

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Aurora Distributed Solar,
LLC's Application for a Site Permit to
Construct a 100 MW Distributed Solar Energy
Project

ISSUE DATE: September 24, 2014

DOCKET NO. E-6929/GS-14-515

ORDER ACCEPTING SITE-PERMIT
APPLICATION AS COMPLETE,
EXTENDING TIME FOR FINAL
DECISION, AND REFERRING
APPLICATION TO THE OFFICE OF
ADMINISTRATIVE HEARINGS

PROCEDURAL HISTORY

On July 9, 2014, Aurora Distributed Solar, LLC (Aurora or the Company) filed an application for a site permit to construct multiple photovoltaic solar-energy generating systems and associated facilities totaling 100 megawatts (MW). Aurora proposes to build up to 24 individual solar facilities, ranging in size from 1.5 MW to 10 MW, in 16 counties throughout southern and central Minnesota.

On July 15, 2014, the Commission issued a notice seeking comments on the completeness of the site-permit application.

On July 30, 2014, the Minnesota Department of Commerce (the Department) filed comments recommending that the Commission accept the site-permit application as complete upon Aurora making a filing summarizing information on each potential facility.

On August 6, 2014, Aurora filed reply comments with fact sheets summarizing information on each potential facility.

The Commission also received comments from several local government units and members of the public who reside near proposed facility locations.

On August 21, 2014, Aurora filed supplemental information on project cost, project design, and future capacity expansions, and the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Regulatory Background

No person may construct a large electric power generating plant without a site permit from the Commission.¹ A “large electric power generating plant” means “electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more.”²

A combination of solar-energy generating systems with a total nameplate capacity of 50,000 kilowatts or more meets the definition of “large electric power generating plan” and is subject to the Commission’s jurisdiction if the systems are constructed within the same 12-month period and exhibit characteristics of being a single development, including but not limited to ownership structure, shared interconnection, revenue sharing, and common financing.³

Upon the written request of an applicant, the Department must make a written size determination using the preceding definition. In the case of a dispute, the Commission makes the final size determination.⁴

On June 27, 2014, Aurora asked the Department to make a size determination for the proposed project. On July 29, 2014, the Department informed Aurora that, based on the information supplied, the proposed project was a 100 MW large electric power generating plant and therefore subject to the Commission’s siting authority under Minnesota Statutes chapter 216E.

A large electric power generating plant powered by solar energy is eligible for the alternative permitting process authorized by Minn. Stat. § 216E.04.⁵ Accordingly, Aurora filed its site-permit application under the process established by the Commission in Minn. R. 7850.2800–.3900.

II. Application Completeness

The Department reviewed the site-permit application for completeness and concluded that it meets the requirements of Minn. R. 7850.3100. The Commission has examined the record and concurs with the Department that the application contains the information required and is therefore complete under Minn. R. 7850.3200. The Commission’s finding of completeness is as to form only; it implies no judgment on the merits of the application.

¹ Minn. Stat. § 216E.03, subd. 1.

² Minn. Stat. § 216E.01, subd. 5.

³ 2014 Minn. Laws ch. 254, § 18.

⁴ *Id.*

⁵ *Id.*, § 19.

III. Extending Timeframe for Final Decision

Generally, the final decision on a site or route permit must be made within six months of the Commission's determination that the application is complete. The Commission may extend this period for up to three months for just cause or upon agreement of the applicant.⁶

In its comments, the Department proposed a tentative nine-month schedule for completing review of the Aurora site-permit application. The Company initially supported a more expedited six-month process. However, at the Commission meeting, Aurora asked the Commission to adopt the Department's schedule. The Company stated that it would continue to work with the Department to find opportunities to streamline the process going forward.

The Commission concludes that there is just cause to use a nine-month schedule as recommended by the Department. A more conservative schedule will allow for careful review of Aurora's distributed solar project, which is the first of its kind in Minnesota. The Commission will grant a three-month extension of the deadline for a final decision under Minn. R. 7850.3900, subp. 1.

IV. Referral to the Office of Administrative Hearings

The Commission finds that it cannot resolve all issues raised by the application on the basis of the record before it. Those issues turn on specific facts that are best developed in proceedings conducted by an Administrative Law Judge. The Commission will therefore refer the matter to the Office of Administrative Hearings for summary proceedings under Minn. R. 7850.3800, adapting the existing procedural framework to facilitate further factual development of the record. Specifically, the Commission will take the actions set forth below:

- Request that the Administrative Law Judge assigned to this matter emphasize the statutory timeframe for the Commission to make final decisions on applications and strongly encourage the parties and participants to adhere to a schedule that conforms to the statutory timeframe.
- Direct Commission staff to formally contact relevant state agencies to request their participation in the development of the record and public hearings under Minn. Stat. § 216E.10, subd. 3, and request that state agencies submit comments before the last day of the public hearing.
- Request that the Administrative Law Judge ask the parties, participants, and the public to address whether the proposed project and any alternatives meet the selection criteria established in Minn. Stat. § 216E.03, subd. 7, and Minn. R. 7850.4100.
- Request that the Administrative Law Judge prepare a report setting forth findings, conclusions, and recommendations on the merits of the proposed project, alternatives to the proposed project, and a preferred site alternative, applying the siting criteria set forth in statute and rule; and provide comments and recommendations, if any, on the conditions and provisions of the proposed permit.

⁶ Minn. R. 7850.3900, subp. 1.

V. Public Advisor

Upon acceptance of an application for a site permit, the Commission is to designate a staff person to act as the public advisor on the project.⁷ The public advisor is available to answer questions from the public about the permitting process. In this role, the public advisor may not act as an advocate on behalf of any person.

The Commission will designate Tracy Smetana, Public Advisor, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, Saint Paul, Minnesota 55101-2147, (651) 296-0406, to act as the public advisor in this matter.

VI. Advisory Task Force

The Commission must also decide whether to appoint a citizen advisory task force.⁸

The board of Buffalo Township, where one of the proposed facilities may be located, filed comments requesting that an advisory task force be formed to allow local government units more input into the site-selection process.

The Department recommended that the Commission take no action on an advisory task force. The Department expects that most citizen concerns will relate to individual facilities. Because these facilities are dispersed among 24 locations in 16 counties, the Department concluded that one large advisory task force would not be an effective vehicle for gathering information on the impacts of the project. The Department plans to survey local government entities that would typically participate in an advisory task force to gather information on issues with individual facilities.

The Commission concurs with the Department's analysis and will decline to appoint an advisory task force at this time. The alternative permitting process, combined with the survey proposed by the Department, will provide a better opportunity for citizens and local governmental units to identify issues and site alternatives to be addressed in an environmental assessment. The Commission may reconsider whether to appoint an advisory task force if circumstances arise that may warrant it.

ORDER

1. The Commission hereby accepts Aurora's application as complete.
2. The Commission extends the deadline for a final decision under Minn. R. 7850.3900, subp. 1.
3. The Commission refers this case to the Office of Administrative Hearings for a summary proceeding and requests that that agency adapt the existing procedural framework to incorporate the items set forth in part IV of this Order.

⁷ Minn. R. 7850.3400.

⁸ Minn. R. 7850.3600.

4. The Commission hereby appoints a public advisor as described herein.
5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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