

Reply Brief/FoF from Laborers' District Council of Minnesota and North Dakota (LIUNA)

October 10, 2025

Honorable Judge McKenzie
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101

RE: In the Matter of the Application of Benton Solar, LLC for Site Permits and a Route Permit a 100 MW Solar Energy Generating System, a 100 MW Battery Energy Storage System, and associated High-Voltage Transmission Line in Benton County, Minnesota (MPUC Docket No.: IP7115/GS-23-423, ESS-24-283, TL-23-425; OAH Docket No. 25-2500-40508)

Dear Judge McKenzie,

LIUNA appreciates the opportunity to file the enclosed suggested revisions to Benton Solar's proposed findings of fact in the above-captioned matters. We have tried to the best of our ability to integrate our proposed changes into the structure of the Applicant's proposed findings, proposing edits to language of findings relevant to our workforce concerns, and adding suggested additional findings where needed. We were unable to come up with a means to align the numbering of proposed new footnotes with Applicant's document, so they begin at 1.

We believe that our legal argument for an additional permit condition requiring the Applicant to follow through on commitments regarding use of local union labor through a Project Labor Agreement was provided in our initial brief, and the logic is reflected in the proposed findings.

Proposed revisions to Benton Solar proposed Findings of Fact

11. On October 18, 2024, LIUNA filed comments indicating that the Project has the potential to provide significant socioeconomic benefits to the regional economy by creating high-quality construction and maintenance jobs, but that NEER has a "tendency to over-promise and under-deliver on certain projects when it comes to employment of local workforce".¹⁶ LIUNA also: (i) stated that they do not see a need for a Citizens Advisory Committee; (ii) requested that the Commission inquire into Benton Solar's commitments and plans for construction of the Project based on their past experience with NEER affiliates in Minnesota and North Dakota; and (iii) requested that the Commission consider whether additional permit conditions are needed to require firm commitments that provide meaningful assurance for local workers and communities in and around Benton County, and to prevent NEER from "engaging in a bait-and-switch when it comes to use of local labor."¹⁷

14. On October 30, 2024, LIUNA submitted supplemental comments reiterating the concerns articulated in their initial comments, expressing concern that the Applicant will hinder the

development of a robust record without direction from the Commission based on past experience with NEER affiliate Dodge County Wind, LLC, and restating that any factual disputes around local labor usage, namely around conduct of NEER affiliates in neighboring states, are relevant and could be addressed through an informal or contested case proceeding.²¹ LIUNA proposed that the Commission issue an order to develop a record, either through an informal process or a contested case proceeding, regarding Benton Solar's likely utilization of local labor and the economic impacts of such local labor employment.²²

21. On December 19, 2024, the Commission issued an Order ("December 19 Order") accepting the Applications as substantially complete, authorizing review under the alternative permitting process, and directing: (i) a joint public hearing and combined environmental review for the Applications; (ii) a contested case proceeding be referred to the Court of Administrative Hearings; (iii) the intervention of LIUNA, Local 49, and Carpenters be granted; and (iv) an ALJ to develop the record in accordance with the Commission's finding that the Applicant's labor practices in other states are relevant to the statutory criteria to be applied in this matter.²⁹

220. Construction and operation of the Project is anticipated to have a minimal to significant and positive effect on the socioeconomics of Benton County based on expenditures during construction, wages, and tax revenue.²⁸¹ The magnitude of local socioeconomic benefits will depend to a significant degree on utilization of local construction labor.¹ During construction, the Solar Facility and the BESS likely will result in increased expenditures for lodging, food and fuel, transportation, and general supplies at local businesses during construction.²⁸²

221. In addition, construction of the Project will require approximately 150-300 workers, creating employment opportunities and likely resulting in additional economic activity due to wages paid to local laborers constructing the Project.²⁸³

222. Testimony from witnesses for Benton Solar and LIUNA indicate that the economic benefit to Benton County will be higher if Benton Solar's Project is constructed with a higher percentage of local labor.²⁸⁴ The testimony is also consistent with the conclusions in the EA.²⁸⁵

222A. LIUNA witness Dr. Lucas Franco found that construction wages and health benefits associated with the project will generate an estimated \$19.4 million to \$24.8 million in local economic activity, assuming use of a 50% to 70% local workforce,² using an economic model developed by North Star Policy Institute ("NSPI").³ When the value of deferred retirement benefits is included, the expected impact grows by an additional \$3.6 million.⁴

222B. Benton Solar provided its own economic analysis produced by a professor of economics at St. Cloud State University, which found that construction of the project would result in approximately \$20 million in direct benefits from labor income assuming use of a 60% local

¹ Ex. 156 (EA) at 52; Ex. LIUNA-408 (Franco Direct Att. A) at 1

² Ex. LIUNA-413 (Franco Direct) at 3; Ex. LIUNA-408 (Franco Direct Att. A) at 1

³ Ex. LIUNA-408 (Franco Direct Att. A) at 2

⁴ Ex. LIUNA-408 (Franco Direct Att. A) at 1

construction workforce.⁵ While Applicant's analysis used incorrect wage rates and did not account for overtime or health and retirement benefits associated with union employment, the author's findings are similar in direction and magnitude to the findings of Dr. Franco.⁶

222C. According to both economic models, the local benefits of a large renewable energy project diminish substantially at lower levels of local labor utilization. Using Benton Solar's model, the magnitude of local economic benefit associated with construction payrolls is directly proportional to the percent of local workforce, with use of a 30%-local workforce reducing associated economic benefits by half compared to the Applicant's 60%-local baseline, while utilization of a 15%-local workforce would reduce such benefits by three-quarters.⁷ Dr. Franco's model, meanwhile, shows that building a project like Benton Solar with a largely non-local workforce (10-30% local) is expected to reduce local economic benefits by \$14.3 million compared to a largely local workforce (50-70% local).⁸

222D. LIUNA provided expert testimony and data analysis supporting the feasibility of building Benton Solar using largely local workforce based on past utility-scale solar and wind energy construction projects built with union labor, where rates of local labor utilization have ranged from 40% to 78% for wind, and 84% to 92% for solar.⁹ The Applicant does not dispute the feasibility of building Benton Solar with a largely local construction workforce, and in fact assumed such an outcome in the company's economic impact analysis.

223. LIUNA filed testimony expressing concern that the Project may not be constructed using a significant amount of local labor based on past reliance on non-local labor by other NEER subsidiaries in Minnesota and North Dakota, citing as examples NEER's Lake Benton II, Emmons-Logan, Northern Divide, and Oliver IV wind projects.²⁸⁶ Local workers performed just 28% of construction work hours on Lake Benton II according to Labor Statistics Reports filed with the Commission, while LIUNA estimates that North Dakotans accounted for less than 10% of workers employed on the three North Dakota projects – results that are generally consistent with data provided by NextEra in response to LIUNA Information Requests.¹⁰

224. ~~However,~~ Benton Solar has committed, in a letter filed on the docket and in response to several public comments, to utilizing an EPC contractor to construct the Project who will utilize union labor.²⁸⁷ ~~B~~Further, based on testimony in the record, utilization of union labor is strongly correlated with significant utilization of a local workforce.²⁸⁸ ~~Moreover,~~ Benton Solar's intended EPC contractor has already executed a Project-specific PLA with unions including LIUNA that ensures the Project will utilize union and local workers if constructed by the aforementioned

⁵ "Dr. Banaian concluded

⁶ Ex. LIUNA-415 (Franco Surr.) at 13-14; Evid. Hrg. Tr. at 15-16; "Q So we would agree that there's probably actually greater economic benefits to the project in terms of labor income than are represented in Dr. Banaian's analysis? A Based on the information you provided me, yeah, I would -- I would agree." Evid. Hrg. Tr. at 17, 20-25

⁷ Evid. Hrg. Tr. at 12-13 and 17

⁸ Ex. LIUNA-408 (Franco Direct Att. A) at 1

⁹ Ex. LIUNA-408 (Franco Direct Att. A) at 9

¹⁰ Ex. 400 (Comment on Application Completeness) at 2; Evid. Hrg. Tr. at 58-59.

contractor. Additionally, Benton Solar and LIUNA both provided testimony indicating that many other projects constructed by NEER subsidiaries in Minnesota have utilized a significant amount of local labor.²⁸⁹

224A. LIUNA raised concerns that Benton Solar's commitments to use union labor may not be enforceable in the absence of a binding permit condition, and that the PLA would have no effect if the project is ultimately built by a different EPC contractor because the Applicant is not a party to the agreement.¹¹ Mr. Gracia confirmed that NEER and its affiliates are not a party to the PLA, and did not dispute that the existing PLA would have no effect if a different EPC were ultimately selected to build the project.¹² The draft site permits filed in the record require Benton Solar to report on use of local labor, but do not require the Applicant to build the solar generation, battery storage, or transmission components of the project under PLAs, nor do they specifically require the Applicant to take any other steps to maximize use of local workforce.¹³

224B. The Commission cannot assume that the project will be built under the existing PLA because the Applicant has not provided a copy of the EPC agreement or detailed the circumstances under which the agreement could be modified or terminated by Benton Solar or the contractor. Mr. Gracia committed that NextEra would require any successor EPC to enter into a similar PLA with local building trades unions, but was unable to offer an opinion as to whether such a commitment was enforceable by the Commission, LIUNA or any other party in the absence of a binding legal agreement or permit condition.¹⁴

224C. NEER has overstated the local construction employment benefits of the company's utility-scale renewable energy projects on several occasions.

224D. NEER indicated to the North Dakota Public Service Commission ("NDPSC") in the project's site permit application that the company's Emmons-Logan Wind would require "200 to 300 temporary construction workers" and that the company expected North Dakotans to fill jobs involved with "basic infrastructure and site development", which includes major scopes of work including but not limited to clearing, excavation and foundation construction according to Mr. Gracia.¹⁵ NEER also claimed publicly that the project would be "adding jobs and tax base to the local economy."¹⁶ In fact, roughly 10% of construction jobs on the project were filled by North Dakotans.¹⁷

¹¹ Ex. LIUNA-410A (Franco Rebuttal) at 1

¹² Evid. Hrg. Tr. at 20

¹³ Ex. 126, 127, 128 (Sample Permits)

¹⁴ Ibid. at 21

¹⁵ Ex. LIUNA-413 (Franco Direct) at 6; **ADD NDPSC APP EXHIBIT**; Evid. Hrg. Tr. at 43

¹⁶ Ex. LIUNA-413 (Franco Direct) at 6

¹⁷ Just 6% of construction jobs were filled by North Dakota workers based on LIUNA's estimates, while NextEra reports that **[TRADE SECRET INFORMATION BEGINS]** **[TRADE SECRET INFORMATION ENDS]** of work hours were performed by North Dakotans. Ibid.; LIUNA Ex. 420 (Cortina TS Surr.) at 7; LIUNA Ex. 422 (Cortina TS Surr. Att. 2); Ex. LIUNA-413 (Franco Direct) at 7

224E. NEER also informed the NDPSC that Northern Divide Wind that the project would create “200 to 300” construction jobs and suggested that North Dakotans would, at a minimum, fill jobs associated with “basic infrastructure and site development needs.”¹⁸ NEER told a local newspaper that Northern Divide would “create homegrown, renewable energy, good jobs and millions of dollars in additional revenue for the local community there.”¹⁹ In fact, fewer than 10% of construction jobs on the project were filled by North Dakota workers despite high levels of unemployment among local construction workers during project construction.²⁰

224F. Despite past failures to deliver meaningful local employment benefits on the Emmons-Logan and Northern Divide projects, NEER once more led regulators to believe that Oliver IV Wind would create meaningful employment benefits in an area of the state that has experienced job losses associated with the decline of coal-fired power.²¹ NEER publicly listed an anticipated 200 construction jobs as one of three key local “economic benefits” on a company web page.²² Finally, NEER representative Clay Cameron told Public Service Commissioners that “we commit that our EPCs will hire as much local labor as possible.”²³ In fact, no more than 5% of construction jobs on the project were filled by North Dakotans – a worse outcome for local workers than on prior projects.²⁴

224G. The evidence in the record indicates that NEER misled LIUNA, regulators and the public concerning the company’s plans to work with the union to increase utilization of local construction workforce on the Oliver IV project.²⁵ LIUNA witness Steve Cortina testified that he attended a meeting immediately prior to the Oliver IV public hearing at which NEER representatives committed that the EPC contractor responsible for the wind farm would hire LIUNA members to staff the project, and offered to have representatives of the EPC contractor fly to Bismarck the following day to reaffirm the company’s commitment to use union labor.²⁶ The Applicant disputes Mr. Cortina’s description of the conversation, but notably did not offer its own first-hand witness to the meeting or explain discrepancies between the company’s account of the meeting and media reports on the project.²⁷

¹⁸ **ADD CITE FOR NDPSC APP**

¹⁹ Ibid.

²⁰ Just 8.5% of construction jobs were filled by North Dakota workers based on LIUNA’s estimates, while NextEra reports that **[TRADE SECRET INFORMATION BEGINS] [REDACTED] [TRADE SECRET INFORMATION ENDS]** of work hours were performed by North Dakotans. Ibid.; Ex. LIUNA-413 (Franco Direct) at 7, 9; LIUNA Ex. 422 (Cortina TS Surr. Att. 2)

²¹ Ex. LIUNA-420 (Cortina Surr.) at 3; “It is likely that general skilled labor is available either in the county or the state to serve the basic infrastructure and site development needs.” Ex. LIUNA-425 (Oliver IV Wind Application Excerpt)

²² Ex. LIUNA-413 (Franco Direct) at 8

²³ Ex. LIUNA-402 (ND Monitor) at 2

²⁴ Just 5.3% of construction jobs were filled by North Dakota workers based on LIUNA’s estimates, while NextEra reports that **[TRADE SECRET INFORMATION BEGINS] [REDACTED] [TRADE SECRET INFORMATION ENDS]** of work hours were performed by North Dakotans. Ex. LIUNA-413 (Franco Direct) at 8; Ex. LIUNA-420 (Cortina TS Surrebuttal) at 7

²⁵ Ex. LIUNA-403 (Letter to NDPSC);

²⁶ Ex. LIUNA-412 (Cortina Direct) at 8; Ex. LIUNA-420 (Cortina Surr.) at 6

²⁷ Ex. LIUNA-401 (Bismarck Tribune); Ex. LIUNA-402 (ND Monitor)

225. Based on the evidence in the record, if Benton Solar is~~will be~~ constructed with a significant amount of local labor, the project will have direct and indirect positive economic impacts in Benton County and the region around the Project. There is sufficient evidence in the record that these benefits can be realized if the project is built under a PLA with local labor unions.~~Benton Solar has committed to having its EPC utilize union labor, that the use of union labor will result in the use of local labor, and that the EPC has agreements with unions to staff the construction jobs for the Project.~~

225A. On the other hand, record evidence shows that projected local economic benefits are unlikely to be realized in the absence of a PLA due to low utilization of local construction workforce and the lack of meaningful efforts to promote local hiring on past NEER projects built with nonunion labor.

225B. Testimony filed by LIUNA and information submitted by NextEra in response to information requests provides little evidence that NEER has made efforts to encourage, monitor or evaluate efforts by EPC contractors and subcontractors to employ local construction labor, except where the company was legally or contractually obligated to do so. To the contrary, NEER states that the company “does not collect or maintain information related to those practices unless it is required for compliance with local, state, or federal requirements”.²⁸ NEER was specifically unable to provide evidence that a single local recruitment activity was completed by the company’s wind EPCs to recruit local construction workforce on four recent North Dakota projects.²⁹

226. Following construction, the operation of the Project will continue to provide economic benefits to the region, including through wages.²⁹⁰

227. Additionally, Benton Solar will increase the local tax revenue by providing approximately \$200,000 to Benton County and \$50,000 to Minden Township annually.²⁹¹ Based on prior expenditures of Benton County and Minden Township, the increase in revenue would represent modest beneficial impact to the County over the life of the Project, while the increase in revenue to Minden Township would be significant.²⁹²

227A. Construction payrolls are among the most significant local benefits of the project that are quantified in Applicant’s economic analysis. For example, while the project is expected to generate \$4.2 million in local tax revenues and \$4.8 million in state tax revenues over the life of the project, these tax receipts total less than half of the roughly \$20 million associated with construction labor incomes.³⁰

228. The record shows that, if built under a PLA~~overall~~, the Solar Facility and the BESS will have a significant positive impact on the socioeconomics of the region by increasing employment opportunities, stimulating economic activity, and providing additional tax

²⁸ (Cortina TS Surr. Atts. 1 and 2); See also Evid Hrg. Trans. At 45

²⁹ Ex. 168; Ev. Hrg. Trans. at 51-53

³⁰ Ex. 162 (Gracia Rebuttal) at 21

revenue.²⁹³ Any adverse socioeconomic from the loss of agricultural land and income will be mitigated through lease payments to landowners over the lifespan of the Project.²⁹⁴

490. The record in this proceeding demonstrates that Benton Solar can satisfy~~ied~~ the criteria for a site permit as set forth in Minn. Stat. §§ 216E.03, 216E.04 and Minn. R. Ch. 7850 and all other applicable legal requirements if the Applicant follows through on its commitment to build the project under a PLA.

490A. The Commission should require Benton Solar to build the Solar Facility, BESS and transmission line under a PLA consistent with commitments made by the Applicant in this proceeding.

491. The Solar Facility and the BESS, with the permit conditions discussed above, satisfy the site permit criteria under Minn. Stat. §§