

April 14, 2025

Via eDockets

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

RE: EERA Reply Comments and Responses to Proposed Findings of Fact
Birch Coulee Solar Project
PUC Docket No. IP7119/GS-23-477
OAH Docket No. 5-2500-40417

Dear Judge Mortenson,

Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) staff offers the following comments on the Birch Coulee Solar Project (project) proposed by Birch Coulee Solar LLC (Birch Coulee Solar).

In these comments EERA:

- Responds to hearing comments and proposed permit conditions,
- Responds to Birch Coulee Solar's Proposed Findings of Fact, Conclusions of Law, and Recommendation (Birch Solar FOF)

1. Response to Hearing Comments

A. Minnesota Department of Natural Resources Comments

In its March 24, 2025, comments, the Minnesota Department of Natural Resources (DNR) provided their support for special conditions in the Draft Site Permit (DSP) to minimize lighting impacts, avoid use of chloride products in dust control, require wildlife-friendly erosion control, and apply tree removal restrictions to protect bat pups.¹

¹ Minnesota Department of Natural Resources, Comment, March 24, 2025, eDocket No. [20253-216754-01](#)

1. Facility lighting.

DNR supports section 5.14 of the DSP which requires the Applicant to install motion activated, down-lit, and shielded lighting fixtures within and around the Project.

5.14 Facility Lighting

The Permittee shall use motion activated, down-lit, shielded lighting around and within the Project and coordinate with MnDOT on Approved Products for Luminaries with respect to approved Uplight ratings and nominal color temperatures.

2. Dust Control.

DNR supports section 5.15 of the DSP which prohibits the use of dust suppression agents that contain chloride.

5.15 Dust Control

The Permittee shall use dust suppression agents that do not contain chloride.

3. Wildlife-friendly Erosion Control

DNR supports section 5.16 of the DSP requiring use of wildlife-friendly erosion control.

5.16 Wildlife-Friendly Erosion Control

The Permittee shall use erosion control materials that do not contain plastic or synthetic fibers of malachite green dye.

4. Tree Removal

DNR supports section 5.17 of the DSP requiring the Applicant to adhere to the U.S. Fish and Wildlife Service's guidance and requirements limiting tree clearing from April 1 to October 31 to protect bat pups.

5.17 Northern Long-Eared Bat

The Permittee shall comply with the USFWS guidance and requirements in effect regarding the Northern Long-Eared Bat, including tree clearing restrictions if applicable.

5. Security Fencing

DNR recommends that the security fence reaches a minimum height of 10 feet to prevent wildlife from entering the project, as detailed in the DNR's Commercial Solar Siting Guidance² and Fencing Handbook For 10ft Woven Wire Deer Exclusion Fence.³ DNR notes that a white-tailed deer removal permit will not

² Minnesota Department of Natural Resources, Commercial Solar Siting Guidance, Revised February 2023, retrieved from: https://files.dnr.state.mn.us/publications/ewr/commercial_solar_siting_guidance.pdf

³ Minnesota Department of Natural Resources, Fencing Handbook For 10ft Woven Wire Deer Exclusion Fence, retrieved from: https://files.dnr.state.mn.us/assistance/backyard/privatelandhabitat/woven_wire_fence_handbook_deer.pdf

be issued for facilities with woven wire fences lower than 10 feet. DNR recommends that the applicant coordinate with appropriate DNR area wildlife staff to identify fencing needs and ensure fencing design will minimize wildlife impacts, and supports section 4.3.32 of the DSP which states the following:

4.3.32 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 specific site in coordination with the Department of Commerce 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. Vegetation Management Plan

DNR recommends continued coordination with the interagency Vegetation Management Plan Working Group (VMPWG) in order to develop the project's vegetation management plan (VMP), as required in section 4.3.17 of the DSP. DNR also supports section 4.3.16 of the DSP which states the following:

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 enhances soil water retention and reduces 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 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.

DNR states the final VMP should be developed in accordance with the DNR's recently revised Prairie Establishment & Maintenance Technical Guidance for Solar Projects.⁴ The guidance explains how planting native grasses and forbs throughout the project can help limit herbicide application and describes appropriate mowing practices.

⁴ Minnesota Department of Natural Resources, Prairie Establishment and Maintenance Technical Guidance for Solar Project, Revised February 2025, retrieved from:
https://files.dnr.state.mn.us/publications/ewr/prairie_solar_tech_guidance.pdf

B. Renville County

In its March 13, 2025, comments, Renville County discussed their concerns with financial surety for the project's decommissioning and requested a modification to a standard condition of the DSP regarding noxious weeds.⁵

1. Decommissioning.

Birch Coulee Solar estimates Project decommissioning costs to be approximately \$13 million and Project component salvage value to be approximately \$10 million, for a net estimated Project decommissioning cost of \$3.3 million.⁶ Renville County finds the net estimated Project decommissioning cost of approximately \$3.3 million to be insufficient. Renville County believes decommissioning costs for the Project will be approximately \$3.5 million at current market prices. Renville County seeks assurance that the cost of Project decommissioning will not fall on taxpayers.

2. Noxious Weeds.

Renville County requests that section 4.3.21 of the DSP be modified to extend noxious weed management beyond the construction phase. EERA supports Renville County's proposed revision to Section 4.3.21 of the DSP.

4.3.21 Noxious Weeds

The Permittee shall take all reasonable precautions against the spread of noxious weeds ~~during all phases of construction~~ throughout the life of the Project, including during construction. When utilizing seed to establish temporary and permanent vegetative cover on exposed soil the Permittee shall select site appropriate seed certified to be free of noxious weeds. To the extent possible, the Permittee shall use native seed mixes. The Permittee shall keep records of compliance with this section and provide them upon the request of Department of Commerce staff or Commission staff.

C. Birch Coulee Solar Comments

Birch Coulee Solar LLC ("Birch Coulee Solar") provided initial comments on the project Environmental Assessment (EA) on March 24, 2025. These comments include several proposed clarifications and edits to the EA, and comments on the DSP.⁷ Birch Coulee Solar also provided comments in response to the oral and written public comments received during the March 2025 public hearings on April 7, 2025.

Birch Coulee Solar noted EERA's comments on the project decommissioning plan and the project vegetation management plan (VMP) and will coordinate with EERA to update the decommissioning plan and VMP prior to construction. In addition, Birch Coulee Solar addressed DNR's comments on facility

⁵ Renville County, Comment, March 13, 2025, eDocket No. [20253-217001-01](#)

⁶ EERA, Birch Coulee Solar Environmental Assessment (EA), Section 2.2, February 26, 2025, eDocket No. [20252-215772-01](#)

⁷ Birch Coulee Solar, Comments on Environmental Assessment and Draft Site Permit, March 24, 2025, eDocket No. [20253-216743-02](#)

lighting, dust control, wildlife-friendly erosion control, tree removal, project fencing, and the VMP, Renville County's comments on project decommissioning and noxious weed control, and a public comment concerning coordination between Xcel Energy and Birch Coulee Solar regarding the Minnesota Energy Connection project and the Birch Coulee Solar project.⁸

1. Response to Comments on the Environmental Assessment

EERA has no objections to the following proposed edits to the EA proposed by Birch Coulee Solar:

- Project fencing proposed by Birch Coulee Solar consists of two fences – a chain link substation fence and a woven wire perimeter fence.⁹ In Section 4.7.7 Wildlife and Habitat, the perimeter fence was incorrectly described as a chain link fence. The fencing-wildlife impacts description should read as follows:
 - The largest impact to wildlife associated with solar facilities is fencing. Project fencing will be 7 ft-high **woven wire fencing** topped with a one-foot strand of high-tensile wire, which is below the height recommended by the Minnesota DNR.¹⁰

EERA does not object to the following comments and clarifications made by Birch Coulee Solar on the EA; however, additional information is provided for context:

- Section 4.3.1 of the EA includes Figures 16, 17, and 18, which represent the different viewsheds around the Project. These pictures were taken at various distances from the project area. Figures 16 and 18 are both from vantage points south of the Project, looking across TH 19 (Fig. 16) and the Franklin Baseball Field (Fig. 18) towards the project area.¹¹ The viewsheds of these two images were included as they are associated with recreational features, the Minnesota River Valley National Scenic Byway (TH 19) and a sports facility, and as such are considered to have high viewer sensitivity.

The viewsheds shown in Figures 16 and 18 do not represent all potential vantage points for individuals using these recreational features. The distance between TH 19 and the majority of the Project, existing tree cover, and the topographic rise north of TH 19 will significantly minimize the viewshed impacts when looking north towards the Project from these recreational vantage points. However, some vantage points may be characterized by a small degree of visibility at specific locations or during specific times, such as during seasonal foliage loss.

- Section 4.3.3 of the EA discusses the cultural values of the area, noting that the Project's impacts to cultural values are difficult to quantify as they are dependent upon individual

⁸ Birch Coulee Solar, Responses to Hearing Comments, April 7, 2025, eDocket No. [20254-217331-01](#)

⁹ EERA, Birch Coulee Solar Environmental Assessment (EA), Section 2.1.3.3, February 26, 2025, eDocket No. [20252-215772-01](#)

¹⁰ EERA, Birch Coulee Solar EA, Section 4.7.7, February 26, 2025, eDocket No. [20252-215772-01](#)

¹¹ EERA, Birch Coulee Solar EA, Section 4.3.1, February 26, 2025, eDocket No. [20252-215772-01](#)

perception of, and response to, the Project.¹² Birch Coulee Solar provides additional context to the area's cultural values in their site permit application by noting various events and community organizations in the area and discussing the nearby Lower Sioux Indian Community.

- Section 4.3.5 of the EA provides details of an individual home sale adjacent to the project. The home sold for 31 percent below asking price and was on the market for twice the average time to sell in Minnesota. As noted in the EA, it is not uncommon for houses to sell at prices below their listed values, and the limited housing in the area means there is no home sale data for similar homes to compare to. Therefore, it is impossible to ascertain that the Project impacted this individual home sale.¹³

The sale of this home was discussed in the EA due to the property's proximity to the Project. Additionally, Birch Coulee Solar notes that the home sold for an amount equivalent to the estimated market value in April 2024, the month before it was listed. The difference between a home's estimated market value and the listing price is determined by the individual seller. EERA appreciates the additional context provided by Birch Coulee Solar and notes that homes that are priced above market value can become stale listings, making them more difficult to sell.

- Section 4.4.2 of the EA discusses public safety concerns regarding access roads along TH 19. The original Project design included the installation of one access road off TH 19 in the southwestern portion of the site. In addition, the road off TH 19 that is used to reach the existing Franklin 115 kV substation was intended to act as an access road for the large temporary laydown area located in the southern portion of the site during construction.¹⁴ The EA described the increased collision risk associated with these access points identified by MnDOT during scoping.

Birch Coulee Solar has coordinated with MnDOT and the adjacent property owner to relocate the proposed TH 19 access road to County Road 5. In addition, the large temporary laydown yard in the southern portion of the site has been removed, so the existing Franklin 115 kV substation road off TH 19 will not be used for site access during construction.¹⁵ There was insufficient time to incorporate these layout updates into the EA. The new layout removes the TH 19 collision risks, making the impacts and mitigation regarding TH 19 access points discussed in the EA no longer applicable to the Project.

- Section 4.4.2 of the EA discusses public safety concerns regarding a living snow fence along TH 19. Damage to the snow fence could create a blowing snow issue, reducing visibility and increasing collision risk. As noted in the EA, the living snow fence is not located on Project property and significant impacts to the snow fence are not anticipated.¹⁶ The snow fence was

¹² EERA, Birch Coulee Solar EA, Section 4.3.3, February 26, 2025, eDocket No. [20252-215772-01](#)

¹³ EERA, Birch Coulee Solar EA, Section 4.3.5, February 26, 2025, eDocket No. [20252-215772-01](#)

¹⁴ EERA, Birch Coulee Solar EA, Section 4.4.2, February 26, 2025, eDocket No. [20252-215772-01](#)

¹⁵ Birch Coulee Solar, Comments on Environmental Assessment and Draft Site Permit, March 24, 2025, eDocket No. [20253-216743-02](#)

¹⁶ EERA, Birch Coulee Solar EA, Section 4.4.2, February 26, 2025, eDocket No. [20252-215772-01](#)

discussed in the EA because it is directly adjacent to the Project, is in close proximity to the proposed TH 19 access road in the initial Project design, and was identified by MnDOT during scoping.

- Section 4.7.4 of the EA discusses the potential impacts that construction-induced sedimentation could have on the Minnesota River. The degree of these potential impacts is determined by the erosion control measures implemented during construction, which are discussed in the mitigation section.¹⁷ The term “inadequate stormwater management” was used as a potential cause for increased sedimentation, not as a description of Birch Coulee Solar’s stormwater management plan.

2. Response to Comments on the Draft Site Permit

On its March 24, 2025, and April 7, 2025, comments, Birch Coulee Solar provided responses and revisions to the proposed special site permit conditions in the DSP.

Special Site Permit Conditions

1. Vegetative Screening Along Roadsides

EERA proposed Special Condition 5.1. Birch Coulee Solar indicated that they do not support this condition. Birch Coulee has continued coordination with Renville County regarding vegetative screening and has already identified specific locations for vegetative screening.

EERA learned of the vegetative screening coordination between Birch Coulee Solar and Renville County following the issuance of the EA. EERA now considers this proposed special condition no longer applicable to the Project.

EERA supports removing Special Condition 5.1 from the DSP.

~~**5.1 Vegetative Screening Along Roadsides**~~

~~*The Permittee shall coordinate with jurisdictional road management authorities to develop vegetative screening plans for state, county, and township roads adjacent to or bisecting the Project. Vegetative screening plans must comply with jurisdictional ROW management and/or setback requirements.*~~

2. Noise Notification for Nearby Residences

EERA proposed Special Condition 5.2. Birch Coulee Solar indicated that they do not support this condition and find it to be duplicative and vague. Birch Coulee Solar notes that they will comply with standard condition 4.1 which requires permittees to give landowners notice of the start of construction.

¹⁷ EERA, Birch Coulee Solar EA, Section 4.7.4, February 26, 2025, eDocket No. [20252-215772-01](#)

EERA supports the inclusion of this special condition. Birch Coulee Solar's comments on this special condition regarding application and compliance are appreciated. EERA proposes the following revisions to the special condition:

5.2 Construction Noise Notice ~~Notification~~ for ~~Nearby~~ Local Residences

The Permittee shall provide ~~inform nearby residences of~~ a construction noise notice to the 14 local residences within 0.25-miles of the Project, as identified in the Site Permit Application. The notice must include the following:

(a) anticipated construction dates;

(b) a projected construction schedule listing the anticipated duration of each construction stage;

(c) anticipated daytime ~~active~~ construction hours, ~~and provide notice detailing when major noise-producing construction activities are planned to occur.~~

3. Community Partnerships

EERA proposed Special Condition 5.3. Birch Coulee Solar indicated that they do not support this condition and submit that it is not appropriate for a site permit. Birch Coulee Solar is voluntarily pursuing local partnerships in the community.

EERA supports the inclusion of this special condition. Birch Coulee Solar's comments on this special condition regarding vagueness of partnerships efforts and compliance are appreciated. In its Site Permit Application, Birch Coulee noted its support for the Renville County 4-H club, the local Women's Civic Club and the Franklin Lion's Club.¹⁸ EERA proposes the following revisions to the special condition:

5.3 Community Partnerships

The Permittee shall continue community partnerships that provide resources to the Renville County 4-H club, local Women's Civic Club, and Franklin's Lion Club ~~the Franklin area 4-H program, support local events, and assist community restoration projects throughout the Project's lifespan~~. The Permittee shall keep records of its community partnership efforts and provide them upon the request of Commission staff.

4. Renville County Setbacks

EERA proposed Special Condition 5.4. Birch Coulee Solar indicated that they do not support this condition and stated it could be viewed as an erosion of the Commission's siting authority. Birch Coulee Solar noted that the Project design follows Renville County renewable energy setback requirements.

¹⁸ Birch Coulee Solar, Site Permit Application, Section 4.2.9, July 29, 2024, eDocket No. [20247-209066-02](#)

EERA supports the inclusion of this special condition. EERA proposes the following revisions to the special condition:

5.4 Renville County Setbacks

The Permittee shall adhere to ~~all~~ Renville County's renewable energy setback requirements as listed in the 2021 revision of Chapter 15 of the Renville County Land Use Ordinance.

5. Traffic Control Plan

EERA proposed Special Condition 5.5. Birch Coulee Solar indicated that they do not support this condition and find it to be duplicative. Birch Coulee Solar notes that this special condition could be addressed as part of Special Condition 5.6.

EERA appreciates Birch Coulee Solar's recommendation that the topic of Special Condition 5.5 be addressed in Special Condition 5.6. EERA supports removing Special Condition 5.5 from the DSP and revising Special Condition 5.6 to cover both topics, as discussed in the following section.

~~5.5 Traffic Control Plan~~

~~The Permittee shall develop a traffic control plan with the appropriate road jurisdictional authorities that will be implements for local events and temporary road closures.~~

6. Road Use and Development Agreement

EERA proposed Special Condition 5.6. Birch Coulee Solar indicated that they do not support the inclusion of the term "Development Agreement" in this condition due to the vague nature of the phrase. Birch Coulee Solar proposed a revision to this condition to remove the term "Development Agreement" and incorporate the traffic control plan discussed in the previous section.

EERA appreciates Birch Coulee Solar's recommendations regarding this special condition. EERA has no objection to Birch Coulee Solar's proposed revisions to Special Condition 5.6 of the DSP and has proposed additional revisions regarding road repair and maintenance:

5.6 Road Use ~~and Development~~ Agreement (Birch Coulee Solar Proposed Text)

The Permittee shall enter into a Road Use ~~and Development~~ Agreement with Renville County and affected Townships. The Road Use Agreement shall include a description of how the Permittee will coordinate traffic control with local road authorities. The Permittee shall keep records of ~~its Road Use and Development Agreement~~ compliance with this section and provide them upon the request of Commission staff.

5.6 Road Use ~~and Development~~ Agreement (EERA Proposed Text)

The Permittee shall enter into a Road Use ~~and Development~~ Agreement with Renville County and affected Townships. The Road Use Agreement shall include a description of how the Permittee will coordinate traffic control with local road authorities. The

Permittee shall, prior to the use of such roads, make satisfactory arrangements with the appropriate county or township governmental body having jurisdiction over roads to be used for construction of the Project for maintenance and repair of roads that will be subject to extra wear and tear due to transportation of equipment and Project components. The Permittee shall keep records of ~~its Road Use and Development Agreement~~ compliance with this section and provide them upon the request of Commission staff.

7. Decommissioning Plan

EERA proposed Special Condition 5.7. Birch Coulee Solar indicated they do not support this condition. Birch Coulee Solar noted that the Project's Decommissioning Plan is already in compliance with Commission requirements and the inclusion of this special condition could undermine the Commission's permitting authority.

EERA supports the inclusion of this special condition. EERA recognizes Birch Coulee Solar's concerns regarding the effect that the phrase "mutually agreeable" may have on Project decommissioning requirements and appreciates their commitment to continued coordination with Renville County. EERA also recognizes Renville County's concerns regarding the Project Decommissioning Plan as noted in their scoping and hearing comments. EERA proposes the following revisions to the special condition:

5.7 Decommissioning Plan

The Permittee shall coordinate with Renville County as the Permittee ~~to~~ develops a ~~mutually agreeable decommissioning plan~~ Project Decommissioning Plan consistent with Section 9.1 of this permit. The Permittee shall provide Renville County with a second decommissioning cost estimate prior to construction. The Permittee shall include the second estimate in the updated Project Decommissioning Plan pursuant to Section 9.1 of this permit.

8. Ownership Change Notification

EERA proposed Special Condition 5.8. Birch Coulee Solar responded with revisions specifying to whom the notice should be provided.

EERA appreciates Birch Coulee Solar's recommendations regarding this special condition. EERA has no objection to Birch Coulee Solar's proposed revisions to Special Condition 5.8 of the DSP:

5.8 Ownership Change Notification (Birch Coulee Solar Proposed Text)

The Permittee shall notify Renville County ~~officials~~ Board of Commissioners if there is an ownership change pursuant to Section 2.1 of this permit and shall provide the new contact information.

9. Fire Risk Assessment

EERA proposed Special Condition 5.9. Birch Coulee Solar indicated that they do not support this condition as it is vague and not supported by the record. Birch Coulee Solar notes that they will comply with standard condition 8.12 which requires permittees to prepare an Emergency Response Plan.

EERA supports the inclusion of this special condition. Birch Coulee Solar's comments on this special condition are appreciated. EERA proposes the following revisions to the special condition:

5.9 Fire Risk Assessment

The Permittee shall develop and incorporate a Project Fire Risk Assessment into the ~~filed~~ Emergency Response Plan required by Section 8.12 of this permit. The Fire Risk Assessment must include an assessment of potential fire risks, possible mitigation measures, and fire response measures.

10. Emergency Response Training

EERA proposed Special Condition 5.10. Birch Coulee Solar indicated that they do not support this condition. Birch Coulee Solar notes that standard condition 8.12 requires the permittee to develop an Emergency Response Plan in consultation with emergency responders and provide emergency responders with location indicator information.

EERA supports the inclusion of this special condition. EERA believes this condition is responsive to Renville County's request for in-person emergency response training. EERA proposes the following revision to the special condition:

5.10 Emergency Response Training

The Permittee shall work and train with local emergency response teams that may have to enter the Project to ensure teams ~~are aware of~~ can utilize Project access points and ~~can~~ perform their necessary duties. ~~safely.~~

11. TH 19 Access Points

EERA proposed Special Condition 5.11. Birch Coulee Solar indicated that this special condition is no longer necessary due to changes in the Project layout.

As discussed in a previous section, Birch Coulee Solar has relocated the proposed TH 19 access road to County Road 5. EERA learned of the access road relocation shortly before the issuance of the EA and did not have sufficient time to adjust the documents accordingly. EERA now considers this proposed special condition no longer applicable to the Project.

EERA supports removing Special Condition 5.11 from the DSP.

~~5.11 TH 19 Access Points~~

~~The Permittee shall coordinate with MnDOT regarding possible mitigation measures to reduce the crash risk associated with proposed access points along TH 19. The Permittee~~

~~shall implement mitigation measures agreed upon with MnDOT. Mitigation measures include, but are not limited to, moving access points to lower volume township or county roads or installing a temporary or permanent right hand turn lane along TH 19.~~

12. Laydown Area Protection Plan

EERA proposed Special Condition 5.12. Birch Coulee Solar responded that this special condition is no longer necessary due to changes in the Project layout.

As discussed in a previous section, Birch Coulee Solar has removed the large temporary laydown yard in the southern portion of the Project that fell within the Drinking Water Supply Management Area. This portion of the Project will no longer be used for activities with the potential for leaks or spills such as equipment storage or vehicle parking. EERA now considers this proposed special condition no longer applicable to the Project.

EERA supports removing Special Condition 5.12 from the DSP.

~~5.12 Laydown Area Protection Plan~~

~~The Permittee shall develop and file a Laydown Area Protection Plan for laydown areas within the Wellhead Protection Area and Drinking Water Supply Management Areas. The plan shall describe how vehicles that would use the laydown areas will be kept well-maintained and inspected for oil and gasoline leaks, the spill-minimizing BMPs that will be used for any re-fueling of construction equipment, and appropriate containment measurements for any spills that happen.~~

13. Fencing ROW Setbacks

EERA proposed Special Condition 5.13. Birch Coulee Solar responded that this condition is unnecessary as fencing setbacks are already instituted into the Project design.

EERA proposed revisions to Special Condition 5.4, Renville County Setbacks, to define Project setbacks based on Renville County's current requirements. EERA finds that the proposed revisions to Special Condition 5.4 sufficiently define Project setbacks. EERA now considers this proposed special condition, 5.13, no longer necessary.

EERA supports removing Special Condition 5.13 from the DSP.

~~5.13 Fencing ROW Setbacks~~

~~The Permittee shall apply a minimum setback of 67 feet from the perimeter fence to all road ROWs to reduce the risk of vehicle collisions with wildlife.~~

18. Bald Eagle

EERA proposed Special Condition 5.18. Birch Coulee Solar indicated that this condition is not necessary as there are no bald eagle nests within the Project site, which does not contain suitable habitat.

EERA acknowledges the special permit condition does not mitigate a currently impacted resource. However, EERRA notes that the Project is located one mile from the Minnesota River and bald eagle nest locations vary from year to year. EERA supports the inclusion of Special Condition 5.18; if no bald eagle's nests need to be removed for construction of the Project, no compliance filing will be required.

5.18 Bald Eagle

The permittee shall file documentation authorizing any Bald Eagle nest removal prior to construction.

19. TH 19 ROW Vegetation

EERA proposed Special Condition 5.19. Birch Coulee Solar indicated that this special condition is no longer necessary due to changes in the Project layout.

As discussed in previous sections, the updated Project layout no longer includes the access road off TH 19 or the large temporary laydown yard in the southern portion of the site. EERA learned of these changes to the Project layout shortly before the issuance of the EA and did not have sufficient time to adjust the documents accordingly. EERA now considers this proposed special condition no longer applicable to the Project.

EERA supports removing Special Condition 5.19 from the DSP.

~~*5.19 TH 19 ROW Vegetation*~~

~~The permittee shall comply with any MnDOT permit requirements deemed necessary by MnDOT's Office of Environmental Stewardship Protect Species Unit relating to vegetation in the TH 19 ROW.~~

EERA notes that in the time since the EA was issued, relevant Project updates provided by Birch Coulee Solar have rendered several proposed special conditions unnecessary. EERA has included an amended DSP for the Project in Attachment A of this document. The amended DSP no longer contains the proposed special conditions deemed unnecessary, incorporates the proposed revisions to special conditions discussed above, and rennumbers the proposed special conditions to account for removals.

2. EERA Comments on Proposed Findings

EERA proposes revising several of Birch Coulee Solar's proposed FOF.¹⁹ Most of the recommended revisions are technical edits intended to accurately reflect the record and ensure consistency. EERA

¹⁹ Birch Coulee Solar Proposed Findings of Fact, Conclusions of Law, and Recommendations, April 7, 2025, eDockets no. [20254-217329-02](#)

summarizes the proposed revisions here. The full text of EERA's recommended revisions are shown in red strikeout and underline in Attachment B. EERA also proposes revisions to Birch Coulee Solar's proposed FOF to reflect the revisions to and removal of the special conditions discussed above.

1. EERA recommends revising Finding 31 to the correct date on which the Commission filed a handout of the Public Hearing presentation, March 10, 2025.
2. EERA recommends revising Finding 68 to reflect that EERA recommends removing Section 5.1 of the Draft Site Permit.
3. EERA recommends revising Finding 77 to reflect EERA's proposed revisions to Section 5.2 of the Draft Site Permit.
4. EERA recommends revising Finding 81 to reflect EERA's proposed revisions to Section 5.3 of the Draft Site Permit.
5. EERA recommends revising Finding 85 to reflect EERA's proposed revisions to Section 5.4 of the Draft Site Permit and to reflect that EERA recommends removing Section 5.13 of the Draft Site Permit.
6. EERA recommends revising Finding 98 to reflect that EERA recommends revising and combining Section 5.5 and Section 5.6 of the Draft Site Permit into one condition.
7. EERA recommends revising Finding 111 to reflect EERA's proposed revisions to Section 5.7 of the Draft Site Permit and to reflect EERA's support for Birch Coulee Solar's proposed revisions to Section 5.8 of the Draft Site Permit.
8. EERA recommends revising Finding 123 to reflect EERA's proposed revisions to Section 5.9 and Section 5.10 of the Draft Site Permit.
9. EERA recommends revising Finding 124 to reflect that EERA recommends removing Section 5.11 of the Draft Site Permit.
10. EERA recommends revising Finding 156 to reflect that EERA recommends removing Section 5.12 of the Draft Site Permit.
11. EERA recommends revising Finding 157 to include information about prime farmland soils.
12. EERA recommends revising Findings 171 and 173 to include additional detail about current vegetation and anticipated revegetation and management strategies.
13. EERA recommends revising Finding 175 to reflect comments received by Renville County on the proposed modification to Standard Condition 4.3.21 regarding noxious weed control.

14. EERA staff recommends revising Findings 177 through 179 to reflect DNR's comments and proposed permit conditions related to lighting, dust control methods, erosion control materials and mulch products, and tree removal.
15. EERA recommends revising Finding 188 to reflect that EERA recommends removing Section 5.19 of the Draft Site Permit.

EERA appreciates the opportunity to comment on the proposed Project.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Agnew". The signature is fluid and cursive, with the first name "Lauren" being more prominent than the last name "Agnew".

Lauren Agnew
EERA Environmental Review Manager