

February 7, 2023

**VIA E-DOCKETS**

Mr. Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
Saint Paul, MN 55101-2147

**Re: In the Matter of the Application of Byron Solar, LLC for a Certificate of Need for the up to 200 MW Byron Solar Project and 345 kV Transmission Line in Olmsted and Dodge Counties, Minnesota**  
**MPUC Docket No. IP-7041/CN-20-764**  
**OAH Docket No. 82-2500-38038**

**In the Matter of the Application of Byron Solar, LLC for a Site Permit to construct the up to 200 MW Byron Solar Project in Dodge County, Minnesota**  
**MPUC Docket No. IP-7041/GS-20-763**  
**OAH Docket No. 82-2500-38038**

**In the Matter of the Application of Byron Solar, LLC for a HVTL Route Permit for the 345 kV Transmission Line in Olmsted and Dodge Counties, Minnesota**  
**MPUC Docket No. IP-7041/TL-20-765**  
**OAH Docket No. 82-2500-38038**

Dear Mr. Seuffert:

Byron Solar, LLC (“Byron Solar” or “Applicant”) appreciates the thorough analysis and recommendations contained in the Administrative Law Judge’s (“ALJ”) Findings of Fact, Conclusions of Law, and Recommendations (“ALJ Report”) dated January 23, 2023, in the above-referenced matters. Overall, the ALJ Report presents a comprehensive and detailed review of the record in this proceeding. As such, Byron Solar submits only limited comments and exceptions regarding findings and the permit conditions related to: (1) when the Permittee must notify the Commission of a change in project ownership; (2) security fencing; (3) the visual screening plan; and (4) the timeline for agency review of the pre-construction site plan filing.

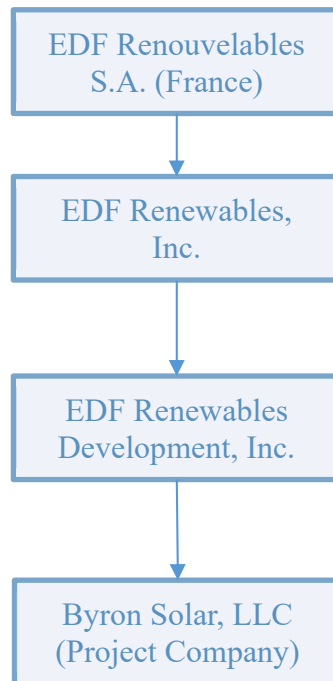
**1. Project Ownership/Non-affiliated Transfer.**

The ALJ Report recommends adopting the new permit condition in Section 2.2 (Project Ownership) of the Draft Site Permit (“DSP”) as proposed by the Minnesota Department of Commerce, Energy Environmental Review and Analysis (“EERA”) staff. EERA’s newly

proposed Section 2.2 notice requirement requires additional reporting beyond the permit transfer language that remains in Section 12 of the DSP.

While Byron Solar does not object to providing information to the Commission in the event of a material change in project ownership, Byron Solar advocated for a slight modification to EERA’s new language to exclude project ownership transfers to affiliated entities.

Within the energy industry, upstream changes to affiliated entities are common. As illustrated in **Figure 1** below, the Byron Solar’s current ownership structure includes several affiliated entities upstream from Byron Solar. Changes or reorganizations of the affiliated EDF Renewables, Inc. entities would have no practical impact on Byron Solar or the operations of a project, including project contacts or obligations under (and compliance with) existing permit conditions.



\*\* All ownership percentages = 100%

**Figure 1. Organization Chart for Byron Solar, LLC.**

Byron Solar proposes the following modification to Section 2.2 of the DSP to eliminate reporting requirements related to ownership changes among affiliated entities:

## 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 to a non-affiliated entity, 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.

To implement this change, the following revisions should be made to the Findings of Fact in the ALJ Report:

355. 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, it reasoned, 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:<sup>404</sup>

## 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 to a non-affiliated entity, 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.<sup>405</sup> EERA proposed that the permit condition remain as proposed by EERA in its November 29, 2022, comments, specifically:~~

#### ~~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.~~

The term proposed by Byron Solar is reasonable because upstream changes to affiliated entities are not likely to have any consequential effect on the Permittee or its compliance with its Site Permit obligations. ~~may be subject to interpretation and the condition as proposed is not onerous in light of the importance of the project.~~ Therefore, ~~for clarity,~~ the permit condition should ~~remain as proposed~~ reflect the language proposed by Byron Solar. ~~EERA.~~

Additionally, Byron Solar proposes adding the following new Conclusion of Law:

It is reasonable to amend the DSP to include the changes to Section 2.2 of the DSP regarding Project ownership as proposed by Byron Solar.

Byron Solar respectfully requests that the Commission adopt this modification to the DSP and related findings to narrow the scope of this new reporting requirement to exclude ownership changes among affiliated entities.

## **2. Security Fencing.**

Byron Solar disagrees with the ALJ Report's incorporation of EERA's proposed language in Section 4.3.31 (Security Fence) of the DSP.

Byron Solar's proposed fencing was designed in accordance with the Minnesota Department of Natural Resources' ("MDNR") 2016 Guidance for Commercial Solar Projects, which is the only guidance currently reflected in this record. Although the Project is anticipated to commence construction in 2024, final design of the Project, including the security fence, will be completed far in advance of commencement of construction. While the MDNR is in the process of updating its guidance, but the updated guidance has not been published nor is it reflected in this record. This yet-to-be published guidance has not been vetted through public comment or public hearings. Requiring Byron Solar to meet the requirements of unpublished guidance creates unreasonable regulatory uncertainty for the Project and the public. The Commission must base its decision on the administrative record,<sup>1</sup> and there is no evidence in this record supporting a requirement that the Project adhere to future DNR guidance on fencing.

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<sup>1</sup> See Minn. Stat. § 14.62, subd. 1 (providing that every decision and order shall be in writing and "shall be based on the record"); Minn. Stat. § 14.69 (providing that the scope of judicial review includes whether the decision is "unsupported by substantial evidence in view of the entire record as submitted").

Additionally, the Commission has not been consistent in imposing specific security/perimeter fencing requirements in recently issued solar site permits. **Attachment A** summarizes the fence conditions included in recent solar dockets. As shown in Attachment A, the Commission has imposed a security/perimeter fencing condition in only three out of the last six solar dockets. In those three dockets, the Commission has required the permittee to coordinate with MDNR to develop a fence plan. Only one solar project's condition referenced MDNR guidance (specifically, requiring the fence to be within the parameters laid out in the 2016 Commercial Solar Siting Guidance).

Thus, it is reasonable for the Commission to adopt the proposed security fencing language from Byron Solar's December 9, 2022, reply comments. This language reads:

#### 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 ~~consistent with~~ within the parameters laid out in the 2016 Commercial Solar Siting Guidance ~~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.

To incorporate this change, Byron Solar proposes the following revisions to the ALJ Report:

359. 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.<sup>416</sup> 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.<sup>417</sup> The MDNR is in the process of updating its guidance, but the updated guidance has not been finalized nor is an anticipated date of issuance known. Although the Project is not anticipated to commence construction until 2024, Byron Solar notes that the final design will be completed in advance of commencement of construction and that the proposed fencing was designed in accordance with the MDNR's 2016 Guidance for Commercial Solar Projects, which is the only guidance currently in effect. Byron Solar argues that 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:<sup>418</sup>

#### 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 ~~W~~while maintaining compliance with the National Electric Safety Code. ~~T~~he 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.<sup>419</sup> The Administrative Law Judge agrees with [Byron Solar's EERA's](#) reasoning and proposal that the permit condition remain as proposed by [Byron Solar EERA](#) in its [December 9, 2022](#) ~~November 29, 2022~~, [reply](#) comments.

#### 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 ~~consistent with~~ within the parameters laid out in the 2016 Commercial Solar Siting Guidance ~~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.

Byron Solar proposes the following revisions to the Conclusions of Law in the ALJ Report:

18. It is reasonable to amend the DSP to include the changes to Section 4.3.31 of the DSP regarding security fencing as proposed in [Byron Solar's December 9, 2022, reply comments](#). ~~EERA's December 23, 2022, reply comments.~~

Adopting these changes ensures that the security fence requirements for Byron Solar are consistent with the administrative record in this proceeding and fencing conditions adopted by the Commission in other recent solar siting dockets. It also avoids unknown cost and regulatory uncertainty that would result from incorporating future agency guidance that has not yet been presented to the Commission.

### **3. Visual Screening Plan.**

Byron Solar also takes exception to the ALJ Report recommendation that the Commission adopt the new Section 5.5 permit condition related to a visual screening plan as proposed by EERA in its comments dated December 23, 2022.

Byron Solar appreciates the ALJ's and EERA's agreement to separate the visual screen plan from the Vegetation Management Plan ("VMP") but believes the language could be further streamlined for clarity.

Byron Solar has already developed a visual screening plan in coordination with neighboring landowners. That plan is already in the record and has received very little comment. The screening plan is designed to allow Byron Solar to work with neighboring landowners to implement screening that is specific to the landowner.

While EERA's recommended language separates the visual screening plan from the VMP, it requires consideration of local ordinances and setbacks. Byron Solar recommends deleting the language referring to local ordinances and setbacks, because the site permit preempts all local ordinances. In addition to the preemption issue, Byron Solar provided information in its Applications and November 29, 2022, comments demonstrating why it would be unreasonable to apply Dodge County's Zoning Ordinance's performance standards to a utility-scale solar project. Consequently, Byron Solar proposes removing the language in Section 5.5 stating that the visual screening plan must address local ordinances and setbacks.

Byron Solar also notes that, as shown in **Attachment B**, the Commission has not imposed a visual or vegetative screening condition in any of the last six solar dockets.

Byron Solar proposes revisions to the following Finding of Fact in the ALJ Report:

361. EERA staff proposed a new special condition to the DSP, Section 5.5, regarding a visual screening plan.<sup>423</sup> 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:<sup>424</sup>



## 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. 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. ~~The Administrative Law Judge agrees with EERA's reasoning and recommendation 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<sup>425</sup>~~  
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.

However, the record supports the special permit condition Section 5.5 of the DSP as proposed in Byron Solar's February 7, 2023, Exceptions filing:

#### 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.~~ The location of trees and shrubs included in the Visual Screening Plan shall be included in the Site Plan filed under Section 8.3.

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.~~

Byron Solar proposes the following revisions to the Conclusions of Law in the ALJ Report:

23. It is reasonable to amend the DSP to include the special permit condition Section 5.5 of the DSP as proposed in [Byron Solar's February 7, 2023, Exceptions filing](#).

Accordingly, Byron Solar proposes the following revision to Section 5.5 of the DSP:

#### 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. The location of trees and shrubs included in the Visual Screening Plan shall be included in the Site Plan filed under Section 8.3.

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.

#### 4. Site Plan.

Byron Solar also takes exception to the ALJ Report recommendation that the Commission adopt the Section 8.3 permit condition proposed by EERA in its comments dated December 23, 2022, which removes any timeframe for agency review of the pre-construction site plan.

The removal of the 30-day timeframe for the Commission's review of the site plan from Section 8.3 of the DSP effectively leaves that review period open-ended. Certainty, or at least reasonable guidance on timing, is critical for a project's construction. Further, removal of the 30-day review timeframe is inconsistent with the equivalent site permit conditions in recent solar dockets where the Commission issued site permits with a 30-day timeframe for reviewing the site plan.<sup>2</sup>

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<sup>2</sup> Order Granting Certificate Of Need And Issuing Site Permit, *In the Matter of the Application of Hayward Solar LLC for a Certificate of Need and Site Permit under the Alternative Permitting Process for the up to 150 MW Hayward Solar Project in Freeborn County*, Docket Nos. IP-7053/CN-21-112, IP-7053/GS-21-113 (November 30, 2022); Order Issuing Site And Route Permits, *In the Matter of the Application of Xcel Energy for a Site Permit for the up to 460-megawatt Sherco Solar Energy Generating System in Sherburne County*, Docket No. E-002/GS-

Additionally, with the Minnesota Legislature's renewed push to build more wind and solar in Minnesota,<sup>3</sup> certainty around the timeframe for the site plan review is even more important for the projects' construction.

Byron Solar proposes the following revisions to the ALJ Report:

365. 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.<sup>435</sup> 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.<sup>436</sup>

### 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

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21-191 (September 22, 2022); Order Issuing Permits, *In the Matter of the Application of Red Rock Solar, LLC for a Site Permit for the up to 60 MW Red Rock Solar Project in Cottonwood County, Minnesota*, Docket No. IP-7014/GS-19-620 (September 28, 2022); Order Granting Certificate Of Need And Issuing Site Permit, *In the Matter of the Application of Louise Solar Project, LLC for a Site Permit for the 50 MW Louise Solar Project in Mower County, Minnesota*, Docket No. IP-7039/GS-20-647 (March 18, 2022); Order Granting Certificate Of Need And Issuing Site Permit, *In the Matter of the Application of Regal Solar, LLC for a Site Permit for the up to 100 MW Regal Solar Project in Benton County, Minnesota*, Docket No. IP-7003/GS-19-395 (April 26, 2021); Order Adopting Findings Of Fact, Conclusions Of Law, And Recommendations, Granting Certificate Of Need, And Issuing Site Permit, *In the Matter of the Application of Elk Creek Solar, LLC for a Site Permit for the up to 80- Megawatt Elk Creek Solar Project in Rock County, Minnesota*, Docket No. IP-7009/GS-19-495 (December 31, 2020).

<sup>3</sup> H.R. 0007, 2023 Leg., 93d Sess. (Minn. 2023).

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.

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. The Administrative Law Judge agrees with [Byron Solar's EERA's](#) reasoning and recommendation that the permit condition remain as proposed by [Byron Solar EERA](#) in its [December 9, 2022](#) ~~November 29, 2022~~, [reply](#) comments, which reads:

### 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.

Byron Solar proposes the following revisions to the Conclusions of Law in the ALJ Report:

20. It is reasonable to amend the DSP to include the changes to Section 8.3 of the DSP regarding the site plan as proposed by [Byron Solar EERA](#) in its December ~~9~~<sup>23</sup>, 2022, [reply](#) comments.

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**Conclusion.**

Byron Solar respectfully requests that the Commission adopt the ALJ Report with the revisions noted herein and grant the Certificate of Need, Site Permit, and Route Permit for the Byron Solar Project.

A copy of this filing is also being served upon the persons on the Official Service Lists of record. Please let me know if you have any questions regarding this filing.

Sincerely,

*/s/ Christina K. Brusven*

Christina K. Brusven  
*Attorney at Law*

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## ATTACHMENT A

### FENCING CONDITIONS IN RECENT SOLAR DOCKETS

Project Name	Docket No.	Site Permit Issued	Fence condition:
Elk Creek Solar Project	19-495	12/31/2020	N/A
Regal Solar Project	19-395	04/26/2021	<p><b>5.6 Security Fencing</b>                      The security fence surrounding the facility shall be designed to minimize the visual impact of the project. While maintaining compliance with the NESC, the Permittee shall install a 6 to 10 foot agricultural-style woven wire fence, or substantially similar, around the perimeter of the facility. As an alternate to barbed wire at the top of the fence, a top guard angled out and upward at 45 degrees with 3 to 4 strands of smooth wire may be used to discourage trespassing. The Permittee shall coordinate with 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 exists at the facility. The results of the coordination shall be submitted to the Commission with the site plan pursuant to Section 8.3.</p>
Louise Solar Project	20-647	03/18/2022 (reissued on 07/11/2022)	<p><b>5.5 Security Fencing</b>                      The security fence surrounding the facility shall be designed 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 with EERA and the DNR. The final fence plan shall be submitted to the Commission with the site plan pursuant to Section 8.3.</p>
Sherco Solar Project	21-191	09/22/2022	<p><b>5.4 Perimeter Fencing</b>                      The Permittee shall coordinate with the DNR to further refine the appropriate fence design. The results of the coordination shall be submitted to the Commission with the site plan pursuant to Section 8.3.</p>
Red Rock Solar Project	19-620	09/28/2022	N/A
Hayward Solar Project	21-113	11/30/2022	N/A



## ATTACHMENT B

### VISUAL/VEGETATIVE SCREENING CONDITIONS IN RECENT SOLAR DOCKETS

<b>Project Name</b>	<b>Docket No.</b>	<b>Site Permit Issued</b>	<b>Visual/Vegetative Screening Condition:</b>
Elk Creek Solar Project	19-495	12/31/2020	N/A
Regal Solar Project	19-395	04/26/2021	N/A
Louise Solar Project	20-647	03/18/2022 (reissued on 07/11/2022)	N/A
Sherco Solar Project	21-191	09/22/2022	N/A
Red Rock Solar Project	19-620	09/28/2022	N/A
Hayward Solar Project	21-113	11/30/2022	N/A

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**In the Matter of the Applications of Byron Solar, LLC, for a Certificate of Need, Site Permit, and Route Permit for the up to 200 MW Byron Solar Project and 345 kV Transmission Line in Olmsted and Dodge Counties, Minnesota**

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**MPUC Docket Nos. IP-7041/GS-20-763,  
IP-7041/CN-20-764, and  
IP-7041/TL-20-765  
OAH Docket No. 82-2500-38038**

### **CERTIFICATE OF SERVICE**

Breann L. Jurek certifies that on the 7<sup>th</sup> day of February 2023, she e-filed on behalf of Byron Solar, LLC true and correct copies of the following documents via eDockets ([www.edockets.state.mn.us](http://www.edockets.state.mn.us)):

- Byron Solar, LLC's Exceptions to the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendations with Attachments A and B; and
- Certificate of Service.

Said documents were also served on the Official Service Lists on file with the Minnesota Public Utilities Commission and as attached hereto.

Executed on: February 7, 2023

*Signed: /s/ Breann L. Jurek*  
\_\_\_\_\_  
Fredrikson & Byron, P.A.  
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Kevin	Pranis	kpranis@liunagro.com	Laborers' District Council of MN and ND	81 E Little Canada Road St. Paul, Minnesota 55117	Electronic Service	No	OFF_SL_20-764_Official Service List
Stephen	Rakow	stephen.rakow@state.mn.us	Department of Commerce	Suite 280 85 Seventh Place East St. Paul, MN 551012198	Electronic Service	No	OFF_SL_20-764_Official Service List
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_20-764_Official Service List
Kevin	Reuther	kreuther@mncenter.org	MN Center for Environmental Advocacy	26 E Exchange St, Ste 206 St. Paul, MN 551011667	Electronic Service	No	OFF_SL_20-764_Official Service List
Susan	Romans	sromans@allete.com	Minnesota Power	30 West Superior Street Legal Dept Duluth, MN 55802	Electronic Service	No	OFF_SL_20-764_Official Service List
Stephan	Roos	stephan.roos@state.mn.us	MN Department of Agriculture	625 Robert St N Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_20-764_Official Service List
Nathaniel	Runke	nrunke@local49.org		611 28th St. NW Rochester, MN 55901	Electronic Service	No	OFF_SL_20-764_Official Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Richard	Savelkoul	rsavelkoul@martinsquires.com	Martin & Squires, P.A.	332 Minnesota Street Ste W2750  St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_Official Service List
Elizabeth	Schmiesing	eschmiesing@winthrop.com	Winthrop & Weinstine, P.A.	225 South Sixth Street Suite 3500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-764_Official Service List
Matthew	Schuerger	matthew.schuerger@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_Official Service List
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-764_Official Service List
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190  Richfield, MN 55423	Electronic Service	No	OFF_SL_20-764_Official Service List
Katie	Sieben	katie.sieben@state.mn.us	Public Utilities Commission	121 East 7th Place suite 350  St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_Official Service List
Colleen	Sipiorski	Colleen.Sipiorski@wecenergygroup.com	Minnesota Energy Resources Corporation	700 North Adams St  Green Bay, WI 54307	Electronic Service	No	OFF_SL_20-764_Official Service List
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Peggy	Sorum	peggy.sorum@centerpointenergy.com	CenterPoint Energy	505 Nicollet Mall  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-764_Official Service List
Jamez	Staples	jstaples@renewablepartners.com	Renewable Energy Partners	3033 Excelsior Blvd S  Minneapolis, MN 55416	Electronic Service	No	OFF_SL_20-764_Official Service List
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Richard	Stasik	richard.stasik@wecenergygroup.com	Minnesota Energy Resources Corporation (HOLDING)	231 West Michigan St - P321  Milwaukee, WI 53203	Electronic Service	No	OFF_SL_20-764_Official Service List
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Stuart	Tommerdahl	stommerdahl@otpc.com	Otter Tail Power Company	215 S Cascade St PO Box 496 Fergus Falls, MN 56537	Electronic Service	No	OFF_SL_20-764_Official Service List
John	Tuma	john.tuma@state.mn.us	Public Utilities Commission	121 7th Place East, Suite 350  St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_Official Service List
Analeisha	Vang	avang@mnpower.com	Minnesota Power	30 W Superior St  Duluth, MN 558022093	Electronic Service	No	OFF_SL_20-764_Official Service List
Lisa	Veith	lisa.veith@ci.stpaul.mn.us	City of St. Paul	400 City Hall and Courthouse 15 West Kellogg Blvd. St. Paul, MN 55102	Electronic Service	No	OFF_SL_20-764_Official Service List
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, Minnesota 55155-4040	Electronic Service	No	OFF_SL_20-764_Official Service List
Scott	Wentzell	scott.wentzell@edf-re.com	EDF Renewables	10 NE 2nd St Ste 400  Minneapolis, MN 55413	Electronic Service	Yes	OFF_SL_20-764_Official Service List
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Joseph	Windler	jwindler@winthrop.com	Winthrop & Weinstine	225 South Sixth Street, Suite 3500  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-764_Official Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Michelle F.	Bissonnette	michelle.bissonnette@hdrinc.com	HDR Engineering, Inc.	Golden Hills Office Center 701 Xenia Ave S Ste 600 Minneapolis, MN 55416	Electronic Service	No	OFF_SL_20-765_Official Service List
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PUC	CAO	consumer.puc@state.mn.us	Public Utilities Commission	Consumer Affairs Office 121 7th Place E Suite 350 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-765_Official Service List
Barbara	Case	barbara.case@state.mn.us	Office of Administrative Hearings	600 N. Robert St. St. Paul, Mn. 55101	Electronic Service	Yes	OFF_SL_20-765_Official Service List
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-765_Official Service List
Bill	Cook	bcook@rpu.org	Rochester Public Utilities	4000 East River Road NE Rochester, MN 55906	Electronic Service	No	OFF_SL_20-765_Official Service List
John	Crane	johncranefishing@gmail.com	Fishing	1250 Wee Gwaus DR SW Bemidji, MN 56601	Electronic Service	No	OFF_SL_20-765_Official Service List
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Cory	Dutcher	cory.dutcher@ge.com	GE Power and Water	1 River Rd. Bldg. 37-413  Schenectady, NY 12345	Electronic Service	No	OFF_SL_20-765_Official Service List
Kristen	Eide Tollefson	healingsystems69@gmail.com	R-CURE	28477 N Lake Ave  Frontenac, MN 55026-1044	Electronic Service	No	OFF_SL_20-765_Official Service List
Scott	Ek	scott.ek@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-765_Official Service List
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Valerie	Herring	vherring@taftlaw.com	Taft Stettinius & Hollister LLP	2200 IDS Center 80 S. Eighth Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-765_Official Service List
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Tom	Karas	tomskaras@gmail.com		3171 309th Ave NW  Cambridge, MN 55008	Electronic Service	No	OFF_SL_20-765_Official Service List
Bruce	King	Brenda@ranww.org	Realtors, Association of Northwestern WI	Suite 3 1903 Keith Street Eau Claire, WI 54701	Electronic Service	No	OFF_SL_20-765_Official Service List
Chris	Kopel	chrisk@CMPASgroup.org	Central Minnesota Municipal Power Agency	459 S Grove St  Blue Earth, MN 56013-2629	Paper Service	No	OFF_SL_20-765_Official Service List
Stacy	Kotch Egstad	Stacy.Kotch@state.mn.us	MINNESOTA DEPARTMENT OF TRANSPORTATION	395 John Ireland Blvd.  St. Paul, MN 55155	Electronic Service	No	OFF_SL_20-765_Official Service List
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd  Saint Paul, MN 55155	Electronic Service	No	OFF_SL_20-765_Official Service List
Dana	Mock	gsdlm@kmtel.com		25742 655th St  Kasson, MN 55944	Electronic Service	No	OFF_SL_20-765_Official Service List



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Colleen	Mueller	N/A		22186 State Hwy 4 Paynesville, MN 56362	Paper Service	No	OFF_SL_20-765_Official Service List
Dan	Nelson	Dan.Nelson@ISGinc.com	I&S Group	115 E Hickory St Ste 300 Mankato, MN 56001	Electronic Service	No	OFF_SL_20-765_Official Service List
Carol A.	Overland	overland@legalectric.org	Legaletric - Overland Law Office	1110 West Avenue Red Wing, MN 55066	Electronic Service	No	OFF_SL_20-765_Official Service List
Kevin	Peterson	kjp@ibew160.org	IBEW Local 160	1109 Northway Lane NE Rochester, MN 55906	Electronic Service	No	OFF_SL_20-765_Official Service List
Angela	Piner	angela.piner@hdrinc.com	HDR, Inc.	Suite 600 701 Xenia Avenue South Suite 600 Minneapolis, MN 55416	Electronic Service	No	OFF_SL_20-765_Official Service List
Stephen	Rakow	stephen.rakow@state.mn.us	Department of Commerce	Suite 280 85 Seventh Place East St. Paul, MN 551012198	Electronic Service	No	OFF_SL_20-765_Official Service List
Larry	Rebman	larryemls@hotmail.com	EMLS, Inc	PO Box 122 Appleton, MN 56208	Electronic Service	No	OFF_SL_20-765_Official Service List
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_20-765_Official Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Margaret	Rheude	Margaret_Rheude@fws.gov	U.S. Fish and Wildlife Service	Twin Cities Ecological Services Field Office 4101 American Blvd. E. Bloomington, MN 55425	Electronic Service	No	OFF_SL_20-765_Official Service List
Nathaniel	Runke	nrunke@local49.org		611 28th St. NW  Rochester, MN 55901	Electronic Service	No	OFF_SL_20-765_Official Service List
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-765_Official Service List
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190  Richfield, MN 55423	Electronic Service	Yes	OFF_SL_20-765_Official Service List
Tom	Slukich	tom@nationalconductor.com	National Conductor Constructors	18119 Hwy 371 North  Brainterd, MN 56401	Electronic Service	No	OFF_SL_20-765_Official Service List
Adam	Sokolski	adam.sokolski@edf-re.com	EDF Renewable Energy	10 Second Street NE Ste 400  Minneapolis, MN 55410	Electronic Service	No	OFF_SL_20-765_Official Service List
Suzanne	Steinhauer	suzanne.steinhauer@state.mn.us	Department of Commerce	85 7th Place East Suite 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-765_Official Service List
Mark	Strohfus	mstrohfus@grenergy.com	Great River Energy	12300 Elm Creek Boulevard  Maple Grove, MN 553694718	Electronic Service	No	OFF_SL_20-765_Official Service List
Carl	Strohman	cjsmg@sbcglobal.net	SBC Global	105 East Edgewood Ave  Indianapolis, IN 46227	Electronic Service	No	OFF_SL_20-765_Official Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_20-765_Official Service List
Todd	Tadych	ttadych@atcllc.com	American Transmission Company LLC	5303 Fen Oak Dr  Madison, WI 53718	Electronic Service	No	OFF_SL_20-765_Official Service List
Caren	Warner	caren.warner@state.mn.us	Department of Commerce	85 7th Place East Suite 280  St. Paul, MN 55101-2198	Electronic Service	No	OFF_SL_20-765_Official Service List
Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, Minnesota 55155-4040	Electronic Service	No	OFF_SL_20-765_Official Service List
Elizabeth	Wefel	eawefel@flaherty-hood.com	Flaherty & Hood, P.A.	525 Park St Ste 470  Saint Paul, MN 55103	Electronic Service	No	OFF_SL_20-765_Official Service List
Scott	Wentzell	scott.wentzell@edf-re.com	EDF Renewables	10 NE 2nd St Ste 400  Minneapolis, MN 55413	Electronic Service	No	OFF_SL_20-765_Official Service List
Deanna	White	mncwa@cleanwater.org	Clean Water Action & Water Fund of MN	330 S 2nd Ave Ste 420  Minneapolis, MN 55401	Electronic Service	No	OFF_SL_20-765_Official Service List