


## Staff Briefing Papers

Meeting Date	July 26, 2019	Agenda Item *1
Company	Elk Creek Solar, LLC	
Docket No.	IP7009/CN-19-351	
	<b>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</b>	
Issues	<ol style="list-style-type: none"><li>1. Should the Commission approve Elk Creek Solar, LLC's request for exemptions from certain certificate of need filing requirements?</li><li>2. Should the Commission vary Minn. R. 7849.0200, Subp. 6, and extend the 30-day time limit to consider the exemption request?</li></ol>	
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 <b>Relevant Documents</b>	<b>Date</b>
Elk Creek Solar, LLC Request for Exemption	May 28, 2019
Notice of Comment Period	June 7, 2019
Letter – Rock County Board of Commissioners	June 25, 2019
Department of Commerce Division of Energy Resources Comments	June 27, 2019
Elk Creek Solar, LLC Reply Comments	July 8, 2019

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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 Issues**

Should the Commission approve Elk Creek Solar, LLC's request for exemptions from certain certificate of need filing requirements?

Should the Commission vary Minnesota Rule 7849.0200, Subp. 6, and extend the 30-day time limit to consider the exemption request?

## **II. Request for Exemption**

Elk Creek Solar, LLC (Elk Creek) is an Independent Power Producer proposing to construct an 80 megawatt solar photovoltaic system in Rock County. The proposed project would occupy approximately 960 acres in Vienna Township and interconnect to the existing ITC 161-kilovolt Magnolia Substation in Rock County.

On May 28, 2019, Elk Creek filed a Request for Exemption from certain Certificate of Need Application Content Requirements pursuant to Minnesota Rule 7849.0200, Subp. 6. Elk Creek asserted that the information requirements for which it is requesting exemption are not applicable to independent power producers, or can be satisfied by submitting another document.

In support of its request Elk Creek stated that the project would produce renewable energy to be sold to electric utilities or other entities to satisfy renewable energy standards, policies, or goals. Elk Creek noted that it does not have an assigned service area or "system" as cited in rule.<sup>1</sup> Elk Creek cited several instances in which the Commission granted exemption requests to Independent Power Producers. The petitioner also offered to provide alternative information relevant to the determination of need for the project where applicable.

Elk Creek requested exemption from the following rules:

- Minnesota Rule 7849.0240, subp. 2(B): Promotional Activities
- Minnesota Rule 7849.0250(B): Description of Certain Alternatives
- Minnesota Rule 7849.0250(C)(1)-(6), (8) and (9): Data on Alternatives
- Minnesota Rule 7849.0250(C)(7): System-wide Rate Impacts
- Minnesota Rule 7849.0250(D): Map of Applicant's System

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<sup>1</sup> "System" means the service area where the utility's ultimate consumers are located and that combination of generating, transmission, and distribution facilities that makes up the operating physical plant of the utility, whether owned or non-owned, for the delivery of electrical energy to ultimate consumers. Minnesota Rule 7849.0010, Subp. 29 Definitions, August 12, 2013.

- Minnesota Rule 7849.0270: Peak Demand and Annual Consumption Forecast
- Minnesota Rule 7849.0280: System Capacity
- Minnesota Rule 7849.0290: Conservation Programs
- Minnesota Rule 7849.0300: Consequences of Delay
- Minnesota Rule 7849.0330: Transmission Facilities
- Minnesota Rule 7849.0340: No Facility Alternative

Elk Creek requested the Commission to grant the requested exemptions from the Certificate of Need data requirements.

### **III. Comments Received**

#### **Rock County Board of Commissioners Comments**

On June 25, 2019, the Rock County Board of Commissioners filed comments expressing support for the project noting its positive economic benefits and cost-effective renewable energy generation.

#### **Department of Commerce Division of Energy Resources (DOC DER)**

DOC DER filed comments on June 27, 2019. DOC DER analyzed each of the requested exemptions and recommended that the Commission approve the data exemption requests with one modification.

DOC DER noted that providing an analysis of an alternatively sized renewable project as required by Minnesota Rule 7849.0250 (B)(4) is reasonable and has been the practice of other Independent Power Producers in the state. DOC DER recommended the Commission require Elk Creek to provide the alternatives analysis.

#### **Elk Creek Reply Comments**

Elk Creek filed reply comments on July 8, 2019 indicating agreement with DOC DER's recommendations and requested the Commission to approve the data exemption requests as identified in DOC DER's comments.

### **IV. Staff Analysis**

As noted by the Department, the requested exemptions to the Certificate of Need filing requirements are common exemptions afforded by the Commission to independent power producers. Staff agrees with the Department and supports adopting Elk Creek's exemption

requests as modified by DOC DER's recommendations.

### **General Variance Procedures – Minnesota Rule 7829.3200**

As a procedural matter, Staff recommends the Commission provide a variance to Minnesota Rule 7849.0200, Subp. 6 in order to extend the 30-day time limit for review of the exemption request.

Under Minn. R. 7829.3200, subp. 1, the Commission is authorized to grant a variance to its rules upon determining the following conditions are met:

- 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.

Staff believes the three conditions are met for variance of the scoping decision issuance deadline:

- 1) Enforcement of the rule would impose an excessive burden on the public and those reasonably likely to be affected by the proposed project by limiting the Commission's ability to identify alternative sites and ensure their consideration in the environmental assessment.
- 2) Granting the variance would not adversely affect the public interest and would in fact serve the public interest by enabling a more comprehensive evaluation of public comment and interests at the outset of the review process.
- 3) Granting the variance would not conflict with standards imposed by law since the ten-day timeline is set by rule not statute and, therefore, may be waived.

## **V. Decision Options**

### **A. Exemption Petition**

1. Grant Elk Creek's petition for exemptions from certain Certificate of Need application requirements as modified by the DOC DER's recommendations.
2. Deny the petition.
3. Take some other action deemed appropriate.

**B. Variance of Timeline for Review**

1. Grant a variance to Minn. R. 7849.0200, subp. 6, to vary the thirty-day timeline.
2. Take some other action deemed more appropriate.

**Staff Recommendation: A1 and B1**