

May 29, 2025

VIA E-FILING

Mr. William Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101-2147

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

Dear Mr. Seuffert:

Birch Coulee Solar LLC (Birch Coulee Solar) submits these exceptions to the May 15, 2025, Findings of Fact, Conclusions of Law, and Recommendation (Report) issued by the Administrative Law Judge in the above-referenced matter. The Report recommends that the Minnesota Public Utilities Commission (Commission) grant a site permit for the Birch Coulee Solar Project (Project). The Report is thorough and comprehensively reflects the record developed in this matter, and Birch Coulee Solar offers only these limited clarifications (primarily related to permit conditions) to the extent they are helpful in the Commission's review of the record.

As an initial matter, Birch Coulee Solar agrees with the Report's recommendation not to include the following draft special conditions proposed by the Department of Commerce, Energy Environmental Review and Analysis (EERA):¹ 5.1, 5.2, 5.3, 5.4, 5.5, 5.10, 5.11, 5.12, 5.13, 5.18, and 5.19. Birch Coulee Solar provides clarifications regarding the Report's findings regarding proposed special conditions 5.7, 5.9, and 5.17. For ease of review, in **Attachment A**, Birch Coulee Solar includes the special conditions recommended in the Report, as clarified in these Exceptions.²

5.7 Decommissioning Plan

The Environmental Assessment (EA) included EERA's initial recommendation regarding a special condition related to a decommissioning plan. Following comments from Birch Coulee Solar, EERA updated its proposed special condition to state:

The Permittee shall coordinate with Renville County as the Permittee develops a 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

¹ See Ex. EERA-7 at Appendix B - Draft Site Permit (EA).

² To avoid confusion, when referring to a special condition, these Exceptions retain the numbering in EERA's Draft Site Permit.

construction. The Permittee shall include the second estimate in the updated Project Decommissioning Plan pursuant to Section 9.1 of this permit.³

The Report recommends including proposed special condition 5.7,⁴ but does not specifically refer to EERA's revised language, as quoted above. Nonetheless, Birch Coulee Solar believes that the revised language now better reflects the record and does not object to its inclusion in the site permit.

5.9 Fire Risk Assessment

The EA included EERA's initial recommendation regarding a special condition related to a fire risk assessment. Following comments from Birch Coulee Solar, EERA updated its proposed special condition to state:

The Permittee shall develop and incorporate a Project Fire Risk Assessment into the 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.⁵

Similarly, the Report recommends that proposed special condition 5.9 be revised to include: "a definition of a fire and risk assessment (FRA) which addresses its purpose: to prevent fire incidents, protect lives, and minimize property damage. The FRA should be completed in conjunction with the emergency response plan in Section 8.12 and the assistance of the local emergency responders."⁶ Birch Coulee Solar appreciates EERA's review of its comments and the Report's careful consideration of this condition. Birch Coulee Solar believes that the updated language proposed by EERA, as quoted above, is responsive to Birch Coulee Solar's comments and generally consistent with the Report's finding.

5.17 Northern Long-Eared Bat

The Report recommends the removal of proposed special condition 5.17 but does not include an explanation.⁷ Condition 5.17 relates to compliance with U.S. Fish and Wildlife Service guidance regarding the northern long-eared bat, and both EERA and Birch Coulee Solar support inclusion of this condition in the site permit.⁸

³ EERA Reply Comments at 10 (April 14, 2025) (eDocket No. 20254-217622-01); Report ¶ 216.

⁴ Report ¶ 216.

⁵ EERA Reply Comments at 11 (April 14, 2025) (eDocket No. 20254-217622-01); Report ¶ 213.

⁶ Report ¶ 213.

⁷ Report ¶ 215.

⁸ See EERA Reply Comments at 2 (April 14, 2025) (eDocket No. 20254-217622-01) and Birch Coulee Solar Comments on the EA and Draft Site Permit at 13 (March 24, 2025) (eDocket No. 20253-216743-02).

Mr. William Seuffert
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Conclusion

Birch Coulee Solar respectfully requests the Commission adopt the Report, incorporating these clarifications, and issue a site permit for the Project.

This document has been e-filed through www.edocket.state.mn.us. A copy of this filing is also being served upon the persons on the Official Service List of record. Please let me know if you have any questions regarding this filing.

Sincerely,

FREDRIKSON & BYRON, P.A.

s/ Haley Waller Pitts

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Attachment A
Birch Coulee Solar Site Permit Conditions

No.	Condition
4.3.21	<p>Noxious Weeds.</p> <p>The Permittee shall take all reasonable precautions against the spread of noxious weeds during all phases of construction throughout the life of the Project, <u>including during construction.</u>¹ 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.²</p>
5.1	The Report finds that the record supports removal of this draft special condition. ³
5.2	The Report finds that the record supports removal of this draft special condition. ⁴
5.3	The Report finds that the record supports removal of this draft special condition. ⁵
5.4	The Report finds that the record supports removal of this draft special condition. ⁶
5.5	The Report finds that the record supports removal of this draft special condition. ⁷
5.6	<p>Traffic Control and Road Use Agreement.</p> <p>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.⁸</p>
5.7	<p>Decommissioning Plan.</p> <p>The Permittee shall coordinate with Renville County as the Permittee develops a 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.⁹</p>

¹ Revisions reflect changes from the Commission's standard site permit. *See* EERA Reply Comments at 4 (April 14, 2025) (eDocket No. [20254-217622-01](#)).

² Report ¶ 175.

³ *Id.* ¶ 215.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* ¶ 209.

⁹ EERA Reply Comments at 10 (April 14, 2025) (eDocket No. [20254-217622-01](#)); Report ¶ 216.

Attachment A
Birch Coulee Solar Site Permit Conditions

No.	Condition
5.8	Ownership Change Notification. The permittee shall notify Renville County Board of Commissioners if there is an ownership change pursuant to Section 2.1 of this permit and shall provide the new contact information. ¹⁰
5.9	Fire Risk Assessment. The Permittee shall develop and incorporate a Project Fire Risk Assessment into the 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. ¹¹
5.10	The Report finds that the record supports removal of this draft special condition. ¹²
5.11	The Report finds that the record supports removal of this draft special condition. ¹³
5.12	The Report finds that the record supports removal of this draft special condition. ¹⁴
5.13	The Report finds that the record supports removal of this draft special condition. ¹⁵
5.14	Wildlife-Friendly 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. ¹⁶
5.15	Non-Chloride Dust Suppression. The permittee shall use dust suppression agents that do not contain chloride. ¹⁷
5.16	Wildlife Friendly Erosion Control. The permittee shall use erosion control materials that do not contain plastic or synthetic fibers or malachite green dye. ¹⁸

¹⁰ Report ¶ 211.

¹¹ EERA Reply Comments at 11 (April 14, 2025) (eDocket No. [20254-217622-01](#)); Report ¶ 213.

¹² Report ¶ 215.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* ¶ 216.

¹⁷ *Id.*

¹⁸ *Id.*

Attachment A
Birch Coulee Solar Site Permit Conditions

No.	Condition
5.17	Northern Long Eared Bat. The permittee shall comply with the USFWS guidance and requirements in effect regarding NLEB, including tree clearing restrictions if applicable. ¹⁹
5.18	The Report finds that the record supports removal of this draft special condition. ²⁰
5.19	The Report finds that the record supports removal of this draft special condition. ²¹

¹⁹ Birch Coulee Solar Comments on EA and Draft Site Permit at 13 (March 24, 2025) (eDocket No. [20253-216743-02](#)).

²⁰ Report ¶ 215.

²¹ *Id.*

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CERTIFICATE OF SERVICE

Maia Martinez certifies that on the 29th day of May, 2025, she e-filed true and correct copy of Birch Coulee Solar LLC's Exceptions, including Attachment A, via eDockets (www.edockets.state.mn.us):

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

Executed on: May 29, 2025

Signed: /s/ Maia Martinez

Fredrikson & Byron, P.A.
60 South Sixth Street
Suite 1500
Minneapolis, MN 55402

#	First Name	Last Name	Email	Organization	Agency	Address	Delivery Method	Alternate Delivery Method	View Trade Secret	Service List Name
11	Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us		Office of the Attorney General - Residential Utilities Division	1400 BRM Tower 445 Minnesota St St. Paul MN, 55101-2131 United States	Electronic Service		Yes	23-477Official CC Service List
12	Nathaniel	Runke	nrunke@local49.org			611 28th St. NW Rochester MN, 55901 United States	Electronic Service		No	23-477Official CC Service List
13	Will	Seuffert	will.seuffert@state.mn.us		Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul MN, 55101 United States	Electronic Service		Yes	23-477Official CC Service List
14	Janet	Shaddix Elling	jshaddix@janetshaddix.com		Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield MN, 55423 United States	Electronic Service		Yes	23-477Official CC Service List
15	Haley	Waller Pitts	hwallerpitts@fredlaw.com		Fredrikson & Byron, P.A.	60 S Sixth St Ste 1500 Minneapolis MN, 55402-4400 United States	Electronic Service		No	23-477Official CC Service List