

**Minnesota Public Utilities Commission**  
**Staff Briefing Papers**

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Meeting Date: **April 11, 2013** ..... **Agenda Item # \*2**

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Company: EDF Renewable Energy

Docket No. IP-6646/CN-13-193

Subject: In the Matter of the Application of EDF Renewable Energy for a Certificate of Need for the 100 MW Stoneray Wind Project in Pipestone and Murray Counties, Minnesota

Issue(s): Should the Commission vary Minnesota Rules 7849.0200 subp. 6 to allow more time to consider the merits of the exemption petition and application completeness?

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**Relevant Documents**

Minn. Rules, 7849.0200: Procedures & Timing

Minn. Rules, 7829.3200: Other Variances

EDF Renewable Energy – Request for Exemptions and Variance ..... March 15, 2013

The attached materials are workpapers 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.

**This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 296-0406 (voice), 1-800-627-3529 (TTY relay service) or by dialing 711.**

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## ***Statement of the Issue***

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Should the Commission vary Minnesota Rules 7849.0200 subp. 6 to allow more time to consider the merits of the exemption petition and application completeness?

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## ***Background***

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On March 15, 2013 the Minnesota Public Utilities Commission (Commission) received a request from EDF Renewable Energy (Applicant or EDF) for an exemption from some of the data requirements for a certificate of need application in Minnesota Rule, Chapter 7849.<sup>1</sup> EDF also requested a variance to the rule requirement that an exemption request be filed at least 45 days before a certificate of need application is filed.

The Commission issued a notice of comment period on the requested exemptions and variance on March 25, 2013, requesting initial comments by April 5, 2013 and reply comments by April 12, 2013.<sup>2</sup>

The Applicant is proposing a 100 MW large electric wind-generation facility in Pipestone and Murray County in southwest Minnesota. The Applicant proposes to locate the project in an area near Woodstock, Minnesota.

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## ***Laws and Rules***

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The proposed wind project is a large energy facility as defined by Minnesota Statute §216B.2421, subd. 2 (1) because it is an electric power generating plant or combination of plants at a single site with a combined capacity of 50 MW or more and has transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system. Therefore, under Minnesota Statute §216B.243, Subd. 2 the project must receive a certificate of need from the Commission before it can be constructed.

The operative certificate of need rules for this project are in Chapter 7849. The specific provisions related to the items under discussion are Minn. Rules 7849.0200, subp. 5 and 6.

Minnesota Rule 7849.0200, subp. 6 reads:

**Exemptions.** 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 commission shall respond in writing to a request for exemption within 30 days of receipt and include the reasons for the decision. The commission shall file a statement of exemptions granted and reasons for granting them before beginning the hearing. (Emphasis added.)

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1 EDF Renewable Energy: *Initial Filing – 100 MW Stoneray Wind Project* (March 15, 2013) – eDockets ID [20133-84687-01](#)

2 MN Public Utilities Commission: *Notice of Comment Period* (March 25, 2013)- eDockets ID [20133-85001-01](#)

Minnesota Rule 7849.0200, subp. 5 reads:

**Complete Applications.** The commission must notify the applicant within 30 days of the receipt of the application if the application is not substantially complete. On notification, the applicant may correct any deficiency and may resubmit the application. If the revised application is substantially complete, the date of its submission is considered the application date.

Both subpart 5 and 6 provide that the Commission has 30 days to act on each filing, first, the consideration of the exemption request and second, the determination of application completeness.

### *Staff Analysis*

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Staff is proposing a variance with respect to the timing requirement in the rule subparts. Specifically, staff is proposing that 1) the Commission vary the 30 day timing requirement in Minn. Rule 7849.0200 Subpart 6 in order to allow sufficient time to solicit comments, review the exemption request, hold a Commission meeting and provide a written order and 2) that the Commission vary Minn. Rule 7849.0200 subpart 5 in order to allow sufficient time to solicit comments on the completeness of the certificate of need application upon it being filed, to review the filing and comments, hold a Commission meeting and provide a written order.

Staff believes that the extensions of time to consider 1) the request for exemption and 2) the completeness of the forthcoming certificate of need application are reasonable and consistent with the Applicant's long-term schedule for the project. Staff will bring the merits of the exemption request and the assessment of application completeness before the Commission as soon as practicable.

Requests for exemption and completeness determinations are sufficiently complicated that comments from the Division of Energy Resources (DER) – Energy Planning and Advocacy staff have been helpful to the Commission. Specifically, with the amount of time necessary for due process, as well as consideration of the DER and staff resources, 30-day review periods typically do not allow sufficient time to evaluate a filing and comments, schedule a Commission meeting, and prepare a written order.

### *Criteria for a Variance*

Minnesota Rules, part 7829.3200 provides that the Commission shall grant a variance to a given rule when it determines that the following three conditions are met:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

Staff believes these three conditions are met under the circumstances outlined above. First, enforcement of the rule would impose an excessive burden on the Commission, its staff, the staff of the DER, and other interested persons because of the short time available for comments, a

Commission meeting and a written order.

Second, the public interest would be poorly served by inadequate consideration of request for exemption and application completeness. As suggested above, the long-term schedule for the project should accommodate a review period longer than 30 days in each instance. A thorough and careful evaluation of what should be filed in the application and a later determination of whether the proper information has been filed is important. A more thorough review at this time may prevent later delays in the review process.

Third, staff is unaware of any way by which an extension would conflict with any other standards imposed by law.

NOTE: Commission staff did not solicit comments on the time extension issue. While staff believes there is no opposition to tolling the time on these matters, the Commission should offer parties or interested persons the opportunity for oral comment at the hearing.

### ***Decision Alternatives***

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1. Grant a variance to Minnesota Rules, part 7849.0200, subp. 5 and subp. 6 to extend both 30-day time periods provided for Commission consideration of the exemption request and the completeness of the application. Provide a variance for an unspecified but reasonable period of time.
2. Make some other decision deemed more appropriate than the aforementioned alternatives.
3. Deny the requests for a variance.

### ***Recommendation***

Staff recommends Alternative 1.