

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

Katie Sieben
Valerie Means
Matthew Schuerger
John A. Tuma
Joseph K. Sullivan

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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.

Docket No. IP7041/CN-20-764

REPLY COMMENTS

I. INTRODUCTION

On October 12, 2020, Byron Solar, LLC (“Byron Solar”) submitted a request to the Minnesota Public Utilities Commission (“Commission”) for approval of its Notice Plan in connection with its forthcoming application for a certificate of need for a new 345 kilovolt transmission line and associated facilities (“Transmission Line”) to be located in Olmsted and Dodge Counties, Minnesota.

DOC-DER submitted comments on Byron Solar’s request for approval of its Notice Plan on November 3, 2020. DOC-DER recommends that the Commission approve Byron Solar’s proposed Notice Plan with the following modifications: (1) include notification to the City of Byron, Dodge County, and Olmsted County; (2) approve the implementation of the Notice Plan no more than 60 days, and no less than two weeks prior to the filing of the certificate of need application (“CN Application”); and (3) include notice in a newspaper of statewide circulation at the same time as other notice documents.

Byron Solar submits these reply comments to address DOC-DER’s recommendations and provide clarifications to its Notice Plan.

II. RESPONSE

A. Notice to City of Byron, Dodge County, and Olmsted County.

Byron Solar agrees with DOC-DER’s recommendation that Byron Solar provide notice to the City of Byron, Dodge County, and Olmsted County. Accordingly, Byron Solar will include the following local officials on its governmental notice list:

City of Byron

Daryl Glassmaker
Mayor
680 Byron Main Court NE
Byron, MN 55920

Monica Bishop
Deputy City Clerk
680 Byron Main Court NE
Byron, MN 55920

Dodge County

Jim Elmquist
Dodge County Administrator
721 Main Street N, Dept. 31
Mantorville, MN 55955

Olmsted County

Heidi Welsch
Olmsted County Administrator
151 4th Street SE
Rochester, MN 55904

B. Notice Timing.

Byron Solar has no objection to DOC-DER’s modification regarding notice timing, that implementation of the notice plan occur no more than 60 days and no less than two weeks prior to the filing of the CN Application.

C. Newspaper Notice of the CN Application.

Byron Solar has reviewed DOC-DER’s recommendation that newspaper notice of the CN Application, required under Minn. R. 7829.2500, be combined with the Notice Plan newspaper notice requirement under Minn. R. 7829.2550. While Byron Solar appreciates that DOC-DER is raising this issue now with its comments on the Notice Plan, Byron Solar respectfully disagrees with the recommendation that the Notice Plan newspaper notice be published in a newspaper of statewide circulation.

As stated in the Notice Plan, Byron Solar proposed providing notice in the *Post-Bulletin* and the *Dodge County Independent* to reach “members of the public in areas reasonably likely to

be affected by the proposed transmission line.” Minn. R. 7825.2550, subp. 3(D). The *Post-Bulletin* is a daily paper with a circulation of 41,111 on weekdays and 44,893 on the weekend. It reaches eight counties including and surrounding Dodge and Olmsted Counties and is Minnesota’s largest afternoon newspaper with more than 77,000 readers daily. The *Dodge County Independent* has a weekly circulation of 1,480 and reaches primarily 12,500 readers in Dodge County. Given the extensive information required in this notice, these newspaper ads come at considerable expense.

The newspaper notice requirements under Minn. R. 7829.2500, while requiring notice of the “filing in newspapers of general circulation throughout the state,” are otherwise less prescriptive as to the required content than the newspaper notices under Minn. R. 7829.2550. Additionally, the 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. To place the Notice Plan ad in the *Star Tribune*, for example, would cost at least \$4,000, and based on readership data, such an ad is likely to predominantly reach metro area readers.¹ Therefore, Byron Solar asks that the Commission decline to adopt DOC-DER’s recommendation regarding newspaper notice under Minn. R. 7829.2500.

Alternatively, Byron Solar asks that the Commission vary Minn. R. 7829.2500 to allow notice to be placed in the *Post-Bulletin* rather than in a newspaper of statewide circulation. Minnesota Rules, part 7829.3200, subp. 1 allows the Commission to vary Minn. R. 7829.2500 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.

¹ <https://mediakit.startribunecompany.com/wp-content/uploads/2017/08/Display-Rate-Book.pdf>

Here, the conditions for a variance are met. First, requiring Byron Solar to publish a lengthy notice required under Minn. R. 7829.2550 in a newspaper of statewide circulation pursuant to Minn. R. 7829.2500 would impose an excessive financial burden on Byron Solar, especially considering the local nature of the short Transmission Line and its purpose to interconnect an adjacent solar project.

Second, granting the variance would result in no adverse consequences to the public. The *Post-Bulletin* has a daily circulation of 41,111 and more than 77,000 readers daily. Providing notice in the *Post-Bulletin*, rather than in a newspaper with statewide circulation, would not adversely affect the public's ability to learn about the project and would, in fact, provide better coverage in the area closest to the proposed Transmission Line. Filing the Minn. R. 7829.2500 notice in a widely-read regional paper, rather than in a newspaper of general circulation across the state is, in fact, more likely to reach interested readers.

Finally, the variance would not conflict with standards imposed by law. The requirement to provide notice of the CN Application in a newspaper of statewide circulation is a Commission rule, and Byron Solar is unaware of a conflicting standard required by another Minnesota law. Thus, the variance would adhere to standards imposed by law.

III. CONCLUSION

Consistent with the information provided in these reply comments, Byron Solar respectfully requests that the Commission approve its Notice Plan with the revisions discussed above, and, with Commission approval, grant a variance to the requirement under Minn. R. 7829.2500 that notice of the CN Application be published in a newspaper of statewide circulation.

Dated: November 13, 2020

Respectfully submitted,

/s/ Christina K. Brusven

Christina K. Brusven (# 0388226)

FREDRIKSON & BYRON, P.A.

200 South Sixth Street, Suite 4000

Minneapolis, MN 55402-1425

Telephone: (612) 492-7000

Fax: (612) 492-7077

Attorney for Byron Solar, LLC