

Staff Briefing Papers

Meeting Date December 23, 2020 Agenda Item 1*

Company Byron Solar Project, LLC

Docket No. **IP7041/CN-20-764**

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

- Issues
1. Should the Commission approve the notice plan proposed by Byron Solar Project, LLC?
 2. Should the Commission grant the exemptions request by Byron Solar Project, LLC?
 3. Should the Commission vary Minnesota Rule 7849.0200, subpart 6, and extend the 30-day time limit to consider the exemption request?

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Relevant Documents

Date

Byron Solar CN Notice Plan Approval Request (2 parts)	October 12, 2020
Byron Solar Request for Exemption from Certain Application Content Requirements (2 parts)	October 12, 2020
Notice of Comment Period	October 22, 2020

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 **Relevant Documents**

Date

DOC DER Comments

November 3, 2020

LIUNA Minnesota and North Dakota Comments

November 6, 2020

DOC DER Comments

November 6, 2020

Byron Solar Notice Plan Reply Comments

November 13, 2020

Byron Solar Exemption Request Reply Comments (2 parts)

November 13, 2020

Byron Solar Supplemental Filing to Notice Plan Reply Comments

November 16, 2020

I. Statement of the Issues

Should the Commission approve the notice plan proposed by Byron Solar Project, LLC?

Should the Commission grant the exemptions request by Byron Solar Project, LLC?

Should the Commission vary Minnesota Rule 7849.0200, subpart 6, and extend the 30-day time limit to consider the exemption request?

II. Project Description and Procedural History

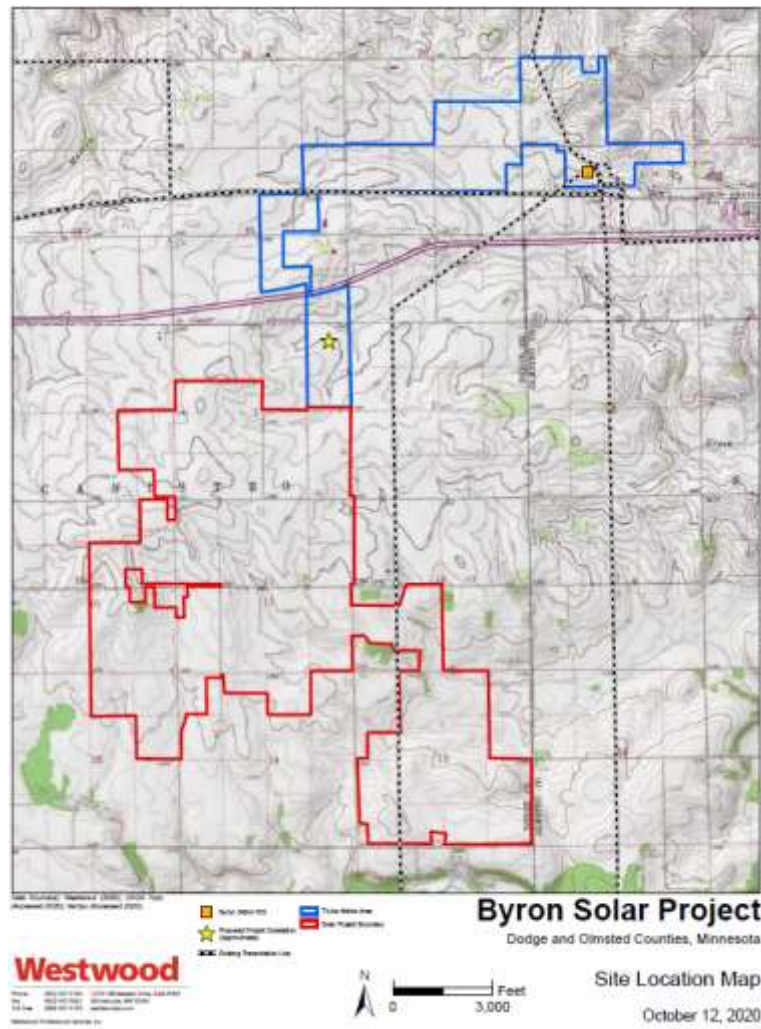
Byron Solar Project, LLC (Byron or Byron Solar) is an Independent Power Producer proposing to construct and operate an up to 200-megawatt (MW) photovoltaic solar energy generating system and an approximately 4-mile 345 kilovolt (kV) high-voltage transmission line (HVTL) in Olmsted and Dodge Counties (the project). The primary components of the project would include photovoltaic (PV) panels affixed to a linear ground-mounted single-axis tracking system, an electrical collection system, inverters, racking, fencing, access roads, an operation and maintenance building, substation facility, underground electrical collection system, up to two weather stations, and other infrastructure typical of a PV solar energy generating system. The proposed project would occupy approximately 1,600 acres in Kalmar Township in Olmsted County and Canisteo and Manterville Townships in Dodge County. The proposed project would interconnect to the existing Byron Substation via the proposed 345 kV HVTL.

On October 12, 2020, Byron Solar filed a Notice Plan Approval Request for the proposed HVTL. Under Minn. R. 7829.2550, a proposed plan for providing notice to all persons reasonably likely to be affected by the proposed transmission line must be filed three months prior to filing a certificate of need application. In accordance with Minn. R. 7829.2550, Byron noticed an initial 20-day comment period that ended on November 2, 2020, and a 20-day reply comment period that ended on November 23, 2020.

Also, on October 12, 2020, Byron Solar filed a Request for Exemption from Certain Certificate of Need (CN) Application Content Requirements for the project pursuant to Minn. R. 7849.0200, Subp. 6. Byron asserted that the information requirements for which it is requesting exemption are not applicable to independent power producers or could be satisfied by the submittal of alternative documentation.

In support of its request Byron stated that the project would produce renewable energy to be sold to electric utilities or other entities to satisfy renewable energy standards, policies, or goals. Byron Solar indicated that it did not have a Power Purchase Agreement at this time. Byron noted that it does not have an assigned service area or “system” as cited in rule. Byron

cited several instances in which the Commission granted exemption requests to Independent Power Producers. Byron Solar's request also provided alternative information relevant to the determination of need for the project.



On October 22, 2020, the Commission issued a notice of comment period for the exemption request establishing an initial comment period through November 6, 2020 and a reply comment period through November 13, 2020.

On November 3, 2020, the Department of Commerce Division of Energy Resources (Department) filed comments recommending the Commission approve the notice plan with modifications.

On November 6, 2020, LIUNA Minnesota and North Dakota (LIUNA) filed comments in support of Byron Solar's exemption request.

On November 6, 2020, the Department filed comments recommending that the Commission approve Byron's exemption request with modifications.

On November 13, 2020, Byron filed reply comments on the exemption request expressing agreement with the Department's recommendations and requested that the Commission approve the exemption requests as recommended by the Department. On the same day, Byron filed comments agreeing with the Department's review of the notice plan with one exception related to the use of a newspaper of statewide circulation for the notice.

On November 16, 2020, Byron filed a supplement to its November 13 reply comments that updated the estimated costs of publication of the notice plan advertisement in the *Star Tribune* newspaper.

III. Statutes and Rules

A. Certificate of Need

Under Minn. Stat. § 216B.243, subd. 2, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.

The proposed 4-mile 345 kV transmission line is a large energy facility as defined under Minn. Stat. § 216B.2421, subd. 2(2), because it is a transmission line associated with an electric power generating with a combined capacity of 50,000 kilowatts or more necessary to interconnect the plant to the transmission system.¹

B. Notice Plan

A notice plan is prepared as an initial step in the certificate of need regulatory process to ensure that potentially affected persons are informed of the proposed project and of the opportunity to participate in the proceeding. Under Minn. R. 7829.2550, certain procedural and content requirements must be met before the Commission can consider approving a notice plan for implementation:

- In addition to the Commission, a proposed notice plan must be filed with the Department of Commerce, the Office of the Attorney General, and those on the Power Plant Siting Act General Service List.

¹ Site and Route permit applications for the solar facility and HVTL will be filed separately under Docket Nos. IP7041/GS-20-763 and IP7041/TL-20-765 respectively.

- A notice plan must include notice of a 20-day initial comment period and a 20-day reply comment period.
- A notice plan must provide for notice via direct mail to the following entities reasonably likely to be affected by the proposed transmission line: landowners (based on county tax assessment); all mailing addresses within the project area; and tribal governments, towns, cities, and counties.
- A notice plan must provide for newspaper notice in areas reasonably likely to be affected by the proposed transmission line.
- The notices must include the information outlined in Minn. R. 7829.2550, subp. 4.
- The notice plan must be implemented within 30 days of Commission approval.

Under Minn. R. 7829.2550, an applicant must file a proposed plan for providing notice to all persons reasonably likely to be affected by the proposed high-voltage transmission line at least three months before filing a certificate of need application. The rule establishes criteria for the types of notice, the content of notices, and the timing for implementation of the notice plan. The notice plan must be implemented within 30 days of its approval by the Commission.

C. Exemption from Application Data Request

Under Minn. R. 7849.0200, subp. 6, an applicant may request exemption from any data requirements of parts 7849.0010 to 7849.0400. Under the rule, a request for exemption must be filed with the Commission at least 45 days before submitting a certificate of need application. An applicant may be exempted from certain data requirements if it shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting alternative data. The Commission is required to make its determination on the request within 30 days of its submission.

D. Rule Variances

Under Minn. R 7829.3200, subp. 1, the Commission is authorized to grant a variance to its rules if it determines that: (1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; (2) granting the variance would not adversely affect the public interest; and (3) granting the variance would not conflict with standards imposed by law.

IV. Comments Received

A. Notice Plan Comments Received

On November 3, 2020, the Department provided comments and recommendations on Byron

Solar's proposed notice plan. The Department recommended that the Commission approve Byron's proposed notice plan with certain modifications.

The Department concluded that it would be reasonable to amend the government notice list to include the City of Byron, Dodge County and Olmsted County.

The Department noted that the Byron is required under Minn. R. 7829.2500, subp. 5 to publish notice of the application in newspapers of general circulation throughout the state. The Department recommended the Commission order that a statewide newspaper be added to the notice list.

The Department also recommended the Commission vary Minn. R. 7829.2550, Subpart 6 to modify the timing for implementation of the notice plan to occur no more than 60 days and no less than 14 days prior to filing of the CN application rather than within 30 days of notice plan approval by the Commission. The Department concluded the variance met the following operative criteria of Minn. R. 7829.3200: (1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; (2) granting the variance would not adversely affect the public interest; and (3) granting the variance would not conflict with standards imposed by law.

In its November 13, 2020 reply comments, Byron agreed with the Department's recommendations regarding the amendment of the government notice distribution list and a variance modifying the timing of notice plan implementation. Byron disagreed with the recommendation the newspaper notice be published in a newspaper of statewide circulation.

In support of its position, the applicant noted that the providing notice in the *Post-Bulletin* and the *Dodge County Independent* would reach "members of the public in areas reasonably likely to be affected by the proposed transmission line as noted in Minn. R. 7829.2550, subp. 3(D) (Types of Notice). Byron also noted that, while the newspaper notice requirements under Minn. R. 7829.2500 subp. 5 (Certificate of Need Filing – Publication in Newspapers) required notice of the "filing in newspapers of general circulation throughout the state," but are otherwise less prescriptive as to the required content than the newspaper notices under Minn. R. 7829.2550. Byron added that notice of the CN application will focus as much on the solar project as on the Transmission Line, where the notice plan filing is more focused on the Transmission Line. Given the less prescriptive nature of the notice, it can be reduced in size to save on print costs.²

² In its reply comments, Byron indicated that publishing the notice plan in the *Star Tribune* would cost at least \$4,000 and that such an ad would likely reach predominantly metro area readers. In its supplemental filing, Byron stated a representative of the *Star Tribune's* advertising department responded to an earlier request from Byron and quoted a cost of \$10,393.50 for publication of the notice plan ad on one weekday.

Byron Solar asked that the Commission decline to adopt the Department's recommendation regarding newspaper notice under Minn. R. 7829.2500. In the alternative, Byron requested the Commission to vary Minn. R. 7829.2500 to allow notice to be placed in the *Post-Bulletin* rather than in a newspaper of statewide circulation. Byron stated the requisite conditions for granting a variance as described in Minn. R 7829.3200, subp 1 have been met.

B. Request for Exemptions to Certificate of Need Application Requirements Comments

Byron Solar Exemptions Request

On October 12, 2020, Byron Solar filed a request for exemptions from providing certain certificate of need application content that it deemed either unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document as provided in Minn. R. 7849.0200, Subp. 6.

Byron stated the requested exemptions would apply to certain data requirements that are specific to the operation and regulation of facilities proposed by utilities and not those of an independent power producer.

Byron requested partial exemptions for those data requirements seeking information on alternatives to the Project that would not satisfy the Minnesota Solar Energy Standard (Minn. Stat. § 216B.1691) or other clean energy standards or sustainability goals. Byron noted that the renewable energy from the project would be purchased by electric utilities or other entities to satisfy renewable energy standards.

Byron Solar requested exemptions from the following certificate of need application content requirements:

- 1) 7849.0240, subp. 2 (B): Promotional Activities;
- 2) 7849.0250 (B): Description of Certain Alternatives;
- 3) 7849.0250 (C) (1) – (9): Details Regarding Alternatives;
- 4) 7849.0250 (C) (7): Effect of Project on Rates Systemwide;
- 5) 7849.0250 (D): Map of Applicant's System;
- 6) 7849.0260 (A) (3) and (C) (6): Details Regarding Alternatives;
- 7) 7849.0260 (B) (1): Alternatives to Large High Voltage Transmission Line (LHVTL);
- 8) 7849.0260 (C) (5): Details Regarding Alternatives;
- 9) 7849.0260 (D): Map of Applicant's System;
- 10) 7849.0270: Peak Demand and Annual Consumption Forecast;
- 11) 7849.0280: System Capacity;

- 12) 7849.0290: Conservation Programs;
- 13) 7849.0300: Consequences of Delay;
- 14) 7849.0330: Transmission Facilities; and
- 15) 7849.0340: The Alternative of No Facility.

Byron offered to provide alternative information relevant to the determination of need for the project. Byron stated the requested exemptions are consistent with the relief the Commission has previously granted to other independent power producers. Byron cited several previous instances where the Commission approved such exemption requests.

LIUNA Comments and Recommendations to Exemptions Request

On November 6, 2020, LIUNA Minnesota & North Dakota filed comments in support of the project. LIUNA noted the project's potential to provide significant socio-economic benefits to the regional economy through creation of high-quality jobs. LIUNA also emphasized the need to provide opportunities to local workers. LIUNA also stated that the requested exemptions are reasonable and consistent with previously granted exemptions by the Commission to independent power producers.

Department of Commerce Comments and Recommendations to Exemptions Request

In its November 6, 2020 comments and recommendations, the Department recommended that the Commission approve Byron's exemption request with modifications. The Department agreed that several of the exemptions requested by Byron are similar to exemptions requested in the past by other independent power producer applicants.

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

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

The Department concluded that the transmission line associated with the proposed Project does not qualify as a Large High-Voltage Transmission Line as defined in Minn. Stat. § 216B.2421, subd. 2(2). The Department therefore concluded that none of the data requirements of Minnesota Rules part 7829.0260 are applicable and no exemptions is needed for the following application content requirements:

- 7949.0280: System Capacity;
- 7849.0290: Conservation Programs;
- 7849.0300: Consequences of Delay; and
- 7849.0330: Transmission Facilities.

The Department recommended the Commission grant exemptions to the Minnesota Rule parts listed below with the provision that if a power purchase agreement is executed prior to application submittal or during the Commission’s review of the certificate of need, Byron must provide 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.

Byron Solar Reply Comments to Exemption Requests

In its November 13 Reply Comments, Byron agreed with the Department’s recommendations and requested that the Commission approve the exemptions to the application data requirements as detailed in the Department’s November 6, 2020 comments and recommendations.

V. Staff Analysis

Notice Plan

Staff notes that Byron and the Department are in general agreement on the notice plan

requirements except regarding the choice of which newspaper should be chosen for distribution of the notice of the CN application. Minn. R. 7829.2500 requires the applicant to publish notice of the filing in newspapers of general circulation throughout the state while Minn. R. 7829.2550 requires publication of a newspaper notice in areas reasonably likely to be affected by the proposed transmission line. Staff agrees with the Department's position because wider distribution of the project provides more members of the public an opportunity to participate in the review of the certificate of need.

Staff also agrees with the Department's effort to ensure that notice timing is calibrated to the CN application date by providing notice no more than 60 days and no less than two weeks prior to the filing of the CN application by varying the notice timing through a variance of Minnesota Rules, part 7829.2550. Staff agrees that the requisite conditions for granting a variance as described in Minn. R 7829.3200, subp 1 have been met as described in the Department's November 3, 2020 comments.

Staff recommends the Commission provide a variance to Minnesota Rule 7849.0200, Subp. 6 in order to extend the 30-day time limit for review of the exemption request.

Under Minn. R. 7829.3200, subp. 1, the Commission is authorized to grant a variance to its rules upon determining the following conditions are met:

- 1) Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- 2) Granting the variance would not adversely affect the public interest; and
- 3) Granting the variance would not conflict with standards imposed by law.

Staff believes the three conditions are met for variance of the decision on application content exemption timeline:

- 1) Enforcement of the rule would impose an excessive burden on the public and those reasonably likely to be affected by the proposed project by limiting the Commission's ability to identify alternative sites and ensure their consideration in the environmental assessment.
- 2) Granting the variance would not adversely affect the public interest and would in fact serve the public interest by enabling a more comprehensive evaluation of public comment and interests at the outset of the review process.
- 3) Granting the variance would not conflict with standards imposed by law since the ten-day timeline is set by rule not statute and, therefore, may be waived.

Exemption Request

Staff agrees with the Department and supports adopting Byron Solar's exemption requests as modified by the Department. Staff notes that the applicant is required to provide relevant information upon request during the CN review process.

VI. Decision Options

A. Notice Plan

1. Approve the proposed notice plan proposed by Byron Solar and the modifications recommended by the Department in its November 3, 2020 filing.
2. Approve the proposed notice plan proposed by Byron Solar and the modifications recommended by the Department in its November 3, 2020, except approve the choice of newspaper as requested by Byron Solar in its November 13, 2020 reply comments.
3. Reject the proposed notice plan and indicate the deficiencies that need to be corrected.
4. Take some other action deemed appropriate.

B. Application Data Exemption Request

1. Approve the requested exemptions with modifications as provided in the Department's November 6, 2020 Comments.
2. Deny one or more of the exemptions requested by Byron Solar.
3. Take some other action deemed appropriate.

C. Variance to Notice Time Frames

1. Vary the 30-day requirement of Minn. R. 7829.2550, subp. 6.
2. Do not vary the 30-day requirement of Minn. R. 7829.2550, subp. 6.
3. Take some other action deemed appropriate.

Staff Recommendation: A1, B1, and C1