

June 27, 2019

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. IP-7003/CN-19-351

Dear Mr. Wolf:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Request for Exemption from Certain Certificate of Need Application Content
Requirements for the Application of Elk Creek Solar, LLC for a Certificate of Need
for an up to 80 MW Elk Creek Solar Project in Rock County, Minnesota.

The petition was filed on behalf of Elk Creek Solar, LLC on May 28, 2019 by:

Jeremy P. Duehr
Fredrickson and Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota, 55402-1425

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the data exemption requests, with one modification, as detailed in the attached Comments.** The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ DANIEL W. BECKETT
Rates Analyst

DWB/ja
Attachment

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. IP-7003/CN-19-351

I. SUMMARY OF FILING

On May 28, 2019 Elk Creek Solar, LLC (Elk Creek or the Applicant) filed a *Request for Exemption from Certain Certificate of Need Application Content Requirements* (Petition).

On June 7, 2019 the Minnesota Public Utilities Commission (Commission) issued its *Notice of Comment Period on Certificate of Need Exemption Requests* (Notice). The Notice asked: “Should the Commission grant the exemptions to the certificate of need application content requirements requested by Elk Creek Solar, LLC?”

A. PROJECT BACKGROUND

Elk Creek is an independent power producer (IPP) that plans to construct an up to 80-MW photovoltaic (PV) solar energy generating system in Rock County, Minnesota (Project), which qualifies as a “large energy facility” (LEF) as defined by Minn. Stat. § 216B.2421, subd 2(1), and a “large electric generating facility” as defined by Minn. R. 7849.0010, Subp. 13. The Applicant intends to sell power produced by this solar facility to wholesale customers and/or corporate customers. The Project would span approximately 960 acres in Rock County, Minnesota, and would consist of panels affixed to tracking mechanisms that would enable the panels to track the sun as it moves from east to west. Additionally, the Project would consist of an electrical collection system, access roads, up to two weather stations, a substation, interconnection facilities, and an operations and maintenance facility. The Project would interconnect to the existing ITC 161-kV Magnolia Substation within project area.

B. EXEMPTION REQUESTS

In the Petition, Elk Creek requested exemptions or partial exemptions from providing data relevant to the Minnesota Rules listed below:

- 1) 7849.0240, subp. 2 (B);
- 2) 7849.0250 (B) 1-5;
- 3) 7849.0250 (C) 1 to 6, 8 and 9;
- 4) 7849.0250 (C) 7;

- 5) 7849.0250 (D);
- 6) 7849.0270;
- 7) 7849.0280;
- 8) 7849.0290;
- 9) 7849.0300;
- 10) 7849.0330; and
- 11) 7849.0340.

Elk Creek noted that the Commission has previously granted exemption requests for these items for IPP projects.

Below are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) regarding the Petition.

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUE

Minnesota Statutes § 216B.243, subd. 2 states that no LEF shall be constructed without a certificate of need (CN). At 80 MW, the proposed Project qualifies as an LEF. Elk Creek's Petition requests full or partial exemptions from several of the filing requirements related to a future CN application for the proposed Project.

Minnesota Rules, part 7849.0200, subp. 6 states that an exemption is appropriate if the data requirement is not necessary to determine the need, or can be obtained via another document:

Before submitting an application, a person is exempted from any data requirement of parts 7849.0010 to 7849.0400 if the person (1) requests an exemption from specified rules, in writing to the Commission, and (2) shows that the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document. A request for exemption must be filed at least 45 days before submitting an application.

The Department examined each specific exemption request separately. The criterion to be considered is whether Elk Creek has shown that “the data requirement is unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document.”

B. EXEMPTION ANALYSIS

1. 7849.0240, subp. 2 (B): Promotional Activities

This rule requires an applicant to provide an explanation of the relationship of the proposed facility to promotional activities that may have given rise to the demand for the facility. Elk Creek stated that the Company “has not engaged in promotional activities that could have given rise to the need for the electricity to be generated by the Project.”¹ The Department notes that the Commission has granted this exemption to IPPs because these companies do not have captive retail customers. However, as Elk Creek anticipates securing a purchaser for the energy, the Applicant proposes providing equivalent data from its purchaser. The Department concludes that Elk Creek’s exemption request and proposal to provide promotional activity information from the purchaser is reasonable and recommends that the Commission grant the proposed exemption.

2. 7849.0250 (B) 1-5: Description of Certain Alternatives

This rule requires an applicant to provide a discussion of the availability of alternatives to the facility, including but not limited to:

- 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 combinations of the alternatives listed in sub items (1) to (4).

Elk Creek requested an exemption from information requirements 1, 2, 3 and 5 as they are not applicable and a partial exemption from requirement 4 such that Elk Creek not be required to address non-renewable alternatives or any alternative generating facilities of a different size. The Department agrees that addressing non-renewable alternatives would be extraneous in this context as the stated intention of the Project is “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.”² However, the Department

¹ Petition, p. 4.

² Petition, p. 6.

notes that providing an analysis of an alternatively sized renewable project is reasonable and has been the practice of other IPPs in the state.³ The Department recommends that the Commission grant the partial exemption but require the Applicant to provide an analysis of alternatively sized renewable energy projects.

Regarding Minnesota Rules 7849.0250 (B) 1, Elk Creek is proposing to produce power to sell to what it anticipates is an in-state purchaser for the full output of the Project, and thus is in the business of selling rather than purchasing power. The Department agrees that an exemption is appropriate.

While the requirements of Minnesota Rules 7849.0250 (B) 2, 3, and 5 are not applicable to Elk Creek, they may be applicable to Elk Creek's customer. As Elk Creek anticipates securing a purchaser for the power, it proposes to provide equivalent data from the purchaser. The Department agrees with this assessment and recommends the Commission grant the proposed exemption.

3. 7849.0250 (C) 1 to 6, 8 and 9: Availability of Alternatives to the Facility

This rule requires an applicant to provide the following information for the proposed facility and each of the alternatives provided in response to Minnesota Rules 7849.0250 (C):

- 1) capacity costs in current dollars per kilowatt;
- 2) service life;
- 3) estimated average annual availability;
- 4) fuel costs in current dollars per kilowatt hour;
- 5) variable operating and maintenance costs in current dollars per kilowatt hour;
- 6) total cost in current dollars of a kilowatt hour provided by it;
- 7) estimate of its effect on rates system wide and in Minnesota;
- 8) efficiency, expressed as the estimated heat rate; and
- 9) major assumptions made in providing the above information (e.g., escalation rates used, projected capacity factors).

Elk Creek requested a partial exemption from this Rule to limit its discussion to only renewable alternatives consistent with their request for exemption from Minnesota Rules 7849.0250 (B). Specifically, since the intent of the project is to provide renewable energy to sell to the market, examination of non-renewable alternatives would be irrelevant.

³ Docket Nos. IP6961/CN-16-215 and IP6981/CN-17306 are two examples. In both cases, the IPPs provided analyses of alternative renewable projects of varying energy source and size.

The Department agrees that the required information — regarding non-renewable alternatives — is not relevant to analyses of alternatives to Elk Creek’s proposed Project and that limiting the requirement to renewable alternative data will better address the proposed need. Therefore, the Department recommends that the Commission grant the proposed exemption. To be clear, Elk Creek will be required to provide the information above as to its own facilities.

4. *7849.0250 (C) 7: Effect of Project on Rates System-wide*

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. Elk Creek requested an exemption because it does not operate a system. The Commission has granted a similar exemption to other IPPs because they do not have a system. However, as Elk Creek anticipates securing a purchaser for the energy, the Applicant proposes to provide equivalent data from the purchaser. The Department agrees with this assessment and recommends that the Commission approve the exemption request as proposed.

5. *7849.0250 (D): Map of Applicant’s System*

This rule requires an applicant to provide a map of the applicant’s system. Elk Creek requested an exemption because it does not operate a system and, thus, the information does not exist. As an alternative, Elk Creek proposes to file a map showing the site of the Project and its location relative to the power grid. The Department agrees that the proposed alternative map would contain more relevant data. Therefore, the Department recommends that the Commission approve the requested exemption with the provision of Elk Creek’s proposed alternative data.

6. *7849.0270: Peak Demand and Annual Consumption Forecast*

This rule requires an applicant to provide system forecast data. Elk Creek requested an exemption because it does not have a service area or a system. As the Applicant anticipates securing a Power Purchase Agreement, it instead proposes to “submit a general overview of the purchaser’s system and future renewable resource needs.”⁴ The Department agrees that Elk Creek’s proposed alternative data are relevant. Therefore, the Department recommends that the Commission approve the requested exemption and require Elk Creek to provide data regarding the purchaser’s system and future renewable resource needs.

⁴ Petition, p. 8.

7. *7849.0280: System Capacity*

This rule requires an applicant to provide information regarding “the ability of its existing system to meet the demand for electrical energy forecast in response to part 7849.0270.” Again, Elk Creek does not have a system but instead proposes to provide a general overview of the purchaser’s system and future renewable resource needs. The Department recommends that the Commission approve the requested exemption and require Elk Creek to provide data regarding the purchaser’s system and future renewable resource needs.

8. *7849.0290: Conservation Programs*

This rule requires an applicant to provide information related to conservation programs. Elk Creek requested an exemption to this rule because it is not a regulated utility, has no retail customers, and plans to sell the project’s output into the wholesale market.

The Department agrees that conservation program information is not relevant to the determination of need for the Project, since conservation cannot meet the need for renewable energy, and recommends that the Commission approve the requested exemption.

9. *7849.0300: Consequences of Delay—System*

This rule requires an applicant to provide information regarding 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 requested an exemption because the Applicant does not have a system. Rather, as it anticipates having a purchaser for its energy, Elk Creek proposes to submit data on the consequences of delay to the purchaser’s system and future renewable resource needs. The Department agrees with this assessment and recommends that the Commission approve the requested exemption as proposed.

10. *7849.0330: Alternative Involving a Large High Voltage Transmission Line (LHVTL)*

This rule requires an applicant to provide data for each alternative that would involve construction of an LHVTL. Regarding this requirement, Elk Creek stated that transmission facilities are not true alternatives to the Project as the purpose of the Project is to increase the available supply of renewable energy. Additionally, the Project intends to connect to ITC’s Magnolia 161-kV substation within the project area and all energy transmitted beyond the point of interconnection will be on facilities owned or operated by others. The Department agrees with the Applicant’s analysis and recommends that the Commission grant the proposed exemption as the rule is not applicable.

11. 7849.0340: The Alternative of No Facility

This rule requires an applicant to provide information regarding the impact of the alternative of no facility on the existing system. Elk Creek requested an exemption because it does not have a system and, instead, proposes to provide data regarding the no-build alternative on the purchaser's system and future renewable resource needs. The Department agrees with this assessment and recommends that the Commission approve the requested exemption.

III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission approve the following exemptions as proposed:

- 7849.0240, subp. 2 (B): Promotional Activities;
- 7849.0250 (B) 1 to 3, and 5: Description of Certain Alternatives;
- 7849.0250 (C) 1 to 6, 8 and 9: Availability of Alternatives to the Facility;
- 7849.0250 (C) 7: Availability of Alternatives to the Facility;
- 7849.0250 (D): Map of Applicant's System;
- 7849.0270: Peak Demand and Annual Consumption Forecast;
- 7849.0280: System Capacity;
- 7849.0290: Conservation Programs;
- 7849.0300: Consequences of Delay—System;
- 7849.0330: Alternatives Involving a LHVTL; and
- 7849.0340: The Alternative of No Facility.

The Department recommends that the Commission approve the following exemption conditioned upon Elk Creek providing data of alternatively sized renewable energy projects:

- 7849.0250 (B) 4: Description of Certain Alternatives.

/ja

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. IP7003/CN-19-351

Dated this 27th day of June 2019

/s/Sharon Ferguson

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