

Staff Briefing Papers

Meeting Date: May 2, 2019

Agenda Item *1

Company: Regal Solar, LLC

Docket No. IP7003/CN-19-223

In the Matter of the Application of Regal Solar, LLC for a Certificate of Need for the up to 100 MW Regal Solar Project in Benton County, Minnesota

- Issues:
1. Should the Commission grant the exemptions requested by Regal Solar, LLC in its March 13, 2019 Request for Exemption from Certain Certificate of Need Application Content Requirements?
 2. Should the Commission vary Minn. R. 7849.0200, subp. 6, and extend the 30-day time limit to consider the exemption request?

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Relevant Documents

Date

Regal Solar Request for Exemption from Certain Certificate of Need Application Content Requirements

03/13/2019

Department of Commerce Division of Energy Resources
Comments on Exemption Request

04/04/2019

Regal Solar Reply Comments on Exemption Request

04/11/2019

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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.

I. STATEMENT OF THE ISSUES

- Should the Commission grant the exemptions requested by Regal Solar, LLC in its March 13, 2019 Request for Exemption from Certain Certificate of Need Application Content Requirements?
- Should the Commission vary Minn. R. 7849.0200, subp. 6, and extend the 30-day time limit to consider the exemption request?

II. PROJECT DESCRIPTION

Regal Solar, LLC (Regal) plans on filing a certificate of need application for an up to 100 megawatt (MW) solar energy generating system and has requested exemptions from certain application data requirements under Minn. R. 7849.0200, subp. 6. As indicated by Regal, the proposed project would be located on 800 acres in Langola Township in Benton County, Minnesota. The primary components of the facility would include photovoltaic panels affixed to a linear ground-mounted single-axis tracking system, solar inverters, an electrical collection system, fencing, access roads, two weather stations, a project substation and interconnection facilities, and an operation and maintenance facility. The project would interconnect at the existing Great River Energy 115 kilovolt (kV) Langola Substation in the project area.

Regal indicated that the power generated from the project will be offered for sale to wholesale customers, including in-state and out-of-state utilities and cooperatives; however, it has not secured a power purchase agreement at this time.

III. PROCEDURAL HISTORY

On March 13, 2019, Regal filed a Request for Exemption from certain certificate of need application content requirements. Regal requested that the Commission grant exemptions from certain data requirements related to its forthcoming application for a proposed 100 MW solar energy generating facility to be located in Benton County, Minnesota.

On March 21, 2019, the Commission issued a Notice of Comment Period on Regal's exemption requests. An initial comment period was open through April 4, 2019, and a reply comment period was open through April 11, 2019.

On April 4, 2019, the Department of Commerce Division of Energy Resources (DOC DER) filed its comments and recommendations on Regal's exemption requests.

On April 11, 2019, Regal filed reply comments.

IV. 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 Regal solar energy generating facility is a large energy facility as defined in Minn. Stat. § 216B.2421, subd. 2(1), because it is an electric power generating plant with a capacity of 50 MW or more with associated transmission lines necessary to connect the facility to the transmission system.

B. Exemption from Application Data Requirements

Under Minn. R. 7849.0200, subp. 6, an applicant may request exemption from any data requirements of parts 7849.0010 to 7849.0400, before submitting an application for a certificate of need. 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 a determination on the request within 30 days of its submission.

C. 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.

V. EXEMPTION REQUEST

On March 13, 2019, Regal filed a Request for Exemption from certain certificate of need application content requirements (March 13 Request). Regal explained in its filing that because it is an independent power producer and not a Minnesota public utility whose rates are regulated by the Commission, some of the data requirements are: 1) not reasonably available to Regal; 2) are inapplicable to Regal and the project; and 3) are not necessary to determine the need for the project. Regal indicated that it will submit regional or state data that are relevant

to the Commission's determination on the need for the project, in lieu of certain specified data. Regal pointed out that the requested exemptions are consistent with the relief the Commission has previously granted to other independent power producers. As such, Regal requested that the Commission grant it exemptions from the following certificate of need application data requirements:

Regal has requested a full exemption from the data requirements listed below.

- **7849.0240, subp. 2 (B): Promotional Activities.** Regal maintained that this data requirement is not applicable because it has not engaged in promotional activities that could have given rise to the need for the electricity to be generated by the project and has also not secured a power purchase agreement for the output of the project, so equivalent data is not available from the purchaser.
- **7849.0250 B (1), (2), (3), and (5): Description of Certain Alternatives.** (purchased power, increased efficiency of existing facilities, and new transmission lines). Regal reasoned these data requirements are not applicable because: 1) it is an independent power producer and does not purchase power; 2) it has no existing facilities in Minnesota for which it might seek improved operating efficiency, and 3) it has no plans to become involved in owning or operating transmission lines beyond what could be needed for interconnection of the project.
- **7849.0290: Conservation Programs.** Regal maintained that the required information is not helpful to the determination of need because it is not a regulated utility, has no retail customers, and plans to sell the project's output on the wholesale market.
- **7849.0330: Transmission Facilities.** Regal maintained that this data is not applicable because transmission facilities are not true alternatives to the proposed project, since the purpose of the Project is to increase the supply of available renewable energy. Regal also indicated that it does not currently plan on installing any facilities that would be defined as a large high-voltage transmission line.

Regal has requested a partial exemption from the data requirements listed below and instead has proposed to provide alternative information.

- **7849.0250 B (4): Description of Certain Alternatives.** (new generating facilities of a different size or using a different source, *e.g.*, fuel oil, natural gas, coal, nuclear, and emergent technologies). Regal maintained this data requirement is not applicable and

has instead proposed to discuss only those alternative generating facilities that are of the same size and that are renewable.

- **7849.0250 C (1) – (6), (8), and (9): Details Regarding Alternatives.** Regal maintained that these data requirements are not applicable and has instead proposed to limit its discussion to only those renewable alternatives discussed in response to Minn. R. 7849.0250 B (4).
- **7849.0250 C (7): Effect of Project on Rates Systemwide.** Regal maintained that this data requirement does not apply because it does not operate a system, is not a utility with retail rates, and has not secured a power purchase agreement. Regal requested a partial exemption to this rule, but did not indicate what if any alternative data it would provide in lieu of the data requirement.
- **7849.0250 D: Map of Applicant’s System.** Regal maintained that this data requirement does not apply because the information does not exist. Regal has instead proposed to submit a site map showing the proposed site of the project and its location relative to the power grid.
- **7849.0270: Peak Demand and Annual Consumption Forecast.** Regal maintained that the data requirement does not apply because it does not have a service area or a system nor has it secured a power purchase agreement, so it cannot reasonably forecast peak demand for a buyer’s service area. Regal has instead proposed 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.
- **7849.0280: System Capacity.** Regal maintained that the data requirement does not apply because it does not have a service area or a system nor has it secured a power purchase agreement, so it cannot reasonably forecast peak demand for a buyer’s service area. Regal has instead proposed 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.
- **7849.0300: Consequences of Delay.** Regal maintained that the data requirement is not applicable and is not necessary to determine need for the project because it is not a utility and does not have a system. Regal has instead proposed to submit data on the consequences of delay to its potential customers and the region.

- **7849.0340: No-Facility Alternative.** Regal maintained that the data requirement is not applicable and is not necessary to determine need for the project because it does not have a system or other generation and transmission facilities in Minnesota. Regal has instead proposed to submit data reasonably available to it regarding the impact on the wholesale market of the “no facility” alternative.

VI. DOC DER COMMENTS

On April 4, 2019, DOC DER filed comments and recommendations on Regal’s exemption requests. In its comments, the Department examined each exemption requested by Regal separately and discussed whether Regal: 1) sufficiently demonstrated that the data required by the rule is unnecessary to determine the need for the proposed project; or 2) proposed alternative data to satisfy a rule requirement.

DOC DER recommended that the Commission approve the exemptions as proposed by Regal on the condition that Regal provides the alternative data identified in its March 13 Request. DOC DER also emphasized that Regal must provide: 1) the information related to its proposed facility in connection with Minn. R. 7849.0250 C (1) – (6), (8), and (9); and 2) in connection with Minn. R. 7849.0270, should provide an update in its certificate of need application on efforts to secure a power purchase agreement.

VII. STAFF DISCUSSION

A. Exemption Requests

Commission staff has reviewed the documents filed in this matter and agrees with DOC DER that the Commission should approve the requested exemptions conditioned on Regal providing the alternative data identified in its March 13 Request. The Commission has previously granted the same or similar exemptions to independent power producers because the independent power producer did not have a system, service area, or system demand as defined and used in the rules.

That said, staff points out that Regal requested a partial exemption rather than a full exemption from the data requirements of Minn. R. 7849.0250 C (7): Effect of Project on Rates Systemwide, but did not identify what if any alternative data it would be providing. It appears that this may have been a simple error or an inadvertent omission, as Regal did reference a Commission

order for a different project requesting the same exemption.¹ In that docket, the applicant requested full exemption from Minn. R. 7849.0250 C (7), but DOC DER recommended that rather than a full exemption the applicant provide the equivalent data from the purchaser of the power. The Commission agreed with DOC DER. However, the difference between that exemption request and Regal's exemption request is that Dodge County Wind had a power purchase agreement in place whereas Regal does not.

If Regal is indeed requesting a partial exemption from Minn. R. 7849.0250 C (7), staff directs the Commission to another similar docket² where the applicant also requested a partial exemption to that rule and did not have a power purchase agreement in place. In that instance, the applicant proposed to provide data on *the project's impact on state or regional wholesale prices* in lieu of the required data, which the Commission granted.

The Commission may wish to ask Regal to clarify whether it is seeking a full exemption or a partial exemption from Minn. R. 7849.0250 C (7), and if a partial exemption, what alternative data it proposes to provide.

B. Variance to 30-Day Exemption Review Period

Minn. R. 7849.0200, subp. 6, requires the Commission to make a determination on an exemption request within 30 days of its receipt. Although staff tried to review Regal's exemption request within the required time period, a timeline of 30 days does not allow the necessary time to review the exemption request, solicit comments, schedule a Commission meeting and prepare a written order. Therefore, to be in compliance with the rule, staff requests that the Commission vary the 30-day requirement.

Staff believes the conditions outlined in Minn. R. 7829.3200, subp. 1, authorizing the Commission to grant a variance to its rules, specifically the 30-day timeline under Minn. R. 7849.0200, subp. 6, are met as follows:

- 1) Enforcing the 30-day time line would impose an excessive burden upon the public, upon parties to the proceeding, and upon the Commission and the DOC DER because it would not allow adequate time to thoroughly review the filing, schedule a Commission meeting, and prepare a written order;

¹ July 7, 2017 Dodge County Wind Exemption Order, Docket No. IP6981/CN-17-306.

² January 17, 2019 Plum Creek Wind Farm Exemption Order, Docket No. IP6997/CN-18-699.

- 2) Varying the 30-day time line would not adversely affect the public interest. Varying the 30-day timeline would instead serve the public interest by allowing time for public comment on the filing; and
- 3) Varying the 30-day time line would not conflict with any other standards imposed by law.

VIII. COMMISSION DECISION OPTIONS

A. Application Data Exemption Request

1. Approve the requested exemptions conditioned on Regal providing the alternative data identified in its March 13 Request.
2. If Regal is requesting a partial exemption from Minn. R. 78949.0250 C (7), require data on *the project's impact on state or regional wholesale prices* in lieu of the required data.
3. Deny one or more of the exemptions requested by Regal.
4. Take some other action deemed appropriate.

B. Variance to 30-Day Exemption Review Period

1. Vary the 30-day requirement of Minn. R. 7849.0200, subp. 6.
2. Do not vary the 30-day requirement of Minn. R. 7849.0200, subp. 6.
3. Take some other action deemed appropriate.

Staff Recommendation: A1, A2, and B1