

Staff Briefing Papers

Meeting Date: January 9, 2019

Agenda Item *8

Company: Plum Creek Wind Farm, LLC

Docket No. IP-6997/CN-18-699

In the Matter of the Application of Plum Creek Wind Farm, 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

- Issues:
1. Should the Commission approve the notice plan proposed by Plum Creek Wind Farm, LLC in its November 9, 2018 Certificate of Need Notice Plan Approval Request?
 2. Should the Commission grant the exemptions requested by Plum Creek Wind Farm, LLC in its November 13, 2018 Request for Exemption from Certain Application Content Requirements?
 3. 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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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
Plum Creek Wind Farm, LLC Certificate of Need Notice Plan Approval Request	11/09/2018
Plum Creek Wind Farm, LLC Request for Exemption from Certain Application Content Requirements	11/13/2018
Department of Commerce Division of Energy Resources Comments on Notice Plan Approval Request	11/28/2018
Department of Commerce Division of Energy Resources Comments on Exemption Request	12/06/2018
Plum Creek Wind Farm, LLC Reply Comments on Exemption Request	12/17/2018
Plum Creek Wind Farm, LLC Reply Comments on Notice Plan Approval Request	12/19/2018

I. STATEMENT OF THE ISSUES

- Should the Commission approve the notice plan proposed by Plum Creek Wind Farm, LLC in its November 9, 2018 Certificate of Need Notice Plan Approval Request?
- Should the Commission grant the exemptions requested by Plum Creek Wind Farm, LLC in its November 13, 2018 Request for Exemption from Certain 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

Plum Creek Wind, LLC (Plum Creek) intends on filing a certificate of need application with the Commission for a 414 megawatt (MW) large wind energy conversion system (LWECS) with an approximate 100,000 acre project footprint to be located in Cottonwood, Murray, and Redwood counties. The project also includes a 25-mile-long 345 kilovolt (kV) transmission line to be built within a 150-foot-wide right-of-way that will interconnect the project at the existing Brookings to Hampton 345 kV transmission line. The transmission line is to be located in Cottonwood and Redwood counties. The purpose of the project, as described by Plum Creek, is to produce renewable energy for purchase by electric utilities or other entities to satisfy Minnesota Renewable Energy Standard under Minn. Stat. § 216B.1691, or other clean energy standards and sustainability goals.

III. PROCEDURAL HISTORY

On November 9, 2018, Plum Creek filed a Certificate of Need Notice Plan Approval Request. Plum Creek indicated that it intends to file a certificate of need application for a proposed 25-mile long 345 kV transmission line that would connect the proposed Plum Creek Wind Facility to the transmission system. 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, Plum Creek noticed an initial 20-day comment period that ended on November 29, 2018, and a 20-day reply comment period that ended on December 19, 2018.

On November 13, 2018, Plum Creek filed a Request for Exemption from Certain Application Content Requirements. Plum Creek requested that the Commission grant exemptions from certain certificate of need application data requirements related to its proposed 414 MW Plum Creek Wind Facility and associated 25-mile long 345 kV high-voltage transmission line to interconnect the project to the bulk power system.

On November 26, 2018, the Commission issued a Notice of Comment Period on Plum Creek's request for exemption from certain certificate of need application data requirements. An initial comment period was open through December 10, 2018, and a reply comment period was open through December 17, 2018.

On November 28, 2018, Department of Commerce Division of Energy Resources (DOC DER or Department) filed comments on Plum Creek's Certificate of Need Notice Plan Approval Request.

On December 6, 2018, DOC DER filed comments on Plum Creek's Request for Exemption from Certain Application Content Requirements.

On December 17, 2018, Plum Creek filed reply comments concerning its Request for Exemption from Certain Application Content Requirements.

On December 19, 2018, Plum Creek filed reply comments concerning its Certificate of Need Notice Plan Approval Request.

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 Plum Creek Wind 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.¹

The proposed 25-mile long 345 kV transmission line associated with the facility is a large energy facility as defined under Minn. Stat. § 216B.2421, subd. 2(2), because it is a high-voltage transmission line with a capacity of 200 kV or more and greater than 1,500 feet in length.²

B. Notice Plan

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.³ The notice plan must be implemented within 30 days of its approval by the Commission.

C. 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

¹ The proposed facility is also defined as a Large Wind Energy Conversion System (LWECS) under Minn. Stat. § 216F.01, subd. 2, because it has a nameplate capacity of 5 MW or more. A site permit application will be filed separately.

² A route permit application will be filed separately.

³ Minn. R. 7829.2550, subp. 3, subp. 4, subp. 6.

data. The Commission is required to make a determination on the request within 30 days of its submission.⁴

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.

V. NOTICE PLAN APPROVAL REQUEST

Plum Creek is requesting Commission approval of its proposed notice plan in connection with a new 25-mile 345 kV transmission line it intends to construct in order to interconnect the 414 MW Plum Creek Wind facility to the bulk power electric system. 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 the Power Plant Siting Act General Service List.
- 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. 4.⁵

⁴ These exemptions to data requirements are commonly given to Independent Power Producers who do not have a system, service area, or system demand as defined and used in the rules.

⁵ A map showing the location of the proposed project and any existing transmission facilities in the area; a description of the right-of-way requirements for the proposed line(s) and a statement that the applicant intends to acquire property rights for any needed land that the proposed project will require; a

- The notice plan must be implement within 30 days of Commission approval.

On November 28, 2018, the Department provided comments and recommendations on Plum Creek's proposed notice plan. The Department recommended that the Commission approve Plum Creek's proposed notice plan. In making its recommendation, the Department compared the proposed notice plan against the requirements set forth in Minn. R. 7829.2550, and concluded the following:

- The proposed transmission line is defined as a large energy facility under Minn. Stat. § 216B.2421, and is considered a high-voltage transmission line for which a notice plan is required.
- The notice area and notice approach for residents, landowners, and governmental entities is reasonable upon **including notification of state and federal senators and representatives whose districts are within the notice area.**
- The three local newspapers selected for public notice are reasonable.
- The proposed notice letters and maps for the resident/landowner notice, governmental notice, and newspaper notice provided by Plum Creek generally contain the required information under Minn. R. 7829.2550, subp. 4, and are acceptable upon **including reference to Minnesota Rules chapter 4410** (See Minn. R. 7829.2550, subp. 4(H)).

On December 19, 2018, Plum Creek filed reply comments indicating that it agreed with the Department's recommendations to: include notice to state and federal senators and representatives whose districts are within the notice area, and to reference Minnesota Rules chapter 4410 in the notices.

VI. EXEMPTION REQUEST

On November 13, 2018, Plum Creek filed a Request for Exemption from Certain [Certificate of Need] Application Content Requirements. Plum Creek 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 Plum Creek;

notice that the proposed project cannot be constructed without a determination of need by the Commission; the Commission's mailing address, telephone number and website address; the website address where the applicant will post or has posted its biennial transmission projects report, if the applicant is a utility subject to Minnesota Rules, chapter 7848; a statement that the Department of Commerce will be preparing an environmental report for the proposed project; an explanation of how to get on the Commission's mailing list for the proceeding; and a statement that the requested certificate of need for the proposed project is governed by Minnesota law, including specifically Minnesota Rules, chapters 4410 and 7849, and Minnesota Statutes 216B.243.

2) are inapplicable to Plum Creek and the Project; and 3) are not necessary to determine the need for the Project. Plum Creek 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. As such, Plum Creek is requesting that the Commission grant it exemptions from the following certificate of need application data requirements:

Full Exemption to Rule

- 7849.0240, subp. 2(B): Promotional Activities.
- 7849.0250 B (1), (2), (3), and (5): Description of Certain Alternatives (purchased power, increased efficiency of existing facilities, and new transmission lines).
- 7849.0260 A (3) and C (6): Line Loss Data.
- 7849.0260 B (1): Alternatives to Transmission Line.
- 7849.0260 C (5): Details Regarding Alternatives.
- 7849.0290: Conservation Programs.
- 7849.0330: Transmission Facilities.

Partial Exemption to Rule

- 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). Plum Creek 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. Plum Creek has instead proposed to limit its discussion to renewable alternatives only in response to Minn. R. 7849.0250 B (4) that could provide electric power at the asserted level of need.
- 7849.0250 C (7): Effect of Project on Rates System wide. Plum Creek has instead proposed to submit data on the project's impact on state or regional wholesale prices.
- 7849.0250 D: Map of Applicant's System. Plum Creek has instead proposed to submit a site map showing the proposed site of the project and its location relative to the power grid.
- 7849.0260 D: Map of Applicant's System. Plum Creek has instead proposed to submit a site map showing the proposed transmission line and how it connects to the power grid.
- 7849.0270: Peak Demand and Annual Consumption Forecast. Plum Creek 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. Plum Creek 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. Plum Creek has instead proposed to submit data on the consequences of delay to its potential customers and the region.
- 7849.0340: No-Facility Alternative. Plum Creek has instead proposed to submit data reasonably available to it regarding the impact on the wholesale market of the “no facility” alternative.

On December 6, 2018, the Department filed comments and recommendations on Plum Creek’s exemption requests. In its comments, the Department examined each exemption requested by Plum Creek separately and discussed whether Plum Creek: 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. The Department’s recommendations are summarized below.⁶

The Department recommended that the Commission determine the following data requirements are not applicable because the proposed transmission line is not a separate facility, as it is directly associated with the proposed wind facility to interconnect the facility to the transmission system:⁷

- 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.

The Department agreed with Plum Creek and recommended that the Commission approve the requested exemptions from the following rules:

- 7849.0240, subp. 2(B): Promotional Activities;
- 7849.0250 B (1), (2), (3), and (5): Description of Certain Alternatives;
- 7849.0250 C (1) – (6), (8), and (9): Details Regarding Alternatives;
- 7849.0250 C (7): Effect of Project on Rates Systemwide;

⁶ See the Department’s December 6 Comments for detailed explanations of its recommendations on the data exemption requests.

⁷ Minn. Stat. § 216B.2421, subd. 2(1).

- 7849.0290: Conservation Programs; and
- 7849.0330: Transmission Facilities.

The Department recommended that the Commission approve Plum Creek's requested exemptions from the following rules on the condition that Plum Creek provides the alternative data identified in its exemption request:

- 7849.0250 B (4): Description of Certain Alternatives;
- 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; and
- 7849.0340: No-Facility Alternative.

VII. 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 Plum Creek'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 rule, staff requests that the Commission vary the 30-day requirement of Minn. R. 7849.0200, subp. 6.

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 Department because it would not allow adequate time to review the filing, schedule a Commission meeting, and prepare a written order;
- 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. STAFF DISCUSSION

Commission staff has reviewed the documents filed in this matter and agrees with Department that the Commission should:

- 1) Approve the proposed notice plan with the following modifications: (i) include notice to state and federal senators and representatives whose districts are within the notice area; and (ii) include reference to Minnesota Rules chapter 4410 in the notices.
- 2) Approve the requested exemptions conditioned on Plum Creek providing the alternative data identified in its November 13, 2018 Request for Exemption from Certain Application Content Requirements.⁸

IX. COMMISSION DECISION OPTIONS

A. Notice Plan

1. Approve the proposed notice plan proposed by Plum Creek.
2. Approve the proposed notice plan proposed by Plum Creek with the modifications recommended by the Department.
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 conditioned on Plum Creek providing the alternative data identified in its November 13, 2018 Request for Exemption from Certain Application Content Requirements.
2. Deny one or more of the exemptions requested by Plum Creek.
3. Take some other action deemed appropriate.

⁸ For clarification, staff notes that the Department categorized the data requirements under Minn. R. 7849.0260 D, as not applicable, and 7849.0250 C (1) – (6), (8), and (9) and 7849.0250 C (7), as fully exempt. Plum Creek offered to provide alternative data for these requirements. Therefore, should the Commission approve the requested exemptions, Staff recommends that Plum Creek continue with its proposal to provide the alternative data for those requirements.

C. 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: A2, B1, and C1