

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben
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Joseph K. Sullivan
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Chair
Commissioner
Commissioner
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Commissioner

In the Matter of the Application of Xcel Energy for a Site Permit for the up to 460 MW Sherco Solar Project in Sherburne County.

ISSUE DATE: August 11, 2021

DOCKET NO. E-002/GS-21-191

In the Matter of the Application of Xcel Energy for a Route Permit for the East 345 kV Transmission Line for the Sherco Solar Project in Sherburne County.

DOCKET NO. E-002/TL-21-190

In the Matter of the Application of Xcel Energy for a Route Permit for the West 345 kV Transmission Line for the Sherco Solar Project in Sherburne County.

DOCKET NO. E-002/TL-21-189

ORDER ACCEPTING APPLICATION AS COMPLETE AND AUTHORIZING USE OF THE ALTERNATIVE REVIEW PROCESS

PROCEDURAL HISTORY

On April 20, 2021, Northern States Power Company d/b/a Xcel Energy (Xcel Energy) filed a petition for approval to develop, own, and operate a 460-megawatt solar energy generating system and two 345-kilovolt transmission lines.

On May 4, 2021, the Commission requested comments on five topics related to Xcel Energy's combined application for a site permit and two route permits:

- Does the Xcel Energy's application for a site permit and two route permits contain the information required under Minn. R. 7850.3100?
- Should the three components of the proposed solar project (the solar facility and two high-voltage transmission lines) be reviewed jointly as part of one regulatory proceeding?
- Should an advisory task force be appointed?
- Are there any contested issues of fact with respect to the representations made in the application?

- If the Commission were to find that a certificate need was required, what procedural treatments should be applied to the site and route permit application?

On July 6, 2021, the Commission issued an order granting an exemption to the requirement to obtain a Certificate of Need for the project.¹

By May 18, 2021, comments were received from the following:

- Department of Commerce Energy Environmental Review and Analysis (DOC- EERA),
- Becker Township,
- the City of Becker,
- the Minnesota Pollution Control Agency,² and
- R.D. Offutt Farms.

By June 30, 2021, comments were received from the following:

- Xcel Energy,
- Big Lake Sno Cruisers,
- the Clear Lake Township Board,
- and Laborers International Union of North America Minnesota & North Dakota (LIUNA),
- International Brotherhood of Electrical Workers Local Union 292 (IBEW Local 292), and
- several landowners.

On July 8, 2021, Xcel Energy's application for a site permit and two route permits came before the Commission.

FINDINGS AND CONCLUSIONS

I. Summary

In this order, the Commission finds Xcel Energy's application for a site permit and two route permits is substantially complete. In addition, the Commission finds it appropriate to proceed with a public hearing under the summary proceeding process.

II. Background

Xcel Energy proposes to construct an up to 460-megawatt solar energy generating system and two 345-kilovolt transmission lines (collectively, Sherco Solar Project).

The solar energy generating system would consist of two blocks: (1) the East Block, a 230-megawatt site, and (2) the West Block, a 230-megawatt site. Both blocks would be built adjacent

¹ *In the Matter of Xcel Energy's Petition for Approval of the Sherco Solar Project*, No. E-002/M-20-891, Order Granting Certificate of Need Exemption (July 6, 2021).

² The Minnesota Pollution Control Agency indicated it had no comments at this time.

to the coal-powered Xcel Energy Sherburne County Generating Facility and connected to the electrical grid at the existing Sherburne County Substation—the East Block by a 1.7-mile-long, single circuit 345-kilovolt transmission line and the West Block by a 3.2 mile-long, single circuit 345-kilovolt transmission line. The Sherco Solar Project would be sited in Clear Lake and Becker Townships in Sherburne County.

Under Minn. Stat. § 216B.243, subd. 2, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission. The proposed Sherco Solar Project is a large energy facility as defined by Minn. Stat. § 216B.2421, subd. 2(1), because it would have a combined capacity of 50 megawatts or more. On July 6, 2021, the Commission found the Sherco Solar Project was exempt from the requirement to obtain a certificate of need under Minn. Stat. § 216B.2422.³

III. Commission’s Jurisdiction under the Alternative Review Process

No person may construct a large electric generating plant in Minnesota without a site permit from the Commission.”⁴ Similarly, no person may construct a high-voltage transmission line in Minnesota without a route permit from the Commission.⁵

Applications for such plants and transmission lines may be evaluated under either (1) the process outlined in Minn. Stat. § 216E.03 or (2) the alternative review process outlined in Minn. Stat. § 216E.04. Under either process, the Commission contemporaneously considers both the generating plant and any transmission lines necessary to interconnect the generating plant to the transmission system.⁶

Xcel Energy has applied for a site permit and two route permits for the Sherco Solar Project under Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900, which govern the alternative review process. All three aspects of the Sherco Solar Project are eligible for review under the alternative permitting process. The electric generating plant portion of the project is eligible as a solar project, and the two associated high-voltage transmission lines are eligible since each is less than five miles in length.⁷

IV. Completeness of Xcel Energy’s Application

Under the alternative permitting process, an applicant for a site or route permit must provide specific information required by Minn. R. 7850.3100. An applicant does not need to propose any alternative sites or routes to the preferred site or route; although the applicant is required to explain its reasons for rejecting other sites or routes it had considered. An application does require specific information, such as on environmental topics, as outlined in Minn. R. 7850.1900.

³ *In the Matter of Xcel Energy’s Petition for Approval of the Sherco Solar Project*, No. E-002/M-20-891, Order Granting Certificate of Need Exemption (July 6, 2021).

⁴ Minn. Stat. § 216E.03, subd. 1. A large electric power generating plant is defined as “electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.” Minn. Stat. § 216E.01, subd. 5.

⁵ Minn. Stat. § 216E.03, subd. 2. 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 is greater than 1,500 feet in length.” Minn. Stat. § 216E.01, subd. 4.

⁶ Minn. Stat. § 216E.03, subd. 1.

⁷ Minn. Stat. § 216E.04, subd. 2(4), (8).

A. Position of DOC-EERA and Xcel Energy's Reply

The DOC-EERA reviewed Xcel Energy's application for completeness against the requirements of Minn. R. 7850.3100. This included whether the application contained the necessary environmental information under Minn. R. 7850.1900, subp. 3. The DOC-EERA concluded Xcel Energy's application was substantially complete under these rules and appropriately describes the scope of the Sherco Solar Project, the potential environmental impact and mitigation measures, and any federal, state, and local approvals that may be required. As a result, the DOC-EERA recommended the Commission accept the application as complete, allowing the formal environmental review process to begin.

In its reply comment, Xcel Energy agreed with the DOC-EERA's recommendation regarding the completeness of its application for a site permit and two route permits.

B. Position of Becker Township and Xcel Energy's Reply

Becker Township argued Xcel Energy's application failed to adequately address the environmental impacts of the Sherco Solar Project.⁸ Becker Township claimed the application failed to analyze the impact the site and routes would have on existing and future public road connections and any subsequent effects on public health and safety. These concerns were paramount because of the fluid, ongoing planning around Becker Township's business park.

In its reply comment, Xcel Energy argued Becker Township raised several issues that would be further developed during the permitting process, but these issues were not deficiencies in Xcel Energy's application under Minn. R. 7850.3100.

C. Position of City of Becker and Xcel Energy's Reply

The City of Becker contended Xcel Energy's application failed to adequately address the environmental impacts of the Sherco Solar Project.⁹ The City of Becker contended the application failed to address how the site and routes, which would limit development near its borders, would affect its economy and existing infrastructure. Further, the City of Becker claimed the application lacked any description of any mitigation measures by Xcel Energy.

In its reply comment, Xcel Energy argued the City of Becker raised several issues that would be further developed during the permitting process, but these issues were not deficiencies in Xcel Energy's application under Minn. R. 7850.3100.

D. Other Comments

The Clear Lake Township Board and LIUNA believed Xcel Energy's application for site and route permits for the Sherco Solar Project was procedurally sufficient. IBEW Local 292, R.D.

⁸ See Minn. R. 7850.1900, subp. 3(B)-(C), (H). Becker Township also argued against exempting the Sherco Solar Project from the certificate of need requirements; however, the Commission previously granted an exemption on July 6, 2021.

⁹ See Minn. R. 7850.1900, subp. 3(B)-(C), (G)-(H). The City of Becker also argued against exempting the Sherco Solar Project from the certificate of need requirements; however, the Commission previously granted an exemption on July 6, 2021.

Offutt Farms, Big Lake Sno Cruisers, and several landowners advocated approving the Sherco Solar Project, generally.

E. Commission Action

The Commission finds that Xcel Energy's application is substantially complete. Xcel Energy's application contains the information required under Minn. R. 7850.3100 for the site and two route permits, including the necessary environmental information outlined in Minn. R. 7850.1900, subp. 3.

The Commission appreciates the concerns of Becker Township and the City of Becker but emphasizes that their concerns can be addressed further through the rest of the permitting process. The environmental information issues raised by Becker Township and the City of Becker do not affect the completeness of Xcel Energy's application. There is no expectation that all issues should be identified and resolved at the time of the initial application for a site or route. The public hearing process identified in the alternative review process is a formal time to address issues between communities and developers; otherwise, the public hearing process would be redundant and unnecessary.¹⁰

The Commission looks forward to reviewing the information gained through the hearing process and through continued communication between Xcel Energy, Becker Township and the City of Becker, a path all three indicated, during the hearing, they would continue to pursue.

V. Public Hearing Process and Procedure

Applications reviewed under the alternative permitting process require a public hearing upon completion of the environmental assessment under the procedure outlined in Minn. R. 7850.3800, subp. 3. The Commission has historically required an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) preside over the public hearing, following one of two processes:

- (1) Summary Report. As part of a summary report an ALJ will preside over the hearing and provide a complete summary of the public comments. As part of the summary report process, the ALJ does not issue findings of fact, conclusions of law, or recommendations.
- (2) Summary Proceeding. As part of a summary proceeding an ALJ will preside over the hearing and issue findings of fact, conclusions of law, and recommendations. A summary proceeding may include more formal procedures to help facilitate the development of an appropriate record.

Although the hearing is referred to the OAH, neither the summary report nor the summary proceeding process is a contested case proceeding, a third track which is intended to resolve issues of material fact and falls within the framework of the Minnesota Administrative Procedure Act.¹¹

¹⁰ Minn. Stat. § 216E.04, subd. 6.

¹¹ Minn. R. 7829.1000.

A. Position of DOC-EERA and Xcel Energy's Reply

The DOC-EERA argued there were no issues of material facts and recommended the Commission order a summary proceeding, wherein the ALJ would issue findings of fact, conclusions of law, and recommendations.

B. Becker Township and Xcel Energy and LIUNA's Replies

Becker Township argued there were contested issues of fact regarding road expansion in Xcel Energy's application, implicitly advocating for a contested case proceeding.¹²

In its reply comment, Xcel Energy argued against ordering a contested case proceeding. The process, instead of helping develop the record, would make participation more burdensome for potential parties.

In its reply comment, LIUNA stated that Becker Township did not raise any issues of fact and failed to provide a reasonable basis for the Commission to order a contested case hearing.

At the hearing, however, Becker Township consented to participate in the summary proceeding and indicated its desire to continue as part of the development process.

C. City of Becker and Xcel Energy's Reply

The City of Becker contended there were issues of fact, specifically objecting to representations about its approval of the currently proposed Sherco Solar Project made in Xcel Energy's application. By alleging there were issues of fact, the City of Becker implied a need for a contested case proceeding.¹³

In its reply comment, Xcel Energy argued against ordering a contested case proceeding. The process, instead of helping develop the record, would make participation more burdensome for potential parties.

At the hearing, the City of Becker agreed to the summary proceeding process and to continue conversations with Xcel Energy.

D. Commission Action

The Commission finds the application can proceed with a public hearing overseen by an ALJ from the OAH under the summary proceeding process. There is currently no dispute regarding any material fact, even though issues have been raised by Becker Township and the City of Becker.

¹² Although arguing that there were generally contested issues of fact, Becker Township highlighted only the contested case proceeding within the context of the certificate of need, which was previously addressed by the Commission.

¹³ Although arguing that there were generally contested issues of fact, the City of Becker highlighted only the contested case proceeding within the context of the certificate of need, which was previously addressed by the Commission.

The Commission, however, concurs that the concerns of Becker Township and the City of Becker should be addressed. The summary proceeding process will provide a forum for both local governments to file comments and participate in record development on the issues that have been raised. At the hearing, Becker Township and the City of Becker agreed to the reasonableness of developing these issues through the summary proceeding process.

To ensure proper development of the record, the Commission will delegate administrative authority to the Executive Secretary and will establish related notification and procedural requirements as described below. The Commission will also refer the matter to the OAH for the appointment of an ALJ to prepare findings of fact, conclusions of law, and recommendations. By ordering that the hearing be held under the summary proceeding process, the Commission believes all the parties will have a chance to outline their concerns as part of a clear, written record.

ORDER

1. The Commission accepts the Application for a Site Permit and Two Route Permits filed April 20, 2021, as substantially complete.
2. The Commission requests that an Administrative Law Judge from the Office of Administrative Hearings preside over a public hearing (Summary Proceeding) and
 - a. Conduct a public hearing in accordance with Minn. R. 7850.3800, subp. 2 to 4, and following, as the Administrative Law Judge determines appropriate, Minn. R. 1405.0500, 1405.0600, 1405.0800, 1405.1900, and 1405.2200;
 - b. Clarify that intervention as a party is not required and that people may participate as public participants or as otherwise prescribed;
 - c. Ask state agencies to participate in the proceeding in accordance with Minn. Stat. § 216E.10, subd. 3;
 - d. Schedule a prehearing conference in accordance with Minn. R. 1405.1100, as appropriate, to establish the types of filings necessary to facilitate proper record development (*e.g.*, testimony, briefs, reply briefs, proposed findings, and site permit recommendations) and a schedule for submitting those filings;
 - e. Emphasize the statutory time frame for the Commission to make final decisions on the application and encourage adherence to a schedule that conforms to the statutory timeframe;
 - f. Ask Xcel Energy and others to address whether the proposed project meets the criteria established under Minn. Stat. §§ 216E.01-18 (Minnesota Power Plant Siting Act) and Minn. R. Ch. 7850.1000-5600;
 - g. Prepare a report setting forth findings of fact, conclusions of law, and recommendations on the merits of the combined site and route permit application,

and provide recommendations, if any, on conditions and provisions to the site and route permits; and

- h. Direct that the hearing record be maintained through the Commission's electronic eDockets filing system.
3. The Commission delegates administrative authority, including timing issues, to the Executive Secretary.
4. The Commission requests that the Department of Commerce Energy Environmental Review and Analysis unit continue to study the issues and indicate during the hearing process its position on the reasonableness of granting site and route permits.
5. The Commission orders Xcel Energy to facilitate in every reasonable way the continued examination of the issues.
6. The Commission orders Xcel Energy to place a print or electronic copy of the application in a government center or public library located near the proposed project site.
7. The Commission directs Xcel Energy to work with Commission staff to arrange for publication of the notices related to public information meetings and public hearings in newspapers of general circulation under the timelines prescribed in rules and statutes and that proof of publication be obtained from the newspapers selected.
8. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



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