

May 30, 2025

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

RE: EERA Exceptions to ALJ Report
Birch Coulee Solar Project
PUC Docket No. IP-7119/GS-23-477
OAH Docket No. 5-2500-40417

Dear Mr. Seuffert,

Department of Commerce, Energy Environmental Review and Analysis (EERA) staff has reviewed the Findings of Fact, Conclusions of Law, and Recommendations (ALJ report) issued by Administrative Law Judge James Mortenson on May 15, 2025, for the Birch Coulee Solar Project (project).

EERA appreciates the comprehensive analysis of the record and concurs with Judge Mortenson's recommendation that the Minnesota Public Utilities Commission (Commission) grant a site permit for the project.

EERA staff submits the following exceptions to the ALJ report to ensure the accuracy of the record and to reiterate recommendations made by EERA in its reply comments.¹

1. **Finding 4 – Procedural History.** Finding 4 of the ALJ report states:

On March 23, 2024, Birch Coulee Solar filed a Notice of its Intent to Submit a Site Permit Application for the Project under the alternative permitting procedures of Minn. R. 7850.2800-.3900.

EERA staff recommends that the finding be amended to read:

On ~~March~~-~~May~~ 23, 2024, Birch Coulee Solar filed a Notice of its Intent to Submit a Site Permit Application for the Project under the alternative permitting procedures of Minn. R. 7850.2800-.3900.

¹ EERA, Reply Comments, April 14, 2025, eDockets No. [20254-217622-01](#).

2. **Finding 36 – Procedural History.** The ALJ report’s Procedural History did not include EERA’s response to hearing comments and Birch Coulee Solar’s proposed findings of facts, conclusions of law, and recommendations. EERA staff recommends the inclusion of the following statement as Finding 36B of the Procedural History.

[36B. On April 14, 2025, EERA submitted a response to hearing comments and the Applicant’s Proposed Findings of Facts, Conclusions of Law, and Recommendation.](#)

3. **Finding 81 – Cultural Values.** Finding 81 of the ALJ report states:

EERA proposed adding to the DSP Special Condition 5.3 requiring the permittee to continue community partnerships that provide resources to the Renville County 4-H club, local Women’s Civic Club, and Franklin Lions Club. Birch Coulee Solar does not support this proposed special condition because, as discussed in Section 4.2.9 of the Application, Birch Coulee Solar is actively and voluntarily pursuing local partnerships in the community. Birch Coulee Solar respectfully submits that a permit condition related to these voluntary engagement commitments is not appropriate and has not typically been included in other Commission site permits. Likewise, Birch Coulee Solar argues, the proposed permit condition is vague in that it is unclear how compliance could be demonstrated (i.e., what “supporting local events” or “community restoration projects” mean).

EERA staff recommends that the finding be amended to read:

EERA proposed adding to the DSP Special Condition Section 5.3 requiring the permittee to continue community partnerships that provide resources to the Renville County 4-H club, local Women’s Civic Club, and Franklin Lions Club. [This addition address Birch Coulee Solar’s concerns that the proposed permit condition is vague in that it is unclear how compliance could be demonstrated \(i.e., what “supporting local events” or “community restoration projects” mean\).](#) Further, this addition is limited to community partnerships described by Birch Coulee Solar in its site permit application. Requiring Birch Coulee Solar to fulfill commitments expressed in their application to community organizations is reasonable. Birch Coulee Solar does not support this proposed special condition because, as discussed in Section 4.2.9 of the Application, Birch Coulee Solar is actively and voluntarily pursuing local partnerships in the community. Birch Coulee Solar respectfully submits that a permit condition related to these voluntary engagement commitments is not appropriate and has not typically been included in other Commission site permits. ~~Likewise, Birch Coulee Solar argues, the proposed permit condition is vague in that it is unclear how compliance could be demonstrated (i.e., what “supporting local events” or “community restoration projects” mean).~~

4. **Finding 98 – Transportation and Public Services.** Finding 98 of the ALJ report states:

EERA recommends revising and combining the special conditions related to traffic control and road usage in Sections 5.5 and 5.6 of the DSP into one condition at Section 5.6. Birch Coulee Solar did not support the original two proposed special conditions because the topic of traffic control is already covered in Section 4.3.22 of the DSP, which addresses road use and impacts. Birch Coulee Solar intends to enter into a road use agreement for the Project and does not object to EERA’s proposed Special Condition Section 5.6, which reflects Birch Coulee Solar’s commitment:

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 up on the request of Commission staff.

EERA notes that the revised and combined condition discussed in Finding 98 was proposed by Birch Coulee Solar, not EERA. In its reply comments, EERA provided additional revisions to Birch Coulee Solar's revised condition to clarify the terms of the the "Development" aspect of the agreement requested by Renville County, which was removed in Birch Coulee Solar's revised condition.² The language proposed by EERA has been used by the Commission in existing site permits.³ The revised and combined condition proposed by EERA reads:

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, prior to the use of such roads, make satisfactory arrangements with the appropriate county or township governmental body having jurisdiction over roads to be used for construction of the Project for maintenance and repair of roads that will be subject to extra wear and tear due to transportation of equipment and Project components. The Permittee shall keep records of compliance with this section and provide them up on the request of Commission staff.

EERA staff recommends that Section 5.6 of the DSP be adopted as proposed by EERA in its reply comments.

5. **Special Condition 5.2**

The ALJ report recommends the removal of proposed special condition 5.2, which would require the permittee to provide a noise notification for nearby residents. Birch Coulee Solar opposed this condition and noted that it is vague in that it is unclear how compliance could be demonstrated. EERA provided revisions to the condition to address vagueness that specified the noise notice should detail anticipated construction dates, the projected construction schedule including the anticipated duration of each stage of construction, and the anticipated daytime construction hours, and that the notice should be provided to the 14 local residences within 0.25-miles of the project.⁴

EERA proposed Special Condition 5.2 in response to a comment submitted by a resident during the in-person scoping meeting held in Franklin on October 9, 2024. The resident lives within 0.25-miles of the project. The comment requested "clarification in writing" as to the intended active construction hours and specifically referenced the noise created by post pounding in the foundation installation phase.⁵

² EERA, Reply Comments, pp. 9-10, April 14, 2025, eDockets No. [20254-217622-01](#).

³ Commission, Site Permit Final, Pleasant Valley Wind Project, December 6, 2022, eDockets No. [202212-191127-02](#).

⁴ EERA, Reply Comments, pp. 7-8, April 14, 2025, eDockets No. [20254-217622-01](#).

⁵ EERA, Oral Comments on the Scope of Environmental Assessment, November 11, 2024, eDocket Number: [202411-212174-01](#), page 22, lines 6-14.

Standard condition 4.3.7 requires the permittee to comply with established Minnesota noise standards under Minnesota Rule, part 7030.0010 to 7030.0080, and to limit construction and maintenance activities to daytime hours, defined as hours from 7:00 a.m. to 10:00 p.m.,⁶ to the extent practicable.

EERA finds the request for clarification of active hours reasonable, given that the 15-hour span of daytime hours makes up a considerable portion of a local resident's day. EERA supports the inclusion of Special Condition 5.2 to provide the requested information for the local residents who will experience noise impacts from Project construction.

6. Special Condition 5.3

The ALJ report recommends the removal of proposed special condition 5.3, which would require the permittee to continue community partnerships with the Renville County 4-H club, local Women's Civic Club, and Franklin Lions Club and provide records of said partnership efforts to Commission staff upon request.

EERA appreciates that Birch Coulee Solar has committed to voluntary community partnerships. EERA proposed Special Condition 5.3 as a way to ensure that the partnership commitments Birch Coulee Solar referenced in the Application were realized. EERA supports the inclusion of Special Condition 5.3 and suggests it be revised as follows to only require maintenance of community partnership records to provide Commission staff upon request:

~~The Permittee shall continue community partnerships that provide resources to the Renville County 4-H club, local Women's Civic Club, and Franklin's Lion Club.~~ The Permittee shall ~~keep~~ maintain records of its community partnership efforts with the Renville County 4-H club, local Women's Civic Club, and Franklin's Lion Club and provide them upon request of Commission staff.

7. Special Condition 5.4

The ALJ report recommends the removal of proposed special condition 5.4, which would require the permittee to adhere Renville County's renewable energy setback requirements. EERA revised this condition to define the setback requirements as those listed in the 2021 revision of Chapter 15 of the Renville County Land Use Ordinance, as these were the setback requirements in place at the time the project was designed.⁷

EERA proposed Special Condition 5.4 in response to a request from Renville County during the in-person scoping meeting held in Franklin on October 9, 2024. Birch Coulee Solar has designed the project to be consistent with Renville County's current renewable energy setback requirements. Renville County requested that language requiring adherence to the setbacks in their ordinance be added to the permit to ensure that said setbacks are met.⁸ EERA supports the inclusion of Special Condition 5.4 to accommodate Renville County's setbacks request.

⁶ Minnesota Rule [7030.0020](#), Subp. 3.

⁷ EERA, Reply Comments, pp. 8-9, April 14, 2025, eDockets No. [20254-217622-01](#).

⁸ EERA, Oral Comments on the Scope of Environmental Assessment, November 11, 2024, eDocket Number: [202411-212174-01](#), page 27, lines 6-10.

8. **Special Condition 5.10**

The ALJ report recommends the removal of proposed special condition 5.10, which would require the permittee to work and train with local emergency response teams that may have to enter the Project to ensure that teams can utilize access points and perform necessary duties. Birch Coulee Solar opposed this condition and noted that they will prepare an emergency response plan pursuant to standard condition 8.12.

EERA proposed Special Condition 5.10 in response to a request from Renville County during the in-person scoping meeting held in Franklin on October 9, 2024, and from the written comments Renville County submitted during the scoping comment period. Renville County requested training with the local emergency response teams occurred to ensure safety.^{9,10} Standard condition 8.12 requires the permittee to prepare an emergency response plan in consultation with local emergency responders and provide emergency responders with location indicators, but does not explicitly require training with local teams.

EERA revised this condition to clarify the purpose of training with local emergency response teams and reduce vagueness.¹¹ EERA supports the inclusion of Special Condition 5.10 to accommodate Renville County's emergency team training request.

9. **Special Condition 5.17**

The ALJ report recommends the removal of proposed special condition 5.17, which would require the permittee to comply with U.S. Fish and Wildlife Service requirements in effect regarding the Northern Long-Eared Bat.

EERA proposed Special Conditions 5.17 as a protective measure. Birch Coulee Solar has designed the Project to avoid tree clearing, but notes that tree clearing may be determined necessary closer to construction. In addition, Birch Coulee Solar acknowledges it is possible that the Northern Long-Eared Bat could use the limited trees in the land control area as roosting habitat.¹² Birch Coulee Solar does not oppose Special Condition 5.17, and EERA supports the inclusion of Special Condition 5.17 to protect the Northern Long-Eared Bat.

10. **Special Condition 5.18**

The ALJ report recommends the removal of proposed special condition 5.18, which would require the permittee to file documentation authorizing the removal of any bald eagle nest prior to construction.

EERA proposed Special Conditions 5.18 as a protective measure. Bald eagles typically nest within 1 to 1.8 miles of water sources. The Minnesota River is within 1 mile of the project, and bald eagles have expanded their range into the Minnesota River Valley region as populations recover. There are

⁹ EERA, Oral Comments on the Scope of Environmental Assessment, November 11, 2024, eDocket Number: [202411-212174-01](#), page 29, lines 12-16.

¹⁰ EERA, Written Comments on the Scope of Environmental Assessment, November 1, 2024, eDocket Number: [202411-211553-01](#), page 5, comment 7.

¹¹ EERA, Reply Comments, p. 11, April 14, 2025, eDockets No. [20254-217622-01](#).

¹² Birch Coulee Solar, Site Permit Application, eDocket Number [20247-209066-02](#), Section 4.5.8.1: Federal Rare Species, Impacts and Mitigative Measures pg. 58.

no bald eagle nests currently located within the land control area and very limited trees, but nest locations can vary over time and construction is not slated to begin until 2028. EERA supports the inclusion of Special Condition 5.18 to protect the Bald Eagle; if no bald eagle nests need to be removed for Project construction, no compliance filing will be required.

Site Permit Special Conditions Summary

Based on the above discussion, EERA staff recommends the following amendments and additions to Findings 209, 210, 214, 215, and 216.

11. **Finding 209 and 210.** EERA recommends the findings be amended as follows to reflect the additional revisions proposed by EERA:

209. Birch Coulee Solar proposes combining portions of Sections 5.5 and 5.6 of the DSP because this topic is already covered in Section 4.3.22 of the DSP. Because it is unclear what is contemplated by a “development agreement,” Birch Coulee Solar proposed removed that phrase. [EERA proposed additional revisions to clarify the terms of a “development agreement.”](#) After [both](#) revisions, the resulting condition will take the place of Sections 5.5 and 5.6 of the DSP, as follows:

5.X Traffic Control and Road Use Agreement

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, prior to the use of such roads, make satisfactory arrangements with the appropriate county or township governmental body having jurisdiction over roads to be used for construction of the Project for maintenance and repair of roads that will be subject to extra wear and tear due to transportation of equipment and Project components.](#) The Permittee shall keep records of compliance with this section and provide them upon request of Commission staff.

210. The record supports the inclusion of the [both the](#) Applicant’s [and EERA’s](#) revisions to Sections 5.5 and 5.6 of the DSP.

12. **Finding 214.** EERA staff recommends the inclusion of the following statement as Finding 214B:

[214B. EERA proposes the removal of the following special conditions proposed by EERA: 5.1, 5.5, 5.11, 5.12, 5.13, 5.19.](#)

13. **Finding 215 and 216.** EERA recommends the findings be amended as follows to reflect the special permit conditions that EERA believes are supported by the record:

215. For the reasons described elsewhere in these findings, the record supports the removal of the following proposed special conditions: 5.1, ~~5.2, 5.3, 5.4,~~ 5.5, ~~5.10,~~ 5.11, 5.12, 5.13, ~~5.17, 5.18,~~ and 5.19.

216. For the reasons described elsewhere in these findings, the record supports keeping the following proposed special conditions as written:

- [In the original proposed form: ~~5.7~~, 5.14, 5.15, ~~and~~ 5.16, 5.17, and 5.18.](#)¹³
- [As revised by EERA in reply comments: 5.2, 5.4, 5.7, and 5.10.](#)¹⁴
- [As revised by EERA in this document: 5.3.](#)

EERA staff appreciates the opportunity to provide these exceptions and is available to answer any questions the Commission may have.

Sincerely,



Lauren Agnew
Environmental Review Project Manager

¹³ EERA, Birch Coulee Solar Environmental Assessment, Appendix B: Draft Site Permit, February 26, 2025, eDockets No. [20252-215772-03](#).

¹⁴ EERA, Reply Comments, April 14, 2025, eDockets No. [20254-217622-01](#).