



December 23, 2022

The Honorable Barbara Case  
Office of Administrative Hearings  
600 North Robert Street  
P.O. Box 64620  
Saint Paul, MN 55164-0620

RE: EERA Reply Comments  
Byron Solar Project  
OAH Docket No. 5-2500-38038  
PUC Docket Nos. IP-7041/GS-20-763, CN-20-764, GS-20-765

Dear Judge Case,

Department of Commerce, Energy Environmental Review and Analysis (EERA) staff submits these reply comments on the proposed Byron Solar Project.

Byron Solar submitted reply comments on December 9, 2021.<sup>1</sup> Byron Solar's comments summarized the hearing record and responded to a number of hearing comments (including EERA's November 29, 2022, comments<sup>2</sup>), proposed Findings of Fact, Conclusions of Law, and Recommendations (Byron Solar FOF),<sup>3</sup> and provided markups of its proposed Draft Site Permit (DSP) and Draft Route Permit (DRP).

In these reply comments, EERA provides a technical analysis of the two route alternatives and responds to Byron Solar's December 9, 2022, reply comments. EERA's comments consist of five parts.

- I. Technical analysis of the route alternatives
- II. Discussion of substantive modifications to Byron Solar's FOF
- III. Summary of technical edits to Byron Solar's FOF
- IV. Response to Byron Solar's comments on EERA review of Draft Decommissioning Plan
- V. Edited versions (underline and strikethrough) incorporating EERA's proposed edits to:
  - a. Byron Solar's FOF (Attachment A)
  - b. Draft Site Permit (DSP) (Attachment B)
  - c. Draft Route Permit (DRP) (Attachment C).

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<sup>1</sup> Byron Solar, *Reply Comments and Attachments*, December 9, 2022, eDocket No. [202212-191223-01](#)

<sup>2</sup> EERA, *Hearing Comments*, November 29, 2022, eDocket Nos. [202211-190960-02](#), [202211-190960-05](#), [202211-190960-08](#)

<sup>3</sup> Byron Solar, *Proposed Findings of Fact, Conclusions of Law, and Recommendation*, December 9, 2022, eDocket No. [202212-191224-02](#)

## I. Technical Analysis of Route Alternatives

The Environmental Assessment (EA) prepared by EERA discusses the relative merits of the Blue Route and Red Route with respect to the criteria the Commission must apply in its decision.<sup>4</sup> For most of the routing factors impacts, or consistency with the routing factor, both routes are similar. However, there are a handful of factors for which potential impacts, or consistency with the routing factor, vary between the routes.

### A. Anticipated Impacts Are Similar Between Route Alternatives

Impacts to existing resources are anticipated to be for both routes, although the level of impact varies across resources for most routing factors.

#### 1. Negligible to Minimal Impacts

For both routes impacts are expected to be negligible to minimal and able to be mitigated, or consistent with the routing factor for the following routing factors: displacement, cultural values, electric interference, floodplains, property values, recreation, socioeconomics, airports, public safety, land-based economics, archaeological and historic resources, air quality, soils, surface water, topography, vegetation, wetlands, wildlife, wildlife habitat, and rare and unique resources.

#### 2. Minimal to Moderate Impacts

For both routes impacts are expected to be minimal to moderate and able to be mitigated in part or are somewhat less consistent with the routing factor for the following routing factors: aesthetics, land use and zoning, roads, utilities, use of existing transportation, pipeline, and electrical transmission systems or right-of-way (ROW).

#### 3. Moderate to Significant Impacts

Although temporary and intermittent in duration, construction noise impacts for both routes are anticipated to be moderate to significant and unable to be fully mitigated. Once operational, noise impacts are not expected from either route.

Minn. Stat. § 216E.03, subd. 7(e), requires the Commission to make specific findings that it has considered locating a route for a high-voltage transmission line (HVTL) on an existing HVTL route and the use of parallel existing highway ROW. If neither existing HVTL routes or existing highway ROW are used for the route selected by the Commission, the Commission must state the reasons for its decision not to use existing ROW.

EERA notes that although the statute refers to location on an existing “route,” determining the location of a route is difficult because routes are not legally recorded and there is no reliable record of the extent of a transmission route after the HVTL is constructed. Minn. Stat. § 216E.01, subd. 8, defines a

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<sup>4</sup> Ex. 212 at pp. 13 – 17 (Environmental Assessment (EA) Text, September 22, 2022, eDocket No. [20229-189238-01](#) )

route as “the location of a high voltage transmission line between two end points. The route may have a variable width of up to 1.25 miles.” A route is used during the Commission’s consideration of alternative pathways between two end points. Route permits issued by the Commission are for construction of HVTLs, and while the dimensions of the route selected are specified in the route permit, the route is not legally recorded. Because HVTL ROW are legally recorded, and because they reflect the constructed location of the HVTL, EERA has used HVTL ROW in evaluating this routing factor.

EERA does not believe that either route is entirely consistent with this routing factor. Neither route uses or parallels existing highway ROW. Although neither route uses existing HVTL ROW, both routes do parallel existing high-voltage transmission line ROW to varying degrees, The Blue Route parallels an existing 161 kV transmission line for approximately one mile along the railroad tracks and parallels an existing transmission line along final 0.25 miles (shared with the Red Route) into the Byron Substation, totaling approximately existing transmission lines for approximately 1.25 miles in total, or approximately 45 percent of the total 2.8-mile route length. The Red Route parallels Xcel Energy’s existing 345 kV and 161 kV transmission lines for approximately three miles, and then parallels an existing transmission line in the final segment (shared with the Blue Route) into the Byron Substation, totaling approximately 3.25 miles, or approximately 72 percent of the route length.

## B. Anticipated Impacts That Differ Between Routes Alternatives

For some resources, the Red Route (and associated alternative substation location) will result in greater impacts or, in the case of geology and groundwater, greater potential impacts without providing any specific benefits as compared to the Blue Route (and associated substation location). The Red Route is likely to have a somewhat higher potential for impacts in the following areas:

- **Land Use and Zoning:** The Red Route may affect the development of two platted commercial properties as it approaches the Byron Substation from the south.
- **Tree Clearing:** Construction of the Red Route would require removal of approximately two acres of trees in two areas west of the Dodge/Olmsted County line, whereas the Blue Route does not contain significant areas of trees or other woody vegetation.
- **Geology and Groundwater:** Because of the presence of karst in the EA project area, there is potential for both direct and indirect impacts to groundwater due to construction and operation of the project. Direct and indirect impacts are anticipated to be minimal to moderate and can be mitigated through adherence to best management practices for construction in karst areas and avoiding construction activity in areas with active karst features. Section 5.3 of the DSP and Section 6.3 of the DRP propose special conditions intended to minimize the potential for impacts. That said, due to the Red Route’s proximity to identified active karst features, construction of the alternate substation location and transmission structures in the southern-most area of the Red Route has an increased potential for groundwater contamination. Structures along the Red Route are more likely to require concrete pier foundations due to the potential for shallow bedrock.

**Costs Dependent on Design and Route:** Because the Red Route is longer (approximately 4.5 miles) than the Blue Route (approximately 2.8 miles) construction costs will be higher for the Red Route

### C. EERA Recommendation

On balance, EERA staff believes that the selection of the Blue Route is likely to create fewer human and environmental impacts than the Red Route.

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## II. Substantive Modifications to Byron Solar Proposed Findings

While most of EERA’s comments on the Byron Solar’s FOF are technical, addressed in Section III of this document, there are several more substantive issues that EERA believes merit discussion.

For purposes of this discussion, Byron Solar’s FOF are shown in plain black text, while EERA’s recommended revision are shown in red strikethrough and underline. For clarity and length, footnotes included in Byron Solar’s Findings are not included in EERA’s comments. Footnotes are included in EERA’s markup of Byron Solar’s FOF included as Attachment A.

### A. Applicant

1. EERA recommends revising Finding 2 to remove promotional language about Byron Solar’s parent, EDF Renewables (EDFR’s) market position and focus on its core businesses.
  2. ~~EDFR is a market leading IPP and service provider that delivers grid-scale power, including wind, solar photovoltaic, and storage.~~ EDFR develops, builds, and operates clean energy power plants in more than 20 countries. EDFR has developed 16,000 MW in North America and has 11,000 MW currently under a long-term operations & maintenance contract.
2. EERA recommends revising Finding 3 to identify only Minnesota projects that eDockets clearly identifies as being owned and operated by EDFR or for which an EDFR subsidiary holds a permit from the Commission While EERA does not dispute EDFR’s experience, Byron Solar has included a number of Minnesota projects for which EDFR was involved with previously but no longer owns according to eDockets records (e.g. Wapsipinicon Wind and Nobles Wind) or is in the process of developing, but has not yet submitted applications to the Commission.
  3. EDFR ~~has permitted over 1,200~~ owns and operates (through its subsidiaries) approximately 812 MW of large wind energy conversion systems in Minnesota, including the Fenton, Lakefield, Prairie Star, Red Pine, and Stoneray ~~Wapsipinicon, and Nobles~~ Wind Projects. In addition to its operating projects, the Commission issued a site permit to Louise Solar, LLC, an EDFR subsidiary, for an up to 50 MW solar energy generating system in Mower County in March 2022; after the issuance of the permit, the Louise Solar LLC was sold to National Grid. EDFR is also currently planning the

~~Andyville Solar Project, an up to 200 MW PV solar energy generating system and accompanying 161 kV transmission line in Mower County, Minnesota through its subsidiary Andyville Solar Project, LLC; Louise Solar Project, an up to 50 MW PV solar energy generating system and accompanying 161 kV transmission line in Mower County, Minnesota through its subsidiary Louise Solar Project, LLC; and Minneota Solar, an up to 200 MW solar energy generating system in Lyon County, Minnesota.~~

## B. Application of Certificate of Need Criteria

EERA recommends revising Finding 221 to add “applicable” to clarify that “The Project will meet or exceed the requirements of all *required* federal, state, and local environmental laws and regulations. As discussed in Sections II.C.2 and II.C.7 of this comment and in Findings 233, 357 and 362, the Project does not meet or exceed the requirements of all local environmental laws and regulations.

221. The Project will meet or exceed the requirements of all applicable federal, state, and local environmental laws and regulations. Byron Solar provided a table listing the potential permits and approvals needed for the Project. Byron Solar states that it will secure all necessary permits and authorizations prior to commencing construction on the portions of the Project requiring such approvals.

## C. Site Permit - Application of Siting Criteria

### 1. Human Settlement

a. EERA edits Finding 255 and its footnote to clarify that Byron Solar’s proposed screening plan<sup>5</sup> is conceptual and does not completely address potential visual impact concerns.

255. The EA discusses mitigation/minimization measures for visual impacts, such as through shielding the facilities from view by terrain or vegetation. Site-specific landscaping plans can minimize visual impacts to adjacent land uses and homes through vegetation screening, berms, or fencing. Byron Solar has completed visual simulations and renderings to evaluate potential visual impacts. Byron Solar has coordinated with adjacent landowners and has proposed a conceptual screening plan ~~that addresses to~~ address potential visual impact concerns. Byron Solar has committed to planting visual screening around portions of the Solar Facility. Specifically, Byron Solar has stated it will work with landowners with residences within 500 feet of a solar array that has direct line of sight to that solar array to incorporate vegetative buffering. This is consistent the ~~with Byron Solar’s revisions to EERA staff’s~~ proposed special condition requiring the permittee to develop a Visual Screening Plan.

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<sup>5</sup> Ex. 108 at Appendix L (Joint SP/RP Application), eDocket No. [20218-177541-12](#)

b. EERA edits Finding 256 to reflect the conclusion in the EA that people who live in the EA Project Area may experiences a greater aesthetic impact than those that are passing through the area on occasion.

256. Visual impacts from the Solar Facility and associated facilities are expected to be minimal to most people who pass through the EA Project Area but are anticipated to be moderate to significant to those that live in the EA Project Area. Potential visual impacts are unavoidable but can be mitigated The record demonstrates that Byron Solar has taken steps to avoid and minimize visual impacts. Further, Section 4.3.8 of the DSP requires permittee to consider input pertaining to visual impacts from landowners and the local unit of government.

c. EERA edits Finding 268 to reflect the conclusion in the EA that construction of the Solar Facility will change the character of the area and to acknowledge the tension expressed by many residents between the opportunities provided by renewable energy projects and the potential that for some area residents, the Project may affect their sense of place.

268. The Project-Solar Facility contributes to the growth of renewable energy and is likely to strengthen and reinforce this value, especially in an area that already has wind farms and community solar generating facilities. Development of the Solar Facility will change the character of the area and potentially change residents' sense of place. There are tradeoffs for rural communities between renewable energy projects and retaining the rural character of the EA Project Area. Construction and operation of the Project is not anticipated to impact or alter the work and leisure pursuits of residents in the EA Project Area in such a way as to impact the underlying culture of the area.

## 2. Land-Based Economies

a. EERA edits finding 291 to clarify that Byron Solar's screening analysis was conducted consistent with the 2020 guidance material jointly developed by EERA and the Minnesota Department of Agriculture.

291. An assessment of the availability of feasible and prudent alternatives is an important component in the Commission's review of the project. EERA and the Minnesota Department of Agriculture jointly developed a guidance document, *Solar Energy Production and Prime Farmland: Guidance for Evaluating Prudent and Feasible Alternatives* to assist developers when evaluating potential solar sites relative to the feasible and prudent language in the rule. Since the state of Minnesota has mandates to both advance solar energy production and protect prime farmland, and due to the inherent difficulties in avoiding prime farmland, the guidance document is meant to assist developers in defining feasible and prudent in relation to siting alternatives, and to encourage them to build a record early in the site selection process showing whether or not an exception to the prime farmland exclusion is warranted. Consistent with the

guidance, Byron Solar conducted a screening analysis to assess whether the Project meets the “feasible and prudent alternative” threshold. The analysis looked at factors such as high solar resource areas, interconnect locations with sufficient capacity, and open farmland, focusing on the southern portion of the state. Within this area, Byron Solar screened for substations and transmission lines with available capacity, leading to a relatively narrow subset of possible POIs with low or no network upgrade requirements. Financial constraints further focused on potential locations within five miles of the identified POIs which had to meet the following criteria: cleared and otherwise undeveloped, not currently encumbered by other easements (wind farms, etc.), contained minimal wetlands, streams, transmission lines, pipelines, roads, or other obstacles that would limit the buildable land or lead to irregularly shaped development areas. Once potential sites were identified, Byron Solar approached landowners for voluntary leases and easements. The Project site was chosen over others for its proximity to the POI, supportive landowners, and no competition with other potential renewable energy projects (i.e., available land not currently participating in other renewable energy projects). Byron Solar identified the existing Byron Substation as having available capacity and low interconnection costs

b. EERA’s proposes revising Finding 308 to remove the determination as to whether the proposed fencing in its current design appropriately balances impacts. The proposed revisions acknowledge that Byron Solar has developed the fence design in accordance with the Minnesota Department of Natural Resources (DNR)’s 2016 *Guidance for Commercial Solar Projects*, which is the guidance available at this stage of the Solar Facility’s design. As discussed in Section II.C.5 of these comments, DNR is in the process of revising its guidance and anticipates an update in early 2023.

308. The Solar Facility will be enclosed by a fence, restricting ingress and egress of larger wildlife. Byron Solar proposes to install either a 6-foot chain-link fence with top guard angled out and upward at 45 degrees with 3-4 strands of smooth wire (no barbs), or 8-foot chain link for security and safety purposes. Barbed wire will not be used around the perimeter of the Project. Byron Solar’s proposed fencing was designed in accordance with the MDNR’s current guidance (MDNR’s 2016 *Guidance for Commercial Solar Projects*) and ~~appropriately~~ balances visual impacts to neighboring properties with wildlife impacts. The fencing proposed by Byron Solar is ~~appropriately~~ protective of wildlife, including deer, and supported by the record. ~~Byron Solar’s proposed changes to Section 4.3.31 of the DSP regarding security fencing are consistent with the Commission’s approach in recent dockets and also provide for a flexible approach that~~ requires Byron Solar to continue working with the MDNR and the EERA to design a fence that suits the needs of the Project while affording due consideration to agency recommendations

### 3. Natural Environment

EERA edits Finding 332 to reference Section 5.1 of the DSP that limits construction activities in proximity to active karst features and requires the permittee to file a geotechnical investigation with recommendations for project design and construction.

332. The record demonstrates that Byron Solar has taken steps to avoid and minimize impacts to geologic and groundwater resources. Further, the DSP contains adequate conditions to minimize and mitigate the Project’s potential impacts on geologic and groundwater resources. Section 5.1 of the DSP precludes construction activity or placement of Project infrastructure within 150 feet of active karst features and requires the permittee to file a geotechnical investigation with recommendations for project design and construction.

#### D. Site Permit Conditions

EERA proposes changes to the following Findings. EERA’s proposed changes, arranged by DSP Section number are reflected in the markup of the DSP in Attachment B.

##### 1. Project Ownership (Finding 356, DSP Section 2.2)

In its filing, Byron Solar noted that “upstream changes to affiliated entities are fairly commonplace” and would not have a practical impact on the operations of a project. With this understanding, Byron Solar recommended the language in Section 2.2 of the DSP be modified to exclude transfers to “entities affiliated with the Permittee.”

Absent a more concrete example of the upstream changes to affiliated entities envisioned by Byron Solar, EERA is not convinced that this modification is compatible with the intent of this proposed permit condition. EERA notes that the language of this section provides examples of the types of ownership changes that would require further information – sale of a parent entity, majority or controlling interest.

EERA disagrees with Byron Solar’s proposed modification of the Section 2.2 of the DSP related to Project ownership and recommends that the permit language remain as described in EERA’s November 29, 2022, comments. EERA recommends the following revisions to Finding 356.

356. Section 2.2 of the DSP pertains to Project ownership. EERA staff proposed changes to DSP Section 2.2 from the sample site permit. Byron Solar recommended changes to Section 2.2 to exclude transfers to entities affiliated with the Permittee (here, Byron Solar), because upstream changes to affiliated entities are fairly commonplace and they have no practical impact on the operations of a project, including project contacts or compliance with existing permit obligations. Byron Solar proposed the following revisions to Section 2.2 of the DSP:



## 2.2 Project Ownership

The Permittee shall identify the Project's ownership structure including any parent entity, majority or controlling interest to the Commission at least 14 days prior to the pre-construction meeting.

In the event of an ownership change to a non-affiliated entity, such as the sale of a parent entity, majority or controlling interest, the Permittee shall identify the new Project's ownership structure, provide the name and contact information for the site manager, as described in Section 4.3.2, and either a current version with e-docket reference, or a revised version of the following to the Commission:

- (a) vegetation management plan, as described in Section 4.3.17;
- (b) complaint procedures, as described in Section 7 and Attachment 1;
- (c) emergency response plan, as described in Section 8.10; and
- (d) decommissioning plan, as described in Section 9.

Also, in the event of an ownership change, the Permittee must provide the Commission with a certification that it has read, understands and is able to comply with the plans and procedures it filed and all conditions of this permit.

EERA disagreed that Byron Solar's proposed modification is compatible with the intent of the proposed permit condition, noting that the permit condition provides examples of the types of ownership changes that would require further information. EERA proposed that the permit condition remain as proposed by EERA in its November 29, 2022, comments.

## 2.2 Project Ownership

The Permittee shall identify the Project's ownership structure including any parent entity, majority or controlling interest to the Commission at least 14 days prior to the pre-construction meeting.

In the event of an ownership change, such as the sale of a parent entity, majority or controlling interest, the Permittee shall identify the new Project's ownership structure, provide the name and contact information for the site manager, as described in Section 4.3.2, and either a current version with e-docket reference, or a revised version of the following to the Commission:

- (a) vegetation management plan, as described in Section 4.3.17;
- (b) complaint procedures, as described in Section 7 and Attachment 1;
- (c) emergency response plan, as described in Section 8.10; and
- (d) decommissioning plan, as described in Section 9.

Also, in the event of an ownership change, the Permittee must provide the Commission with a certification that it has read, understands and is able to comply with the plans and procedures it filed and all conditions of this permit.

## 2. Aesthetics (Finding 357, DSP 4.3.8)

In its filing, Byron Solar generally agreed with EERA’s clarification to Section 4.3.8 of the DSP that a permittee consider input on visual impacts from local governments with direct zoning authorities over the area where a project is located, but suggested a revision to refer to the special condition proposed as Section 5.5 of the DSP requiring a Visual Screening Plan (discussed in greater detail in Section I.A.7 of these comments).

EERA does not believe the inclusion of the reference to the special condition is appropriate or necessary in the general condition. The Visual Screening Plan is proposed as a special condition. Consistent with other site and route permits issued by the Commission, Section 5 of the DSP is clear that “Special conditions shall take precedence over other conditions of this permit should there be a conflict.”<sup>6</sup> Section 4.3.8 is a general permit condition that would require any permittee to consider input from local governments on aesthetic impacts, regardless of whether the project has a Visual Screening Plan. EERA notes that many local units of government have zoning regulations that address visual impacts, and it is reasonable that a permittee consider those local standards in its design and construction of a solar generating facility. As the local zoning regulations apply to smaller projects, typically in the one to five MW size range, those standards may not be feasible for a utility-scale solar generating facility. Byron Solar has discussed the ways in which it plans to provide visual screening but meeting the requirement of the Dodge County standards is unfeasible.<sup>7</sup> EERA disagrees with Byron Solar’s proposed modification of the Section 4.3.8 of the DSP related to the Permittees’ consideration of local government input on visual impacts and recommends that the permit language remain as described in EERA’s November 29, 2022, comments.

Byron Solar also noted that, although EERA’s modification was included in EERA’s November 29, 2022, comments, it was not included in the markup of the DSP included as an attachment to EERA’s comments. EERA appreciates Byron Solar’s clarification of the record. EERA’s omission of this section of the DS from EERA’s November 29, 2022, markup of the DSP was inadvertent.

EERA recommends revising Finding 357 to include EERA’s response to Byron Solar’s proposed revision to Section 4.3.8 of the DSP and EERA’s recommended permit language.

357. Section 4.3.8 of the DSP requires in part that the permittee consider input pertaining to visual impacts from landowners and land management agencies. Byron Solar and EERA staff agreed that the term “land management agencies” is vague and should be deleted from the condition. In its November 29, 2022 comments, EERA staff proposed additional revisions which still require the permittee to consider input on visual impacts from local jurisdictions but provide more clarity as to the local authority to be consulted. Byron Solar agreed with EERA staff’s proposed changes, but suggests

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<sup>6</sup> See, exhibit 212, at Appendix C, Section 5 (EA – Appendix C: Draft Site Permit, eDocket No. [20229-189238-10](#) )

<sup>7</sup> Byron Solar, *Response to Public Hearing Comments*, see Table 1, November 29, 2022, eDocket No. [202211-190965-02](#); *Reply Comments and Attachments*, at pp. 13-14, December 9, 2022, eDocket No. [202212-191223-01](#)

that the condition be further revised to include a reference to the visual screening plan special condition, as the visual screening plan will be developed as a result of Byron Solar’s efforts to consider input pertaining to visual impacts from landowners and the local unit of government. Byron Solar proposed the following revisions to Section 4.3.8:

#### 4.3.8 Aesthetics

The Permittee shall consider input pertaining to visual impacts from landowners ~~and land management agencies~~ and the local unit of government having direct zoning authority over the area in which the Project is located when developing the Visual Screening Plan required in Section 5.5. The Permittee shall use care to preserve the natural landscape, minimize tree removal and prevent any unnecessary destruction of the natural surroundings in the vicinity of the Project during construction and operation.

In response to Byron Solar’s proposed modification, EERA noted that the permit condition is intended as a general permit condition that would require any permittee to consider input from local governments on aesthetic impacts, regardless of whether the project has a Visual Screening Plan. EERA also noted that many local units of government have zoning regulations that address visual impacts and that the reference to the special condition requiring a Visual Screening Plan is inconsistent with the standard permit condition. EERA further noted that the condition requires that a permittee considers input from local units of government but need not fully incorporate the local standards. EERA recommended that the permit condition does not refer to any special condition, and remain as proposed by EERA in its November 29, 2022, comments.

#### 4.3.8 Aesthetics

The Permittee shall consider input pertaining to visual impacts from landowners and the local unit of government having direct zoning authority over the area in which the Project is located. The Permittee shall use care to preserve the natural landscape, minimize tree removal and prevent any unnecessary destruction of the natural surroundings in the vicinity of the Project during construction and operation.

### 3. Soil Compaction (Finding 358, DSP 4.3.10)

Byron Solar proposed deleting the final portion of the condition, noting that it no longer made sense following EERA’s proposed modifications. EERA agrees with Byron Solar’s proposed modifications and recommends revising Finding 358 to include EERA’s response.

358. Section 4.3.10 of the DSP addresses soil compaction. EERA staff proposed changes to DSP Section 4.3.10 from the sample site permit. Byron Solar proposed deleting the final phrase of the condition (following the semicolon), as it no longer

makes sense given the changes from the sample site permit language. Byron Solar proposed the following revisions to Section 4.3.10:

#### 4.3.10 Soil Compaction

The Permittee shall implement measures to minimize soil compaction of all lands utilized for Project construction and travelled on by cranes, heavy equipment, and heavy trucks; ~~even when soil compaction minimization measures are used.~~

EERA agreed with the proposed modification.

#### 4. Beneficial Habitat (Finding 359, DSP 4.3.16)

Byron Solar noted that the Section 4.3.16 of the DSP did not require the permittee to meet the standards of Minnesota’s Habitat-Friendly Solar Program and proposed deleting the reporting requirement in the last sentence of the condition.

EERA agrees that the permit condition encourages but does not require compliance with the Habitat Friendly Solar Program. The intent of the reporting element is to have the documents on file if the Permittee does participate in the program. EERA proposes modifying the permit condition to clarify that the Permittee need file only if it chooses to participate in the program. EERA proposes revising Finding 359 to include EERA’s response and to clarify that the permittee need file documents with the Commission only if it seeks certification under the Habitat Friendly Solar Certification with the Board of Soil and Water Resources.

359. Section 4.3.16 of the DSP pertains to beneficial habitat. EERA staff proposed changes to DSP Section 4.3.16 from the sample site permit. Byron Solar proposes deleting the reporting requirement in the last sentence because the condition *encourages* but does not require compliance with the standards for Minnesota’s Habitat Friendly Solar Program. Byron Solar proposed the following revisions to Section 4.3.16:

#### 4.3.16 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 improve soil water retention and reduce storm water runoff and erosion. To ensure continued management and recognition of beneficial habitat, the Permittee is encouraged to 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 Board of Water and Soil Resources (BWSR). ~~The Permittee shall file documents required to be filed with BWSR for meeting and maintaining Habitat Friendly Solar Certification with the Commission.~~

In response to Byron Solar’s proposed modification, EERA agreed that the permit condition encourages but does not require participation in Minnesota’s Habitat Friendly Solar Program. EERA noted that the intent of the reporting element is to have the documents on file if the Permittee does choose to participate in the program. EERA proposed the following revisions to Section 4.3.16. to clarify the filing requirement.

4.3.16 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 improve soil water retention and reduce storm water runoff and erosion. To ensure continued management and recognition of beneficial habitat, the Permittee is encouraged to 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 Board of Water and Soil Resources (BWSR). If the Permittee chooses to to participate in Minnesota’s Habitat Friendly Solar Program, it shall file documents required to be filed with BWSR for meeting and maintaining Habitat Friendly Solar Certification with the Commission.

5. Security Fencing (Finding 360, DSP 4.3.31)

In earlier testimony Byron Solar proposed modifying Section 4.3.31 of the DSP related to the design of security fencing to be consistent with the condition included in the site permit the Commission issued for Louise Solar.<sup>8</sup> Byron Solar recommended the modification to ensure consistency with recently issued permits and provide for flexibility in designing a fence that meets the needs of the project in a way that considers agency recommendations. In its November 29, 2022, comments, EERA generally agreed with Byron Solar’s recommendations on the matter, but recommended removing the specific reference to the DNR’s 2016 guidance. EERA noted that DNR is currently in the process of updating its guidance and that construction is not expected to begin until the latter part of 2024.<sup>9</sup>

In its December 9, 2022, reply comments Byron Solar again advocated for including reference to the 2016 guidance, noting that the guidance has been under revision for some time and the timeline for its release is uncertain. Byron Solar also stated that the final design of the project including the security fencing will be completed “far in advance” of the anticipated 2024 construction date.<sup>10</sup>

EERA acknowledges Byron Solar’s concern with potential uncertainty. EERA understands that DNR anticipates the guidance will be available in early 2023, possibly before the Commission makes its decisions on the applications before it, and almost certainly before the Project design is finalized.

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<sup>8</sup> Ex. 119, at lines 409-437 (Direct Testimony of Scott Wentzell, October 11, 2022, eDocket No. [20218-177541-12](#))

<sup>9</sup> EERA, *Hearing Comments*, November 29, 2022, at p. 18, eDocket No. [202211-190960-02](#)

<sup>10</sup> Byron Solar, *Reply Comments and Attachments*, December 9, 2022, eDocket No. [202212-191223-01](#))

Because agency guidance is regularly updated, EERA recommends against referencing the date of the guidance in the body of the permit. If the text of the permit refers to outdated guidance, EERA would likely request clarification from the Commission over which guidance document should be filed at the time of pre-construction review. EERA recommends that the Section 4.3.31 of the DSP remain as proposed by EERA in its November 29, 2022, comments. Should the Commission determine that adherence to superseded guidance material is appropriate with respect to a site permit issued for the Solar Facility, EERA believes that determination is more appropriately addressed in a special condition.

EERA recommends removing the specific reference to the DNR's 2016 guidance in Section 4.3.31 of the DSP. EERA proposes revising Finding 360 to include EERA's response and proposed permit language.

360. Section 4.3.31 of the DSP addresses security fencing for the Solar Facility. Byron Solar proposed revisions to the DSP filed with the EA to make the condition consistent with the Commission's approach in recent dockets and to provide for a flexible approach that requires Byron Solar to continue working with the MDNR and the EERA to design a fence that meets the needs of the Project while affording due consideration to agency recommendations. In comments filed November 29, 2022, EERA staff supported Byron Solar's request for clarity and generally agreed with Byron Solar on the matter, but recommended removing the specific reference to the MDNR's 2016 guidance. Although the MDNR is in the process of updating its guidance, the MDNR has been updating its fencing guidance since at least June 2021 and such updated guidance has not been finalized or issued, nor is there any indication of when it will be finalized. Further, although the Project is not anticipated to commence construction until 2024, final design of the Project, including the security fence, will be completed far in advance of commencement of construction. Byron Solar's proposed fencing was designed in accordance with the MDNR's 2016 Guidance for Commercial Solar Projects, which is the only guidance currently in effect and reflected in this record. Subjecting the Project to unknown, new, and late design requirements creates unreasonable regulatory uncertainty. Accordingly, Byron Solar proposed revising EERA staff's proposed language to include the reference to the MDNR's 2016 Commercial Solar Siting Guidance. Byron Solar proposed the following revisions to Section 4.3.31:

#### 4.3.31 Security Fence

The Permittee shall design the security fence surrounding the solar energy generating system to minimize the visual impact of the Project. ~~While~~ maintaining compliance with the National Electric Safety Code, ~~the~~ Permittee shall develop a final fence plan for the specific site that is within the parameters laid out in the 2016 Commercial Solar Siting Guidance and is done in coordination ~~coordinate~~ with EERA and the DNR ~~to further refine the appropriate fence design, identify ways to preclude wildlife entanglement in the security fence, and to ensure adequate deer escape technology.~~ The final fence plan ~~Permittee shall be submitted~~ the results of the coordination to the Commission as part of the site plan pursuant to Section 8.3.

In response to Byron Solar’s proposed modification, EERA acknowledged Byron Solar’s concern with potential uncertainty, but notes that, given the anticipated delay in construction of the Solar Facility and the fact that the project is not fully designed, it does not support a including a reference to DNR’s 2016 guidance. EERA proposed that the permit condition remain as proposed by EERA in its November 29, 2022, comments.

#### 4.3.31 Security Fencing

The Permittee shall design the security fence surrounding the solar energy generating system to minimize the visual impact of the Project while maintaining compliance with the National Electric Safety Code. The Permittee shall develop a final fence plan for the site that is consistent with DNR guidance for commercial solar facilities and is done in coordination with EERA and the DNR. The final fence plan shall be submitted to the Commission as part of the site plan pursuant to Section 8.3.

### 6. Feeder Lines (Finding 361, DSP Section 4.4)

Byron Solar proposed replacing “must” with “may” in the first sentence of Section 4.4 of the DSP for consistency with the remainder of the condition. EERA agrees with Byron Solar’s proposed modifications and recommends revising Finding .361 to include EERA’s agreement with Byron Solar’s proposed revision.

361. Section 4.4 of the DSP pertains to feeder lines. EERA staff proposed changes to DSP Section 4.4 from the sample site permit. Byron Solar proposed a minor clarifying because the new language in the first sentence appears to require use of a hybrid electrical collection system of aboveground and belowground conductors, while the second sentence acknowledges that a permittee *may* use overhead or underground feeder lines. Byron Solar proposed the following a minor clarifying revision to Section 4.4:

#### 4.4 Feeder Lines

The Permittee may ~~must~~ use a hybrid electrical collection system of aboveground and belowground conductors to balance direct and indirect aesthetic impacts, electrical interference potential, bird collisions and electrocution, and soil impacts.

The Permittee may use overhead or underground feeder lines that carry power from an internal project interconnection point to the project substation or interconnection point on the electrical grid. The Permittee shall place overhead and underground feeder lines that parallel public roads within the public right-of-way or on private land immediately adjacent to the road. The Permittee shall

obtain approval from the landowner or government unit responsible for the affected right-of-way.

The Permittee shall locate feeder lines in such a manner as to minimize interference with agricultural operations including, but not limited, to existing drainage patterns, drain tile, future tiling plans, and ditches. The Permittee shall place safety shields on all guy wires associated with overhead feeder lines. The Permittee shall submit the engineering drawings of all collector and feeder lines with the site plan pursuant to Section 8.3.

EERA agreed with the proposed modification.

## 7. Visual Screening Plan (Finding 362, DSP 5.5)

In its November 29, 2022, hearing comments, EERA proposed a special condition requiring the permittee to develop and implement a Visual Screening Plan to minimize aesthetic impacts to nearby residences. Byron Solar agreed that it was reasonable to include a Visual Screening Plan as a special condition in the DSP but proposed several revisions to the language of the special condition in Section 5.5 of the DSP.

Byron Solar’s proposed changes would separate the visual screening plan from the Vegetation Management Plan (“VMP”) and the Department’s VMP guidance. Byron Solar also proposed deleting language requiring the Visual Screening Plan to address local ordinances and setbacks, arguing that the language suggested that Visual Screening Plan must comply with local ordinances.

Byron Solar noted that it has already developed a screening plan in coordination with neighboring landowners and the plan had received little comment. Byron Solar further noted that the screening plan is intended to allow Byron Solar the flexibility to work with neighboring landowners to implement screening that addresses the desires of individual landowners. Depending upon the unique situation, the vegetative screening may occur either on land under Byron Solar’s site control or on private property outside of its site control.

In its November 29, 2022, comments, EERA proposed including the Visual Screening Plan as an element of the VMP, noting that the draft VMP in the Joint Site and Route Permit Application included a placeholder for a “Screening Vegetation Management Unit” (Screening VMU) that is not fully developed.<sup>11</sup> The description of the “Screening VMU in the Draft VMP indicates that the objective would be to provide screening, presumably between the Solar Facility and nearby residences, but lacks specificity on where the screening would be located or how the plantings would be established and maintained.<sup>12</sup>

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<sup>11</sup> EERA, *Hearing Comments*, November 29, 2022, eDocket No. [202211-190960-02](#)

<sup>12</sup> Ex. 108 at Appendix L (Joint SP/RP Application, Appendix L: Conceptual Mitigation Planting Plan), eDocket No. [20218-177541-12](#).



EERA does not object to separating the Visual Screening Plan from the VMP. EERA believes that the “Conceptual Mitigation Planting Plan” filed as Appendix L in the Joint Site and Route Permit Application could be used as a framework for a Visual Screening Plan, but notes that, as its title suggests, in its current form the plan is conceptual and lacking the detail that EERA would expect to see in a Visual Screening Plan. Based on experience with screening used in earlier solar facilities permitted by the Commission, EERA believes that detail on how the vegetation will be established and maintained is a critical element to successfully establishing screening of the facility.

EERA supports the requirement that the Visual Screening Plan consider local government ordinances and setbacks and wishes to clarify that considering these local requirements does not mean complying with the requirements. EERA believes it is reasonable for the Visual Screening Plan to identify any variances between local requirements and the Project as designed and constructed. Byron Solar has identified the variances between the local ordinances and what it believes is reasonable for a utility-scale solar generating facility in its hearing and reply comments,<sup>13</sup> and EERA believes that information can readily be incorporated in the Visual Screening Plan.

EERA proposes modifying the permit condition to clarify that the Visual Screening Plan is a separate condition from the VMP. EERA recommends revising Finding 362 to include EERA’s response and proposed modifications to the condition. EERA has included EERA’s revised permit language in Section 5.5 of the DSP.

362. EERA staff proposed a new special condition to the DSP, Section 5.5, regarding a visual screening plan. Byron Solar agreed that it is reasonable to include the screening plan on the site plan under Section 8.3 of the DSP. However, Byron Solar proposed revisions to special condition Section 5.5. Byron Solar proposed revisions to separate the visual screening plan from the VMP and associated VMPWG. As Byron Solar noted, it has already developed a screening plan in coordination with neighboring landowners which is designed to allow Byron Solar to work with neighboring landowners to implement screening that is specific to the particular landowner. Byron Solar also proposed deleting the language stating that the visual screening plan must address local ordinances and setbacks, since the site permit preempts all local ordinances, and this language seems to suggest compliance with such ordinances. Byron Solar proposed following revisions to special condition Section 5.5:

5.5 Visual Screening Plan

~~As part of the VMP required under Section 4.3.17 of this permit, the~~The Permittee shall develop a site-specific Visual Screening Plan. The Visual Screening Plan shall be designed and managed to mitigate visual impacts to adjacent residences ~~and address local government ordinances and setbacks.~~

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<sup>13</sup> Byron Solar, *Response to Public Hearing Comments*, November 29, 2022, see Table 1, eDocket No. [202211-190965-02](#); Byron Solar, *Reply Comments and Attachments*, December 9, 2022, at pp. 13-14, eDocket No. [202212-191223-01](#)

The Permittee shall file documentation of coordination between landowners within 500 feet of the site boundary and Dodge County Office of Environmental Services at least 14 days prior to the pre-construction meeting ~~with its VMP submittal~~. The Permittee shall provide a copy of the Visual Screening Plan to all landowners within 500 feet of the site boundary and Dodge County Environmental Services and shall file with the Commission an affidavit of its distribution of the Visual Screening Plan to landowners within 500 feet of the site boundary and Dodge County Environmental Services at least 14 days prior to the pre-construction meeting ~~with its VMP submittal~~. The location of trees and shrubs included in the Screening Plan shall be included in the Site Plan filed under Section 8.3.

~~The Visual Screening Plan shall be developed in accordance with the Department of Commerce Guidance for Developing a Vegetation Establishment and Management Plan for Solar Facilities and shall include:~~

- ~~a) management objectives for the screening of nearby residencies;~~
- ~~b) a description of planned restoration and vegetation management activities at the screening locations, including how the screening locations will be prepared, timing of activities, how planting will occur, the types of tree and shrub species to be used, plans for watering and other maintenance;~~
- ~~c) a description of how the screening will be monitored and evaluated to meet management objectives;~~
- ~~d) a description of the management tools used to maintain screening vegetation (e.g., mowing, spot spraying, hand removal, etc.), including the timing and frequency of maintenance activities;~~
- ~~e) identification of the third party (e.g., consultant, contractor, site manager, etc.) contracted for restoration, monitoring, and long term vegetation management of the screening;~~
- ~~f) identification of on-site noxious weeds and invasive species (native and non-native) and the monitoring and management practices to be utilized; and~~
- ~~g) a marked-up copy of the site plan showing how the location of the tree and shrub species.~~

In response to Byron Solar's proposed modification, EERA agreed to Byron Solar's request that the Visual Screening Plan be separate from the VMP. EERA recommended that the Visual Screening Plan be required to include information on the objective of the screening and how the trees and shrubs will be established and maintained in addition to the location of the plantings. EERA proposed the following revisions to Section 5.5 of the site permit.

### 5.5 Visual Screening Plan

The Permittee shall develop a site-specific Visual Screening Plan. The Visual Screening Plan shall be designed and managed to mitigate visual impacts to adjacent residences and consider local government ordinances and setbacks.

At least 14 days prior to the pre-construction meeting the Permittee shall file:

- a) the Visual Screening Plan,
- b) documentation of coordination between landowners within 500 feet of the site boundary and Dodge County Office of Environmental Services, and
- c) an affidavit of its distribution of the Visual Screening Plan to landowners within 500 feet of the site boundary and Dodge County Environmental Services.

The Permittee shall work with landowners and use the Department of Commerce Guidance for Developing a Vegetation Establishment and Management Plan for Solar Facilities to develop the Visual Screening Plan. At minimum the Visual Screening plan shall include:

- a) management objectives for the screening of nearby residences;
- b) a description of planned restoration and vegetation management activities at the screening locations, including how the screening locations will be prepared, timing of activities, how planting will occur, the types of tree and shrub species to be used, plans for watering and other maintenance;
- c) a description of how the screening will be monitored and evaluated to meet management objectives; and
- d) a marked-up copy of the site plan showing the location of the tree and shrub species.

## 8. Snowmobile Trail (Finding 363, DSP 5.6)

In its November 29, 2022, comments DNR recommended adding a permit condition requiring the Permittee to coordinate with Kasson-Mantorville Trails on the rerouting of Snowmobile Trail 302. Byron Solar recommended a new condition (Section 5.6) to address DNR's recommendation. EERA agrees with Byron Solar's proposed condition and recommends modifying Finding 363 to include EERA's agreement.

363. On November 23, 2022, the MDNR recommended adding a special condition related to Snowmobile Trail 302 – specifically, requiring the permittee to coordinate with Kasson-Mantorville Trails. The MDNR provided an example condition from a recent docket. Byron Solar proposed modifying the MDNR's suggested language slightly to require documentation of efforts to reroute the snowmobile (rather than the location of the trail) in case the location is still being finalized. Byron Solar proposed adding a special condition with the following language based on the example provided by the MDNR:

#### 5.6 Snowmobile Trail

The Permittee shall coordinate with local snowmobile trail association to reroute Snowmobile Trail 302. At least 14 days prior to the preconstruction meeting, the Permittee shall provide the Commission with documentation identifying efforts to reroute the snowmobile trail.

EERA agreed with the proposed condition.

### 9. Facility Lighting (Finding 364, DSP 5.7)

In its November 29, 2022, comments DNR recommended adding a permit condition requiring the Permittee use shielded and downward facing lighting that minimizes blue hue at the Project Substation. Byron Solar recommended a new condition (Section 5.7) to address DNR’s recommendation. EERA agrees with Byron Solar’s proposed condition and recommends modifying Finding 364 to include EERA’s agreement.

364. On November 23, 2022, the MDNR recommended adding a special condition related to lighting of the O&M facility and Project substation. The MDNR provided an example condition from a recent docket. Byron Solar proposed adding a special condition with the following language based on the example provided by the MDNR:

#### 5.7 Facility Lighting

The Permittee must use shielded and downward facing lighting and LED lighting that minimizes blue hue at the project substation and operations and maintenance facility. Downward facing lighting must be clearly visible on the site plan submitted for the project.

EERA agreed with the proposed condition.

### 10. Dust Control (Finding 365, DSP 5.8)

In its November 29, 2022, comments DNR recommended adding a permit condition requiring the Permittee use non-chloride products for dust control during construction. Byron Solar recommended a new condition (Section 5.8) to address DNR’s recommendation. EERA agrees with Byron Solar’s proposed condition and recommends modifying Finding 365 to include EERA’s agreement.

365. On November 23, 2022, the MDNR recommended adding a special condition related to use of chemicals for dust control. Byron Solar stated it has no objection to adding a special condition with the language proposed by the MDNR:

#### 5.8 Dust Control

The Permittee shall utilize non-chloride products for onsite dust control during construction.

EERA agreed with the proposed condition.

11. Site Plan (Finding 366, DSP 8.3)

Byron Solar recommended editing Section 8.3 of the DSP (Site Plan) to allow the Permittee to commence construction 30 days after the site plan has been filed if the Commission has not completed its review of the documents and determined that the planned construction is consistent with the permit issued by the Commission. Byron Solar recommended the 30-day timeframe to provide some sort of certainty for the Permittee about when construction can start.

EERA appreciates Byron Solar’s concern that the condition provides reasonable guidance on timing. EERA acknowledges that the 30-day timeframe was included in in the sample permit provided by Commission staff and in several Commission-issued site permits for solar generating facilities.

The permit text in Section 8.3 requires that the Permittee file site plans 30 days prior to the pre-construction meeting required by Section 8.1 of the DSP. In both the sample permit and the modification proposed by Byron Solar, It goes on to require that the Permittee “may not commence construction until 30 days has expired or until the Commission has notified the Permittee in writing that it has completed its review of the documents and determined that the planned construction is consistent with this permit.” Upon closer examination, however, EERA believes this language is problematic in three ways.

- First, it is unclear when the 30-day review timeline begins (the date of the pre-construction meeting, or the date the plan and profile is filed).
- Second, if it is assumed that the 30-day review timeline proposed by Byron Solar and included in other permits begins on the date the plan and profile is filed, condition 8.3 is potentially inconsistent with Section 8.1 of the DSP, as the 30-day review timeline would end at or before the date of the pre-construction meeting, allowing the permittee to construct prior to completing the pre-construction requirements of the permit. The pre-construction meeting is used to review pre-construction filing requirements. Section 8.1 also requires the Permittee to file a summary of the pre-construction meeting within 14 days of the meeting and to indicate the construction start date in its summary. In EERA’s experience, it is not unusual that the pre-construction meeting results in action items requiring updates to site plans or other pre-construction filings. In most cases these action items require relatively minor technical changes to pre-construction filings, for example adding a street address for the field manager, or marking sensitive areas are shown on the site plans to avoid construction activities in these sensitive areas.
- Third, as written in both Byron Solar’s proposed modifications and in the sample site permit provided by Commission staff, the condition does not clearly provide the opportunity for the Commission to notify the Permittee of a deficiency in filings. As the permitting authority, the Commission, not the permittee or EERA staff, retains final responsibility for finding pre-construction compliance complete and authorizing construction.

Finally, EERA notes that the language in the DSP included in the EA is consistent with two recent wind permits issued by the Commission. The site permits for the Northern Wind Project<sup>14</sup> and the Buffalo Ridge Wind Project<sup>15</sup> address authorization to construct as follows:

“The Permittee may not commence construction until the Commission has advised the Permittee in writing that it has completed its review of the documents and determined that the planned construction is consistent with this permit.”

EERA recommends that the language in Section 8.3 of the site permit remain as proposed as described in EERA’s November 29, 2022, comments. EERA recommends that Finding 366 be amended to include EERA’s response to Byron Solar’s proposal and EERA’s recommendation on permit language.

366. Section 8.3 of the DSP pertains to the site plan that must be filed prior to commencement of construction. EERA staff proposed changes to DSP Section 8.3 from the sample site permit, including removing the 30-day timeframe for the Commission’s review of the site plan and effectively leaving that review period open-ended. Byron Solar proposed to add back in the previous 30-day timeframe for site plan review, noting that certainty, or at least reasonable guidance on timing, is critical for a project’s construction. Byron Solar proposed following revisions to Section 8.3:

#### 8.3 Site Plan

At least 30 days prior to the pre-construction meeting, the Permittee shall file with the Commission, and provide the Department of Commerce, and the County(s) where the Project is located with a site plan that includes specifications and drawings for site preparation and grading; specifications and locations of the solar energy generating system and associated facilities; and procedures for cleanup and restoration. The documentation shall include maps depicting the Project Boundary, solar energy generating system and associated facilities layout in relation to that approved by this permit.

The Permittee may not commence construction until 30 days has expired or until the Commission has notified the Permittee in writing that it has completed its review of the documents and determined that the planned construction is consistent with this permit. If the Permittee intends to make any significant changes to its site plan or the specifications and drawings after submission to the Commission, the Permittee shall notify the Commission at least five days before implementing the changes. No changes shall be made that would be in violation of any of the terms of this permit.

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<sup>14</sup> Commission, *Order Issuing Site Permit*, March 1, 2022, eDocket No. [20223-183310-01](#)

<sup>15</sup> Commission, *Order Granting Certificate of Need and Issuing Site Permit*, January 5, 2021, eDocket No: [20211-169557-01](#)

In response to Byron Solar’s proposed modification, EERA acknowledged Byron Solar’s concern with potential uncertainty, but noted that Byron Solar’s proposed modification may not provide sufficient opportunity to review all the preconstruction filings and does not clearly provide the opportunity for the Commission to notify the Permittee of a deficiency in filings. EERA recommended that the permit condition remain as proposed by EERA in its November 29, 2022, comments.

### **8.3 Site Plan**

At least 30 days prior to the pre-construction meeting, the Permittee shall file with the Commission, and provide the Department of Commerce, and the County(s) where the Project is located with a site plan that includes specifications and drawings for site preparation and grading; specifications and locations of the solar energy generating system and associated facilities; and procedures for cleanup and restoration. The documentation shall include maps depicting the Project Boundary, solar energy generating system and associated facilities layout in relation to that approved by this permit.

The Permittee may not commence construction until the Commission has notified the Permittee in writing that it has completed its review of the documents and determined that the planned construction is consistent with this permit. If the Permittee intends to make any significant changes to its site plan or the specifications and drawings after submission to the Commission, the Permittee shall notify the Commission at least five days before implementing the changes. No changes shall be made that would be in violation of any of the terms of this permit.

## **12. Status Reports (Finding 367, DSP 8.4)**

Byron Solar recommended that the monthly status report describing construction activities and progress is more appropriately tied to the pre-construction meeting than to the issuance of the permit. EERA agrees with Byron Solar’s recommendation to begin construction status reports beginning with the pre-construction meeting.

EERA also notes that Byron Solar does not anticipate the project will commence construction until late 2024, more than a year after the Commission is anticipated to make a permit decision. As it has noted previously, Byron Solar does not to execute its final generator interconnection agreement until April 2023, also following the Commission’s anticipated permit decision. EERA believes that it is reasonable given the anticipated delay between any permit issuance and the commencement of construction, that Byron Solar file periodic updates on the anticipated timing of construction and proposes amending Section 8.4 of the DSP (Status Reports) to require updates on the anticipated status of construction every six months, beginning with the issuance of the permit. EERA recommends amending Finding 387 to include EERA’s response and proposed permit condition.

367. Section 8.4 of the DSP requires the permittee to file monthly status reports. EERA staff proposed changes to DSP Section 8.4 from the sample site permit, including requiring status reports to be submitted beginning with the issuance of the permit instead of submittal of the site plan. Byron Solar proposed revisions to Section 8.4 to require status reports beginning with the pre-construction meeting, which is consistent of the purpose of this condition to “describe construction activities and process.” Byron Solar proposed following revisions to Section 8.4:

#### 8.4 Status Reports

The Permittee shall file monthly status reports on progress regarding site construction with the Commission. Reports shall begin with the pre-construction meeting ~~issuance of this permit~~ and continue until completion of restoration. Reports shall describe construction activities and progress, and activities undertaken in compliance with this permit. Reports shall include text and photographs.

EERA agreed with Byron Solar’s recommendation that monthly construction status reports should begin with the pre-construction meeting. However, EERA also argued that periodic status updates are reasonable between the issuance of the permit and the anticipated commencement of construction in late 2024. EERA recommended that Section 8.4 of the DSP be revised to require updates every six months if construction does not commence within six months of the permit issuance.

#### 8.4 Status Reports

The Permittee shall file monthly status reports on progress regarding site construction with the Commission. Construction status reports shall begin with the pre-construction meeting and continue until completion of restoration. Construction status reports shall describe construction activities and progress, and activities undertaken in compliance with this permit. Reports shall include text and photographs.

If the Permittee does not commence construction of the Project within six months of the permit issuance, the Permittee shall file status reports on the anticipated timing of construction every six months beginning with the issuance of this permit until the pre-construction meeting. The status updates shall include information on the Project’s Midcontinent Independent System Operator (MISO) interconnection process.

### 13. Final Site Restoration (Finding 368, DSP 9.2)

Byron Solar proposed adding additional language to Section 9.2 of the DSP to clarify that decommissioning and restoration measures at the end of the Project’s operating life are linked to the



most recently filed decommissioning plan. EERA agrees with Byron Solar’s proposed modifications and recommends revising Finding 368 to include EERA’s agreement.

368. Section 9.2 of the DSP pertains to final site restoration. Byron Solar proposed the following revisions to Section 9.2 of the DSP to eliminate confusion and acknowledge that decommissioning and restoration measures are governed by the most recently filed and accepted decommissioning plan. In its November 29, 2022 comments, EERA staff stated that it supports Byron Solar’s proposed changes to this condition. The proposed changes to Section 9.2, proposed by Byron Solar and supported by EERA staff, are as follows:

9.2 Final Site Restoration

Upon termination of operation of the Project, the Permittee shall have the obligation to dismantle and remove from the site all solar panels, mounting steel posts and beams, inverters, transformers, overhead and underground cables and lines, foundations, buildings, and ancillary equipment in accordance with the most recently filed and accepted decommissioning plan. To the extent feasible, the Permittee shall restore and reclaim the site to pre-Project conditions. Landowners may require the site be returned to agricultural production or may retain restored prairie vegetation, or other land uses as agreed to between the landowner and the Permittee. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. All such agreements between the Permittee and the affected landowner shall be submitted to the Commission prior to commencing restoration activities.

The Permittee shall restore the site in accordance with the requirements of this condition and file a notification of final restoration completion to the Commission within 18 months of termination of operation of the Project.

EERA agreed with the proposed modification.

E. Route Permit – Application of Route Permit Criteria

EERA accepts Byron Solar’s proposed modification to the DRP and offers the following recommendation for Findings 375 to 513, Application of the Route Permit Criteria.

1. Human Settlement

a. EERA recommends revising Finding 382 to remove the opening sentence. The same information is contained and is presented in a more neutral way in the fourth sentence.

b. EERA recommends removing Finding 383. EERA does not believe that the record supports the assertion that the Blue Route is located “where a transmission line is most harmonious with the landscape, such as along roads and field edges.” The record supports that both routes parallel existing landscape features such as transmission lines, railroads, and field lines.

- c. EERA recommends removing Finding 384. EERA does not believe the record supports that the addition of the Transmission Line is likely to strengthen and reinforce the growth of renewable energy. Finding 268 discusses the role of the Solar Facility in strengthening and reinforcing the growth of renewable energy.
- d. EERA recommends revising Finding 388 to clarify that neither route cross any recreations facilities.
- e. EERA recommends revising Finding 389 to clarify that neither route directly impacts recreational opportunities.
- f. EERA recommends revising Finding 391 to include information on the Red Route.
- g. EERA recommends revising Finding 394 to clarify that neither route crosses any pipelines.
- h. EERA recommends revising Finding 396 to clarify that neither route is anticipated to have significant impacts on radio, television, cellular phones, or GPS systems.
- i. EERA recommends revising Finding 404 to include information on the Red Route.
- j. EERA recommends revising Finding 406 to clarify that both routes are compatible with the Olmsted County General Land Use Plan.
- k. EERA recommends revising Finding 407 to clarify that both routes are located in Olmsted County's A-2 Agricultural Zoning District.
- l. EERA recommends removing Finding 410. EERA does not believe the record supports that the addition of the Transmission Line alone is likely to result in short- or long-term benefits to the local economy. Finding 44 discusses the role of the Project generally in strengthening and reinforcing the growth of renewable energy.
- m. EERA recommends revising Finding 411 to clarify that most of the construction jobs from the Project will support construction of the Solar Facility.
- n. EERA recommends revising Finding 414 to clarify that the Red Route is expected to have somewhat greater impacts on human settlement in comparison to the Blue Route. EERA also proposes removing that statement that the Red Route is closer to the nearest residence; the difference in distance to homes between the Red Route (250 feet) and the Blue Route (280 feet) is discussed in Finding 382 and is not, in EERA's opinion, significant enough to call that out as a determining factor.

## 2. Natural Resources

- a. EERA recommends revising Finding 451 to reference a requirement of the DRP that limits construction activity or placement of Project infrastructure within 150 feet of active karst features and requires the Permittee to file a geotechnical investigation with recommendations for project design and construction.
- b. EERA recommends revising Finding 472 to clarify that both routes are predominantly situated in agricultural fields.
- c. EERA recommends revising Finding 481 to clarify that the Red Route has greater *potential* for impacting geology and groundwater resources.

## 3. Use or Paralleling of Existing Rights-of-Way

- a. EERA recommends revising Finding 495 and its associated footnote to clarify the routing considerations the Commission must consider and to clarify that although neither route uses existing rights-of-way, both routes parallel existing transmission rights-of-way for portions of their length.
- b. EERA recommends revising Finding 496 to correct the lengths for which the Blue Route parallels existing transmission or railroad ROW.
- c. EERA recommends revising Finding 497 to correct the lengths for which the Red Route parallels existing transmission ROW.

## 4. Unavoidable Impacts

EERA recommends revising Finding 505 and its associated footnote to clarify that both power plant siting and high-voltage transmission routing factors require the consideration of irreversible and irretrievable commitments of resources.

## 5. Irreversible and Irretrievable Commitment of Resources

EERA recommends revising Finding 507 to clarify that both power plant siting and high-voltage transmission routing factors require the consideration of irreversible and irretrievable commitments of resources.

## F. Conclusions of Law

EERA recommends revising several of the proposed Conclusions of Law, consistent with EERA's proposed revisions to the Findings.

- a. EERA recommends deleting Conclusion 15. EERA does not believe that the record supports Byron Solar's proposed changes to Section 2.2 of the DSP regarding Project ownership.

- b. EERA recommends deleting Conclusion 16. EERA does not believe that the record supports Byron Solar’s proposed changes to Section 4.3.8 of the DSP regarding visual impacts.
- c. EERA recommends revising Conclusion 18 to include changes to Section 4.3.16 of the DSP as recommended by Byron Solar and EERA.
- d. EERA recommends deleting Conclusion 19. EERA does not believe that the record supports Byron Solar’s proposed changes to Section 4.3.8 of the DSP regarding visual impacts.
- e. EERA recommends revising Conclusion 21 to include changes to Section 8.3 of the DSP as recommended by EERA.
- f. EERA recommends revising Conclusion 22 to include changes to Section 8.4 of the DSP as recommended by Byron Solar and EERA.
- g. EERA recommends amending Conclusion 32 to state that, consistent with Byron Solar’s errata filed December 14, 2022,<sup>16</sup> the Blue Route satisfies the route permit criteria in Minn. Stat. § 216E. 03

### III. Technical Edits to Byron Solar’s Proposed Findings of Fact

Most of EERA’s revisions to Byron Solar’s proposed FOF are technical edits for clarification or to correct typographical errors. For purposes of brevity, EERA summarizes these revisions here:

#### A. Clarification of terminology throughout

The Proposed Findings define “Project” to mean both the Solar Facility and the Transmission Line. Although many of the findings reflect both components of the Project, the document appropriately addresses the permits separately. Throughout the document, EERA has in many cases replaced “Project” with either “Solar Facility” or “Transmission Line” to clarify the discussion of impacts and permit conditions.

- 1. EERA edits Findings 237, 280, 288, 300, 301, 305, 316, 317, 323, 334, 339, 340, 342, 343, and 344 to replace “Project” with “Solar Facility.”
- 2. EERA recommends editing Findings 379, 385, 403, 425, and 461 to replace “Project” with “Transmission Line.”
- 3. EERA edits Findings 194, 250, 269, 298, 299, 389, and 464 to clarify that the project area referenced is the EA Project Area (consistent with the terminology defined in Footnote 97).

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<sup>16</sup> Byron Solar, Errata, *Proposed Findings of Fact, Conclusions of Law, and Recommendations*, December 14, 2022, eDocket No. [202212-191321-02](#)

## B. Technical Edits

Most of EERA’s proposed modifications to Byron Solar’s Proposed Findings of Fact, Conclusions of Law and Recommendations are technical edits to improve clarity, use consistent terminology, and correct minor typographical errors.

1. EERA recommends revising the description of “Solar Facility” on page 1 to replace “systems” with “facilities.”
2. EERA recommends revising Finding 1 to clarify that “EDFR” means EDF Renewables, Byron Solar’s parent company.
3. EERA edits Findings 29, 52 and 57 to clarify that the Notice of Public Information and Environmental Review Scoping Meeting and Notice of EA Availability, Public Hearings, and Comment Period were jointly issued by the Commission and EERA.
4. EERA edits Finding 72 to provide a range of total project costs using both the Blue Route and the Red Route.
5. EERA edits Finding 98 to clarify that Byron Solar has not acquired ROW for the Red Route.
6. EERA edits Finding 133 to add the remaining text (subsections 11 and 12) of Minn. Stat. § 216B.243, subdivision 3.
7. EERA edits Finding 226 to correct the date of EERA’s response to Byron Solar’s request for a size determination.
8. EERA edits Finding 238 to clarify that the draft versions of the VMP, AIMP, and decommissioning plan were included in Byron Solar’s Joint Site and Route Permit Application.
9. EERA edits Finding 257 to remove the reference to U.S. Highway 14 bisecting the Project. This finding is related to the siting criteria for the proposed Solar Facility. The Transmission Line’s relationship to U.S. Highway 14 is described in Findings 68, 84, 85, 88, 89, and 102.
10. EERA edits Finding 276 to clarify that the Emergency Response Plan is required under Section 8.10 of the DSP.
11. EERA edits Finding 277 to add additional examples of the types of extraordinary events requiring reporting.
12. EERA edits Finding 288 to clarify that the prime farmland required for the Solar Facility would be taken out of production for the operating life of the Solar Facility.

13. EERA edits Finding 289 to clarify that the loss of productive farmland from the Solar Facility is only in Dodge County. This finding is related to the siting criteria for the proposed Solar Facility.

14. EERA recommends correcting the title of Section II.E from “Natural Environmental” to “Natural Environment.”

15. EERA recommends revising Finding 315 to clarify that the VMP and AIMP developed by Byron Solar and included in its Joint Site and Route Permit Application are drafts, and not the final versions required under Sections 4.3.17 and 4.3.18 of the DSP.

16. EERA recommends revising Finding 321 to clarify that the AIMP developed by Byron Solar and included in its Joint Site and Route Permit Application is a draft, and not the plan required under Section 4.3.17 of the DSP.

17. EERA edits Finding 333 to spell out “Federal Emergency Management Agency” prior to the use of “FEMA” as an acronym.

18. EERA recommends editing Finding 402 for consistency in rounding.

19. EERA recommends revising Finding 423 to replace “The” with “the.”

20. EERA recommends revising Finding 426 to replace “Project facilities” with “transmission structures.”

21. EERA recommends revising Finding 431 to clarify that there are no forestry operations along either route

## IV. EERA Response to Byron Solar Comments on Draft Decommissioning Plan

In its November 29, 2022, hearing comments, EERA provided comments on Byron Solar’s draft decommissioning plan.<sup>17</sup> The intent of EERA’s comments was to clarify elements of the plan that meet EERA’s expectations for a pre-construction fling and to recommend revisions that it will be looking for as it reviews the pre-construction version of the decommissioning plan required in Section 9.1 of the DSP.

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<sup>17</sup> EERA, *Hearing Comments*, November 29, 2022, eDocket Nos. [202211-190960-02](#)

In its reply comments, Byron Solar noted that it would consider EERA’s comments when preparing the updated decommissioning plan required prior to construction.<sup>18</sup> Byron Solar also noted that EERA’s recommendation to include the expiration date of any power purchase agreement (PPA) may require disclosure of potentially trade secret information, perhaps unnecessarily complicating the public availability of the decommissioning plan. Byron Solar also interpreted EERA’s recommendation to be informational and not to suggest that the Project would be decommissioned at the end of the PPA term rather than the end of the anticipated 30-year term of the site permit. Byron Solar also indicated that the Commission or its designee be identified as the beneficiary of the financial assurance and that the question as to whether the beneficiary’s would have access to funds can be deferred until future five-year reviews of the decommissioning plan.

EERA wishes to clarify that the request for the expiration date of any PPA is related to the timeframe for establishing the full amount of financial assurance and not to the date of decommissioning of the Project. EERA’s expectation is that the decommissioning plan should anticipate decommissioning at end of the site permit. EERA also notes that the Commission’s procedures for handling trade-secret information would not overly complicate the decommissioning plan.

EERA staff appreciates the opportunity to submit these reply comments.

Sincerely,



Suzanne Steinhauer  
Environmental Review Manager

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<sup>18</sup> Byron Solar, *Reply Comments and Attachments*, December 9, 2022, eDocket No. [202212-191223-01](#)