

December 27, 2024

VIA E-FILING

Mr. William Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101-2147

Re: In the Matter of Amazon Data Services, Inc.'s Petition for an Exemption from Certificate of Need Requirements for Emergency Backup Generators at Becker, Minnesota

MPUC Docket No. ____ /M-24-____

Dear Mr. Seuffert:

Enclosed please find Amazon Data Services, Inc.'s Request for an Exemption from Certificate of Need Requirements for Emergency Backup Generators at Becker, Minnesota, which has been e-filed through www.edocket.state.mn.us.

Please let me know if you have any questions regarding this filing.

Sincerely,

FREDRIKSON & BYRON, P.A.



Christina K. Brusven
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**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Hwikwon Ham	Commissioner
Valerie Means	Commissioner
Joseph K. Sullivan	Commissioner
John Tuma	Commissioner

In the Matter of Amazon Data Services, Inc.'s Petition for an Exemption from Certificate of Need Requirements for Emergency Backup Generators at Becker, Minnesota

MPUC Docket No. ____/M-24-____

SUMMARY OF FILING

On December 27, 2024, Amazon Data Services, Inc. (ADS) filed a petition with the Minnesota Public Utilities Commission (Commission) requesting:

- (1) an exemption from the certificate of need (CN) requirements in Minn. Stat. § 216B.243 and Minn. R. Ch. 7849 for emergency backup generators needed at its proposed data center in Becker, Minnesota;
- (2) in the alternative, if the Commission determines a CN is required for emergency backup generators, exemptions from certain CN application data requirements pursuant to Minn. R. 7849.0200, subp. 6; and
- (3) resolution of the petition on an expedited basis under Minn. R. 7829.1275.

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In the Matter of Amazon Data Services, Inc.’s Petition for an Exemption from Certificate of Need Requirements for Emergency Backup Generators at Becker, Minnesota

MPUC Docket No. ____/M-24-____

INTRODUCTION

In accordance with Minn. Stat. §§ 216A.05, 216B.08, 216B.243, Minn. R. 7829.1300, and Minn. R. 7829.3200, Amazon Data Services, Inc. (ADS) respectfully petitions the Minnesota Public Utilities Commission (Commission or MPUC) for an order exempting ADS’s proposal to construct behind-the-meter, emergency generators to ensure a continuous power supply at its data center from the Certificate of Need (CN) requirements in Minn. Stat. § 216B.243 and Minn. R. Ch. 7849. The proposed emergency backup generators will not be connected to the grid and will only provide emergency power to the data center (1) in the event power is unavailable from its electric supplier, Xcel Energy, (2) for testing and routine maintenance purposes, and (3) during other electricity outages. The emergency backup generators are generally expected to run less than 15 hours per year for necessary equipment testing and maintenance, plus in extraordinary circumstances of utility outages and other power interruptions.¹

¹ ADS will operate the emergency backup generators in compliance with federal regulations and a capped emissions permit or individual minor source air permit to be issued by the Minnesota Pollution Control Agency.

Alternatively, if the Commission determines that a CN is required, ADS requests the Commission grant it exemptions from certain application data requirements pursuant to Minn. R. 7849.0200, subp. 6.

BACKGROUND

ADS is proposing to construct a data center in Becker, Minnesota. ADS purchased property for the data center in Becker, adjacent to Xcel Energy's Sherburne County Generating Facility (Sherco Plant). ADS's selection of this site was informed by the City of Becker's redevelopment plans for the area around the Sherco Plant. The City of Becker is looking for additional light industrial, manufacturing and other industrial uses to develop this area and replace some of the tax base lost when Xcel Energy decommissions the Sherco Plant.² The City of Becker completed an Alternative Urban Areawide Review (AUAR) to expedite potential development and specifically identified data centers as a planned land use in this area.³

The data center will provide services that are increasingly important in our digital world, such as storage and processing for large amounts of data, by housing computing equipment like servers, storage systems, and networking devices. It also allows organizations to centrally manage and access their critical applications and data, including backups, while ensuring security and high availability through redundancy. The facility is expected to have a peak daily load requirement of up to 600 megawatts (MW), which will be supplied by power purchased from the local utility, Xcel Energy. However, data centers must have reliable, on-demand backup power in the event of potential service disruptions. This generation must be able to deliver power within 10 seconds of

² See Xcel Energy / City of Becker Alternative Urban Areawide Review (hereinafter AUAR) 2 (January 2023), <https://www.ci.becker.mn.us/DocumentCenter/View/2689/Xcel-Energy--City-of-Becker-AUAR>.

³ *Id.*

power loss and be able to generate up to 600 MW with minimal disruption under all weather conditions.

ADS is proposing to supply this backup power from approximately 250 Tier 4-compliant⁴ generators ranging in size from 250 kilowatts (kW) to 2.75 MW. These generators will provide power solely to ADS's data center, and will operate only when power from the Xcel Energy system is interrupted and for routine testing and maintenance per the manufacturer instructions. The generators will be electrically isolated from Xcel Energy's system, such that power will never flow from any generator onto the Xcel Energy local distribution or transmission systems. The emergency backup generators will not require the construction of any interconnection facilities, transmission lines, or transmission network upgrades. The generators will be fueled by diesel that will be stored onsite in belly tanks within the generators and in aboveground storage tanks. ADS plans to submit a site permit application under Minn. Stat. § 216E.03 as soon as possible after the Commission issues a decision on this petition.

PROCEDURAL REQUIREMENTS

ADS provides the following required general filing information for miscellaneous filings under Minn. R. 7829.1300.

A. Summary of filing.

A one-paragraph summary of the filing accompanies this petition pursuant to Minn. R. 7829.1300, subp. 1.

B. Service on other parties.

ADS is not a public utility and therefore does not have an established general service list pursuant to Minn. R. 7829.0600. A copy of this petition has been served on the Minnesota

⁴ Tier 4 is the most stringent compliance level for clean air standards set by the U.S. Environmental Protection Agency for diesel generators under the New Source Performance Standards.

Department of Commerce, the Office of the Attorney General, and the Power Plant Siting Act service list maintained under Minn. R. 7850.2100, subp. 1(A).

C. Name, address, and telephone number of filing party.

Amazon Data Services, Inc.
410 Terry Avenue North
Seattle, WA 98109-5210
Phone: (404) 229-5403

D. Name, address, electronic address, and telephone number of any attorney that represents the filing party.

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E. The date of the filing and the date of the proposed rate or service change, if any, will go into effect.

The date of this filing is December 27, 2024. ADS is not a public utility, and there are no proposed rates or service changes associated with this filing.

F. The statute that the utility believes controls the time frame for processing the filing.

This filing is made under Minn. Stat. §§ 216A.05, 216B.08, and 216B.243. Under Minn. Rule 7829.1400, comments on miscellaneous filings are due within 30 days of filing, and reply comments are due 10 days thereafter. ADS requests expedited treatment and, therefore, requests

that the Commission specify that comments regarding this filing are due January 17, 2025, and reply comments are due January 24, 2025.

In accordance with Minn. Rule 7829.1200, ADS respectfully requests that the Commission resolve this petition on an expedited basis, aiming for a decision before March 1, 2025. Expedited resolution under Minn Rule. 7829.1200 is warranted because there are no material facts in dispute. The issue before the Commission is purely legal—whether ADS’s behind-the-meter emergency backup generators are subject to the Commission’s CN requirements. Expedited review will also facilitate efficient use of resources, as clarifying the CN requirements now, pre-application, avoids delay or ambiguity as to the content and procedural steps ADS must follow in the CN and/or site permit application process.

G. The signature, electronic address, and title of the utility employee responsible for the filing.

ADS is not a public utility. The ADS employee responsible for this filing is Aaron Toro, and his contact information is as follows:

Aaron Toro
Technical Infra Program Manager
Amazon Data Services, Inc.
410 Terry Avenue North
Seattle, WA 98109-5210
aatoro@amazon.com
(404) 229-5403

 /s/ Aaron Toro

H. A description of the filing, its impact on rates and services, its impact on any affected person, and the reasons for the filing.

ADS is submitting this petition to ensure its compliance with Minnesota’s laws and regulations governing certificates of need. ADS seeks an exemption from the Commission’s CN

requirements because it is not clear that the CN requirements are intended to apply to the emergency backup generators it seeks to develop.

And, while ADS is unaware of any other party that may be affected by this filing, ADS believes this issue is likely to appear before the Commission again soon. Data center development is rapidly expanding across the country, and many of those facilities will require the type of reliable, on-site backup generation that ADS seeks to implement. The Commission should resolve this issue now to provide clarity and transparency for the stakeholder community.

PETITION

ADS requests that the Commission: (1) determine that a CN is not required for ADS's emergency backup generators or (2) in the alternative, grant ADS exemptions from certain CN application data requirements pursuant to Minn. R. 7849.0200, subp. 6.

1. A Certificate of Need is Not Required for Emergency Backup Generation Because the Nominal Generating Capability of the Generators Does Not Exceed 50 MWs.

ADS respectfully requests that the Commission conclude that ADS's proposed emergency backup generators are exempt from CN requirements because the total size of the planned facility, net of in-plant (i.e., data center) use does not exceed the statutory 50 MW threshold for large energy facilities.

A CN is required to construct a large energy facility in Minnesota.⁵ 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."⁶ ADS proposes

⁵ Minn. Stat. § 216B.243, subd. 2.

⁶ Minn. Stat. § 216B.2421, subd. 2(1).

to construct approximately 250 Tier 4-compliant diesel generators ranging in size from 250 kW to 2.75 MW at the Becker site, totaling up to 600 MWs at a single site.

Minn. R. Ch. 7849 further clarifies the scope and applicability of the Commission's CN requirements. Minn. R. 7849.0030, subp. 1, states:

Facilities covered. A person applying for a certificate of need for an LEGF or an LHVTL shall provide the information required by parts 7849.0010 to 7849.0400. A certificate of need is required for a new LEGF, a new LHVTL, and for expansion of either facility when the expansion is itself of sufficient size to come within the definition of “large electric generating facility” or “large high voltage transmission line” in part 7849.0010. The nominal generating capability of an LEGF is considered its size. If the nominal generating capability of an LEGF varies by season, the higher of the two seasonal figures is considered its size[]

(emphasis added). Minn. R. 7849.0010, subp. 20, defines “nominal generating capability” as “the average output power level, *net of in-plant use*, that a proposed LEGF is expected to be capable of maintaining over a period of four continuous hours of operation” (emphasis added).

In 1993, the Commission relied upon this rule to conclude that Xcel Energy was not required to obtain a CN to construct two 5,400 kW⁷ emergency diesel generators required by the Nuclear Regulatory Commission (NRC) to provide emergency power systems in the case of a possible station blackout at Xcel Energy's Prairie Island nuclear generating plant.⁸ These emergency generators were required to cool the nuclear reactor core until the plant's normal in-plant power source was restored. The generators were not connected to the transmission grid for the purpose of generating power.

⁷ At the time of the Order, the definition of a “large energy facility” in Minn. Stat. § 216B.2421, subd. 2(a) included “any electric power generating plant or combination of plants at a single site with a combined capacity of 80,000 kilowatts or more or any facility of 5,000 kilowatts or more which requires oil, natural gas, or natural gas liquids as a fuel...” (emphasis added).

⁸ Order Exempting Northern States Power Company from the Requirements of Minn. Stat. 216B.243 for the Addition of Two Diesel Generators at its Prairie Island Plant (1993 Order), *In the Matter of the Petition of Northern States Power Company for an Exemption from Certificate of Need Requirements*, MPUC Docket No. E-002, M-92-246 (Jan. 11, 1993). See **Attachment A**.

In reaching the conclusion the emergency generators were exempt from CN requirements, the Commission found:

Applying these rules to the particular set of facts now before the Commission, the Commission finds that the implementation of the diesel emergency generators does not require a certificate of need proceeding. In this case, the addition to the large electrical generating facility (Prairie Island) is in the form of two emergency diesel generators. These generators will be a backup to the existing emergency diesel generators. The new generators will not be connected to the transmission grid for the purpose of generating power. Rather, they will supply an alternative source of ac power in the case of one particular event, an SBO [station blackout]. This alternative power source would be used within the plant to cool the nuclear reactor core until the plant's normal in-plant power source was restored. The diesel generators are not therefore expected to be capable of maintaining any output power level, net of in-plant use, for any period of time. Pursuant to the relevant Minnesota rules, this particular proposed addition to Prairie Island's nuclear power plant, for the particular emergency use proposed by the Company, is not an expansion to the plant for which a certificate of need proceeding is necessary.⁹

The same logic applies to ADS's proposed emergency backup generators. ADS's emergency backup generators will not be connected to the transmission grid. The emergency backup generators will supply an alternative source of power if power is unavailable from the grid, and the power will be used to operate equipment in the data center until the utility power supply is restored. Accordingly, the emergency backup generators will not be capable of maintaining *any* output power level, net of in-plant use, for *any* period of time, given that they will be sized to meet the exclusive needs of ADS's data center and will not be connected to the transmission grid.

Accordingly, ADS respectfully requests the Commission determine that ADS's proposed emergency backup generators are exempt from CN requirements because they will not have a nominal generating capability that exceeds the 50 MW threshold for large energy facilities.

2. In the Alternative, ADS Requests the Commission Grant ADS Exemptions from Certain Application Data Requirements Because the Data is Unavailable to ADS or Inapplicable for Emergency Backup Generators.

⁹ 1993 Order at 5 (emphasis added).

If the Commission finds that ADS is required to obtain a CN, it should grant exemptions from various CN application data requirements because the information is not applicable to a need determination for behind-the-meter, backup generation.

Minnesota Rules chapter 7849 sets forth the data an applicant must provide in an application for a CN for a large energy facility. An applicant may be exempted from providing certain information if the applicant requests an exemption in a writing that shows that the data requirement is either unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document.¹⁰

ADS seeks exemptions from certain data requirements that are specific to the operation and regulation of facilities proposed by utilities. For example, ADS seeks exemptions from data requirements that pertain to a utility’s “system,” *i.e.*, “the service area where the utility’s ultimate consumers are located” and the facilities used to generate, transmit, and distribute electricity to that service area.¹¹ Like many independent power producers that historically sought CNs for large energy facilities, ADS does not have an assigned service area or a “system.” The Commission has held that data requirements seeking system-related information are unnecessary to determine need in such cases.¹²

As detailed below, where applicable, ADS will provide alternative information relevant to the determination of need for the Project. The exemptions ADS requests are consistent with the relief the Commission has previously granted to independent power producers.¹³

¹⁰ Minn. R. 7849.0200, subp. 6.

¹¹ See Minn. R. 7849.0010, subp. 29.

¹² See *In the Matter of the Application of Rapids Power LLC for a Certificate of Need for its Grand Rapids Cogeneration Project*, Docket No. IP-4/CN-01-1306, Order Granting Exemptions from Filing Requirements at 4 (Oct. 9, 2001) (“Rapids Power Exemption Order”).

¹³ See, e.g., *In the Matter of the Application of Iron Pine Solar Power, LLC for a Certificate of Need for a 230 kV Transmission Line in Pine County, Minnesota*, MPUC Docket No. IP-7114/CN-23-416, Order at 1 (Dec. 26, 2023); *In the Matter of the Application of Big Bend Wind, LLC and Red Rock Solar, LLC for a Certificate of Need for an up*

ADS requests exemptions from the following data requirements:

a. Minnesota Rule 7849.0240, subp. 2(B): Promotional Activities.

This rule requires each large electric generating facility CN application to contain “an explanation of the relationship of the proposed facility to . . . promotional activities that may have given rise to the demand for the facility.” Backup generation is required when electricity is not available from the utility system, thus there are no promotional activities which would give rise to need for backup generation. Instead, emergency backup generation is a necessary component of providing reliable data services. Because there is no relationship between promotional activities and the need for emergency backup generation, an exemption is appropriate.

b. Minnesota Rule 7849.0250(C)(7): Effect of Project on Rates Systemwide.

Minnesota Rule 7849.0250(C)(7) requires an applicant to estimate its proposed project’s “effect on rates systemwide and in Minnesota, assuming a test year beginning with the proposed in-service date.” ADS requests an exemption from this requirement because it does not have a “system” as defined by the Rules, and it is not a utility with retail rates for the power it plans to generate. ADS will be solely responsible for costs related to the generators and no other utility

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, MPUC Docket Nos. IP-7013/CN-19-408 and IP-7014/CN-19-486, Order Approving Exemptions to Certain Filing Requirements at 6–7 (Sep. 24, 2019); In the Matter of the Application of Plum Creek Wind Farm, LLC for a Certificate of Need for an up to 414 MW Large Wind Energy Conversion System and 345 kV Transmission Line in Cottonwood, Murray and Redwood Counties, Minnesota, MPUC Docket No. IP-6997/CN-18-699, Order at 1 (Jan. 17, 2019); In the Matter of the Application of Blazing Star Wind Farm, LLC for a Certificate of Need for the 200 Megawatt Blazing Star Wind Project in Lincoln County, Minnesota, MPUC Docket No. IP-6961/CN-16-215 at 1 (Apr. 28, 2016) (Blazing Star Exemption Order); In the Matter of the Application of Red Pine Wind Project, LLC for a Certificate of Need for the 200 MW Red Pine Wind Project and Associated Facilities in Lincoln and Lyon Counties, MPUC Docket No. IP-6959/CN-16-140 at 1 (Mar. 25, 2016); In the Matter of the Application of Freeborn Wind Energy LLC for a Certificate of Need for the 200 MW Freeborn Wind Project in Freeborn County, Minnesota, MPUC Docket No. IP-6946/CN-15-343, Order Granting Freeborn Wind Energy LLC’s Exemption Request (June 1, 2015); In the Matter of the Application of ITC Midwest LLC for a Certificate of Need for the Minnesota-Iowa 345 kV Transmission Line Project in Jackson, Martin, and Faribault Counties, Minnesota, MPUC Docket No. ET-6675/CN-12-1053, Order Granting ITC Midwest LLC’s Requested Exemptions (Feb. 8, 2013) (ITC Exemption Order); and 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, MPUC Docket No. IP-6646/CN-13-193, Order (Apr. 29, 2013) (Stoneray Wind Exemption Order).

customers will be exposed to these costs. As such, the data is not available to ADS and is unnecessary to determine need for the Project.

c. Minnesota Rule 7849.0250(D): Map of Applicant's System.

Minnesota Rule 7849.0250(D) requires the applicant to include a map showing the applicant's system. This information does not exist and is not relevant to the determination of need for the Project. Instead, ADS proposes to submit a map showing the proposed site of the Project and its location relative to the power grid.

d. Minnesota Rule 7849.0270: Peak Demand and Annual Consumption Forecast.

Minnesota Rule 7849.0270 requires the applicant to provide "data concerning peak demand and annual electrical consumption within the applicant's service area and system." ADS does not have a "service area" or "system" and, as such, the requested data are inapplicable. Moreover, ADS's data center will be the sole consumer of power from the backup generation. As such, ADS proposes to provide information regarding the data center's peak demand and annual electrical consumption to demonstrate the backup generation has been appropriately sized to meet the needs of the data center should electricity be unavailable from the utility provider.

e. Minnesota Rule 7849.0280: System Capacity.

Minnesota Rule 7849.0280 requires the applicant to "describe the ability of its existing system to meet the demand for electrical energy forecasted in response to part 7849.0270, and the extent to which the proposed facility will increase this capability." ADS does not have a "system" as defined by the Rule. Power from the backup generation will be used exclusively to serve the data center load when and if power is unavailable from the utility provider. The backup generation will not be grid connected. Accordingly, it is not available to meet the broader demand for

electricity that may exist on the utility’s system. ADS requests a full exemption from these data requirements.

f. Minnesota Rule 7849.0290: Conservation Programs.

Minnesota Rule 7849.0290 requires an applicant to describe its energy and conservation plans, including load management, and the effect of conservation in reducing the applicant’s need for new generation and transmission facilities.

The Commission has previously determined that this Rule is “designed to ensure that regulated utilities, providing essential services to captive customers, give conservation the same careful consideration they give to new generation in planning to meet the future needs of their service areas.”¹⁴ Since ADS is not a regulated utility, has no retail customers, and will utilize the power from the backup generation exclusively to serve its data center when power is unavailable from the utility provider, it requests an exemption from this requirement in its entirety.

g. Minnesota Rule 7849.0300: Consequences of Delay.

Minnesota Rule 7849.0300 requires the applicant to discuss the “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.” ADS is not a utility and has no “system” as defined by the Rules. Moreover, the generators will not be connected to any system, neighboring system or power pools. Thus, this data requirement is inapplicable to ADS and is unnecessary to determine the need for the proposed Project. ADS requests a full exemption from this requirement.

h. Minnesota Rule 7849.0340: The Alternative of No Facility.

Minnesota Rule 7849.0340 requires an applicant to submit data for the alternative of “no facility,” including a discussion of the impact of this alternative on the applicant’s generation and

¹⁴ Rapids Power Exemption Order, at 6.

transmission facilities, system, and operations. The Rule also requires an analysis “of equipment and measures that may be used to reduce the environmental impact of the alternative of no facility.”

ADS does not have a “system,” nor does it have other generation and transmission facilities in Minnesota. As such, the requirements of this rule are not applicable to the Project and are not necessary to determine need for the facility. ADS requests an exemption from this requirement.

3. The Commission Should Grant Expedited Consideration of This Petition.

ADS respectfully requests that the Commission provide its response to this petition within approximately sixty days of submission. ADS seeks to respond to the rapidly growing demand for data center services, which requires obtaining necessary permits and beginning construction as soon as possible. Delay in determining the applicable regulatory requirements would impose an excessive burden on ADS given the expected timeline for construction of the Project. Given that this question is purely legal, granting an expedited review will not adversely affect the public interest. Moreover, this timeframe is consistent with the new applicability determinations in the Minnesota Energy Infrastructure Permitting Act and is not otherwise inconsistent with Minnesota law.¹⁵ Accordingly, we respectfully request that the Commission act expeditiously to respond to this petition.

CONCLUSION

ADS respectfully requests that the Commission provide an order clarifying that a CN is not required for construction of ADS’s proposed emergency backup generators. To the extent the Commission determines a CN is required, ADS respectfully requests exemptions from the CN data requirements described in this Petition.

¹⁵ Minn. Stat. § 216I.04 (2024).

Dated: December 27, 2024

Respectfully submitted,

/s/ Christina K. Brusven

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Attorney for Amazon Data Services, Inc.

ATTACHMENT A

E-002/M-92-246 ORDER EXEMPTING NORTHERN STATES POWER COMPANY FROM THE REQUIREMENTS OF MINN. STAT. § 216B.243 FOR THE ADDITION OF TWO DIESEL GENERATORS AT ITS PRAIRIE ISLAND PLANT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of
Northern States Power Company
for an Exemption from
Certificate of Need Requirements

ISSUE DATE: January 11, 1993

DOCKET NO. E-002/M-92-246

ORDER EXEMPTING NORTHERN STATES
POWER COMPANY FROM THE
REQUIREMENTS OF MINN. STAT.
§ 216B.243 FOR THE ADDITION OF
TWO DIESEL GENERATORS AT ITS
PRAIRIE ISLAND PLANT

PROCEDURAL HISTORY

In 1973 and 1974 Northern States Power Company (NSP or the Company) obtained the necessary licenses from the federal Nuclear Regulatory Commission (NRC) to operate Prairie Island, a two-unit nuclear generating plant. Since it came on-line, Prairie Island has been subject to the NRC's regulation of issues concerning safe operation and maintenance. Prairie Island is under the Minnesota Public Utilities Commission's jurisdiction for questions of additional generating capacity, type of generating facilities to be licensed, land use and ratemaking.

In the 1970's the nuclear industry and the NRC began investigating emergency responses to a possible "station blackout" (SBO) at a nuclear generating plant. An SBO is a complete loss of offsite power, concurrent with the failure of onsite emergency power systems. Providing a second level of emergency power is of extreme importance, because the capability of cooling the nuclear reactor core is dependent on the ability to restore power in a timely fashion.

In June, 1988, the NRC issued a final rule on the SBO issue. Among other things, the rule required all nuclear facilities to be able to cope with an SBO for a specified acceptable duration, selected on a plant-specific basis. All nuclear generating plants were required to respond to the final rule within nine months of its issuance.

After evaluating its Prairie Island facility in light of the new regulations, NSP determined that changes would be necessary to comply with the NRC's new rule. NSP decided that it must add two new emergency generators to the two existing emergency generators

which are shared by the two units. The new generators would allow two generators to be dedicated to each of Prairie Island's units. The new emergency generators, which would be fueled by diesel fuel oil, would each have capacity of 5400 kw(e). After NSP submitted the emergency generator proposal to the NRC, the NRC responded that the two new generators would bring NSP in conformance with the SBO response rule.

On March 27, 1992, NSP petitioned the Commission for an exemption from Minn. Stat. § 216B.243, the certificate of need statute. NSP cited two reasons that it did not need a certificate of need from the Commission in order to operate its new emergency generators: state certification laws are preempted by federal law because the NRC has exclusive jurisdiction over nuclear facility construction, operation and safety issues; and the generators will not be used to provide retail electric service to NSP customers.

On April 17, 1992, the Department of Public Service (the Department) and the Residential Utilities Division of the Office of Attorney General (RUD-OAG) filed comments in response to the Company's request for exemption. Although both agencies disagreed with the arguments presented by the Company, they recommended that the Commission not require a certificate of need. Both the Department and the RUD-OAG felt that this particular set of facts did not fall within the statutory purpose for a certificate of need proceeding.

The matter came before the Commission for consideration on December 10, 1992.

FINDINGS AND CONCLUSIONS

I. Governing Statutes and Rules

Determination of the issue before the Commission starts with an examination of relevant statutes and rules. The certificate of need statute, Minn. Stat. § 216B.243, provides in part that "no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission..." A large energy facility is defined in part in Minn. Stat. § 216B.2421, subd. 2 (a) as "any electric power generating plant or combination of plants at a single site with a combined capacity of 80,000 kilowatts or more or any facility of 5,000 kilowatts or more which requires oil, natural gas, or natural gas liquids as a fuel..."

Minn. Rules, part 7849.0030 determines the scope of Chapter 7849, Public Utilities Commission - Power Plants and Transmission Lines. The rule states that

A certificate of need is required for a new [large electric generating facility], a new [large high voltage transmission line], and for expansion of either facility when the expansion is itself of sufficient size to come within the definition of "large electric generating facility" or "large high voltage transmission line" in part 7849.0010.

Minn. Rules, part 7849.0010 refers back to Minn. Stat. § 216B.2421, subd. 2 (a) for the definition of large electric generating facility.

Minn. Rules, part 7849.0030 also says that the "nominal generating capacity" of a large electric generating facility is considered its size. Nominal generating capacity is explained in Minn. Rules, part 7849.0010, subp. 20 as "the average output power level, net of in-plant use, that a proposed [large electric generating facility] is expected to be capable of maintaining over a period of four continuous hours of operation."

II. Comments of the Parties

NSP

NSP argued that the emergency diesel generators were chosen and put in place at Prairie Island in response to NRC requirements. The Prairie Island generating station is under the exclusive jurisdiction of the NRC for matters of safe operation. NSP therefore concluded that questions of implementing the diesel generators were preempted by federal law.

NSP next argued that a certificate of need requirement does not apply because the diesel generators are not intended to provide retail electric service to consumers. NSP cited the Commission's enabling legislation, Minn. Stat. § 216B.01, as authority for this argument.

The Department

The Department argued that the Company chose the method of responding to the NRC's rule requirement when it decided upon designing and building diesel generators. According to the Department, decisions such as the selection of a type of plant equipment fall under the jurisdiction of the Commission, not the NRC.

The Department disagreed with the Company's argument that there is no need for a certificate because the generators will not serve retail customers. The Department pointed out that the certificate of need statutes do not distinguish retail sale situations from wholesale or other sale situations.

The Department argued that a certificate of need requirement for the NSP emergency diesel generators would be contrary to legislative intent. The addition of the generators falls outside the legislative concerns behind the certificate of need process,

as expressed in Minn. Stat. § 216C.05. Those concerns include increases in energy demand and the need for additional electrical generating plants.

The RUD-OAG

The RUD-OAG agreed with the Department that the selection of a piece of plant equipment falls under the traditional Commission authority over economic questions such as the need for additional generating capacity, the type of generating facility, land use, and rate making. The RUD-OAG concluded that issues surrounding the selection of the diesel generators were not federally preempted.

The RUD-OAG argued against NSP's statement that it was exempted from the certificate of need process because the diesel generators would not provide service to retail customers. The RUD-OAG asserted that this contention limits too narrowly the concept of electrical service to customers. The RUD-OAG also argued that the diesel generators must be considered part of the provision of electric service to retail customers if the generators were to eventually be found "used and useful in rendering service to the public" as required for rate recovery under Minn. Stat. § 216B.16, subd. 6.

III. Commission Analysis

Necessity of a Certificate of Need Proceeding

NSP's nuclear generating facility at Prairie Island clearly comes under the certificate of need parameters of Minn. Stat. §§ 216B.243 and 216B.2421, as discussed above. Although the Prairie Island plant was constructed prior to the enactment of the certificate of need statutes, it would be subject to the need process if it were constructed today. The question now before the Commission is the necessity of a certificate proceeding for the addition of two emergency backup diesel generators.

As previously stated, Commission rules (Minn. Rules, part 7849.0030) state that a certificate of need is required for expansion of a large energy generating facility "when the expansion is itself of sufficient size to come within the definition of 'large electric generating facility'..." Size, or nominal generating capability, is explained in Minn. Rules, part 7849.0010, subp. 20 as "the average output power level, net of in-plant use, that a proposed [large electric generating facility] is expected to be capable of maintaining over a period of four continuous hours of operation."

The application of the Commission rules becomes clear when they are read together. An addition to a large electrical generating facility is considered an expansion for which a certificate is required if the addition is expected to be capable of maintaining a certain average output power level, net of in-plant use, over a period of four continuous hours.

Applying these rules to the particular set of facts now before the Commission, the Commission finds that the implementation of the diesel emergency generators does not require a certificate of need proceeding. In this case, the addition to the large electrical generating facility (Prairie Island) is in the form of two emergency diesel generators. These generators will be a backup to the existing emergency diesel generators. The new generators will not be connected to the transmission grid for the purpose of generating power. Rather, they will supply an alternative source of ac power in the case of one particular event, an SBO. This alternative power source would be used within the plant to cool the nuclear reactor core until the plant's normal in-plant power source was restored. The diesel generators are not therefore expected to be capable of maintaining any output power level, net of in-plant use, for any period of time. Pursuant to the relevant Minnesota rules, this particular proposed addition to Prairie Island's nuclear power plant, for the particular emergency use proposed by the Company, is not an expansion to the plant for which a certificate of need proceeding is necessary.

The Commission notes that the construction and installation of the emergency diesel generators will be subject to the Commission's examination of prudence if rate recovery is sought in a future rate case.

Federal Preemption

NSP argued that Minnesota certificate of need statutory requirements are preempted by federal law. Having applied the Commission rules to NSP's proposed addition to its Prairie Island plant, the Commission has found that a certificate of need proceeding is not required. The Commission therefore need not reach NSP's arguments regarding federal preemption, and will not discuss them in this Order.

ORDER

1. Northern States Power Company's request for an exemption from the requirements of Minn. Stat. § 216B.243 for the addition of two emergency diesel generators at its Prairie Island plant is granted.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

CERTIFICATE OF SERVICE

**In the Matter of Amazon Data Services,
Inc.'s Petition for an Exemption from
Certificate of Need Requirements for
Emergency Backup Generators at Becker,
Minnesota**

MPUC Docket No. ____ /M-24-____

Maia Martinez certifies that on the 27th day of December, 2024, she e-filed true and correct copy the Request for an Exemption from Certificate of Need Requirements for Emergency Backup Generators at Becker, Minnesota on behalf of Amazon Data Services, Inc. via eDockets (www.edockets.state.mn.us):

Said documents were also served as designated on the Minnesota Department of Commerce, the Office of the Attorney General, and the Power Plant Siting Act service list maintained under Minn. R. 7850.2100, subp. 1(A), on file with the Minnesota Public Utilities Commission and as attached hereto.

Executed on: December 27, 2024

Signed: /s/ Maia Martinez

Fredrikson & Byron, P.A.
60 South Sixth Street
Suite 1500
Minneapolis, MN 55402

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6	Todd	Green	todd.a.green@state.mn.us		Minnesota Department of Labor & Industry	443 Lafayette Rd N St. Paul MN, 55155-4341 United States	Electronic Service		No	CN - CERTIFICATE OF NEEDS
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11	Dawn S	Marsh	dawn_marsh@fws.gov	U.S. Fish & Wildlife Service		Minnesota-Wisconsin Field Offices 4101 American Blvd E Bloomington MN, 55425 United States	Electronic Service		No	CN - CERTIFICATE OF NEEDS
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