

August 19, 2024

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

RE: EERA Comments and Recommendations on Application Completeness  
Birch Coulee Solar Project – Site Permit Application  
Docket No. IP-7119/GS-23-477

Dear Mr. Seuffert,

Attached are comments and recommendations of Department of Commerce, Energy Environmental Review and Analysis (EERA) staff in the following matter:

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

The site permit application was filed on July 29, 2024, by:

Scott Groux  
The AES Corporation  
2180 S 1300 E  
Suite 500  
Salt Lake City, UT  
84106

Lauren Colwell  
The AES Corporation  
2180 S 1300 E  
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Salt Lake City, UT  
84106

EERA staff recommends that the Commission accept the application as substantially complete and require Birch Coulee Solar to provide GHG emission details for the construction stage of the project. EERA staff is available to answer any questions the Commission may have.

Sincerely,



Lauren Agnew  
Environmental Review Manager

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## BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

### ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS COMMENTS AND RECOMMENDATIONS

#### BIRCH COULEE SOLAR PROJECT DOCKET No. IP-7119/GS-23-477

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**Date:** August 19, 2024

**EERA Staff:** Lauren Agnew | 651-539-1838 | [Lauren.Agnew@state.mn.us](mailto:Lauren.Agnew@state.mn.us)

**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**

**Issues Addressed:** These comments and recommendations address the completeness of the site permit application, the need for an advisory task force, and other issues related to this matter.

**Documents Attached:**

- (1) Project Overview Map
- (2) Table 1. Application Completeness Requirements
- (3) Table 2. Draft Permitting and Environmental Review Schedule

Additional documents and information can be found on:

- eDockets via <https://www.edockets.state.mn.us/EFiling/search.jsp> (23-477) and;
- The Department of Commerce's website via <http://mn.gov/commerce/energyfacilities>.

This document can be made available in alternative formats (i.e., large print or audio) by calling 651-539-1529 (voice).

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## Introduction and Background

On July 29, 2024, Birch Coulee Solar, LLC (Birch Coulee Solar) filed a site permit application to construct and operate the Birch Coulee Solar project, an up to 125 megawatt (MW) alternating current photovoltaic solar energy generating facility and associated infrastructure in Birch Coulee, Camp, and Bandon Townships and the city of Franklin in Renville County, Minnesota.<sup>1</sup> On August 6, 2024, the Minnesota Public Utilities Commission (Commission) issued a notice soliciting comments on the completeness of the site permit application, the need for an advisory task force, and any other issues

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<sup>1</sup> Birch Coulee Solar Project, Application to the Minnesota Public Utilities Commission for a Site Permit for a Large Electric Generating Facility, July 29th, 2024, eDockets Numbers [20247-209066-01](#) (through -09), [20247-209069-01](#) (through -08).

related to this matter.<sup>2</sup>

## Project Purpose

Birch Coulee Solar indicates that the project will assist the State of Minnesota in meeting its renewable energy objectives,<sup>3</sup> diversify electricity sources, meet anticipated growth in electricity demand, and meet consumers' growing demand for renewable energy.<sup>4</sup> Birch Coulee Solar is working to secure a power purchase agreement with wholesale customers (e.g., Minnesota utilities and cooperatives) or commercial and industrial customers to sell the electric power generated by the project.

## Project Description

Birch Coulee Solar proposes to construct and operate an up to 125 MW solar farm in Birch Cooley, Camp, and Bandon Townships and the city of Franklin, Renville County, Minnesota. The project will occupy approximately 1,041.6 acres, of which 768.2 acres will be developed for the project, north of the city of Franklin (see Project Overview Map). The project will use photovoltaic solar panels mounted on single axis tracking systems. Underground collection cables will gather and send the electric power generated by the solar panels to a project substation, where it will be transmitted to a proposed utility owned switchyard. The project switchyard will interconnect with the electrical grid through an existing 115kV Franklin Substation immediately adjacent to the Project Site, via a short (<500 feet) overhead gen-tie line.<sup>5</sup>

Birch Coulee Solar indicates that a generator interconnection for the project has been requested with the Midcontinent Independent System Operator.<sup>6</sup> Birch Coulee Solar expects to sign a generator interconnection agreement in March 2025. Construction is anticipated to begin in 2027 and 2028 with completion and operation anticipated in 2028.<sup>7</sup>

## Regulatory Process and Procedures

In Minnesota, no person may construct a large electric power generating plant without a site permit from the Commission.<sup>8</sup> A large electric power generating plant is defined as a facility capable of operating at a capacity of 50 MW or more.<sup>9</sup> The Birch Coulee Solar project will be capable of producing up to 125 MW and therefore requires a site permit from the Commission. Because the project is powered by solar energy, the site permit application qualifies for Commission review under the alternative permitting process described in Minnesota Statute 216E.04, Subd. 2.

As Birch Coulee Solar is an independent power producer, a certificate of need (CN) is not required for the project. The project is exempt under Minnesota Statute 216B.243, subd. 8(a)(8), which provides that a CN is not required for a "solar energy generating system, as defined in section 216E.01, subdivision 9a,

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<sup>2</sup> Notice of Comment Period on Application Completeness, August 6, 2024, eDockets Number 20248-209278-01.

<sup>3</sup> Minnesota Statute 216B.1691.

<sup>4</sup> Site Permit Application, Section 1.1.

<sup>5</sup> Site Permit Application, Section 3.4

<sup>6</sup> Site Permit Application, Section 1.1

<sup>7</sup> Site Permit Application, Section 1.3

<sup>8</sup> Minnesota Statute 216E.03.

<sup>9</sup> Minnesota Statute 216E.01.

for which a site permit application is submitted by an independent power producer under chapter 216E.”<sup>10</sup>

### Site Permit Application Acceptance

Site permit applications for large electric power generating plants must provide information about the applicant, a description of the project, and discussion of potential human and environmental impacts and mitigation measures.<sup>11</sup> Review under the alternative permitting process does not require an applicant to propose alternative sites in their permit application; however, if alternative sites were evaluated and rejected, the application must describe these sites and reasons for rejecting them.<sup>12</sup>

With an application, the Commission may accept it as complete, reject it and advise the applicant of the deficiencies, or accept it as complete upon filing of supplemental information.<sup>13</sup> The environmental review and permitting process begins when the Commission determines that a permit application is complete; the Commission has six months (or nine months, with just cause) from the date of this determination to reach a permit decision.<sup>14</sup>

### Public Advisor

Upon acceptance of a route permit application, the Commission must designate a public advisor.<sup>15</sup> The public advisor answers questions about the permitting process but cannot provide legal advice or act as an advocate for any person.

### Environmental Review

Site permit applications are subject to environmental review conducted by Department of Commerce, Energy Environmental Review and Analysis (EERA) staff. Projects proceeding under the alternative permitting process require the preparation of an environmental assessment (EA).<sup>16</sup> An EA is a document which contains an overview of the resources affected by a proposed project and describes the potential human and environmental impacts and possible mitigation measures. An EA is the only state environmental review document required for site permit applications reviewed under the alternative permitting process.

EERA conducts public information and scoping meetings during a public comment period to inform the content of the EA.<sup>17</sup> The Commissioner of the Department of Commerce determines the scope of the EA,<sup>18</sup> and may include alternative sites suggested during the scoping process if they would aid the Commission in making a permit decision.

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<sup>10</sup> Minnesota Statute 216B.243, Subd. 8(a)(8)

<sup>11</sup> Minnesota Rules 7850.1900 and 7850.3100.

<sup>12</sup> Minnesota Rule 7850.3100.

<sup>13</sup> Minnesota Rule 7850.3200.

<sup>14</sup> Minnesota Statute 216E.04, Subd. 7.

<sup>15</sup> Minnesota Rule 7850.3400.

<sup>16</sup> Minnesota Rule 7850.3700.

<sup>17</sup> Minnesota Rule 7850.3700, subp. 2.

<sup>18</sup> Minnesota Rule 7850.3700, subp. 3.

## Public Hearing

Site permit applications under the alternative permitting process require that a public hearing be held in the project area after completion and release of the EA.<sup>19</sup> The hearing is typically presided over by an administrative law judge (ALJ) from the Office of Administrative Hearings. The Commission may request that the ALJ solely provide a summary of public testimony. Alternately, the Commission may request that the ALJ provide a full report with findings of fact, conclusions of law, and recommendations regarding the project.

## Advisory Task Force

The Commission may appoint an advisory task force to aid the environmental review process.<sup>20</sup> An advisory task force must include representatives of local governmental units in the project area.<sup>21</sup> A task force would assist EERA staff with identifying additional sites or impacts and mitigation measures to be evaluated in the EA. A task force expires upon issuance of the EA scoping decision.<sup>22</sup>

The Commission is not required to appoint an advisory task force for every project. If the Commission does not appoint a task force, citizens may request that one be appointed.<sup>23</sup> If such a request is made, the Commission must make this determination at its next regularly scheduled meeting. The decision whether to appoint an advisory task force does not need to be made at the time of application acceptance; however, it should be made as soon as practicable to ensure it can complete its charge prior to issuance of the EA scoping decision.

## EERA Staff Analysis and Comments

EERA staff provides the following analysis and comments in response to the Commission's notice requesting comments on completeness and other issues related to Birch Coulee Solar's site permit application.

### Application Completeness

EERA staff conferred with Birch Coulee Solar about the proposed project and reviewed a draft site permit application. EERA staff believe that staff comments on the draft application have largely been addressed in the site permit application submitted to the Commission. Staff evaluated the site permit application against the application completeness requirements of Minnesota Rule 7850.3100, which refers to 7850.1900 with exception for proposing alternative sites (see Table 1). Staff finds that the application contains appropriate and complete information with respect to these requirements. This said, staff requests that Birch Coulee Solar provide information regarding greenhouse gas (GHG) emissions associated with construction of the project. The application provides GHG emissions for operation of the project but does not discuss emissions associated with construction.<sup>24</sup>

### Vegetation Management Plan

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<sup>19</sup> Minnesota Rule 7850.3800.

<sup>20</sup> Minnesota Statute 216E.08.

<sup>21</sup> Minnesota Statute 216E.08.

<sup>22</sup> Minnesota Rule 7850.3600.

<sup>23</sup> Minnesota Rule 7850.3600

<sup>24</sup> Site Permit Application, Section 4.7.1.

Birch Coulee Solar has provided a draft Vegetation Management Plan (VMP) with its application (Appendix F). The VMP provides measurable and clearly defined long-term and short-term management objectives for the site and is consistent with the Vegetation Management Plan Working Group's Guidance for Developing a Vegetation Establishment and Management Plan for Solar Facilities. Birch Coulee Solar intends to establish short-statured native vegetation throughout the array area, mixed height native vegetation outside of the fenced arrays, and native wetland vegetation for the stormwater and wetland areas. There will also be a non-native fescue mix installed around the fence line to maintain a perimeter less susceptible to invasion and wildfire. Native plantings will follow the Vegetation Management Guidance from the Minnesota Department of Natural Resources (DNR).

EERA staff noted some concern with the current proposed seed mix being too dry for the project area's relatively moist soil hydrology. This has been discussed with Birch Coulee Solar; once planned geotechnical field surveys are carried out to confirm the hydrological characteristics of the site, the seed mix will be updated as necessary.

### Advisory Task Force

EERA staff analyzed the merits of establishing an advisory task force for the Birch Coulee Solar project. Staff concludes that a task force is not warranted at this time.

In analyzing the need for an advisory task force for the project, EERA staff considered four characteristics: project size, project complexity, known or anticipated controversy, and sensitive resources.

- **Project Size.** The project will utilize a relatively large area of land – approximately 1,041.6 acres (768.2 acres to be developed). However, the concerns associated with such a large acreage are muted, to a great extent, by the fact that land for the project is privately-owned land under contract or owned by Birch Coulee Solar and/or its affiliates (with the exception of public road right-of-way). Birch Coulee Solar has secured all necessary land rights for construction and operation of the project. Thus, this project-size factor weighs against a task force.
- **Project Complexity.** With respect to energy production and land use, the project is not complex. Though large solar electric projects are fairly new in Minnesota, they are relatively straightforward – solar panels are arranged to gather sunlight and create electric energy, which is then transferred to the electric transmission grid. Land use in the project area is agricultural and the topography is relatively flat. There are no special construction techniques or operational features that make the project complex. This project-complexity factor weighs against a task force.
- **Known or Anticipated Controversy.** To date, EERA staff has received no comments concerning the project, and there are currently no public comments in the record. Birch Coulee Solar has conducted outreach with state and federal agencies as well as Minnesota tribal nations and local governments in the project area.<sup>25</sup> The project has been planned on land under contract or owned by Birch Coulee Solar and/or its affiliates. As a whole, EERA staff does not anticipate controversy with the project.

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<sup>25</sup> Site Permit Application, Section 5.0.

- **Sensitive Natural Resources.** There are few sensitive natural resources in the project area.<sup>26</sup> The project area is located on agricultural land.<sup>27</sup> The DNR recommends avoidance of MBS Sites of Biodiversity Significance ranked High or Outstanding, none of which are present in the project area.<sup>28</sup> The DNR also recommends avoidance of rare native plant communities; the closest native plant community is .5 miles from the development area.<sup>29</sup>

There is one federally endangered species, the northern long-eared bat, one federally threatened species, prairie bush clover, two federally proposed endangered species, the tricolored bat and the salamander mussel, and one federal candidate species, the monarch butterfly, potentially present within the project area. Impacts to these sensitive natural resources are anticipated to be minimal. The DNR notes that there are no species of concern near the project area and indicates the project will not affect any known occurrences of rare features.<sup>30</sup> On whole, potential impacts to sensitive natural resources weigh against a task force.

Based on the assessment of the factors above, EERA staff believe that an advisory task force is not warranted for the project at this time.

### Other Issues Related to This Matter

EERA staff recommends that the Commission request a full ALJ report for the project's public hearing. EERA staff believe that a full ALJ report with recommendations provides an unbiased, efficient, and transparent method to voice and resolve any issues that may emerge as the record is developed. Requiring a full ALJ report reduces the burden on staff and helps to ensure that the Commission has a robust record on which to base its decision. Additionally, a full ALJ report does not significantly lengthen the site permitting process. EERA staff has provided a draft schedule for the Birch Coulee Solar permitting process, which includes a comparison of potential hearing work products and schedules – i.e., a summary of public testimony versus a full ALJ report with findings, conclusions, and recommendations (see Table 2).

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<sup>26</sup> Site Permit Application, Section 4.5.8.

<sup>27</sup> Site Permit Application, Section 4.2.6

<sup>28</sup> Site Permit Application, Section 4.5.8.3

<sup>29</sup> Site Permit Application, Section 4.5.8.3

<sup>30</sup> Site Permit Application, Section 4.5.8.1 & 4.5.8.2



## **EERA Staff Recommendations**

EERA staff recommends that:

- The Commission accept Birch Coulee Solar's site permit application as substantially complete.
- Birch Coulee Solar provide GHG emissions associated with construction of the project.
- The Commission not appoint an advisory task force for the site permit application.
- The Commission request a full ALJ report with recommendations for the project's public hearing.

**Table 1. Application Completeness Requirements**

Minnesota Rule 7850.1900, Subpart 1	Location in Site Permit Application	EERA Staff Comments
A. a statement of proposed ownership of the facility at the time of filing the application and after commercial operation;	1.2.1 and 1.2.2	Satisfactory. Birch Coulee Solar LLC is the owner of the project.
B. the precise name of any person or organization to be initially named as permittee or permittees and the name of any other person to whom the permit may be transferred if transfer of the permit is contemplated;	1.2 and 1.2.1	Satisfactory. Birch Coulee Solar LLC will be the permittee.
C. at least two proposed sites for the proposed large electric power generating plant and identification of the applicant's preferred site and the reasons for the preference;	Not applicable.	The project can use the alternative permitting process of Minnesota Statute 216E.04, which does not require providing this information via Minnesota Rule 7850.3100.
D. a description of the proposed large electric power generating plant and all associated facilities, including the size and type of the facility;	3.3	Satisfactory.
E. the environmental information required under subpart 3;	See Minnesota Rule 7850.1900, subpart 3 below.	
F. the names of the owners of the property for each proposed site;	Appendix C	Satisfactory. Birch Coulee Solar, an affiliate of AES Clean Energy, has obtained leases or purchase options for land which is adequate to support a 125 MW solar project.
G. the engineering and operational design for the large electric power generating plant at each of the proposed sites;	3.4	Satisfactory.

Minnesota Rule 7850.1900, Subpart 1	Location in Site Permit Application	EERA Staff Comments
H. a cost analysis of the large electric power generating plant at each proposed site, including the costs of constructing and operating the facility that are dependent on design and site;	3.9	Satisfactory.
I. an engineering analysis of each of the proposed sites, including how each site could accommodate expansion of generating capacity in the future;	3.1, 3.2, and 3.7	Satisfactory.
J. identification of transportation, pipeline, and electrical transmission systems that will be required to construct, maintain, and operate the facility;	3.4.3, 3.4.6, 3.4.7, and 3.4.11	Satisfactory.
K. a listing and brief description of federal, state, and local permits that may be required for the project at each proposed site; and	2.4	Satisfactory.
L. a copy of the certificate of need for the project from the Commission or documentation that an application for a certificate of need has been submitted or is not required;	2.1	Satisfactory. A certificate of need is not required for the project.

Minnesota Rule 7850.1900, Subpart 3	Location in Site Permit Application	EERA Staff Comments
A. a description of the environmental setting for each site or route;	4.1	Satisfactory.

Minnesota Rule 7850.1900, Subpart 3	Location in Site Permit Application	EERA Staff Comments
B. a description of the effects of construction and operation of the facility on human settlement, including, but not limited to, public health and safety, displacement, noise, aesthetics, socioeconomic impacts, cultural values, recreation, and public services;	4.2	Satisfactory.
C. a description of the effects of the facility on land-based economies, including, but not limited to, agriculture, forestry, tourism, and mining;	4.3	Satisfactory.
D. a description of the effects of the facility on archaeological and historic resources;	4.4	Satisfactory.
E. a description of the effects of the facility on the natural environment, including effects on air and water quality resources and flora and fauna;	4.5	Satisfactory.
F. a description of the effects of the facility on rare and unique natural resources;	4.5.8	Satisfactory.
G. identification of human and natural environmental effects that cannot be avoided if the facility is approved at a specific site or route; and	4.9	Satisfactory.
H. a description of measures that might be implemented to mitigate the potential human and environmental impacts identified in items A to G and the estimated costs of such mitigative measures.	4.0	Satisfactory. Generally discussed throughout the section by resource.

**Table 2. Draft Permitting and Environmental Review Schedule**

Permitting Day	Process Step (Summary of Public Testimony)	Process Step (Full ALJ Report)
0	Site Permit Application Filed	
	Comment Period on Application Completeness	
	Reply Comment Period	
	Commission Considers Application Completeness	
1	Application Acceptance Order	
5	Public Information and Scoping Meeting Notice	
30	Public Information and Scoping Meeting	
60	Scoping Decision Issued	
170	EA Issued   Notice of EA Availability and Public Hearing	
190	Public Hearing	
200	Public Hearing Comment Period Closes	
210	Applicant Responses to Hearing Comments	
220	Applicant Proposes Findings	
230	EERA Responses to Comments on EA; Technical Analysis; Replies to Applicant Proposed Findings	
230	ALJ Submits Summary of Public Testimony	NA
260	Commission Prepares Findings and Proposed Site Permit	ALJ Submits Full Report
275	NA	Exceptions to ALJ Report
280	Commission Considers Site Permit Issuance	NA
290	NA	Commission Prepares Proposed Site Permit
310	NA	Commission Considers Site Permit Issuance



## Project Overview Map

