

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Dan Lipschultz	Commissioner
Valerie Means	Commissioner
Matthew Schuenger	Commissioner
John A. Tuma	Commissioner

In the Matter of the Application of Big Bend Wind, LLC and Red Rock Solar, LLC for a Certificate of Need for an up to 335-MW Wind Project and an up to 75-MW Solar Large Energy Facility with an Associated 30-mile, 161-kV High Voltage Transmission Line in Cottonwood, Martin, and Jackson Counties

ISSUE DATE: September 24, 2019

DOCKET NO. IP-7013/CN-19-408

DOCKET NO. IP-7014/CN-19-486

ORDER APPROVING EXEMPTIONS TO CERTAIN FILING REQUIREMENTS

**PROCEDURAL HISTORY**

On June 19, 2019, Big Bend Wind, LLC and Red Rock Solar, LLC (jointly, the Applicants) submitted a Request for Exemption from Certain Application Content Requirements and Rule 7829.2550 HVTL Notice Plan.

On July 8, 2019, the Commission issued a Notice of Comment Period on the Applicants' request, setting a deadline of July 22 for initial comments and July 29 for reply comments.

On July 22, 2019, the Commission received initial comments from Laborers' International Union of North America (LIUNA) Minnesota and from the Department of Commerce, Division of Energy Resources (the Department).

On July 29, 2019, the Commission received reply comments from the Applicants.

On September 5, 2019, the Commission met to consider the matter. At the Commission meeting, Applicants modified portions of their request relating to the notice plan exemption.

**FINDINGS AND CONCLUSIONS**

**I. Applicants' request**

Applicants intend to construct an up to 335 megawatt (MW) wind project and an up to 75 MW solar project to be located in Cottonwood County, and plan to file separate certificate of need applications for the two projects later in 2019. Applicants also intend to build a 30-mile, 161-kV shared high-voltage transmission line (HVTL) to interconnect the two projects to the bulk

electric system via Great River Energy’s Lakefield Junction substation. They do not plan to file a separate certificate of need application for the HVTL; they believe a separate certificate of need is not required because the HVTL is not a “stand-alone” line, but is directly associated with the power generating plants. Consequently, Applicants plan to combine the HVTL certificate of need with either the wind or solar project certificate of need application.

In Applicants’ June 16 filing, they requested (1) “exemptions from certain certificate of need informational requirements”<sup>1</sup> and (2) a Commission determination that the Applicants are not required to file a notice plan under Minn. R. part 7829.2550. Alternatively, “[i]f the Commission believes a notice plan is required, then applicants ask that the Commission grant applicants a waiver so they can file the notice plan later in the process. . . .”<sup>2</sup>

Specifically, Applicants requested an exemption or variance from the following Minnesota Rules:

- 7849.0240, subp. 2 (B): Promotional Activities;
- 7849.0250 (B) (1) – (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;
- 7849.0250 (D): Map of Applicant’s System;
- 7849.0260(A)(3) and (C)(6): Details Regarding Alternatives;
- 7849.0260(B)(1): Alternatives to LHVTL;
- 7849.0260(C)(5): Details Regarding Alternatives;
- 7849.0260(D): Map of the Applicant’s System;
- 7849.0270: Peak Demand and Annual Consumption Forecast;
- 7849.0280: System Capacity;
- 7849.0290: Conservation Programs;
- 7849.0300: Consequences of Delay;
- 7849.0330: Transmission Facilities;
- 7849.0340: No-Facility Alternative; and
- 7829.2550: Notice Plans When Seeking Certification of High-Voltage Transmission Lines.

#### **A. Data requirements**

Minnesota Rules, part 7849.0200, subpart 6, states that “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

---

<sup>1</sup> Applicants’ request for exemption, at 2 (June 19, 2019).

<sup>2</sup> *Id.*

another document.” Applicants requested exemptions from certain certificate of need requirements that they believed were “inapplicable to [Applicants] and otherwise irrelevant in determining [the] project’s need,”<sup>3</sup> and proposed alternative documents when appropriate.

Applicants reasoned that the rules from which they requested exemptions are relevant to utilities, whereas Applicants are independent power producers (IPPs). Because Applicants are not utilities, they do not have retail rates, retail customers, or a system of generation, transmission, and distribution facilities, and they do not purchase power. Applicants noted that, because of these differences, in some cases the required information does not exist, and in others, the rule simply contemplates circumstances that do not pertain to the Applicants or the anticipated projects. For example, Minn. R. 7849.0250(D) requires a map of the applicant’s “system.” Because Applicants do not have a “system,” Applicants proposed instead providing a map of the proposed project sites and their location relative to the grid.

### **B. Notice plan requirement**

Applicants also requested a variance from the notice plan requirement in Minnesota Rules, part 7829.2550, which requires a notice plan to be filed three months before a certificate of need application is filed for a HVTL.

First, Applicants requested a declaratory determination that no HVTL notice plan be required. Applicants reasoned that the rule requiring a notice plan was intended to apply to stand-alone HVTLs that are not associated with proposed electric generating plants because, if the Commission “agreed in the first instance for the need on the separate wind and solar projects,” “it would be illogical for a person to argue the [associated HVTL] isn’t needed.”<sup>4</sup> Therefore, applicants argued that “once need is determined for the generating plant, one should be unable to question the need for the [associated HVTL] in the same way they should be able to question the need for a stand-alone HVTL.”<sup>5</sup>

Furthermore, Applicants noted that “they intend to secure all right-of-way for the [HVTL] through *voluntary* easements,”<sup>6</sup> so affected landowners will necessarily be made aware of the HVTL.

Finally, Applicants stated that they will be providing notices required by Minnesota Statutes section 216B.243 and chapters 216E and 216F, so affected landowners will also be made aware of the anticipated projects through those avenues.

Alternatively, Applicants requested a variance from the notice plan requirement that would allow Applicants to file the plan later in the certificate of need process, after a route has been proposed. Under Minnesota Rules, part 7829.3200, “[t]he commission shall grant a variance to its rules when it determines that... enforcement of the rule would impose an excessive burden upon the

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, at 12.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, at 13 (emphasis in original).

applicant or others affected by the rule; granting the variance would not adversely affect the public interest; and granting the variance would not conflict with standards imposed by law.”

Applicants asserted that because they do not yet know the HVTL route, it would be an excessive burden to provide notice to affected landowners, and that adding a three month notice period to the certificate of need process would also be an excessive burden.

## **II. Party comments**

### **A. The Department**

The Department recommended that the Commission approve the Applicants’ data exemption requests with certain conditions, but deny the request for a variance to the notice plan requirement.

First, the Department recommended that the Commission approve the exemptions to Minnesota Rules, parts 7849.0250(B)(1), 7849.0250(D), 7849.0290, and 7849.0330 as requested by the Applicants. The Department reasoned that each of these exemptions was reasonable because the rules are not relevant to Applicants or their anticipated projects. In some cases, Applicants proposed providing alternative information; the Department supported each of these proposals.

Next, the Department recommended that the Commission approve exemptions to the following rules on the condition that if a power purchase agreement (PPA) is executed before the certificate of need applications are submitted or during the pendency of the certificate of need proceeding, the Applicants must provide equivalent data from any purchaser or any alternative data proposed by the Applicant, where applicable:

- 7949.0240, subp. 2 (B): Promotional Activities;
- 7849.0250 (B) (2), (3), and (5): Description of Certain Alternatives;
- 7849.0250 (C) (7): Effect of Project on Rates System-wide;
- 7849.0270: Peak Demand and Annual Consumption Forecast;
- 7849.0280: System Capacity;
- 7849.0300: Consequences of Delay; and
- 7849.0340: No-Facility Alternative.

The Department stated that it is reasonable to grant these exemption to IPPs “because these companies do not have captive customers.”<sup>7</sup> Rather, the applicants are presumably seeking a purchaser for the anticipated output of the facilities. The Department reasoned that these rules are not currently relevant to the Applicants, but may be relevant to any future purchasers; consequently, these exemptions should be granted on the condition that if a PPA is executed while these dockets are pending, the Applicant will need to obtain and provide the relevant information.

---

<sup>7</sup> Department comments, at 5 (July 22, 2019).

The Department also recommended that the Commission grant a partial exemption to Minnesota Rules parts 7849.0250(B)(4) and 7849.0250(C)(1) to (6), (8), and (9), such that the information to be provided is limited to renewable alternatives. The Department agreed with the Applicants' reasoning that the intent of the anticipated wind and solar projects is to generate energy "that will count toward satisfying the purchaser's renewable, clean energy or sustainability standards. Given this purpose, only renewable energy sources are alternatives to the project."<sup>8</sup> Therefore, the Department agreed that only information about renewable alternatives would be relevant. Commission staff recommended that information related to sustainable or clean energy alternatives be included as well, as that would also meet the Applicants' stated intent of the power purchase.

The Department recommended taking no action on the requests for exemption from Minn. R., part 7849.0260. The Department stated that "under Minnesota Rules, the transmission line associated with the proposed generating facilities is not considered to be a facility separate from the generating facilities and therefore does not qualify as a large high voltage transmission line."<sup>9</sup> According to the Department, Applicants are not subject to these rules and exemptions would be unnecessary.

Finally, the Department recommended that the Commission deny Applicants' request for a variance to Minnesota Rules, part 7829.2550, the notice plan requirement. The Department asserted that although the HVTL is considered an "associated facility" and does not require a separate certificate of need, it does fall under the definition of a "large energy facility" and therefore does require a notice plan under Minnesota Rules, part 7829.2550.

The Department disagreed with what they believed was Applicants' "very narrow reading of the rule language" and reasoned that "a large energy facility such as the Applicants' proposed interconnection line will have the same impacts to landowners and other stakeholders whether the line is subject to a separate [certificate of need] or is certified as an associated facility. Notice is important, no matter what approval process is followed, so that interested persons can participate in the process and provide needed input."<sup>10</sup>

The Department asserted that the Applicants' request for a variance to the notice plan requirement did not meet the criteria in Minnesota Rules, part 7829.3200. The Department stated that if the Applicants have sufficient information to file a complete certificate of need application, then it is possible for them to provide notice as required by the rule, and noted that notice is "not a new or unexpected requirement."<sup>11</sup> Finally, the Department asserted that because the notice plan requirement is what ensures that the public receives due process, granting a variance as requested by Applicants would adversely affect the public interest and would conflict with standards imposed by law.

---

<sup>8</sup> Applicants' request for exemption, at 5 (June 19, 2019).

<sup>9</sup> Department comments, at 8 (July 22, 2019).

<sup>10</sup> Applicants' request for exemption, at 5 (June 19, 2019).

<sup>11</sup> *Id.*, at 13.

## **B. LIUNA Minnesota**

Comments were also submitted by LIUNA Minnesota, a labor union representing skilled construction workers throughout the state. LIUNA’s comments were generally supportive of Applicants’ request for certificate of need exemptions, stating that LIUNA “[sees] no reason for the Commission to burden the applicant or clutter the docket by requiring certain Certificate of Need requirements.”<sup>12</sup> However, LIUNA noted its concern that exemptions may be used as “a cudgel” to “limit inquiry into the socioeconomic impacts and its alternatives,” and asked the Commission to ensure “full consideration of socioeconomic impacts, including the differential impact on the availability of high-quality local construction jobs . . . .”<sup>13</sup>

## **C. Applicants’ reply comments**

Applicants submitted reply comments disagreeing with the Department’s characterization of their notice plan variance request and providing additional history and background on the notice plan rule and related statutes. Applicants concluded that “[t]he history of HVTL notice plans demonstrate they were not intended in situations where nonutilities propose transmission lines to connect renewable energy production facilities to the grid.”<sup>14</sup>

## **III. Modification of request**

At the Commission meeting, Applicants modified their request for a variance to the notice plan requirement. As discussed above, Minnesota Rule part 7829.2550 requires a notice plan to be filed three months before a certificate of need application is filed for a HVTL. In their June 19 filing, Applicants requested a declaratory determination that no notice plan would be required, or in the alternative, authorization to file a notice plan roughly midway through the certificate of need process. At the meeting, Applicants instead requested authorization to file a notice plan at the same time they file the certificate of need application (approximately three months earlier than their original request).

Because this modification was made at the Commission meeting, parties did not have time to submit comments on the new request. The Department was unable to comment on the appropriateness of this variance at the meeting and stated that it would need additional time for attorneys and staff to analyze the modified request before it could offer an opinion.

## **IV. Commission action**

The Commission agrees with the Department’s comments and reasoning on the various data exemption requests, as modified by Commission staff, and will adopt the Department’s recommendations accordingly, as discussed below.

As noted above, under Minnesota Rules, part 7849.0200, subpart 6, “a person is exempted from any data requirement of parts 7849.0010 to 7849.0400 if the person (1) requests an exemption

---

<sup>12</sup> LIUNA Minnesota comments (July 22, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> Applicants’ reply comments, at 7 (July 29, 2019).

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.”

The Commission believes that the exemptions it grants in this order meet the standard set out in Minnesota Rules part 7849.0200. First, the Applicants have requested exemptions from specified rules in writing, in their June 19 filing.

Second, the rules and portions of rules from which the Commission is exempting the Applicants are not relevant to the Applicants or their anticipated projects, and are therefore unnecessary to determine the need for the proposed facilities. In many cases, the required data does not exist. The Commission has narrowly tailored the exemptions to require as much information as practicable, directing Applicants to provide alternative information or establishing conditions on exemptions when relevant and necessary to determine need.

The Commission will make no decision at this time on Applicants’ request for a variance to Minnesota Rules part 7829.2550, the notice plan requirement. Because Applicants modified their variance request at the Commission hearing, the Commissioners and other parties did not have an opportunity to carefully review the modified request. The Commission anticipates that Applicants may file their updated variance request separately and if they do, the Commission will make a decision on the notice plan variance following a public comment period and with the benefit of a fully-developed record.

Finally, the Commission appreciates LIUNA Minnesota’s comments and intends to fully consider relevant socioeconomic impacts as these dockets progress.

## **ORDER**

1. The Commission grants exemptions to the following rules as requested by Applicants:
  - a. 7849.0250 (B) (1)
  - b. 7849.0250 (D)
  - c. 7849.0290
  - d. 7849.0330
2. The Commission grants exemptions to the following rules on the condition that if a power purchase agreement is executed prior to application submittal or during the pendency of the certificate of need proceeding, the Applicants must provide equivalent data from any purchaser or any alternative data proposed by the Applicant:
  - a. 7949.0240, subp. 2 (B)
  - b. 7849.0250 (B) (2), (3), and (5)
  - c. 7849.0250 (C) (7)
  - d. 7849.0270
  - e. 7849.0280

- f. 7849.0300
  - g. 7849.0340
3. The Commission grants exemptions to the following rules, such that the information to be provided is limited to renewable, sustainable, or clean energy alternatives:
- a. 7849.0250 (B) (4)
  - b. 7849.0250 (C) (1) to (6), (8), and (9)
4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service or email [consumer.puc@state.mn.us](mailto:consumer.puc@state.mn.us) for assistance.