

**STATE OF MINNESOTA  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

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Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

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 in Olmsted and Dodge Counties, Minnesota.**

**REQUEST FOR EXEMPTION  
FROM CERTAIN APPLICATION  
CONTENT REQUIREMENTS**

**I. INTRODUCTION**

Byron Solar Project, LLC (“Byron”) plans to file an Application for a Certificate of Need (“CN”) pursuant to Minn. Stat. § 216B.243 and Minn. R. 7849 to construct and operate the Byron Solar Project, an up to 200 megawatt (“MW”) photovoltaic (“PV”) solar-energy generating system and accompanying 345 kilovolt (“kV”) transmission line in Olmsted and Dodge Counties, Minnesota (the “Project”). The Project is a large energy facility (“LEF”) as defined in Minn. Stat. § 216B.2421, subd. 2(1) and a large electric generating facility (“LEGF”) as defined in Minn. R. 7849.0010, Subp. 13.<sup>1</sup>

Byron respectfully requests that the Minnesota Public Utilities Commission (the “Commission”) grant it exemptions from certain CN data requirements that are inapplicable and unnecessary to determine need for the Project.

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<sup>1</sup> Byron also plans to file a large electric power generating plant site permit application and a route permit application for the Project in separate dockets.

## **II. PROJECT DESCRIPTION**

Byron is an independent power producer that proposes to construct and operate the Project within Olmsted and Dodge Counties, Minnesota. 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.

The Project will be in Olmsted and Dodge Counties, and the Project's footprint spans approximately 1600 acres in Kalmar Township in Olmsted County and Canisteo and Manterville Townships in Dodge County. Byron is proposing to utilize panels affixed to tracking mechanisms that would allow the panels to "track" the sun from East to West on a daily basis. In addition to PV panels, the Project will consist of 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 Project is proposed to interconnect to the existing Byron substation in Kalmar Township, Olmsted County, Minnesota via a new approximately 4-mile 345 kV transmission line.

Byron plans to construct the Project on a schedule that facilitates an in-serve date in 2023.

## **III. EXEMPTION REQUESTS**

Minnesota Rules Chapter 7849 sets forth the data an applicant must provide in an application for a CN for a large energy facility. An applicant may be exempted from providing certain information if the applicant requests an exemption in a writing that shows that the data requirement is either unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document. Minn. R. 7849.0200, subp. 6.

Byron seeks exemptions from certain data requirements that are specific to the operation and regulation of facilities proposed by utilities. For example, Byron seeks exemptions from data requirements that pertain to a utility’s “system,” *i.e.*, “the service area where the utility’s ultimate consumers are located” and the facilities used to generate, transmit, and distribute electricity to that service area. *See* Minn. R. 7849.0010, subp. 29. Given that independent power producers, such as Byron, do not have an assigned service area or a “system,” the Commission has held that data requirements seeking system-related information are unnecessary to determine need in such cases.<sup>2</sup>

The Project will produce renewable energy that will be purchased by electric utilities or other entities to satisfy renewable energy standards, such as the Minnesota Solar Energy Standard under Minn. Stat. § 216B.1691 (the “SES”) or other clean energy standards and sustainability goals. Given this purpose, Byron requests partial exemptions for data requirements seeking information on alternatives to the Project that would not satisfy the SES or similar standard.

As detailed below, where applicable, Byron will provide alternative information relevant to the determination of need for the Project. The exemptions Byron requests are consistent with the relief the Commission has previously granted to other independent power producers.<sup>3</sup>

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<sup>2</sup> *See In the Matter of the Application of Rapids Power LLC for a Certificate of Need for its Grand Rapids Cogeneration Project*, Docket No. IP-4/CN-01-1306, Order Granting Exemptions from Filing Requirements, at 4 (Oct. 9, 2001) (“Rapids Power Exemption Order”).

<sup>3</sup> *See, e.g., In the Matter of the Application of Elk Creek Solar, LLC for a Certificate of Need for the up to 80 MW Elk Creek Solar Project in Rock County, Minnesota*, Docket No. IP-7009/CN-19-351, Order (Aug. 19, 2019) (“Elk Creek Exemption Order”); *In the Matter of the Application of Plum Creek, LLC for a Certificate of Need for an up to 414 MW Large Wind Energy Conversion System and 345 kV Transmission Line in Cottonwood, Murray, and Redwood Counties, Minnesota*, Docket No. IP-6997/CN-18-699, Order (Jan. 17, 2019) (“Plum Creek Exemption Order”); *In the Matter of the Application of Flying Cow Wind, LLC for a Certificate of Need for the up to 150 MW Bitter Root Wind Project in Yellow Medicine County, Minnesota*, Docket No. IP-6984/CN-17-676, Order (Nov. 1, 2017) (“Flying Cow Exemption Order”); *In the Matter of the Application of Dodge County Wind, LLC for a Certificate of Need for the 200 MW Large Wind Energy Conversion System and an Associated 345 kV Transmission Line in Dodge County, Minnesota*, Docket No. IP-6981/CN-17-306, Order (July 7, 2017) (“Dodge County Wind Exemption Order”); *In the Matter of the Application of Nobles 2 Power Partners, LLC for a Certificate of Need for the up to 300 MW Nobles 2 Wind Project in Nobles and Murray Counties, Minnesota*, Docket No. IP6964/CN-16-289, Order (May 25, 2016); *In the Matter of the Application of Blazing Star Wind Farm, LLC for a Certificate of Need for the 200 Megawatt Blazing Star Wind Project in Lincoln County, Minnesota* Docket No. IP-6961/CN-16-215 at 1 (April 28, 2016) (“Blazing Star Exemption Order”); *In the Matter of the Application of Red Pine Wind Project, LLC for a Certificate of Need for the 200 MW Red Pine Wind Project and Associated Facilities in Lincoln and Lyon Counties*, Docket No. IP-6959/CN-

Byron requests exemptions from the following data requirements:

**A. Minnesota Rule 7849.0240, subp. 2(B): Promotional Activities**

This rule requires each LEGF CN application to contain “an explanation of the relationship of the proposed facility to . . . promotional activities that may have given rise to the demand for the facility.” In the past, “the Commission has granted this exemption to other [independent power producers] because these companies do not have captive retail customers and there is no authorized

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16-140 at 1 (March 25, 2016); *In the Matter of the Application of Freeborn Wind Energy LLC for a Certificate of Need for the 200 MW Freeborn Wind Project in Freeborn County, Minnesota*, Docket No. IP-6946/CN-15-343, Order Granting Freeborn Wind Energy LLC’s Exemption Request (June 1, 2015); *In the Matter of the Application of ITC Midwest LLC for a Certificate of Need for the Minnesota-Iowa 345 kV Transmission Line Project in Jackson, Martin, and Faribault Counties, Minnesota*, Docket No. ET-6675/CN-12-1053, Order Granting ITC Midwest LLC’s Requested Exemptions (February 8, 2013) (the “ITC Exemption Order”); *In the Matter of the Application of EDF Renewable Energy for a Certificate of Need for the 100 MW Stoneray Wind Project in Pipestone and Murray Counties, Minnesota*, Docket No. IP6646/CN-13-193, Order (Apr. 29, 2013) (the “Stoneray Wind Exemption Order”); *In the Matter of the Application of a Joint Request of Black Oak Wind, LLC and Getty Wind, LLC for a Determination Regarding Whether a Certificate of Need is Required for Two Large Wind Conversion Systems in Stearns County, Minnesota*, Docket No. IP6853, 6866/CN-11-471, Order (Aug. 22, 2011) (the “Black Oak Wind/Getty Wind Exemption Order”); *In the Matter of Ellerth Wind LLC’s Request for a Variance and Exemption from Certain Certificate of Need Application Content Requirements*, Docket No. IP6855/CN-11-112, Order (Apr. 4, 2011) (the “Ellerth Wind Exemption Order”); *In the Matter of a Petition for a Certificate of Need for a 101 MW Wind Farm and Related 115 kV Transmission Line in Rock County, MN*, Docket No. ET6838/CN-10-80, Order (May 14, 2010) (the “Prairie Rose Exemption Order”); *In the Matter of Prairie Wind Energy, LLC’s Exemption and Waiver Request*, Docket No. IP6844/CN-10-429, Order (June 18, 2010) (the “Prairie Wind Energy Exemption Order”); *In the Matter of the Application of Pleasant Valley Wind, LLC for a Certificate of Need for the 299.5 MW Pleasant Valley Project in Dodge, Olmsted, and Mower Counties*, Docket No. IP6828/CN09-937, Order approving exemption requests as recommended by the Office of Energy Security in comments dated September 8, 2009 (Oct. 8, 2009) (the “Pleasant Valley Exemption Order”); *In the Matter of the Application of Goodhue Wind, LLC for a Certificate of Need for a 78 MW Wind Project and Associated Facilities in Goodhue County*, Docket No. IP6701/CN-09-1186, Order Finding Application Complete and Initiating Informal Review Process (Dec. 30, 2009) (the “Goodhue Exemption Order”); *In the Matter of the Application of Paynesville Wind, LLC for a Certificate of Need for a 95 MW Large Wind Energy Conversion System in Stearns County*, Docket No. IP6830/CN-09-1110, Order approving Paynesville’s request for exemption from the required data as identified in the Petition (Nov. 30, 2009) (the “Paynesville Exemption Order”); *In the Matter of the Request of Heartland Wind, LLC for a Certificate of Need for the 150 MW Elm Creek II Wind Project in Jackson and Martin Counties*, Docket No. IP6728/CN-09471, Order approving the Company’s request for exemption from the required data as identified in the Petition (June 26, 2009) (the “Heartland Exemption Order”); *In the Matter of the Application of EcoHarmony West Wind, LLC for a Certificate of Need for a 200 MW Wind Farm Project in Fillmore County in Southeastern Minnesota*, Docket No. IP6688/CN-08-961, Order Granting Exemption Requests (Oct. 10, 2008) (the “EcoHarmony Exemption Order”); *In the Matter of the Application of Wapsipinicon Wind for a Certificate of Need for a Large Energy Facility, a 105 MW Large Wind Energy Conversion System in Mower County, Minnesota*, Docket No. IP6670/CN-08-334, Order Granting Exemptions, Requiring Additional Filings and Establishing Procedures for Expedited Proceedings (May 12, 2008) (the “Wapsipinicon Exemption Order”); *In the Matter of the Application of Elm Creek Wind, LLC, for a Certificate of Need for a Large Energy Facility, the Elm Creek Wind Project in Jackson and Martin Counties*, Docket No. IP6631/CN-07-789, Order Granting Exemptions (Aug. 1, 2007) (the “Elm Creek Exemption Order”).

rate of return to consider.”<sup>4</sup> 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 non-existent, and, as the Commission has previously determined, an exemption is appropriate.

**B. Minnesota Rule 7849.0250(B): Description of Certain Alternatives**

Minnesota Rule 7849.0250(B) requires an applicant to discuss the 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; and (5) any reasonable combination of alternatives listed in subparts (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 the alternative of purchased power (1), Byron, as an independent power producer, does not purchase power; rather, Byron intends to sell power to utilities or other potential off-takers. With respect to the alternative of increased efficiency (2), Byron has no existing facilities in Minnesota for which it might seek improved operating efficiency. Regarding the alternative of new transmission lines (3), Byron has no plans to become involved in owning or operating transmission lines beyond what could be needed for interconnection of the Project. The development, construction, and operation of transmission and distribution lines designed to deliver power to end use customers will be left to utilities with defined service area obligations to retail

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<sup>4</sup> Blazing Star Exemption Order, Recommendations of the Department of Commerce at 3.

customers. Byron has no plans to own or operate such transmission lines and, therefore, requests an exemption from this requirement.

With respect to data requirement (4), Byron requests a partial exemption. The Project is specifically designed to offer for purchase on the wholesale market electricity generated by a resource that will count toward satisfying the purchasing utilities' or other entities' renewable or clean energy standards, policies, or goals. Given this purpose, only renewable energy sources are alternatives to the Project.<sup>5</sup> For this reason, Byron requests that it be exempted from discussing any alternative generating facilities of a different size or using an energy source other than renewable alternatives.<sup>6</sup>

**C. Minnesota Rule 7849.0250(C)(1)–(9): Details Regarding Alternatives**

Byron requests a partial exemption from this Rule, which requires a discussion of various details regarding both the Project and each of the alternatives discussed in response to Minn. R. 7849.0250(B). Because Byron is requesting a partial exemption from the data requirements in Minn. R. 7849.0250(B)—*i.e.*, limiting its discussion to only renewable alternatives—Byron also proposes to limit its response to this data requirement to only those renewable alternatives discussed in response to Minn. R. 7849.0250(B)(4) that could provide electric power at the asserted level of need.<sup>7</sup>

**D. Minnesota Rule 7849.0250(C)(7): Effect of Project on Rates Systemwide**

Minn. R. 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." Byron requests an exemption from this requirement because it does not have a "system" as

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<sup>5</sup> See, e.g., Blazing Star Exemption Order at 1; Elm Creek Exemption Order at 4.

<sup>6</sup> See, e.g., Elk Creek Exemption Order at 2; Dodge county Wind Exemption Order at 1; Blazing Star Exemption Order at 1.

<sup>7</sup> See *id.*

defined by the Rules and it is not a utility with retail rates for the power it plans to generate. As such, the data are neither available to Byron nor necessary to determine need for the Project. Instead, Byron proposes to submit data on the Project's impact on state or regional wholesale prices.<sup>8</sup>

**E. Minnesota Rule 7849.0250(D): Map of Applicant's System**

Minn. R. 7849.0250(D) requires the applicant to include a map showing the applicant's system. This information does not exist and is not relevant to the determination of need for the Project. Instead, Byron proposes to submit a map showing the proposed site of the Project and its location relative to the power grid.<sup>9</sup>

**F. Minnesota Rule 7849.0260(A)(3) and (C)(6): Details Regarding Alternatives**

Minn. R. 7849.0260 (A) 3 requires that a large high-voltage transmission line ("LHVTL") CN applicant provide information on ". . . the expected losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations." Similarly, Minn. R. 7849.0260(C)6 requires that an applicant provide a discussion of the Project's "efficiency, expressed for a transmission facility as the estimated losses under projected maximum loading and under projected average loading in the length of the transmission line and at the terminals or substations, or expressed for a generating facility as the estimated heat rate. . . ." Unlike a traditional utility transmission line, 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 as would a more typical utility-LHVTL that is part of the integrated

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<sup>8</sup> See Plum Creek Exemption Order at 4.

<sup>9</sup> See Elk Creek Exemption Order at 2; Dodge County Wind Exemption Order at 1; Blazing Star Exemption Order at 1.

transmission system. Therefore, filing information under Minn. R. 7849.0260 A (3) and (C) 6 is not applicable to a radial generation-tie line, and, thus, it is appropriate to exempt Byron from these filing requirements.

**G. Minnesota Rule 7849.0260(B)(1): Alternatives to LHVTL**

Minn. R. 7849.0260(B)(1) requires a discussion of new generation alternatives to the LHVTL. The Byron generation-tie line is proposed to connect the Byron Solar Project to the transmission grid, and, thus, there is no new generation alternative that is a true substitute for the proposed generation-tie line. Unlike a traditional utility that is adding a LHVTL for purposes of addressing system reliability or congestion and a new generation resource may be an alternative, the Byron generation-tie is not being added for purposes of addressing system reliability or congestion like a utility transmission line that is part of the integrated transmission system. Therefore, Byron requests an exemption from the filing requirements in Minn. R. 7849.0260(B)1.

**H. Minnesota Rule 7849.0260(C)(5): Details Regarding Alternatives**

Minn. R. 7849.0260(C)(5) requires an applicant to estimate its proposed project's "effect on rates systemwide and in Minnesota, assuming a test year beginning with the proposed inservice date." Byron requests an exemption from this requirement because it is not a Minnesota public utility whose rates are regulated by the Commission. Rather, as an independent power producer providing its electrical output to a single purchaser, Byron cannot derive a systemwide rate effect, nor do so for the entire State of Minnesota.



**I. Minnesota Rule 7849.0260(D): Map of Applicant’s System**

Minn. R. 7849.0260 (D) requires a LHVTL CN applicant to include a map showing the applicant’s system or load center to be served by the proposed transmission line. As previously discussed, Byron is an independent power producer and does not have a “system” or Commission-approved customer service area. Therefore, such information does not exist and is unnecessary to determine the need for the generation-tie line. Alternatively, Byron proposes to submit a map showing its LHVTL and how it connects to the grid.

**J. Minnesota Rule 7849.0270: Peak Demand and Annual Consumption Forecast**

Minn. R. 7849.0270 requires the applicant to provide “data concerning peak demand and annual electrical consumption within the applicant’s service area and system.” 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. Given that Byron does not yet know who the buyer or buyers will be, Byron cannot reasonably forecast peak demand for those buyers’ service areas and systems. As an alternative consistent with prior Commission decisions, 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.<sup>10</sup>

**K. Minnesota Rule 7849.0280: System Capacity**

Minn. R. 7849.0280 requires the applicant to “describe the ability of its existing system to meet the demand for electrical energy forecasted in response to part 7849.0270, and the extent to which the proposed facility will increase this capability.” Byron does not have a “system” as

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<sup>10</sup> Blazing Star Exemption Order at 1.

defined by the Rules and has not yet secured a purchaser for the Project's output. 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.

**L. Minnesota Rule 7849.0290: Conservation Programs**

Minn. R. 7849.0290 requires an applicant to describe its energy and conservation plans, including load management, and the effect of conservation in reducing the applicant's need for new generation and transmission facilities.

The Commission has previously determined that this Rule is "designed to ensure that regulated utilities, providing essential services to captive customers, give conservation the same careful consideration they give to new generation in planning to meet the future needs of their service areas."<sup>11</sup> Different considerations apply in the wholesale context and thus the requirements of Minn. R. 7849.0290 are "onerous and essentially unhelpful" to the Commission's determination.<sup>12</sup> Because Byron is not a regulated utility, has no retail customers, and plans to sell the Project's output on the wholesale market, it requests an exemption from this requirement in its entirety.

**M. Minnesota Rule 7849.0300: Consequences of Delay**

Minn. R. 7849.0300 requires the applicant to discuss the "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." Byron is not a utility and has no "system." Thus, this data requirement is inapplicable to Byron and is unnecessary to determine the need for the proposed Project. Instead, Byron proposes to submit data on the consequences of delay to its potential customers and the region.

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<sup>11</sup> Dodge County Wind Exemption Order at 1.

<sup>12</sup> Rapids Power Exemption Order at 6.

**N. Minnesota Rule 7849.0330: Transmission Facilities**

Minn. R. 7849.0330 requires the applicant to provide certain data for each alternative that would involve construction of a LHVTL. 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 to increase the supply of renewable energy to the purchaser to meet its renewable, clean energy, or sustainability obligations. The Project is planned to connect to the Byron substation in Olmsted, County, Minnesota. Access to transmission facilities beyond the point of interconnection will be arranged by the utility or utilities purchasing the Project's energy output and will depend on the buyer and the ultimate destination for the energy output. Thus, it is anticipated that the electricity generated will be transmitted via facilities owned or operated by others. For these reasons, Minnesota Rule 7849.0330 is not applicable and Byron respectfully requests an exemption.

**O. Minnesota Rule 7849.0340: The Alternative of No Facility**

Minn. R. 7849.0340 requires an applicant to submit data for the alternative of "no facility," including a discussion of the impact of this alternative on the applicant's generation and transmission facilities, system, and operations. The Rule also requires an analysis "of equipment and measures that may be used to reduce the environmental impact of the alternative of no facility."

Byron does not have a "system," nor does it have other generation and transmission facilities in Minnesota. As such, the requirements of this rule are not applicable to the Project and are not necessary to determine need for the facility. Instead, Byron proposes to submit data reasonably available to it regarding the impact on the wholesale market of the "no facility" alternative.

#### IV. CONCLUSION

Byron has requested exemptions from certain data requirements on the grounds that, as an independent power producer, such data are not reasonably available to Byron, are inapplicable to Byron and the Project, and are not necessary to determine the need for the Project. In lieu of certain specified data, Byron will submit regional or state data that are relevant to the Commission's determination on the need for the Project. The Commission has granted similar exemption requests to independent power producers in the past, and Byron respectfully asks the Commission to grant its requests for exemptions from the CN data requirements discussed above.

Dated: October 12, 2020

Respectfully submitted,

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