

## Staff Briefing Papers

Meeting Date January 28, 2021 Agenda Item \* 2

Company Andyville Solar Project, LLC

Docket No. **IP-7045/CN-20/856**

**In the Matter of the Application of Andyville Solar Project, LLC for a Certificate of Need for the up to 100 MW Andyville Solar Project in Mower County**

- Issues
1. Should the Commission grant the exemptions requested by Andyville Solar Project, LLC 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**

Andyville Solar Project, LLC request for Exemption	December 3, 2020
MN Department of Commerce, Division of Energy Resources Comments on Exemption Request	December 28, 2020
Andyville Solar Project, LLC Reply Comments on Exemption Request	January 8, 2021

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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 ISSUE**

1. Should the Commission grant the exemptions requested by Andyville Solar Project, LLC 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?

## **II. PROJECT DESCRIPTION**

Andyville Solar Project, LLC (Andyville) 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 Andyville, the proposed project would be located on 1000 acres in Austin Township in Mower 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, up to two weather stations, a project substation and an operation and maintenance facility. The project would interconnect at the existing Austin North Substation in the project area.

Andyville 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 December 3, 2020 Andyville filed a request for exemption from certain application content requirements.

On December 28, 2020 the Department of Commerce Division of Energy Resources (DOC DER or Department) filed comments on the exemption request.

On January 8, 2021 Andyville 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 December 3, 2020, Andyville filed a Request for Exemption from certain [Certificate of Need] application content requirements (December 3 Request). Andyville explained in its filing that because it is an independent power producer and not a Minnesota public utility whose rates are regulated by the Minnesota Public Utilities Commission (Commission), some of the data requirements are: 1) not reasonably available to Andyville; 2) are inapplicable to Andyville and the project; and 3) are not necessary to determine the need for the project. Andyville 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. Andyville pointed out that the requested exemptions are consistent with the relief the Commission has previously granted to other independent power producers. As such, Andyville requested that the Commission grant it exemptions from the following certificate of need application data requirements:

- **7849.0240, subp. 2 (B): Promotional Activities.** This rule requires each Large Energy Generating Facility 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."

Andyville 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). 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).

Andyville asserted 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. Andyville requested 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.

- **7849.0250 C (1) – (6), (8), and (9): Details Regarding Alternatives.** This rule requires an applicant to provide information on alternatives provided in response to Minn. R. 7849.0250 (C).

Andyville requested a partial exemption from this rule to limit its discussion to renewable alternatives similar to its request for exemption to Minn. R. 7849.0250 B. Since the project is intended to provide renewable energy to the market, an examination of non-renewable alternatives would be irrelevant. Andyville maintained that these data requirements are not applicable and proposed instead to limit its discussion to those renewable alternatives discussed in response to Minn. R. 7849.0250 B (4).

- **7849.0250 C (7): Effect of Project on Rates Systemwide.** This rule requires an applicant to provide an estimate of the project's effect on rates system-wide and in Minnesota, assuming a test year beginning with the proposed in-service date.

Andyville 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. Andyville requested a partial exemption to this rule, and indicated that it would provide data on the Project's impact on state or regional wholesale prices.

- **7849.0250 D: Map of Applicant's System.** This rule requires an applicant to provide a map of the applicant's system.

Andyville maintained that this data requirement does not apply because it does not operate a system and the information does not exist. Andyville has instead proposed to submit a site map showing the proposed site of the project, including the generation-tie line and its proposed point of interconnection to the power grid.

- **7849.0270: Peak Demand and Annual Consumption Forecast.** This rule requires an applicant to provide system forecast data.

Andyville 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. Andyville proposed instead to submit regional demand, consumption, and capacity data.

- **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.

Andyville asserted 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, therefore it cannot reasonably forecast peak demand for a buyer's service area. Andyville has instead proposed to submit regional demand, consumption, and capacity data.

- **7849.0290: Conservation Programs.** Minn. R. 7849.0290 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.”

Andyville 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.

- **7849.0300: 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.”

Andyville 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. Alternatively, Andyville proposed to submit data on the consequences of delay to its potential customers and the region.

- **7849.0330: Transmission Facilities.** Minn. R. 7849.0330 requires the applicant to provide certain data for each alternative that would involve construction of a large high voltage transmission line (“LHVTL”).

Andyville maintained that this data is not applicable because transmission facilities are not true alternatives to the proposed project, rather the purpose of the Project is to increase the supply of available renewable energy. Andyville also indicated that it does not currently plan on installing any facilities that would be defined as a LHVTL. It is anticipated that the electricity generated will be transmitted via facilities owned or operated by others.

- **7849.0340: No-Facility Alternative.** 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. Additionally, the Rule requires an analysis “of equipment and measures that may be used to reduce the environmental impact of the alternative of no facility.”

Andyville reiterated that it does not have a system or other generation and transmission facilities in Minnesota and therefore the data requirement is not applicable and is not necessary to determine need for the project. Andyville 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

The Department recommended the Commission determine that the following data requirements are not applicable:

- 7849.0260 (A) 3 and (C) 6: Line Loss Data;
- 7849.0260 (B) 1: Alternatives to the Transmission Line;
- 7849.0260 (C) 5: Details Regarding Alternatives; and
- 7849.0260 (D): Map of Applicant’s System.

DOC DER recommended the Commission approve the following exemptions conditioned upon Andyville providing alternative data:

- 7849.0250 (D): Map of Applicant’s System;
- 7849.0270: Peak Demand and Annual Consumption Forecast;
- 7849.0280: System Capacity;
- 7849.0300: Consequences of Delay—System; and
- 7849.0340: The Alternative of No Facility.

The Department also recommended the Commission approve the requested exemption for 7849.0250 (C) 7: *Effect of Project on Rates System-wide*, but require the applicant to provide alternative data regarding the impact of the project on wholesale prices. Note: staff notes that in its initial filing Andyville did indicate it would submit data on the Project's impact on state or regional wholesale prices.

DOC DER recommended the Commission grant the partial exemption to 7849.0250 (B) 4: *Description of Certain Alternatives* requirement, but require the Applicant to provide an analysis of alternatively sized renewable energy projects.

Finally, the Department recommended the Commission approve the following exemptions as proposed. However, if a PPA is executed prior to application submittal or during the review process, the Department recommended the exemption be conditioned upon Andyville providing equivalent data from any purchaser(s) and/or any alternative data proposed by Andyville (where applicable):

- 7849.0240, subp. 2 (B): Promotional Activities;
- 7849.0250 (B) 1, 2, 3, and 5: Description of Certain Alternatives;
- 7849.0250 (C) 1 to 6, 8 and 9: Availability of Alternatives to the Facility;
- 7849.0290: Conservation Programs; and
- 7849.0330: Alternatives Involving an LHVTL.

## VII. ANDYVILLE REPLY COMMENTS

On January 8, 2021 Andyville filed a letter indicating its agreement with the Department's recommendation and requesting that the Commission approve the exemption request as detailed in the DOC DER's comments.

## VIII. 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 contingent upon Andyville providing the alternative data identified in its December 3 Request, and with the additional conditions proposed by the Department. 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.

### 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 Andyville'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 recommends 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;
- 2) Varying the 30-day timeline 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 timeline would not conflict with any other standards imposed by law.



## **IX. DECISION OPTIONS**

### **A. Application Data Exemption Request**

1. Approve the requested exemptions as represented by Andyville and as conditioned by the Department.
2. Deny one or more of the exemptions requested by Andyville.
3. 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, and B1