

May 27, 2025

Via eDockets

The Honorable Jessica Palmer-Denig
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, MN 55164-0620

RE: EERA Reply Comments and Responses to Proposed Findings of Fact
Coneflower Solar Project
PUC Docket No. IP7132/GS-24-215
OA H Docket No. 71-2500-40396

Dear Judge Palmer-Denig,

Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) staff offers the following comments on the Coneflower Solar Project (project) proposed by Coneflower Energy, LLC (Coneflower Solar).

In these comments EERA:

- Responds to hearing comments and proposed permit conditions,
- Responds to Coneflower Solar's Proposed Findings of Fact, Conclusions of Law, and Recommendation (Coneflower FOF)

1. Response to Hearing Comments

Hearing comments were received from a variety of sources including state agencies and the vegetation management planning working group, county conservation districts, labor unions, and members of the public. Here, EERA addresses the comments that specifically discuss the project Environmental Assessment (EA), and Draft Site Permit (DSP) filed on March 26, 2025.^{1,2}

¹ EERA, Coneflower Solar Environmental Assessment (EA), March 26, 2025, eDocket No. [20253-216823-01](#)

² EERA, Coneflower Solar Environmental Assessment, Appendix B: Draft Site Permit (DSP), March 26, 2025, eDocket No. [20253-216823-03](#).

A. Minnesota Pollution Control Agency Comments

In its April 16, 2025, comments, the Minnesota Pollution Control Agency (PCA) noted that if Coneflower Solar requires a Clean Water Act Section 404 Permit from the U.S. Army Corps of Engineers (USACE) due to project related wetland impacts, Coneflower Energy must also obtain a Section 401 Water Quality Certification (WQC) with conditions, waiver, or denial from PCA as part of the permitting process. Should any of the USACE permitting vehicles be required, the 401 WQC must also be included and will become an enforceable component of the associated federal license or permit.

PCA noted the EA indicates that, under Section 404, the discharge of any dredged and fill material into U.S. waters would most likely be regulated under the USACE Regional General Permit. PCA clarified that if the project requires a 401 WQC, Coneflower Solar is required to follow the 401 Certification process as it pertains to regulating discharge of dredged and fill material into waters of the US. All surface waters, even those determined to be USACE non-jurisdictional or exempt from the Wetland Conservation Act, are regulated by the PCA. Coneflower Solar must describe any surface water impacts in the MPCA 401 application. The PCA also notes that if a USACE Section 404 Permit is necessary, the following [401 Certification process](#) is required:³

- An Antidegradation Assessment (anti-deg) must be submitted in accordance with water quality standards Minn. R. 7050.0265 and 7050.0285.
- The 401 program cannot authorize a certification with conditions, waiver or a denial until a signed and complete Record of Decision/Findings of Fact (ROD/FOF) is received.
- The applicant must request and complete a pre-filing meeting.
- A reasonable period-of-time (RPOT) will be issued after a complete anti-deg is submitted.
- The PCA 401 program will complete an internal triage meeting to determine if this Project should be certified with conditions, waiver or denial.

B. Minnesota Department of Natural Resources Comments

In its May 2, 2025, comments, the Minnesota Department of Natural Resources (DNR) provided their support for special conditions in the DSP to minimize lighting impacts, avoid use of chloride products in dust control, require wildlife-friendly erosion control, and construct fencing that is both permeable and visible to wildlife. The DNR provided further recommendations concerning security fencing and vegetation management, and proposed an additional special condition pertaining to rare species.⁴ The DNR provided the Natural Heritage Review Letter for the project, which included comments, recommendations, and requirements pertaining to tree removal, ecologically significant areas, and listed species.⁵

³ Minnesota Pollution Control Agency, Comment, April 16, 2025, eDocket No. [20254-217740-01](#)

⁴ Minnesota Department of Natural Resources, Comment, May 2, 2025, eDocket No. [20255-218562-01](#)

⁵ Minnesota Department of Natural Resources, Comment, May 2, 2025, eDocket No. [20255-218562-02](#)

1. Facility Lighting.

DNR supports section 5.10 of the DSP which requires Coneflower Solar to install motion activated, down-lit, lighting fixtures within and around the Project. Coneflower Solar proposed revising this special condition to switch-controlled lighting, rather than motion-activated lighting. This revision is addressed further below in the discussion of Coneflower Solar's comments on the DSP.

5.10 Facility Lighting

The Permittee shall use ~~motion-activated~~ switch-controlled, down-lit lighting around and within the Project.

2. Dust Control

DNR supports section 5.11 of the DSP which prohibits the use of dust suppression agents that contain chloride.

5.11 Dust Control

The Permittee shall use dust suppression agents that do not contain chloride.

3. Wildlife-Friendly Erosion Control

DNR supports section 5.12 of the DSP requiring use of wildlife-friendly erosion control.

5.12 Wildlife-Friendly Erosion Control

The Permittee shall use erosion control materials that do not contain plastic or synthetic fibers or malachite green dye.

4. Wildlife Permeable Fencing

DNR supports section 5.13 of the DSP requiring Coneflower Solar to coordinate with the DNR to finalize a wildlife-permeable fence design.

5.13 Wildlife Permeable Fencing

The Permittee shall coordinate with the DNR on the design and use of small- to medium-sized animal permeable fencing around the Project.

5. Fence Visibility Markers

DNR supports section 5.14 of the DSP requiring Coneflower Solar to coordinate with the DNR to install fence visibility markers that minimize the risk of avian collisions.

5.14 Fence Visibility Markers

The Permittee shall coordinate with the DNR on the installation of fence visibility markers in locations determined to pose a collision risk for low-flying birds.

6. Security Fencing

DNR recommends that the security fence reaches a minimum height of 10 feet to prevent wildlife from entering the project, as detailed in the DNR's Commercial Solar Siting Guidance⁶ and Fencing Handbook For 10 ft. Woven Wire Deer Exclusion Fence.⁷ DNR notes that a white-tailed deer removal permit will not be issued for facilities with woven wire fences lower than 10 feet. DNR supports section 4.3.32 of the DSP which states the following:

4.3.32 Security Fencing

The Permittee shall design the security fence surrounding the solar energy generating system to minimize the visual impact of the Project while maintaining compliance with the National Electric Safety Code. The Permittee shall develop a final fence plan for the specific site in coordination with the Department of Commerce and the DNR. The final fence plan shall be submitted to the Commission as part of the Site Plan pursuant to Section 8.3.

7. Vegetation Management Plan

DNR recommends continued coordination with the interagency Vegetation Management Plan Working Group (VMPWG) in order to develop the project's vegetation management plan (VMP), as required in section 4.3.17 of the DSP. The final VMP should be developed in accordance with the DNR's recently revised Prairie Establishment & Maintenance Technical Guidance for Solar Projects.⁸ The guidance explains how planting native grasses and forbs throughout the project can help limit herbicide application and describes appropriate mowing practices.

The DNR also supports section 4.3.16 of the DSP which states the following:

4.3.16 Beneficial Habitat

The Permittee shall implement site restoration and management practices that provide for native perennial vegetation and foraging habitat beneficial to gamebirds, songbirds, and pollinators; and that enhances soil water retention and reduces storm water runoff and erosion. To ensure continued management and recognition of beneficial habitat, the Permittee is encouraged to meet the standards for Minnesota's Habitat Friendly Solar Program by submitting project plans, seed mixes, a completed project planning

⁶ Minnesota Department of Natural Resources, Commercial Solar Siting Guidance, Revised February 2023, retrieved from: https://files.dnr.state.mn.us/publications/ewr/commercial_solar_siting_guidance.pdf

⁷ Minnesota Department of Natural Resources, Fencing Handbook For 10ft Woven Wire Deer Exclusion Fence, retrieved from: https://files.dnr.state.mn.us/assistance/backyard/privatelandhabitat/woven_wire_fence_handbook_deer.pdf

⁸ Minnesota Department of Natural Resources, Prairie Establishment and Maintenance Technical Guidance for Solar Project, Revised February 2025, retrieved from: https://files.dnr.state.mn.us/publications/ewr/prairie_solar_tech_guidance.pdf

assessment form, and any other applicable documentation used to meet the standard to the Board of Water and Soil Resources (BWSR). If the Permittee chooses to participate in Minnesota's Habitat-Friendly Solar Program, it shall file documents required to be filed with BWSR for meeting and maintaining Habitat Friendly Solar Certification with the Commission.

The DNR notes that the project VMP may not satisfy the requirements of section 4.3.16 or their technical guidance, noting that the current VMP includes limited diversity seed mixes and high use of broadcast herbicides.

8. State-Listed Species

DNR also recommended including a special permit condition to ensure compliance with Minnesota state-listed endangered and threatened species laws, including avoidance measures and the Takings Permit process if necessary, before project activities begin. Coneflower Solar does not anticipate that a Takings Permit will be necessary for the project, but they find the DNR's proposed special permit condition to be reasonable and support its inclusion in the DSP.⁹ EERA also supports the inclusion of the special permit condition in the DSP:

State-Listed Species

The Permittee shall 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 Department of Commerce of Commission staff.

C. LIUNA Minnesota and North Dakota Comments

In their May 6, 2025, comments, LIUNA Minnesota and North Dakota (LIUNA) noted that the project could bring significant economic benefits to local workers via the construction employment and career opportunities highlighted in the EA. In addition, LIUNA discussed both the short- and long-term economic boost that surrounding communities would experience as a result of employment, and provided an economic analysis demonstrating that local communities would receive the greatest economic benefits from the project when local labor is utilized.¹⁰ LIUNA recommends that the Commission adopt permit conditions that ensure Coneflower Energy prioritizes the use of local labor to maximize local socioeconomic benefits.

⁹ Coneflower Energy, LLC, Response to Public Hearing Comments, May 19, 2025, eDocket No. [20255-219084-01](#)

¹⁰ LIUNA Minnesota/North Dakota, Comments, May 6, 2025, eDocket No. [20255-218617-01](#) and [20255-218617-02](#).

D. Coneflower Solar Comments

Coneflower Solar provided initial comments on the project EA in the Direct Testimony filed on April 11, 2025. These comments include several proposed clarifications and edits to the EA and DSP.¹¹

In addition, Coneflower Solar responded to the public hearing comments on May 19, 2025. Coneflower Solar noted EERA's comments on the project decommissioning plan and will address the remaining comments in pre-construction filings. In addition, Coneflower Solar addressed DNR's comments on facility lighting, dust control, wildlife-friendly erosion control, tree removal, project fencing, the VMP, and state-listed species, PCA's comments on Section 404 and 401 requirements and surface water impacts, the Minnesota Interagency Vegetation Management Planning Working Group's comments on the project VMP, the Lyon County Soil and Water Conservation District's comments on County Ditch 29, and comments from labor unions regarding the use of local labor.¹²

1. *Response to Comments on the Environmental Assessment*

EERA has no objections to the following corrections and clarifications to the EA proposed by Coneflower Solar and appreciates its thorough review to ensure accuracy for the record:

- Correcting the project's anticipated commercial operation date to be by year-end 2027, as opposed to an anticipated commercial operation of 2030 as stated in the EA.¹³
- Clarifying that the project VMP was not designed to meet Minnesota's Habitat Friendly Solar Standard. The EA incorrectly stated that the project VMP was designed to meet that Habitat Friendly Solar Standard.¹⁴
- Clarifying that the project will have five permanent weather stations, not three permanent weather stations as stated in the EA.¹⁵
- Clarifying that the project will place a 100-foot buffer around the two discrete areas that contain the four Traditional Cultural Properties identified during surveys. The EA incorrectly described that the project would place a 100-foot buffer around the four Traditional Cultural Properties themselves.¹⁶

¹¹ Coneflower Energy, LLC, Direct Testimony of Brie Anderson with Schedules A-D, April 11, 2025, eDocket No. [20254-217535-02](#)

¹² Coneflower Energy, LLC, Response to Public Hearing Comments, May 19, 2025, eDocket No. [20255-219084-01](#)

¹³ EERA, Coneflower Solar EA, Section 2.1.4, March 26, 2025, eDocket No. [20253-216823-01](#)

¹⁴ Id

¹⁵ EERA, Coneflower Solar EA, Section 4.3.1, March 26, 2025, eDocket No. [20253-216823-01](#)

¹⁶ EERA, Coneflower Solar EA, Section 4.6, March 26, 2025, eDocket No. [20253-216823-01](#)

EERA does not object to the following comments and clarifications made by Coneflower Solar on the EA; however, additional information is provided for context:

Bald Eagles

Section 4.7.8 of the EA discusses coordination of appropriate mitigation measures with the United States Fish and Wildlife Service (FWS) for bald eagles. Potential mitigation measures are listed, including setbacks, timing restrictions, and nest removal permits. Coneflower noted that no bald eagle nests were found within the land control area or the 0.25-mile buffer surrounding the land control area, and that minimal tree clearing is anticipated for the project, but indicated they will coordinate with FWS as needed.

As noted in the Section 4.7.8 of the EA, nesting habitat suitable for bald eagles is not present within the project boundaries, and coordination with the FWS is not anticipated. EERA notes that discussion of coordination with FWS relating to bald eagles is a typical component of the EA for projects whose IpaC report indicates that there are bald eagles in the area, a common occurrence as bald eagles recover and extend their range into southwestern Minnesota. EERA appreciates Coneflower Solar's commitment to coordination with the FWS over bald eagles, should it be deemed necessary.

Cultural Values

Section 4.12.2 of the EA discusses the potential cumulative impacts to cultural values resulting from the project, the Minnesota Energy Connection Project (MNEC), and the Lyon County Station (LCS) project on Garvin residents, noting that some residents of Garvin will likely experience significant impacts to cultural values. Coneflower Solar disagreed with this statement and remarked that the project is located outside of municipal areas and will not impact any cultural or historic sites or the ability of local residents to participate in community events. Coneflower Solar noted that numerous sections of the EA describe the positive benefits the project will have on the local community, such as the creation of good-paying jobs for local workers and increased revenue for local businesses. In addition, Coneflower Solar referenced the comments offered by local residents at the hearing in Marshall on April 22, 2025,¹⁷ noting the statements of support for the project and the positive socioeconomic benefits the project will provide the community.

EERA's discussion of potential significant impacts to cultural values does not negate the positive impacts the project will have on the community. As noted in the EA and supportive hearing comments, the project will provide several benefits to the local community. However, EERA maintains that the characterization of impacts to cultural values presented in the EA is appropriate; the project alone will have minimal to moderate impacts to cultural values, and the cumulative effect of additional energy projects may result in significant impacts to cultural values for some residents. Cultural values are more than just cultural sites and community events, they also include the character of an area. The development of the project will change

¹⁷ Marshall Public Hearing Transcript, April 22, 2025, eDocket No. [20255-218618-02](#).

the character of the area, which can impact a resident's attachment to place and thus their cultural values. As noted in the EA, the cultural values and character of an area cannot be universally defined amongst residents due to individual variation in perception. Even small scale solar projects can impact attachment to place, with larger installations evoking stronger emotions, and this project is one of the largest solar facilities proposed in the state in terms of contiguous acreage. The project's proximity to the city of Garvin and surrounding recreational wildlife habitats may further heighten its visibility to residents.

While hearing comments offered by local residents were largely in support of the project, scoping comments offered by local residents were mixed in their support of, and opposition to, the project.^{18,19} Various concerns raised in scoping comments focused on topics that contribute to an individual's sense of place such as wildlife and nature, hunting culture, agricultural production, and community aesthetics, and the size of the project was referenced several times. Furthermore, the additional energy projects, MNEC and LCS, were mentioned alongside the project in the context of the overall energy development proposed for the Garvin area. These scoping comments factored into EERA's discussion of the project's potential impacts to cultural values at both the individual and cumulative scale.

2. *Response to Comments on the Draft Site Permit*

It its April 15, 2025, and May 19, 2025, comments, Coneflower Solar proposed modifications and revisions to the contents and proposed special site permit conditions of the DSP.

Draft Site Permit Contents

The DSP provided by EERA as part of the EA incorrectly listed Renville County as the permit host county. Coneflower Solar requested that Section 2 of the DSP be corrected to list Lyon County as the permit host county. As noted in EERA's hearing comments, EERA supports this modification of the DSP.²⁰

Special Site Permit Conditions

1. *Fencing ROW Setbacks*

EERA proposed a special condition in Section 5.9 of the DSP, *Fencing ROW Setbacks*, directing the Permittee to apply minimum setbacks between the road right-of-way (ROW) and project fencing to reduce wildlife-vehicle collisions. Coneflower Solar has proposed modifying this special condition to only apply to paved rows where project facilities occupy both sides of the ROW, noting that a minimum setback from all road ROWs removes acreage from the project and reduces the efficiency of the design. Coneflower Solar's proposed modifications to Section 5.9 are as follows:

¹⁸ EERA, Written Comments on the Scope of Environmental Assessment, December 10, 2024, eDocket No. [202412-212858-01](#).

¹⁹ EERA, Oral Comments on the Scope of Environmental Assessment, December 16, 2024, eDocket No. [202412-213040-01](#).

²⁰ EERA, Hearing Comments, May 5, 2025, eDocket No. [20255-218595-01](#).

5.9 Fencing ROW Setbacks

The Permittee shall apply a minimum setback of 50 feet from the perimeter fence to ~~paved~~ all road ROWs on US Highway 14 and County Road 7 where Project Facilities are sited on both sides of the road to reduce the risk of vehicle collisions with wildlife.

EERA does not support Coneflower Solar's proposed modification to Section 5.9. As noted in the EA, a high rate of wildlife movement is anticipated in the project area as animals move between the various habitat patches both within and adjacent to the project. EERA supports including the unmodified form of Section 5.9 in the DSP, as it reflects the DNR's recommendation.

2. Wildlife Friendly Lighting

EERA proposed a special condition in Section 5.10 of the DSP, *Wildlife-Friendly Lighting*, requiring the Permittee's use of wildlife-friendly lighting in and around the project. Coneflower Solar has proposed modifying this special condition to accurately reflect the lighting planned for the project. Coneflower Solar's proposed modifications to Section 5.10 are as follows:

5.10 Wildlife-Friendly Lighting

The Permittee shall use ~~motion-activated~~ switch-controlled, down-lit lighting around and within the Project.

As noted in EERA's hearing comments, EERA supports Coneflower Solar's proposed modification to Section 5.10. Switch-controlled lighting is wildlife friendly, and this modification maintains compliance with the DNR's recommendation. EERA notes that there is a discrepancy in the wording of Section 5.10 between the EA and the DSP. The EA version of Section 5.10 contains the word "shielded," but this word is missing in the DSP version of Section 5.10. EERA recommends an additional modification to Section 5.10 to include the word shielded, as follows:

5.10 Wildlife-Friendly Lighting

The Permittee shall use ~~motion-activated~~ switch-controlled, down-lit, shielded lighting, around and within the Project.

3. Community Impact Mitigation Agreement

EERA proposed a special condition in Section 5.16 of the DSP, *Community Impact Mitigation Agreement*, requiring the Permittee to mitigate impacts to the community of Garvin via a formalized agreement with the city of Garvin and Custer Township, as follows:

5.16 Community Impact Mitigation Agreement

The Permittee shall enter into a Community Impact Mitigation Agreement with the city of Garvin and Custer Township that mitigates impacts to the community of Garvin.

Coneflower Solar does not support Section 5.16 and request it be removed in its entirety. Coneflower Solar noted that the hearing comments received from community members in support of the project

and the positive community benefits anticipated from the project, such as job creation and tax revenue, demonstrate that Section 5.16 is not necessary. In addition, Coneflower Solar noted that Section 5.16 would be inappropriate if the cumulative impacts of additional energy projects, MNEC and LCS, factored into its proposal, as Coneflower Solar should not be the only one required to address the cumulative impacts of these projects.

EERA agrees that Coneflower Solar is not responsible for mitigating the combined impacts of the project, MNEC, and LCS. Section 5.16 is intended only to mitigate the impacts of the project. As discussed previously in this document and the EA, construction of this project will result in unavoidable impacts to resident's cultural values, changing the character of the area. The project is designed to serve the state of Minnesota, but the impacts to cultural values will only be felt by the local residents. While the project will generate tax revenue for both Custer Township and Lyon County, this revenue must serve the county and township as a whole and is subject to statutes regarding the appropriation of funds. This places limitations on the ability of the project's economic benefits to mitigate impacts to the community. In addition, economic benefits alone cannot mitigate all impacts. Community agreements allow for more flexibility in mitigating project impacts because they are customized to meet the specific needs of the host community.

EERA notes that while a special condition explicitly requiring the creation of a community agreement is novel for Commission permits, special conditions that address the specific needs and desires of the host community are not. The site permit for the Plummer Solar Project includes a special condition requiring economic and workforce development opportunities for local tribes,²¹ and the site permit for the Sherco 3 Solar Project includes a special condition requiring a vegetative screening plan for the cemetery of Saint Marcus, a community church.²² In public hearing comments, local residents stated that Coneflower Solar has already been helping communities in Lyon County, noting support for the churches, schools, and 4-H clubs of the area. Partnerships with these sorts of community organizations are, in essence, customized mitigative impacts for the host community. If Coneflower Solar has already established community partnerships, then they have already entered into a community impact mitigation agreement as intended by Section 5.16. EERA supports the inclusion of Section 5.16 in the permit.

2. EERA Comments on Proposed Findings

EERA proposes revising several of Coneflower Solar's proposed FOF.²³ Most of the recommended revisions are technical edits intended to accurately reflect the record and ensure consistency. EERA summarizes the proposed revisions here. The full text of EERA's recommended revisions are shown in

²¹ Commission, Plummer Solar Project Site Permit, April 16, 2025, eDocket No. [20254-217785-01](#).

²² Commission, Sherco 3 Solar Project Site Permit, July 31, 2024, eDocket No. [20247-209139-01](#).

²³ Coneflower Solar Proposed Findings of Fact, Conclusions of Law, and Recommendations, May 19, 2025, eDockets no. [20255-219083-02](#)

red strikeout and blue underline in Attachment A. EERA also proposes revisions to Coneflower Solar's proposed FOF to reflect the revisions to the special conditions discussed above.

1. EERA recommends revising Finding 22 to the correct date on which the Administrative Law Judge issued an order establishing a schedule for the proceedings, December 23, 2024.
2. EERA recommends an addition to Finding 35 listing the written public hearing comment and prehearing conference transcript that were filed on May 19, 2025, after Coneflower Solar filed the proposed FOF.
3. EERA recommends an addition to Finding 48 to include additional comment topics raised during the in-person scoping meeting on November 12, 2024.
4. EERA recommends an addition to Finding 55 to include additional topics of concern raised in the public written comments received during scoping.
5. EERA recommends revising Finding 56 to accurately reflect how many members of the public offered in-person hearing comments and the comment topics raised.
6. EERA recommends an addition to Finding 57 to list additional written public comments received during the hearing comment period. A comment from Rick Anderson was received on May 2, 2025, before the closing date of the hearing comment period, but was filed on May 19, 2025. This comment should be considered a hearing comment in the record.
7. EERA recommends an addition to Finding 59 describing the contents of Rick Anderson's written comment.
8. EERA recommends revising Finding 74 to accurately describe the project design.
9. EERA recommends revising Finding 77 to remove the suggestion that the O&M building may not be built on site. Offsite locations for the O&M building are not being considered for the project. This was incorrectly suggested in the EA.
10. EERA recommends revising Findings 94, 95, 99, 100, and 101 to accurately reflect anticipated impacts to cultural values.
11. EERA recommends revising Finding 213 to identify scenario-specific details.
12. EERA recommends an addition to Finding 257 to include EERA's proposed revision to Section 5.10, Wildlife-Friendly Lighting, to include the word "shielded," as was presented in the EA.
13. EERA recommends revising Findings 299 and 300 to include EERA's proposed revisions to Section 5.10, the addition of the word "shielded," and its support in the record.
14. EERA recommends revising Findings 302 and 303 to accurately reflect the anticipated impacts to cultural values.

15. EERA recommends revising Conclusion of Law 11 to include the subsequent changes to the DSP proposed by both Coneflower Solar and EERA.

EERA appreciates the opportunity to comment on the proposed Project.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Agnew". The signature is fluid and cursive, with the first name "Lauren" being more prominent than the last name "Agnew".

Lauren Agnew
EERA Environmental Review Manager