

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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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

ISSUE DATE: December 23, 2019

DOCKET NO. IP-7009/CN-19-351

DOCKET NO. IP-7009/GS-19-495

In the Matter of the Application of Elk Creek Solar, LLC for a Site Permit for the up to 80 MW Elk Creek Solar Project in Rock County, Minnesota

ORDER ACCEPTING APPLICATIONS
AS SUBSTANTIALLY COMPLETE
AND DIRECTING USE OF INFORMAL
REVIEW PROCESS

PROCEDURAL HISTORY

On May 28, 2019, Elk Creek Solar, LLC filed a request for exemption from certain certificate of need application content requirements for an anticipated 80 megawatt (MW) solar energy generating system to be located on approximately 681 acres in Rock County (the Elk Creek Solar Project).

On August 19, 2019, the Commission issued an order approving the requested exemptions and requiring certain alternative data.

On July 31, 2019, as required by Minnesota Rules, part 7850.2800, subpart 2, Elk Creek Solar filed a letter stating its intent to file a site permit application under the alternative permitting process.

On September 13, 2019, Elk Creek Solar filed separate applications for a certificate of need and a site permit for the Elk Creek Solar Project.

On September 20, 2019, the Commission issued a notice requesting comments on whether the two applications were complete, whether the certificate of need application should be reviewed using the informal process or a contested-case proceeding, whether an advisory task force should be appointed for the site permit application, whether the applications should be processed jointly, and whether there were contested issues of fact in either application. Initial comments were accepted until October 4, 2019, and reply comments until October 11, 2019.

On October 4, 2019, the Commission received initial comments on the applications from the Department of Commerce Division of Energy Resources (DOC DER), Department of Commerce Energy Environmental Review and Analysis unit (DOC EERA), and the Laborers' International Union of North America (LIUNA).

On October 7, 2019, DOC DER filed corrected comments.

On October 9, 2019, the Commission received comments that the Minnesota Pollution Control Agency had submitted to DOC EERA.

On October 11, 2019, the Commission received reply comments from Elk Creek Solar.

On November 7, 2019, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary

In this order the Commission will accept Elk Creek Solar's applications for a certificate of need and a site permit as substantially complete and will elect to review the certificate of need application using the informal review process. The Commission will also establish additional procedural and administrative requirements, request that the assigned administrative law judge (ALJ) conduct the proceeding as set forth herein, and grant a variance to the timeline for determining completeness under Minn. R. 7849.0200, subp. 5.

II. Jurisdiction

No person may site or construct a large energy facility without a certificate of need from the Commission.¹ A large energy facility includes "any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system."²

Similarly, no person may construct a large electric power generating plant without a site permit from the Commission.³ A large electric power generating plant is defined as "electric power generating equipment and associated facilities designed for or capable of operation at a capacity of 50,000 kilowatts or more."⁴

The Elk Creek Solar Project would have a capacity of up to 80 MW (or 80,000 kilowatts), requiring the company to obtain both a certificate of need and a site permit.

¹ Minn. Stat. § 216B.243, subd. 2, and Minn. R. 7849.0030, subp. 1.

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

³ Minn. Stat. § 216E.03, subd. 1.

⁴ Minn. Stat. § 216E.01, subd. 5.

Elk Creek Solar filed its site permit application under Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900, which govern the alternative review process for eligible projects, including large electric power generating plants that are powered by solar energy. The proposed project would be fueled solely by solar energy and the application is therefore eligible for review under the alternative permitting process.

III. Application completeness

A. Certificate of need

DOC DER reviewed the certificate of need application for completeness under Minn. R. 7849.0240 to 7849.0340, and recommended that the Commission find the application complete pending the submission of additional information. DOC DER noted that the Commission had granted certain exemptions to Elk Creek Solar in its August 19 order on the condition that, if a Power Purchase Agreement (PPA) was secured before the certificate of need application was filed, Elk Creek Solar would provide certain relevant data from the purchaser.

DOC DER stated that Northern States Power Company d/b/a Xcel Energy (Xcel) had petitioned the Commission for approval of a PPA for the Elk Creek Solar project on September 10, 2019 — before the filing of the certificate of need application. Therefore, DOC DER stated that relevant data from Xcel should have been included in the certificate of need application and, in some cases, such data was not included.

In response, Elk Creek Solar filed the additional information relating to Xcel as recommended by DOC DER.

The Commission has reviewed the certificate of need application and the parties' comments and agrees with the DOC DER that the original certificate of need application was complete except for the relevant information relating to the Xcel PPA. Because Elk Creek Solar has now provided that information in its reply comments, the Commission will accept the certificate of need application as substantially complete as of the date of the reply comments.

B. Site permit

DOC EERA reviewed Elk Creek Solar's site permit application for completeness under Minn. R. 7850.3100 and concluded that the application was substantially complete. DOC EERA noted that the application did not specify the proposed type of electrical collection system or certain details regarding the panel technology, but felt that the specific permit language that removes uncertainty on these items could be developed during the environmental review process.

The Commission concurs with DOC EERA and will accept the site permit application as substantially complete.

IV. Review process

A. Informal review

Under Minn. R. 7829.1200, the Commission has the discretion to evaluate certificate of need applications using either contested-case proceedings or an informal comment and reply process.

Informal proceedings may be used when contested-case proceedings are not required, including when there are no material facts in dispute.

No person has identified any contested issue of material fact or recommended that the case be referred to the Office of Administrative Hearings for contested-case proceedings at this time. The Commission will therefore direct that the informal comment and reply process be used for developing the record.

B. Joint meetings, hearings, and environmental review

The Commission concludes that it is feasible, efficient, and in the public interest to hold joint public meetings, joint public hearings, and allow combined environmental review on the certificate of need and site permit applications.⁵ Therefore, the Commission will direct that the public meetings and public hearings for the certificate of need and the site permit applications be held jointly, and that environmental review be conducted jointly, to the extent practicable.

C. Administrative responsibilities

To ensure proper development of the record, the Commission will delegate administrative authority to the Executive Secretary and will establish related notification and procedural requirements as described below.

The Commission will also refer the matter to the Office of Administrative Hearings for the appointment of an ALJ to serve as hearing examiner in these dockets; the Commission will request that the ALJ prepare a summary report.

V. Rule variance

Under Minn. R. 7829.3200, the Commission will grant a variance to its rules upon making the following findings:

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.

Minn. R. 7849.0200, subp. 5, provides for the Commission to make a decision on the completeness of an application for a certificate of need within 30 days of its filing.

The 30-day timeline provides insufficient time to review the certificate of need application, solicit comments, schedule a Commission meeting, and prepare a written order. Consequently, the Commission will vary this rule and extend the time for ruling on the application's completeness, based on the following findings:

⁵ Minn. R. 7850.1600.

1. Enforcing the 30-day deadline of Minn. R. 7849.0200, subp. 5, would impose an excessive burden upon the public, the Commission, and the Department, because it would not allow adequate time to review the application, schedule a Commission meeting, and issue a written order.
2. Varying the deadline would not adversely affect the public interest, and would instead serve the public interest by allowing more time for public comment on, and Commission consideration of, the application.
3. Varying the deadline would not conflict with any standards imposed by law.

ORDER

1. The Commission accepts the certificate of need application as substantially complete.
2. The Commission directs that the certificate of need application be reviewed using the informal review process.
3. The Commission accepts the site permit application as substantially complete and authorizes review under the alternative permitting process defined in Minn. Stat. § 216E.04 and Minn. R. 7850.2800 to 7850.3900.
4. The Commission approves joint public meetings, joint public hearings, and combined environmental review of the certificate of need and site permit applications to the extent practical.
5. The Commission takes no action on an advisory task force at this time.
6. The Commission refers the matter to the Office of Administrative Hearings for the appointment of an ALJ to serve as the hearing examiner and requests preparation of a summary report in general adherence to the timelines listed in Table 1 of DOC EERA's October 4, 2019 comments in Docket No. IP-7009/GS-19-495.
7. Regarding administrative responsibilities, the Commission:
 - a. Delegates administrative authority, including timing issues, to the Executive Secretary.
 - b. Identifies Charley Bruce as the Commission's Public Advisor who will facilitate citizen participation in the process.
 - c. Requests that DOC DER and DOC EERA continue to study the issues and indicate during the hearing process through testimony or comment its position on the reasonableness of granting a site permit.
 - d. Requires the Applicants to facilitate in every reasonable way the continued examination of the issues requested by DOC DER, DOC EERA, and Commission staff.
 - e. Requires the Applicants to place a copy of the certificate of need and site permit applications in the government center or public library located closest to the proposed project site.

- f. Directs the Applicants to work with Commission staff and DOC staff to arrange for publication of the notices related to public information meetings and public hearings in newspapers of general circulation under the timelines prescribed in rule and statute; such notice must be in the form of visible display ads and proof of publication must be obtained and provided to Commission staff.
 - g. Approves the sample site permit (Attachment A of the briefing papers) for public review during the review process.
- 8. The Commission grants a variance to Minn. R. 7849.0200, subp. 5, to extend the 30-day timeline.
- 9. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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