

March 4, 2019

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. IP-7003/CN-19-223

Dear Mr. Wolf:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Request for Exemption from Certain Certificate of Need Application Content Requirements for the Application of Regal Solar, LLC for a Certificate of Need for an up to 100 MW Regal Solar Project in Benton County, Minnesota.

The petition was filed on behalf of Regal Solar, LLC on March 13, 2019 by:

Jeremy P. Duehr  
Fredrickson and Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota, 55402-1425

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the data exemption requests, as detailed in the attached Comments.** The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ DANIEL W. BECKETT  
Rates Analyst

DWB/ja  
Attachment

## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. IP-7003/CN-19-223

#### I. SUMMARY OF FILING

On March 13, 2019 Regal Solar, LLC (Regal or the Applicant) filed a *Request for Exemption from Certain Certificate of Need Application Content Requirements* (Petition).

On March 21, 2019 the Minnesota Public Utilities Commission (Commission) issued its *Notice of Comment Period on Certificate of Need Exemption Requests* (Notice). The Notice asked: “Should the Commission grant the exemptions to the certificate of need application content requirements requested by Regal Solar, LLC?”

#### A. PROJECT BACKGROUND

Regal is an independent power producer (IPP) that plans to construct an up to 100-MW photovoltaic (PV) solar energy generating system in Benton County, Minnesota (Project), which qualifies as a “large energy facility” (LEF) as defined by Minn. Stat. § 216B.2421, subd 2(1), and a “large electric generating facility” as defined by Minn. R. 7849.0010, Subp. 13. The Applicant intends to sell power produced by this solar facility to wholesale customers and/or corporate customers. The Project would span approximately 800 acres in Benton County, Minnesota, and would consist of panels affixed to tracking mechanisms that would enable the panels to track the sun as it moves from east to west. Additionally, the Project would consist of an electrical collection system, access roads, up to two weather stations, substations, interconnection facilities, and an operations and maintenance facility. The Project would interconnect to Great River Energy’s existing Langola 115-kV substation within project area.

#### B. EXEMPTION REQUESTS

In the Petition, Regal requested exemptions or partial exemptions from providing data relevant to the Minnesota Rules listed below:

- 1) 7849.0240, subp. 2 (B);
- 2) 7849.0250 (B) 1-5;
- 3) 7849.0250 (C) 1 to 6, 8 and 9;
- 4) 7849.0250 (C) 7;

- 5) 7849.0250 (D);
- 6) 7849.0270;
- 7) 7849.0280;
- 8) 7849.0290;
- 9) 7849.0300;
- 10) 7849.0330; and
- 11) 7849.0340.

Regal noted that the Commission has previously granted exemption requests for these items for IPP projects.

Below are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) regarding the Petition.

## **II. DEPARTMENT ANALYSIS**

### **A. GOVERNING STATUE**

Minnesota Statutes § 216B.243, subd. 2 states that no LEF shall be constructed without a certificate of need (CN). At 100 MW, the proposed Project qualifies as an LEF. Regal's Petition requests full or partial exemptions from several of the filing requirements related to a future CN application for the proposed Project.

Minnesota Rules, part 7849.0200, subp. 6 states that an exemption is appropriate if the data requirement is not necessary to determine the need, or can be obtained via another document:

Before submitting an application, a person is exempted from any data requirement of parts 7849.0010 to 7849.0400 if the person (1) requests an exemption from specified rules, in writing to the Commission, and (2) shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document. A request for exemption must be filed at least 45 days before submitting an application.

The Department examined each specific exemption request separately. The criterion to be considered is whether Regal has shown that “the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document.”

*B. EXEMPTION ANALYSIS*

*1. 7849.0240, subp. 2 (B): Promotional Activities*

This rule requires an applicant to provide an explanation of the relationship of the proposed facility to promotional activities that may have given rise to the demand for the facility. Regal stated that the Company “has not engaged in promotional activities that could have given rise to the need for the electricity to be generated by the Project.” The Department notes that the Commission has granted this exemption to IPPs because these companies do not have captive retail customers.

*2. 7849.0250 (B) 1-5: Description of Certain Alternatives*

This rule requires an applicant to provide a discussion of the availability of alternatives to the facility, including but not limited to:

- 1) purchased power;
- 2) increased efficiency of existing facilities, including transmission lines;
- 3) new transmission lines;
- 4) new generating facilities of a different size or using a different energy source; and
- 5) any reasonable combinations of the alternatives listed in sub items (1) to (4).

Regal requested a full exemption from information requirements 1, 2, 3 and 5 as they are not applicable and a partial exemption from requirement 4 such that Regal not be required to address non-renewable alternatives or any alternative generating facilities of a different size. The Department agrees with the Applicant that an exemption to the extent an alternative cannot address the need for renewable power is reasonable.

Regarding Minnesota Rules 7849.0250 (B) 1, while Regal has not secured a purchaser for its power, Regal is proposing to produce power to sell to utilities in the market, and thus is in the business of selling rather than purchasing power. The Department agrees that an exemption is appropriate.

The requirements of Minnesota Rules 7849.0250 (B) 2, 3 and 5 are not applicable to Regal as the Applicant is not a vertically integrated regulated utility and therefore has no existing facilities in Minnesota for which efficiency could be improved to mitigate the need for the

project. Moreover, Regal does not own or plan to own transmission lines other than those needed for the interconnection of the project. Therefore, the Department recommends that the exemption be granted.

*3. 7849.0250 (C) 1 to 6, 8 and 9: Availability of Alternatives to the Facility*

This rule requires an applicant to provide the following information for the proposed facility and each of the alternatives provided in response to Minnesota Rules 7849.0250 (C):

- 1) capacity costs in current dollars per kilowatt;
- 2) service life;
- 3) estimated average annual availability;
- 4) fuel costs in current dollars per kilowatt hour;
- 5) variable operating and maintenance costs in current dollars per kilowatt hour;
- 6) total cost in current dollars of a kilowatt hour provided by it;
- 7) estimate of its effect on rates system wide and in Minnesota;
- 8) efficiency, expressed as the estimated heat rate; and
- 9) major assumptions made in providing the above information (e.g., escalation rates used, projected capacity factors).

Regal requested a partial exemption from this Rule to limit its discussion to only renewable alternatives similar to their request for exemption from Minnesota Rules 7849.0250 (B). Specifically, since the intent of the project is to provide renewable energy to sell to the market, examination of non-renewable alternatives would be irrelevant.

The Department agrees that the required information — regarding non-renewable alternatives — is not relevant to analyses of alternatives to Regal’s proposed Project and that limiting the requirement to renewable alternative data will better address the proposed need. Therefore, the Department recommends that the Commission grant the proposed exemption. To be clear, Regal will be required to provide the information above as to its own facilities.

*4. 7849.0250 (C) 7: Effect of Project on Rates System-wide*

This rule requires an applicant to provide an estimate of the project’s effect on rates system-wide and in Minnesota, assuming a test year beginning with the proposed in-service date. Regal requested an exemption because it does not operate a system, is not a utility with retail rates, and has not secured a purchaser for power produced by the Project. The Commission has granted a similar exemption to IPPs because they do not have a system. Therefore, the Department recommends that the Commission grant the proposed exemption.

5. *7849.0250 (D): Map of Applicant's System*

This rule requires an applicant to provide a map of the applicant's system. Regal requested an exemption because it does not operate a system and, thus, the information does not exist. As an alternative, Regal proposed to file a map showing the site of the Project and its location relative to the power grid. The Department agrees that the proposed alternative map would contain more relevant data. Therefore, the Department recommends that the Commission approve the requested exemption with the provision of Regal's proposed alternative data.

6. *7849.0270: Peak Demand and Annual Consumption Forecast*

This rule requires an applicant to provide system forecast data. Regal requested an exemption because it does not have a service area or a system. Because the Applicant also has not identified a buyer yet, it cannot reasonably forecast peak demand for the buyer's service area. Regal proposed to submit regional demand, consumption, and capacity data to demonstrate the need for independently produced renewable energy. The Department agrees that Regal's proposed alternative data are relevant. Therefore, the Department recommends that the Commission approve the requested exemption and require Regal to provide data regarding regional demand, consumption, and capacity. However, Regal's CN petition should provide an update on Regal's efforts to secure a purchaser for its power.

7. *7849.0280: System Capacity*

This rule requires an applicant to provide information regarding the ability of its existing system to meet the demand for electrical energy forecast in response to part 7849.0270. Again, Regal does not have a system but proposed to submit regional demand, consumption and capacity data. The Department recommends that the Commission approve the requested exemption and require Regal to provide data regarding regional demand, consumption and capacity.

8. *7849.0290: Conservation Programs*

This rule requires an applicant to provide information related to conservation programs. Regal requested an exemption to this rule because it is not a regulated utility, has no retail customers, and plans to sell the project's output into the wholesale market. For these reasons, and the fact that the project is a renewable energy project, conservation programs could not serve as an alternative to the project.

The Department agrees that conservation program information is not relevant to the determination of need for the Project and recommends that the Commission approve the requested exemption.

*9. 7849.0300: Consequences of Delay—System*

This rule requires an applicant to provide information regarding anticipated consequences to its system, neighboring systems, and the power pool should the proposed facility be delayed one, two, and three years, or postponed indefinitely. Regal requested an exemption because the Applicant does not have a system and proposed, instead, to provide data on the consequences of delay to its potential customers and the region. The Department recommends that the Commission approve the requested exemption and require Regal to provide data regarding the consequences of delay on its potential customers and the region.

*10. 7849.0330: Alternative Involving a Large High Voltage Transmission Line (LHVTL)*

This rule requires an applicant to provide data for each alternative that would involve construction of an LHVTL. Regarding this requirement, Regal stated that transmission facilities are not true alternatives to the Project as the purpose of the Project is to increase the available supply of renewable energy. Additionally, the Project intends to connect to Great River Energy's existing Langola 115-kV substation within the project area and all energy will be transmitted via facilities owned or operated by others. The Department agrees with Regal's analysis and recommends that the Commission grant the proposed exemption as the rule is not applicable.

*11. 7849.0340: The Alternative of No Facility*

This rule requires an applicant to provide information regarding the impact of the alternative of no facility on the existing system. Regal requested an exemption because it does not have a system. The Department recommends that the Commission approve the requested exemption and allow Regal to provide data regarding the impact on the wholesale market of the "no facility" alternative as the Applicant proposes.

### **III. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission approve the following exemptions conditioned upon Regal providing alternative data:

- 7849.0250 (B) 4: Description of Certain Alternatives;
- 7849.0250 (D): Map of Applicant's System;
- 7849.0270: Peak Demand and Annual Consumption Forecast;
- 7849.0280: System Capacity;
- 7849.0300: Consequences of Delay—System; and
- 7849.0340: The Alternative of No Facility.

The Department recommends that the Commission approve the following exemptions as proposed:

- 7849.0240, subp. 2 (B): Promotional Activities;
- 7849.0250 (B) 1, 2, 3, and 5: Description of Certain Alternatives;
- 7849.0250 (C) 1 to 6, 8 and 9: Availability of Alternatives to the Facility;
- 7849.0250 (C) 7: Effect of Project on Rates System-wide;
- 7849.0290: Conservation Programs; and
- 7849.0330: Alternatives Involving a LHVTL.

/ja



## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Comments**

**Docket No. IP7003/CN-19-223**

**Dated this 4<sup>th</sup> day of April 2019**

**/s/Sharon Ferguson**

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