

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

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Chair  
Vice Chair  
Commissioner  
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

DOCKET NO. PT7151/CN-24-435

**COMMENTS OF THE OFFICE OF  
THE ATTORNEY GENERAL—  
RESIDENTIAL UTILITIES DIVISION**

Amazon Data Services Inc. proposes to build approximately 250 diesel-fueled generators in Becker, Minnesota ranging in size from 250 kilowatts (kW) to 2.75 MW, capable of generating up to 600 megawatts (MW) of electricity.<sup>1</sup> The generators would run (1) in the event power is unavailable from Amazon's electric supplier, Xcel Energy, (2) for testing and maintenance, and (3) during other electricity outages.<sup>2</sup>

The Office of the Attorney General, Residential Utilities Division (OAG), recommends that the Commission deny Amazon's request to find that its proposed project does not require a certificate of need (CN). Amazon's arguments that the CN statute does not apply fail on the law and would set bad precedent. Instead, the Commission should require Amazon to make a CN filing. Regarding Amazon's data exemption request, the Commission should not exempt Amazon from the requirement that Amazon estimate the proposed project's "effect on rates systemwide and in Minnesota."<sup>3</sup> Instead, the Commission should order Amazon to work with Xcel to provide an

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<sup>1</sup> Amazon Data Services, Inc. Request for Exemption from Certificate of Need Requirements for Emergency Backup Generation at 4 (Dec. 27, 2024) (Petition).

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

<sup>3</sup> *Id.* at 11.

analysis of the impact of building 600 MW of diesel backup generation on Xcel's customers and Minnesota generally, to allow for comparison of alternatives.<sup>4</sup>

**I. AMAZON'S 600MW DIESEL-POWERED LARGE ENERGY FACILITY IS NOT EXEMPT FROM THE CN REQUIREMENTS IN MINNESOTA LAW.**

Amazon's proposed fleet of 600 MW of diesel generators require a CN under Minnesota law. For context, 600 MW is larger than Xcel's Allen S. King Unit 1 coal-fired generating plant and slightly smaller than Xcel's Monticello nuclear generating facility.<sup>5</sup> Amazon's legal arguments that its diesel generation fleet is actually zero MW, in terms of "nominal generating capability," misapplies terms in the Commission's rules. And the Commission should not give credence to Amazon's reliance on a distinguishable, and explicitly factually limited, Commission decision from 1993. Instead, the statutes and Commission rules show that 600 MW of diesel generation requires a CN from the Commission.

Additionally, Amazon's exemption request could set a significant precedent, at the early stages of data center development in the state, for how emergency electricity backup for data centers is treated in Minnesota. With rapidly evolving technologies, both in data centers and in the available means of providing backup generation, the Commission should not write itself out of the in-depth review of potential reasonable alternatives that the CN statute requires by granting Amazon's request.

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<sup>4</sup> The OAG does not oppose Amazon's request for an expedited proceeding to resolve the legal question presented by Amazon's exemption requests, provided that the CN process occurs under the normal time frames should Amazon's request be denied. *See* Petition at 1, 14.

<sup>5</sup> *See* Docket No. E999/M-24-11, Northern States Power Company, d/b/a Xcel Energy, 2023 Electric Utility Annual Report Corrected (July 26, 2024).

**A. The Energy Use of the Data Center Is Not “In-Plant Use” Because the Data Center Is Not Part of a “Plant.”**

Amazon argues that its 600 MW of generators is actually zero MW under the Commission’s rules. This is incorrect. Minnesota’s CN law requires that “[n]o large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission.”<sup>6</sup> The law further defines “large energy facility,” in relevant part, as “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.”<sup>7</sup>

Amazon’s 600 MW diesel generation facility is twelve-times larger than the 50 MW necessary to trigger the CN requirement. Amazon reasons, however, that no CN is necessary because the scope of the rules states that the size of the plant is its “nominal generating capability,”<sup>8</sup> which is defined as “the average output power level, *net of in-plant use*.”<sup>9</sup> Amazon claims that because the diesel generators are emergency backup generators, they “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 [Amazon’s] data center.”<sup>10</sup>

Amazon’s interpretation ignores that the data center, is not a “plant.” The data center’s load, therefore, should not be netted as “in-plant use.” While the Commission’s rules or statutes do not directly define “plant,” the term is used throughout chapters 216B and 7849 to be generally

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<sup>6</sup> Minn. Stat. § 216B.243, subd. 2.

<sup>7</sup> Minn. Stat. § 216B.2421, subd. 2.

<sup>8</sup> Minn. R. 7849.0030, subp. 1.

<sup>9</sup> Minn. R. 7849.0010, subp. 20 (emphasis added).

<sup>10</sup> Petition at 9 (emphasis in original).

synonymous with “power plant.”<sup>11</sup> Furthermore, the use of “plant” for “in-plant use” in 7849 derives from the statutory use of “plant” in the CN statute and cross-referenced definition of “large energy facility” in section 216B.2421.<sup>12</sup> Specifically, the definition of “large energy facility” uses “plant” several times to describe an “electric power generating plant.”<sup>13</sup>

Amazon’s planned data center, aside from the proposed diesel backup generation, is clearly not a “plant” within the meaning of the Commission’s rules. The data center would not produce energy on its own. It would do the opposite. Amazon intends for this data center to become one of the largest customers, using some of the largest load, in Xcel’s service territory.<sup>14</sup> Amazon’s data center would not be a “plant” for the purpose of measuring “nominal generating capability,” “net of in-plant use” under the Commission’s rules.

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<sup>11</sup> Minn. Stat. § 216B.1645, subd. 4(b)(2) (providing for payments of “\$50,000 for each dry cask or container containing spent fuel that is located at the Prairie Island nuclear generating facility, whether or not the *plant* is in licensed operation”) (emphasis added); 216B.1695, subd. 2(b)(2) (requiring an assessment of financial and operational impacts of regulations of “the benefits of the retirement or repowering of the *plant* that is the subject of the filing with cleaner fuels considering the costs of complying with state and federal environmental regulations”) (emphasis added); Minn. R. 7849.0210, subp. 1 (“The fee for processing an application shall be: \$10,000 plus \$50 for each megawatt of plant capacity for [Large Electric Generating Facilities] . . . .”); 7849.1500, subp. 2 (requiring the environmental report discuss “the anticipated contribution of the project to impairment of visibility within a 50-mile radius of the plant”). There are limited instances in chapter 216B where “plant” refers to natural vegetation, but these are clear from context. *See e.g.*, Minn. Stat. § 216B.2411, subd. 1(1).

<sup>12</sup> Minn. Stat. § 216B.243, subd. 3(12) (“[I]f the applicant is proposing a nonrenewable generating plant, the applicant's assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the *plant*, including a proposed means of allocating costs associated with that risk.”) (emphasis added).

<sup>13</sup> Minn. Stat. § 216B.2421, subd. 2(1) (defining “large energy facility” in relevant part as “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.”) (emphasis added).

<sup>14</sup> *See* Jenny Berg, Amazon Data Services Buys Site Slated for Data Center Near Sherco in Becker, Minnesota Start Tribune (Nov. 13, 2024) <https://www.startribune.com/amazon-data-center-xcel-sherco-becker-minnesota/601180310> (noting that a 1,000 MW data center would be equivalent to the power demands of 1 million residential customers).

**B. The 1991 Commission Decision Amazon Relies on Is Distinguishable and Explicitly Limited to Its Facts.**

Amazon also argues that a CN is not required under a 1993 Commission order regarding Northern States Power's (NSP) Prairie Island nuclear power plant. But that proceeding was distinguishable, and the Commission's 1993 determination was explicitly limited to its facts.

The proceeding referenced by Amazon did not discuss backup generation for a potential electricity customer, but instead dealt with whether NSP's additional generators at Prairie Island were an "expansion" of the plant requiring a CN. NSP argued that its proposed emergency backup generators were required by the Nuclear Regulatory Commission for safe operation of the plant and that the CN requirements did not otherwise apply.<sup>15</sup>

The Commission determined that the diesel generators were not an expansion to an existing plant within the Commission's rules and, as such, did not reach the preemption question. Importantly, the Commission emphasized that its rules were being applied to "the particular set of facts now before the Commission."<sup>16</sup> Importantly those facts included that the diesel emergency generators were part of an existing "plant." As the Commission explained, the Prairie Island emergency generators "would be used within the plant" to cool the reactor until the plant's normal in-plant power source was restored. Therefore, the Commission reasoned "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."<sup>17</sup>

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<sup>15</sup> Petition, Attach. A at 3.

<sup>16</sup> Petition, Attach. A at 5.

<sup>17</sup> Petition, Attach. A at 5 (emphasis added).

The particular set of facts proposed by Amazon are quite different than those presented to the 1993 Commission. Here, Amazon’s proposed diesel generators would not be “used within the plant” because there is no associated “plant” run by Amazon. Instead, the generators would power the Amazon data center, which is a potential Xcel Energy customer, not an electricity generating plant. Further, Amazon is not proposing an expansion to an existing plant, nor are the diesel generators related to another “plant” within the meaning of the rules. Last, Amazon is not claiming that the diesel generators are required by federal law for an existing plant to continue operating.

The Commission’s 1993 order, which the 1993 Commission explicitly limited to its facts, is clearly distinguishable and the Commission should not rely on it.

**C. Exempting Amazon from a CN Could Set a Precedent for Future Data Centers in an Area of Emerging Technologies and Rapid Change.**

The Commission’s decision in this proceeding could set a precedent for how emergency electricity backup for data centers is treated in Minnesota near the beginning of data center development in the state. Energy generation technology is rapidly evolving and potential alternatives to diesel backup may grow or become cheaper. If the Commission determines that Amazon’s facility does not require a CN, the ability to explore reasonable alternatives from evolving technologies may be cut off.

Although the backup generators will not be connected to the transmission grid,<sup>18</sup> this does not mean that the choice of the type of emergency backup generation will not have impacts on Minnesota’s grid. Due to significant emissions, diesel generators are only permitted to run a limited number of hours. Amazon’s petition acknowledges that the diesel generators would only run if power is unavailable from Xcel, for testing, or during other electricity outages.<sup>19</sup> As Amazon

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<sup>18</sup> Petition at 9.

<sup>19</sup> *Id.* at 2.

notes, it will only “operate the emergency backup generators in compliance with federal regulations and a capped emissions permit or individual minor air permit to be issued by the Minnesota Pollution Control Agency.”<sup>20</sup> While necessary to protect air quality from diesel generation emissions, these limitations may restrict the use of this type of data-center backup generation to function as a system demand-response resource or to reduce the system costs necessary to serve data centers. Other potential data center backup resources, however, may not be as limited.

While the OAG understands that data centers have generally used diesel emergency backup generation in the past, this may not be always be the case in the future. Data centers are exploring alternative generation for emergency backup and off-grid operation, including natural gas combustion turbines<sup>21</sup> and fuel cells.<sup>22</sup> Although some mitigation of the environmental impacts from diesel backup generation may be achievable through a site permit or through air quality permits, data center impacts to the grid are immense, and retaining the availability to explore reasonable alternatives to diesel backup generation will be increasingly important as technology evolves.

## **II. THE COMMISSION SHOULD DENY AMAZON’S REQUEST FOR AN EXEMPTION TO THE COMMISSION’S RULES REQUIRING ANALYSIS OF THE EFFECT OF THE PROJECT ON RATES SYSTEMWIDE AND IN MINNESOTA.**

The Commission should not exempt Amazon from the requirement that Amazon estimate the proposed project’s “effect on rates system wide and in Minnesota.”<sup>23</sup> Instead, the Commission

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<sup>20</sup> *Id.* at 2 n.1.

<sup>21</sup> See Powering Data Centers with Natural Gas, Black & Veatch, *available at* <https://www.bv.com/en-US/perspectives/powering-data-centers-with-natural-gas-a-report-on-the-benefits-of-natural>

<sup>22</sup> Rethinking Data Center Power, HDR (May 8, 2023), <https://www.hdrinc.com/insights/rethinking-data-center-power>.

<sup>23</sup> Minn. R. 7849.0250(C)(7).

should order Amazon to work with Xcel to provide an analysis of the impact on Xcel’s customers and Minnesota generally of the project to allow for comparison of alternatives.

The Commission’s rules require that a CN application provide “an estimate of its effect on rates systemwide and in Minnesota, assuming a test year beginning with the proposed in-service date.”<sup>24</sup> This data then informs the parties analysis, and the Commission’s consideration, among other things, of whether “a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.”<sup>25</sup>

Amazon’s claim that this data is “unnecessary to determine need for the Project” is incorrect.<sup>26</sup> Amazon is proposing a backup generator that can only run in limited duration, whereas there may be alternatives that allow for better integration with utility’s system that could reduce rate impacts. Exempting Amazon completely from this important data requirement and giving weight to similar exemption requests for future projects while many utility customer’s rates are climbing is unreasonable. It could also set poor precedent at the advent of data center buildout in Minnesota.

Instead, the Commission should order Amazon to work with Xcel to provide an analysis in the CN application of the impact of building 600 MW of diesel back up generation on Xcel’s customers and Minnesota electricity rates generally, to allow for comparison of alternatives.

## CONCLUSION

The OAG recommends the Commission deny Amazon’s request to find that it is exempt from the CN requirements in Minnesota law. The OAG also recommends the Commission deny Amazon’s alternative requests for a complete exemption from Minn. R. 7849.0250(C)(7). Instead,

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<sup>24</sup> *Id.*

<sup>25</sup> Minn. R. 7849.0120(B).

<sup>26</sup> Petition at 11–12.



the Commission should order Amazon to work with Xcel to provide an analysis in the CN application of the impact of building 600 MW of diesel back up generation on Xcel's customers and Minnesota electricity rates generally, to allow for comparison of alternatives.

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Respectfully submitted,

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