

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
John A. Tuma
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Site Permit Application for
the 100 MW Aurora Distributed Solar Energy
Project at Multiple Facilities in Minnesota

ISSUE DATE: June 30, 2015

DOCKET NO. E-6928/GS-14-515

ORDER ISSUING SITE PERMIT AS
AMENDED

PROCEDURAL HISTORY

On July 9, 2014, Aurora Distributed Solar, LLC (Aurora) applied for a 40-year Site Permit to build solar-powered photovoltaic electric generators and related facilities at up to 24 sites spread throughout 16 counties. Aurora filed supplementary information on August 6 and 21. The Commission accepted the application as complete and referred the case to the Office of Administrative Hearings to develop the record.¹

On November 17, 2014, an administrative law judge (ALJ) from the Office of Administrative Hearings issued the first pre-hearing order in this matter. That order established a procedural schedule and called upon the Energy Environmental Review and Analysis staff (EERA) of the Minnesota Department of Commerce (the Department or DOC) to file its conclusions about the most appropriate facilities and the proposed permit conditions.

On December 5, 2014, the Department's deputy commissioner issued a decision on the scope of the Environmental Assessment the Department would prepare to aid the Commission's analysis of Aurora's application.² And on January 30, 2015, EERA issued its final Environmental Assessment.

On December 23, 2014, Commission staff filed a draft Site Permit establishing conditions pertaining to site preparation, construction, cleanup, restoration, operation, maintenance, abandonment, decommissioning, and other matters. For example, the draft permit would direct Aurora to do the following:

¹ This docket, Order Accepting Site-Permit Application as Complete, Extending Time for Final Decision, and Referring Application to the Office of Administrative Hearings (September 24, 2014).

² Minn. R. 7850.3700.

- Use the construction practices and materials set forth in Aurora’s permit application;
- Convene meetings with EERA and Commission staff, designate field representatives to oversee compliance at each site, and prepare various plans for avoiding and mitigating foreseeable problems before construction begins (pre-construction meeting); and
- Prepare site plans, including site layouts and landscaping plans, at least 14 days before the pre-construction meeting.

On February 2, 2015, EERA mailed a Notice of Environmental Assessment to people who had placed themselves on the project contact list, to owners of property close to the proposed developments, and to various units of government.³ EERA also mailed copies of the Assessment to public libraries near the proposed solar facility sites.

On February 9-12, 2015, the ALJ convened public hearings in Chisago City, Pipestone, Montevideo, Faribault, Montrose, and Paynesville. The ALJ also received and reviewed public comments received through February 24, 2015.

On March 10, 2015, the parties filed comments. In particular, EERA recommended that the Commission bar Aurora from locating solar generators in areas designated as shoreland districts. In addition, EERA divided the 24 proposed sites into three categories:

- Sites where standard mitigation measures identified in the proposed Site Permit would allow the facilities to be developed in a manner that minimizes adverse human and environmental impacts;
- Sites where additional mitigation measures should be required; and
- Sites facing additional challenges.

Finally, EERA filed a revised draft Site Permit.

On April 9, 2015, the ALJ issued her Findings of Fact, Conclusions of Law, and Recommendation (ALJ’s Report), recommending that the Commission approve the sites requested with conditions. In particular, the ALJ recommended that the Commission direct Aurora to comply with local shoreland ordinances – or, if compliance in any given location would be infeasible, to ask the Commission to preempt an ordinance at that location.

Aurora and EERA each filed exceptions to the ALJ’s Report. In particular, EERA recommended directing Aurora to comply with the minimum shoreland standards established by the Minnesota Department of Natural Resources (DNR), rather than complying with the various local shoreland ordinances; EERA filed revised Site Permit language consistent with this recommendation.

³ Hearing Exhibit (Ex.) 32.

On May 28, 2015, the case came before the Commission. At that time the DNR and EERA each recommended that the Commission adopt the ALJ's recommendation to direct Aurora to comply with local shoreland ordinances, and to seek an exception only when compliance would be impracticable. At the conclusion of oral argument, the record closed under Minn. Stat. § 14.61, subd. 2.

FINDINGS AND CONCLUSIONS

I. Summary

The Commission will grant a 30-year Site Permit for Aurora's Distributed Solar Project for selected locations.

- A. The Commission will approve Aurora's proposals for developing the sites at Albany, Atwater, Brooten, Eastwood, Fiesta City, Hastings, Lake Emily, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Scandia, Waseca, West Faribault, and West Waconia as set forth in the Site Plans Aurora submitted with its application. However, Aurora may modify those plans provided that the modifications do not exceed the site's defined project development areas, are submitted in pre-construction filings, and are approved by EERA.
- B. The Commission will approve the proposals for Chisago, Dodge Center, Paynesville, and Pine Island subject to additional conditions proposed by EERA.
- C. The Commission will approve the proposal for Annandale on the condition that Aurora provide appropriate assurances with respect to Annandale's concerns about vegetative screening and maintenance accommodations.
- D. The Commission will approve the proposal for Mayhew Lake subject to the additional conditions that Aurora negotiated with the City of Sauk Rapids.

But the Commission will decline to act on Aurora's proposals for Pipestone, Wyoming, and Zumbrota.

Consistent with these actions, the Commission will adopt the findings and conclusions of the ALJ's Report and the draft Site Permit with modifications. In particular, the Commission will affirm that Aurora should comply with local shoreland ordinances – with the proviso that Aurora may ask the Commission to supersede those ordinances if compliance at any given location proves to be impracticable.

II. The Proposed Project

Aurora proposed 24 projects located throughout 16 counties, each with a generating capacity of 1.5 to 10 MW, and with a combined nameplate generating capacity of 130.5 MW. Aurora does not propose to build all 24 projects, but will evaluate the locations considering site-specific studies, environmental survey results, and interconnection details, and build enough solar facilities to achieve a 100 MW capacity.

Aurora stated that it aims to place the proposed project in service by the end of 2016. While Aurora states that its solar facilities have an expected operating life of 30 years, it seeks a 40-year Site Permit so as to benefit from the facilities that may operate longer than expected.

III. The Legal Standard

Minn. Stat. Ch. 216E and Minn. R. Ch. 7850 require developers of large energy facilities to locate them in an orderly manner consistent with the state's goals of environmental preservation and the efficient use of resources.⁴ The statute directs that generators be located in a manner that conserves resources, minimizes environmental impacts, minimizes conflicts with human settlement and other land uses, promotes efficiency and cost-effectiveness, and ensures the state's electric energy security.⁵

To this end, the statute requires the developer of a project designed to generate 50 MW or more to obtain a site permit from the Commission.⁶ The Commission may grant the permit, deny it, or grant it with conditions.⁷ A site permit is required to build a collection of solar facilities over a 12-month period that has an aggregate nameplate capacity of 50 MW or more, if the facilities have characteristics of being part of a single development. These characteristics may include common ownership, shared interconnection, revenue sharing, and common financing.⁸

Chapter 216E prescribes the process for obtaining a permit, but also prescribes an alternative process that applies to solar facilities, among other things.⁹ Aurora applied for review under the alternative permitting process.¹⁰

Finally, Minn. Stat. § 216E.04, subd. 5, directs the Department's Commissioner to prepare an Environmental Assessment containing information on the human and environmental consequences of the project if built at the proposed sites or at other potential sites, and measures for mitigating the consequences for all of the sites considered.

In preparing this document, the Commissioner may take account of Minnesota's Shoreland Management Act.¹¹ That Act directs the DNR to adopt model standards and criteria for development in shorelands of the state's public waters that are subject to local government land use controls, and directs counties and municipalities with shoreland to develop their own standards based on the DNR model. However, the Commission's siting authority includes the authority to supersede these local zoning, building, and land use ordinances.¹²

⁴ Minn. Stat. § 216E.02.

⁵ Minn. Stat. § 216E.03, subd. 7(a) and Minn. R. 7850.4000.

⁶ Minn. Stat. § 216E.01, subd. 5; § 216E.03, subd. 1.

⁷ Minn. Stat. § 216E.04.

⁸ Minn. Stat. § 216E.021.

⁹ Minn. Stat. §§ 216E.03, 216E.04.

¹⁰ Minn. R. 7850.2800-.3900.

¹¹ Minn. Stat. §§ 103F.201-103F.227.

¹² Minn. Stat. § 216E.10, subd. 1.

IV. Environmental Assessment

Minn. R. 7850.3700 requires that the Environmental Assessment include:

- A. a general description of the proposed facility;
- B. a list of any alternative sites that are addressed;
- C. a discussion of the potential impacts of the proposed project and each alternative site on the human and natural environment;
- D. a discussion of mitigative measures that could reasonably be implemented to eliminate or minimize any adverse impacts identified for the proposed project and each alternative site analyzed;
- E. an analysis of the feasibility of each alternative site considered;
- F. a list of permits required for the project; and
- G. a discussion of other matters identified in the scoping process.

On December 5, 2014, the Department's deputy commissioner issued a Scoping Decision identifying the issues to be addressed in the Environmental Assessment, including a project description; a discussion of the potential environmental consequences and measures to mitigate those consequences; and required permits and approvals.

On January 30, 2015, EERA issued the Environmental Assessment, which contains a comprehensive analysis of the proposed project and the feasibility of project alternatives, including an evaluation of the affected environment, potential impacts, and possible mitigation measures.

The Commission has reviewed the Environmental Assessment under Minn. R. 7850.3900, subp. 2, which requires the Commission to determine whether the Environmental Assessment and the record created at the public hearing address the issues identified in the Scoping Decision. Based on its review, the Commission finds that the Environmental Assessment and the record as a whole address the issues identified in the Scoping Decision.

V. The ALJ's Report

Having reviewed the public comments and the parties' testimony and briefs, the ALJ made 265 findings of fact and 21 conclusions, supporting her recommendation to grant the requested Site Permit with conditions. Among other findings:

- The ALJ recommends that Aurora prepare and file an Agricultural Impact Mitigation Plan to facilitate returning any site to agricultural uses when the solar facility is decommissioned, and a Vegetation Management Plan to minimize harm to vegetation and promote vegetation management throughout the project's lifetime.

- The ALJ recommends authorizing installations within shoreline areas when consistent with local ordinances. But the ALJ also recommends that the Commission consider granting exceptions for a location if Aurora can demonstrate that compliance with a local ordinance would be impracticable, and there is no feasible and prudent alternative.¹³

Aurora and EERA each generally support the ALJ's recommendations, but take exception to aspects of the ALJ's Report.

First, Aurora does not contest the duty to file an Agricultural Impact Mitigation Plan or a Vegetation Management Plan, but proposes changing the timeline for filing the plans.

Second, Aurora objects to the ALJ's recommendation that Aurora be required to comply with local shoreland ordinances. Aurora argues that being subject to varied regulation would pose administrative challenges and create inefficiencies, and would likely prohibit some sites from being fully developed. Instead, Aurora proposed that the Commission require compliance only with the DNR's minimum shoreland standards.¹⁴

In exceptions EERA asked the Commission to revise a variety of findings and Site Permit provisions as discussed below. But while EERA initially supported Aurora's proposal to be exempt from local shoreland ordinances, at the Commission's meeting EERA joined the DNR in supporting the application of local ordinances to these projects.

VI. Analysis of Aurora's Proposal

Aurora seeks a 40-year Site Permit to build solar facilities at 24 locations throughout 16 counties. EERA divided these 24 locations into three categories:

A. Sites where the proposal's adverse human and environmental impacts can be addressed with standard mitigation

EERA argues that most of Aurora's proposed sites could be developed, and the resulting adverse effects on humans and the environment could be managed, through the standard mitigation procedures set forth in the draft Site Permit. None of Aurora's proposals for Albany, Atwater, Brooten, Eastwood, Fiesta City, Hastings, Lake Emily, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Scandia, Waseca, West Faribault, and West Waconia would require conditions beyond those contained in the draft Site Permit and the Site Plans included in Aurora's application.

B. Sites where the impacts can be addressed through additional mitigation measures

EERA argues that the unique circumstances at four sites -- Chisago, Dodge Center, Paynesville, and Pine Island -- warrant additional mitigation measures.

¹³ ALJ's Report, Findings 206 and 207.

¹⁴ Minn. R. 6120.3300.

Chisago: Aurora proposes to build a facility with road access at the intersection of CSAH 14 (Lincoln Road) and CSAH 11 (Kost Trail). The Chisago County Department of Public Works reports that this T-intersection has a history of accidents, and Lent Township states that the intersection has poor visibility. EERA recommends that Aurora re-design its site plan to provide access from other streets.

Dodge Center, Paynesville and Pine Island: Sensitive native plant communities are growing in each of the locations Aurora has selected for these facilities. Aurora agrees to avoid disturbing these plants, even if this requires revising its site layouts and reducing the generating capacity at the sites.

C. Sites with additional siting challenges

Finally, EERA states that it has some unresolved questions about the merits of five sites: Annandale, Mayhew Lake, Pipestone, Wyoming, and Zumbrota.

Annandale: Aurora proposes to build a 6 MW facility near Annandale. The City of Annandale questions whether a solar facility is the best and highest use for the property identified by Aurora, given Annandale's investment in utility extensions and trunk lines in order to promote economic development in the area.

But according to Aurora, Annandale may be open to accommodating this change in its development plans if Aurora can satisfy the city's concerns about Aurora's vegetative screening, maintenance, and decommissioning. Aurora states that it is willing to provide landscaping to obscure the sight of the facilities from neighboring developments – but proposes to wait until the neighboring lots are used for some purpose other than agriculture.

Aurora states that it is committed to maintaining the Annandale site, arguing that the city's interest in keeping the site maintained is fully aligned with Aurora's. Aurora notes that the proposed Site Permit requires both a vegetative management plan and a process for filing complaints that Aurora must then report to the Commission.

Finally, Aurora and EERA note that the draft Site Permit already requires Aurora to describe and document how it will decommission its facilities at the end of their service lives. And Aurora's power purchase agreement for this project is expected to provide a steady source of revenue, reducing the risk that Aurora would lack the resources to fulfill its decommissioning obligations when they arise.

Mayhew Lake: Aurora proposes to build a 4 MW facility near Sauk Rapids. In its comments submitted during scoping, the City of Sauk Rapids identified the site as being within an orderly annexation area along highway designated as a growth corridor. Also, building the facility would entail removing a home and barn – and the barn may become listed on the National Register of Historic Places. If the National Register chooses to list the barn, Aurora would need to develop an additional plan for mitigating the consequences of its proposal.

Aurora states that it has had constructive discussions with the city and with the Minnesota State Historical Society, and has reached an agreement with the city for how to proceed with the project. In particular, Aurora has agreed to install its proposed solar facilities away from the frontage road to avoid interfering with future development there.

Pipestone: Aurora proposes to build a 2 MW facility in the City of Pipestone and the adjacent township, immediately north of a residential district. While Aurora proposes to develop landscaping to screen the view of the facilities, various circumstances – including Aurora’s reluctance to grow high vegetation on the southern border of a solar facility where it would block the sunlight – may limit the effectiveness of this screen. EERA states that development of this site, particularly given the other siting alternatives, is inconsistent with the directive to site large energy facilities in a manner that minimizes impacts to human settlement and land use conflicts.

Wyoming: Aurora proposes to build a 7 MW facility in Wyoming. The City of Wyoming states that its Comprehensive Plan designates the location of this solar facility as an area for mixed use development due to its access to city water and sewer, and to US Highway 61. Aurora has offered to work with the city and to amend its site plan to preserve the city’s rights of way for utility access. But given the prospects for more intensive economic development, EERA questions whether this location is best used for building a solar facility.

Zumbrota: Aurora proposes to build a 3.5 MW facility near Zumbrota. The City of Zumbrota states that it has invested more than \$2 million to improve utility and highway access to the intersection of Goodhue County Highway 68 and Highway 52, just north of the proposed site, in anticipation of future economic development. Consequently both the city and EERA question whether a solar facility would be the highest and best use for this site. Aurora acknowledges that it has found no mitigation measures that would address the city’s concerns.

D. Commission Action

Having reviewed the record and the arguments of the parties, the Commission will approve Aurora’s proposals for the following locations with the following conditions.

First, the Commission will authorize Aurora to develop its proposals for Albany, Atwater, Brooten, Eastwood, Fiesta City, Hastings, Lake Emily, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Scandia, Waseca, West Faribault, and West Waconia in accordance with the Site Plans submitted in the application.

But given the detail of the proposed Site Plans and the large number of sites under consideration, it is foreseeable that Aurora will find it necessary or desirable to deviate from a Site Plan in some particular. Rather than require Aurora to petition the Commission to revise its Site Permit, the Commission will authorize Aurora to deviate from these Site Plans on the condition that 1) Aurora submits the revised plan as part of its pre-construction filings, 2) the revised plan remains within the boundaries of the defined project development area, and 3) EERA approves the change. This policy will avoid needlessly constraining the development of Aurora’s sites while ensuring that appropriate constraints remain in place.

Second, the Commission will approve Aurora's proposals for Chisago, Dodge Center, Paynesville, and Pine Island, subject to additional conditions proposed by EERA – that is, that Aurora modify the road access for the Chisago location and minimize the consequences of its facilities on sensitive native plant communities at the other locations.

Third, the Commission will approve the proposal for Annandale on the condition that Aurora provides appropriate assurances with respect to the City of Annandale's concerns about vegetative screening and maintenance. Decommissioning issues will be addressed more fully in Aurora's Decommissioning Plan to be filed in accordance with section 10 of the Site Permit.

Fourth, the Commission will approve the proposal for Mayhew Lake provided Aurora complies with the agreements it has reached with the City of Sauk Rapids.

For each of the three remaining sites – Pipestone, Wyoming, and Zumbrota – a local unit of government objected that a proposed solar facility would conflict with development plans or current usage. The Legislature has entrusted the Commission with the authority to supersede local zoning plans when necessary to promote the state's interest in siting and routing electric power facilities in an efficient manner.¹⁵ But the Commission has not previously had occasion to act on a site permit application for 24 separate locations, including locations in proximity to housing and other economic development. Consequently at this time the Commission elects to use its preemption authority sparingly, acknowledging that local officials will often have a keener understanding of local land-use concerns.

Too many unresolved questions remain for the Commission to act on Aurora's proposal to develop solar facilities at Pipestone, Wyoming, and Zumbrota. It is unclear whether Aurora's plans for those locations are necessary to ensure the electric power system's reliability and integrity, and to meet the needs of the electric system in an orderly and timely fashion – and whether they would minimize adverse human and environmental impacts.¹⁶ However, Aurora will still have the power to petition for approval of any of the remaining locations as circumstances change.

Finally, various cities expressed concern that, while the location of a given solar facility may not conflict with a city's plans in the near term, it may pose problems for development decades hence. To accommodate those concerns, and given that Aurora states that the expected life of its solar facilities is 30 years, the Commission will conform the duration of the Site Permit to match. While Aurora had initially requested a 40-year Site Permit, both Aurora and EERA acknowledge that Aurora could implement its plans with a 30-year permit as well. Again, Aurora will retain the discretion to seek an extension if and when it becomes relevant to do so.

VII. ALJ's Report and Site Permit

The ALJ's Report is well reasoned, comprehensive, and thorough. Having examined the record and having considered the ALJ's Report, the Commission concurs in most of her findings, conclusions, and recommendations. In a few instances, however, the Commission will make clarifications to the ALJ's Report and to the EERA's draft Site Permit, as delineated and explained

¹⁵ Minn. Stat. § 216E.10, subd. 1.

¹⁶ See Minn. Stat. § 216E.02, subd. 1.

below. The Commission accepts, adopts, and incorporates her findings, conclusions, and recommendations except as inconsistent with this order.

A. Finding 37

EERA recommends adopting Finding 37 amended as follows to clarify that the agent signing the Department's Scoping Decision was the Department's Deputy Commissioner.

37. The Scoping Decision for the EA was signed by the Deputy Commissioner of the Department of Commerce on December 4, 2014, and filed with the Commission and made available to the public as provided in Minn. R. 7850.3700, subp. 3, on December 5, 2014.

The Commission concurs with EERA and will therefore make the recommended modification.

B. Findings 38, 43, and 102

EERA observes that aspects of the ALJ's Report inadvertently confuse EERA's Environmental Assessment with related documents.

First, Finding 38 states that the Scoping Decision, establishing the topics to be addressed in the Environmental Analysis, included an analysis of potential locations to install solar facilities within 2.5 miles of an electric substation. While the Environmental Assessment includes this analysis, the Scoping Decision does not. Rather, the Scoping Decision merely *proposed* that EERA perform the analysis; and indeed, it proposed analyzing an area within 2 miles of a substation, not the 2.5 mile radius EERA ultimately used. Consequently EERA recommends adopting Finding 38 amended as follows:

38. The scope of the EA evaluation is identified as the 24 facility locations proposed by Aurora in the application; no other locations are included. The EA scope also ~~includes~~ anticipates an analysis of the potential development area within ~~2.5~~ two miles of each interconnection substation to which the 24 facility locations would interconnect....

Second, while Finding 43 states that EERA sent copies of the Notice of Environmental Assessment to public libraries, EERA sent the actual Environmental Assessment instead. Consequently EERA recommends adopting Finding 43 amended as follows:

43. On February 3, 2015, the DOC-EERA sent copies of the ~~Notice of Environmental Assessment~~ EA to public libraries

Third, while Finding 102 states that the Scoping Decision directed EERA to include an evaluation of the relative merits of each facility location as part of the Environmental Assessment, EERA notes that this instruction actually derived from the ALJ's First Prehearing Order (November 17, 2014). Consequently EERA recommends adopting Finding 102 amended as follows:

102. The Scoping Decision required the EA to review the relative merits of the facility locations. The In response to the request in the Administrative Law Judge's First Prehearing Order that DOC-EERA provide conclusions on the most appropriate facilities, the DOC-EERA grouped the 24 sites proposed in the Site Permit application into three categories: sites where impacts can be addressed with standard mitigation; sites where impacts can be addressed through additional mitigation measures; and sites with additional siting challenges. According to the DOC-EERA, additional mitigation measures are necessary at the Chisago site to address issues of public traffic safety. The mitigation measures may minimally impact the design of the facility and its generating capacity.

The Commission concurs with EERA and will therefore make the recommended modifications.

C. Finding 39

In introducing a discussion of the Environmental Assessment, Finding 39 simply misstates the document's date. Consequently EERA recommends adopting Finding 39 amended as follows:

39. The EA was filed with the Commission and made available on ~~February~~ January 30, 2015. The EA was prepared in accordance with Minn. R. 7850.3700 and the Scoping Decision.

The Commission concurs with EERA and will therefore make the recommended modification.

D. Finding 135 and Site Permit Section 14.4

In describing the proposed project's aesthetics, Finding 135 accurately notes that Aurora proposed surrounding each solar facility with a chain-linked fence topped with barbed wire. But the ALJ ultimately recommended – and all parties concurred in – finding a substitute for the barbed wire.¹⁷ Consequently EERA recommends adopting Finding 135 amended as follows to emphasize that the barbed wire was merely part of Aurora's initial proposal:

135. The primary components of a PV solar facility that alter the landscape are solar arrays and perimeter fencing. When PV panels are at a zero degree angle, the panels will be approximately four to six feet off the ground. When panels are at their maximum tilt of 45 degrees, the tops of the panels will be approximately eight to ten feet off the ground. As proposed by Aurora, each facility would ~~Each facility will be~~ enclosed by an eight-foot safety and security fence made up of a seven-foot chain link fence topped by another foot of barbed wire.

Additionally, EERA recommends adding the following condition to the Site Permit to clarify the new fence requirement:

¹⁷ See ALJ's Report at Finding 232.

14.4 Security Fence Design

The security fence surrounding each Facility shall be comprised of a chain link fence of up to seven (7) feet, topped by a 1- to 2-foot extension, tilted 45 degrees outward from the vertical plane of the chain link portion, carrying monofilament cables or barbless wire.

The Commission concurs with EERA and will therefore make the recommended modifications.

E. Finding 140

Addressing aesthetic concerns raised by people living adjacent to various proposed development sites, Finding 140 states that those concerns “will be largely mitigated” by Aurora’s landscaping plans. EERA argues that it is unnecessary to conclude that Aurora’s strategy will succeed in ameliorating aesthetic concerns; it should be sufficient to find that Aurora has proposed an appropriate strategy for addressing those concerns. Consequently EERA recommends adopting Finding 140 modified as follows to affirm the reasonableness of Aurora’s strategy while withholding judgment about the ultimate consequences of implementation:

140. In response to concerns raised by adjacent residents Aurora has proposed landscaping plans for the Atwater, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Pipestone, Wyoming and Zumbrota facilities, which are all proposed sites near existing residential homes. ~~Aesthetic impacts for neighboring homeowners will be largely mitigated by the site-specific landscaping plans developed by Aurora for the Atwater, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Wyoming and Zumbrota facilities.~~ A Site Permit condition requiring that a site-specific landscaping plan be developed for each facility is a reasonable method of mitigating visual impact to neighboring homes.

The Commission concurs with EERA and will therefore make the recommended modification.

F. Site Permit Sections 5.2, 8.7, and 14.3

In these Site Permit sections, EERA proposes (in addition to a non-substantive change) to –

- remove statements that Aurora should comply with the *minimum* standards for the development of shorelands on public waterways, and
- add a reference to Minnesota Rules 6120.2800, acknowledging the authority of local governments to adopt ordinances over any of the state’s shorelands within their borders, and using the DNR’s minimum standards as a guide.

EERA now joins the ALJ and the DNR in arguing that local ordinances generally provide appropriate guidance for land use at various locations throughout the state, and that the Commission should exercise its power to supersede local ordinances only under exceptional circumstances. Consequently EERA proposes the following changes:

5.2 Wetlands and Shoreland

Solar panels and associated facilities including foundations, access roads, underground cable and transformers, shall not be placed in public waters wetlands as shown on the public water inventory maps prescribed by Minnesota Statute 103G except that electric collector or feeder lines may cross or be placed in public waters or public waters wetlands subject to permits and approvals by the Minnesota Department of Natural Resources (DNR) and the United States Army Corps of Engineers (USACE), and local units of government as implementers of the Minnesota Wetlands Conservation Act. Solar panels and associated facilities including foundations, access roads, underground cable and transformers, shall be located in compliance with the ~~minimum~~ standards for development of the shorelands of public waters as identified in Minnesota Rules 6120.3300 and as adopted pursuant to Minnesota Rules 6120.2800 unless there is no feasible and prudent alternative.

8.7 Equipment Storage

The Permittee shall not locate temporary equipment staging areas on lands not under its control unless negotiated with affected landowner. Temporary equipment staging areas shall not be located in wetlands or native prairie as defined in Sections 5.2 and 5.3. Temporary equipment staging areas shall be sited to comply with ~~minimum~~ standards for development of the shorelands of public waters as identified in Section 5.2.

14.3 Demonstration of Compliance with Shoreland Standards

The Permittee shall demonstrate compliance with the ~~minimum~~ standards for development of shoreland areas as specified in section 5.2 of this permit, in the site plans filed in accordance with Section 6.1 of this permit, for the following facilities: Annandale, Chisago, Lake Emily, Lake Pulaski, Pine Island, and West Waconia, ~~and Zumbrota.~~

Aurora argues that requiring it to comply with all the different shoreland ordinances in all the locations where it proposes to build solar facilities would be prohibitively burdensome – and that the Legislature granted the Commission authority to supersede these ordinances to avoid this problem. Consequently Aurora proposed that the Commission require compliance only with the DNR’s minimum shoreland standards.¹⁸

The Commission concurs with the ALJ, EERA, and the DNR, and will adopt language establishing the presumption that Aurora will comply with local shoreland ordinances.

As an initial matter, the Commission observes that shoreland ordinances apply to only seven of the 24 proposed facility locations, as set forth in draft Site Permit section 14.3. Plans for three of these locations -- Lake Emily, Lake Pulaski, and West Waconia – have been uncontroversial. Municipal concerns regarding the other three sites – Annandale, Chisago, and Pine Island – appear to have been managed. And the Commission will decline to address the merits of the final site – Zumbrota – in the context of this order for reasons unrelated to compliance with a local shoreland ordinance.

¹⁸ Minn. R. 6120.3300.

As previously discussed, the Legislature has entrusted the Commission with the authority to supersede local ordinances when appropriate to advance the state's interest in siting and routing electric power facilities in an efficient manner. But the Commission has not previously had occasion to act on a site permit application for 24 separate locations. Consequently the Commission elects to use its preemption authority sparingly, acknowledging that local officials will often have a keener understanding of local land-use concerns.

Finally, where compliance with a local shoreland ordinance would leave Aurora without a feasible and prudent alternative, Site Permit section 5.2 provides for Aurora to petition the Commission to supersede the ordinance, consistent with the ALJ's recommendation.¹⁹ With this safeguard, the Commission finds that the ALJ's recommended policy best balances the interests involved.

G. Site Permit Sections 6.4 and 6.5

The ALJ's Report adopted EERA's recommendation to require Aurora to file an Agricultural Impact Mitigation Plan and Vegetation Management Plan prior to construction. Aurora objected that the ALJ's proposed schedule for filing these plans conflicted with the proposed schedule for pre-construction compliance filings.²⁰ Aurora proposes altering this recommendation to provide for filing these plans at least 14 days before submitting the Site Plan required by Site Permit section 6.1, for any portion of the project. Language making these changes (and correcting a typographical error) is set forth below:

6.4 Agricultural Impact Mitigation Plan

The Permittee shall, with the cooperation of the Minnesota Department of Agriculture, develop an Agricultural Impact Mitigation Plan (AIMP). The purpose of the AIMP shall be to identify measures to minimize potential impacts to agricultural uses of the land upon the decommissioning of the Project. The Permittee shall submit the AIMP to the Commission fourteen (14) days prior to submitting the first pre-construction meeting site plan for any portion of the Project. The AIMP shall include:

- (a) Measures that will be taken to segregate topsoil from subsoil during grading activities and the removal of topsoil during construction of the Project to the extent that such actions do not violate sound engineering principles or system reliability criteria.*
- (b) Measures that will be taken to minimize impacts to and repair drainage tiles damaged during construction of the Project.*
- (c) Measures that will be taken to prevent the introduction of non-native and invasive species.*
- (d) Measures that will be taken to re-vegetate disturbed areas with appropriate low-growing vegetation to the extent that such actions do not violate sound engineering principles or system reliability criteria.*

¹⁹ ALJ's Report, Finding 207.

²⁰ See EERA Comments (March 10, 2015), Schedule 3.

- (e) *Measures that will be taken to maintain established vegetation at the facilities throughout the operational life of the facility.*

6.5 *Vegetation Management Plan*

The Permittee shall, in cooperation with the Minnesota Department of Commerce and the Minnesota Department of Natural Resources, develop a Vegetation Management Plan for the Project and submit it to the Commission fourteen (14) days prior to submitting the first Site Plan required by Section 6.1 of this permit. The purpose of the Vegetation Management Plan is to minimize tree clearing, prevent the introduction of noxious weeds and invasive species, revegetate disturbed areas at each Facility with appropriate low-growing species, and maintain appropriate vegetation at each Facility throughout the operating life of the Project. The Vegetation Management Plan shall:

- (a) *Identify measures taken to minimize tree removal and minimize ground disturbance.*
- (b) *Identify a comprehensive re-vegetation plan for disturbed areas.*
- (c) *Identify methods to maintain appropriate vegetation throughout the operating life of the Project.*
- (d) *Identify vegetation control methods to be used during the operation and maintenance of the Project.*
- (e,f) *Identify measures to prevent the introduction of noxious weeds and invasive species on lands disturbed by construction activities.*

EERA raised no objection to this change. The Commission concurs with Aurora and will therefore make the recommended modification.

H. Site Permit Section 8.19

In the interest of facilitating communications and securing prompt assistance in an emergency, the Commission's site permits have long directed project developers to register their projects with the local government's Emergency 911 services. The Commission will give special emphasis to this requirement for this project, given that the project will span areas served by many different groups of first responders and 911 call centers (Public Safety Answering Points, or PSAPs).

Consequently the Commission will modify its traditional language to require Aurora to make a filing demonstrating compliance with this provision – and specifically to show that before beginning construction, Aurora provided first responders and PSAPs with copies of Aurora's Emergency Response Plan. The revised language will appear in Site Permit section 8.19 as follows:

8.19 Emergency Response

....The Permittee shall also obtain and register the address or other location indicators acceptable to the emergency responders and Public Safety Answering Points (PSAP) having jurisdiction over each of the separate facilities of the Project with the local governments' emergency 911 services. As part of the compliance filings required by this Site Permit, the Permittee shall show that prior to

beginning work on the site the Permittee provided a copy of the Emergency Response Plan to the emergency responders and the PSAP with jurisdiction over each of the separate facilities of the Project.

I. Site Permit Section 14.1

Finally, the language in the draft Site Permit directs Aurora to take certain precautions when installing facilities at the proposed Wyoming site. Because this order will not authorize siting facilities at the Wyoming site, the Commission will modify the permit language as follows to omit references to Wyoming:

14.1 Blanding's Turtle

The Permittee shall follow the fact sheet of recommendations for avoiding and minimizing impacts to the Blanding's turtle at the Chisago County, and Scandia ~~and Wyoming~~ Facilities. The summary of recommendations for avoiding and minimizing impacts to Blanding's turtle populations, including the attached colored photocopies of the Blanding's turtles, shall be made available to all contractors and its employees. Attachment [5] contains the fact sheet recommendations and summary. The Permittee shall use wildlife friendly erosion mesh during construction at the Chisago County, and Scandia ~~and Wyoming~~ Facilities.

VIII. Conclusion

With the conditions established herein, the Commission finds that Aurora Distributed Solar Project satisfies the siting criteria contained in Minn. Stat. § 216E.03 and Minn. R. 7850.4100 and meets the goal set forth in Minn. Stat. § 216E.02 to locate large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. The Commission will therefore issue the Site Permit to Aurora in the form attached.

ORDER

1. The Environmental Assessment and the record created at the public hearing address the issues identified in the Environmental Assessment scoping decision.
2. The Commission approves and adopts the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommendation for the 100 megawatt (MW) Aurora Distributed Solar Energy Project except as inconsistent with this order.
3. The Commission hereby issues to Aurora Distributed Solar, LLC, a Site Permit for the 100 MW Large Electric Power Generating Plant for the Aurora Distributed Solar Energy Project to be built at the following facilities as follows:
 - A. Albany, Atwater, Brooten, Eastwood, Fiesta City, Hastings, Lake Emily, Lake Pulaski, Lawrence Creek, Lester Prairie, Montrose, Scandia, Waseca, West Faribault, and West Waconia, to be developed as per the Site Plans submitted in the application, or with modifications to the site plans within the defined project development areas as submitted in pre-construction filings and approved by EERA.

- B. Chisago, Dodge Center, Paynesville, and Pine Island with the additional mitigation measures set forth herein.
- C. Annandale, on the condition that Aurora provide appropriate assurances with respect to Annandale's concerns about vegetative screening and maintenance accommodations.
- D. Mayhew Lake, provided Aurora complies with the agreements it has reached with the City of Sauk Rapids.

The attached Site Permit incorporates the modifications made herein.

- 4. The Commission declines to include the Pipestone, Wyoming, or Zumbrota locations in the site permit.
- 5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.