

May 28, 2019

VIA ELECTRONIC FILING

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, MN 55101-2147

**Re: 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**

Dear Mr. Wolf:

Enclosed please find Request for Exemption from Certain Certificate of Need Application
Content Requirements which has been e-filed today on behalf of Elk Creek Solar, LLC through
www.edockets.state.mn.us.

In addition, please add the following individuals to the Official Service List of Record:

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A copy of this filing is also being served upon the persons on the attached Affidavit of Service.
Please let me know if you have any questions regarding this filing.

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Mr. Daniel P. Wolf
May 28, 2019
Page 2

Sincerely,

/s/ Jeremy P. Duehr

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AFFIDAVIT OF SERVICE

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-_____ /CN-19_____

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

Breann Jurek, of the City of Minneapolis, the County of Hennepin, State of Minnesota, being duly sworn on oath, deposes and states that on the 28th day of May, 2019, she e-filed with the Minnesota Public Utilities Commission the following:

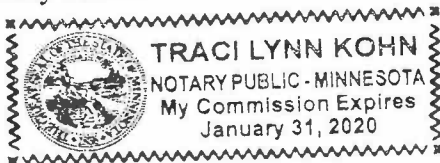
1. Request for Exemption from Certain Certificate of Need Application Content Requirements; and,
2. Affidavit of Service.

A copy has also been served on the individuals listed on the attached service list.


Breann Jurek

Subscribed and sworn to before me
this 28th day of May, 2019


Notary Public



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

**Katie J. Sieben
Dan Lipschultz
Valerie Means
Matthew Schuerger
John A. Tuma**

Chair
Commissioner
Commissioner
Commissioner
Commissioner

**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-_____/CN-19-____

**REQUEST FOR EXEMPTION FROM
CERTAIN CERTIFICATE OF NEED
APPLICATION CONTENT
REQUIREMENTS**

I. INTRODUCTION.

Elk Creek Solar, LLC (“Elk Creek”) plans to file an Application for a Certificate of Need (“CN”) pursuant to Minn. Stat. § 216B.243, subd. 4, and Minn. R. 7849.0200 to construct and operate the Elk Creek Solar Project, an up to 80 megawatt (“MW”) photovoltaic (“PV”) solar-energy generating system at a single-site in Rock County, 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. 13.¹

Elk Creek 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.

¹ Elk Creek also plans to file a large electric power generating plant site permit application for the Project in a separate docket.

II. PROJECT DESCRIPTION.

Elk Creek is an independent power producer that proposes to construct and operate the Project at a site within Rock County in southwestern Minnesota. The power generated by the Project will be offered for sale to wholesale customers, including in-state and out-of-state utilities and cooperatives that have identified a need for additional renewable energy as well as corporate customers that desire renewable power to meet their power demand.

The Project will be located in Rock County, and the Project's footprint spans approximately 960 acres in Vienna Township. Elk Creek 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: solar modules, 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 proposes to interconnect to the existing ITC 161-kV Magnolia Substation in Rock County, Minnesota.

Elk Creek plans to construct the Project on a schedule that facilitates an in-service date in 2021.

III. EXEMPTION REQUESTS.

Minnesota Rule Chapter 7849 sets forth the data an applicant must provide in an application for a CN for an LEF. An applicant may be exempted from providing certain information if the applicant requests an exemption in 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.

Elk Creek seeks exemptions from certain data requirements that are specific to the operation and regulation of facilities proposed by utilities. For example, Elk Creek 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 Elk Creek, do not have an assigned service area or "system," the Commission has held that data requirements seeking system-related information are unnecessary to determine need in such cases.²

The Project will produce renewable energy that will be purchased by electric utilities or other entities to satisfy renewable energy standards, policies, or goals. Given this purpose, Elk Creek requests partial exemptions for data requirements seeking information on alternatives to the Project that would not satisfy a renewable energy standard or similar standard, policy, or goal.

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

² *See e.g., 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) (the "Rapids Power Exemption Order").

³ *See, e.g., 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. IP6984/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 MW Blazing Star Wind Project in Lincoln County, Minnesota*, Docket No. IP-6961/CN-16-215, Order (Apr. 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-16-140, Order (Mar. 25, 2016) ("Red Pine 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*

Elk Creek 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 rate of return to consider.”⁴ Elk Creek has not engaged in promotional activities that could have given rise to the need for the electricity to be generated by the Project.

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/CN-09-937, 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”).

⁴ Blazing Star Exemption Order, Recommendations of the Department of Commerce at 3.

Because Elk Creek anticipates securing a Power Purchase Agreement, Elk Creek request an exemption from this requirement and instead proposes to provide equivalent data from the purchaser of the power.⁵

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). Elk Creek requests an exemption from data requirements (1), (2), (3), and (5) because they are not applicable to Elk Creek or the Project. With respect to data requirements (2), (3), and (5), Elk Creek instead proposes to provide equivalent data from the purchaser of the power, consistent with Commission precedent.⁶ Consistent with Commission precedent, Elk Creek also 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), Elk Creek, as an independent power producer, does not purchase power; instead, Elk Creek intends to sell power to utilities or other potential off-takers. Further, Elk Creek anticipates securing an in-state purchaser for the full output of the Project, and, therefore, consideration of a purchase power alternative is not applicable. With respect to the alternative of increased efficiency (2), Elk Creek has no existing facilities in Minnesota for which it might seek improved operating efficiency. Regarding the

⁵ See Dodge County Wind Exemption Order at 1.

⁶ See Dodge County Wind Exemption Order at 1.

alternative of new transmission lines (3), Elk Creek 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 customers. Elk Creek has no plans to own or operate such transmission and distribution lines and, therefore, requests an exemption from this requirement. With respect to data requirement (4), Elk Creek 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 entity's renewable or clean energy standards, policies, or goals. Given this purpose, only renewable energy sources are alternatives to the Project.⁷ For this reason, Elk Creek requests that it be exempted from discussing any alternative generating facilities of a different size or using an energy source other than renewable alternatives.⁸ Given that filing requirements (1), (2), and (3) are wholly inapplicable to Elk Creek and requirement (4) only partially applicable, Elk Creek requests an exemption from requirement (5) that requires a filing on any reasonable combination of requirements (1) through (4). Instead, with respect to data requirements (2), (3), and (5), Elk Creek proposes to provide equivalent data from the purchaser of the power.

C. Minnesota Rule 7849.0250(C)(1)-(6), (8) and (9): Details Regarding Alternatives.

Elk Creek 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

⁷ See, e.g., Blazing Star Exemption Order at 1; Elm Creek Exemption Order at 4.

⁸ See, e.g., Dodge County Wind Exemption Order at 1; Blazing Star Exemption Order at 1.

Minn. R. 7849.0250(B). Because Elk Creek is requesting a partial exemption from the data requirements in Minn. R. 7849.0250(B), *i.e.*, limiting its discussion to only renewable alternatives, Elk Creek 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) and requests an exemption from evaluating non-renewable alternatives.⁹

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." Elk Creek does not have a system because it is an independent power producer. As such, the required data is neither available to Elk Creek nor necessary to determine need for the Project. Because Elk Creek anticipates securing a power purchase agreement, Elk Creek instead proposes providing equivalent data from the purchaser of the power, consistent with Commission precedent.¹⁰

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, Elk Creek proposes to submit a map showing the proposed site of the Project and its location relative to the power grid, consistent with prior Commission decisions.¹¹

F. Minnesota Rule 7849.0270: Peak Demand and Annual Consumption Forecast.

⁹ *See id.*

¹⁰ Dodge County Wind Exemption Order at 1.

¹¹ *See* Dodge County Wind Exemption Order at 1; Blazing Star Exemption Order at 1.

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.” Elk Creek does not have a “service area” or “system” and, as such, the requested data are inapplicable. As an alternative and consistent with prior Commission decisions, Elk Creek proposes to submit a general overview of the purchaser’s system and future renewable resource needs.¹²

G. 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.” As stated previously, Elk Creek does not have a “system” within the meaning of the Rule, and, therefore, the requested information is inapplicable. Thus, Elk Creek requests an exemption from the filing requirements in Minn. R. 7849.0280. Notwithstanding the exemption, similar to its request with respect to Minn. R. 7849.0270 above, Elk Creek will provide a general overview of the purchaser’s system and future renewable resource needs.

H. 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 have given to new generation in planning to meet the future needs of

¹² Dodge County Wind Exemption Order at 1.

their service areas.”¹³ 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.¹⁴ Because Elk Creek 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.

I. 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.” Elk Creek is not a utility and has no system. Thus, this data requirement is inapplicable to Elk Creek and is unnecessary to determine the need for the Project. Instead, Elk Creek proposes to submit data on the consequences of delay to the purchaser’s system and future renewable resource needs.

J. 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 large high voltage transmission lines (“LHVTL”). Transmission facilities are not true alternatives to the Project, since the purpose of the Project is to increase the supply of available renewable energy. The Project plans to interconnect to ITC’s Magnolia 161kV substation in Rock County, Minnesota. The Project is in the MISO West April 2018 DPP study group, set to start in Q1 2020 with an expected Generation Interconnection Agreement executed in Q3 2021. Any transmission line for the Project will be short and limited in use to connecting the Project to the broader transmission system. Elk Creek does not currently plan on

¹³ Rapids Power Exemption Order at 6.

¹⁴ *Id.*

installing any facilities that would be defined as an LHVTL. 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, Minn. R. 7849.0330 is not applicable, and Elk Creek respectfully requests an exemption.

K. 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.”

Elk Creek 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, Elk Creek proposes to submit data regarding the “no facility” alternative on the purchaser's system and future renewable resource needs.

IV. CONCLUSION.

Elk Creek has requested exemptions from certain data requirements on the grounds that, as an independent power producer, such data are not reasonably available to Elk Creek, are inapplicable to Elk Creek and the Project, and are not necessary to determine need for the Project. In lieu of certain specified data, Elk Creek will submit equivalent data from the purchaser of the power 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 Elk Creek respectfully asks the Commission to grant its requests for exemptions from the CN data requirements discussed above.

Dated: May 28, 2019

Respectfully submitted,

/s/ Jeremy P. Duehr

Jeremy P. Duehr (# 0391808)

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