

MEMO

Date: February 4, 2020

To: Katherine Blauvelt, Assistant Commissioner

Through: Louise Miltich, Supervisor EERA

From: William Cole Storm, Environmental Review Manager
EERA, (651) 539-1844

Subject: Environmental Assessment Scoping Decision for Elk Creek Solar
Project, PUC Docket Nos. IP7009/CN-19-351 and IP7009/GS-19-495

Action Required

The signature of the Assistant Commissioner is requested on the attached Environmental Assessment (EA) Scoping Decision. Once signed, Department of Commerce, Energy Environmental Review and Analysis (EERA) staff will provide notice of the Scoping Decision to those persons on the *Project Contact List* and begin preparing the Environmental Assessment.

Background

On September 13, 2019, Elk Creek Solar, LLC submitted a certificate of need (CN) and a site permit application (SPA)¹ to the Minnesota Public Utilities Commission for the Elk Creek Solar project. Elk Creek Solar, LLC, is a wholly owned subsidiary of Geronimo Energy, LLC (Geronimo), a National Grid Company.

The CN and SPA applications were accepted as complete on December 23, 2019. The Applicant expects the project to be operational by the end of 2021.

The attached scoping process summary and EA Scoping Decision recommendation are intended to advise the Assistant Commissioner on the scoping process for the Elk Creek Solar project. Once finalized, the *EA Scoping Decision* will identify the issues and alternatives that the Department of Commerce and the Public Utilities Commission have determined are appropriate for inclusion in the environmental review document.

Schedule

Please review and provide a signature by February 7, 2020. If you require any changes or have any questions, please contact staff as soon as possible. The Environmental Assessment is scheduled to be completed by the end of May, 2020.

¹ Under the Alternative Review Process (Minnesota Statute 216E.04; Minnesota Rule 7850.2800-3900).

In the Matter of the Applications of
Elk Creek Solar, LLC, for a
Certificate of Need and Site Permit for the
80 MW Elk Creek Solar Project in
Rock County, Minnesota

Environmental Assessment
Scoping Decision

Docket No. IP7009/CN-19-351
Docket No. IP7009/GS-19-495

The above matter is before the assistant commissioner of the Department of Commerce (Department) for a decision on the scope of the environmental assessment (EA) to be prepared for the Elk Creek Solar Project (Project) proposed by Elk Creek Solar, LLC (Applicant) in Rock County.

This scoping decision identifies topics that will be analyzed in the EA.

On September 13, 2019, Elk Creek Solar, LLC submitted a request for a certificate of need (CN) and a site permit application (SPA) to the Minnesota Public Utilities Commission (Commission) for the Elk Creek Solar project. Elk Creek Solar, LLC, is a wholly owned subsidiary of Geronimo Energy, LLC (Geronimo), a National Grid Company.

The CN and SPA applications were accepted as complete by the Commission on December 23, 2019. The Applicant expects the project to be operational by the end of 2021.

Project Purpose and Description

Elk Creek and Xcel Energy entered into a 20-year PPA for the purchase and sale of all power generated by the Project. The proposed Project would install up to 80 MW of solar generating capacity in Minnesota that would contribute to satisfying Xcel Energy's and its consumers' demands for renewable energy.

The Applicant proposes to construct the Elk Creek Solar Project, a solar energy conversion facility with an 80-megawatt (MW) alternating current (AC) nameplate capacity, in Vienna Township, Rock County, Minnesota (**Figure 1**). The Project's primary components include photovoltaic panels affixed to a linear ground-mounted single-axis tracking system, inverters and transformers housed in electrical cabinets, electrical collection system, project substation, and SCADA systems and metering equipment. The project also requires fencing, access roads, laydown areas, weather stations, and an operation and maintenance facility. It would interconnect to the electrical grid at the existing Magnolia Substation, which is located adjacent to the project site.

Regulatory Background

The project requires a site permit from the commission.¹ Because the project is powered by solar energy it qualifies for the alternative permitting process.² Applicants must provide the commission with written

¹ Minn. Stat. 216E.03, subd. 1 (no person may construct a large electric generating plant without a site permit from the commission); Minn. Stat. 216E.01, Subd. 5 ("large electric power generating plant" shall mean electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more).

² Under the Alternative Review Process (Minnesota Statute 216E.04; Minnesota Rule 7850.2800-3900).

notice of their intent to file an application under the alternative permitting process,³ which was provided June 6, 2019.⁴

A certificate of need (CN or certificate) is also required.⁵ The applicant applied to the commission for a certificate on September 13, 2019.⁶ The CN application is considered under the process outlined in Minnesota Statute 216B.243, and Minnesota Rules 7849.

Site Permit Application and Acceptance

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

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

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

Public Advisor

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

Advisory Task Force

The commission may appoint an advisory task force to aid in the environmental review process.¹⁴ An advisory task force would assist Energy Environmental Review and Analysis (EERA) staff in identifying additional sites or particular impacts to evaluate in the EA prepared for the

³ Minn. R. 7850.2800, subp. 2.

⁴ Elk Creek Solar, LLC, Notice of Intent to File a Site Permit Under the Alternative Process, July 31, 2019. eDocket No. 20197-154859-01.

⁵ Minn. Stat. 216B.243, subd. 2 (no “large energy facility” shall be constructed without issuance of a certificate of need); Minn. Stat. 216B.2421, subd. 2(1) (“large energy facility” means any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more).

⁶ Elk Creek Solar, LLC, Certificate of Need Application, September 13, 2019. eDocket 20199-155857-01.

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

⁸ Ibid.

⁹ Ibid.

¹⁰ Minn. R. 7850.3200.

¹¹ Minn. R. 7850.3900, subp. 1.

¹² Ibid.

¹³ Minn. R. 7850.3400.

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

project.¹⁵ If appointed, an advisory task force must include certain local government representatives.¹⁶ The advisory task force expires upon completion of its charge or issuance of the scoping decision.¹⁷

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

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

Environmental Review

The alternative permitting process requires completion of an EA, which is prepared by EERA staff.²⁰ An EA contains an overview of the resources affected by the project, and discusses potential human and environmental impacts (*Factors Considered*)²¹ and mitigation measures.²² Under the alternative permitting process an EA is the only required state environmental review document.

EERA conducts necessary public scoping meetings in conjunction with a public comment period to inform the content of the EA.²³ The commissioner of the Department of Commerce or designee determines the scope of the EA,²⁴ and may include alternative sites suggested during the scoping process if they would aid the commission in making a permit decision.²⁵

Certificate of Need and Joint Environmental Review

The project requires a CN, and the applicant applied to the commission for a certificate. CN applications are subject to environmental review. EERA staff must prepare an environmental report for the project.²⁶ The report contains “*information on the human and environmental impacts of the [project] associated with the size, type, and timing of the project, system configurations, and voltage.*”²⁷ It also contains information on alternatives to the project, as well as mitigation measures. The commission has 12 months to approve or deny a certificate of need from the date the application is filed.²⁸

If an applicant for a CN applies for a site permit prior to completion of the environmental report, EERA may elect to prepare an EA in lieu of an environmental report. If so, the EA must include the content required by Minnesota Rule 7849.1500.

¹⁵ Minn. R. 7850.2400, subp. 3.

¹⁶ Minn. Stat. 216E.08, subd. 1.

¹⁷ Minn. R. 7850.2400, subp. 4.

¹⁸ Minn. R. 7850.2400, at subp. 2.

¹⁹ *Ibid.*

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

²¹ Minn. R. 7850.4100.

²² Minn. Stat. 216E.04, subd. 5; Minn. R. 7850.3700, subp. 4.

²³ Minn. R. 7850.3700, subp. 2.

²⁴ *Id.* at subp. 3.

²⁵ *Id.* at subp. 2.

²⁶ Minn. R. 7849.1200.

²⁷ *Ibid.*

²⁸ Minn. Stat. 216B.243, subd. 5; Application at page 4 (the applicant anticipates the site permit decision to be made in summer 2020).

Public Hearing

The alternative permitting process requires a public hearing be held in the project area upon completion of the EA²⁹ in accordance with the procedures outlined in Minnesota Rule 7850.3800, subpart 3. If the site permitting process and CN determination are proceeding concurrently, the commission may order that a joint hearing be held to consider both siting and need.³⁰

The hearing is typically presided over by an administrative law judge (ALJ) from the Office of Administrative Hearings (OAH). The commission may request the ALJ provide a summary of the hearing (summary report), or request the ALJ provide findings of fact, conclusions of law, and recommendations regarding the site permit application (summary proceeding). This hearing is not a contested case hearing and is not conducted under OAH Rule 1405.

Scoping Process Summary

Scoping is the first step in the environmental review process. Staff use the information gathered during scoping, in addition to the factors considered,³¹ to focus the EA on the most relevant information needed by the commission to make informed decisions. Scoping includes a public meeting and comment period that provide opportunities for interested persons to help develop the scope of the EA.³²

On January 13, 2020, the commission and Department issued a joint *Notice of Public Information and Environmental Assessment Scoping Meeting* and associated public comment period.³³ Notice was sent to those individuals on the project contact list and to potentially affected landowners. Minnesota Rule 7850.3700, subpart 3, requires commerce to determine the scope of the EA within 10 days after the close of the public comment period.

Public Meeting and Comment Period

Commission and EERA staff jointly held the public information and scoping meeting as noticed. The purpose of the meeting was to provide information and answer questions about the project and permitting process, and gather input regarding potential impacts and mitigative measures that should be studied in the EA. The meeting also provided an opportunity to solicit potential site or system alternatives. Multiple handouts were provided, including presentation slides, process summary, and comment form. A court reporter was present to document verbal statements.

Approximately 20 people attended the public meeting. The Commission, Department, and Applicant representatives gave verbal presentations. Three Individuals took the opportunity to speak on the record and provided verbal comments.³⁴

During the scoping meeting these individuals covered a variety of questions and comments; topics ranged from general support to specifics concerning finance (ownership, funding, tax credits), operations (capacity

²⁹ Minn. R. 7850.3800, subp. 1.

³⁰ Minn. Stat. 216B.243, subd. 4 (stating that unless a joint hearing is not feasible or more efficient, or otherwise not in the public interest, a joint hearing shall be held).

³¹ Minn. R. 7850.4100.

³² Minn. R. 7850.3700, subp. 2.

³³ Public Utilities Commission (December 23, 2019) *Notice of Public Information and Environmental Assessment Scoping Meeting*, eDockets No.201912-158585-01.

³⁴ Public Comments on Scoping (Oral and written), eDockets No. 20201-159824-01.

factors, inverter efficiencies, vegetation management), and decommissioning (lifespan, recycling of materials, and handling and disposal of hazardous materials).

A public comment period, ending January 28, 2020, provided an opportunity for interested persons to identify issues, mitigation measures, and site or system alternatives for study in the EA. Written comments were received from three individuals, two state agencies, and one local governmental unit (Rock County).³⁵

The individual comments ranged from general support to concerns over the capacity factor of a solar farm sited in Minnesota and the tying up of prime farm land.

The Minnesota Department of Natural Resources (MNDNR) recommended that the Applicant consider the establishing of a cover crop several months ahead of construction to stabilize soils prior to construction, thereby minimizing erosion issues. Additionally, that construction should be planned for drier, late summer conditions to reduce the likelihood of storm-water related construction challenges.

The DNR letter also noted the presence of two state-listed species within one mile of the project: the Topeka shiner (state species of special concern) and the plains topminnow (state threatened species), and that measures (siting and BMPs) should be taken to avoid potential impacts.

The DNR letter continues, with a recommendation that the EA discuss options for perimeter fencing and its potential impact on wildlife, and the importance of incorporating and establishing pollinator habitat into the project design.

The Minnesota Pollution Control Agency (MPCA) comment letter raised concerns about stormwater management at the site and calculating impervious surfaces at solar farms.

Rock County Land Management group brought up several points and made a number of requests that lie outside the scope of environmental review (see list below). Many of the associated components within this list (emergency services, descriptions of staging and laydown areas, potential impacts on transportation systems and drainage infrastructure) are covered in the EA Scoping Decision per the factors to be considered.³⁶ However, overall, the various requests are more appropriately raised at the public hearing and will not be addressed in the EA.

- In the interest of emergency services, E-911 addresses should be considered and required for this project, particularly for structures including the O & M Facility and substations. E-911 addresses should probably be considered at each access road throughout the solar farm, in the interest of directing emergency services.
- Rock County respectfully requests the opportunity to conduct public hearings for the issuance of Conditional Use Permits for staging areas/laydown yards/facilities
- Rock County respectfully requests the opportunity to issue local permits, which would include Land Use Permits for permanent structures, such as the O & M facility and weather stations and SSTS permits for onsite sewer systems at the O & M Facility
- Permits for the approaches for the access roads would need to be obtained from the applicable road authority, whether the Rock County Highway Department or the local Township board of supervisors

³⁵ Public Comments on Scoping (Oral and written), eDockets No. 20201-159824-01.

³⁶ Minn. R. 7850.4100.

- A road use agreement should be considered for this project
- A development agreement should also be considered for this project
- A formal agreement should probably be in place to address issues involving the project and its impact to underground field tile drainage lines

No site or system alternatives were recommended for study.

* * * * *

Having reviewed the matter and consulted with department staff, I hereby make the following scoping decision in accordance with Minnesota Rule 7850.3700:

MATTERS TO BE ADDRESSED

The EA will describe the project and the human and environmental resources of the project area. It will provide information about potential impacts—both positive and negative—concerning the resources outlined in this scoping decision. The EA will describe mitigation measures that could reasonably be implemented to reduce or eliminate identified negative impacts. The EA will identify impacts that cannot be avoided and irreversible and irretrievable commitments of resources.

The EA will include the information that would have otherwise been required in an ER for a certificate of need by Minnesota Rule 7849.1500. This includes evaluating matters of size, type, and timing that would normally be excluded in an EA for a site permit application. The EA will describe and analyze the availability and feasibility of system alternatives, including a no-build alternative.

Data and analyses in the EA will be commensurate with the importance of potential impacts and the relevance of the information to consider mitigation measures. EERA staff will consider the relationship between the cost of data and analyses and the relevance and importance of the information in determining the level of detail to provide in the EA. Less important material may be summarized, consolidated, or simply referenced.

The EA will list information sources. If relevant information cannot be obtained within timelines prescribed by statute and rule, the costs of obtaining such information is excessive, or the means to obtain it is unknown, EERA staff will include in the EA a statement that such information is incomplete or unavailable and the relevance of the information in evaluating potential impacts or alternatives.

Staff will abbreviate analysis in the EA for resource topics determined to be of minor importance to the commission's decision in these dockets. *Abbreviated analysis* means that the resource topic will not be discussed in as much detail as the standard analysis. The decision whether to abbreviate analysis for certain resource topics will be made by EERA staff, and will be based on information from the site permit application, field visit(s), comments received, preliminary environmental analysis, and staff experience with similar projects.

The issues outlined below will be analyzed in the EA for the project. This outline is not intended to serve as a table of contents for the document itself.

Project Information

- Purpose
- Description (including perimeter fencing)
- Location
- Site Requirements
- Engineering and Design
- Construction
- Operation and Maintenance
- Decommissioning
- Cost

Regulatory Framework

- Certificate of Need
- Site Permit
- Other Permits or Approvals
- Environmental Review Process

Affected Environment, Potential Impacts, and Mitigative Measures

Human Settlement

- Aesthetics
- Cultural Values
- Displacement
- Electronic Interference
- Land Use and Zoning
- Noise
- Public Health and Safety (including EMF, stray voltage)
- Public Services and Infrastructure
- Recreation
- Socioeconomics (including property values)

Land Based Economies

- Agriculture (including drainage infrastructure)
- Forestry
- Mining
- Tourism

Archaeological and Historic Resources

Natural Environment

- Air
- Geology
- Groundwater
- Surface Water
- Rare and Unique Resources (including T&E species)
- Soils
- Vegetation (including pollinator plants)
- Wetlands (including stormwater control/designs)
- Wildlife (including deer movement)
- Wildlife Habitat

Alternatives to the Proposed Solar Project

The EA, in accordance with Minnesota Rule 7849.1500, will describe and analyze the feasibility of the following system alternatives, and the human and environmental impacts and potential mitigation measures associated with each.

- No-build Alternative

- 80 MW Solar Facility in a different location
- 80 MW Wind Facility

Unavoidable Impacts

The EA will discuss ways to mitigate potential impacts; however, even with mitigation strategies, certain impacts cannot be avoided. These unavoidable impacts will be listed.

Irreversible and Irretrievable Commitments of Resources

Resource commitments are irreversible when it is impossible or very difficult to redirect that resource to a different future use. An irretrievable commitment of resources means the resource is not recoverable for use by future generations. Irreversible and irretrievable commitments of resources will be listed.

ISSUES OUTSIDE THE SCOPE OF THE ENVIRONMENTAL ASSESSMENT

The EA will not consider the following:

- Any site alternative other than the site location proposed by the applicant.
- Any system alternative not specifically identified in this scoping decision, including: demand side management; purchased power; facilities using a non-renewable energy source; upgrading existing facilities; and transmission rather than generation.
- The manner in which landowners are compensated.

SCHEDULE

The EA is anticipated to be complete by the end of May 2020. Upon completion, it will be noticed and made available for review. A public hearing will be held in the project area after the EA has been issued. This hearing will be noticed. Comments on the EA may be submitted into the hearing record.

Signed this 5 day of February, 2020

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE



Katherine Blauvelt, Assistant Commissioner

Figure 1 Project Location

