

June 17, 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 Gopher State Solar, LLC, for a Site Permit for the up to 200 MW Gopher State Solar Project in Renville County, MN
OAH Docket No. 24-2500-40416
MPUC Docket No. IP-7119/GS-24-106**

Dear Mr. Seuffert:

Gopher State Solar, LLC (Gopher State Solar) submits these exceptions to the June 2, 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 Gopher State Solar Project (Project). The Report is thorough and comprehensively summarizes the record developed in this matter. The Report does not, however, include recommendations as to whether the Commission should adopt the suggested special conditions or modify other conditions based on the record.

As reflected in the Report, there were very limited areas of difference between condition language recommended by the Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) staff and Gopher State Solar. Following receipt of the Report, Gopher State Solar further coordinated with EERA staff and resolved these minor differences. Accordingly, these exceptions summarize the recommended conditions and attempt to narrow the open items before the Commission.

A. Recommended Conditions

Attachment A comprehensively lists the recommended modifications to standard conditions or proposed special conditions that were developed in this record. Many of these changes were recommended by EERA, Gopher State Solar, Renville County, or the Minnesota Department of Natural Resources (MDNR).

As of the close of the public comment period, EERA and Gopher State Solar each supported adopting the language contained in the following conditions:

- 4.3.21 (Noxious Weeds);
- 5.2 (Renville County Setbacks);
- 5.3 (Road Use and Development Agreement);
- 5.4 (Decommissioning Plan);

- 5.5 (Ownership Change Notification);
- 5.6 (Emergency Response Training);
- 5.7 (Northern Long Eared Bat);
- 5.8 (Bald Eagle); and
- MDNR recommended special permit conditions requiring Facility Lighting, Dust Control, Wildlife-Friendly Erosion Control, and compliance with Minnesota state-listed endangered and threatened species laws.¹

The open items included:

- 4.3.23 (Archaeological and Historic Resources);²
- 5.1 (Vegetative Screening);³
- 5.9 (Migratory Birds);⁴ and
- 8.4 (Status Reports).⁵

Representatives of Gopher State Solar and EERA met on June 11, 2025 to discuss these open items, and through additional coordination, all areas of difference were resolved. The following discussion summarizes the initial areas of difference and the resolution.

Condition 4.3.23 (Archaeological and Historic Resources)

In its Reply Comments, EERA suggested adding a notification to the Bois Fort Band of Chippewa if human remains are discovered during construction.⁶ Gopher State Solar agrees with this recommendation.

Condition 5.1 (Vegetative Screening)

In its Reply Comments, EERA suggested modifying Gopher State Solar's proposed vegetative screening condition language to include all residences, not just nonparticipating residences, within or adjacent to the Project facilities in the screening plan.⁷ After further review, Gopher State Solar agrees with EERA's recommendation.

Condition 5.9 (Migratory Birds)

¹ See MDNR Comments (April 10, 2025) (eDocket No. 20254-217490-01).

² See EERA Reply Comments and Response to Proposed Findings of Fact at 2 (May 2, 2025) (eDocket No. 20255-218543-01) (EERA Reply Comments).

³ EERA Reply Comments at 12.

⁴ EERA Reply Comments at 13-14.

⁵ EERA Reply Comments at 11.

⁶ EERA Reply Comments at 2.

⁷ EERA Reply Comments at 11-12.

EERA and Gopher State Solar both recommended inclusion of a special condition addressing compliance with the Migratory Bird Treaty Act (MBTA). As summarized in EERA's Reply Comments, the proposed language differed in that EERA recommended inclusion of specific language aimed at minimizing impacts to two species of migratory birds, the Chimney Swift and Northern Harrier.⁸

As part of its coordination with EERA following issuance of the Report, Gopher State Solar expressed two primary concerns regarding EERA's proposed language for special condition 5.9. First, while the Chimney Swift and Northern Harrier are on the U.S. Fish and Wildlife Services' (USFWS) MBTA list of birds of conservation concern, that does not mean that those species are more protected under the MBTA or that they warrant special consideration. Other migratory birds with the same level of protection under the MBTA are just as likely, if not more so, to be present in the Project Area during construction (for instance, the American Robin, Canada Goose, and Red-winged Blackbird). Neither the Chimney Swift nor the Northern Harrier are listed as Threatened or Endangered under either the federal Endangered Species Act or by MDNR. And, when given the opportunity to provide comments directly to the Project in response to agency consultation letters or as comments on the Site Permit Application, neither the USFWS nor MDNR specifically called out these two bird species for additional protection or consideration. The automatic inclusion of the Probability of Presence Summary for the Chimney Swift and the Northern Harrier in the IPaC report was because of the intersection of those birds being on the list of conservation concern, and "the bird's probability of presence in the 10km grid cell(s)" overlapping the Project.⁹

Second, regarding the timing restrictions, Gopher State Solar was concerned that the timeframes listed in EERA's proposed language were overly broad. The MBTA attachment to the USFWS IPaC report includes information regarding two types of time periods for each of the two bird species: Breeding Season and Probability of Presence. The first time period, Breeding Season, is noted in the report as being a "liberal estimate of the timeframe inside which the bird breeds across its entire range."¹⁰ The second time period, the Probability of Presence, is "the bird's relative probability of presence in the 10km grid cell(s) your project overlaps during that week of the year."¹¹ The first time period, Breeding Season, is indicated on page 10 of the IPaC report with yellow bars, while the Probability of Presence time period is indicated with green bars. The Chimney Swift's breeding season across its entire range is approximately March 15 to August 25, which is the time period that EERA is recommending in special condition 5.9. Gopher State Solar suggested that the relevant time periods to the Project for this species are the Probability of Presence dates, indicated as approximately (and only) the first week of June and the third week of July. For the Northern Harrier, the report indicates the bird's breeding season across its entire range is approximately April 1 to September 15, while its Probability of Presence in the Project area is approximately one week in the middle of March. These shorter periods are also supported by the

⁸ EERA Reply Comments at 13-14.

⁹ Ex. GSS-4 – Appendix K at 10 (Protected Species Documentation).

¹⁰ Ex. GSS-4 – Appendix K at 10 (Protected Species Documentation).

¹¹ Ex. GSS-4 – Appendix K at 10 (Protected Species Documentation).

language in the IPaC letter, which says, “[f]or guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, see the PROBABILITY OF PRESENCE SUMMARY below to see when these birds are most likely to be present and breeding in your project area.”¹²

Following additional coordination, Gopher State Solar and EERA agreed to adjust the timeframes in special condition 5.9 (Migratory Birds) as follows:

The Permittee shall comply with the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712) and, to the extent practicable, avoid impacts to marshes, wetlands, peatlands, tree nesting locations, and other migratory bird habitat during the Chimney Swift’s breeding season of March 15—August 25 and the Northern Harrier’s breeding season of April 1—September 15. If impacts are likely to occur during the breeding seasons, the Permittee shall confer with the United States Fish and Wildlife Service (USFWS) regarding mitigation measures. ~~If impacts to migratory birds cannot be avoided, or impacts are anticipated during the Chimney Swift’s Probability of Presence period of the first week of June and third week of July or the Northern Harrier’s Probability of Presence period in mid-March,~~ nesting locations shall be identified and appropriate mitigative measures will be implemented in consultation with the United States Fish and Wildlife Service ~~USFWS~~ prior to beginning construction. The Permittee shall keep records of compliance with this section and provide them upon the request of Commission staff.

Gopher State Solar appreciates EERA’s willingness to resolve this issue and asks the Commission to adopt this agreed upon language in the site permit.

Condition 8.4 (Status Reports)

Gopher State Solar proposed modifying this standard condition to require regular status reports on the anticipated start of construction every six months following the expected start of construction, rather than after permit issuance. EERA recommended retaining the standard permit language.¹³ After further review, Gopher State Solar agrees with EERA’s recommendation.

B. Conclusion

Attachment A includes a table reflecting the suggested conditions and agreed upon modifications based on the record and the additional coordination between Gopher State Solar and

¹² Ex. GSS-4 – Appendix K at 10 (Protected Species Documentation).

¹³ EERA Reply Comments at 10-11.

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EERA. Gopher State Solar respectfully requests the Commission adopt the Report, and issue a site permit for the Project reflecting the conditions set forth in Attachment A.

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.

A handwritten signature in black ink, appearing to read 'CKB', followed by a horizontal line extending to the right.

Christina K. Brusven
Direct Dial: (612) 492-7412
Email: cbrusven@fredlaw.com
Attachment

Attachment A
Gopher State 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 <u>throughout the life of the Project, 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>
4.3.23	<p>Archaeological and Historic Resources.</p> <p>The Permittee shall make every effort to avoid impacts to archaeological and historic resources when constructing the Project. In the event that a resource is encountered, the Permittee shall consult with the State Historic Preservation Office (SHPO) and the State Archaeologist. Where feasible, avoidance of the resource is required. Where not feasible, mitigation must include an effort to minimize Project impacts on the resource consistent with SHPO and State Archaeologist requirements.</p> <p>Prior to construction, the Permittee shall train workers about the need to avoid cultural properties, how to identify cultural properties, and procedures to follow if undocumented cultural properties, including gravesites, are found during construction. If human remains are encountered during construction, the Permittee shall immediately halt construction and promptly notify local law enforcement and the State Archaeologist <u>and the Bois Fort Band of Chippewa.</u> The Permittee shall not resume construction at such location until authorized by local law enforcement or the State Archaeologist. The Permittee shall keep records of compliance with this section and provide them upon the request of Department of Commerce staff or Commission staff.³</p>

¹ Revisions reflect changes from the Commission's standard site permit. *See* Comment by Scott Refsland (April 2, 2025) (eDocket [20254-217161-01](#)); Gopher State Solar's Response to Public Hearing Comments (April 25, 2025) (eDocket No. [20254-218157-01](#)); and EERA Reply Comments and Response to Proposed Findings of Fact (May 2, 2025) (eDocket No. [20255-218543-01](#)) (EERA Reply Comments).

² *See* Report at ¶ 215.

³ Revisions reflect changes from the Commission's standard site permit. *See* EERA Reply Comments at 2.

Attachment A
Gopher State Solar Site Permit Conditions

No.	Condition
5.1	<p>Vegetative Screening.</p> <p>The Permittee shall coordinate with jurisdictional road management authorities to develop a vegetative screening plans for state, county, and township roads adjacent to or bisecting nonparticipating residences within or adjacent to the Project <u>facilities</u>. Vegetative screening plans must comply with jurisdictional ROW management and/or setback requirements. <u>The location of screening included in the vegetative screening plan shall be included in the Site Plan filed under Section 8.3 of this permit.</u>⁴</p>
5.2	<p>Renville County Setbacks.</p> <p>The Permittee shall adhere to all Renville County renewable energy setback requirements, except for drain tile, in which the Permittee shall adhere to the 40-foot drain tile setback to the extent practical.⁵</p>
5.3	<p>Road Use and Development Agreement.</p> <p>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.⁶</p>
5.4	<p>Decommissioning Plan.</p> <p>The permittee shall coordinate with Renville County to develop a mutually agreeable decommissioning plan consistent <u>identify a third-party engineering firm, to be hired at Gopher State Solar's expense, to review the decommissioning plan prior to the pre-construction meeting and determine its consistency with Section 9.1 of this permit.</u>⁷</p>
5.5	<p>Ownership Change Notification.</p> <p>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.⁸</p>
5.6	<p>Emergency Response Training.</p>

⁴ See EERA Reply Comments at 12.

⁵ See Ex. EERA-8 at Appendix C - Draft Site Permit (EA).

⁶ See Ex. EERA-8 at Appendix C - Draft Site Permit (EA).

⁷ See Report at ¶ 222 and EERA Reply Comments at 12-13.

⁸ See Ex. EERA-8 at Appendix C - Draft Site Permit (EA).

Attachment A
Gopher State Solar Site Permit Conditions

No.	Condition
	The permittee shall work with 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. ⁹
5.7	<p>Northern Long-Eared Bat.</p> <p>If <u>potential impacts are identified, then</u> the permittee shall comply with the USFWS guidance and requirements in effect regarding NLEB, including tree clearing restrictions if applicable.¹⁰</p>
5.8	<p>Bald Eagle.</p> <p>If, in consultation with the U.S. Fish and Wildlife Service, a bald eagle nest must be removed for construction of the project, the Permittee shall file with the Commission the documentation authorizing any such nest removal at least 14 days prior to the pre-construction meeting.¹¹</p>
5.9	<p>Migratory Birds.</p> <p>The Permittee shall <u>comply with the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712) and, to the extent practicable, avoid impacts to marshes, wetlands, peatlands, tree nesting locations, and other migratory bird habitat during the Chimney Swift's breeding season of March 15 – August 25 and the Northern Harrier's breeding season of April 1 – September 15. If impacts are likely to occur during the breeding seasons, the Permittee shall confer with the United States Fish and Wildlife Service (USFWS) regarding mitigation measures. If impacts to migratory birds cannot be avoided, or impacts are anticipated during the Chimney Swift's Probability of Presence period of the first week of June and third week of July or the Northern Harrier's Probability of Presence period in mid-March,</u> nesting locations shall be identified and appropriate mitigative measures <u>will be implemented in consultation with the United States Fish and Wildlife Service</u> USFWS prior to beginning construction. The Permittee shall keep records of compliance with this section and provide them upon the request of Commission staff.</p>
5.x	<p>Facility Lighting.</p> <p>The Permittee must use shielded and downward facing lighting and LED lighting that minimizes blue hue at the project substation and operations and</p>

⁹ See Ex. EERA-8 at Appendix C - Draft Site Permit (EA).

¹⁰ See Report at ¶ 224 and EERA Reply Comments at 13.

¹¹ See Ex. EERA-8 at Appendix C - Draft Site Permit (EA).

Attachment A
Gopher State Solar Site Permit Conditions

No.	Condition
	maintenance facility. Downward facing lighting must be clearly visible on the site plan submitted for the project. ¹²
5.x	Dust Control. The Permittee shall utilize non-chloride products for onsite dust control during construction. ¹³
5.x	Wildlife-Friendly Erosion Control. The Permittee shall use only “bio-netting” or “natural netting” types of erosion control materials and mulch products without synthetic (plastic) fiber additives or malachite green dye. ¹⁴
5.x	State-listed Species. Prior to the start of construction, the Permittee shall resubmit a Natural Heritage Review and continue to consult with the MDNR regarding implementation of avoidance measures for state-protected threatened and endangered species. The Permittee will comply with applicable Minnesota Department of Natural Resources requirements related to state-listed endangered and threatened species in accordance with Minnesota's Endangered Species Statute (Minnesota Statutes, section 84.0895) and associated Rules (Minnesota Rules, part 6212.1800 to 6212.2300 and 6134). The Permittee shall keep records of compliance with this section and provide them upon the request of Commission staff. ¹⁵
8.4	Status Reports. The Permittee shall file with the Commission monthly Construction Status Reports beginning with the pre-construction meeting and until completion of restoration. Construction Status Reports shall describe construction activities and progress, activities undertaken in compliance with this site permit, and shall include text and photographs. If the Permittee does not commence construction of the Project within six months of this site permit issuance, the Permittee shall file with the Commission Pre-Construction Status Reports on the anticipated timing of construction every six months beginning with the issuance of this site permit until the pre-construction meeting. The status updates shall include information on the Project’s Midcontinent Independent System Operator (MISO) interconnection process, if applicable. ¹⁶

¹² See DNR Comments at 1-2 (April 10, 2025) (eDocket No. [20254-217490-01](#)) (DNR Comments) and EERA Reply Comments at 5-6.

¹³ See DNR Comments at 2 and EERA Reply Comments at 6.

¹⁴ See DNR Comments at 2 and EERA Reply Comments at 6.

¹⁵ See Report at ¶ 231; DNR Comments at 3; and EERA Reply Comments at 7.

¹⁶ See Report at ¶ 229 and EERA Reply Comments at 11.

**In the Matter of the Application of Gopher State
Solar, LLC for a Site Permit for the up to 200
MW Gopher State Solar Project in Renville
County, MN.**

**MPUC Docket No. IP-7119/GS-24-106
OAH Docket No. 24-2500-40416**

CERTIFICATE OF SERVICE

Abby Goshgarian certifies that on the 17th day of June, 2025, she e-filed a true and correct copy of the Exceptions to the ALJ Report, including Attachment A, on behalf of Gopher State Solar, LLC 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: June 17, 2025

Signed: /s/ Abby Goshgarian

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
1	Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron		60 S 6th St Ste 1500 Minneapolis MN, 55402-4400 United States	Electronic Service		No	24-106Official
2	Kristien	Butler	kristien.butler@state.mn.us		Office of Administrative Hearings	PO Box 64620 Saint Paul MN, 55164 United States	Electronic Service		No	24-106Official
3	Generic	Commerce Attorneys	commerce.attorneys@ag.state.mn.us		Office of the Attorney General - Department of Commerce	445 Minnesota Street Suite 1400 St. Paul MN, 55101 United States	Electronic Service		Yes	24-106Official
4	Ryan	Cox	rcox@fredlaw.com	Fredrikson & Byron, P.A.		60 S Sixth St Ste 1500 Minneapolis MN, 55402-4400 United States	Electronic Service		No	24-106Official
5	Martin	Donovan	martin.donovan@state.mn.us		Department of Natural Resources	500 Lafayette Road St Paul MN, 55155 United States	Electronic Service		No	24-106Official
6	Richard	Dornfeld	richard.dornfeld@ag.state.mn.us		Office of the Attorney General - Department of Commerce	Minnesota Attorney General's Office 445 Minnesota Street, Suite 1800 Saint Paul MN, 55101 United States	Electronic Service		No	24-106Official
7	Sharon	Ferguson	sharon.ferguson@state.mn.us		Department of Commerce	85 7th Place E Ste 280 Saint Paul MN, 55101-2198 United States	Electronic Service		No	24-106Official
8	Craig	Janezich	craig.janezich@state.mn.us		Public Utilities Commission	121 7th Pl E #350 St. Paul MN, 55101 United States	Electronic Service		No	24-106Official
9	Richard	Kolodziejski	rkolodziejski@ncsrcc.org	North Central States Regional Council of Carpenters		700 Olive St St. Paul MN, 55130 United States	Electronic Service		No	24-106Official
10	Rosanne	Koneval	rosanne@rangerpower.com	Gopher State Solar, LLC		320 N Sangamon Street, Suite 1025 Chicago IL, 60607 United States	Electronic Service		No	24-106Official
11	Kevin	Pranis	kpranis@liunagroc.com	Laborers' District Council of MN and ND		81 E Little Canada Road St. Paul MN, 55117 United States	Electronic Service		No	24-106Official
12	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	24-106Official

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