock Solar Reply Comments (19-486, 19-620)	5/5/2021
MnDOT Aeronautics Comments (19-486, 19-620)	5/24/2021
DOC EERA – EA Scoping Summary and Recommendations (19-486, 19-620)	5/24/2021
DOC EERA - Environmental Assessment Scoping Decision (19-486, 19-620)	8/24/2021
Applicants’ Testimony – Ikkala Direct (2 parts) (19-486, 19-620)	10/1/2021
Big Bend/Red Rock Scoping Comments (19-486, 19-620)	11/1/2021
DOC EERA Revised Environmental Assessment Scoping Decision (19-486, 19-620)	11/5/2021
LIUNA Direct Testimony of Lucas Franco (2 parts) (19-486, 19-620)	11/10/2021 and 11/12/2021
Notice of EA Availability, Public Hearings and Comment Period (19-486, 19-620)	11/14/2021
DOC EERA - Environmental Assessment (10 parts) (19-486, 19-620)	1/18/2022



**Relevant Documents**

**Date**

DOC EERA - Corrections to Environmental Assessment (19-486, 19-620)	1/25/2022
DOC DER Comments the Merits of the Certificate of Need (19-486)	1/28/2022
Ikkala Surrebutal Testimony Schedules (4 parts) (19-486, 19-620)	1/31/2022
DOC EERA - Corrections to the Environmental Assessment 2-2-22 (19-486, 19-620)	2/8/2022
IUOP, Local 49 Comments (19-620)	2/14/2022
North Central States Reg Council of Carpenters Comments (19-620)	2/22/2022
MNDNR Comments (19-620)	2/22/2022
Applicants' Post Hearing Comments (19-486, 19-620)	2/22/2022
DOC EERA Public Hearing Comments (19-486, 19-620)	2/22/2022
PUC Public Comment Batch 022022 (19-486, 19-620)	2/23/2022
Applicants' Post Hearing Brief (19-486, 19-620)	3/18/2022
Applicants' Combined Proposed Findings of Fact, Conclusions of Law, and Recommendations (19-486, 19-620)	3/18/2022
DOC EERA Reply Brief – Redlines of Applicant Proposed Finding of Fact (19-486, 19-620)	4/1/2022
LIUNA Letter (19-620)	4/1/2022
OAH Report -Findings of Fact, Conclusion of Law, and Recommendation (19-486, 19-620)	4/29/2022
PUC Letter to State Historic Preservation Office (8 parts) (19-408, 19-619, 621)	5/12/2022
Big Bend Wind/Red Rock Solar Letter (19-486, 19-620)	5/16/2022
DOC EERA - Exceptions to ALJ Report (19-486, 19-620)	5/16/2022
State Historic Preservation Office Comments (19-486, 19-620)	6/27/2022

**Attachments**

Attachment C: Proposed Solar Energy Generating System Site Permit

## **I. Statement of the Issues**

1. Should the Commission adopt the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation?
2. 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?
3. Should the Commission grant a certificate of need for the up to 60 MW Red Rock Solar Project proposed in Cottonwood County, Minnesota?
4. Should the Commission grant a site permit for the up to 60 MW Red Rock Solar Project proposed in Cottonwood County, Minnesota?

## **II. Project Description**

Red Rock Solar, LLC, (Red Rock Solar, Applicant) an affiliate of Apex Clean Energy Holdings, LLC, filed with the Minnesota Public Utilities Commission (Commission) separate applications for a certificate of need and a site permit for an up-to 60 MW solar energy generating system on approximately 483 acres of land in Cottonwood County, Minnesota. The primary components of the facility would include photovoltaic panels installed on a tracking rack system, electrical inverters, an electrical collection system, fencing, access roads, up to three weather stations, a project substation, and 10 stormwater drainage basins. The Red Rock Solar Project is proposed to interconnect using the same transmission line as Big Bend Wind at the existing Blue Lake-Wilmarth-Interstate Interconnection 345kV transmission line via an approximately 18 miles long 161 kV overhead transmission line.

The Red Rock Solar Project is associated with the Big Bend Wind Project proposed by Big Bend Wind, LLC (Big Bend Wind), also an affiliate of Apex Clean Energy Holdings, LLC. The Red Rock Solar and Big Bend Wind Projects are proposed to be a hybrid wind and solar renewable energy project that would generate up to 335 MW of electricity together. The Big Bend Wind Project is a proposed up-to 300 MW large wind energy conversion system and associated 161 kV transmission line proposed to be located in portions of Cottonwood, Martin, and Watonwan Counties, Minnesota.

The Red Rock Solar Project has been proposed to be constructed and operated only in combination with the proposed Big Bend Wind Farm. The Applicant has indicated the proposed projects are intended to function as a hybrid project of wind and solar energy generation. The Big Bend Wind Farm is feasible as a stand-alone project or as a hybrid.

The purpose of the hybrid project, as described by the applicants, is to produce renewable energy for purchase by electric utilities or other entities to satisfy Minnesota Renewable Energy Standard under Minn. Stat. § 216B.1691, or other clean energy standards and sustainability goals. The applicants have not secured a power purchase agreement for the sale of the energy at this time.

The applicant anticipates a commercial operation date as early as 2024, dependent on the completion of the interconnection process, permitting, and other development activities.

### III. Procedural History

On September 24, 2019, the Commission issued an order that approved exemptions to certain certificate of need (CN) data requirements.<sup>1</sup>

On November 9, 2020, and November 10, 2020, Red Rock Solar filed its site permit and CN application for the Solar Project. Red Rock Solar also submitted an updated information on January 14, 2021.

On January 27, 2021, as part of staff's briefing papers, a sample solar site permit for public review was entered into the record.

On March 11, 2021 the Commission issued its order *Accepting Applications as Complete, Establishing Review Procedures, Granting Variances, and Notice of and Order for Hearing*.<sup>2</sup> The order accepted the CN application as complete; authorized the use of the informal review process under Minn. Rule 7829.1200 and requested the preparation of findings of fact, conclusions of law, and recommendations; and, upon the commitment from the applicant that the Red Rock Solar Project will be at least 50 MW, authorized the review of the site permit application under the alternative permitting process defined in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 3900; authorized joint public meetings, hearings, and combined environmental review; requested preparation of an environmental assessment (EA) 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 recommendations.

On April 1, 2021, at the public meetings several members of the public made comments regarding the local economic development impacts, local support, environmental and animal impacts, property tax implications, the size of the wind turbines, eminent domain and routing in relation to the transmission line, (most comments were related to the wind farm), solar array collector line (underground or above ground). Two members of the Cottonwood County Commissioners stated their support for the project, including noting that the Cottonwood County Commission had taken a unanimous vote in support of the project.

On April 30, 2021, Minnesota Department of Transportation (MnDOT) Office of Land Management provided written comments stating that the solar project does not abut any state

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<sup>1</sup> PUC. Order Approving Exemptions from Certain Data Filing Requirements. September 24, 2022. Document ID: [201911-157279-01](#)

<sup>2</sup> PUC Order Accepting Applications as Complete, Establishing Review Procedures, Granting Variances, and Notice of and Order for Hearing. March 11, 2021. Document ID: [20213-171785-03](#)



trunk highway and had no concerns regarding the solar project.<sup>3</sup> MnDOT Aeronautics' written comments were focused on the Big Bend Wind Project.<sup>4</sup>

On April 29, 2021, the Minnesota Department of Natural Resources' (DNR) submitted written comments<sup>5</sup> related to the Red Rock Solar Project and the vegetation management plan. The DNR noted that Minn. Stat. 216B.1642, subd. 1 encourages site management practices that provide native pollinator habitat and reduce stormwater runoff and erosion at solar sites. The DNR recommended the EA consider the use of a diverse seed mix be used to help stabilize the soil and create a pollinator habitat. The DNR also asked for maps that Red Rock Solar later committed to providing<sup>6</sup> to the DNR.

On April 29, 2021, and April 30, 2021, respectively, two intervening parties, the Minnesota Historical Society (MNHS)<sup>7</sup> and Lower Sioux Indian Community (LSIC)<sup>8</sup> provided comments focused on the potential visual impacts related to users of the Red Rock Ridge and the Jeffers Petroglyphs from Big Bend Wind Project. Both organizations also requested specific turbine layout restrictions and hybrid combinations be considered in the EA.

On August 24, 2021, the Department of Commerce Energy Environmental Review & Analysis (DOC EERA) filed its Environmental Assessment 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; and system alternatives not specifically identified in the Scoping Decision.<sup>9</sup>

On October 1, 2021, Big Bend Wind and Red Rock Solar filed the direct testimony from D. Ikkala.<sup>10</sup>

On October 15, 2021, DOC EERA filed a *Notice of Substantial Changes and Substantial New Information and Comment Period on Re-evaluation of the Environmental Assessment Scope*. This notice was issued due to Big Bend Wind, LLC filing a Settlement Agreement mutually agreed upon with Big Bend Wind, LLC; Red Rock Solar, LLC; Apex Clean Energy Holdings, LLC; the Minnesota Historical Society, the Lower Sioux Indian Community in the State of Minnesota,

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<sup>3</sup> MnDOT Comments. April 30, 2021. Document ID: [20214-173651-01](#)

<sup>4</sup> MnDOT Office of Aeronautics Comments and Email to DOC-EERA. June 4, 2021. Document ID: [20215-174410-03](#)

<sup>5</sup> DNR Comments, April 29, 2021. Document ID: [20214-173608-01](#)

<sup>6</sup> Surrebutal Testimony with Schedules, pt. 1, p. 7. Document IDs: [20221-182257-10](#); [20221-182257-15](#); [20221-182257-20](#)

<sup>7</sup> Minnesota Historical Society. Comments on the Scope of the Environmental Assessment for the Big Bend Wind Project. April 29, 2022. Document ID: [20214-173618-02](#)

<sup>8</sup> LSIC Comments, April 30, 2021. Document ID: [20214-173725-01](#)

<sup>9</sup> DOC EERA Environmental Assessment Scoping Decision. August 24, 2021. Document ID: [20218-177409-03](#)

<sup>10</sup> Red Rock Solar. D. Ikkala Direct Testimony. October 1, 2021. Document ID: [202110-178431-04](#)

and the Upper Sioux Community (September Settlement Agreement). The September Settlement Agreement affected turbine locations associated with the Big Bend Wind Project. Comments were accepted until November 1, 2021.

On November 5, 2021, DOC EERA filed a REVISED EA Scoping Decision.<sup>11</sup> DOC EERA received one comment during the written comment period, and it was to continue to evaluate an all-solar energy facility. DOC EERA believed this alternative was appropriate to move forward. DOC EERA also made changes to the scope of what would be evaluated regarding the Big Bend Wind Project based on the September Settlement Agreement.

On November 10 and 12, 2021, LIUNA filed the direct testimony of Lucas Franco.<sup>12</sup>

On January 18, 2022, DOC EERA filed the EA.

On January 25, 2022, and February 8, 2022, DOC EERA filed corrections to the EA.

On January 28, 2022, the Department of Commerce, Division of Energy Resources (DOC DER) filed comments on the Red Rock Solar's certificate of need application. DOC DER recommended the Commission issue a certificate of need for the Red Rock Solar Project, pending results of the EA.<sup>13</sup>

On January 31, 2022, Big Bend Wind and Red Rock Solar filed surrebuttal testimony from D. Ikkala.<sup>14</sup>

On February 1 and 2, 2022, the Administrative Law Judge (ALJ) James E. LaFave with the Office of Administrative hearings presided over three public hearings. Two were held on February 1 in Windom, Minnesota. A virtual hearing was held on February 2. The hearing procedures included brief presentations by Commission staff and by Big Bend Wind and Red Rock 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 hearing, a written comment period was open through February 22, 2022.

At the hearings the Commission heard from 19 members of the public. Comments addressing the Red Rock Solar Farm were from Tom Karas who is with Minnesota Native Landscapes and provides vegetation services to solar projects in the state. There were several comments in support of the project generally for the additional good paying jobs during construction,

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<sup>11</sup> DOC EERA Revised Environmental Assessment Scoping Decision. November 5, 2021. Document ID: [202111-179554-04](#)

<sup>12</sup> LIUNA Minnesota & North Dakota Testimony Lucas Franco. November 10 & 12, 2021. Document IDs: [202111-179692-03](#), [202111-179693-02](#)

<sup>13</sup> DOC DER Comments. January 28, 2022. Document ID: [20221-182126-01](#)

<sup>14</sup> Surrebutal Testimony with Schedules (3 parts). Document IDs: [20221-182257-10](#); [20221-182257-15](#); [20221-182257-20](#)

economic impacts, and community development opportunities. There were multiple comments with concerns about the transmission line route, the proposed alternative route, loss of animal habitat related to the high voltage transmission line (HVTL) and project. There were also concerns about the impact the project would have on property values.

Prior to the close of the written comment period, comments were filed regarding the Red Rock Solar Project from the International Union of Operating Engineers Local 49 (IUOE)<sup>15</sup>, North Central States Regional Council of Carpenters<sup>16</sup> and Wayne Hesse<sup>17</sup> in support of the projects for the environmental and local economic and job benefits. Richard Flohrs<sup>18</sup> stated his opposition to the HVTL route. There were several comments<sup>19</sup> from members of the public, these comments were in opposition to the Big Bend Wind project and the HVTL.

In the MnDNR's<sup>20</sup> comments related to the Red Rock Solar Project, the Agency recommended the applicants revise their vegetation management plan to be based on the *Guidance for Developing a Vegetation Establishment and Management Plan for Solar Facilities*<sup>21</sup>.

On February 8, 2022, DOC EERA submitted comments from Davis Harder<sup>22</sup> that were unintentionally omitted from comments that were filed as received during the proposed draft site permit and EA scoping comment period. Mr. Harder's comments related to the Red Rock Solar Project were concerned with reducing potential water runoff from the solar site onto adjacent conservation wetland easement land and contained a recommendation to use the DNR's recommended native seed mix.

On February 8, 2022, DOC EERA issued an *Environmental Assessment Errata* which includes the corrected versions of the EA Summary and Chapter 8 of the EA.<sup>23</sup>

On February 22, 2022, DOC EERA submitted Public Hearing Comments.<sup>24</sup> These focused on the Big Bend Wind Project and the HVTL.

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<sup>15</sup> IUOWE Local 49 Comments. February 14, 2022. Document ID: [20222-182735-01](#)

<sup>16</sup> North Central States Regional Council of Carpenters. February 22, 2022. Document ID: [20222-183026-01](#)

<sup>17</sup> W. Hesse Public Comment. February 7, 2022. Document ID: [20222-182475-03](#)

<sup>18</sup> Richard Flohrs Public Comment. February 9, 2022. Document ID: [20222-182622-01](#)

<sup>19</sup> PUC Batch 1 02222022. February 23, 2022. Document ID: [20222-183074-04](#)

<sup>20</sup> Minnesota Department of Natural Resources Comments. February 22, 2022. Document ID: [20222-183042-01](#)

<sup>21</sup> <https://mn.gov/eera/web/project-file/11702/>

<sup>22</sup> DOC EERA – Public comments submitted during the PDSP and EA Scoping Comment Period. Document ID: [20222-182545-02](#)

<sup>23</sup> DOC-DOC EERA. Other – Corrections to the Environmental Assessment 2-2-22. February 8, 2022. Document ID: [20222-182544-01](#).

<sup>24</sup> DOC EERA – Comments EERA Public Hearing Comments. February 22, 2022. Document ID: [20222-](#)

On February 22, 2022, Big Bend Wind and Red Rock Solar submitted post hearing comments in response to public comments received.<sup>25</sup> The Reply comments focused mainly on the Big Bend Wind project, impacts of the proposed project on property values, conservation easements, and the sourcing of wind turbine and solar panel components, and the Texas power grid.

On March 18, 2022, Big Bend Wind and Red Rock Solar submitted a Post Hearing Brief and proposed Findings of Fact, Conclusions of Law, and Recommendations.<sup>26</sup> The post hearing brief mainly pertained to the Big Bend Wind Project and the HVTL.

In the Comments, Red Rock Solar addressed the DNR's recommendation regarding the vegetation management plan (VMP) and committed to coordinate with the DNR on the VMP prior to construction. Additionally, Red Rock Stated that they did not oppose the use of an independent construction monitor, as proposed by DOC EERA. Finally, Red Rock Solar stated it did not agree with DOC EERA's recommendation for tree clearing and suggested using US Fish and Wildlife guidance as the record did not support deviating from it.

On April 1, 2022, DOC EERA submitted redlines of the applicants Proposed Findings of Fact.<sup>27</sup>

On April 29, 2022, ALJ LaFave filed Findings of Fact, Conclusions of Law, and Recommendations (ALJ Report).<sup>28</sup>

On May 16, 2022, DOC EERA submitted exceptions to the ALJ Report.<sup>29</sup> DOC EERA had limited revisions to the ALJ Report and focused on the Big Bend Wind Project.

On May 16, 2022, Big Bend Wind and Red Rock Solar filed a letter indicating it had no exceptions to the ALJ Report.

On June 24, 2022, the State Historic Preservation Office (SHPO)<sup>30</sup> submitted comments regarding the proposed projects. The Comments stated there are no National Register listed or State Register listed history-architecture properties that will be affected by the Red Rock Solar

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[183059-05](#)

<sup>25</sup> Big Bend Wind, LLC and Red Rock Solar, LLC. Post Hearing Comments. February 22, 2022. Document ID: [20222-183052-04](#)

<sup>26</sup> Big Bend Wind and Red Rock Solar Post Hearing Brief and Combined Proposed Findings of Fact, Conclusions of Law, and Recommendations. March 18, 2022. Document IDs: [20223-183968-12](#), [20223-183968-07](#)

<sup>27</sup> DOC EERA Redlines of Applicants Proposed Findings of Fact. April 1, 2022. Document ID: [20224-184339-01](#)

<sup>28</sup> OAH Report – Findings of Fact, Conclusions of Law, and Recommendation. April 29, 2022. Document ID: [20224-185394-05](#)

<sup>29</sup> DOC EERA Exceptions to the ALJ Report. May 16, 2022. Document ID: [20225-185842-02](#)

<sup>30</sup> State Historic Preservation Office Comments. June 27, 2022. Document ID: [20226-186894-02](#)

Project. Additionally, SHPO stated no archaeological resources would be impacted by the Red Rock Solar project.

#### **IV. Statutes and Rule**

##### **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 CN by the Commission. The Red Rock 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.

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 Red Rock 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 or more and, therefore, requires a site permit.

The proposed Red Rock Solar Project is also defined as a solar energy generating system under Minn. Stat. § 216E.03, subd. 9a, because the primary purpose of the facility is to produce electricity by a combination of collecting, transferring, and converting solar-generated energy.

In determining whether to issue a site permit for a large electric power generating plant, the Commission must consider the factors 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 Assessment**

The Red Rock Solar Project is being reviewed under the alternative permitting process established in Minn. Stat. § 216E.04, because it is a proposed large electric power generating plant that is powered by solar energy,

Minn. R. 7850.3700, requires preparation of an EA for projects being reviewed under the alternative permitting process. 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.

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 CN 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**

### **A. DOC DER**

DOC DER's comments concluded that Red Rock Solar had met the criteria under Minn. R. 7849.0120 required to establish need for the project<sup>31</sup> and recommended that the Commission issue a certificate of need to Red Rock Solar upon considering the EA and determining that the project's benefits to society are compatible with protecting the natural environment, socioeconomic environment, and human health.<sup>32</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 January 28, 2022<sup>33</sup> Comments for its complete analysis.

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<sup>31</sup> Minn. R. 7849.0120 A, Minn. R. 7849.0120 B, and Minn. R. 7849.0120 D.

<sup>32</sup> Minn. R. 7849.0120 C.

<sup>33</sup> DOC DER Comments. January 28, 2022. Document ID: [20221-182126-01](#)

## B. ALJ

The ALJ also reviewed the Red Rock Solar project and applied the criteria under Minn. R. 7849.0120.<sup>34</sup> After his review, the ALJ stated that Red Rock Solar had satisfied the criteria for a CN and a more reasonable and prudent alternative to address the needs met by the solar project was not demonstrated in the record. The ALJ recommended the Commission issue the a CN to Red Rock Solar, LLC.

## 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 certificate of need and a site permit to Red Rock Solar to construct and operate the up to 60-megawatt Red Rock Solar Project.

In making the recommendation, the ALJ, as summarized by staff, concluded that:

- The Commission and the ALJ have jurisdiction over Red Rock Solar’s Certificate of Need and Site Permit Application.
- The Commission, DOC EERA and Red Rock Solar have complied with the procedural requirements of Minnesota Statutes Chapter 216E and Minnesota Rules Chapter 7850.
- The ALJ conducted public hearings near the project site. Proper notice of the public hearing was given. The public had an opportunity to speak at the hearing and to submit written comments.
- The EA prepared under Minn. R. 7849.1800, subp. 2 and Minn. R. 7850.3700, .3900, subp. 2 and the record created at the public hearing and associated public comment period, address the issues identified in the revised scoping decision.
- The Commission has the authority under Minn. Stat. § 216E.03, to place conditions in a large electric power generating plant site permit.
- The Sample Site Permit contains a number of important mitigation measures and other reasonable conditions.
- It is reasonable to amend the sample solar site permit as proposed by Red Rock Solar.

The ALJ’s recommendation to issue a site permit included permit conditions related to:

- Vegetation Management Plans
- Tree Removal Timetable
- Independent Monitor

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<sup>34</sup> Office of Administrative Hearings. Report – Finding of Fact, Conclusion of Law and Recommendation. Starting at p. 96. April 29, 2022. Document ID: [20224-185394-05](#)



## VII. Exceptions to the 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 April 29, 2022<sup>35</sup>. Exceptions were filed by DOC EERA<sup>36</sup>. Red Rock Solar submitted a letter<sup>37</sup> indicating it did not have any exceptions to the ALJ Report.

DOC EERA's exceptions suggested revisions to Finding No. 77 and Conclusion of Law No. 16, related to the Big Bend Wind Project.

## VIII. Staff Analysis

The Commission has the following issues before it regarding the proposed Red Rock Solar Project:

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

Based on information in Red Rock Solar's certificate of need and site permit applications, the analysis provided in the EA, public comments, applicant testimony, the ALJ Report, 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 Red Rock 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.

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<sup>35</sup> Office of Administrative Hearings. Report – Finding of Fact, Conclusion of Law and Recommendation. April 29, 2022. Document ID: [20224-185394-05](#)

<sup>36</sup> DOC EERA. Exceptions to the ALJ Report. May 16, 2022. Document ID: [20225-185842-03](#)

<sup>37</sup> Big Bend Wind and Red Rock Solar. No Exceptions Letter. May 16, 2022. Document ID: [20225-185833-04](#)



- The EA discussed potential alternatives to the project such as a 335-megawatt solar facility, a 335-megawatt wind energy and solar facility hybrid in a different location, a 335-megawatt solar facility with battery storage in a different location, 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 and requested the ALJ to prepare findings of fact, conclusions of law, and recommendations.

Staff agrees with the recommendation of DOC DER and the ALJ that Red Rock 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 the evidence in the record demonstrates that the Red Rock Solar 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 and the ALJ that the Commission should issue a certificate of need to Red Rock Solar for the up to 60-megawatt solar facility to be located in Cottonwood 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 and Site Permit**

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.

## 1. ALJ Report

Staff agrees with the findings, conclusions, and recommendations reached by the ALJ. Staff finds that the ALJ Report is a sound comprehensive 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.

## 2. Site Permit

Staff agrees with the ALJ that the Commission should issue a site permit to Red Rock Solar for the up to 60-megawatt solar facility to be located in Cottonwood County, Minnesota. Staff also agrees that the Sample Site Permit identified in Mr. Ikkala's Surrebutal Testimony, Schedule G should be issued as the site permit for the project with the following modifications from staff.

### a) Section 2 Project Description

Staff proposes to add details regarding section 2 of the solar site permit for the Red Rock Solar project to better describe the project being permitted.

The Red Rock Solar Project's primary components include solar panels and racking, inverters, security fencing, Solar Project Substation, electrical collection and communication lines, stormwater basins, laydown areas, and up to three weather stations.

If the Commission adopts this proposed change, staff will update the language contained in the proposed Solar Site Permit attached to these briefing papers.

### b) Section 2.1 Associated Facilities

Staff proposes adding the following language to section 2.1 of the solar site permit in order to describe the associated facilities of the project. Staff notes that the second sentence (in red below) may need to be modified based on the Commission's decision on the route of the Big Bend Wind high voltage transmission line and the interconnection point.

Associated facilities include approximately 3 miles of underground 34.5 kilovolt (kV) collection lines connecting to the 34.5/161 kV step-up Red Rock Solar Project Substation. **The Red Rock Solar and the Big Bend Wind Project will interconnect to the existing Blue Lake-Wilmarth-Interstate Interconnection 345 kV transmission line at the Xcel Energy Crandall Switching Station via a 161-kV overhead gen-tie transmission line of approximately 18 miles.**

If the Commission adopts this proposed change, staff will update the language contained in the proposed Solar Site Permit attached to these briefing papers.

### c) Conditions

#### (1) Vegetation Management Plans – Proposed Permit Special Condition 5.1

In the DNR's February 22, 2022, comments recommended the applicant revise their vegetation management plan based on the *Guidance for Developing a Vegetation Establishment and Management Plan for Solar Facilities*. Red Rock argued in Ikkala's Surrebutal Testimony and Schedules submitted on January 31, 2022, that the EA does not identify any deficiencies in the vegetation management plan or seed mixes proposed by Red Rock Solar and stated that the DNR's recommendation is not supported by the record. Additionally, Red Rock Solar committed to coordinating with the DNR prior to construction in the Post Hearing Brief<sup>38</sup>.

Staff believes that the language proposed by the applicant and included in the attached permit reflects the commitment Red Rock Solar has made to continue to work with the DNR about the vegetation management plan and make it available prior to the preconstruction meeting.

#### (2) Tree Removal Timetable – Proposed Permit Special Condition 5.2

In DOC EERA's EA, it recommended that "any tree removal should avoid the active season (April 1 – September 30) for the Northern long-eared bat. Ensuring construction and operation are consistent with USFWS guidance would minimize impacts to this species." As noted in Ikkala's Surrebutal Testimony and Schedules<sup>39</sup> submitted on January 31, 2022, the applicants do not agree with the recommendation because it is not consistent with current USFWS guidance or recent Commission permits.

The Applicants proposed Solar Site permit language similar to language previously adopted by the Commission that tree clearing shall occur between August 1 and March 31. This language is similar to that adopted Frazee to Erie 115 kV Transmission Line Project, Docket No. TL-20-423<sup>40</sup>. There was no objection in the DOC EERA's Public Hearing comments<sup>41</sup>. In his Report, the ALJ agreed with Red Rock Solar that the record did not support a departure from USFWS guidance and recent Commission permits.<sup>42</sup>

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<sup>38</sup> Big Bend Wind and Red Rock Solar Post Hearing Brief and Combined Proposed Findings of Fact, Conclusions of Law, and Recommendations, p. 9. March 18, 2022. Document ID: [20223-183968-08](#)

<sup>39</sup> Surrebutal Testimony with Schedules, pt 1, p. 5. Document IDs: [20221-182257-10](#); [20221-182257-15](#); [20221-182257-20](#)

<sup>40</sup> PUC Order Adopting Administrative Law Judge Report and Issuing Route Permit pt. 1, permit condition 6.5. December 17, 2021. Document ID: [202112-180819-01](#)

<sup>41</sup> DOC EERA – Comments DOC EERA Public Hearing Comments. February 22, 2022. Document ID: [20222-183059-05](#)

<sup>42</sup> OAH Report – Findings of Fact, Conclusions of Law, and Recommendation, p. 120. April 29, 2022. Document ID: [20224-185394-05](#)

Staff believes that including the language recommended by the applicant and following the recommendation of the ALJ properly addresses this issue. This language is included in the proposed Solar Site Permit attached to these briefing papers.

(3) Independent Construction Monitor – Proposed Permit Special Condition  
5.3

In DOC EERA’s EA, it recommended that the Commission could require a third-party monitor for the construction of the project.<sup>43</sup> The Applicants included language. As noted in Ikkala’s Surrebutal Testimony and Schedules submitted on January 31, 2022, the applicant did not object to this provision. Similar language has also been included in previous Commission permitted projects like the Frazee to Erie 115 kV Transmission Line Project, Docket No. TL-20-423<sup>44</sup>.

However, the language included in the Applicant’s proposed Solar Draft Site Permit<sup>45</sup> differs slightly from that included in the ALJ report at 617 in that it includes language about “right-of-way preparation” and restoration “of right-of-way.” As noted in DOC EERA’s Public Hearing Comments<sup>46</sup>, this language pertains to the Big Bend HVTL. The language included in the ALJ’s report at 617<sup>47</sup> does not include the right-of-way language. Staff proposes amending the proposed Solar Site Permit Special Condition 5.3 to reflect the ALJ’s report at 617 as shown below:

**Section 5.3 Independent Monitor**

*Prior to any construction, the Permittee shall propose a scope of work and identify one independent third party agency monitor on behalf of the Department of Commerce. The scope of work shall be developed in consultation with and approved by the Department of Commerce. This third-party monitor will report directly to and will be under the control of the Department of Commerce with costs borne by the Permittee. The Permittee shall file the with the Commission the scope of work 30 days prior to commencing construction and the name, address, email, phone number, and emergency phone number of the third-party monitor 14 days prior to commencing any construction*

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<sup>43</sup> DOC EERA Corrections to Environmental Assessment, p. 379 (pdf p. 19). Document ID: [20221-181968-04](#)

<sup>44</sup> PUC Order Adopting Administrative Law Judge Report and Issuing Route Permit pt. 1, permit condition 6.10. December 17, 2021. Document ID: [202112-180819-01](#)

<sup>45</sup> Surrebutal Testimony with Schedules, pt 3, p. schedule G Solar Draft Site Permit. Document IDs: [20221-182257-10](#); [20221-182257-15](#); [20221-182257-20](#)

<sup>46</sup> DOC EERA – Comments DOC EERA Public Hearing Comments. February 22, 2022. Document ID: [20222-183059-05](#)

<sup>47</sup> OAH Report – Findings of Fact, Conclusions of Law, and Recommendation, finding 617. April 29, 2022. Document ID: [20224-185394-05](#)

~~or right-of-way preparation and upon any change that may occur during the construction of the project and restoration of the right-of-way.~~

If the Commission adopts this proposed change, staff will update the language contained in the proposed Solar Site Permit attached to these briefing papers.

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

The attached Proposed Site Permit is based on the Sample Site Permit filed to eDockets at the time of application acceptance as part of Commission staff's briefing papers and that was included as Appendix D to the EA. The attached proposed site permit includes the language as recommended by the applicant and the ALJ, except where otherwise noted.

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**

#### **ALJ Report**

1. Approve and adopt the ALJ's Findings of Fact, Conclusions of Law, and Recommendation. *(ALJ, Applicant, Staff)*
2. Amend the ALJ's Findings of Fact, Conclusions of Law, and Recommendations, as deemed Appropriate.

#### **Environmental Assessment**

3. Determine that the Environmental Assessment and the record created in this matter address the issues identified in the Scoping Decision. *(ALJ, Applicant, Staff)*
4. 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.

#### **Big Bend Wind Certificate of Need**

5. Grant a certificate of need for the up to 300 MW Big Bend Wind Project proposed in Cottonwood, Watonwan, and Martin Counties, Minnesota. *(ALJ, Applicant, DER, Staff)*
6. Deny a certificate of need for the up to 300 MW Big Bend Wind Project.

#### **Big Bend Wind Site Permit**

7. Issue a Site Permit for the up to 300 MW Big Bend Wind Large Wind Energy Conversion System in Cottonwood, Watonwan, and Martin Counties, Minnesota.
8. Issue a Site Permit incorporating the permit conditions adopted by the Administrative Law Judge. *(Applicant)*

9. Issue a Site Permit incorporating the permit conditions adopted in the ALJ Report with the correction to Section 6.2 and the additional permit condition in Section 6.3 as proposed by DOC EERA. *(Applicant)*

10. Issue a Site Permit incorporating the permit conditions adopted in the ALJ Report, the correction to Section 6.2, new permit condition 6.3, and DOC EERA's exception in Permit Section 4.1 which eliminates the following paragraph: *(DOC EERA)*

*"The Commission authorizes a variance of the wind access buffer setback for the following turbine locations: A01 and A02."*

11. Decline to issue a Site Permit.

#### **Route Permit for the approximately 18-mile long 161 kV Transmission Line**

12. Issue a Route Permit that identifies the route proposed by Big Bend Wind for its 161 kV transmission line that includes specific requirements and conditions. *(ALJ, Applicant, Staff)*

13. Issue a Route Permit for a different route determined to be more appropriate.

14. Deny a route permit for Big Bend Wind's 161 kV transmission line project.

#### **Red Rock Solar Certificate of Need**

15. Grant a certificate of need for the up to 60-megawatt Red Rock Solar Project proposed in Cottonwood County, Minnesota. *(ALJ, Applicant, DER, staff)*

16. Deny a certificate of need for the up to 60-megawatt Red Rock Solar Project proposed in Cottonwood County, Minnesota, and state the reasons for the denial.

#### **Red Rock Solar Site Permit**

17. Issue the Proposed Site Permit attached to these briefing papers as the Site Permit for the up to 60-megawatt Red Rock Solar Project proposed in Cottonwood County, Minnesota. *(ALJ, Applicant)*

18. Amend the Proposed Site Permit attached to these briefing papers, as deemed appropriate. *(Staff) (This option would include the modifications to proposed site permit sections 2, 2.1, and 5.3)*

19. Do not issue a site permit for the up to 60-megawatt Red Rock Solar Project proposed in Cottonwood County, Minnesota, and state the reasons for the denial.

#### **Administrative**

20. 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)*

**Attachment A**

Proposed Large Wind Energy Conversion System Site Permit

**Attachment B**

Proposed High Voltage Transmission Line Route Permit



**Attachment C**

Proposed Solar Energy Generating System Site Permit

