

April 7, 2025

VIA eFILING

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

The Honorable Jim Mortenson
Administrative Law Judge
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

Re: *Responses to Hearing Comments*
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. 24-2500-40416

Dear Judge Mortenson and Mr. Seuffert:

Birch Coulee Solar LLC (Birch Coulee Solar) respectfully submits these comments pursuant to the procedural schedule established by the Administrative Law Judge's Prehearing Order issued on November 21, 2024¹ in the above referenced matter. Specifically, these comments respond to oral public comments made at the public hearings held on March 11 and 12, 2025, and the written comments submitted during the public comment period ending March 24, 2025, on Birch Coulee Solar's Application for a Site Permit (Application) for an up to 125 megawatt (MW) solar energy generating facility and associated facilities in Renville County, Minnesota (Project).

Written comments were submitted by the Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) staff,² the Minnesota Department of Natural Resources (MDNR),³ Ann Brazil Johnson,⁴ and Scott Refsland (on behalf of Renville County).⁵ Birch Coulee Solar appreciates the agency and public participation in this docket and the opportunity to offer this response.

As an initial matter, the record demonstrates that the Project has been thoughtfully designed and sited to avoid and/or minimize human and environmental impacts to the greatest extent practicable. The Project makes efficient use of available land and the solar resource while minimizing adverse

¹ Prehearing Order (Nov. 21, 2024) (eDocket No. 202411-212233-01).

² EERA Comments (March 24, 2025) (eDocket No. 20253-216742-01).

³ DNR Comments (March 24, 2025) (eDocket No. 20253-216754-01).

⁴ Comment by Ann Brazil (March 24, 2025) (eDocket Nos. 20253-216708-01 and 20253-216715-01).

⁵ Scott Refsland's Comments (March 31, 2025) (eDocket No. 20253-217001-01).

human and environmental impacts. As such, Birch Coulee Solar respectfully submits that the record supports the issuance of a site permit for the Project.

I. EERA

EERA filed hearing comments on March 24, 2025, regarding the draft decommissioning plan, the draft vegetation management plan (VMP), and EERA's recommended special permit conditions in the Draft Site Permit.⁶ Birch Coulee Solar appreciates EERA's review of the Project's draft decommissioning plan and VMP, both of which were filed with the Application. Birch Coulee Solar will coordinate with EERA to update the draft decommissioning plan and VMP prior to any construction and in compliance with the timeframes set forth in the Site Permit.⁷

Regarding EERA's recommended special permit conditions, Birch Coulee Solar addressed EERA's recommendations in its March 24, 2025, written comments. As detailed in those comments, the record does not support imposing 19 special conditions on this Project – a 125 MW facility located in agricultural land. Birch Coulee Solar is not aware of a similar number and scope of conditions being imposed on other solar projects, and nothing in the record demonstrates that this Project warrants 19 special permit conditions. Indeed, the record demonstrates that the Project has been appropriately sited to minimize impacts, and the public and stakeholder input during the public hearing period further demonstrates Birch Coulee Solar's diligence. 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.⁸

II. MDNR

MDNR filed comments recommending special permit conditions for security fencing, which Birch Coulee Solar addresses below. MDNR's comments also discussed conditions related to facility lighting, dust control, wildlife friendly erosion control, and tree removal. As discussed in Birch Coulee Solar's March 24, 2025, comments, Birch Coulee Solar does not object to these conditions. MDNR also offered comments on the Project's VMP.⁹ As recommended by MDNR, Birch Coulee Solar will continue to coordinate with the VMPWG on the Project's VMP.

⁶ EERA Comments (March 24, 2025) (eDocket No. 20253-216742-01).

⁷ For example, EERA guidance states that it reviews updated decommissioning plans as compliance filings prior to construction. *See In the Matter of the Department of Commerce Working Group on Decommissioning of Wind and Solar Facilities*, MPUC Docket No. E-999/M-17-123, EERA Recommendations on Review of Solar and Wind Decommissioning Plans at 5 (March 16, 2020).

⁸ Birch Coulee Solar's Comments on EA and DSP (March 24, 2025) (eDocket No. 20253-216743-01 and 20253-216743-02).

⁹ DNR Comments (March 24, 2025) (eDocket No. 20253-216754-01).

Security Fencing

MDNR provided comments on the Project's perimeter fence. MDNR stated it supports section 4.3.32 of the DSP which directs the applicant to coordinate with MDNR and EERA to develop a satisfactory fencing plan. MDNR also recommended that the Site Permit require the permittee to install at least 10-foot-tall perimeter fencing.¹⁰ Birch Coulee Solar appreciates MDNR's comments and will continue to coordinate with MDNR and EERA regarding the Project's security fence. However, Birch Coulee Solar respectfully disagrees with MDNR's recommendations as to fence height.

MDNR recommended at least ten-foot-tall security fencing to prevent large wildlife from entering the solar facility. As discussed in the Application and the EA, the fencing that will surround the solar arrays will be "woven wire fencing with a height of approximately seven feet from the ground with a 1-foot high-tensile smooth wire at the top."¹¹ This type of fencing is designed to exclude deer. There is nothing in the record supporting requiring a ten-foot-high security fence. Further, as reflected in Section 4.3.32 (Security Fencing) of the Draft Site Permit, the security fence should be designed to "minimize the visual impact of the Project." Ten-foot-tall security fencing around the arrays would result in a greater visual impact, with no evidence that it would better exclude deer than Birch Coulee Solar's current design. Additionally, Birch Coulee Solar has designed its security fencing to comply with applicable National Electrical Code (NEC) requirements.¹² The fencing proposed for the Project is also consistent with other site permits issued by the Commission.¹³ Additionally, Birch Coulee Solar has found that a fence design of seven feet of woven wire fencing with a 1-foot high-tensile smooth wire at the top, as proposed here, is consistent with successful AES Clean Energy projects in other jurisdictions.

III. Ann Brazil Johnson

Ms. Brazil Johnson's comment related to the proximity of the Project and Xcel Energy's Minnesota Energy Connection transmission line project and expressed concern about perceived

¹⁰ DNR Comments at 1 (March 24, 2025) (eDocket No. 20253-216754-01).

¹¹ Ex. BCS-2 at 15 (Application); Ex. EERA-7 at 29 (EA).

¹² Ex. BCS-2 at 15 (Application); Ex. EERA-7 at 28-29 (EA).

¹³ See, e.g., *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, Site Permit at Section 4.3.32 (July 31, 2024) (PUC Docket No. E-002/GS-23-217) (eDocket No. 20247-209139-01); *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, Site Permit at Section 4.3.31 (April 23, 2024) (PUC Docket No. IP-7070/GS-21-792) (eDocket No. 20244-205861-01); *In the Matter of the Application of Byron Solar, LLC for a Certificate of Need, Site Permit, and Route Permit for the up to 200 MW Byron Solar Project and 345 kV Transmission Line in Dodge and Olmsted Counties, Minnesota*, Order Granting Certificate of Need and Issuing Site and Route Permits, Site Permit at Section 4.3.31 (May 1, 2023) (PUC Docket No. IP-7041/GS-20-763) (eDocket No. 20235-195471-02).

lack of coordination between Xcel Energy and Birch Coulee Solar.¹⁴ Birch Coulee Solar has coordinated with Xcel Energy regarding the Project and Minnesota Energy Connection; the alignment of the transmission line will be decided in a separate proceeding. Birch Coulee Solar will continue to coordinate with Xcel Energy throughout the Project's interconnection process.

IV. Renville County

Mr. Scott Refsland offered verbal comments on behalf of Renville County during the virtual public hearing on March 12, 2025¹⁵ and filed written comments mirroring the verbal comments on March 31, 2025.¹⁶ Mr. Refsland stated that Birch Coulee Solar has already addressed most of the County's comments and that Birch Coulee Solar's project team has been very willing to work with the County.¹⁷

Regarding decommissioning, Renville County states that "the estimated full cost to decommission the site is \$3.5 million" and "seeks assurance that the cost of decommissioning will not fall on taxpayers." As stated in Birch Coulee Solar's comments on the EA and DSP from March 24, 2025, 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.¹⁸ With respect to Renville County's concern about costs falling on taxpayers, the Commission's process ensures that facility owners will be responsible for decommissioning. Specifically, site permits issued by the Commission for solar projects typically include sections requiring the permittee to file a decommissioning plan identifying decommissioning cost estimates, to identify financial securities, and to restore and reclaim the site to pre-project conditions. Furthermore, the permittee has the obligation to dismantle and remove from the site all solar panels, mounting steel posts and beams, inverters, transformers, overhead and underground cables and lines, foundations, buildings, and ancillary equipment in accordance with the most recently filed and accepted decommissioning plan. Taken together, the requirements imposed by the Commission, which Birch Coulee Solar accepts, work to ensure that permittees – not landowners or local governments – are responsible for decommissioning.

Renville County also requests that Section 4.3.21 of the DSP be amended to require the permittee to take all reasonable precautions against the spread of noxious weeds throughout the life of the

¹⁴ Comment by Ann Brazil (March 24, 2025) (eDocket Nos. 20253-216708-01).

¹⁵ WebEx 6:00 p.m. Public Hearing Transcript (WebEx 6:00 p.m. Tr.) at 17-19 (March 12, 2025).

¹⁶ Scott Refsland's Comments (March 31, 2025) (eDocket No. 20253-217001-01).

¹⁷ See WebEx 6:00 p.m. Tr. at 18:7-10 (March 12, 2025).

¹⁸ Birch Coulee Solar's Comments on EA and DSP (March 24, 2025) (eDocket No. 20253-216743-01 and 20253-216743-02).

Project, including all phases of construction.¹⁹ Birch Coulee Solar does not object to this request, and it is consistent Birch Coulee Solar's plans for the Project.²⁰

V. Conclusion

Birch Coulee Solar appreciates this opportunity to provide these reply comments to the oral comments at the public hearings and the written comments submitted during the public comment period.

These reply comments have been e-filed through www.edocket.state.mn.us. A copy of this filing is also being served upon the persons as designated 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

Haley Waller Pitts

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¹⁹ See WebEx 6:00 p.m. Tr. at 18:13-24 (March 12, 2025); *see also* Scott Refsland's Comments (March 31, 2025) (eDocket No. 20253-217001-01).

²⁰ See Ex. BCS-2 at Appendix F, p. 32 (Application).

**In the Matter of the Application of Birch Coulee
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MW Birch Coulee Solar Project in Renville
County, Minnesota**

CERTIFICATE OF SERVICE

**MPUC Docket No. IP7119/GS-23-477
OAH Docket No. 24-2500-40416**

Maia Martinez certifies that on the 7th day of April, 2025, she e-filed, on behalf of Birch Coulee Solar LLC, a true and correct copy of Birch Coulee Solar's Response to Hearing Comments via eDockets (www.edockets.state.mn.us):

Said document was also served as designated on the Official Service List on file with the Minnesota Public Utilities Commission and as attached hereto.

Executed on: April 7, 2025

Signed: /s/ Maia Martinez

Fredrikson & Byron, P.A.

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