

Chisago County Power Plant Task Force
Recommendations Compared to
02/17/2010 Development Agreement &
Proposed 03/12/2010 Development Agreement

BLACK INK: Denotes Chisago County Power Plant Task Force Recommendations to County Board

BLUE INK: Denotes 02/17/2010 Development Agreement

GREEN INK: Denotes Proposed 03/12/2010 Development Agreement in the packets

Project Labor Agreement

As part of the DA, a project labor agreement must be in place between LS Power and the Minnesota Building Trades and a responsible bidder policy in place for any contractor/subcontractor.

- 1.12 Project Labor Agreement. Developer shall require its engineering, procurement and construction contractor (“EPC Contractor”) to enter into a project labor agreement reasonably acceptable to the EPC Contractor and the appropriate local building and construction trades council prior to the start of construction. Upon request by the Town or the County, Developer will provide verification that the project labor agreement has been entered into.

- 1.13 Chisago County Suppliers. The County will provide Developer with a list of Chisago County businesses that may be able to supply goods and services to contractors working on the construction of the Project. Developer will make this list available to the contractors and encourage the contractors to consider using Chisago County suppliers.

Protecting Property Values

The DA & Host Agreement should require a plan that would provide a tax reduction for property owners within a radius of 3 miles of the power plant.

Research conducted by the **Joint Center of the Department of Economics, MIT energy Initiative and Sloan School of Management** released in June 2008 says:

“Compared to neighborhoods farther away, housing values and rents decreased by 3-5% between 1990 and 2000 in neighborhoods near sites.” The full study is available.

In a more recent research study entitled: ***The Effect of Power Plants on Local Housing Values and Rents*** by Lucas W. Davis, published July 2009 looked at a sample of 92 plants opened during the 1970s, 1980s, and 2003-2006.

“The results indicate 3-7% decreases in housing values and rents within two miles of

plants with somewhat larger decreases within one mile and for large capacity plants.” (APPENDIX B outlines how this devaluation will affect property owners.)

ISSUE: Land owners within the immediate radius of LS Power should not have to bear the loss of their net worth so other residents in Chisago County can reap the \$2.4 + -million dollar per year tax benefit.

3.7 Contribution to County Neighborhood Enhancement Fund. The Developer shall annually and for each year of operation of the Project make a contribution to the County for deposit in a fund to be used for neighborhood enhancement (“Neighborhood Enhancement Fund Contribution”). The County will endeavor to expend the Neighborhood Enhancement Fund Contribution for the enhancement of neighborhoods in the general vicinity of the Project. The first five Neighborhood Enhancement Fund Contribution payments shall be in the amount of two hundred fifty thousand dollars and no cents (\$250,000.00) per year and all subsequent Neighborhood Enhancement Fund Contribution payments shall be in the amount of two hundred thousand dollars and no cents (\$200,000.00) per year.

3.7.1 Notice and First Payment. The first Neighborhood Enhancement Fund Contribution payment shall be made to the County within ninety (90) days after the Commercial Operation Date. Developer shall provide the County with written notice of the Commercial Operation Date within thirty (30) days after that date.

3.7.2 Subsequent Payments. Subsequent Neighborhood Enhancement Fund Contribution payments shall continue annually thereafter so long as this Agreement is in effect as provided herein. Payment may be made by check or acceptable electronic transfer and shall be made by the Developer to the County within sixty (60) days of each anniversary of the Commercial Operation Date.

Noise & Vibration Survey

The DA, Section 2.1.1 must be modified to include the following: 2.1.1 Noise and Vibration Surveys. Prior to the commencement of construction and in each of the first two years after Commercial Operation Date as provided herein, the Developer shall reimburse the Township for the hiring of a qualified engineering firm to conduct surveys in a sufficient number of locations around the Site and over such period of time as needed to reasonably determine the Project's compliance with state noise standards and the Vibration Standard as amended in Action Item #16 above.

Issue: The proposed Development Agreement appropriately has noise and vibration surveys being conducted before and after the plant is built and operational. The proposed Development Agreement has LS Power (Sunrise River Energy LLC) retaining the noise consulting firm. I think it would be more appropriate for the Township or County to retain the acoustical engineering firm and have LS Power reimburse them for this service.

Solution: Modify the Development Agreement language to have the Township or County hire a qualified firm to conduct the noise and vibration surveys.

2.1.1 Noise and Vibration Surveys. Prior to the commencement of construction and in each of the first two years after the Commercial Operation Date as provided herein, the Developer shall have a qualified engineering firm conduct surveys in a sufficient number of locations around the Site and over such period of time as needed to reasonably determine the Project's compliance with state noise standards and the Vibration Standard. The Developer shall notify the Town Board of the engineering firm it intends to have conduct the surveys together with a summary of its experience and qualifications to conduct such surveys. The Town Board shall have the right to review and approve the engineering firm the Developer selects to conduct the surveys, which approval shall not be unreasonably withheld or delayed. The results of the surveys shall be presented to the Town Board during a regular or special board meeting. The Town Board may, at its election, retain an independent consultant to review the results of the surveys with the cost of the independent consultant to be reimbursed by the Developer pursuant to Section 4.1 below. If the Town Board elects not to hire an independent consultant to review the results of the survey, the County may choose to do so and the Developer shall reimburse the County for its costs pursuant to Section 4.1 below. If the surveys indicate actual violation of applicable noise standards or the Vibration Standard, the Developer shall develop and implement a plan within ninety (90) days or as soon as practicable thereafter to further mitigate the noise and/or vibration impacts of the Project to ensure compliance with applicable noise rules, regulations, and laws and the Vibration Standard.

Certificate of Need & Site Permit

As part of the DA, LS Power must go to the PUC and file for a certificate of need and a site permit. The proposed energy facility must be in compliance with the Minnesota Environmental Policy Act, including timely public notice and multiple opportunities for public comment. A full review and approval for the project must be completed by the PUC to complete this DA.

- 1.4.1 Developer shall obtain a certificate of need and site and route permits as required from the PUC prior to starting construction on the Project. Developer shall not pursue local approval of the Project pursuant to Minn. Stat. § 216E.05.

Whereas, pursuant to Minnesota Statutes, the PUC is responsible for determining the need for and issuing the site permit for Project, and these matters are not within the authority of the County or the Town.

- 1.4.2 Environmental review for the Project shall be conducted in accordance with PUC rules with all public notices and opportunities for public comment provided by PUC rules. Among other potential impacts of the Project assessed in the environmental review process, Developer shall request the PUC to include the topic of potential impacts on public or private television, radio, telemetry or other electromagnetic communication signals.

Inflation Accelerator Fund

An Inflation Accelerator Fund should be added to the DA & Host Agreements. Yearly payments by LS Power to local units of government should be adjusted yearly based upon the Consumer Price Index (CPI) or a predetermined % mutually agreed upon by all parties.

Issue: At present the \$600,000 is stated in the Personal Property Exemption Statute as a maximum (*amount not to exceed*). To better protect the County, an additional Inflation Accelerator Fund should be paid by LS Power.

Option 1: This fund could be adjusted upon the Consumer Price Index (CPI) each year or

Option 2: A fixed % increase could be established such as 3%. The following table demonstrated how a 3% Inflation Accelerator Fund would be implemented:

Natural Gas & Wastewater Pipelines & Life Stations

The DA must include a provision that requires any wastewater lines and lift stations and any natural gas lines and compressor stations be contained within existing utility rights-of-way. Motion seconded by Brad Aker. Several *friendly amendments were offered as follows: to add the word “substantially” between the words “be” and “contained”; and to add the following language to the end of the motion: “excluding transactions between the developer and private parties”; and to add the following language to the end of the motion: “as long as consistent with the PUC”.* The *friendly amendments* were **accepted** by the motion maker and second. Upon a vote being taken thereon, the *amended motion* **carried unanimously**.

3.10 Natural Gas Pipelines. Prior to utilizing the power of eminent domain to acquire rights-of-way and/or easements for natural gas pipelines and compressor stations, Developer shall attempt to negotiate such easements and/or rights-of-way with landowners. Developer shall encourage local natural gas distribution companies to consider making use of Developer’s natural gas pipelines and/or rights-of-way where feasible and permitted to make retail natural gas service available to residents and surrounding developments near the Project and along the route of the natural gas line or lines serving the Project.

3.12 Natural Gas Pipelines. Prior to utilizing the power of eminent domain to acquire rights-of-way and/or easements for natural gas pipelines and compressor stations, Developer shall attempt to negotiate such easements and/or rights-of-way with landowners. Developer shall encourage local natural gas distribution companies to consider making use of Developer’s natural gas pipelines and/or rights-of-way where feasible and permitted to make retail natural gas service available to residents and surrounding developments near the Project and along the route of the natural gas line or lines serving the Project.

Interference With Communications

The DA must include the following provision: Operation of the energy project would not create conditions that unduly reduce or interfere with public or private television, radio, telemetry or other electromagnetic communication signals. If undue reduction or interference occurs, the applicant must restore reception to the level present before operation of the energy project.

1.4.2 Environmental review for the Project shall be conducted in accordance with PUC rules with all public notices and opportunities for public comment provided by PUC rules. Among other potential impacts of the Project assessed in the environmental review process, Developer shall request the PUC to include the topic of potential impacts on public or private television, radio, telemetry or other electromagnetic communication signals.

Site Access

The DA include a provision for LS Power to consider relocating the proposed access road to CSAH 14 across from Kable Avenue and the DA is modified accordingly – Section 1.3 under General Provisions, Section 3.2.1, other applicable sections of the DA, and the Site Access Plan. Upon a vote being taken thereon, the motion as *amended carried* as follows: **IN FAVOR THEREOF:** Brad Aker, Brad Bjorklund, Wayne Buisman, David Cartwright, Rob Kravitz, Keith Limerick, Dave Whitney, John Wilking **OPPOSED:** Sheldon Anderson.

Issue: Currently the plan proposed includes site access from CSAH 15 requiring construction and hauling traffic to make two turns (CSAH 14 to CSAH 15 and CSAH15 to Plant) thus increasing noise, increasing risk of accidents on the curved stretch of CSAH 14, impacting adjacent landowners to the north of the former mink farm, and involving a portion of Chisago Lakes Township, who will derive little benefit from the proposed plant.

Solution: Access the proposed site directly from CSAH 14 directly across from Kable Avenue and possibly install a traffic light at this intersection.

- 1.3 Site Access Plan. A site access plan (“Access Plan”) showing how the Site will be accessed is included as Exhibit C. Exhibit C shows both the preferred access from CSAH 14 (“Preferred CSAH 14 Access”) and the alternative access from CSAH 15 (“Alternative CSAH 15 Access”). Access to the Site will be from the Preferred CSAH 14 Access if reasonably possible; otherwise access to the Site will be from the Alternative CSAH 15 Access.
- 3.2.1 Construction Traffic. Traffic for construction shall use CSAH 15 (if the Alternative CSAH 15 Access is used for the Site) and CSAH 14 – via either TH 95 or US Hwy 8. Construction traffic shall not use CSAH 18 (Lent Trail) or CSAH 15 more than 100 feet north of the access road to the Site, except as may be required for construction of water and/or natural gas pipelines.
- 3.2.2 Haul Routes. All haul routes shall be approved by Chisago County Public Works prior to their use, which approval shall not unreasonably be withheld. Developer shall be responsible for any and all restoration of haul routes per Mn/DOT Specifications 2051.
- 3.2.3 Turn Lane. Construction of required turn and by-pass lane at the access to the Site shall be required per access permit.
- 3.2.5 County State Aid Highway 15. If the Alternative CSAH 15 Access is used for the Site, County State Aid Highway 15 (CSAH 15) shall be reconstructed from the intersection with CSAH 14 to a point 100 feet north of the access road to the Site. Reconstruction plans shall be approved by Chisago County Public Works and shall include a 40-foot top and 10-ton design, construction of turn

and by-pass lanes, and repaving of the entire distance from the intersection with CSAH 14 to the point 100 feet north of the access road to the Site.

- 3.4 Security. Prior to the commencement of construction of the Project, Developer shall provide the County with a letter of credit in the amount of \$500,000, from a bank and in a form reasonably satisfactory to the County, to reimburse the County for reasonable reconstruction costs incurred by the County, in the event the requirements for road reconstruction pursuant to Sections 3.2.2, 3.2.3, 3.2.4, and 3.2.5 of this Agreement are not met to the County's reasonable satisfaction. The County may not obtain reimbursement for any item of reconstruction work unless, prior to incurring costs for the work, the County provides Developer with written notice and allows Developer a minimum of thirty (30) days from the date of notice, or such longer period as is reasonable under the circumstances, to complete the work. The letter of credit shall be released upon the completion of the reconstruction by Developer or completion by the County and reimbursement of the County.
- 3.11 Kable Avenue Outlet. Kable Avenue, located south of the Site, currently has no outlet other than CSAH 14. If Developer receives all required approvals and closes on the primary financing for the construction of the Project, Developer shall contribute up to two hundred and fifty thousand dollars and no cents (\$250,000.00) for purposes of development of an additional outlet from Kable Avenue. If the County, the Town, or the adjacent township elects to construct the outlet, it shall provide the Developer written notice of its intent to undertake the project, said notice to be delivered no sooner than ninety (90) days after Developer closes on the primary financing for the construction of the Project; and no later than five (5) years after the Commercial Operation Date. Developer shall fully reimburse the entity undertaking the outlet project for its acquisition and construction costs up to the maximum of two hundred and fifty thousand dollars and no cents (\$250,000.00) within thirty (30) days of presentation of associated invoice(s), or the Developer may be required to escrow the project funds from which the entity can deduct its expenses as they are incurred. The entity that constructs the outlet shall be the road authority with respect to the new section of road and shall be responsible for its on-going maintenance and repair unless another road authority agrees to maintain it.
- 3.2.4 Repair of CSAH 14. Immediately prior to the commencement of construction of the Project, the County Engineer and an engineer selected by the Developer shall jointly assess and document the condition of the full length of CSAH 14, or 11.2 miles. After construction traffic has ceased, Developer shall: (a) repair any damage to CSAH 14 caused by its construction as reasonably determined by the County Engineer after consultation with an engineer selected by Developer; and (b) seal coat CSAH 14 as per Chisago County Public Works specifications, except where not required due to Developer's repairs.

Landscaping By Local Contractors

The DA, Section 2.2 Visual Impacts be modified to include the following: 2.2 Visual Impacts. Developer shall use commercially reasonable efforts to mitigate visual impacts of the Project by the inclusion of landscaping, fencing, shielded and down-cast lighting (unless otherwise required for personnel safety), and other architectural features in the design. Mixed plantings, obtained from Chisago County growers and installed by Chisago County landscapers, and earthen mounds not less than five (5) feet in height be placed along the north, east and western edges of the site, as well as the Access road, as shown on the modified Site Plan. . . . Also, the DA, Section 2.4.5 Landscaping Plan must be modified to include the following: All plant materials shall be purchased in Chisago County and installed by Chisago County-based landscapers that comply with the Project Labor Agreement.

Issue: The proposed Development Agreement includes landscaping the berms around the proposed plant with appropriate species and of sufficient size to mitigate visual impacts in a reasonable period of time. There are numerous growers and landscapers in Chisago County that are capable of providing and installing the plant material for this project. The Development Agreement does not provide any preference for local purchase of these materials/service.

Solution: Modify the Development Agreement language to require purchase of all plant materials and landscaping services from Chisago County nurseries and landscapers.

- 1.13 Chisago County Suppliers. The County will provide Developer with a list of Chisago County businesses that may be able to supply goods and services to contractors working on the construction of the Project. Developer will make this list available to the contractors and encourage the contractors to consider using Chisago County suppliers.
- 2.2 Visual Impacts. Developer shall use commercially reasonable efforts to mitigate visual impacts of the Project by the inclusion of landscaping, fencing, shielded and down-cast lighting (unless otherwise required for personnel safety), and other architectural features in the design. Mixed plantings and earthen mounds not less than five (5) feet in height shall be placed along the north, east and western edges of the site as shown on the Site Plan. The Site Plan also identifies plant species that may be included in the design. Plantings identified in the Site Plan shall be integrated with the drainage plan prepared for the Site as described in the Landscaping and Drainage Plan (“Landscaping and Drainage Plan”) included as Exhibit E. A Lighting Plan (“Lighting Plan”) has also been included in Exhibit F. The Lighting Plan describes commercially reasonable measures to be taken to mitigate light from interfering with surrounding properties and rights-of-way. In addition to the planned mitigation measures, the Developer shall also comply with all specific requirements for mitigation of visual impacts imposed by the appropriate state agencies as conditions of the state site permit. Developer shall consult in good faith with the Town as the plans for the Project are being finalized

regarding final plans for visual mitigation including, but not limited to, selection and placement of appropriate plant species and the height of security lighting.

- 2.4.5 Landscaping Plan. Landscaping of the Site is described in the Site Plan and Landscaping and Drainage Plan. Trees located within 100 feet of the nearest edge of the CSAH 14 right-of-way shall not be removed by Developer or its contractors, except to the extent required to construct the Preferred CSAH 14 Access and water, wastewater or natural gas pipelines, or as otherwise reasonably consented to by the Town. The Developer shall otherwise take commercially reasonable steps to minimize the number of trees to be removed from the Site within two hundred (200) feet from the nearest edge of the CSAH 14 right-of-way, although it shall not be necessary for the Developer to alter the design of the Project in order to preserve existing trees on the Site. It is acknowledged that the trees forming the existing windbreak running from east to west in the approximate middle of the Site will be removed. Removal of dead or diseased trees shall not be considered a violation of this provision provided those trees identified as part of the screening plan are replanted with trees of a type and size to reasonably further the goals of the screening plan. Trees to be planted pursuant to the Landscaping and Drainage Plan shall be not less than six (6) feet in height. As part of its consultations with the Town regarding finalization and implementation of the Landscaping and Drainage Plan, the Developer shall set aside a budget of no less than \$125,000 that shall be spent on landscaping to mitigate visual impacts after consulting with the Town. The budgeted amount is intended to ensure there are sufficient funds to implement specific recommendations the Town may make regarding landscaping and mitigation measures and does not constitute a limit on the amount the Developer may need to spend in order to properly implement the Landscaping and Drainage Plan. To the extent reasonably available at competitive prices, and subject to the requirements of the project labor agreement between Developer's EPC Contractor and the appropriate building and construction trades council, landscaping plant materials shall be obtained from and installed by Chisago County growers and landscapers.

Reclamation/Retrofit Protection

The DA should require LS Power when it ceases operation of the energy project to restore the site accordingly to a plan approved by the County and include financial assurance mechanism.

Issue: Once the power plant is no longer profitable, the owner of the plant at the time may elect simply to vacate the building and land leaving a single use facility to the taxpayers to restore or destroy.

3.9 Restoration.

3.9.1 Within six (6) months after the date on which the Developer or its successors or assigns provides written notice to the Parties of a permanent halt to all current and future generation of electricity on the Site, Developer or its successors or assigns shall establish a plan for the restoration of the Site (the “Restoration Plan”), which shall include plans to remove all physical material related to the Project to a depth of 36 inches and restore the surface of the land to substantially the same condition it was in at the effective date of this Agreement (reasonable wear and tear, condemnation, casualty damage and acts of God excepted) (all hereinafter referred to as “Restoration”); provided, however, that there shall be no obligation to remove access road and utility facilities that could reasonably be used by a future user of the Site. The Restoration shall be completed within twelve (12) months after the date the Restoration Plan is established.

3.9.2 In order to secure the Restoration obligation, the County shall give Developer or its successors or assigns written notice, no earlier than twenty (20) years after the Commercial Operation Date, to require Developer or its successors or assigns to provide the County with a letter of credit or bond in the amount of the estimated costs to complete the Restoration (“Restoration Costs”). Within ninety (90) days after the notice, Developer or its successors or assigns shall provide the County with a written estimate of the Restoration Costs from a qualified contractor licensed in the State of Minnesota and provide the County with a letter of credit or bond in the estimated amount. On each full calendar year thereafter, the security for the Restoration Costs shall be increased by an annual escalation rate of two percent (2%). The security for the Restoration Costs shall remain in effect until the Restoration is complete and all associated costs have been paid in full, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and materialmen.

3.9.3 The provisions of this Section 3.9 shall survive the termination of this Agreement.

3.11 Restoration.

3.11.1 Within six (6) months after the date on which the Developer or its successors or assigns provides written notice to the Parties of a permanent halt to all current and future generation of electricity on the Site, Developer or its successors or assigns shall establish a plan for the restoration of the Site (the “Restoration Plan”), which shall include plans to remove all physical material related to the Project to a depth of 36 inches and restore the surface of the land to substantially the same condition it was in at the effective date of this Agreement (reasonable wear and tear, condemnation, casualty damage and acts of God excepted) (all hereinafter referred to as “Restoration”); provided, however, that there shall be no obligation to remove access road and utility facilities that could reasonably be used by a future user of the Site. The Restoration shall be completed within twelve (12) months after the date the Restoration Plan is established.

3.11.2 In order to secure the Restoration obligation, the County shall give Developer or its successors or assigns written notice, no earlier than twenty (20) years after the Commercial Operation Date, to require Developer or its successors or assigns to provide the County with a letter of credit or bond in the amount of the estimated costs to complete the Restoration (“Restoration Costs”). Within ninety (90) days after the notice, Developer or its successors or assigns shall provide the County with a written estimate of the Restoration Costs from a qualified contractor licensed in the State of Minnesota and provide the County with a letter of credit or bond in the estimated amount. On each full calendar year thereafter, the security for the Restoration Costs shall be increased by an annual escalation rate of two percent (2%). The security for the Restoration Costs shall remain in effect until the Restoration is complete and all associated costs have been paid in full, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and materialmen.

3.11.3 The provisions of this Section 3.11 shall survive the termination of this Agreement.

Actions Before the PUC

The DA should include a clause requesting the PUC to require an EIS as part of each docket in the permitting process, including Certificates of Need, Power Purchase Agreement, and Siting/Routing Permit.

Issue: Require an Environmental Impact Statement (EIS)

The PUC does not as a part of its Certificate of Need, Power Purchase Agreement, or site permitting process necessarily require that an EIS be done. An EIS, however, will address many of the issues we need addressed: Affect on Property Values, Transportation, Water, Natural Gas and Transmission availability and infrastructure, The Environment, etc.

- 1.4.2 Environmental review for the Project shall be conducted in accordance with PUC rules with all public notices and opportunities for public comment provided by PUC rules. Among other potential impacts of the Project assessed in the environmental review process, Developer shall request the PUC to include the topic of potential impacts on public or private television, radio, telemetry or other electromagnetic communication signals.
- 1.4.3 If the Developer elects to pursue the alternative PUC review process for the Project provided in Minn. Stat. § 216E.04, Developer agrees the environmental assessment conducted for the Project under Minn. Stat. § 216E.04, subd. 5 (“Environmental Assessment”) will have the same scope, and be as rigorous, as an environmental impact statement under Minn. Stat. § 216E.03, subd. 5 (“Environmental Impact Statement”), except that the Developer shall not be required to identify and evaluate a second site unless required to do so under the rules of the PUC. The Developer acknowledges that a number of concerns have been expressed by the public on the potential human and environmental impacts of the Project and agrees the intent of this Section is to ensure the review of the Project and the Site addresses the full range of issues that would be reviewed if an Environmental Impact Statement was being developed for the Project. To that end, the Developer agrees to request, if necessary, and to otherwise submit to an Environmental Assessment conducted by the PUC that has the same scope with respect to the Site as an Environmental Impact Statement, except that the Developer shall not be required to identify and evaluate a second site unless required to do so under the rules of the PUC. The completeness of the Environmental Assessment shall be determined by the PUC.

Enforcement

The DA must include the requirement for a Surety/Performance Bond in the amount of \$150,000,000. Also, the DA must include an Arbitration Clause to address the issue of perceived or real non-compliance with the DA.

Issue: The only enforcement provision in the agreement requires any legal action arising under this Agreement shall be brought in the State of Minnesota, Chisago County District Court, unless otherwise agreed by the Parties in writing. The Chisago County District Court has an extensive backlog and timely resolution through this process is unlikely.

Other more workable enforcement provisions are needed.

Solution: Incorporate a significant Surety/Performance Bond requirement and include an Arbitration Clause or other mechanism to enforce the provisions of the agreement.

1.11 Advisory Council. The Developer, the Town, and the County will form an Advisory Council made up of nine members to provide a forum for review of and comment on matters relating to the development and operation of the Project, including but not limited to permit applications filed by the Developer and the implementation of the Landscaping and Drainage Plan pursuant to Section 2.4.5 below. The Developer, the Town, and the County shall each appoint three members of the Advisory Council. The Advisory Council shall meet at least six times per year during the period of development and construction of the Project and at least one time per year after the Project is in operation. Each meeting of the Advisory Council shall be publicly noticed and open to the public. The members of the Advisory Council shall be reimbursed for mileage for attendance at the regular meetings of the Advisory Council at the rate established annually by the Chisago County Board, but the members of the Advisory Council shall not otherwise be reimbursed or compensated in connection with their membership on the Advisory Council. The Developer shall be financially responsible for paying mileage reimbursement amounts. On the fifth anniversary of the Commercial Operation Date, and every five years thereafter (or more frequently if necessary), Developer shall meet with designated County and Town officials to discuss administration of this Agreement and potential improvements to the manner in which this Agreement is being administered.

6.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any legal action arising under this Agreement shall be brought in the State of Minnesota, Chisago County District Court, unless otherwise agreed by the Parties in writing. The Parties shall make reasonable efforts to engage in alternative dispute resolution to expedite the resolution of disputes. Upon written agreement of the Parties, any dispute hereunder may be submitted to binding arbitration under the rules of the American Arbitration Association.

Protecting the Aquifer

The DA include the following: “State and Local units of government shall not take water from any aquifer for needs of the proposed LS Power Plant, nor enter into any agreement with LS Power, its successors, or any Sewage Treatment facility or other water treatment facility to inject water taken from any part of the aquifers to support any water coolant needs of the LS Power plant in Perpetuity or to the end of the Republic.

The Development Agreement does say, *“The Project will be designed to use effluent from local sewage treatment plants, including either or both Chisago Lakes Joint Sewage Treatment Plant and North Branch Sewage Treatment Plant as the exclusive water source for generation purposes,”*

Issue: The Development Agreement does not, however, prevent the sewage treatment plants from drilling into the aquifers for water if they cannot provide adequate water supply to cool the LS Power generators.

- 1.5 Use of Effluent. The Project will be designed to use effluent from local sewage treatment plants, including either or both Chisago Lakes Joint Sewage Treatment Plant and North Branch Sewage Treatment Plant, as the exclusive water source for generation purposes and the Developer will not seek an exemption from legislative approval under Minn. Stat. § 103G.265, subd. 3(b). Developer shall request agreement of the sewage authorities to accept a prohibition on the sewage authorities appropriating groundwater to provide the Project with water for generation purposes. The Project may use ground water for drinking, restrooms, showers, cleaning, HVAC systems, fire suppression, irrigation of landscaping, and other building and grounds operations and maintenance purposes.
- 1.6 No Discharge of Processed Wastewater. The Project shall not discharge processed wastewater into any stream, river, lake, natural pond, ditch, or wetland within the County. Any solids removed from the processed wastewater through the use of a zero liquid discharge system shall be properly managed and disposed of in accordance with applicable regulations.
- 2.3 Water Appropriation. The Project shall not appropriate any groundwater for generation purposes. For purposes of clarity, and without limitation of the generality of the foregoing, no groundwater appropriation wells shall be drilled into the Mt. Simon-Hinckley aquifer or any other aquifer to support the Project, except to provide ground water for drinking, restrooms, showers, cleaning, HVAC systems, fire suppression, irrigation of landscaping, and other building and grounds operations and maintenance purposes.

Natural Gas Outlets

LS Power to provide Natural Gas outlets with town load border or rigging stations and distribution branch lines where required for residents and surrounding developments along the route of the natural gas main serving the new power plant. This will provide residents with the ability to have natural gas instead of propane.

- 3.10 Natural Gas Pipelines. Prior to utilizing the power of eminent domain to acquire rights-of-way and/or easements for natural gas pipelines and compressor stations, Developer shall attempt to negotiate such easements and/or rights-of-way with landowners. Developer shall encourage local natural gas distribution companies to consider making use of Developer's natural gas pipelines and/or rights-of-way where feasible and permitted to make retail natural gas service available to residents and surrounding developments near the Project and along the route of the natural gas line or lines serving the Project.
- 3.12 Natural Gas Pipelines. Prior to utilizing the power of eminent domain to acquire rights-of-way and/or easements for natural gas pipelines and compressor stations, Developer shall attempt to negotiate such easements and/or rights-of-way with landowners. Developer shall encourage local natural gas distribution companies to consider making use of Developer's natural gas pipelines and/or rights-of-way where feasible and permitted to make retail natural gas service available to residents and surrounding developments near the Project and along the route of the natural gas line or lines serving the Project.

Transmission Lines

The DA, Section 1.10 must be modified to read: Transmission Lines, Route and Corridors. Developer's interconnection agreement with the Midwest Independent System Operator shall not require the acquisition of more than one mile of new electric transmission right-of-way within the County and shall not require any other new lines, routes or corridors for future electric transmission lines in County.

Issue: The Development Agreement currently includes the provision of no new transmission corridors or rights-of-way as a result of the plant (other than the line to connect the plant to the existing substation. Mr. Wheatley has repeatedly indicated that no new "lines" will be required as a result of this project.

Solution: The Development Agreement should be clarified to include the language in Section 1.10 to clarify this point.

- 1.10 Transmission Routes and Corridors. Developer's interconnection agreement with the Midwest Independent System Operator shall not require the acquisition of more than one mile of new electric transmission right-of-way within the County and shall not provide for any other new lines, routes or corridors for future electric transmission lines in the County.

Noise & Vibrations

The DA, Section 2.1 must be modified to include the following: Noise and Vibration Impacts. Developer shall use commercially available efforts to mitigate potential noise impacts of the Project through design features sufficient to avoid violation of all state noise rules, regulations and laws. Absolute noise levels for Noise Area Classification 1 shall be achieved. The Exceptions (7030.0040 Subpart 3 Exceptions) shall not apply. The Developer will also comply with ANSI Standard B133.8-1977 for low-frequency sound-induced vibration (“Vibration Standard”) or 65dB© at the nearest residence, whichever is more stringent.

Issue: The proposed Development Agreement vibration conditions do not go far enough given the rural character of the neighboring area. The ANSI vibration standard referenced in the development agreement, written in 1977 and reviewed with modification in 1989 (still 20 years ago before the building boom in peaker plants, is not stringent enough for this residential setting (75dB(C) vs. recommended 65dB(C)).

Solution: Modify the Development Agreement language to lower the vibration standard to more currently accepted limits of 65dB(C).

- 2.1 Noise and Vibration Impacts. Developer shall use commercially reasonable efforts to mitigate potential noise impacts of the Project through design features sufficient to avoid violation of all state noise rules, regulations and laws and to comply with ANSI Standard B133.8-1977 for low-frequency sound-induced vibration (“Vibration Standard”). Such mitigation measures may include berms, vegetation and architectural features. A noise impact mitigation plan (“Noise and Vibration Mitigation Plan”) has been included in Exhibit D. The Noise and Vibration Mitigation Plan identifies design features and measures that may be used to mitigate noise and vibration from the Project and to ensure compliance with applicable noise and vibration rules, regulations, laws, and standards. The Parties understand specific noise and/or vibration provisions may be specified by state agencies as conditions of the state site permit. Developer shall consult in good faith with the Town as plans for the Project are being finalized regarding final plans for noise and vibration mitigation.

Minimum Property Tax

The DA must include a provision that sets the real property taxes at a minimum value of \$1,000,000/year, indexed for inflation, with the difference between the actual property taxes and the \$1,000,000/year, indexed for inflation, being paid as a contribution to the County's general fund and distributed to the County, North Chisago Lakes Township and Sunrise Township in equal portions.

Issue: The Developer has been promoting the proposed plant as a \$500M Investment which would generate approximately \$1.5M in annual real property taxes (approximately assessed at 10% of \$500M and taxed at a 3% rate). Should the PUC only approve a small peaking plant with a substantially smaller assessed value, the real property taxes could be significantly less.

Solution: Incorporate a "floor" for real property taxes of \$1M/year.

Use of Fuel Oil

The DA language must be modified to eliminate fuel oil use or restrict its use to 500 hours per year (for ALL generating units).

Issue: The proposed Development Agreement limits the use of fuel oil to 500 hours per generating unit, not 500 hours total. If there are 5 generating units as recently proposed (4 simple cycle and 1 combined cycle), that means that fuel oil could be used for 2500 hours per year if the units ran in series. Also since it is per calendar year and the most frequent use of fuel oil occurs during winter months, the plant could essentially run full time on fuel oil throughout December and January.

Solution: Eliminate the use of fuel oil as a backup fuel source or restrict its use to 500 hours total (all generating units).

- 1.8 Use of Fuel Oil. The Project will limit its use of fuel oil in any generating unit to not more than five hundred (500) hours in any calendar year. Fuel oil will be delivered in tanker trucks using the same county roads specified in the construction traffic provisions of this agreement or such other county roads as are reasonably specified by the County; provided, however, that, when constructed, CSAH 17 will be the preferred route for fuel oil deliveries. Fuel oil unloading facilities shall be designed to unload approximately two trucks per hour. Fuel oil storage will comply with all applicable federal, state, local and National Fire Protection Association (“NFPA”) standards, including impervious secondary containment for loading racks and bulk fuel storage tanks. Spill prevention control and countermeasures (“SPCC”) plans will be made available to the local fire department and the facility will be open to inspection by the local fire department on a periodic basis to verify compliance.

- 3.1 County Costs. **The Developer shall be responsible for the following costs borne by the County for and as a result of the Project:**
- 3.1.1 The reasonable costs of easements or right-of-way along Chisago County property, highways or roads;
 - 3.1.2 The reasonable costs associated with the improvements the Developer is required to construct pursuant to Section 3.2; and
 - 3.1.3 Reasonable additional costs as provided in and subject to the limitations of Section 4.1 of this Agreement, including but not limited to the reasonable costs associated with the services and expenses of professionals.
- 3.2 County Roads.
- 3.2.1 **Construction Traffic.** Traffic for construction shall use CSAH 15 (if the Alternative CSAH 15 Access is used for the Site) and CSAH 14 – via either TH 95 or US Hwy 8. Construction traffic shall not use CSAH 18 (Lent Trail) or CSAH 15 more than 100 feet north of the access road to the Site, except as may be required for construction of water and/or natural gas pipelines.
 - 3.2.2 **Haul Routes.** All haul routes shall be approved by Chisago County Public Works prior to their use, which approval shall not unreasonably be withheld. **Developer shall be responsible for any and all restoration of haul routes per Mn/DOT Specifications 2051.**
 - 3.2.3 **Turn Lane.** **Construction of required turn and by-pass lane at the access to the Site shall be required per access permit.**
 - 3.2.4 **Seal coating.** **After construction traffic has ceased, the full length of CSAH 14, or 11.2 miles, shall be seal coated per Chisago County Public Works specifications.**
 - 3.2.5 **County State Aid Highway 15.** **If the Alternative CSAH 15 Access is used for the Site, County State Aid Highway 15 (CSAH 15) shall be reconstructed from the intersection with CSAH 14 to a point 100 feet north of the access road to the Site. Reconstruction plans shall be approved by Chisago County Public Works and shall include a 40-foot top and 10-ton design, construction of turn and by-pass lanes, and repaving of the entire distance from the intersection with CSAH 14 to the point 100 feet north of the access road to the Site**
 - 3.2.6 **County Right-of-Way.** **The entire parcel shall be platted by the Developer and the Developer shall dedicate the required right-of-way to the County.**

3.2.7 **Proposed County State Aid Highway 17.** If and to the extent state funding reduces amounts that would otherwise be paid or incurred by Developer for pipelines or other improvements necessary to obtain treated effluent for use by Developer pursuant to Developer's agreement(s) with the local sewage treatment plant(s), **Developer agrees to pay an equivalent amount, as reasonably determined by Developer, to the County to be used by the County for the development and/or construction of proposed County State Aid Highway 17.**

3.3 **Required Permits and Approvals.** **Access permit and preliminary approval of roadway plans shall be obtained from Chisago County Public Works.**

3.2.4 **Repair of CSAH 14.** Immediately prior to the commencement of construction of the Project, the County Engineer and an engineer selected by the Developer shall jointly assess and document the condition of the full length of CSAH 14, or 11.2 miles. After construction traffic has ceased, Developer shall: (a) repair any damage to CSAH 14 caused by its construction as reasonably determined by the County Engineer after consultation with an engineer selected by Developer; and (b) seal coat CSAH 14 as per Chisago County Public Works specifications, except where not required due to Developer's repairs.

- 3.6 **Contribution to County Environmental Improvement Fund.** The Developer shall **annually and for each year of operation** of the Project make a contribution to the County in the amount of one hundred thousand dollars and no cents (**\$100,000.00**) for deposit in a fund to be used by the County for the improvement of the environment within the County (“Environmental Improvement Fund Contribution”).
- 3.6.1 **Notice and First Payment.** The first Environmental Improvement Fund Contribution payment shall be made to the County within ninety (90) days after the Commercial Operation Date. Developer shall provide the County with written notice of the Commercial Operation Date within thirty (30) days after that date.
- 3.6.2 **Subsequent Payments.** Subsequent Environmental Improvement Fund Contribution payments shall continue annually thereafter so long as this Agreement is in effect as provided herein. Payment may be made by check or acceptable electronic transfer and shall be made by the Developer to the County within sixty (60) days of each anniversary of the Commercial Operation Date.

- 3.6 **Contribution to County Environmental Improvement Fund.** The Developer shall annually and for each year of operation of the Project make a contribution to the County for deposit in a fund to be used by the County for the improvement of the environment within the County (“Environmental Improvement Fund Contribution”). The first five Environmental Improvement Fund Contribution payments shall be in the amount of fifty thousand dollars and no cents (\$50,000.00) per year and all subsequent Environmental Improvement Fund Contribution payments shall be in the amount of one hundred thousand dollars and no cents (\$100,000.00) per year.
- 3.6.1 **Notice and First Payment.** The first Environmental Improvement Fund Contribution payment shall be made to the County within ninety (90) days after the Commercial Operation Date. Developer shall provide the County with written notice of the Commercial Operation Date within thirty (30) days after that date.
- 3.6.2 **Subsequent Payments.** Subsequent Environmental Improvement Fund Contribution payments shall continue annually thereafter so long as this Agreement is in effect as provided herein. Payment may be made by check or acceptable electronic transfer and shall be made by the Developer to the County within sixty (60) days of each anniversary of the Commercial Operation Date.

- 3.7 **Contribution to County Neighborhood Enhancement Fund.** The Developer shall **annually and for each year of operation** of the Project make a contribution to the County in the amount of one hundred thousand dollars and no cents (**\$100,000.00**) for deposit in a fund (“Neighborhood Enhancement Fund Contribution”). The County will endeavor to expend a majority of the Neighborhood Enhancement Fund Contribution for the enhancement of local neighborhoods in the general vicinity of the Project as determined by the County.
- 3.7.1 **Notice and First Payment.** The first Neighborhood Enhancement Fund Contribution payment shall be made to the County within ninety (90) days after the Commercial Operation Date. Developer shall provide the County with written notice of the Commercial Operation Date within thirty (30) days after that date.
- 3.7.2 **Subsequent Payments.** Subsequent Neighborhood Enhancement Fund Contribution payments shall continue annually thereafter so long as this Agreement is in effect as provided herein. Payment may be made by check or acceptable electronic transfer and shall be made by the Developer to the County within sixty (60) days of each anniversary of the Commercial Operation Date.
- 3.7 **Contribution to County Neighborhood Enhancement Fund.** The Developer shall annually and for each year of operation of the Project make a contribution to the County for deposit in a fund to be used for neighborhood enhancement (“Neighborhood Enhancement Fund Contribution”). The County will endeavor to expend the Neighborhood Enhancement Fund Contribution for the enhancement of neighborhoods in the general vicinity of the Project. The **first five Neighborhood Enhancement Fund Contribution payments shall be** in the amount of two hundred fifty thousand dollars and no cents (**\$250,000.00**) per year and **all subsequent Neighborhood Enhancement Fund Contribution payments shall be** in the amount of two hundred thousand dollars and no cents (**\$200,000.00**) per year.
- 3.7.1 **Notice and First Payment.** The first Neighborhood Enhancement Fund Contribution payment shall be made to the County within ninety (90) days after the Commercial Operation Date. Developer shall provide the County with written notice of the Commercial Operation Date within thirty (30) days after that date.
- 3.7.2 **Subsequent Payments.** Subsequent Neighborhood Enhancement Fund Contribution payments shall continue annually thereafter so long as this Agreement is in effect as provided herein. Payment may be made by check or acceptable electronic transfer and shall be made by the Developer to the County within sixty (60) days of each anniversary of the Commercial Operation Date.

3.8 **Contribution to County Park Acquisition and Improvement Fund.** Provided Developer receives all required approvals and closes on the primary financing for the construction of the Project, Developer shall make a contribution to the County in the amount of one hundred thousand dollars and no cents (**\$100,000.00**) for deposit in a fund to be used by the County for the acquisition and improvement of park land within the County (“Park Acquisition and Improvement Fund Contribution”). The County will endeavor to expend a majority of the Park Acquisition and Improvement Fund Contribution in the general area of the Project, as determined by the County, to the extent it is reasonably feasible to do so. The Park Acquisition and Improvement Fund Contribution payment shall be made to the County within ninety (90) days after Developer closes on the primary financing for the construction of the Project.

3.8 **Contribution to County Library System Fund.** The Developer shall **annually** and for each year of operation of the Project make a contribution to the County in the amount of twenty thousand dollars and no cents (**\$20,000.00**) for deposit in a fund to be used by the County for the County library system (“County Library System Fund Contribution”).

3.8.1 **Notice and First Payment.** The first County Library System Fund Contribution payment shall be made to the County within ninety (90) days after the Commercial Operation Date.

3.8.2 **Subsequent Payments.** Subsequent County Library System Fund Contribution payments shall continue annually thereafter so long as this Agreement is in effect as provided herein. Payment may be made by check or acceptable electronic transfer and shall be made by the Developer to the County within sixty (60) days of each anniversary of the Commercial Operation Date.

- 3.9 Contribution to **City of Lindstrom and Almelund Township Fire Departments**. The Developer shall make **one-time contributions** in the amount of thirty-seven thousand five hundred dollars and no cents (**\$37,500.00**) each to the City of Lindstrom and Almelund Township to be used for fire fighting equipment (“Fire Department Contributions”). The Fire Department Contributions shall be made within ninety (90) days after the Commercial Operation Date.

- 3.10 Contribution to **County Communication Equipment Fund**. Provided Developer receives all required approvals and closes on the primary financing for the construction of the Project, Developer shall make a **one-time contribution** to the County in the amount of two hundred thousand dollars and no cents (**\$200,000.00**) for deposit in a fund to be used by the County to assist local fire departments in purchasing communication equipment (“Communication Equipment Fund Contribution”). The Communication Fund Contribution payment shall be made to the County within ninety (90) days after Developer closes on the primary financing for the construction of the Project.

3.11 **Kable Avenue Outlet.** Kable Avenue, located south of the Site, currently has no outlet other than CSAH 14. If Developer receives all required approvals and closes on the primary financing for the construction of the Project, **Developer shall contribute up to two hundred and fifty thousand dollars and no cents (\$250,000.00) for purposes of development of an additional outlet from Kable Avenue.** If the County, the Town, or the adjacent township elects to construct the outlet, it shall provide the Developer written notice of its intent to undertake the project, said notice to be delivered no sooner than ninety (90) days after Developer closes on the primary financing for the construction of the Project and no later than five (5) years after the Commercial Operation Date. **Developer shall fully reimburse the entity undertaking the outlet project for its acquisition and construction costs up to the maximum of two hundred and fifty thousand dollars and no cents (\$250,000.00) within thirty (30) days of presentation of associated invoice(s), or the Developer may be required to escrow the project funds from which the entity can deduct its expenses as they are incurred. The entity that constructs the outlet shall be the road authority with respect to the new section of road and shall be responsible for its on-going maintenance and repair unless another road authority agrees to maintain it.**

3.13 **Kable Avenue Outlet.** Kable Avenue, located south of the Site, currently has no outlet other than CSAH 14. If Developer receives all required approvals and closes on the primary financing for the construction of the Project, Developer shall contribute up to two hundred and fifty thousand dollars and no cents (\$250,000.00) for purposes of development of an additional outlet from Kable Avenue. If the County, the Town, or the adjacent township elects to construct the outlet, it shall provide the Developer written notice of its intent to undertake the project, said notice to be delivered no sooner than ninety (90) days after Developer closes on the primary financing for the construction of the Project and no later than five (5) years after the Commercial Operation Date. Developer shall fully reimburse the entity undertaking the outlet project for its acquisition and construction costs up to the maximum of two hundred and fifty thousand dollars and no cents (\$250,000.00) within thirty (30) days of presentation of associated invoice(s), or the Developer may be required to escrow the project funds from which the entity can deduct its expenses as they are incurred. The entity that constructs the outlet shall be the road authority with respect to the new section of road and shall be responsible for its on-going maintenance and repair unless another road authority agrees to maintain it.

- 4.1 **Reimbursement of Expenses.** The Developer shall reimburse the County and the Town for the reasonable expenses they incur related to this Agreement and the Project, **up to a maximum for the life of this Agreement of \$300,000 for the County** and \$100,000 for the Town. Expenses to be reimbursed by the Developer, subject to these maximums, shall include, but not be limited to reasonable expenses for the following: actual expenses incurred by the County or Town for holding special meetings related to the Project; actual staff time; outside engineering and technical professional consultants related to monitoring and review of the Project; and reasonable outside attorneys fees related to the negotiation, drafting, and implementation of this Agreement. It shall be a condition for reimbursement of costs related to outside engineering and technical professional consultants and attorneys that such engineering and technical professional consultants and attorneys are not available as part of the County or Town staff. Prior to entering into any contract, work order, or similar obligation that is expected to exceed \$5,000 for the services of any one outside engineering or technical professional consultant or consulting firm, the Developer shall have been given reasonable advance notice that the matter will be considered by the board of the County or the Town (as the case may be) and the board shall have approved the expenditure.

Description	Amount
<u>Section 3.6</u> County Environmental Improvement Fund	\$50,000 Annually for the first (5) years \$100,000 Annually Thereafter
<u>Section 3.7</u> County Neighborhood Enhancement Fund	\$250,000 Annually for the first (5) years \$200,000 Annually Thereafter
<u>Section 3.8</u> County Library System Fund	\$20,000 Annually
<u>Section 3.10</u> County Communication Equipment Fund	\$200,000 One-time payment
<u>Section 3.13</u> Kable Avenue – Additional Outlet	Up to \$250,000
Reimbursement of Expenses	Up to \$300,000
Payment if Lieu of Taxes	\$210,000 Annually
<u>Section 3.2</u> County Roads	<p>Developer shall be responsible for:</p> <p>3.2.2 Any and all restoration of haul routes per Mn/DOT Specifications 2051</p> <p>3.2.3 Construction of required turn and bypass lane at the access to the Site shall be required per access permit</p> <p>3.2.4 Repair of CSAH 14. Prior to construction parties will meet & jointly assess & document the condition of CSAH 14, or 11.2 miles. After construction traffic has ceased developer shall: repair any damage as reasonably determined by parties; and seal coat as per Public Works specs, except where not required due to Developer's repairs</p> <p>3.2.5 If the Alternative CSAH 15 Access is used for the Site, CSAH 15 shall be reconstructed from the intersection with CSAH 14 to a point 100 feet north of the access road to the Site. . .</p>

	<p>3.2.6 The entire parcel shall be platted by the Developer and the Developer shall dedicate the required ROW to County</p> <p>3.2.7 If and to the extent state funding reduces amounts that would otherwise be paid or incurred by Developer for pipelines or other improvements necessary to obtain treated effluent for use by Developer pursuant to Developer's agreement(s) with the local sewage treatment plant(s), Developer agrees to pay an equivalent amount, as reasonably determined by Developer, to the County to be used by the County for the development and/or construction of proposed County State Aide Highway 17</p>
<p>County's Estimated Percentage on Real Property</p>	<p>50%</p>