

**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

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Chair
Vice-Chair
Commissioner
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Commissioner

**In the Matter of the Application of Birch
Coulee Solar LLC for a Site Permit for the
up to 125 MW Birch Coulee Solar Project in
Renville County, Minnesota**

**MPUC Docket No. IP-7119/GS-23-477
OAH Docket No. 5-2500-40417**

**COMMENTS ON ENVIRONMENTAL
ASSESSMENT & DRAFT SITE PERMIT**

INTRODUCTION

Birch Coulee Solar LLC (Birch Coulee Solar) submits these comments regarding the Environmental Assessment (EA) and Draft Site Permit (DSP) prepared by the Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) unit on February 26, 2025, in the above referenced docket.

Birch Coulee Solar has reviewed the EA and appreciates EERA's thorough analysis of the Project (Project). In these comments, Birch Coulee Solar provides certain clarifications related to the EA and responds to the Special Permit Conditions EERA proposes to include in the DSP. Overall, given the location and size of the Project, Birch Coulee Solar respectfully submits that the conditions included in the Minnesota Public Utilities Commission's (Commission) typical site permit are appropriately protective of humans and the environment, and that the majority of the 19 special conditions included by EERA are not needed here.

DISCUSSION

I. ENVIRONMENTAL ASSESSMENT.

In an effort to ensure a clear record in this matter, Birch Coulee Solar identified several clarifications to the content in the EA. The following paragraphs are organized according to the

sections of the EA, not in order of import. Where the EA discusses potential special permit conditions, Birch Coulee Solar responds in Section II below.

A. Section 4.3.1: Aesthetics

The EA's discussion of aesthetics and viewshed is extensive, and Birch Coulee Solar provides limited clarifying comments. Specifically, Figures 16 and 18 of the EA depict the existing landscape in the vicinity of the Project.¹ However, Birch Coulee Solar clarifies that the Project will not be visible from the vantages shown in these figures due to the distance between the majority of the Project and Minnesota State Highway 19 (TH 19) and the topographic rise north of TH 19. Birch Coulee Solar provided visual renderings of the Project in the Application that depict the anticipated operational view of the Project from representative locations.²

B. Section 4.3.3: Cultural Values

In its discussion of cultural values, the EA discusses individuals' perception of the Project and renewable energy.³ Birch Coulee Solar appreciates the EA's acknowledgement that this analysis is subjective and respectfully submits that the discussion of cultural values in the Application provides additional context. As noted in the Application, the Project will not impact public participation in regional community cultural events.⁴

C. Section 4.3.5: Property Values

In Section 4.3.5, the EA's discussion around potential property value impacts recites some of the available literature and studies that support the conclusion that the Project will not have a significant impact on property values. The EA also appropriately explains that impacts upon a

¹ Ex. EERA-7 at 50 (EA).

² Ex. BCS-2 at 32-36 (Application).

³ Ex. EERA-7 at 57 (EA).

⁴ Ex. BCS-2 at 41 (Application).

specific property's value are difficult to determine. However, the EA also recites some history about the experience of selling a specific property located proximate to the Project that was raised by an area resident—not the property owner. First, the EA reports the neighbor's hearsay comments that there was less interest in the property than the seller had hoped for. The EA goes on to provide information about the property's marketing period and sales history, and notes that the property was on the market for longer than the average in Minnesota and sold for 31% less than its initial listing price.⁵

Birch Coulee Solar appreciates the EA's recitation of available literature and studies and notes that this analysis is consistent with EAs prepared for other solar projects in Minnesota. With respect to the individual home sale referenced in the EA, Birch Coulee Solar notes that the property sold in December 2024 for an amount equivalent to the estimated market value in April 2024, before it was listed for sale, per publicly-available records.⁶ Birch Coulee Solar respectfully submits that these facts are important context in assessing potential property value impacts from the Project.

D. Section 4.4.2: Public Safety and Emergency Services

Section 4.4.2's analysis of impacts on TH 19 does not take into account Birch Coulee Solar's recent updates to the proposed site layout.⁷ Based on discussions with the Minnesota Department of Transportation (MnDOT) and the adjacent property owner, Birch Coulee Solar agreed to move the access road in the western portion of the Project area to be oriented east-west from County Road 5 instead of north-south from TH 19.⁸

⁵ Ex. EERA-7 at 63-66 (EA).

⁶ See Public Tax History, Zillow.com (2025) available at: https://www.zillow.com/homedetails/40565-660th-Ave-Franklin-MN-55333/106824526_zpid/.

⁷ Ex. EERA-7 at 71 (EA).

⁸ Ex. BCS-10 at 5:2-5 (Groux Testimony).

The EA also refers to a living snow fence along TH 19 and discusses potential impacts from alteration of that snow fence.⁹ However, the snow fence is not located on property included within the Project site. Thus, Birch Coulee Solar clarifies that the Project is not proposing to impact or alter the living snow fence.

E. Section 4.7.4: Surface Water and Floodplains

Section 4.7.4 of the EA suggests that, if the Project uses inadequate stormwater management during construction, it could lead to negative impacts on water quality due to increased sedimentation deposited into the Minnesota River and it could impact Minnesota River's flood capacity.¹⁰ Birch Coulee Solar will comply with Section 4.3.11 of the DSP requiring the permittee to acquire a Construction Stormwater Permit, which is intended to protect surface waters, and no water quality impacts to the Minnesota River are anticipated.

F. Section 4.7.7: Wildlife and Habitat

Section 4.7.7 indicates that Project fencing "will be 7-foot-high chain link fences topped with a one-foot strand of high-tensile wire."¹¹ Birch Coulee Solar clarifies that, as described in Section 2.1.3.3 of the EA, the Project's perimeter fencing will be a 7-foot-high woven wire fence topped with a one-foot strand of high-tensile wire installed with wooden posts. The fencing around the Project substation will be a 7-foot-high chain link fence topped with barbed wire in compliance with the National Electric Code.¹²

⁹ Ex. EERA-7 at 87 (EA).

¹⁰ Ex. EERA-7 at 113-114 (EA).

¹¹ Ex. EERA-7 at 121 (EA).

¹² Ex. EERA-7 at 28-29 (EA).

II. DRAFT SITE PERMIT.

A. Section 5.1: Vegetative Screening along Roadsides

In Section 5.1 of the DSP, EERA proposes a special condition titled *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.

Birch Coulee Solar does not support this proposed special condition. Screening along all roadsides has not historically been required by the Commission and could be burdensome and unduly expensive, with unclear benefit. Further, because the Project is applying for a site permit from the Commission, local ordinance requirements do not apply. Regardless, as discussed in Mr. Groux's Direct Testimony, Birch Coulee Solar has coordinated with the County to identify specific locations for vegetative screening and is requesting feedback from the two adjacent residences affected by that screening regarding the scope proposed by the County.¹³

B. Section 5.2: Noise Notification for Nearby Residences

In Section 5.2 of the DSP, EERA proposes a special condition titled *Noise Notification for Nearby Residences*:

The Permittee shall inform nearby residences of active construction hours and provide notice detailing when major noise-producing construction activities are planned to occur.

Birch Coulee Solar does not support this proposed special condition because it is duplicative and vague. Section 4.1 of the Commission's typical site permit requires permittees to give landowners notice of the start of construction, and Birch Coulee Solar will comply with that

¹³ Ex. BCS-10 at 11:1-8 (Groux Testimony).

requirement. Further, Birch Coulee Solar has concerns about being able to comply with this condition because the proposed condition is vague as to whom it would apply, under what circumstances, and how many times notice would need to be provided.

C. Section 5.3: Community Partnerships

In Section 5.3 of the DSP, EERA proposes a special condition titled *Community Partnerships*:

The Permittee shall continue community partnerships that provide resources to 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.

Birch Coulee Solar does not support this proposed special condition. As discussed in Section 4.2.9 of the Application, Birch Coulee Solar is actively and voluntarily pursuing local partnerships in the community. Birch Coulee Solar respectfully submits that a permit condition related to these voluntary engagement commitments is not appropriate and has not typically been included in other Commission site permits. Likewise, the proposed permit condition is vague in that it is unclear how compliance could be demonstrated (i.e., what "supporting local events" or "community restoration projects" mean).

D. Section 5.4: Renville County Setbacks

In Section 5.4 of the DSP, EERA proposes a special condition titled *Renville County Setbacks*:

The Permittee shall adhere to all Renville County renewable energy setback requirements.

Birch Coulee Solar does not support this special condition because it is both unnecessary and could be viewed as eroding the Commission's siting authority. A site permit from the

Commission preempts land use regulations required by local governments.¹⁴ Regardless, however, the Project has been sited to follow the Renville County Commercial Solar Energy Conversion System setback requirements, and any changes to the Project boundary would be subject to further permitting.¹⁵

E. Section 5.5: Traffic Control Plan

In Section 5.5 of the DSP, EERA proposes a special condition titled *Traffic Control Plan*:

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

Birch Coulee Solar does not support this proposed special condition. The proposed special condition appears to restate language from the Application,¹⁶ but Birch Coulee respectfully submits that this topic is already covered in Section 4.3.22 of the Commission’s typical site permit, which requires permittees to generally coordinate with local road authorities regarding road use and impacts. Likewise, this topic could be addressed as part of EERA’s proposed special condition 5.6, as reflected in the following section.

F. Section 5.6: Road Use and Development Agreement

In Section 5.6 of the DSP, EERA proposes a special condition titled *Road Use and Development Agreement*:

The Permittee shall enter into a Road Use and Development Agreement with Renville County and affected Townships. The Permittee shall keep records of its Road Use and Development Agreement and provide them upon the request of Commission staff.

¹⁴ Minn. Stat. § 216E.10, subd. 1 (2023).

¹⁵ Ex. BCS-2 at 44-45 (Application).

¹⁶ Ex. BCS-2 at 19, 47-48 (Application).

As noted above, this condition is unnecessary because Section 4.3.22 of the Commission’s typical site permit requires coordination with local road authorities. However, Birch Coulee Solar intends to enter into a road use agreement for the Project and, as such, does not object to the special condition, as revised below. Note that Birch Coulee Solar does not support the inclusion of a “development agreement” in this condition because the phrase is vague, and it is unclear what is contemplated by a “development agreement.”

The Permittee shall enter into a Road Use 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 compliance with this section and provide them upon the request of Commission staff.

G. Section 5.7: Decommissioning Plan

In Section 5.7 of the DSP, EERA proposes a special condition titled *Decommissioning Plan*:

The permittee shall coordinate with Renville County to develop a mutually agreeable decommissioning plan consistent with Section 9.1 of this permit.

Birch Coulee Solar does not support this special condition because it does not reflect that the Project’s Decommissioning Plan already complies with Commission requirements and could undermine the Commission’s permitting authority with respect to this Project. The EA acknowledges that “Birch Coulee Solar’s draft decommissioning plan is consistent with Commerce application guidance and with current Commission practice.”¹⁷ The EA nonetheless recommends a permit condition that would require a “mutually agreeable decommissioning plan” because Renville County has, thus far, “not seen large-scale solar development.”¹⁸ Here, the

¹⁷ Ex. EERA-7 at 78 (EA).

¹⁸ Ex. EERA-7 at 79 (EA).

Commission has substantial expertise in projects like this one—including regarding requirements related to decommissioning and financial assurance. The Commission generally applies similar decommissioning and financial assurance across solar projects.¹⁹ The Project meets those requirements, and nothing in this record warrants deviating from those requirements and imposing additional and different conditions here. Birch Coulee Solar is concerned that requiring a “mutually agreeable” plan with Renville County may have the effect of the Project being subject to substantially different requirements than other solar projects permitted by the Commission. Recognizing that Renville County does not have a long history with utility-scale solar projects,²⁰ Birch Coulee Solar has engaged in extensive coordination with Renville County regarding the Project generally, including the County’s comments regarding decommissioning. As part of this coordination, and although Birch Coulee Solar is confident that its Decommissioning Plan and cost estimate were prepared appropriately, Birch Coulee Solar has offered to provide the County with a second decommissioning cost estimate prior to construction. Birch Coulee Solar will include this second estimate as part of the Decommissioning Plan that will be updated as part of pre-construction compliance.

Birch Coulee Solar appreciates Renville County’s ongoing coordination regarding the Project and the Decommissioning Plan, and is committed to continuing coordination with Renville County going forward.

¹⁹ See *In the Matter of the Application of Northern States Power Co. d/b/a Xcel Energy for a Site Permit for the up to 250 MW Sherco 3 Solar Energy Generating System in Sherburne County, Minnesota*, Order Issuing Site Permit, MPUC Docket No. E-002/GS-23-217 (July 31, 2024); *In the Matter of Elk Creek Solar, LLC for a Site Permit for the up to 160 MW Elk Creek Solar Project in Rock County, Minnesota*, Order Issuing Amended Site Permit, MPUC Docket No. IP-7009/GS-19-495 (June 11, 2024); and *In the Matter of the Application of Lake Wilson Solar Energy LLC for a Certificate of Need and a Site Permit for the up to 150 MW Lake Wilson Solar and Associated Battery Storage Project in Murray County, Minnesota*, Order Granting Certificate of Need and Issuing Site Permit, MPUC Docket Nos. IP-7070/CN-21-791, IP-7070/GS-21-792 (April 23, 2024).

²⁰ The EA’s statement that Renville County has thus far not seen large-scale solar development supports applying the Commission’s requirements here. See Ex. EERA-7 at 78 (EA).

H. Section 5.8: Ownership Change Notification

In Section 5.8 of the DSP, EERA proposes a special condition titled *Ownership Change Notification*:

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

Birch Coulee Solar does not oppose this condition but proposes revisions to specify to whom the notice should be provided:

5.8 Ownership Change Notification

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.

I. Section 5.9: Fire Risk Assessment

In Section 5.9 of the DSP, EERA proposes a special condition titled *Fire Risk Assessment*:

The permittee shall develop and incorporate a Project Fire Risk Assessment into the filed *Emergency Response Plan*.

Birch Coulee Solar does not support this special condition because it is vague and is not supported by the record. As an initial matter, Birch Coulee Solar is unsure what a “fire risk assessment” would include and is not aware of similar requirements imposed on any other Commission-permitted solar projects. Because the proposed special condition is vague, it is unclear how to comply with it. Further, the Commission’s general site permit already includes a general condition related to emergency response (Section 8.12, *Emergency Response*). Birch Coulee Solar respectfully submits that the general permit condition is protective, and the record does not support any additional condition specific to this Project.

J. Section 5.10: Emergency Response Training

In Section 5.10 of the DSP, EERA proposes a special condition titled *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 access points and can perform their duties safely.

Birch Coulee Solar does not support this proposed special condition because, as discussed above, the Commission's typical site permit already includes a general condition related to emergency response (Section 8.12). This condition already requires a permittee to prepare an emergency response plan in consultation with emergency responders and obtain and register location indicators and provides that information to emergency responders.

K. Section 5.11: TH 19 Access Points

In Section 5.11 of the DSP, EERA proposes a special condition titled *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.

As discussed in the Direct Testimony of Scott Groux, as a result of coordination with the MnDOT, Birch Coulee Solar has already revised Project plans to be oriented east-west from County Road 5 instead of north-south from TH 19.²¹ Accordingly, this proposed condition is no longer necessary.

L. Section 5.12: Laydown Area Protection Plan

In Section 5.12 of the DSP, EERA proposes a special condition titled *Laydown Area Protection Plan*:

²¹ Ex. BCS-10 at 5:2-5 (Groux Testimony).

The permittee shall develop and file a project 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 may happen[.]

As described in the Direct Testimony of Scott Groux, Birch Coulee Solar has removed the temporary laydown area in the southern portion of the Project area that was within the Drinking Water Supply Management Area (DWSMA).²² Accordingly, this proposed special condition is no longer necessary. Two other laydown areas within the Anticipated Development Area are within the DWSMA and partially within the WHPA. Birch Coulee Solar notes that it will develop both a Stormwater Pollution Prevention Plan (SWPPP) and a Spill Prevention, Control, and Countermeasure (SPCC) Plan prior to construction. The SWPPP will detail best management practices to minimize the potential for downstream water quality impacts. Likewise, the National Pollutant Discharge Elimination System / State Disposal System (NPDES/SDS) Program specifically prohibits the discharge of anything other than stormwater, and the SPCC will apply to construction-related fuel storage and will be prepared prior to operation for operation-related fuel storage, should said storage exceed applicability thresholds. These plans, other permits that will be required for the Project,²³ and the Commission's general permit conditions (Sections 4.3.11 and 4.3.28) already address the topics covered in this proposed condition, and Birch Coulee Solar respectfully submits that no further condition is needed or supported by the record.

M. Section 5.13: Fencing Right-of-Way (ROW) Setbacks

²² Ex. BCS-10 at 5:6-9 (Groux Testimony).

²³ See Ex. EERA-7 at Table 6 (EA).

In Section 5.13 of the DSP, EERA proposes a special condition titled *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.

Birch Coulee Solar respectfully submits that this proposed condition is unnecessary. As stated in the Application, Birch Coulee Solar is instituting a setback of 67 feet from all road ROW.²⁴ Because the siting of the Project already reflects consideration of this setback, a special permit condition is not needed.

N. Section 5.14: Wildlife-Friendly Lighting, Section 5.15: Non-Chloride Dust Suppression, Section 5.16: Wildlife Friendly Erosion Control, and Section 5.17: Northern Long Eared Bat

The EA proposes four special conditions related to the Minnesota Department of Natural Resources (MDNR) recommendations²⁵ or U.S. Fish and Wildlife Service (USFWS) requirements. Birch Coulee Solar understands these are standard MDNR recommendations or USFWS requirements commonly included in other site permits, and Birch Coulee Solar does not oppose these conditions.

O. Section 5.18: Bald Eagle

In Section 5.18 of the DSP, EERA proposes a special condition titled *Bald Eagle*:

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

²⁴ Ex. BCS-2 at 44 (Application).

²⁵ Ex. EERA-7 at 126 and 130 (EA).

The Project does not include suitable habitat for bald eagles, and there are no known bald eagle nests within the Project site.²⁶ Accordingly, this proposed condition is not necessary for the Project.

P. Section 5.19: TH 19 ROW Vegetation

In Section 5.19 of the DSP, EERA proposes a special condition titled *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.

As stated in the Direct Testimony of Scott Groux, Birch Coulee Solar has shifted access off of the state highway, so no part of the Project would require vegetation management within the TH 19 ROW. Thus, this proposed condition is not applicable. Birch Coulee Solar understands that, if Project plans change, it would need to obtain applicable approvals for any changes.²⁷

CONCLUSION

Birch Coulee Solar appreciates EERA's preparation of the EA and the opportunity to provide these comments. As documented in the EA, Birch Coulee Solar has developed the Project to avoid, minimize, and mitigate potential impacts to the extent practicable, and the Commission's general permit conditions further minimize and mitigate potential impacts.

Dated: March 24, 2025

Respectfully submitted,

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²⁶ Exs. BCS-2 at 58 (Application) and EERA-7 at 129 (EA).

²⁷ Exs. BCS-9 at 2 (Response to Scoping Comments) and EERA-7 at 89 (EA).

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