

Initial Brief from the Laborers' District Council of Minnesota and North Dakota (LIUNA)

September 26, 2025

Honorable Judge McKenzie
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101

RE: In the Matter of the Application of Benton Solar, LLC for Site Permits and a Route Permit a 100 MW Solar Energy Generating System, a 100 MW Battery Energy Storage System, and associated High-Voltage Transmission Line in Benton County, Minnesota (MPUC Docket No.: IP7115/GS-23-423, ESS-24-283, TL-23-425; OAH Docket No. 25-2500-40508)

Dear Judge McKenzie,

LIUNA appreciates the opportunity to file the enclosed initial brief in the above-captioned matters. Because our concern in these dockets is specific to local employment and economic impacts and the maximization of local benefits, we have not attempted to propose a full set of findings but have instead sought to lay out our key arguments regarding workforce impacts. In our reply brief, we will seek to identify where our proposed findings and conclusions fit within NextEra's proposed findings of fact and conclusions of law, which we anticipate will be much more comprehensive.

Legal Analysis and Recommendation

In 2023 and 2024, the Minnesota legislature made significant changes to laws that govern utility resource planning and the siting and routing of large energy facilities, as part of the state's efforts to decarbonize its economy, and more specifically, to ensure a beneficial transition to carbon-free electricity by 2040.

As part of this process, legislators made clear that the permitting process for large energy projects approved by the Commission should be streamlined, but should also prioritize the creation of high-quality jobs and career opportunities for local construction workers in order to support development of the state's skilled workforce and maximize the local benefits of clean energy development.

Specifically, legislators added the following language to Minn. Stat. § 216E.03, Subd. 7, which establishes the criteria the Commission must consider when evaluating a siting permit for large solar or other generation projects:

(14) evaluation of the proposed facility's impact on socioeconomic factors; and

(15) evaluation of the proposed facility's employment and economic impacts in the vicinity of the facility site and throughout Minnesota, including the quantity and quality of construction and permanent jobs and their compensation levels. The commission must consider a facility's local employment and economic impacts, and may reject or place conditions on a site or route permit based on the local employment and economic impacts.

It is noteworthy that the legislature did not merely add local employment and economic impacts as criteria for consideration, but also determined that the Commission “must” consider these impacts and may “reject or place conditions on a site or route permit” based on these impacts – an explicit grant of authority that is unique to employment and economic impacts among the many types of impacts to be considered.

It is clear from the statutory language that the Commission has an obligation to take an especially “hard look” at such impacts and cannot simply rubber-stamp an applicant’s claims that a project will deliver sufficient local benefits. Likewise, it is clear that the legislature has directed the Commission to take actions necessary to ensure that the siting of large energy projects maximizes such benefits and advances state goals to ensure a beneficial energy transition.

The state’s goals with respect to the local socioeconomic impacts of energy investments are further fleshed out in Minn. Stat. § 216B.2422, which defines the terms “local workers” and “local job impacts” with a focus on construction jobs associated with the construction and repowering of large energy facilities. The new statute specifically requires the Commission not only to consider local job impacts in resource planning, but to “give preference to proposals that maximize the creation of construction employment opportunities for local workers, consistent with the public interest,” when evaluating utility proposals. In short, the legislature directed the Commission to use the tools at its disposal to both evaluate and maximize the benefits of energy infrastructure investments for local workers.

NextEra has demonstrated based on the project application and supplemental evidence provided in this case that Benton Solar has the *potential* to deliver the type of local employment and economic benefits that the legislature requires the Commission to consider and to seek. But the company has not demonstrated that such benefits are sufficiently certain for the Commission to approve the project without additional conditions to ensure that NextEra keeps its promises in this matter.

Whether one concludes that NextEra has deliberately misled regulators and reneged on explicit commitments to stakeholders with respect to use of local workforce on past projects or cause unintentional “misunderstandings”, it should be clear that the Commission cannot simply rely on the apparent meaning company’s stated commitments with regard to labor. While in some instances it might be reasonable for the Commission to rely on applicants’ promises that lack a clear means of enforcement, based on NextEra’s track record it should be clear that the Commission must explicitly require NextEra to follow through on plans to build the project under

a Project Labor Agreement with local labor unions affiliated with the Minnesota Building and Construction Trades Council in order to have any assurance that the company will ultimately follow through and deliver promised socioeconomic benefits.

Local Socioeconomic Benefits of Local Construction Hiring

LIUNA witness Dr. Lucas Franco found that construction wages and health benefits associated with the project will generate an estimated \$19.4 million to \$24.8 million in local economic activity, assuming use of a 50% to 70% local workforce,¹ using an economic model developed by North Star Policy Institute (“NSPI”).² When the value of deferred retirement benefits is included, the expected impact grows by an additional \$3.6 million.³

The local economic spending multiplier used in Dr. Franco’s analysis was originally produced by the U.S. Bureau of Economic Analysis, and is in line with multipliers commonly used in economic impact analysis, including analyses produced such as the Benton Solar impact study commissioned by NextEra.⁴

Dr. Franco explains in his Surrebuttal testimony why the NSPI model, which was originally developed for construction of utility-scale wind projects, is also applicable to utility-scale solar projects such as Benton Solar, citing similarities in work tasks and substantial overlap among construction employers and construction workforce.⁵ While Mr. Gracia infers in his Rebuttal Testimony that differences between wind and solar construction might limit the applicability of the model, he does not describe these differences or explain why any such differences would affect the validity of the model.⁶

Mr. Gracia filed an economic analysis produced by Dr. King Banaian, a professor of economics at St. Cloud State University, whose findings are similar both in direction and magnitude to the findings of Dr. Franco. Dr. Banaian concluded that construction of the project would result in approximately \$20 million in direct benefits from labor income” based on use of a 60% local construction workforce.⁷

Dr. Franco reviewed Dr. Banaian’s analysis, and found data errors and methodological flaws that contribute to a modest understatement of the labor income associated with use of local construction workforce on the project compared to LIUNA’s analysis.⁸ These errors include:

- Use of hourly wage rates lower than those that must be paid on the project to meet Federal and state requirements. For example, Dr. Banaian assumes that workers will be

¹ Ex. LIUNA-413 (Franco Direct) at 3; Ex. LIUNA-408 (Franco Direct Att. A) at 1

² Ex. LIUNA-408 (Franco Direct Att. A) at 2

³ Ex. LIUNA-408 (Franco Direct Att. A) at 1

⁴ Ex. LIUNA-415 (Franco Surr.) at 9

⁵ Ex. LIUNA-415 (Franco Surr.) at 12

⁶ Ex. 162 (Gracia Rebuttal) at 6

⁷ “Dr. Banaian concluded

⁸ Ex. LIUNA-415 (Franco Surr.) at 13-14

paid hourly wage rates of \$37.66 hourly for “general labor” and \$41.00 for electricians, while Federal and state prevailing wage laws establish minimum wage rates of \$44.00 for laborers and \$60.40 for electricians.⁹ Mr. Gracia confirmed that NextEra expects contractors to pay the higher legal minimum rates.¹⁰

- Mr. Gracia confirmed during the evidentiary hearing that the fringe benefit assumptions used in Dr. Banaian’s study were not provided to him by NextEra, and do not necessarily reflect the full value of the health, retirement and training benefits provided to union workers or to workers on prevailing wage projects.¹¹ The substantial economic and social value of such benefits is discussed extensively in Dr. Franco’s Direct Testimony and his Attachment A.
- Mr. Gracia confirmed during the evidentiary hearing that Dr. Banaian assumed all hours worked on the project would be paid at straight-time rates, despite the fact that extensive use of overtime is common on large renewable energy projects.¹²

Mr. Gracia agreed that, based on the errors and flaws identified by LIUNA, total labor income and resulting economic activity would likely be higher than estimated by Dr. Banaian.¹³

Despite relatively small differences in the two economic models and their output, both Dr. Franco’s and Dr. Banaian’s analyses show that the magnitude of local economic benefits deriving from construction jobs on utility-scale energy projects is directly correlated to employment of local workforce.

In Dr. Banaian’s model, the formula for local labor income can be roughly described as [Total Jobs] x [Local Share of Workforce] x [Avg. Hourly Pay] x [Est. Fringe Benefit Addition] x [Expected Hours Worked] based on Mr. Gracia’s testimony.¹⁴ As a consequence, Mr. Gracia agreed that local economic benefits associated with construction jobs scale proportionally with local workforce utilization, increasing if the project exceeds 60% local workforce, and diminishing at lower utilization levels.¹⁵

Mr. Gracia agreed specifically that, based on the economic model filed by NextEra, use of a 30% local workforce cuts the local economic benefit associated with construction employment by half compared to a project that uses a 60%, and cuts the economic benefit by three-quarters for a project that uses just 15% local workforce.¹⁶

⁹ Ibid.

¹⁰ Evid. Hrg. Tr. at 15

¹¹ Evid. Hrg. Tr. at 15-16

¹² Evid. Hrg. Tr. at 16; Ex. LIUNA-415 (Franco Surr.) at 14

¹³ “Q So we would agree that there’s probably actually greater economic benefits to the project in terms of labor income than are represented in Dr. Banaian’s analysis? A Based on the information you provided me, yeah, I would -- I would agree.” Evid. Hrg. Tr. at 17, 20-25

¹⁴ Evid. Hrg. Tr. at 12-13

¹⁵ Evid. Hrg. Tr. at 17

¹⁶ Ibid.

The economic analysis filed by NextEra shows that construction labor income is among the most significant local economic benefits of the Benton Solar project. For example, while the project will also generate tax revenues, Dr. Banaian estimates that local governments will receive roughly \$4.2 million over the 25-year life of the project while the state will receive \$4.8 million for a state total of \$9 million – less than half of the roughly \$20 million associated with construction labor incomes.¹⁷ Further, compared to labor income will be dispersed among hundreds of workers and not concentrated among a smaller number of landowners.

Feasibility of Local Hiring and Correlation Between Local and Union Labor

The record in this case provides ample evidence demonstrating the feasibility of building a project such as Benton Solar with a workforce that is largely if not overwhelmingly composed of local workers. The record also provides strong evidence of a correlation between use of local and union labor on utility-scale energy projects such as Benton Solar

Data filed in Attachment A of Dr. Franco's testimony shows that, among recent wind energy projects built in Minnesota with union labor, the local share of employment ranged from 39.9% to 78.3% based on Labor Statistics Reports filed with the Public Utilities Commission, while utilization of local labor on utility-scale solar projects built under union agreements ranged from 84.3% for Sherco Solar, which is located in close proximity to Benton Solar, to 92% for Louise Solar in Southeast Minnesota.¹⁸ Dr. Franco concludes based on his analysis of available data that use of union labor is strongly correlated with higher utilization of local labor, and explains how the union employment model facilitates local workforce development.¹⁹ Mr. Gracia stated that he generally agreed with Dr. Franco's conclusion regarding the correlation.²⁰

Dr. Franco further observes that differences between wind and solar construction should make it possible to achieve higher levels of local labor utilization on a solar project, and that these higher levels are reflected in the data cited above.²¹

LIUNA witness Steve Cortina also explains how LIUNA and other trades unions have been able to recruit and train local workers to work on utility-scale clean energy projects, utilizing not only the union's existing base of skilled membership but also workers currently employed in lower wage jobs in construction or related industries who "want a better career".²² NextEra provided

¹⁷ Ex. 162 (Gracia Rebuttal) at 21

¹⁸ Ex. LIUNA-408 (Franco Direct Att. A) at 9

¹⁹ Ibid. at 9-10

²⁰ "I want to confirm that you agree with Dr. Franco's analysis that use of union labor in the data that we have available in this docket is associated with a significantly higher level of local workforce participation than use of nonunion labor on the project? A In general, yes." Evid. Hrg Trans. At 59-60

²¹ Ex. LIUNA-415 (Franco Surr.) at 12

²² Ex. LIUNA-412 (Cortina Direct) at 7

no evidence or analysis to explain why similar efforts and results would not be feasible for Benton Solar.

NextEra Track Record

The record evidence indicates that NextEra's track record with respect to local construction hiring varies widely, based largely on whether the company chooses to hire contractors that employ local union labor rather than exogenous factors such as availability of or competition for skilled labor. In cases where NextEra selects union wind or solar EPCs, rates of local workforce utilization typically fall between 40% and 80%, even in rural locations.²³ On the other hand, where the company selects wind or solar EPCs that rely on nonunion labor, rates of local workforce utilization often fall below 10%, and can dip below 5%.²⁴

Mr. Gracia indicates in his Rebuttal Testimony that NextEra's poor local hiring performance in North Dakota is attributable to differences in state policy and labor market demand, with specific reference to competition from the coal industry.²⁵ During the evidentiary hearing, however, Mr. Gracia failed to identify any North Dakota state law or regulation that made it more difficult to hire local workers in North Dakota compared to Minnesota or any other state.²⁶ Instead, Mr. Gracia agrees that NextEra's tendency to use more local and union workforce in Minnesota is a response to a "regulatory requirement that might support local use of workforce".²⁷ In short, Mr. Gracia acknowledges that NextEra has prioritized use of local labor when pushed or forced by regulators to do so, and not otherwise.

Mr. Gracia likewise fails to offer any evidence that North Dakota coal industry employment opportunities are undercutting local hiring efforts by the company's wind EPCs. Instead, his claims about competition from the coal industry appear to be based on a misunderstanding of direct testimony by Mr. Cortina's which is refuted in Mr. Cortina's Surrebuttal Testimony.²⁸ Mr. Gracia acknowledges during the evidentiary hearing that he had no basis to dispute Mr. Cortina's testimony regarding the loss of coal industry employment opportunities and the corresponding need for opportunities in the wind industry.²⁹

²³ Ex. LIUNA-408 (Franco Direct Att. A) at 9; Ex. 162 (Gracia Rebuttal) at 6

²⁴ LIUNA-413 (Franco Direct) at 9; LIUNA Ex. 420 (Cortina TS Surr.) at 7

²⁵ Ex. 162 (Gracia Rebuttal) at 10

²⁶ Evid. Hrg Trans. at 31

²⁷ Ibid. at 32

²⁸ "Mr. Gracia provides no evidence that additional qualified local workforce was not available to work on the company's North Dakota projects because there were too many competing job opportunities in coal mines and plants or for any other reason. I was present during the Public Service Commission hearing for Oliver IV wind, which is located near multiple coal mines and plants, and NextEra representatives never suggested in their application or in the hearing that this would be a problem, and neither did anyone else. In fact, it was the exact opposite – there was testimony from the union and one of our members whose family works in coal plants that the wind job opportunities are needed because opportunities in coal have been disappearing." Ex. LIUNA-420 at 3

²⁹ Evid. Hrg Trans. at 30

NextEra's track record is not merely characterized by frequent failure to maximize local employment benefits, but also by a pattern of misleading statements to regulators and the public concerning the likely impacts of the projects in cases where the company chooses to rely on nonunion labor. Specifically, NextEra has evidently misled the North Dakota Public Service Commission and the broader public on multiple occasions by promoting construction job creation associated with the company's projects without disclosing that the overwhelming majority of jobs would not be filled by, or be available to, local residents. For example:

NextEra indicated to the North Dakota Public Service Commission ("NDPSC") that Emmons-Logan Wind would require "200 to 300 temporary construction workers" and that the company expected those working on "basic infrastructure and site development" to be North Dakotans.³⁰ NextEra executive John DiDonato underscored the notion that the project would deliver significant local employment benefits by publicly claiming that the project would be "adding jobs and tax base to the local economy."³¹ In reality, roughly 10% of construction jobs on the project were filled by local workers.³²

NextEra's failure to provide local employment opportunities that matched public commitments at Emmons-Logan did not deter the company from making nearly identical claims for Northern Divide Wind which NextEra also claimed would create "200 to 300" construction jobs, once again inferring that a significant share would go to North Dakotans to meet "basic infrastructure and site development needs."³³

NextEra told a local newspaper that Northern Divide would "create homegrown, renewable energy, good jobs and millions of dollars in additional revenue for the local community there."³⁴ Yet in reality, fewer than 10% of construction jobs on the project were filled by local workers.³⁵ It is notable that NextEra failed to improve on the company's performance on Emmons-Logan, despite the fact that the "the project was built during a period of high construction unemployment caused by the COVID pandemic and the resulting collapse in oil and gas production",³⁶ removing the excuse used by NextEra representative Sean Harrington for the company's failure to achieve meaningful levels of local hiring on the Emmons-Logan project.³⁷

³⁰ Ex. LIUNA-413 (Franco Direct) at 6

³¹ Ibid.

³² Just 6% of construction jobs were filled by North Dakota workers based on LIUNA's estimates, while NextEra reports that **[TRADE SECRET INFORMATION BEGINS]** **[TRADE SECRET INFORMATION ENDS]** of work hours were performed by North Dakotans. Ibid.; LIUNA Ex. 420 (Cortina TS Surr.) at 7; LIUNA Ex. 422 (Cortina TS Surr. Att. 2)

³³ Ibid. at 7

³⁴ Ibid.

³⁵ Just 8.5% of construction jobs were filled by North Dakota workers based on LIUNA's estimates, while NextEra reports that **[TRADE SECRET INFORMATION BEGINS]** **[TRADE SECRET INFORMATION ENDS]** of work hours were performed by North Dakotans. Ibid.; Ex. LIUNA-413 (Franco Direct) at 9; LIUNA Ex. 422 (Cortina TS Surr. Att. 2)

³⁶ Ex. LIUNA-413 (Franco Direct) at 7

³⁷ Ibid.

Successive failures to deliver meaningful local employment benefits through Emmons-Logan and Northern Divide Wind still did not discourage NextEra from making similar claims for Oliver IV Wind. The company once again claimed in its site permit application that local labor would be “available either in the county or the state to serve the basic infrastructure and site development needs”, while the project website cited 200 construction jobs as among the three key local economic benefits of the project.³⁸

In the case of Oliver IV, however, NextEra went beyond claims that the project would create hundreds of jobs and use local labor for “basic infrastructure and site development needs” to make yet more explicit commitments to regulators and stakeholders regarding workforce plans for the project, which was located near the state’s second-largest metropolitan area and in the heart of North Dakota’s “Coal Country”.³⁹ During the hearing before the NDPSC, NextEra representative Clay Cameron committed that that “our EPCs will hire as much local labor as possible”,⁴⁰ while the night before the hearing, Mr. Cameron told LIUNA representatives that the EPC responsible for building the wind farm would work with LIUNA to staff the project with local members according to the only eyewitness to the meeting that provided testimony in this proceeding.⁴¹

While Mr. Gracia disputes LIUNA’s account of the commitments made by NextEra before the NDPSC hearing, he acknowledges that, unlike Mr. Cortina, he did not personally witness the meeting in question.⁴² NextEra did not offer any of several company employees who participated in the aforementioned meeting as witnesses, despite the fact that they evidently remain employed by NextEra.⁴³ Mr. Gracia declined to explain the company’s failure to offer a first-hand witness to the disputed exchange, citing attorney-client privilege.⁴⁴ NextEra has not provided any first-hand or other evidence to refute LIUNA’s account of the meeting, and has not even attempted to refute the public report that the company committed to “hire as much local labor as possible.”

NextEra’s poor performance with respect to utilization of local construction labor in North Dakota is not a consequence of the company trying and failing to recruit local workforce due to circumstances beyond its control. Instead, the record indicates that NextEra has not made meaningful efforts to recruit local workforce or induce the company’s contractors to do so except where pushed to do so by legal or contractual requirements.

The record similarly contains no evidence that NextEra makes any efforts to monitor or evaluate the performance of the company’s contractors with respect to use of local construction labor, except where the company is legally or contractually required to do so. NextEra states in the company’s response to multiple information requests regarding actual local results and

³⁸ Ibid. at 8

³⁹ Ex. LIUNA-412 (Cortina Direct) at 10

⁴⁰ Ex. LIUNA-413 (Franco Direct) at 8

⁴¹ Ex. LIUNA-412 (Cortina Direct) st 11; Ex. LIUNA-420 (Cortina Surr.) at 6

⁴² Evid. Hrg. Trans. at 55

⁴³ Ibid. at 57

⁴⁴ Ibid at 56

recruitment efforts with respect to local hiring that the company “does not collect or maintain information related to those practices unless it is required for compliance with local, state, or federal requirements,”⁴⁵ and this statement was affirmed by Mr. Gracia in his testimony.⁴⁶ When asked to provide information on local hiring results and efforts, it took more than three months, from March 12 until June 16, 2025, for NextEra to provide partial answers to the questions submitted based on voluntary responses from the company’s construction contractors.⁴⁷

It is revealing that, across many years and several projects, NextEra was unable, when asked, to produce a single shred of evidence proving that any of the company’s wind EPCs had ever completed a single local workforce recruitment effort in North Dakota. The fact that it took roughly five months for NextEra to produce a single email related to a purported job fair that the company’s EPC may or may not have attended, less than 24 hours before the evidentiary hearing, underscores how little NextEra knows or is even able to discover about the its contractors’ performance with respect to local hiring; and how little the company apparently cares whether commitments made and the expectations created in the minds of regulators and the public are ever fulfilled.⁴⁸

NextEra Labor Commitments

Dr. Franco and Mr. Cortina both expressed concerns about whether NextEra would follow through on promises to build Benton Solar using local union labor, citing the company’s recent history in North Dakota including the company’s failure to honor explicit commitments made with respect to the construction of Oliver IV Wind.⁴⁹

Dr. Franco raised concerns that a Project Labor Agreement (“PLA”) would likely not protect union workers or ensure maximization of local benefits workers if NextEra’s preferred EPC is unable to build the project, or if NextEra ultimately selects a different EPC for other reasons if NextEra is not a party to the PLA.⁵⁰

Mr. Gracia confirmed that NextEra “is not a party” to the PLA between the company’s preferred EPC contractor and local building trades unions, and did not dispute that the existing PLA would have no effect on the project if a different EPC were ultimately in charge of construction.⁵¹ Mr.

⁴⁵ (Cortina TS Surr. Atts. 1 and 2)

⁴⁶ Evid Hrg. Trans. At 45

⁴⁷ Ibid.

⁴⁸ Ex. 168; Ev. Hrg. Trans. at 51-53

⁴⁹ “NextEra’s written commitment to maximize local benefits by working with local unions is a good step towards developing this project in a way that maximizes potential socioeconomic benefits. I am concerned, however, that these commitments may not be fulfilled due to our experience with the developer on the Oliver IV Wind project as described in my direct testimony and the testimony of Mr. Cortina.” Ex. LIUNA-410A (Franco Rebuttal); “We were watching closely with Oliver IV because the company made big promises and we have a lot of members who live in the area but we saw zero efforts and zero publicity about construction job opportunities.” Ex. LIUNA-412 (Cortina Direct) at 8 (Cortina Direct) at 8

⁵⁰ Ibid. at 2

⁵¹ Evid. Hrg. Tr. at 20

Gracia instead cited the commitment letter filed in the docket, and stated that in the event of a change in contracting, NextEra would expect the replacement EPC to enter into a similar PLA with local building trades unions.⁵² Mr. Gracia was unable to provide an opinion on whether the commitment letter represents a binding legal contract.⁵³

In the absence of a legally-enforceable commitment from NextEra, it is unclear how the Commission could ensure that the purported benefits of the project are delivered in the event of a change of EPC.

⁵² Ibid. at 21

⁵³ Ibid.