

November 2, 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 notice plan 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 notice plan 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 *Certificate of Need Notice Plan Approval Request* (Notice Petition). The Notice Petition provides the Company's proposed notice plan to communicate an intent to construct an approximately 5-mile 345-kV transmission line between Byron's up to 200-MW solar generating plant in Dodge County and the existing Byron Substation in Olmsted County (Project). The Notice Petition includes a draft notice for landowners, residents, and governmental jurisdictions, along with a draft newspaper notice.

Also on October 12, 2020 Byron filed an exemption petition; the exemption petition will be addressed in separate comments.

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

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUTES AND RULES

The Company filed the Notice Petition pursuant to Minnesota Rules, part 7829.2550 subpart 1 which states, in part:

Three months before filing a certificate of need application for a high-voltage transmission line as defined by Minnesota Statutes, section 216B.2421, the applicant shall file a proposed plan for providing notice to all persons reasonably likely to be affected by the proposed line.

Minnesota Statutes § 216B.2421 includes in its definition of a Large Energy Facility (LEF):

(2) any high-voltage transmission line with a capacity of 200 kilovolts or more and greater than 1,500 feet in length

Given that the proposed Project involves a 345-kV transmission line approximately 5 miles long and the overall Minnesota Public Utilities Commission (Commission) goal of involving the local community in Commission proceedings, the Department concludes that the proposed 345-kV transmission line requires a notice plan.

B. TYPES OF NOTICE

Minnesota Rules, part 7829.2550, subpart 3, requires types of notice as follows:

- A. direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed transmission line;
- B. direct mail notice to all mailing addresses within the area reasonably likely to be affected by the proposed transmission line;
- C. direct mail notice to tribal governments and to the governments of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the proposed transmission line; and
- D. newspaper notice to members of the public in areas reasonably likely to be affected by the proposed transmission line.

Regarding the notice to landowners, Byron “plans to review the county tax assessment rolls and other relevant county records to determine the names and addresses of those landowners who own property within or adjacent to the proposed transmission line corridor.” The notice area is shown on the site location map on the final page of the Notice Petition.

Regarding the notice to mailing addresses, Byron “intends to mail notice to all mailing addresses within or adjacent to the proposed transmission line corridor.” Addresses will be gathered by Byron from mailing lists maintained by the United States Post Office or from bulk mailing firms. Note that the list of landowners and the list of mailing addresses will be merged and notification letters will be sent to those persons on the resulting list.

Regarding notice to governmental jurisdictions reasonably likely to be affected by the proposed Project, Byron “proposes to provide direct mail notice to all tribal governments located in Minnesota.”

Regarding newspaper notice, Byron plans to publish a notice in the *Rochester Post Bulletin* and the *Dodge County Independent*.

After reviewing the above data, the Department concludes that, with the addition of the city of Byron, Dodge County, and Olmsted County to the governmental notice list, the proposal regarding types of notice is reasonable.

C. CONTENT OF NOTICE

Minnesota Rules, part 7829.2550, subpart 4 require the notices to provide the following information:

- A. a map showing the end points of the line and existing transmission facilities in the area;

- B. a description of general right-of-way requirements for a line of the size and voltage proposed and a statement that the applicant intends to acquire property rights for the right-of-way that the proposed line will require;
- C. a notice that the line cannot be constructed unless the commission certifies that it is needed;
- D. the commission's mailing address, telephone number, and website;
- E. if the applicant is a utility subject to chapter 7848, the address of the website on which the utility applicant will post or has posted its biennial transmission projects report required under that chapter;
- F. a statement that the Environmental Quality Board^[1] will be preparing an environmental report on each high-voltage transmission line for which certification is requested;
- G. a brief explanation of how to get on the mailing list for the Environmental Quality Board's proceeding; and
- H. a statement that requests for certification of high-voltage transmission lines are governed by Minnesota law, including specifically chapter 4410, parts 7849.0010 to 7849.0400, and 7849.1000 to 7849.2100, and Minnesota Statutes, section 216B.243.

The Department reviewed the attached notice, letters and map provided by the Company and concludes that the proposal for the resident/landowner notice, governmental notice, and newspaper notice contains the required information.

D. NOTICE TIMING

Minnesota Rules, part 7829.2550, subpart 6, requires the applicant to implement the notice plan within 30 days of its approval by the Commission. Byron did not request a variance to this rule. However, in past certificate of need (CN) proceedings notice generally was provided no more than 60 days and no less than two weeks prior to the filing of the CN application.² To ensure that notice timing is calibrated to the CN application date, the Department recommends that the Commission vary Minnesota Rules, part 7829.2550, subpart 6 to require this change in the notice timing.

Minnesota Rules, part 7829.3200 governs such variance requests and establishes the following criteria:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

The Department concludes that enforcement of the rule would burden all parties involved by potentially separating the provision of notice from the start of the proceeding. Granting the variance would not

¹ Note that this function now resides within the Department.

² For an example, see Docket No. E002, ET6675/CN-17-184.

adversely affect the public interest since the Department's proposal would more closely tie the implementation of the notice plan to the beginning of the CN proceeding. The Department is not aware that the variance would conflict with standards imposed by law. Therefore, the Department recommends that the Commission approve the implementation of the notice plan no more than 60 days and no less than two weeks prior to the filing of the CN petition.

E. NEWSPAPER NOTIFICATION REQUIREMENTS

In addition to the newspaper notice discussed above, Minnesota Rules, part 7829.2500, subpart 5, requires Byron to publish newspaper notice of the CN filing in newspapers of general circulation throughout the state. In the Notice Petition, Byron proposed to publish a notice in the *Rochester Post Bulletin* and the *Dodge County Independent*. Both selected newspapers are local.

The Department recommends that the Commission order a statewide newspaper be added to the newspaper notice list. However, the Department recommends that the Commission simplify the notification process by approving a variance to the requirement to publish that notice at the time of the CN application—instead the statewide newspaper notice should be published at the same time as the other notice documents. The analysis above regarding a variance applies in this situation as well. In summary, the Department concludes that, with the addition of a statewide newspaper, the Company's proposed plan for newspaper notice is reasonable.

III. CONCLUSION AND RECOMMENDATIONS

The Department recommends that the Commission approve the Notice Petition, as modified by the following:

- require the Company to add the city of Byron, Dodge County, and Olmsted County to the governmental notice list;
- approve a variance to Minnesota Rules, part 7829.2550, subpart 6 to allow the notice plan to be implemented no more than 60 days and no less than two weeks prior to the filing of the CN petition;
- require the Company to add a statewide newspaper to the newspaper notice list; and
- approve a variance to Minnesota Rules, part 7829.2500, subpart 5 to allow the statewide newspaper notice to be published at the same time as the other notice documents.

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 **3rd** 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

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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
Charles J	Urena	curena@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000 Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_20-764_CN-20-764
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