

November 6, 2020

Will Seuffert
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. IP7041/CN-20-764

Dear Mr. Seuffert:

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

In the Matter of the Application of Byron Solar, LLC for a Certificate of Need for the up to 200 MW Byron Solar Project and 345 kV Transmission Line in Olmsted and Dodge Counties, Minnesota.

The Petition was filed on October 12, 2020 by:

Christina K. Brusven
Fredrikson & 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 exemption request with modifications**. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ STEVE RAKOW
Analyst Coordinator

SR/ar
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. IP7041/CN-20-764

I. INTRODUCTION

On October 12, 2020 Byron Solar, LLC (Byron or the Company) filed the Company's *Request for Exemption from Certain Application Content Requirements* (Exemption Petition). The Exemption Petition provides the Company's proposed exemptions to filing requirements for an up to 200-MW solar generating plant and associated 345-kV generation-tie line in Dodge County and Olmsted County (Project).

Also, on October 12, 2020 Byron filed a notice plan petition; the notice plan will be addressed in separate comments.

On October 22, 2020 the Minnesota Public Utilities Commission (Commission) issued its *Notice of Comment Period* (Notice), establishing November 6, 2020 and November 13, 2020 as the due date for comments and reply comments.

Per the Notice the topic open for comment is "Should the Commission grant the exemptions to the certificate of need application content requirements requested by Byron Solar Project, LLC in its October 12, 2020 filing?" Below are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) regarding the Exemption Petition and the Notice.

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUTES AND RULES

Byron filed the Exemption Petition pursuant to Minnesota Rules, part 7849.0200 subpart 6 which states, in part:

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.

In the Exemption Petition, Byron requests to be exempted from certain data requirements of Minnesota Rules 7849.0010 to 7849.0400.

B. BACKGROUND

Byron plans to file an application for a Certificate of Need (CN) pursuant to Minnesota Statutes § 216B.243 and Minnesota Rules 7849 to construct and operate the Project.

Byron is an independent power producer (IPP). The Exemption Petition states that “The power generated by the Project will be offered for sale to wholesale customers, including Minnesota utilities and cooperatives that have identified a need for additional renewable energy and commercial and industrial customers that have set clean energy goals.”

C. REQUESTED EXEMPTIONS

The Exemption Petition requests exemptions from the following requirements:

- 7849.0240, subp. 2 (B): Promotional Activities;
- 7849.0250 (B): Description of Certain Alternatives;
- 7849.0250 (C) (1) – (9): Details Regarding Alternatives;
- 7849.0250 (C) (7): Effect of Project on Rates Systemwide;
- 7849.0250 (D): Map of Applicant’s System;
- 7849.0260 (A) (3) and (C) (6): Details Regarding Alternatives;
- 7849.0260 (B) (1): Alternatives to Large High Voltage Transmission Line (LHVTL);
- 7849.0260 (C) (5): Details Regarding Alternatives;
- 7849.0260 (D): Map of Applicant’s System;
- 7849.0270: Peak Demand and Annual Consumption Forecast;
- 7849.0280: System Capacity;
- 7849.0290: Conservation Programs;
- 7849.0300: Consequences of Delay;
- 7849.0330: Transmission Facilities; and
- 7849.0340: The Alternative of No Facility.

The Department notes that several of these exemptions are similar to exemptions requested in the past by other IPP CN applicants.

D. ANALYSIS OF EXEMPTION REQUESTS

1. Minnesota Rules 7849.0240, subp. 2(B)

Minnesota Rules part 7849.0240, subpart 2 (B) 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.” The Exemption Petition states that:

Byron has not engaged in promotional activities that could have given rise to the need for the electricity the Project will generate. Byron has also not secured a purchaser for the output of the Project. Thus, such information related to promotional activities is nonexistent, and, as the Commission has previously determined, an exemption is appropriate.

The Department agrees with Byron's justification and recommends that the Minnesota Public Utilities Commission (Commission) grant the proposed exemption to Minnesota Rules part 7849.0240, subpart 2 (B). However, if a power purchase agreement (PPA) is executed prior to application submittal or during the pendency of the CN proceeding, the exemption should be conditioned upon Byron providing equivalent data from any purchaser(s) of the output.

2. Minnesota Rules 7849.0250 (B)

Minnesota Rules part 7849.0250 (B) requires an applicant to discuss availability of alternatives to the facility, including:

- 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 (fuel oil, natural gas, coal, nuclear fission, and the emergent technologies); and
- 5) any reasonable combinations of the alternatives listed in subitems (1) to (4).

Byron requests an exemption from data requirements (1), (2), (3), and (5) because they are not applicable to Byron or the Project. Additionally, Byron requests a partial exemption of requirement (4) and proposes that it only discuss those alternative generating facilities that are of the same size as the Project and that use a renewable energy source.

Regarding Minnesota Rules part 7849.0250 (B) (1), Byron is not purchasing power. Instead, Byron intends to sell power to utilities or other off-takers. Thus, purchased power is not an alternative; it is the proposal. Thus, the proposed exemption is appropriate.

Regarding Minnesota Rules part 7849.0250 (B) (4), the Department agrees with Byron that, due to the claimed need, only renewable alternatives need to be discussed.

Regarding Minnesota Rules part 7849.0250 (B) (2), (3), and (5) because Byron is an IPP the requirements are not applicable to Byron. The Department agrees with Byron's justification and recommends that the Commission grant the proposed exemption to Minnesota Rules part 7849.0250 (B) (2), (3), and (5). However, if a PPA is executed prior to application submittal or during the pendency of the CN proceeding, the exemption should be conditioned upon Byron providing equivalent data from any purchaser(s) of the output.

3. Minnesota Rules 7849.0250 (C) (1) – (6), (8), and (9)

Minnesota Rules part 7849.0250 (C) (1) – (9) requires an applicant to discuss several items for the proposed facility and for each of the alternatives provided in response to Minnesota Rules part 7849.0250 B that could provide electric power at the asserted level of need. Byron requests a partial exemption from this rule. Because Byron is requesting a partial exemption from the data requirements in Minnesota Rules part 7849.0250 (B) Byron also proposes to limit its response to this data requirement to only those renewable alternatives discussed in response to Minnesota Rules part 7849.0250 (B) (4) that could provide electric power at the asserted level of need.

The Department agrees that the required information—regarding non-renewable alternatives—is not relevant to analysis of alternatives to Byron’s proposed Project and that the proposed alternative data will better address the proposed need. Therefore, the Department recommends that the Commission grant a partial exemption to Minnesota Rules 7849.0250 (C) (1) through (6), (8), and (9) that allows the Applicants to address only renewable alternatives to the proposed Project.

4. Minnesota Rules 7849.0250 (C) (7)

Minnesota Rules part 7849.0250 (C) (7) requires an applicant to estimate its proposed project’s “effect on rates systemwide and in Minnesota, assuming a test year beginning with the proposed in-service date.” As an IPP Byron requests an exemption from this requirement because it does not have a “system.” Instead, Byron proposes to submit data on the Project’s impact on state or regional wholesale prices.

The Department agrees with Byron’s analysis and recommends that the Commission grant the proposed exemption to Minnesota Rules part 7849.0250 (C) (7) with the provision of the proposed alternative data.

5. Minnesota Rules 7849.0250 (D)

Minnesota Rules part 7849.0250 (D) requires the applicant to include a map showing the applicant’s system. As an IPP Byron requests an exemption from this requirement as the Company does not have a system. Instead, Byron proposes to submit a map showing the proposed site of the Project and its location relative to the power grid.

The Department agrees with Byron’s analysis and recommends that the Commission grant the proposed exemption to Minnesota Rules part 7849.0250 (D) with the provision of the proposed alternative data. However, if a PPA is executed prior to application submittal or during the pendency of the CN proceeding, the exemption should be conditioned upon Byron providing equivalent data from any purchaser(s) of the output if the purchaser has a system as defined by Minnesota Rules part 7849.0010, subp. 29.

6. Minnesota Rules 7849.0260 A (3) and C (6)

Minnesota Rules part 7849.0260 A (3) and C (6) require an applicant to provide estimated “losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations.” The Exemption Petition states that:

the LHVTL associated with the Byron Solar Project is a generation-tie line that has the sole purpose of delivering the output of the solar facility to the transmission grid. As such, the generation-tie line is a radial line that will not impact losses on the transmission system...

Minnesota Rules part 7849.0260 requires data be provided regarding applications for an LHVTL. Since Byron is not proposing an LHVTL [the transmission line is considered part of the Large Electric Generating Facility (LEGF)], none of the data requirements of this rule part are applicable and no exemptions to this rule part are needed.¹

7. Minnesota Rules 7849.0260 (B) (1)

Minnesota Rules part 7849.0260 (B) (1) requires a discussion of the availability of alternatives to the LHVTL facility, including “new generation of various technologies, sizes, and fuel types.” The 345 kV generation-tie line is proposed to connect the proposed Project to the transmission grid, and, thus, there is no new generation alternative that is a true substitute for the proposed generation-tie line. Therefore, Byron requests a full exemption from the filing requirements.

Since Byron is not proposing a LHVTL (the transmission line is considered part of the LEGF), none of the data requirements of this rule part are applicable and no exemptions to this rule part are needed.

8. Minnesota Rules 7849.0260 (C) (5)

Minnesota Rules part 7849.0260 (C) (5) requires an applicant to provide “for the proposed facility and for each of the alternatives...an estimate of its effect on rates systemwide and in Minnesota, assuming a test year beginning with the proposed in-service date.” Byron requests an exemption from this requirement because it is not a Minnesota public utility whose rates are regulated by the Commission. As an IPP Byron will sell electricity to another (as yet unknown) entity and cannot derive a systemwide rate effect, nor do so for the entire State of Minnesota.

Since Byron is not proposing a LHVTL (the transmission line is considered part of the LEGF), none of the data requirements of this rule part are applicable and no exemptions to this rule part are needed.

¹ For an example of an LHVTL being part of an LEGF, see Docket No. IP7013, IP7014/CN-19-408.

9. Minnesota Rules 7849.0260 (D)

Minnesota Rules part 7849.0260 (D) requires the applicant to provide a map showing the applicant's system. As an IPP, Byron does not serve load directly. Instead, Byron proposes to submit a map showing its LHVTL and how it connects to the grid.

Since Byron is not proposing a LHVTL (the transmission line is considered part of the LEGF), none of the data requirements of this rule part are applicable and no exemptions to this rule part are needed.

10. Minnesota Rules 7849.0270

Minnesota Rules part 7849.0270 requires an applicant to provide detailed peak demand and energy consumption forecasts to justify the need for a proposed transmission project. The Exemption Petition states that:

Byron does not have a "service area" or "system" and, as such, the requested data are inapplicable. Moreover, Byron has not yet secured a purchaser for the output from the Project and cannot provide equivalent information regarding the service area and system of the purchaser.

Instead, Byron proposes to submit regional demand, consumption, and capacity data from credible sources to demonstrate the need for the independently produced renewable energy that will be generated by the Project.

The Department agrees with Byron's analysis and recommends that the Commission grant the proposed exemption to Minnesota Rules part 7849.0270 with the provision of the proposed alternative data. However, if a PPA is executed prior to application submittal or during the pendency of the CN proceeding, the exemption should be conditioned upon Byron providing equivalent data from any purchaser(s) of the output.

11. Minnesota Rules 7849.0280

Under Minnesota Rules part 7849.0280 an applicant must provide information that describes the ability of its existing system to meet forecasted demand; in essence, load and capability information. Again, as an IPP Byron does not have a "system" as defined by the Minnesota Rules. Also, Byron has not yet secured a purchaser for the Project's output. Instead, Byron proposes to submit regional demand, consumption, and capacity data from credible sources to demonstrate the need for the independently produced renewable energy that will be generated by the Project.

The Department agrees with Byron's analysis and recommends that the Commission grant the proposed exemption to Minnesota Rules part 7849.0280 with the provision of the proposed alternative data. However, if a PPA is executed prior to application submittal or during the pendency of the CN proceeding, the exemption should be conditioned upon Byron providing equivalent data from any purchaser(s) of the output.

12. Minnesota Rules 7849.0290

Minnesota Rules part 7849.0290 requires the applicant to provide conservation program information and quantification of the impact of conservation programs on forecast data. As an IPP Byron is not a Commission-regulated utility, has no retail customers, and plans to sell the Project's output on the wholesale market. Thus, the Company requests an exemption from Minnesota Rules part 7849.0290 in its entirety.

The Department agrees with Byron's analysis and recommends that the Commission grant the proposed exemption to Minnesota Rules part 7849.0290.

13. Minnesota Rules 7849.0300

Minnesota Rules part 7849.0300 requires detailed information regarding the consequences of delay to its system, neighboring systems, and the power pool at three specific statistically-based levels of demand and energy consumption. The Exemption Petition states that Byron is not a utility and has no "system." Thus, this data requirement is inapplicable to Byron and is unnecessary to determine the need. Instead, Byron proposes to submit data on the consequences of delay to its potential customers and the region.

The Department agrees with Byron's analysis and recommends that the Commission grant the proposed exemption to Minnesota Rules part 7849.0300.

14. Minnesota Rules 7849.0330

Minnesota Rules part 7849.0330 requires the applicant to provide certain data for each alternative that would involve construction of a LHVTL. The Exemption Petition states that "other transmission facilities are not true alternatives to the proposed Byron Solar generation-tie line, since the purpose of the generation-tie line is to deliver the output from the facility... Access to transmission facilities beyond the point of interconnection will be arranged by the utility or utilities purchasing the Project's energy output."

The Department agrees with Byron's analysis and recommends that the Commission grant the proposed exemption to Minnesota Rules part 7849.0330.

15. Minnesota Rules 7849.0340

Minnesota Rules part 7849.0340 requires a discussion of the impact on existing generation and transmission facilities at the three levels of demand specified in Minnesota Rules part 7849.0300 for the no-build alternative. Again, as an IPP Byron does not have a “system,” nor does it have other generation and transmission facilities in Minnesota. Instead, Byron proposes to submit data reasonably available to it regarding the impact on the wholesale market of the “no facility” alternative.

The Department agrees with Byron’s analysis and recommends that the Commission grant the proposed exemption to Minnesota Rules part 7849.0340. However, if a PPA is executed prior to application submittal or during the pendency of the CN proceeding, the exemption should be conditioned upon Byron providing equivalent data from any purchaser(s) of the output.

III. CONCLUSION AND RECOMMENDATIONS

The Department concludes that the transmission line associated with the proposed Project does not qualify as a LHVTL. Therefore, none of the data requirements of Minnesota Rules part 7829.0260 are applicable and no exemptions are needed.

The Department recommends that the Commission grant exemptions to the Minnesota Rule parts listed below. However if a PPA is executed prior to application submittal or during the pendency of the CN proceeding, the Department recommends that the exemption be conditioned upon Byron providing equivalent data from any purchaser(s) and/or any alternative data proposed by Byron (where applicable):

- 7949.0240, subp. 2 (B): Promotional Activities;
- 7849.0250 (B) (2), (3), and (5): Description of Certain Alternatives;
- 7849.0250 (C) (7): Effect of Project on Rates Systemwide;
- 7849.0250 (D): Map of Applicant’s System;
- 7849.0270: Peak Demand and Annual Consumption Forecast;
- 7849.0280: System Capacity; and
- 7849.0340: No-Facility Alternative.

The Department recommends that the Commission grant a partial exemption to the following Minnesota Rule parts such that the information to be provided is limited to renewable alternatives:

- 7849.0250 (B) (4): Description of Certain Alternatives (New Generating Facilities of a Different Size or Source); and
- 7849.0250 (C) (1) to (6), (8), and (9): Details Regarding Alternatives.

The Department recommends that the Commission approve the following to the following Minnesota Rule parts as requested:

- 7849.0250 (B) (1): Description of Certain Alternatives (Purchased Power);
- 7849.0290: Conservation Programs;
- 7849.0300: Consequences of Delay; and
- 7849.0330: Transmission Alternatives.

/ar

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. IP7041/CN-20-764

Dated this **6th** day of **November 2020**

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	Yes	OFF_SL_20-764_CN-20-764
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-764_CN-20-764
Kate	Fairman	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_20-764_CN-20-764
Annie	Felix Gerth	annie.felix-gerth@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_20-764_CN-20-764
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_20-764_CN-20-764
Kari	Howe	kari.howe@state.mn.us	DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_CN-20-764
Breann	Jurek	bjurek@fredlaw.com	Fredrikson & Byron PA	200 South Sixth St Ste 400 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-764_CN-20-764
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_CN-20-764
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_20-764_CN-20-764
Valerie	Means	valerie.means@state.mn.us	Public Utilities Commission	121 7th Place E Suite 350 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_CN-20-764

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Susan	Medhaug	Susan.medhaug@state.mn.us	Department of Commerce	Suite 280, 85 Seventh Place East St. Paul, MN 551012198	Electronic Service	No	OFF_SL_20-764_CN-20-764
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_20-764_CN-20-764
Stephan	Roos	stephan.roos@state.mn.us	MN Department of Agriculture	625 Robert St N Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_20-764_CN-20-764
Jacob	Salisbury	Jacob.Salisbury@edf-re.com	EDF Renewables	10 NE 2nd St Ste 400 Minneapolis, MN 55413	Electronic Service	Yes	OFF_SL_20-764_CN-20-764
Matthew	Schuerger	matthew.schuerger@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_CN-20-764
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-764_CN-20-764
Katie	Sieben	katie.sieben@state.mn.us	Public Utilities Commission	121 East 7th Place suite 350 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_CN-20-764
Adam	Sokolski	adam.sokolski@edf-re.com	EDF Renewable Energy	10 Second Street NE Ste 400 Minneapolis, MN 55410	Electronic Service	Yes	OFF_SL_20-764_CN-20-764
John	Tuma	john.tuma@state.mn.us	Public Utilities Commission	121 7th Place East, Suite 350 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-764_CN-20-764

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Box 25 St. Paul, Minnesota 55155-4040	Electronic Service	No	OFF_SL_20-764_CN-20-764
Scott	Wentzell	scott.wentzell@edf-re.com	EDF Renewables	10 NE 2nd St Ste 400 Minneapolis, MN 55413	Electronic Service	Yes	OFF_SL_20-764_CN-20-764