

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Applications of Regal
Solar, LLC for a Certificate of Need and a
Site Permit for the up to 100 MW Regal
Solar Project in Benton County, Minnesota

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter is pending before Administrative Law Judge Jessica A. Palmer-Denig and involves a Certificate of Need Application (CN Application)¹ and Site Permit Application (SP Application)² filed by Regal Solar, LLC (Regal or Applicant) for an up to 100 megawatt (MW) solar energy generating system and associated facilities in Benton County, Minnesota (the Project). The Minnesota Public Utilities Commission (MPUC or Commission) referred this matter to the Office of Administrative Hearings (OAH) for appointment of an administrative law judge to conduct a public hearing in both dockets, and to prepare findings of fact, conclusions of law, and recommendation regarding the preferred site and permit conditions.³

The Administrative Law Judge held a joint public hearing on the SP Application and CN Application for the Project on December 1, 2020, by remote access, including both telephone and internet access. The record remained open for the receipt of public comments through December 15, 2020. Following final submissions from the parties, the record closed on January 15, 2021.

Jeremy P. Duehr, Fredrikson & Byron, P.A., Melissa Schmit, Director of Permitting, Jordan Burmeister, Senior Project Manager, Michael Morris, Senior Director, Energy Assessment and Project Planning, and Chip LaCasse, Construction Manager, of National Grid Renewables Development, LLC f/k/a Geronimo Energy, LLC, a National Grid Company (National Grid), appeared on behalf of Applicant.

Andrew Levi, Environmental Review Manager, appeared on behalf of the Department of Commerce, Energy Environmental Review and Analysis (EERA).

¹ *In re the Application of Regal Solar, LLC for a Certificate of Need for the up to 100 MW Regal Solar Project in Benton County, Minnesota*, MPUC Docket. No. IP7003-CN-19-223.

² *In re the Application of Regal Solar, LLC for a Site Permit for the up to 100 MW Regal Solar Project in Benton County, Minnesota*, MPUC Docket. No. IP7003-GS-19-395.

³ Order Accepting Applications as Substantially Complete Pending Additional Information and Directing use of Informal Review Process (Oct. 11, 2019) (eDocket Nos. 201910-156514-01 (GS), 201910-156514-02 (CN)).

Scott Ek, Energy Facilities Planner, appeared as a member of Commission staff.

STATEMENT OF ISSUES

Has Regal satisfied the criteria set forth in Minnesota Statutes, chapter 216E (2020), Minnesota Rules, chapter 7850 (2019), for issuance of a site permit for the proposed Project? If so, what conditions should apply?

SUMMARY OF RECOMMENDATION

Regal has satisfied the applicable legal requirements and the Commission should **GRANT** a site permit for the Project, subject to the comments and recommendations discussed below.

Based on the entire record in this proceeding, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. The Applicant

1. Regal is a wholly owned subsidiary of National Grid, formerly known as Geronimo Energy, LLC.⁴ National Grid is a utility-scale renewable energy developer headquartered in Bloomington, Minnesota.⁵

2. National Grid has developed multiple operating wind farms and solar projects throughout the United States – over 2,400 MW of renewable energy projects that are either operational or are currently under construction, and has over 250 MW of completed solar development.⁶

3. Regal does not have any ownership or financial interests in any other renewable energy facilities in Minnesota that were permitted by or otherwise subject to the jurisdiction of the Commission.⁷

4. Regal will construct, own, and operate the Project.⁸

⁴ Ex. Regal-15 at 1 (Revised SP Application); Ex. Regal-25 (Request to Update Service List); *see also* Amended Initial Master Exhibit List (Dec. 1, 2020) (eDocket Nos. 202012-168676-01 (CN), 202012-168676-02 (GS)).

⁵ Ex. Regal-15 at 1 (Revised SP Application); Ex. Regal-16 (Change of Address).

⁶ Ex. Regal-15 at 1 (Revised SP Application); Ex. Regal-26 at Exhibit B (Schmit Direct).

⁷ Ex. Regal-21 at 13 (Revised CN Application).

⁸ Ex. Regal-15 at 3 (Revised SP Application).

II. Site Permit Application and Related Procedural Background

5. On June 11, 2019, Regal filed a notice of its intent to submit a site permit application for the Project under the alternative permitting procedures of Minn. R. 7850.2800-.3900.⁹

6. On July 8, 2019, Regal filed a correction to the letter, indicating that the Project was located at a single site and was not a distributed solar project.¹⁰

7. On July 22, 2019, Regal filed its SP Application with the Commission for the Project.¹¹

8. On July 26, 2019, the Commission issued a Notice of Comment Period on Site Permit Application Completeness, with the initial comment period closing on August 9, 2019, and the reply comment period closing on August 16, 2019. The Notice requested comments on whether the SP Application was complete within the meaning of the Commission's rules; whether an advisory task force should be appointed; whether the site permit application should be processed jointly with the certificate of need application; and whether there are any contested issues of fact with respect to the representations made in the application.¹²

9. On August 5, 2019, Regal notified local government officials and landowners within and around Project facility locations that Regal filed the SP Application.¹³

10. On August 6, 2019, Regal published notice of the SP Application's filing in the *Benton County News*.¹⁴

11. On August 7, 2019, Regal filed a letter revising certain information included in the CN Application and SP Application, correcting the size of the substation, and submitting a Revised Appendix A to its SP Application.¹⁵

12. On August 9, 2019, EERA filed comments recommending that the Commission accept the SP Application as substantially complete, but also recommended that the Commission require Regal to supplement the record with additional information. EERA staff further recommended that the Commission take no action on an advisory task force. EERA staff stated the use of the summary proceeding

⁹ Ex. Regal-3 (Notice of Application to File Site Permit under Alternative Permitting Process); see also Ex. Regal-4 (Corrected Cover Letter re Notice of Application to File Site Permit under Alternative Permitting Process).

¹⁰ Ex. Regal-4 (Corrected Cover Letter re Notice of Application to File Site Permit under Alternative Permitting Process).

¹¹ Ex. Regal-7 (SP Application).

¹² Ex. Commission-302 (Notice of Comment Period on Application Completeness).

¹³ Ex. Regal-12 (Cover Letter with Affidavit of Mailing; Letter to Landowners, Letter to LGUs, Letter to Library, and Affidavit of Publication).

¹⁴ Ex. Regal-12 (Affidavit of Publication).

¹⁵ Ex. Regal-9 (Letter regarding Revised Substation Size in CN, Incorrect Docket Classification and Revised Appendix A to Site Permit).

may be warranted because of the Project's size and the extended timeframe associated with the certificate of need process. Finally, EERA staff posited it might be unnecessary for it to present site alternatives to the Commission for its input prior to issuance of the scoping decision due to the inherent difficulties in suggesting alternative site locations for a project of this size and Regal's indication that it does not have the power of eminent domain to acquire land for the Project.¹⁶

13. In its comments, EERA indicated the following: "While staff believes environmental review can and should accommodate a certain level of flexibility at the application stage, the site permit, if issued, should not be ambiguous. Therefore, staff will use the environmental review process and the public record to recommend permit language that removes uncertainty, for example, to specify what type of electrical collection system can be used."¹⁷

14. Prior to the end of the initial comment period on August 9, 2019, the Commission received several public comments.¹⁸ The Minnesota State Historic Preservation Office (SHPO) noted that the Project did not impact properties listed in the National and State Registers of Historic Places and that there are no known or suspected archeological sites that would be affected by the Project.¹⁹ Duane Cekalla, a local resident, indicated he favors the project because it involves renewable energy and the location chosen for the Project is "prime" due to the presence of local energy providers.²⁰ Related to the Project's initial proposal for interconnection facilities, East Central Energy (ECE), an electrical distribution cooperative and a member of Great River Energy, expressed concerns about the suitability of the transmission capabilities in place and whether additional work related to this issue needed to be done.²¹ Benton County, Minnesota indicated it had no concerns about the Project.²² Mayor Andrea Lauer of Royalton, Minnesota, stated that the Project is located just to the south of Royalton and she supported the Project.²³

15. August 12, 2019, Regal notified those persons on the Commission's general service list that Regal filed the SP Application.²⁴

¹⁶ Ex. EERA-200 (Comments and Recommendations on Application Completeness).

¹⁷ *Id.* at 5.

¹⁸ See Ex. Commission-303 (Comments of the State Historic Preservation Office); Ex. Commission-304 (Comments of Mr. Duane Cekalla); Ex. Commission-305 (Comments of East Central Energy); Ex. Commission-307 (Comments of Benton County); Ex. Commission-308 (Comments of the Mayor of Royalton).

¹⁹ Ex. Commission-303 (Comments of the State Historic Preservation Office).

²⁰ Ex. Commission-304 (Comments of Mr. Duane Cekalla).

²¹ Ex. Commission-305 (Comments of East Central Energy). Note that Regal revised the Project proposal to interconnect at a new switching station, addressing this concern. See Ex. Regal-19 at 1 (SP Addendum).

²² Ex. Commission-307 (Comments of Benton County).

²³ Ex. Commission-308 (Comments of the Mayor of Royalton).

²⁴ Ex. Regal-12 (Cover Letter with Affidavit of Mailing).

16. On August 16, 2019, Regal filed reply comments in response to public comments and the comments filed by EERA staff on August 9, 2019. Regal committed to providing the supplemental information requested by EERA staff.²⁵

17. On August 16, 2019, EERA staff filed reply comments in response to Regal's reply comments filed that day, regarding an additional interconnection option that would be studied as part of the generator interconnection process with the Midwest Independent System Operator (MISO). EERA staff restated its continued recommendation that the SP Application was substantially complete. The EERA noted however, that the Project as originally proposed contemplating interconnecting through an existing substation, and that additional details about interconnecting through an existing transmission line were necessary, and should be included as part of the supplemental information Regal indicated it would provide.²⁶

18. The Minnesota Pollution Control Agency (MPCA) filed comments on August 20, 2019.²⁷ The MPCA's comments were an initial submission, and addressed issues related to noise standards for construction equipment and special waters, wetlands, and stormwater runoff.²⁸

19. On August 23, 2019, the Commission issued a Notice of Commission Meeting scheduling a meeting for September 5, 2019, to address whether to accept the SP Application as substantially complete and authorize review under the alternative permitting process; whether to process the CN Application and the SP Application jointly; whether the Commission should appoint an advisory task force for the siting of the Project; what procedural process to authorize for evaluation of the SP Application; and whether to vary the time limits of Commission rules relating to the processing of the applications.²⁹

20. On September 5, 2019, the Commission met to consider the items identified in the Notice of Commission Meeting.³⁰ The Commission voted to: accept the SP Application as substantially complete and authorize review under the alternative permitting process defined in Minn. Stat. § 216E.04 and Minn. R. 7850.2800-.3900 on the date the Applicant provided an updated and corrected application; approve joint public meetings, joint public hearings, and combined environmental review of the CN Application and SP Application to the extent practical; request that EERA prepare an Environmental Assessment (EA) in lieu of an Environmental Report pursuant to Minn. R. 7849.1900; take no action on an advisory task force; refer the matter to the OAH for the appointment of an administrative law judge to serve as the hearing examiner and request preparation of findings of fact, conclusions of law, and recommendation of a preferred site and permit conditions, and request that the administrative law judge determine the schedule for any testimony and post hearing briefing in consultation with

²⁵ Ex. Regal-11 (Reply Comments regarding Application Completeness).

²⁶ Ex. EERA-201 (Reply Comments: Application Completeness).

²⁷ Ex. Commission-309 (Comments of the Minnesota Pollution Control Agency).

²⁸ *Id.*

²⁹ Notice of Commission Meeting—Sept. 5, 2019 Agenda (eDocket No. 20198-155404-09 (GS)).

³⁰ Minutes—Sept. 5, 2019 Minutes (eDocket Nos. 20201-159483-08 (GS), 20201-159483-01 (CN)).

interested parties, as necessary; grant a variance to Minn. R. 7849.0200, subp. 5, to extend the 30-day timeline; and address various other administrative matters.³¹

21. On September 6, 2019, Regal filed its Revised SP Application with the Commission.³²

22. On October 11, 2019, the Commission incorporated its decision into its Order Accepting Applications as Substantially Complete Pending Additional Information and Directing Use of Informal Review Process.³³

23. On October 17, 2019, the Commission filed a sample solar site permit for public review during the review process (Sample Site Permit).³⁴

24. On October 28, 2019, the Commission issued a Notice of Public Information and Environmental Assessment Scoping Meeting scheduling a meeting on November 13, 2019, to be held in Rice, Minnesota, and announcing that written comments would be accepted through December 2, 2019. The Notice requested comments on issues and facts that should be considered in the development of the EA.³⁵ Prior to the close of this comment period, LIUNA Minnesota & North Dakota (LIUNA),³⁶ and the Minnesota Department of Transportation (MnDOT),³⁷ filed public comments. LIUNA indicated its support for the Project, stated that the creation of high-quality jobs is an important factor to consider for projects in rural Minnesota, and indicated its concerns about the use of out-of-state labor on energy generation facilities in Minnesota.³⁸ MnDOT's comment addressed road access for the Project, potential leasing of MnDOT land for the Project, and permitting for any electrical collection systems running along a trunk highway.³⁹

25. On October 29, 2019, the Notice of Public Information and Environmental Assessment Scoping Meeting was published in the *Benton County News*.⁴⁰

26. On November 13, 2019, Commission staff and EERA staff held a public meeting in Rice, Minnesota, to provide the public with information about the Project and to solicit comments on the scope of the EA. At the meeting, six members of the public asked general questions about the Project; questions related to decommissioning, stray voltage, vegetation management on the Project site, fencing and wildlife movement, and the aesthetics of the Project facilities. A member of the Benton County Board and a

³¹ *Id.*

³² Ex. Regal-15 (Revised SP Application).

³³ Ex. Commission-310 (Order Accepting Applications as Substantially Complete Pending Additional Information and Directing Use of Informal Review Process).

³⁴ Ex. Commission-311 (Sample Solar Site Permit).

³⁵ Ex. Commission-312 (Notice of Public Information and EA Scoping Meeting).

³⁶ Ex. Commission-315 (Comments of LIUNA Minnesota and North Dakota).

³⁷ Ex. Commission-314 (Comments of the Minnesota Department of Transportation).

³⁸ Ex. Commission-315 (Comments of LIUNA Minnesota and North Dakota).

³⁹ Ex. Commission-314 (Comments of the Minnesota Department of Transportation).

⁴⁰ Ex. Commission-313 (Newspaper Notice of Public Information and Environmental Assessment Scoping Meeting).

Supervisor from Langola Township both indicated the support of their governmental entities for the Project. No alternatives to Regal's proposed site were presented at the public meeting.⁴¹

27. On December 5, 2019, the EERA filed its Environmental Assessment Scoping Decision (EA Scoping Decision), which established the matters proposed to be addressed in the EA and identified certain issues outside the scope of the EA. As there were no site alternatives recommended for study, accordingly, the EA would consider only the site location proposed by Regal.⁴² Also on December 5, 2019, EERA staff filed a Notice of Scoping Decision.⁴³

28. On January 27, 2020, Regal filed a notice of change of address.⁴⁴

29. On February 13, 2020, the Administrative Law Judge issued a Notice of Prehearing Conference setting a prehearing conference for February 26, 2020.⁴⁵

30. On February 27, 2020, the Administrative Law Judge issued a Scheduling Order setting a joint public hearing on the CN Application and Revised SP Application for April 29, 2020, and establishing other procedural deadlines in these proceedings.⁴⁶

31. The Administrative Law Judge issued an order suspending the schedule in these proceedings on April 14, 2020.⁴⁷ Just prior to this time period, the Administrative Law Judge set status conferences on the calendar that were ultimately rescheduled.⁴⁸ The schedule was extended because Regal anticipated making additional filings and due to the impact of the coronavirus pandemic.⁴⁹

32. On May 8, 2020, the Administrative Law Judge issued an Order Suspending Schedule stating that because Applicant anticipated making additional filings regarding the Project, which will require further regulatory review, the schedule set by the Scheduling Order dated February 27, 2020, would be suspended.⁵⁰

⁴¹ Ex. EERA-203 (Public Comments Received on the Scope of the Environmental Assessment and Public Meeting Notes).

⁴² Ex. EERA-204 at 5-8 (Scoping Decision).

⁴³ Ex. EERA-205 (Notice of Scoping Decision).

⁴⁴ Ex. Regal-16 (Notice of Change of Address).

⁴⁵ Notice of Prehearing Conference (Feb. 13, 2020) (eDocket No. 20202-160420-02 (GS)).

⁴⁶ Scheduling Order (Feb. 27, 2020) (eDocket No. 20205-162925-01 (GS)).

⁴⁷ Notice of Rescheduled Status Conference and Order Suspending Deadline (Apr. 14, 2020) (eDocket No. 20204-162082-02 (GS)).

⁴⁸ Notice of Status Conference (Mar. 19, 2020) (eDocket No. 20203-161364-02 (GS)); Notice of Rescheduled Status Conference (Mar. 25, 2020) (eDocket No. 20203-161447-01 (GS)); Second Notice of Rescheduled Status Conference (Mar. 31, 2020) (eDocket No. 20203-161629-02 (GS)).

⁴⁹ Notice of Rescheduled Status Conference and Order Suspending Deadline (Apr. 14, 2020) (eDocket No. 20204-162082-02 (GS)).

⁵⁰ Order Suspending Schedule (May 8, 2020) (eDocket No. 20205-163049-01 (GS)).

33. On August 4, 2020, Regal filed an addendum to its Revised SP Application (SP Addendum) with the Commission for the Project.⁵¹

34. On August 25, 2020, the Commission issued a Notice of Comment Period on Amended Certificate of Need and Site Permit Applications and the Scope of the Environmental Assessment, initiating a public comment period to close on September 15, 2020, with reply comments to be filed no later than September 22, 2020. The Notice requested comments on whether there are any missing or mischaracterized items in Regal's SP Addendum, issues that need further development or other review process related issues that need further consideration; and what new or additional potential human and environmental impacts of the Project should be considered in the scope of the EA; and as to the possible methods to minimize, mitigate, or avoid the potential impacts.⁵²

35. On September 16, 2020, EERA staff filed a comment indicating that it had reviewed the SP Addendum and conferred with Regal, and staff advised the Commission that the SP Addendum contained "the information needed to move forward with environmental review."⁵³

36. Before the close of this comment period, the Board of Water and Soil Resources (BWSR),⁵⁴ and the Minnesota Department of Natural Resources (MDNR), submitted written comments.⁵⁵ The BWSR proposed permit conditions related to beneficial habitat and Regal's proposed vegetation management practices.⁵⁶ The MDNR addressed a variety of considerations, including recycling of Project materials, oak wilt prevention, erosion control, pollinator habitats, state-listed plant and bird species, and the cleaning of equipment to prevent invasive species, as a Minnesota Biological Survey (MBS) Site of Biological Significance is located within 150-600 feet of the Project boundary.⁵⁷ The MDNR's comments provided some fact sheets and other informational materials, and also referenced proposed conditions.⁵⁸

37. On September 22, 2020, Regal filed its Reply Comments in response to public comments and EERA staff comments raised during the comment period.⁵⁹ Regal responded to specific recommendations regarding oak wilt and installation of additional swan flight diverters, and indicated it was amenable to the proposed permit language regarding vegetation management.⁶⁰

⁵¹ Ex. Regal-19 (SP Addendum, Appendices and Figures); Ex. Regal-20 (Revised Trade Secret Appendix E to SP Addendum).

⁵² Ex. Commission-317 (Notice of Comment Period on Amended Certificate of Need and Site Permit Applications and the Scope of the Environmental Assessment).

⁵³ Ex. EERA-207 (EERA Staff Comment Letter).

⁵⁴ Ex. EERA-206 (Comments of the BWSR).

⁵⁵ Ex. Commission-318 (Comments of the MDNR).

⁵⁶ Ex. EERA-206 (Comments of the BWSR).

⁵⁷ Ex. Commission-318 (Comments of the MDNR).

⁵⁸ *Id.*

⁵⁹ Ex. Regal-23 (Reply Comments regarding SP Addendum).

⁶⁰ *Id.*

38. On October 2, 2020, EERA staff filed the Environmental Assessment Revised Scoping Decision (EA Revised Scoping Decision), which established the matters it proposed to address in the EA.⁶¹ Again no site alternatives were recommended for study, accordingly, the EA would consider only the site Regal proposed for the Project.⁶²

39. On October 8, 2020, EERA issued a Notice of Revised EA Scoping Decision.⁶³

40. On October 9, 2020, the Administrative Law Judge issued a Notice of Prehearing Conference setting the prehearing conference for October 14, 2020.⁶⁴

41. On October 16, 2020, Regal filed a letter requesting updates to the service list and informing the Commission that as of October 14, 2020, Geronimo Energy, the parent company of the Applicant has undergone rebranding and will now be known as National Grid Renewables.⁶⁵

42. On October 20, 2020, the Administrative Law Judge amended the scheduling order.⁶⁶

43. On November 6, 2020, EERA staff issued the EA.⁶⁷ Notice of the availability of the EA was also published in the *EQB Monitor* and mailed to the local library.⁶⁸

44. On November 10, 2020, the Commission issued Notice of Public Hearing notifying the public of the public hearing to be held on December 1, 2020, and initiating a public comment period to close on December 15, 2020. The Notice provided: (a) the date of the public hearing and instructions to participate through remote access; (b) a description of the proposed Project; (c) a deadline for public comments on the applications and EA; (d) a description of the Commission's review process; and (e) identification of the public advisor. The Notice indicated that the hearing would address the SP and CN Applications. Topics for public comment included: (1) should the Commission issue a certificate of need for the Project; (2) should the Commission grant a site permit for the Project; and (3) if granted, what additional conditions or requirements should be included in a site permit.⁶⁹ Notice was published in the *Benton County News* on November 17, 2020.⁷⁰

⁶¹ Ex. EERA-208 (Revised Scoping Decision).

⁶² *Id.* at 3.

⁶³ Ex. EERA-209 (Notice of Revised Scoping Decision).

⁶⁴ Notice of Prehearing Conference (Oct. 9, 2020) (eDocket No. 202010-167188-02 (GS)).

⁶⁵ Ex. Regal-25 (Request to Update Service List).

⁶⁶ Amended Scheduling Order (Oct. 20, 2020) (eDocket No. 202010-167512-01 (GS)).

⁶⁷ Ex. EERA-211 (EA); Ex. EERA-210 (Notice of EA Availability).

⁶⁸ Ex. EERA-212 (Notice of EA Availability to *EQB Monitor* and Local Library).

⁶⁹ Ex. Commission-320 (Notice of Public Hearing).

⁷⁰ Ex. Commission-321 (Newspaper Notice of Public Hearing).

45. On November 24, 2020, Regal filed the direct testimony of Melissa Schmit, Michael Morris, and Jordan Burmeister.⁷¹

46. On December 1, 2020, the Administrative Law Judge presided over a joint public hearing on the SP Application and the CN Application for the Project via remote means. Commission staff, EERA staff, and representatives from Regal were present, and made presentations to attendees. Three members of the public spoke at the hearing.⁷² In addition, written comments on the Project were filed by the MDNR,⁷³ the International Union of Operating Engineers Local 49⁷⁴ and a member of the public,⁷⁵ before the close of the comment period on December 15, 2020. These comments are addressed in the Summary of Public Comments below.

47. On December 23, 2020, Regal filed its Response to Public Comments.⁷⁶

48. On December 23, 2020, Regal filed proposed Findings of Fact, Conclusions of Law, and Recommendations.⁷⁷

49. On January 15, 2021, EERA filed its Comments and Recommendations regarding Regal's proposed Findings of Fact, Conclusions of Law, and Recommendations.⁷⁸

III. Certificate of Need Application and Related Procedural Background

50. On March 13, 2019, Regal filed a Request for Exemption from Certain Certificate of Need Application Content Requirements with the Commission requesting that it be granted exemptions from certain data requirements related to the CN.⁷⁹

51. On March 21, 2019, the Commission issued a Notice of Comment Period on Request for Exemptions from Certain Certificate of Need Data Requirements, which opened an initial written comment period until April 4, 2019, and a reply comment period until April 11, 2019.⁸⁰

52. On April 4, 2019, Staff of the Department of Commerce, Division of Energy Resources (DER) filed comments agreeing that the requested exemptions were

⁷¹ Ex. Regal-26 (Schmit Direct); Ex. Regal-27 (Morris Direct); Ex. Regal-28 (Burmeister Direct).

⁷² See *generally* Pub. Hr'g Tr. (eDocket No. 202012-168933-01 (GS)).

⁷³ Comments by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

⁷⁴ Comment by International Union of Operating Engineers Local 49 (Dec. 15, 2020) (eDocket No. 202012-169058-02 (GS)).

⁷⁵ Comment by Michael Kloss (Dec. 16, 2020) (eDocket No. 202012-169090-01 (GS)).

⁷⁶ Regal Response to Public Comments (Dec. 23, 2020) (eDocket Nos. 202012-169346-06 (GS), 202012-169346-05 (CN)).

⁷⁷ Regal Proposed Findings of Fact, Conclusions of Law, and Recommendations (Dec. 23, 2020) (eDockets Nos. 202012-169346-04 (GS), 202012-169346-03 (CN)).

⁷⁸ DOC EERA Reply Comments (Jan. 15, 2021) (eDockets Nos. 20211-169878-01 (GS), 20211-169879-01 (CN)).

⁷⁹ Ex. Regal-1 (Request for Exemption).

⁸⁰ Ex. Commission-300 (Notice of Comment Period on Request for Exemption from Certain Certificate of Need Data Requirements).

appropriate and recommending that the Commission approve Regal's data exemption requests, subject to the provision of some additional information from Regal.⁸¹

53. On April 11, 2019, Regal filed reply comments concurring with DER staff's recommendations.⁸²

54. On April 19, 2019, the Commission issued a Notice of Commission Meeting scheduling a meeting for May 2, 2019, to consider whether to grant Regal's data exemption requests with modifications.⁸³

55. On May 13, 2019, the Commission issued an Order approving Regal's data exemption requests and requiring Regal to provide certain alternative data.⁸⁴

56. On July 22, 2019, Regal filed the CN Application with the Commission for the Project.⁸⁵ On July 31, 2019, Regal filed a summary of filing.⁸⁶ Regal seeks approval of a CN under Minn. Stat. § 216B.243 (2020).

57. On July 26, 2019, the Commission issued a Notice of Comment Period on Application Completeness related to the CN Application. Initial comments were accepted through August 9, 2019, and reply comments could be submitted through August 16, 2019.⁸⁷

58. On August 7, 2019, Regal filed a letter to the Commission revising certain information included in the CN Application and SP Application and correcting the size of the substation.⁸⁸

59. As discussed in the Findings of Fact above, written comments were submitted prior to August 9, 2019, by the State Historical Preservation Office, Mr. Cekalla, East Central Energy, LIUNA, Benton County, Minnesota, and the Mayor of Royalton, Minnesota.⁸⁹

⁸¹ Ex. DER-100 (Comments and Recommendations on Exemption Requests).

⁸² Ex. Regal-2 (Reply Comments).

⁸³ Notice of Commission Meeting—May 2, 2019 Agenda Meeting (Apr. 19, 2019) (eDocket No. 20194-152138-05 (CN)).

⁸⁴ Ex. Commission-301 (Order on Certificate of Need Data Requirements Exemption Requests).

⁸⁵ Ex. Regal-5 (CN Application, Public Appendix A, Figures, Affidavit and of Service); Ex. Regal-6 (Trade Secret Appendix A to CN Application).

⁸⁶ Ex. Regal-8 (CN Summary of Filing).

⁸⁷ Ex. Commission-302 (Notice of Comment Period on Application Completeness).

⁸⁸ Ex. Regal-9 (Revised Appendix A to SP Application).

⁸⁹ See Ex. Commission-303 (Comments of State Historical Preservation Office); Ex. Commission-304 (Comments of Mr. Duane Cekalla); Ex. Commission-305 (Comments of East Central Energy); Ex. Commission-306 (Comments of LIUNA Minnesota and North Dakota); Ex. Commission-307 (Comments of Benton County); Ex. Commission-308 (Comments of the Mayor of Royalton).

60. On August 9, 2019, DER staff filed written comments recommending that the Commission find the CN Application to be complete and that the Commission review the application using the Commission's comment process.⁹⁰

61. On August 16, 2019, Regal filed Reply Comments in response to public comments and DER staff comments raised during the completeness comment period.⁹¹

62. On August 23, 2019, the Commission issued a Notice of Commission Meeting scheduling a meeting on September 5, 2019, to consider whether to accept the CN Application as complete; whether to direct that it be evaluated using the informal review process or referred to OAH for contested case proceedings; whether it should direct that the CN Application and SP Application be processed jointly; and whether it should vary the time limits of its rules that relate to application completeness.⁹²

63. On September 5, 2019, the Commission met to consider the items identified in the Notice of Commission Meeting. The Commission voted to: accept the CN Application as substantially complete on the date the Applicant provided an updated and corrected application; direct that the CN Application be reviewed using the informal review process; approve joint public meetings, joint public hearings, and combined environmental review of the CN and SP Applications to the extent practical; request EERA to prepare an EA in lieu of an environmental report; grant a variance to Minn. R. 7849.0200, subp. 5; and address various other administrative matters.⁹³

64. On September 6, 2019, Regal filed a Revised Certificate of Need Application (First Revised CN Application) with the Commission for the Project.⁹⁴

65. On October 11, 2019, the Commission incorporated its decision into its Order Accepting Applications as Substantially Complete Pending Additional Information and Directing Use of Informal Review Process.⁹⁵

66. On October 28, 2019, the Commission issued a Notice of Public Information and Environmental Assessment Scoping Meeting scheduling a meeting to be held on November 13, 2019, in Rice, Minnesota and announcing that written comments would be accepted through December 2, 2019. The Notice requested comments on issues and facts that should be considered in the development of the EA.⁹⁶ During this comment period, MnDOT submitted written comments, as discussed in the Findings of Fact above.⁹⁷

⁹⁰ Ex. DER-101 at 4 (Comments and Recommendations on CN Application Completeness).

⁹¹ Ex. Regal-11 (Reply Comments regarding Application Completeness).

⁹² Notice of Commission Meeting (Sept. 5, 2019) (eDocket No. 20198-155404-05 (CN)).

⁹³ Minutes—Sept. 5, 2019 Minutes (eDocket Nos. 20201-159483-08 (GS), 20201-159483-01 (CN)).

⁹⁴ Ex. Regal-13 (First Revised CN Application, Public Appendix A, Figures); Ex. Regal-14 (Revised Trade Secret Appendix A to CN Application).

⁹⁵ Ex. Commission-310 (Order Accepting Applications as Substantially Complete Pending Additional Information and Directing Use of Informal Review Process).

⁹⁶ Ex. Commission-312 (Notice of Public Information and EA Scoping Meeting).

⁹⁷ Ex. Commission-314 (Comments of the Minnesota Department of Transportation).

67. On October 29, 2019, the Notice of Public Information and Environmental Assessment Scoping Meeting was published in the *Benton County News*.⁹⁸

68. On November 13, 2019, Commission staff and EERA staff held a public meeting in Rice, Minnesota, to provide the public with information about the Project and to solicit comments on the scope of the environmental assessment. As noted above, six members of the public asked general questions about the Project and two commenters expressed support for the Project. No person offered alternatives to Regal's proposed site during the public meeting.⁹⁹

69. On December 5, 2019, EERA staff filed the EA Scoping Decision, establishing the matters the EERA proposed to address in the EA and identifying certain issues outside the scope of the EA. No site alternatives were recommended for study, so the EA would not consider site alternatives other than the site location proposed for the Project.¹⁰⁰ Also on December 5, 2019, EERA staff filed a Notice of Scoping Decision.¹⁰¹

70. On January 27, 2020, Regal filed a notice of change of address.¹⁰²

71. On February 7, 2020, the Commission issued a Notice of Comment Period on the Merits of the Certificate of Need Application, announcing it would accept written comments through April 8, 2020, and reply comments would be accepted through April 22, 2020. The Notice requested comments on whether any contested issues of fact existed with respect to the representations made in the First Revised CN Application, whether the Commission should grant the CN for the Project, or other issues or concerns related to the Project.¹⁰³

72. On February 13, 2020, the Administrative Law Judge issued a Notice of Prehearing Conference setting the prehearing conference for February 26, 2020.¹⁰⁴

73. Following the prehearing conference, on February 17, 2020, the Administrative Law Judge issued a Scheduling Order setting a joint public hearing on the First Revised CN Application and Revised SP Application for April 29, 2020, and setting forth other procedural deadlines in the proceedings.¹⁰⁵

⁹⁸ Ex. Commission-313 (Newspaper Notice of Public Information and Environmental Assessment Scoping Meeting).

⁹⁹ Ex. EERA-203 (Public Comments Received on the Scope of the Environmental Assessment and Public Meeting Notes).

¹⁰⁰ Ex. EERA-204 at 6-8 (Scoping Decision).

¹⁰¹ Ex. EERA-205 (Notice of Scoping Decision).

¹⁰² Ex. Regal-16 (Notice of Change of Address).

¹⁰³ Ex. Commission-316 (Notice of Comment Period on the Merits of the CN Application).

¹⁰⁴ Notice of Prehearing Conference (Feb. 13, 2020) (eDocket No. 20202-160420-01 (CN)).

¹⁰⁵ Scheduling Order (Feb. 27, 2020) (eDocket No. 20202-160773-02 (CN)).

74. The schedule in this matter was suspended by the Administrative Law Judge's Order on April 14, 2020.¹⁰⁶ The Administrative Law Judge scheduled, but postponed, several status conferences because Regal anticipated making additional filings and due to the impacts of the pandemic.¹⁰⁷

75. On May 8, 2020, the Administrative Law Judge issued an Order Suspending Schedule so that Regal could make additional filings regarding its proposed Project, which filings required further regulatory review, so the schedule set by the Scheduling Order dated February 27, 2020, was suspended.¹⁰⁸

76. In the meantime, on April 8, 2020, DER staff filed written comments recommending that the Commission "consider the impacts demonstrated by the environmental report and, if the impacts are acceptable, **approve the Revised Application.**"¹⁰⁹

77. On April 17, 2020, Regal filed Reply Comments in response to, and concurring with, DER staff comments.¹¹⁰

78. On August 12, 2020, Regal filed its second Revised Certificate of Need Application (Second Revised CN Application).¹¹¹

79. On August 17, 2020, DER staff filed amended written comments in light of Regal's Second Revised CN Application concluding that Regal had established the need for the Project and recommending that the Commission issue a CN to Regal.¹¹²

80. On August 25, 2020, the Commission issued a Notice of Comment Period on Amended Certificate of Need and Site Permit Applications and the Scope of the Environmental Assessment initiating a public comment period to close on September 15, 2020, with reply comments to be filed no later than September 22, 2020. The Notice requested comments on whether Regal's Second Revised CN Application contained any missing or mischaracterized items, identifying issues that need further development or other review process related issues that need further consideration; and noting any new or additional potential human and environmental impacts of the Project that should be considered in the scope of the EA, and the possible methods to minimize, mitigate or avoid the potential impacts.¹¹³

¹⁰⁶ Notice of Rescheduled Status Conference and Order Suspending Deadline (Apr. 14, 2020) (eDocket No. 20204-162082-01 (CN)).

¹⁰⁷ Notice of Status Conference (Mar. 19, 2020) (eDocket No. 20203-161364-01 (CN)).

¹⁰⁸ Order Suspending Schedule (May 8, 2020) (eDocket No. 20205-163049-01 (GS)).

¹⁰⁹ Ex. DER-102 (Comments and Recommendations on Merits of CN Application).

¹¹⁰ Ex. Regal-18 (Reply Comments regarding DER's comments on CN Application).

¹¹¹ Ex. Regal-21 (Second Revised CN Application, Public Appendix A, Figures); Ex. Regal-22 (Revised Trade Secret Appendix A to CN Application).

¹¹² Ex. DER-103 at 16 (Amended Comments and Recommendations on Merits of CN Application).

¹¹³ Ex. Commission-317 (Notice of Comment Period on Amended CN and SP Applications and Scope of EA).

81. On September 16, 2020, EERA staff filed written comments from BWSR, as discussed above.¹¹⁴

82. On September 22, 2020, Regal filed its Reply Comments in response to public comments raised during the comment period, concurring with the DER's assessment, and noting that the BWSR's comments were more applicable to the SP Application and were addressed in that docket.¹¹⁵

83. On October 2, 2020, EERA staff filed the EA Revised Scoping Decision, establishing the matters the EERA proposed to address in the EA.¹¹⁶ No site alternatives were recommended for study, and therefore, the EA's scope did not include any alternatives other than the site location proposed by Regal for the Project.¹¹⁷

84. On October 8, 2020, EERA issued a Notice of Revised EA Scoping Decision.¹¹⁸

85. On October 9, 2020, the Administrative Law Judge issued a Notice of Prehearing Conference setting a prehearing conference on the calendar for October 14, 2020.¹¹⁹

86. On October 16, 2020, Regal filed a letter requesting updates to the service list and informing the Commission that as of October 14, 2020, Geronimo Energy, the parent company of the Applicant had undergone rebranding and was now known as National Grid.¹²⁰

87. On October 20, 2020, the Administrative Law Judge amended the scheduling order, setting deadlines for further proceedings.¹²¹

88. On November 6, 2020, EERA staff issued the EA for the Project.¹²² Notice of the availability of the EA was published in the *EQB Monitor* and mailed to the local library in the Project's area.¹²³

89. On November 10, 2020, the Commission issued a Notice of Public Hearing notifying the public that the public hearing would be held December 1, 2020, and that public comments would be accepted through December 15, 2020. The Notice provided: (a) the date of the public hearing and instructions for remote access; (b) a description of the proposed Project; (c) a deadline for public comments on the applications and EA; (d) a description of the Commission's review process; and

¹¹⁴ Ex. EERA-206 (Comments of the Board of Water and Soil Resources).

¹¹⁵ Ex. Regal-24 (Reply Comments regarding Revised CN Application).

¹¹⁶ Ex. EERA-208 (Revised Scoping Decision).

¹¹⁷ *Id.* at 3.

¹¹⁸ Ex. EERA-209 (Notice of Revised Scoping Decision).

¹¹⁹ Notice of Prehearing Conference (Oct. 9, 2020) (eDocket No. 202010-167188-01 (CN)).

¹²⁰ Ex. Regal-25 (Request to Update Service List).

¹²¹ Amended Scheduling Order (Oct. 20, 2020) (eDocket No. 202010-167512-02 (CN)).

¹²² Ex. EERA-211 (EA); Ex. EERA-210 (Notice of EA Availability).

¹²³ Ex. EERA-212 (Notice of EA Availability to *EQB Monitor* and Local Library).

(e) identification of the public advisor. The Notice indicated that the hearing would address the SP and CN Applications. Topics for public comment included: (1) should the Commission issue a certificate of need for the Project; (2) should the Commission grant a site permit for the Project; and (3) if granted, what additional conditions or requirements should be included in a site permit.¹²⁴ The Notice was published in the *Benton County News* on November 17, 2020.¹²⁵

90. On November 24, 2020, Regal filed the direct testimony of Melissa Schmit, Michael Morris, and Jordan Burmeister.¹²⁶

91. On December 1, 2020, the Administrative Law Judge presided over a joint public hearing on the SP and CN Applications for the Project via remote means, with access online and by telephone. Commission staff, EERA staff, and representatives from Regal were present and made presentations to the attendees. As noted above, and as discussed further below, three members of the public spoke at the hearing,¹²⁷ and subsequently timely written comments on the Project were submitted by the International Union of Operating Engineers Local 49¹²⁸ the MDNR,¹²⁹ and a member of the public.¹³⁰

92. On December 23, 2020, Regal filed its Response to Public Comments.¹³¹

93. On December 23, 2020, Regal filed its proposed Findings of Fact, Conclusions of Law, and Recommendations.¹³²

IV. Description of the Project

94. The proposed Project is an up to 100 MW alternating current (AC) nameplate capacity solar energy generating facility in Langola Township, Benton County, Minnesota. The Project would also include associated facilities, including an approximately 3.3-mile-long double-circuit aboveground 3-phase 34.5 kV (kV) collection line.¹³³

95. The components of the Project include solar modules (panels) and linear axis tracking rack system; inverters, step-up transformers, electrical cables and conduits, electrical cabinets, access roads, a 34.5/115 kV step-up substation with metering and switching gear (Project Substation), security fencing, below-ground or

¹²⁴ Ex. Commission-320 (Notice of Public Hearing).

¹²⁵ Ex. Commission-321 (Newspaper Notice of Public Hearing).

¹²⁶ Ex. Regal-26 (Schmit Direct); Ex. Regal-27 (Morris Direct); Ex. Regal-28 (Burmeister Direct).

¹²⁷ See generally Pub. Hr'g Tr. (eDocket No. 202012-168933-02 (CN)).

¹²⁸ Comment by International Union of Operating Engineers Local 49 (Dec. 15, 2020) (eDocket No. 202012-169058-01 (CN)).

¹²⁹ Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

¹³⁰ Comment by Michael Kloss (Dec. 16, 2020) (eDocket No. 202012-169090-02 (CN)).

¹³¹ Regal Response to Public Comments (Dec. 23, 2020) (eDocket Nos. 202012-169346-06 (GS), 202012-169346-05 (CN)).

¹³² Regal Proposed Findings of Fact, Conclusions of Law, and Recommendations (Dec. 23, 2020) (eDocket Nos. 202012-169346-04 (GS), 202012-169346-03 (CN)).

¹³³ Ex. Regal-15 at 1, 7 (Revised SP Application); Ex. Regal-26 at 4 (Schmit Direct).

above-ground electrical collection and communication lines, an Operation and Maintenance (O&M) facility, parking lot, up to two weather stations (up to 20 feet tall), an approximately 700-foot-long 115 kV transmission line extending from the Project substation to a new Minnesota Power switching station, a Supervisory Control and Data Acquisition (SCADA) system, below-ground or above-ground or a hybrid combination of above-ground and below-ground electrical collection and communication lines, and temporary laydown areas.¹³⁴

96. The Project will utilize photovoltaic (PV) solar panels with tempered glass varying in size approximately 4 to 6.5 feet long by 2 to 3.5 feet wide, and 1 to 2 inches thick. The panels will be installed on a tracking rack system that utilizes galvanized steel and aluminum for the foundations and frame with a motor that allows the racking to rotate from east to west throughout the day. Each tracking rack will contain multiple panels. On the tracking rack system, panels will be approximately 15 feet in height from the ground to the top of the panels when at a 45-degree angle. Height may vary due to manufacturer, topography, and vegetation constraints and could reach a height of approximately 20 feet from the ground. Depending on the technology selected, the PV panels may have an aluminum frame, silicon, and weatherized plastic backing or a side-mount or under-mount aluminum frame, heat strengthened front glass, and laminate material encapsulation for weather protection.¹³⁵

97. Electrical wiring will connect the solar panels to inverters, which will convert the power from direct current (DC) to AC. The electrical collection system consists of two main parts: cables that deliver DC power to the inverter/transformer skids, and cables that deliver AC power from the inverter/transformer skids to the Project substation. The DC portion of the electrical collection system may be installed below-ground or may consist of a hybrid of above-ground/below-ground cables, depending on the geotechnical analysis, constructability, costs, and availability of materials. If installed below-ground, the cabling from the panels to the inverters would be located in a trench approximately four feet deep and one-two feet wide. If installed using the hybrid method, the electrical collection system would be strung under each row of panels on steel arms and a steel cable attached to the piles. At the end of each row, hanging brackets would connect several racks/rows of cables to a common collection point near their assigned inverter/transformer skid where the cables will be routed below-ground at a minimum depth of at least four feet below grade to the inverter/transformer skid. In either scenario, the AC portion of the collection system would be installed below-ground. In the above-ground collection system, the cables will be mounted below the panels in a fashion similar to the hybrid system, but instead of routing the cables below-ground from the inverter/transformer skid to the point of interconnection, the AC portion of the collection system would be installed above-ground on wooden poles up to 30 feet tall.¹³⁶

¹³⁴ Ex. Regal-15 at 7 (Revised SP Application); Ex. Regal-26 at 5 (Schmit Direct); Ex. Regal-19 at 12 (SP Addendum); *see also* Ex. Regal-21 at 9 (Second Revised CN Application).

¹³⁵ Ex. Regal-15 at 10-11 (Revised SP Application).

¹³⁶ Ex. Regal-26 at 3-5 (Schmit Direct); Regal-Ex. 15 at 10, 13-16 (Revised SP Application).

98. The Project will interconnect to the Project substation via an approximately 3.3-mile-long double-circuit aboveground 3-phase 34.5 kV collection line within a corridor (the Collection Line Corridor), ranging in width from 75 to 290 feet, that will run from the northwestern corner of the Land Control Area¹³⁷ approximately 3.3 miles northwest to a new Minnesota Power switching station.¹³⁸ The Collection Line Corridor runs from the northwest corner of the Land Control Area and immediately south of Halfway Crossing NW, and travels west approximately three hundred feet before crossing to the north side of Halfway Crossing NW. On the north side of Halfway Crossing NW, the Collection Line Corridor will travel west for approximately 0.4-mile, where Halfway Crossing NW turns northwest. At this point, the Collection Line Corridor extends on both sides of Halfway Crossing NW and travels along the road for 0.3-mile. The Collection Line Corridor crosses to the south side of Halfway Crossing NW prior to crossing the Platte River. On the west side of the Platte River, the Collection Line Corridor extends to both sides of Halfway Crossing Road for 0.15-mile before leaving Halfway Crossing NW and crossing Balsa Road and continuing on the south side of Barley Road NW for 0.43-mile to 65th Avenue NW. The Collection Line Corridor travels north along 65th Avenue NW for approximately 0.5-mile before turning west along a field edge for an additional 0.5-mile to 70th Avenue NW. The Collection Line Corridor follows 70th Avenue NW north for approximately quarter mile before turning west along another field edge for 0.4-mile. The Collection Line Corridor then turns south approximately 100 feet into the new Project substation.¹³⁹

99. The Project substation will interconnect to a new switching station, to be permitted, constructed, owned and operated by Minnesota Power, via an approximately 700-foot-long 115 kV transmission line. The switching station will interconnect to the regional electrical transmission system.¹⁴⁰

100. The Project will use a SCADA system to control and monitor the Project. The SCADA communications systems provides status views of electrical and mechanical data, operation and fault status, meteorological data, and grid station data.¹⁴¹

101. The Project will comply with Benton County's setback requirements, where applicable.¹⁴²

102. Regal does not currently have a signed Power Purchase Agreement (PPA) but is actively marketing the sale of electricity generated by the Project to third parties, including utilities and large energy consumers. As an independent power

¹³⁷ The "Land Control Area" is the 802 acres of privately-owned land for which Regal has a purchase option. Ex. Regal-15 at 7 (Revised SP Application).

¹³⁸ Ex. Regal-19 at 2 (SP Addendum); Ex. Regal-26 at 4-5 (Schmit Direct).

¹³⁹ Ex. Regal-19 at 2 (SP Addendum); Ex. Regal-26 at 5 (Schmit Direct).

¹⁴⁰ Ex. Regal-19 at 1, 12 (SP Addendum).

¹⁴¹ Ex. Regal-15 at 20 (Revised SP Application).

¹⁴² *Id.*

producer, Regal is not limited to the needs of one region and is able to bid into multiple wholesale markets across the country.¹⁴³

103. The total Project-installed capital costs are estimated to be approximately \$164.7 million. The final installed capital cost of the Project depends on variables including, but not limited to, construction costs, taxes, tariffs, and panel selection, along with associated electrical and communication systems, and access roads.¹⁴⁴

V. Site Location and Characteristics

104. The Project's footprint spans approximately 802 acres of privately-owned land, the Land Control Area, for which Regal has a purchase option, together with an approximately 3.3-mile overhead Collection Line Corridor which includes 84.1 acres and consists of: 48 acres of easements for above-ground collection line, a one-acre parcel (approximately 650 feet) owned by Benton County for which Regal will obtain a Utility Crossing Agreement, and a 35.1 acre Project Substation and Minnesota Power switching station review area for which Regal is currently negotiating the configuration of the facilities with the landowner based on preliminary coordination with Minnesota Power. Additionally, crossing of the Platte River within the Collection Line Corridor will require a Utility Crossing License from MDNR.¹⁴⁵

105. Based on preliminary design, aside from those to be constructed in the Collection Line Corridor, Project facilities will cover approximately 711 acres (the Preliminary Development Area).¹⁴⁶ There are approximately 91 acres of the Land Control Area for which Regal has site control, but these acres are currently not contemplated for occupation by solar facilities.¹⁴⁷

106. The Project is located in a rural area. The population density in Langola Township is 22.8 people per square mile.¹⁴⁸

VI. Solar Resource Considerations

107. Regal selected the specific Land Control Area based on significant landowner interest, transmission and interconnection suitability, optimal solar resource, and minimal impact on environmental resources.¹⁴⁹

¹⁴³ *Id.* at 1-2.

¹⁴⁴ Ex. Regal-19 at 8 (SP Addendum).

¹⁴⁵ *Id.* at 3, 6; Ex. Regal-15 at 7 (Revised SP Application); Ex. Regal-21 at 29, 31, 38 (Second Revised CN Application).

¹⁴⁶ Ex. Regal-15 at 7 (Revised SP Application); Ex. Regal-19 at 13 (SP Addendum); Ex. Regal-21 at 29 (Second Revised CN Application).

¹⁴⁷ Ex. Regal-15 at 7 (Revised SP Application); Ex. Regal-21 at 29 (Second Revised CN Application).

¹⁴⁸ Ex. Regal-15 at 32 (Revised SP Application).

¹⁴⁹ *Id.* at 7.

108. Regal estimates the Project will generate up to 100 MW, enough energy to provide electricity for approximately 23,000 homes annually and avoid the emission of approximately 150,000 metric tons of carbon annually.¹⁵⁰

VII. Project Schedule

109. Regal anticipates that construction will begin in second quarter of 2021, but this is dependent on the interconnection study review process currently being completed by MISO. Commercial operation for the Project is targeted to begin by the end of 2021, following the completion of construction and testing. If the commencement of construction is delayed, commercial operations would also be delayed approximately the same amount of time as the start of construction is delayed from that which is contemplated.¹⁵¹

VIII. Summary of Public Comments and Responses

110. At the Public Information and Environmental Scoping Meeting held on November 13, 2019, six members of the public provided verbal comments or asked questions. The participant's comments and questions included a broad range of topics, including: impacts resulting from the construction and operation of the Project; aesthetics (including concerns with an above-ground collection system from an adjacent landowner); agriculture (including access along existing farm roads); electrical interference; human health (specifically electric and magnetic fields); noise; noxious weed control; property values; recreation; screening along county roads; stray voltage; wildlife and their habitats (with emphasis on deer movement); and decommissioning.¹⁵²

111. In addition, LIUNA and MnDOT submitted written comments.

112. LIUNA supports the Project because it has the potential to benefit LIUNA's members and the public at large by creating and sustaining high-quality construction and maintenance jobs. LIUNA is concerned that, in some instances, its members have been told that energy projects will lead to local hiring, but that these commitments have not always led to actual opportunities for the local labor force. LIUNA requested that the "variable socioeconomic impacts of using local versus non-local construction workers on the project" be considered.¹⁵³

113. MnDOT requested the site permit address relevant permits or authorizations from road and rail authorities. Additionally, MnDOT requested that Regal coordinate material delivery that might affect MnDOT's right-of-way with the District 3A Engineering Specialist Senior.¹⁵⁴

¹⁵⁰ *Id.* at 1.

¹⁵¹ Ex. Regal-19 at 4 (SP Addendum).

¹⁵² Ex. EERA-203 (Public Comments Received on the Scope of the Environmental Assessment and Public Meeting Notes).

¹⁵³ Ex. Commission-315 (Comments of LIUNA Minnesota and North Dakota).

¹⁵⁴ Ex. Commission-314 (Comments of the Minnesota Department of Transportation).

114. On August 25, 2020, Commission and EERA staff jointly issued a Notice of Comment Period on Amended Certificate of Need and Site Permit Applications and the Scope of the Environmental Assessment.¹⁵⁵ No members of the public submitted comments. Two state agencies, the MDNR and BWSR, submitted written comments.

115. The MDNR's comments concerned decommissioning and repowering, oak wilt, erosion control, wildlife, state listed species, MBS Sites of Biodiversity Significance, and pollinator habitat. The MDNR included several attachments to its comments.¹⁵⁶

116. The MDNR commented favorably on Regal's stated goal of recycling as much of the solar panel materials as possible, especially semiconductor materials, and other metals, upon decommissioning. The MDNR noted the potential damage to oak savanna plant communities in the Project area due to oak wilt, especially if tree removal and branch trimming are performed between April 1 through July 15, when oak trees are most susceptible to oak wilt infection. The MDNR requested that the use of erosion control blankets be limited to "bio-netting" or "natural netting" types and that the Project review mulch products and prevent any materials with synthetic (plastic) fiber additives from being applied in areas that drain to public waters. The MDNR expressed approval of the Project's plan to install swan flight diverters along the Platte River, and recommended adding additional flight diverters to the northwest end of the Collection Line Corridor due to its proximity to high quality wildlife habitat along the Mississippi River. The MDNR commented on two rare plant species identified in the SP Addendum. The MDNR noted that Regal should limit its tree and shrub removal to periods outside of the nesting season for the Loggerhead Shrike and Lark Sparrow. The MDNR commented on an MBS site of moderate biodiversity significance located at the northwest end of the Collection Line Corridor. It also commented that the MBS site is a mapped MDNR native plant community containing state-listed species of special concern. The MDNR and BWSR provided proposed language for Permit Section 4.3.8 (Beneficial Habitat) and Permit Section 4.3.8.1 (Site Planning and Management).¹⁵⁷

117. Regal responded to these comments. Related to oak wilt, Regal agreed that, when trimming trees between April 1 and July 15, it will paint all cuts and wounds on oaks within 10 minutes of cutting with a water-soluble paint or shellac to minimize the risk for oak wilt infections. Regal also agreed to consider the MDNR's recommendations when preparing the stormwater pollution prevention plan for the Project. Regal stated it would add flight diverters to the northwest end of the Collection Line Corridor and coordinate with the MDNR on the placement of the additional flight diverters. Regal noted that it conducted field surveys of the Collector Line Corridor and did not document the Dry Sand-Gravel Oak Savanna plant community in that area. Most of the Collection Line Corridor is made up of agricultural fields or previously disturbed road right-of-way. Regal acknowledged it was aware of the mapped native plant community and agreed with the MDNR that it is outside of the Project's Collection Line Corridor. Regal stated it will work with its contractor to ensure equipment is properly cleaned before coming

¹⁵⁵ Ex. EERA-208 (Revised Scoping Decision).

¹⁵⁶ Ex. Commission-318 (Comments of the MDNR).

¹⁵⁷ *Id.*; Ex. Commission-319 (Comments of the Minnesota Board of Water and Soil Resources).

close to the MBS site to minimize the risk of non-native vegetation contaminating this site of moderate diversity. Finally, Regal indicated it was amenable to the MDNR's proposed modified permit language.¹⁵⁸

118. During the public hearing on December 1, 2020, three members of the public provided comments or questions. One commenter indicated he supported the Project, but also had questions regarding the efficiency of the Project and the technology used, for example the efficiency of solar collection in cloudy and snowy conditions. Two commenters had questions about the Project's anticipated utilization of local labor.¹⁵⁹

119. In addition, prior to the close of the comment period on December 15, 2020, three written comments were submitted by the MDNR, the International Union of Operating Engineers Local 49, and Michael Kloss.¹⁶⁰

120. The International Union of Operating Engineers Local 49 represents over 14,000 heavy equipment operating engineers over Minnesota, North Dakota, and South Dakota. The union expressed support for the Project and emphasized the importance of using local construction labor, noting benefits to the local economy, including enhanced employment and local spending.¹⁶¹

121. The MDNR recommended that a permit condition be included requiring measures to prevent oak wilt. The MDNR noted that oak wilt can be difficult to control, but that prevention measures are effective. Therefore, the MDNR proposed tree trimming and removal should be avoided within the Project area between April 1 and July 15, unless all cuts and wounds on oaks are painted within 10 minutes with a water-soluble paint or shellac.¹⁶²

122. In its Response to Public Comments, Regal agreed to the MDNR request for a permit condition regarding oak wilt prevention and proposed the following permit condition:

Oak Wilt

If the Permittee performs tree removal and/or branch trimming between April 1 and July 15, the Permittee will use its best efforts to paint all cuts and wounds on oak trees

¹⁵⁸ Ex. Regal-23 (Reply Comments regarding SP Addendum).

¹⁵⁹ See *generally* Pub. Hr'g Tr. (eDocket No. 202012-168933-01 (GS)).

¹⁶⁰ Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)); Comment by International Union of Operating Engineers Local 49 (Dec. 15, 2020) (eDocket No. 202012-169058-02 (GS)).

¹⁶¹ Comment by International Union of Operating Engineers Local 49 (Dec. 15, 2020) (eDocket No. 202012-169058-02 (GS)).

¹⁶² Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

*within 10 minutes of cutting with a water-soluble paint or shellac to minimize the risk for oak wilt infections.*¹⁶³

123. The MDNR also commented on potential impacts to deer mortality and movement due to fencing. The MDNR noted that Central Minnesota, including the Project area, is home to some of the highest deer densities in the state. The MDNR recommended a permit condition requiring fencing to be at least eight feet high without barbed or razor wire at the top.¹⁶⁴ The MDNR expressed its concern that, even using eight-foot high fencing, some deer may jump inside the fenced area and the MDNR recommended that Regal develop a means to allow deer to escape.¹⁶⁵

124. In its Response to Public Comments, Regal agreed to a permit condition requiring fencing to be at least eight feet high without barbed or razor wire at the top, as long as it is a 6-foot fence panel with 2-feet of smooth wire on top.¹⁶⁶ Regal indicated it believes that this permit condition is appropriately protective of the deer population and supported by the record. Regal maintained that it should not be required to include deer escape technology.¹⁶⁷

125. Finally, noting that the Mississippi River corridor is a major bird migration corridor, the MDNR recommended adding the following permit language related to avian protection:

*The Permittee in cooperation with the DNR shall identify areas of the project where bird flight diverters will be incorporated into the transmission line design to prevent large avian collisions attributed to visibility issues. Standard transmission design shall incorporate adequate spacing of conductors and grounding devices in accordance with Avian Power Line Interaction Committee standards to eliminate the risk of electrocution to raptors with larger wingspans that may simultaneously come in contact with a conductor and grounding devices.*¹⁶⁸

¹⁶³ Regal Response to Public Comments (Dec. 23, 2020) (eDocket Nos. 202012-169346-06 (GS), 202012-169346-05 (CN)).

¹⁶⁴ Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

¹⁶⁵ *Id.*

¹⁶⁶ Regal Response to Public Comments (Dec. 23, 2020) (eDocket Nos. 202012-169346-06 (GS), 202012-169346-05 (CN)).

¹⁶⁷ *Id.*

¹⁶⁸ Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

126. In its Response to Public Comments, Regal indicated it was amenable to the MDNR's proposed permit language regarding avian protection with some language revisions to reflect that the overhead power lines to which the MDNR refers to is primarily an overhead collector line. Regal proposed the following revisions to the permit language:

*The Permittee in cooperation with the DNR shall identify areas of the ~~project~~ **Collection Line Corridor** where bird flight diverters will be incorporated into the ~~transmission~~ **above ground power** line design to prevent large avian collisions attributed to visibility issues. Standard ~~transmission~~ **above ground power** line design shall incorporate adequate spacing of conductors and grounding devices in accordance with Avian Power Line Interaction Committee standards to eliminate the risk of electrocution to raptors with larger wingspans that may simultaneously come in contact with a conductor and grounding devices.*¹⁶⁹

127. Michael Kloss's comments asked questions about the displacement of Project materials onto adjacent properties as the result of weather events during operation of the Project. Specifically, Mr. Kloss asked how adjacent landowners would be compensated if, as the result of a weather event such as a tornado, the material used to manufacture the solar panels was "relocated" into adjacent fields currently used for vegetable production and the fields were resultingly rendered "unfit" for commercial vegetable production due to high amounts of foreign material found in the soil.¹⁷⁰

128. In its Response to Public Comments, Regal responded that, as described in the testimony of Michael Morris, the solar panels are designed to withstand significant impacts such as those from weather systems and are securely fastened to the racking. Regal also noted that it would be responsible for retrieving equipment that is blown beyond the Project boundaries and that in the unlikely event a solar panel would dislodge, blow onto another property and shatter, the panel components are highly unlikely to leach any material into the soil or otherwise interfere with agricultural production.¹⁷¹

IX. Site Permit Criteria

129. Large electric power generating plants (LEPGP) are governed by Minn. Stat. ch. 216E and Minn. R. part 7850. Minn. Stat. § 216E.01, subd. 5, defines a "large electric power generating plant" as "electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more."

¹⁶⁹ Regal Response to Public Comments (Dec. 23, 2020) (eDocket Nos. 202012-169346-06 (GS), 202012-169346-05 (CN)).

¹⁷⁰ Comment by Mr. Michael Kloss (Dec. 16, 2020) (eDocket No. 202012-169090-01 (GS)).

¹⁷¹ Regal Response to Public Comments (Dec. 23, 2020) (eDocket Nos. 202012-169346-06 (GS), 202012-169346-05 (CN)).

130. On March 13, 2019, Regal submitted information to the Minnesota Department of Commerce requesting a size determination for the Project.¹⁷² Due to the size of the Project, a site permit is required prior to construction.¹⁷³

131. An LEPGP powered by solar energy is eligible for the alternative permitting process authorized by Minn. Stat. § 216E.04. Regal filed the SP Application under the process established by the Commission in Minn. R. 7850.2800-.3900.¹⁷⁴

132. Under Minn. Stat. § 216E.04, for an LEPGP permitted under the alternative permitting process, EERA prepares an EA for the Commission. The EA contains information on the human and environmental impacts of the proposed project and addresses mitigating measures. The EA is the only state environmental review document required to be prepared on the project. EERA staff is responsible for evaluating the site permit application and administering the environmental review process.

X. Application of Siting Criteria to the Proposed Project

A. Human Settlement

133. The Project is in rural central Minnesota. Langola Township's population density is 22.8 people per square mile.¹⁷⁵

134. The construction of the Project will not displace residents or buildings.¹⁷⁶

1. Zoning and Land Use

135. The Land Control Area is zoned as agricultural. The Benton County Development Code provides that the development of solar energy systems, that are not otherwise under the jurisdiction of the Commission, are a permitted use within the agricultural district. The Project's facilities will be sited to comply with the county's setback requirements, where applicable.¹⁷⁷

136. There are no public conservation and recreation lands within the Land Control Area and there are no properties in government programs or with conservation easements in the Land Control Area.¹⁷⁸

¹⁷² Ex. Regal-15 at 1 (Revised SP Application).

¹⁷³ EERA-211 at S-2 (EA).

¹⁷⁴ See Ex. Regal-3 (Notice of Application to File Site Permit under Alternative Permitting Process); Ex. Regal-4 (Corrected Cover Letter re Notice of Application to File Site Permit under Alternative Permitting Process).

¹⁷⁵ Ex. Regal-15 at 30, 32 (Revised SP Application).

¹⁷⁶ Ex. EERA-211 at 33 (EA); Ex. Regal-15 at 34 (Revised SP Application); Ex. Regal-19 at 26 (SP Addendum).

¹⁷⁷ Ex. Regal-15 at 20, 47 (Revised SP Application).

¹⁷⁸ *Id.* at 69.

137. There are no public conservation and recreation lands or properties in government programs or with conservation easements in the Collection Line Corridor. The Collection Line Corridor crosses the Platte River. This crossing has been designed to maximize the span width across the waterbody and collocate the crossing paralleling Halfway Crossing NW.¹⁷⁹

138. Development of the Project would result in the change of land use in the Land Control Area from an agricultural use to an industrial use for the life of the Project.¹⁸⁰ Regal has designed the above-ground collection line to maintain existing land use, primarily agriculture.¹⁸¹ After the useful life of the Project, the Land Control Area could be restored to agricultural use or other planned uses.¹⁸² The conversion of agricultural land into a solar farm “is not expected to interfere with Benton County zoning ordinances.”¹⁸³

139. Of the 261,120 acres in Benton County, approximately 72 percent (or approximately 188,735 acres) are classified as agricultural land; impacts to the approximately 711 acres of agricultural land within the Project’s Preliminary Development Area would reduce the amount of agricultural land in the county by less than one percent.¹⁸⁴

2. Property Values

140. Property values are influenced by a complex interaction between factors specific to each individual piece of real estate as well as local and national market conditions, making potential changes to a specific property’s value difficult to determine.¹⁸⁵

141. The installation of the Project would create visual impacts when viewed from adjacent properties. The Project is not expected to generate emissions or cause noise-related impacts during operation.¹⁸⁶

142. Widespread negative impacts to property value as a result of the Project are not anticipated. It is possible that specific, individual property values may be negatively impacted. Impacts to property values can be mitigated in part by proper siting and vegetation management and screening the site.¹⁸⁷ Based on the electrical configuration, impacts to property values could differ. The above-ground collection system would have the greatest amount of aesthetic impact due to their highly visible

¹⁷⁹ Ex. Regal-19 at 36, 41, 43 (SP Addendum).

¹⁸⁰ Ex. Regal-15 at 47 (Revised SP Application).

¹⁸¹ Ex. Regal-19 at 26-27 (SP Addendum); Ex. EERA-211 at 71 (EA).

¹⁸² Ex. Regal-15 at 30 (Revised SP Application).

¹⁸³ *Id.* at 47; Ex. EERA-211 at 56 (EA).

¹⁸⁴ Ex. Regal-15 at 47 (Revised SP Application); Ex. EERA-211 at 71 (EA).

¹⁸⁵ Ex. EERA-211 at 58-59 (EA).

¹⁸⁶ *Id.* at 33.

¹⁸⁷ *Id.* at 53-54, 59.

nature compared to the hybrid and below-ground collection systems, thus creating greater indirect impacts to property values.¹⁸⁸

3. Aesthetic Impacts

143. The existing landscape in the Land Control Area is generally flat and agricultural.¹⁸⁹ The existing landscape in the Collection Line Corridor is generally agricultural, except at the Platte River crossing, and existing distribution lines and transmission lines occur within or adjacent to the Collection Line Corridor and are existing man-made focal points.¹⁹⁰

144. Negative aesthetic impacts will be experienced by neighboring landowners and individuals using adjacent local roads. The project will result in visible landscape changes. Based on preliminary design, approximately 670 acres of row crop fields will be converted to an industrial facility. Impacts associated with the collection line are likely to be more associated with removal of trees as opposed to the collection line itself given the existence of an existing distribution line. The Collection Line Corridor will replace approximately one and six-tenths miles of shelter belt vegetation with distribution line. A new substation will be constructed introducing an industrial built structure into agricultural space, as well as a new lit feature to the landscape. There are sixteen residences/farmsteads within the 1,600 feet, and five local roads. Two Rivers campground is located adjacent to the Project.¹⁹¹

145. Regal has coordinated with the landowners of the three residences on parcels adjacent to the Land Control Area and the Two Rivers Campground.¹⁹² Regal has also contacted most of the landowners along the Collection Line Corridor to provide them with information and answer any questions about the Project.¹⁹³ Regal has designed the above-ground collection line to follow existing roads and parcel lines for its entire length.¹⁹⁴ The Project is not expected to create significant visual impacts to the campground due to existing vegetation and the seasonal nature of the campground.¹⁹⁵

146. The impact intensity level is expected to be minimal to moderate for those with low viewer sensitivity, for example, passing motorists along U.S. Highway 10. For those with high viewer sensitivity, for example, neighboring landowners or recreationalists, the anticipated impact intensity level is anticipated to be moderate to significant. Impacts will be short and long-term, and localized.¹⁹⁶ However, aesthetic

¹⁸⁸ *Id.* at ASF-2.

¹⁸⁹ Ex. Regal-15 at 37 (Revised SP Application).

¹⁹⁰ Ex. Regal-19 at 21 (SP Addendum); Ex. EERA-211 at 52-53 (EA).

¹⁹¹ Ex. EERA-211 at 52-53 (EA).

¹⁹² Ex. Regal-15 at 38 (Revised SP Application).

¹⁹³ Ex. Regal-28 at 2 (Burmeister Direct).

¹⁹⁴ Ex. Regal-19 at 22 (SP Addendum).

¹⁹⁵ Ex. EERA-211 at 60 (EA).

¹⁹⁶ *Id.* at 52.

impacts are subjective, and will depend upon the perception and philosophical or psychological responses unique to individuals.¹⁹⁷

147. Regal will install lighting that is down lit to minimize impacts to adjacent uses.¹⁹⁸

148. Based on the electrical configuration, impacts to aesthetics will differ. The above-ground collection system would have the greatest amount of aesthetic impact due to their highly visible nature compared to the hybrid and below-ground collection systems.¹⁹⁹

149. Section 4.3.7 of the Sample Site Permit requires the Applicant to consider visual impacts from landowners and land management agencies.²⁰⁰

4. Public Service and Infrastructure

150. The Project is located in a rural area in central Minnesota. There is an established transportation network that provides access to the Project.²⁰¹ Utilities within the Project area are typical of rural areas across central Minnesota. The Project area is not serviced by city water supply or sanitary sewer. Distribution lines exist throughout the local vicinity.²⁰²

151. During construction, temporary impacts are anticipated on some public roads in the Project area. Construction activities will increase the amount of traffic using local roadways, and such use might result in congestion which would be noticeable to neighboring landowners. Operation of the Project after construction will not noticeably increase traffic. No impacts to roads are anticipated during the operation; negligible traffic increases would occur for maintenance.²⁰³ The impact intensity level will be minimal. Potential impacts associated with construction are anticipated to be short-term, intermittent, and localized.²⁰⁴

152. Besides driveway approaches at access points, upgrades or changes to existing roads necessary to construct the Project are only needed at the Project Substation. Regal may upgrade an existing 1,400-foot two-track dirt road from dirt to gravel in coordination with the landowner “to enhance the reliability and usability of this road to better suit the access needs of the Project and landowner accessing the agricultural field.”²⁰⁵

¹⁹⁷ *Id.* at 51.

¹⁹⁸ *Id.* at 53.

¹⁹⁹ *Id.* at ASF-2.

²⁰⁰ *Id.* at 53.

²⁰¹ *Id.* at 67-68.

²⁰² *Id.* at 68-69.

²⁰³ *Id.* at 67-68.

²⁰⁴ *Id.* at 68.

²⁰⁵ *Id.*

153. Regal will coordinate with Gopher State One Call prior to and during construction to locate and avoid underground facilities. To the extent Project facilities cross or otherwise impact existing underground utilities, Regal will coordinate with the utility to reroute or otherwise protect the utility.²⁰⁶

154. Regal filed Federal Aviation Administration (FAA) 7460-1 Notice of Proposed Construction forms for the perimeter of the Land Control Area. On October 12, 2018, the FAA provided Determinations of No Hazard to air navigation for each of the seven points around the Land Control Area. As such, Project facilities will not exceed obstruction standards and would not be a hazard to air navigation.²⁰⁷

155. Regal and ECE will enter into an agreement that will require, at Regal's expense, ECE to bury its collection line from the Land Control Area to the intersection of Halfway Crossing Road and Balsa Road. Short outages might occur. Customers might experience a 15- to 30-minute outage when the distribution line is disconnected and temporary service is established. The timing and duration of any service interruptions would be determined and communicated by Minnesota Power and ECE. Potential outages associated with the Minnesota Power 115 kV line are anticipated to be approximately one hour or less.²⁰⁸

156. Section 4.3.12 of the Sample Site Permit requires the Applicant to inform road authorities of roads that will be used during construction and acquire necessary permits and approvals for oversize and overweight loads. The Sample Site Permit also requires the Applicant to minimize disruption to public services and public utilities and to restore service promptly if disrupted by the Applicant.

5. Recreational Resources

157. Recreational opportunities in the vicinity of the Project include biking, boating, fishing, camping, swimming, snowmobiling, and nature viewing associated primarily with snowmobile trails, the Mississippi and Platte Rivers, and Two Rivers campground — a privately owned, seasonally operated, campground with 221 campsites, lodge, pool, mini golf, boat access, and tube rentals.²⁰⁹

158. There are no MDNR classified lands, such as State Forests, State Parks, State Trails, Aquatic Management Areas, Wildlife Management Areas, or Scientific and Natural Areas; federal parks, forests, or refuges; or county parks within the local vicinity of the Project. The Mississippi State Water Trail and the Great River Road are within the local vicinity. The Project is not expected to be visible; however, noise related impacts might occur during Project construction.²¹⁰

²⁰⁶ Ex. Regal-15 at 49 (Revised SP Application).

²⁰⁷ *Id.* at 51; Ex. EERA-211 at 49 (EA).

²⁰⁸ Ex. Regal-19 at 28 (SP Addendum); Ex. EERA-211 at 69 (EA).

²⁰⁹ Ex. EERA-211 at 59-60 (EA).

²¹⁰ *Id.* at 60.

159. Two Rivers is immediately adjacent to the Project along 145 Street NW. During construction, visitors will drive through a construction area on their way to the campground. Once operational, visitors will drive through an industrial area. As a result, the look and feel of the campground might change. This impact would be subjective. The Project is not expected to create significant visual impacts to the campground due to existing vegetation and the seasonal nature of the campground.²¹¹

160. Recreationalists float the Platte River. Two Rivers provides a shuttle service to a location upstream of the Halfway Crossing Road bridge. Floaters will cross underneath the collection line at the bridge. Impacts are negligible given the existence of an existing distribution line at this location.²¹²

161. An existing snowmobile trail bisects the Land Control Area. This trail is a major east-west connector and is associated with one of three Mississippi River crossings between Little Falls and Sartell. It would need to be rerouted as a result of the Project. Regal has discussed the trail with the local snowmobile club, and indicates “it is likely the trail [as travelling east to west] would be rerouted to follow the railroad right-of-way for an additional 1,900 feet to get beyond the proposed fence . . . before turning south through agricultural fields.” Impacts are anticipated to be negligible, given that snowmobile trails travel through a variety of landscapes, and often follow built infrastructure. In the local vicinity, the trail follows U.S. Highway 10; therefore, the Project would be consistent with use expectations.²¹³

162. Based on the electrical configuration, impacts to recreation at the Two Rivers campground could differ. The above-ground collection system would have the greatest amount of aesthetic impact due to their highly visible nature compared to the hybrid and below-ground collection systems, thus potentially creating greater indirect impacts to recreation.²¹⁴

B. Public Health and Safety

163. Electric and magnetic fields (EMFs) are present around any electrical device. Electric fields arise from the voltage or electrical charges and magnetic fields arise from the flow of electricity or current that travels along transmission lines, power collection lines, substation transformers, house wiring, and electrical appliances.²¹⁵

164. Based on the most current research on electromagnetic fields, and the distance between the Project and houses, impacts are anticipated to be negligible, and are not expected to negatively affect human health.²¹⁶

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at 60-61; Ex. Regal-15 at 45 (Revised SP Application).

²¹⁴ Ex. EERA-211 at ASF-2 (EA).

²¹⁵ Ex. Regal-15 at 33 (Revised SP Application).

²¹⁶ *Id.* at 34; Ex. EERA-211 at 63-65 (EA).

165. There are two types of stray voltage: induced voltage and neutral-to-earth voltage. Induced voltage is associated with an electric field extending from a transmission line to nearby conductive objects. Neutral-to-earth voltage is a type of stray voltage that can occur where distribution lines enter structures causing extraneous voltage to appear on metal surfaces in buildings, barns, and other structures. The Project will not result in the construction of large transmission lines; interconnect to businesses, farms, or residences; or change local electrical service; therefore, impacts are not expected.²¹⁷

166. Based on the electrical configuration, impacts could differ. While not expected to be significant, the potential exists for increased electrical interference at overhead road crossings making the above-ground system less consistent than the below-ground system.²¹⁸

167. Worker safety issues primarily relate to construction activities. During operation there are occupational risks like those associated with construction, but to a much lesser degree. Public risks would result from unauthorized entry into the facility. These risks are minimized by fencing that will deter public access, and signage will provide appropriate public warnings. An Operations and Emergency Action Plan will be developed with local first responders. Impacts are anticipated to be minimal.²¹⁹

168. In Minnesota, solar panels discarded by commercial entities must be assumed to be hazardous waste due to the probable presence of heavy metals, unless they are specifically evaluated as non-hazardous. Heavy metals in solar panels can include arsenic, cadmium, lead and selenium. If hazardous waste, they must be properly disposed of in a special facility or recycled if recyclers are available.²²⁰

169. Section 4.3.19 of the Sample Site Permit contains conditions to address public safety. In accordance with those conditions, Regal will provide educational materials to landowners adjacent to the Land Control Area and, upon request, to interested persons about the Project and any restrictions or dangers associated with the Project.²²¹

C. Land-Based Economies

1. Local Economy

170. Potential impacts associated with construction of the Project will be positive, but minimal and short-term. Significant positive effects might occur for some individuals. Impacts from operation will be long-term, positive, and significant. The project will not disrupt local communities or businesses, and it does not

²¹⁷ Ex. EERA-211 at 51 (EA).

²¹⁸ *Id.* at ASF-2.

²¹⁹ *Id.* at 66-67.

²²⁰ *Id.*

²²¹ *Id.* at 67.

disproportionately impact low-income or minority populations. Adverse impacts are not anticipated.²²²

171. Positive economic impacts include increased expenditures, for example, food and fuel, at local businesses during construction. The applicant indicates that some materials might be purchased locally depending on availability, terms and conditions, etc.²²³

172. Landowner compensation is established by a voluntary purchase agreement between the landowner and Regal for Regal's purchase of the land.²²⁴

173. Regal will establish the Regal Education Fund upon commercial operation, to which Regal will contribute \$20,000 annually for the first 20 years of the Project's operation. Because the Project is located within the Royalton and Sauk Rapids-Rice school districts, the fund will be distributed equally to both. Regal will continue to coordinate with both school districts to establish the fund as the Project develops.²²⁵

174. In addition to creating jobs and personal income, the Project will provide annual production tax revenues of approximately \$220,000 annually to local governments, or \$5.5 million over 25 years.²²⁶

2. Agriculture

175. The majority of the Land Control Area, 768.7 acres (95.8 percent), is in agricultural use. The majority of the Collection Line Corridor is agricultural, comprising 61.3 acres (72.8 percent). Developed land uses make up 20.6 acres (2.6 percent) of the Land Control Area and 16.7 acres (19.8 percent) of the Collection Line Corridor. Forested or shrubland comprises a combined 12.8 acres (1.6 percent) of the Land Control Area and 5.6 acres (6.6 percent) of the Collection Line Corridor. Introduced and semi natural vegetation comprised 0.2 acre (<0.1 percent) of the Land Control Area and 0.7 (0.8 percent) of the Collection Line Corridor. Open Water is present in only 0.1 acre (<0.1 percent) of the Land Control Area.²²⁷

176. The Project will impact up to 711 acres of agricultural land within the Preliminary Development Area of the Project and partially occupy up to 25 acres of agricultural and right-of-way land in the Collection Line Corridor. Agricultural production would be allowed to continue in the area outside of the fence line of the solar facility (and within the portions of the Collection Line Corridor that are currently used for agricultural production) during construction and operation of the Project.²²⁸

²²² Ex. Regal-15 at 43 (Revised SP Application); Ex. EERA-211 at 62-63 (EA).

²²³ Ex. EERA-211 at 62 (EA).

²²⁴ Ex. Regal-15 at 43 (Revised SP Application).

²²⁵ *Id.*

²²⁶ *Id.* at 43-44.

²²⁷ *Id.* at 46; Ex. Regal-19 at 25-26 (SP Addendum).

²²⁸ Ex. Regal-21 at 24 (Second Revised CN Application).

177. The revenue lost from removing land from agricultural production will be offset by the purchase option with the landowner.²²⁹

178. Regal has designed the above-ground collection line within the Collection Line Corridor to maintain existing land use, and agricultural land uses in particular. The alignment of the collection line and placement of poles were designed to not interfere with agricultural activities, including center-pivot irrigation. Additionally, the Project Substation is sited in an agricultural field corner outside the center-pivot area. The 115 kV gen-tie transmission line has been sited to avoid structure placement within the agricultural field in coordination with the landowner so as not to interfere with agricultural activities, such as operation of center-pivot irrigators when practicable.²³⁰

179. The presence of the Project will not result in a significant impact to land-based economies in the Project vicinity, as this acreage constitutes less than one half of one percent of the agricultural land in Benton County (188,735 acres).²³¹

3. Prime Farmland

180. The United States Department of Agriculture defines prime farmland as land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water).²³²

181. Minn. R. 7850.4400, subp. 4, states that no large electric power generating plant site (including a solar energy generating system) can include more than one-half acre of prime farmland per MW of net generating capacity, unless no feasible and prudent alternative exists.²³³

182. There is no prime farmland in the Land Control Area and there are approximately 2.1 acres of prime farmland within the Collection Line Corridor.²³⁴ The Project does not exceed the one-half acre of prime farmland per MW of net generating capacity threshold test; therefore, Regal is not required to define feasible and prudent alternatives to the proposed Project to meet the requirements of Minn. R. 7850.4400.²³⁵

183. Regal has developed an Agricultural Impact Mitigation Plan (AIMP) in coordination with the Minnesota Department of Agriculture to identify methods that Regal and its contractors can use to avoid, repair and/or mitigate for potential negative agricultural impacts from the design, construction, operation, and eventual restoration of the Project; these plans outline measures designed to ensure the land may be returned

²²⁹ Ex. Regal-15 at 51 (Revised SP Application); Ex. EERA-211 at 71 (EA).

²³⁰ Ex. Regal-19 at 29 (SP Addendum).

²³¹ Ex. Regal-15 at 51 (Revised SP Application); Ex. Regal-21 at 24 (Second Revised CN Application).

²³² Ex. Regal-15 at 59 (Revised SP Application); Ex. EERA-211 at 70 (EA).

²³³ Ex. EERA-211 at 71 (EA).

²³⁴ Ex. Regal-21 at 39 (Second Revised CN Application); Ex. Regal-15 at 59 (Revised SP Application); Ex. Regal-19 at 7 (SP Addendum); Ex. EERA-211 at 71 (EA).

²³⁵ Ex. EERA-211 at 71 (EA).

to future agricultural usages following the closure and decommissioning of the Project.²³⁶

184. Section 4.3.18 of the sample permit requires permittees restore or compensate landowners for damages to crops, fences, drain tile, etc. during construction.²³⁷

D. Archeological and Historic Resources

185. Regal engaged Area M Consulting (Area M) to conduct a Phase I cultural resources investigation of the Land Control Area. Area M also conducted a Phase I field inventory of the entire 802-acre Land Control Area in June 2018. No archaeological or historic sites, or historic architectural resources were identified during Phase I inventory of the Land Control Area; therefore, the construction and operation of the Project will not impact historic properties listed in, eligible for, or potentially eligible for listing in the National Register of Historic Places (NRHP). In a letter dated April 18, 2019, SHPO concurred with Area M's recommendations that the Project would not affect historic properties listed in or eligible for listing in the NRHP.²³⁸

186. In June 2020, Area M conducted an additional Phase I cultural resources literature review and field inventory of the 84.1-acre Collection Line Corridor. The above-ground collection line crosses previously recorded site 21BN003 on the north side of Halfway Crossing NW. Site 21BN003 is a prehistoric site that is listed in the NRHP. Area M revisited the previously recorded site location during Phase I survey of the Collection Line Corridor. Although possible cultural materials were observed on the ground surface, extensive sub-surface testing did not identify intact cultural horizons or site integrity. Because no archaeological or historic sites, or historic architectural resources were identified during Phase I survey and impacts on Site 21BN003 will be avoided, construction and operation of the Project will not impact historic properties listed in, eligible for, or potentially eligible for listing in the NRHP. In a letter dated November 13, 2020, SHPO concurred with Area M's recommendations and concluded that no adverse effect if mitigation measures are followed.²³⁹

187. Regal designed the above-ground collection line to span site 21BN003 to avoid impacts to the previously recorded site boundary and an associated 50-foot buffer. Furthermore, Regal Solar will install temporary fencing to demark the 50-foot buffer area within the Collection Line Corridor during construction to further protect the site from construction traffic.²⁴⁰

188. Section 4.3.13 of the sample permit addresses archeological resources. If previously unidentified archaeological sites are found during construction, Regal would

²³⁶ *Id.*; Ex. Regal-15 at 47-48 (Revised SP Application).

²³⁷ Ex. EERA-211 at 72 (EA).

²³⁸ Ex. Regal-15 at 53 (Revised SP Application); Ex. EERA-211 at 73 (EA).

²³⁹ Ex. Regal-15 at 53 (Revised SP Application); Ex. EERA-211 at 73 (EA); Ex. Regal-26 at 6 (Schmit Direct).

²⁴⁰ Ex. Regal-19 at 30-31 (SP Addendum); Ex. EERA-211 at 73 (EA).

be required to stop construction and contact the SHPO to determine how best to proceed. Ground disturbing activity will stop and local law enforcement will be notified should human remains be discovered. Because impacts to archeological and historic resources are not anticipated, additional mitigation is not proposed.²⁴¹

E. Natural Environment

1. Wildlife

189. Wildlife utilizing the Land Control Area are common species associated with disturbed habitats and are accustomed to human activities occurring in the area, for example, agricultural activities and road traffic. Mammals, reptiles, amphibians, and insects are present. These species include white-tailed deer, red fox, striped skunk, wild turkey, ring-necked pheasant, sandhill crane, passerines, rodents, garter snake, gopher snake, and insects. The area is used by ducks, geese, and, in recent years, trumpeter swans. Central Minnesota has some of the highest deer densities in the state. Based on the proximity to river bottom habitat, species that use the river might move through and forage in the Land Control Area. These species include river otter, beaver, muskrat, and waterfowl.²⁴²

190. Given the agricultural nature of the Land Control Area, impacts to the current wildlife inhabiting the area are expected to be minimal. Population level impacts are not anticipated; however, small species might be crushed or otherwise killed during construction. Individuals will be displaced to adjacent habitats during construction. Because the land control area does not provide important habitat, this should not impact life cycle functions, for example, nesting.²⁴³

191. The largest impact to wildlife associated with the Project would result from fencing. Studies estimate that one ungulate per year becomes entangled for every two and one-half miles of fence. Deer can jump many fences, but smooth or barbed-wire can snag animals and tangle legs, especially if wires are loose and spaced too closely together.²⁴⁴ Predators can use fences to corner and kill prey species. Bird injuries or mortality occurs from fencing due to lack of visibility; raptors in pursuit of prey are particularly impacted by “nearly invisible” wire fencing strands, and low flying birds such as grouse and owls are also vulnerable to fence collisions.²⁴⁵

192. In its comments submitted on December 15, 2020, the MDNR commented on potential impacts to deer mortality and movement due to fencing. The MDNR recommended a permit condition be imposed requiring fencing to be at least eight feet high without barbed or razor wire at the top.²⁴⁶ In its Response to Public Comments, Regal agreed to a permit condition requiring fencing to be at least eight feet high without

²⁴¹ Ex. EERA-211 at 74 (EA).

²⁴² *Id.* at 84-85.

²⁴³ Ex. Regal-15 at 64 (Revised SP Application); *see also* Ex. EERA-211 at 84-85 (EA).

²⁴⁴ *See* Ex. EERA-211 at 87 (EA) (providing an image of an entangled deer at Figure 15).

²⁴⁵ *Id.* at 85.

²⁴⁶ Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

barbed or razor wire at the top, as long as it is a 6-foot fence panel with 2-feet of smooth wire on top.²⁴⁷

193. The MDNR further stated that even at eight feet, some deer may jump the fence and recommended that Regal develop a means to allow deer to escape.²⁴⁸ The record does not provide any data or other evidence indicating the likelihood of deer becoming trapped within the fenced area.²⁴⁹ The EERA maintains that, in the absence of facts in the record on this issue, deference should be given to the MDNR and that Regal should be required to work with the MDNR to include deer escape technology.²⁵⁰

194. During operations, birds may be injured or killed due to either collisions with the above-ground collection line components or electrocution. Regal will construct and operate the Project according to Avian Power Line Interaction Committee (APLIC) recommended standards to reduce the potential for avian collisions and electrocutions. Additionally, to mitigate the collision risk, and based on coordination with the MDNR, Regal will install swan flight diverters on the portion of the aboveground collection line along the Platte River and the northwest end of the Collection Line Corridor. Specific locations will be identified in coordination with the MDNR.²⁵¹ In its December 15, 2020, comments, the MDNR recommended adding permit language to this effect, similar to that included in transmission line route permits.²⁵² In its Response to Public Comments, Regal indicated it was amenable to the MDNR's proposed permit language regarding avian protection with some language revisions to reflect that the overhead power lines the MDNR is referring to is primarily an overhead collector line. Regal proposed the following revisions:

*The Permittee in cooperation with the DNR shall identify areas of the ~~project~~ **Collection Line Corridor** where bird flight diverters will be incorporated into the ~~transmission~~ **above ground power** line design to prevent large avian collisions attributed to visibility issues. Standard ~~transmission~~ **above ground power** line design shall incorporate adequate spacing*

²⁴⁷ Regal Response to Public Comments (Dec. 23, 2020) (eDocket Nos. 202012-169346-06 (GS), 202012-169346-05 (CN)).

²⁴⁸ Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

²⁴⁹ Regal argues that the MDNR provided no evidence in support of its concern that deer may become trapped within the Project's fencing, and Regal offered anecdotal information on this issue in its proposed findings. See Regal Proposed Findings of Fact, Conclusions of Law, and Recommendations at 22 (Dec. 23, 2020) (eDocket Nos. 202012-169346-04 (GS), 202012-169346-03 (CN)). The EERA objects that this anecdotal information is not supported by the record and was not vetted through the EA. DOC EERA Reply Comments at 3 (Jan. 15, 2021) (eDocket Nos. 20211-169878-01 (GS), 20211-169879-01 (CN)). The EERA maintains that in the absence of specific evidence in the record, the Commission should defer to the MDNR's expertise in this area. This issue is discussed further in connection with identifying permit conditions below.

²⁵⁰ Regal Response to Public Comments (Dec. 23, 2020) (eDocket Nos. 202012-169346-06 (GS), 202012-169346-05 (CN)); DOC EERA Reply Comments at 3 (Jan. 15, 2021) (eDocket Nos. 20211-169878-01 (GS), 20211-169879-01 (CN)).

²⁵¹ Ex. Regal-19 at 38 (SP Addendum); Ex. Regal-23 (Reply Comments regarding SP Addendum); Ex. EERA-211 at 86 (EA); Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

²⁵² Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

*of conductors and grounding devices in accordance with Avian Power Line Interaction Committee standards to eliminate the risk of electrocution to raptors with larger wingspans that may simultaneously come in contact with a conductor and grounding devices.*²⁵³

195. Under Section 8.12 of the Sample Site Permit, Regal will be required to report wildlife injuries and fatalities to the Commission on a quarterly basis.

196. The above-ground electrical collection system could cause greater negative impacts to wildlife through increased potential for bird collisions and electrocution compared to the hybrid or below-ground collection system.²⁵⁴

197. The Project area includes mostly open land habitat; however, wood land and wetland habitats exist within the local vicinity. The Mississippi River corridor is a major migration corridor for a variety of birds. The row crop habitat being converted is not crucial to wildlife populations. The land control area is likely used as a travel corridor or, occasionally, as a food source (for example, standing corn). The Collection Line Corridor will remove approximately one and six-tenths miles of shelter belts. These areas provide habitat for small birds and mammals. Shelter belts also provide a travel corridor for wildlife passing through the area. Overall, the project does not contribute to significant habitat loss or degradation or create new habitat edge effects.²⁵⁵

198. Once restored, the land control area will provide native grassland habitat for the life of the Project. This change might be attractive to some species, and not others. Fencing will restrict ingress and egress of larger wildlife, and habitat benefits will be limited to small mammals, birds, insects, etc. accustomed to human disturbance. The habitat will be mowed up to three times yearly, which might limit nesting opportunities, etc.²⁵⁶

2. Vegetation

199. The majority of the land area within the Land Control Area and the Collection Line Corridor is cultivated agricultural land.²⁵⁷

200. There is no MDNR-mapped native prairie in the Land Control Area.²⁵⁸ There are no records of rare plants, native prairie, or native plant communities in the Collection Line Corridor.²⁵⁹

²⁵³ Regal Response to Public Comments (Dec. 23, 2020) (eDocket Nos. 202012-169346-06 (GS), 202012-169346-05 (CN)).

²⁵⁴ Ex. EERA-211 at ASF-5 (EA).

²⁵⁵ *Id.* at 86-87.

²⁵⁶ *Id.* at 87.

²⁵⁷ *Id.* at 82; Ex. Regal-19 at 26 (SP Addendum).

²⁵⁸ Ex. Regal-15 at 68 (Revised SP Application); Ex. EERA-211 at 83 (EA).

²⁵⁹ Ex. Regal-19 at 37 (SP Addendum).

201. Construction of the Project will eliminate vegetative cover at access roads, the Project Substation, O&M building, and parking lot. In the Land Control Area agricultural row crop fields would be converted to perennial, low-growing vegetative cover, resulting in a net increase in vegetative cover for the life of the Project. Native seed mixes developed in cooperation with the MDNR will be used. Once established, vegetation would most likely be maintained by mowing.²⁶⁰

202. The Collection Line Corridor will result in the removal of approximately one and sixth-tenths miles of shelter belt. Additionally, the existing ECE distribution line crosses the Platte River to the north of Halfway Crossing Road. The collection line is proposed to cross to the south. This will result in a new corridor being cleared over the river.²⁶¹

203. Use of the above-ground electrical collection system would require small amounts of tree clearing.²⁶² Regal has designed the Project to minimize tree clearing, and the existing vegetative screening along roads, including Halfway Crossing NW, will also remain.²⁶³

204. The MDNR commented on potential damage to oak savanna plant communities in the Project area due to oak wilt, especially if tree removal and branch trimming are performed during the period between April 1 through July 15, when oak are most susceptible to oak wilt infection. The MDNR recommended that tree trimming and removal should be avoided within the Project area between April 1 and July 15, unless all cuts and wounds on oaks are painted within ten minutes with a water-soluble paint or shellac.²⁶⁴ Regal committed that if it needs to trim trees between April 1 and July 15, it will use its best efforts to paint all cuts and wounds on oaks within 10 minutes of cutting with a water-soluble paint or shellac to minimize the risk for oak wilt infections.²⁶⁵ To ensure compliance, the MDNR has recommended including a permit condition requiring measures to prevent oak wilt.²⁶⁶

205. Section 4.3.7 of the Sample Site Permit requires that vegetation clearing be limited to only the extent necessary for construction access and safe operation and maintenance of the Project. Section 4.3.8 requires implementation of site restoration and management practices that provide for native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators. Section 4.3.9 discusses pesticide use. Section 4.3.10 requires permittees to employ best management practices to avoid the potential introduction and spread of invasive species on lands disturbed by

²⁶⁰ Ex. EERA-211 at 82 (EA).

²⁶¹ *Id.*

²⁶² *Id.* at 83.

²⁶³ Ex. Regal-15 at 46 (Revised SP Application); Ex. Regal-19 at 25 (SP Addendum).

²⁶⁴ Ex. Commission-318 (Comments of the MDNR); Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

²⁶⁵ Ex. Regal-23 (Reply Comments regarding SP Addendum).

²⁶⁶ Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

project construction. Section 4.3.11 requires permittees to take all reasonable precautions against the spread of noxious weeds during all phases of construction.²⁶⁷

206. Regal has developed a Vegetation Management Plan (VMP) to guide site preparation, installation of prescribed seed mixes, management of invasive species and noxious weeds, and control of erosion/sedimentation. Additionally, Regal has developed an AIMP in coordination with the Minnesota Department of Agriculture that details methods to minimize soil compaction, preserve topsoil, and establish and maintain appropriate vegetation to ensure the Project is designed, constructed, operated and ultimately restored in a manner that would preserve soils to allow for the land to be returned to agricultural use.²⁶⁸

207. The BWSR and MDNR recommended the following language be incorporated as Section 4.3.8.1 Site Planning Management:

- Management objectives addressing short term (year 0-3, seeding and establishment) and long term (year 4 through the life of the permit) objectives.
- A description of planned restoration and vegetation activities, including how the site will be prepared, timing of activities, and how seeding will occur (broadcast, drilling, etc.), and the types of seed mixes to be used.
- A description of how the site will be monitored and evaluated to meet management objectives.
- A description of management tools used to maintain vegetation (e.g. mowing, spot spraying, hand removal, fire, grazing, etc.), including timing/frequency of maintenance activity.
- Identify responsible party for site restoration, monitoring, and long-term vegetation management of the site (e.g. consultant, contractor, site manager, etc.).
- Identification, monitoring and management of noxious weeds and invasive species (native and non-native) on site.²⁶⁹

208. Moreover, BSWR and MDNR recommend the VMP be revised in coordination with BWSR, MDNR, and the Minnesota Department of Commerce. The VMP and documentation of the coordination efforts between the permittee and the

²⁶⁷ Ex. EERA-211 at 83 (EA).

²⁶⁸ *Id.*; Ex. Regal-15 at 25, 47-48 (Revised SP Application).

²⁶⁹ Ex. EERA-211 at 83-84 (EA).

coordinating agencies shall be filed at least 14 days prior to the preconstruction meeting.²⁷⁰

3. Soils, Geologic, and Groundwater Resources

209. Construction of the Project's facilities will disturb approximately 700 acres within the Land Control Area. As with any ground disturbance, the potential exists for soil compaction and erosion. Construction may require some amount of grading to provide a level surface for the solar arrays. Approximately 230 acres will be graded. Additional soil impacts during construction will come from the installation of the direct-embedded piers that support the structural framework of the solar arrays, and small areas of foundations for the inverter skids, the Project Substation, and O&M structures.²⁷¹

210. Based on the electrical configuration, impacts to soils will differ. In all systems, some trenching will be required to bury electrical cables. The above-ground collection configuration would have least amount of soil impacts because only a small portion of the DC and AC collection would be trenched into the ground. The hybrid collection system will have the more soil impacts than the above-ground system, but less than the below-ground system.²⁷²

211. Regal will obtain a National Pollutant Discharge Elimination System (NPDES) permit to discharge stormwater from construction facilities from MPCA. Best management practices (BMPs) will be used during construction and operation to protect topsoil and adjacent resources and to minimize soil erosion. In addition, Regal will develop a Stormwater Pollution Prevention Plan (SWPPP) prior to construction that will include BMPs such as silt fencing, revegetation plans, and management of exposed soils to prevent erosion.²⁷³

212. Private wells exist throughout the local vicinity. Two verified drinking water wells are located near the Land Control Area. Well No. 530064 is 50 feet west of the Project and is 100 feet deep. Well No. 827727 is 125 feet from the Land Control Area near Halfway Crossing Road; this well is 144 feet deep. Irrigation wells are present in the Land Control Area. No wells are located are within the Collection Line Corridor.²⁷⁴

213. Impacts to geologic and groundwater resources are not anticipated. Regal developed and is committed to an AIMP that details methods to minimize soil compaction, preserve topsoil, and establish and maintain appropriate vegetation to ensure the Project is designed, constructed, operated and ultimately restored in a manner that would preserve soils to allow for the land to be returned to agricultural use.

²⁷⁰ *Id.* at 84.

²⁷¹ *Id.* at 80 (EA); Ex. Regal-15 at 60 (Revised SP Application).

²⁷² Ex. EERA-211 at 80 (EA); Ex. Regal-15 at 60 (Revised SP Application).

²⁷³ Ex. EERA-211 at 80-81 (EA); Ex. Regal-15 at 56-57 (Revised SP Application).

²⁷⁴ Ex. EERA-211 at 76 (EA).

The VMP lists best management practices, that while directly related to vegetation, will stabilize soils.²⁷⁵

4. Surface Water and Wetlands

214. The potential for wetlands within the Land Control Area was identified by reviewing desktop resources followed by a formal wetland delineation within the Land Control Area in June 2018.²⁷⁶ At the time of the delineation, two palustrine emergent wetlands (PEM) were identified at least partially within the Land Control Area. Additionally, Regal confirmed absence of an NWI-mapped north-south drainage through most of the Land Control Area. The Project boundary was revised post-delineation to avoid the wetland in the northwest portion of the Land Control Area. One wetland is located in the southeast portion of the Land Control Area, with the majority of the wetland located outside of the Land Control Area boundary. Two additional farmed PEM wetlands were identified within the Land Control Area during a field review of the Project by the Benton County Technical Evaluation Panel (TEP) on April 23, 2019. The Project has been designed to avoid permanent fill to wetlands. The two farmed PEM wetlands identified by the Benton County TEP will be temporarily impacted by construction activities. Neither of the wetlands will be impacted by “permanent” facilities; rather, they are both located in areas that will have racking and associated pilings. Driven pilings are not considered fill or impact that would require a wetland permit. Regal will coordinate with both the USACE and LGU prior to construction for temporary wetland impacts.²⁷⁷

215. Regal conducted a wetland delineation within the Collection Line Corridor in June 2020. There are five wetlands totaling 1.5 acres within the Collection Line Corridor, primarily associated with the Platte River. Regal has designed the above-ground collection system to avoid pole placement in delineated wetlands. Furthermore, poles are situated such that access to and workspace around each structure will also avoid impacts.²⁷⁸

216. The Project is located within the Mississippi River – Sartell Watershed Basin. Surface waters in the Project vicinity include the Mississippi and Platte Rivers. The Mississippi River is listed by MPCA as an impaired water. The Collection Line Corridor crosses the Platte River (0.3 acre within the Collection Line Corridor), which is a MDNR PWI watercourse and impaired water. There is also a Federal Emergency Management Agency 100-year floodway (Zone AE) associated with the Platte River. The Collection Line Corridor includes 2.3 acres of floodway at the Platte River; the crossing length of the floodway is 332 feet. Because there is a floodway associated with this PWI, Regal has designed the aboveground collection system to avoid impacts to the floodway and maximize the span width across the waterbody. Additionally, Regal

²⁷⁵ *Id.* at 81.

²⁷⁶ Regal identified surface water and floodplain resources for the Project area by reviewing U.S. Geological Survey (USGS) topographic maps, National Wetlands Inventory (NWI) maps and Minnesota Public Waters Inventory (PWI) maps together with field wetland delineations. Ex. Regal-15 at 61-62 (Revised SP Application); Ex. Regal-19 at 36 (SP Addendum).

²⁷⁷ Ex. Regal-15 at 61-62 (Revised SP Application).

²⁷⁸ Ex. Regal-19 at 36 (SP Addendum); Ex. EERA-211 at 51 (EA).

has minimized impacts by collocating this crossing with Halfway Crossing NW. At the PWI crossing, a stringing vehicle would use the bridge along Halfway Crossing NW to string the collection lines and avoid impacting the waterbody. Because the Project is within one mile of an impaired water, Regal will submit the SWPPP to MPCA for review and approval prior to construction and obtaining coverage under the General Construction Stormwater Permit.²⁷⁹

217. The Project will not directly impact surface waters. Regal proposes to span the Platte River, and the ECE distribution line will be buried using horizontal directional drill techniques to avoid impacting the river. Indirect impacts during construction include sediment or fugitive dust created by excavation, grading, vegetation removal, and construction traffic reaching nearby surface waters.²⁸⁰

218. Temporary dewatering may be required during construction. Any dewatering required during construction will be discharged to the surrounding surface, thereby allowing it to infiltrate back into the ground to minimize potential impacts. If dewatering is necessary, Regal will obtain a Water Appropriation Permit from the MDNR.²⁸¹

219. Section 4.3.5 of the Sample Site Permit limits impacts to public waters resources and requires construction in wetland areas during frozen ground conditions to minimize impacts, to the extent feasible. If construction in the winter is not possible, wooden or composite mats shall be used to protect wetland vegetation. Section 4.3.3 of the Sample Site Permit requires reasonable measures to minimize erosion and sedimentation during construction.

5. Air and Water Emissions

220. Temporary short-term air quality impacts would occur during the construction phase of the Project. Once operational, the Project will not generate criteria pollutants or carbon dioxide.²⁸²

221. Short-term air emissions during the construction phase of the Project are anticipated as a result of vehicle exhaust from the construction equipment and from vehicles traveling to and from facility locations as well as fugitive dust emissions due to travel on unpaved roads grading and limited amounts of excavation that may be needed for foundations (either for inverter boxes, or in some limited cases, the array piers).²⁸³

222. When necessary, dust from construction traffic will be controlled using standard construction practices such as watering of exposed surfaces, covering of

²⁷⁹ Ex. EERA-211 at 81 (EA); Ex. Regal-15 at 61-62 (Revised SP Application); Ex. Regal-19 at 35-36 (SP Addendum).

²⁸⁰ Ex. EERA-211 at 81 (EA).

²⁸¹ Ex. Regal-15 at 56 (Revised SP Application).

²⁸² Ex. EERA-211 at 74 (EA).

²⁸³ *Id.*

disturbed areas, and reduced speed limits. Emission from construction vehicles will be minimized by keeping construction equipment in good working order.²⁸⁴

6. Solid and Hazardous Wastes

223. Regal will develop a Stormwater Pollution Prevention Plan that will describe pollution prevention measures for storage, handling and disposal of hazardous materials, solid waste, concrete and equipment wash water, portable toilets, construction products and materials.²⁸⁵

224. MPCA regulates generation, handling, and storage of hazardous wastes. Contaminated or otherwise hazardous materials would be disposed of in accordance with applicable laws and regulations. Operation of the Project is not expected to generate significant quantities of solid and hazardous wastes.²⁸⁶

F. Rare and Unique Natural Resources

225. Regal reviewed the USFWS Information for Planning and Conservation website for the federal endangered and threatened species, candidate species, and designated critical habitat that may occur in Benton County, Minnesota. Regal also reviewed the MDNR's Natural Heritage Information System (NHIS) for documented occurrences of federally listed species, state-listed species, and state species of concern within one mile of the Land Control Area and within one mile of the Collection Line Corridor.²⁸⁷

226. The northern long-eared bat, which is listed as threatened under the federal Endangered Species Act (ESA) and is a state species of special concern, may occur in Benton County, Minnesota. There is no federally designated critical habitat in Benton County.²⁸⁸

227. Five other species listed as state species of concern or special species of concern may occur in the Project area and are: Loggerhead Shrikes (state-listed species of concern); Lark Sparrow (state-listed species of concern); Cerulean Warblers (state-listed species of special concern); Blunt Sedge (state-listed vascular plant species of special concern); and Drummond's Campion (state-listed vascular plant species of special concern).²⁸⁹

228. Native plant communities do not exist within the Collection Line Corridor; however, the blunt sedge is documented within the Collection Line Corridor. Rare plant and animal communities do not exist in the Land Control Area.²⁹⁰

²⁸⁴ *Id.* at 75.

²⁸⁵ Ex. Regal-15 at 18 (Revised SP Application).

²⁸⁶ Ex. EERA-211 at 12, 25, 38 (EA).

²⁸⁷ Ex. Regal-15 at 65 (Revised SP Application); Ex. Regal-19 at 38 (SP Addendum).

²⁸⁸ Ex. Regal-15 at 66 (Revised SP Application).

²⁸⁹ Ex. EERA-211 at 77-78 (EA).

²⁹⁰ *Id.* at 78-79.

229. Regal committed to implementing mitigation techniques focused on Loggerhead Shrikes as recommended by the MDNR in its October 11, 2018, Natural Heritage Review letter, such as by avoiding tree and shrub removal within suitable habitat during breeding season, and reporting any Loggerhead Shrike sightings to the agency.²⁹¹

230. Tree-nesting birds such as the Loggerhead Shrike might be affected during tree clearing if nests with eggs or chicks are present in the trees that are cleared. Land cover conversion from row crops to native grasses would likely result in more foraging habitat for rare animal species resulting in positive impacts.²⁹²

231. Sections 4.3.8 and 4.3.6 of the Sample Site Permit identify conditions to monitor and mitigate the Project's potential impacts on rare and unique natural resources.

XI. Site Permit Conditions

232. The Sample Site Permit includes a number of proposed permit conditions, many of which are discussed in the preceding Findings of Fact. The conditions apply to site preparation, construction, cleanup, restoration, operation, maintenance, abandonment, decommissioning, and other aspects of the Project.

233. Many of the conditions contained in the Sample Site Permit have been established as part of the site permit proceedings for other solar projects permitted by the Commission, or are reflective of comments submitted to the Commission.

234. On August 9, 2019, the EERA advised the Commission that its staff would use the environmental review process and the public record to recommend permit language specifying the type of electrical collection system that should be used. The above-ground electrical collection system would create significantly greater aesthetic impacts by adding approximately 198 distribution type poles within the site location. These direct aesthetic impacts could result in increased negative indirect impacts to property values and recreation. While not expected to be significant, the potential exists for increased electrical interference at overhead road crossings making the above-ground system less consistent than the below-ground system. The above-ground electrical collection system could also cause greater negative impacts to wildlife through increased potential for bird collisions and electrocution. Trenching the below-ground system would impact soils to a greater extent. Given these considerations, use of the hybrid system would properly balance potential impacts.²⁹³

²⁹¹ *Id.* at 79.

²⁹² *Id.*

²⁹³ Ex. EERA-200 (Comments and Recommendations on Application Completeness); Ex. EERA-211 at ASF-5 (EA).

235. The BWSR and MDNR provided suggested changes to Section 4.3.8 of the Sample Site Permit related to Beneficial Habitat and vegetation management. The revisions are as follows:

4.3.8 Beneficial Habitat

The Permittee shall implement site restoration and management practices that provide for native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators; ~~and that enhances~~ **improving** soil water retention and reducing storm water runoff and erosion. The Permittee shall develop a vegetation management plan that incorporates, ~~to the extent applicable and appropriate, the technical guidance and best management practices outlined in the DNR's Prairie Establishment and Maintenance Technical Guidance for Solar Projects¹~~. **The vegetation management plan shall be filed at least 30 days prior to the preconstruction meeting, using best management practices established by the Minnesota DNR and the Minnesota Board of Water and Soil Resources. The vegetation management plan shall be prepared in coordination with EERA, DNR, and BWSR.**

The vegetation management plan and documentation of the coordination efforts between the permittee and the coordinating agencies shall be filed at least 14 days prior to the preconstruction meeting. To ensure continued management and recognition of beneficial habitat, the Permittee is encouraged to ~~seek certification of the project by following guidance set forth by the Pollinator Plan provided by the Board of Water and Soil Resources.~~ **meet the standards for Minnesota's Habitat Friendly Solar Program by submitting project plans, seed mixes, a completed project planning assessment form, and any other applicable documentation used to meet the standard to the BWSR.** All documents required by BWSR for meeting standards of the Minnesota's Habitat Friendly Solar Program should also be filed with the Commission.

4.3.8.1 Site Planning and Management

The Vegetation Management Plan must include the following:

- Management objectives addressing short term (year 0-3, seeding and establishment) and long term (year 4 through the life of the permit) objectives.
- A description of planned restoration and vegetation activities, including how the site will be prepared, timing of activities, and how seeding will occur (broadcast, drilling, etc.), and the types of seed mixes to be used.

- A description of how the site will be monitored and evaluated to meet management objectives.
- A description of management tools used to maintain vegetation (e.g. mowing, spot spraying, hand removal, fire, grazing, etc.), including timing/frequency of maintenance activity.
- Identify responsible party for site restoration, monitoring, and long-term vegetation management of the site (e.g. consultant, contractor, site manager, etc.).
- Identification, monitoring and management of noxious weeds and invasive species (native and non-native) on site.
- Site plan showing how the site will be revegetated and corresponding seed mixes. Seed mixes, seeding rates, and cover crops should follow best management practices.²⁹⁴

236. In its comments of December 15, 2020, the MDNR recommended adding permit language regarding installation of bird diverters. Regal proposed revisions to the MDNR's proposed permit language to reflect that the overhead power lines the MDNR is referring to is primarily an overhead collector line:

The Permittee in cooperation with the DNR shall identify areas of the Collection Line Corridor where bird flight diverters will be incorporated into the above ground power line design to prevent large avian collisions attributed to visibility issues. Standard above ground power design shall incorporate adequate spacing of conductors and grounding devices in accordance with Avian Power Line Interaction Committee standards to eliminate the risk of electrocution to raptors with larger wingspans that may simultaneously come in contact with a conductor and grounding devices.²⁹⁵

237. The MDNR also recommended adding a permit condition requiring measures to prevent oak wilt:

Tree trimming and removal should be avoided within the Project area between April 1 and July 15 unless all cuts and wounds on oaks are painted within 10 minutes with a water-soluble paint or shellac.

238. Regal has committed to further discussions with the local snowmobile club to address a reroute of the existing snowmobile trail. Therefore, a special permit

²⁹⁴ Ex. EERA-206, (BWSR Comments).

²⁹⁵ Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

condition to document these discussions and provide the location of the rerouted trail is appropriate.²⁹⁶

At least 30 days prior to the preconstruction meeting, the Permittee shall provide the Commission with documentation identifying the location of the rerouted snowmobile trail.

239. Regal has committed to work with a local landowner to ensure continued access along an existing farm road located in the southwest corner of the Land Control Area.²⁹⁷ Therefore, a special permit condition should document how access will be maintained.

When filing the Site Plan required by Section 8.3, the Permittee shall provide the Commission with documentation concerning Mr. David Held's use of an existing farm road throughout the life of the project.

240. The MDNR requested that the use of erosion control blankets be limited to "bio-netting" or "natural netting" types and that the Project review mulch products and not allow any materials with synthetic (plastic) fiber additives in areas that drain to public waters.²⁹⁸ Therefore, the following special permit condition addresses these concerns:

The Permittee shall use only "bio-netting" or "natural netting" types and mulch products without synthetic (plastic) fiber additives within one-quarter mile of the Platte River.

241. Regal will contribute \$20,000 annually to the Regal Education Fund for 20 years.²⁹⁹ This Fund will be divided equally between the Royalton and Sauk Rapids-Rice school districts. Regal will continue to coordinate with both school districts to establish the fund as the Project develops. A special permit condition to report on the Fund would address this issue:

Within the first year of commercial operation, the Permittee shall establish the Regal Education Fund. The Permittee shall report annually on deposits made into this account and how funds were distributed to, and spent by, the Royalton and Sauk Rapids-Rice school districts.

²⁹⁶ Ex. EERA-211 at 61 (EA).

²⁹⁷ *Id.* at 71-72.

²⁹⁸ Ex. Commission-318 (Comments of the MDNR).

²⁹⁹ Ex. Regal-15 at 43 (Revised SP Application).

242. Regal committed to installing temporary fencing to protect historic resources. SHPO indicated this fencing was necessary to ensure protection of the resource.³⁰⁰ Therefore, a special permit condition to ensure compliance is as follows:

The Permittee shall install temporary fencing around Site 21BN003 to demark the 50-foot buffer area within the Collection line Corridor during construction and restoration activities.

243. The largest impact to wildlife associated with the Project relates to fencing.³⁰¹ Much of this impact is associated with entanglement which is affected by a combination of height and visibility. Therefore, a special permit condition requiring the Permittee to work with MDNR to identify means to utilize appropriate fencing to preclude wildlife entanglement is appropriate.

The Permittee shall coordinate with the Department of Natural Resources to identify ways to preclude wildlife entanglement in the boundary fence. The permittee shall implement those recommendations made by the Department of Natural Resources. The permittee shall provide the Commission with documentation concerning the outcome of this coordination when filing the Site Plan required by Section 8.3.

244. The MDNR stated that even at eight feet, some deer may jump the fence and recommended that Regal develop a means to allow deer to escape.³⁰² The record does not establish the likelihood that deer may become trapped within the fenced area. In light of the absence of firm evidence on this issue, the EERA maintains that deference to the expertise of the MDNR is appropriate. Regal should be required to work with the MDNR to include deer escape technology. Such language would read as follows:

The Permittee shall coordinate with the Department of Natural resources to ensure adequate deer escape technology exists at the facility. The Permittee shall implement those recommendations made by the Department of Natural Resources. In addition, when filing the Site Plan required by Section 8.3, the Permittee shall provide the Commission with documentation concerning the outcome of this coordination.

245. Any of the foregoing Findings more properly designated Conclusions of Law are hereby adopted as such.

³⁰⁰ Ex. Regal-26 (Schmit Direct).

³⁰¹ Ex. EERA-211 at 85 (EA).

³⁰² Comment by MDNR (Dec. 15, 2020) (eDocket No. 202012-169062-01 (GS)).

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commission and the Administrative Law Judge have jurisdiction over Regal's SP Application for the up to 100 MW AC proposed Project, pursuant to Minn. Stat. § 216E.03.

2. Regal has substantially complied with the procedural requirements of Minn. Stat. ch. 216E, Minn. R. ch. 7850.

3. The Commission has complied with the procedural requirements of Minn. Stat. ch. 216E, Minn. R. ch. 7850.

4. The Administrative Law Judge conducted a public hearing through remote means in accordance with government directives related to the COVID-19 pandemic. Proper notice of the public hearing was given. The public had an opportunity to speak at the hearing and to submit written comments.

5. The EA prepared under Minn. R. 7849.1400, 7850.3700, and the record created at the public hearing and associated public comment period, address the issues identified in the scoping decision.³⁰³

6. The Commission has the authority under Minn. Stat. § 216E.03, to place conditions in a LEPGP site permit.

7. The Sample Site Permit contains a number of important mitigation measures and other reasonable conditions.

8. It is reasonable to require Regal to use the hybrid collection system to balance the impacts associated with the Project.

9. It is reasonable to amend the Sample Site Permit to include the changes to Sections 4.3.8 of the sample site permit as proposed by Regal and the MDNR.

10. It is reasonable to amend the Sample Site Permit to include the permit conditions listed in Section XI above.

³⁰³ The EERA proposed adding this to the Statement of Issues to be decided at the outset of this Recommendation in order to satisfy the Commission's obligation to make a determination under Minn. R. 7850.3900, subp. 2. See DOC EERA Reply Comments (Jan. 15, 2021) (eDocket Nos. 20211-169878-01 (GS), 20211-169879-01 (CN)). However, this issue was not specifically identified in the Commission's referral of this matter for proceedings before the OAH. See Ex. Commission-310 (Order Accepting Applications as Substantially Complete Pending Additional Information and Directing Use of Informal Review Process). The Administrative Law Judge has exercised caution about identifying an issue beyond those directed for consideration by the Commission. Should the Commission adopt this Conclusion of Law, it will have made the determination requested by the EERA.

11. The Project, with the permit conditions revised as set forth above, satisfies the site permit criteria for an LEPP in Minn. Stat. § 216E.03, and meets all other applicable legal requirements.

12. The Project, with the permit conditions discussed above, does not present a potential for significant adverse environmental effects pursuant to the Minnesota Environmental Rights Act and/or the Minnesota Environmental Policy Act.

13. Any of the foregoing Conclusions of Law which are more properly designated Findings of Fact are hereby adopted as such.

Based upon these Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

The Commission should issue a site permit to Regal Solar, LLC, to construct and operate the up to 100 MW AC Regal Solar Project in Benton County, and the permit should include the amended permit conditions provided in Section XI above.

Dated: February 12, 2021


JESSICA A. PALMER-DENIG
Administrative Law Judge

NOTICE

Notice is hereby given that exceptions to this Report, if any, by any party adversely affected must be filed under the time frames established in the Commission's rules of practice and procedure, Minn. R. 7829.1275, .2700 (2019), unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted pursuant to Minn. R. 7829.2700, subp. 3. The Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if an oral argument is held.

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.