

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

Katie Sieben
Hwikwon Ham
Joseph Sullivan
John Tuma

Chair
Commissioner
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

**REPLY COMMENTS OF
MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY**

February 10, 2025

INTRODUCTION

Minnesota Center for Environmental Advocacy (“MCEA”) respectfully submits these comments responding to the initial comments of various parties regarding Amazon Data Services, Inc.’s (“Amazon”) Petition for an Exemption from Certificate of Need Requirements (“Petition”).

ARGUMENT

I. MCEA, DOC, OAG, and CURE agree a Certificate of Need is legally required

MCEA agrees with the legal analysis provided in the comments of the Department of Commerce (“DOC”), Office of the Attorney General-Residential Utilities Division (“OAG”), and CURE. Specifically, the comments of each of these parties provide a legal analysis of the statutes and rules governing certificates of need (“CN”). Each conclude that Amazon’s diesel backup generation proposal requires a CN because the proposal for 600 MW of generation satisfies the size threshold in Minn. Stat. § 216B.2421, subd. 2(1), and the nominal generating capability of the proposal also satisfies this size threshold.¹

The forementioned parties reached this conclusion by interpreting the legal definition of “nominal generating capability” the same way. These parties all found that determining the nominal generating capability requires subtracting from the plant’s output the electricity used by the power plant itself (and not the load, as Amazon suggests). MCEA’s reading of the CN law is the same as DOC, OAG, and CURE as

¹ Initial Comments of DOC at 2-4; Initial Comments of OAG at 2-4; Initial Comments of CURE at 1-3.

discussed in our initial comments.² MCEA also agrees with DOC, OAG, and CURE that Amazon's proposal is distinguishable from the 1993 Commission decision cited by Amazon, and that the 1993 decision is not precedential.³ Therefore, DOC, OAG, CURE, and MCEA read the relevant law consistently, and all conclude that Amazon's proposal requires a CN under the law.

II. The CN process provides a public policy benefit and is in the public interest

MCEA disagrees with certain commenters that assert "there is no public interest policy rationale for requiring a certificate of need in the present case."⁴ On the contrary, as noted by MCEA, OAG, and CURE in initial comments, the CN process serves a significant public interest because it is the only opportunity regulators and the public have to explore alternate technologies available and to require Amazon to put forth a better proposal if there are clearly better alternatives.⁵

While the project will also require a site permit from the PUC, an air permit from MPCA, and will undergo environmental review, the CN permit is still the only place where regulators have decision-making authority over the "what" of Amazon's proposal. For example, the site permit will focus only on the question of "where" and determine where Amazon's backup generation should be located at its data center complex.⁶ The

² See Initial Comments of MCEA at 3-4.

³ See Initial Comments of DOC at 3-4; Initial Comments of OAG at 5-6; Initial Comments of CURE at 3-4.

⁴ Initial Comments of the Operating Engineers Local 49 and North Central States Regional Council of Carpenters at 2.

⁵ See Initial Comments of OAG at 7; Initial Comments of CURE at 6-7; Initial Comments of MCEA at 1-3.

⁶ MCEA believes the Commission has the authority to deny site permits, but notes this is an area where there is frequently disagreement amongst various stakeholders.

MPCA's air permit will focus on the "how" to ensure Amazon's backup generation is run in compliance with air pollutant limits. And while the environmental review process will contain information about the proposal and discuss alternatives, without the CN permit there will be no opportunity for a regulator to use this information to require a better proposal if one is available. For example, without the CN, even if there was a better technology available or an opportunity for energy efficiency or demand response to play a role, no state agency would have authority to require Amazon to put forth such an improved proposal.

Therefore, in addition to being legally required, there is a clear public policy rationale for requiring a CN for Amazon's proposal. It is the only permit that allows the public and decision-makers to improve the fundamental proposal, if there are improvements to be made.

III. The CN process is unlikely to cause significant delay

MCEA notes the parties that support Amazon's requested CN exemption are largely concerned about how a CN could affect the timeline of Amazon's proposed data center project.⁷ However, MCEA does not believe a CN should create any significant delay for the project's timeline. Amazon's backup diesel generation already requires a

⁷ See Letter of Support from the City of Becker at 2 ("ADS has told us that if the CN is required, it greatly impacts their decision as to the timing and scope of the ultimate build out . . ."); Initial Comments of Operating Engineers Local 49 and North Central States Regional Council of Carpenters at 1 ("Ensuring that Minnesota has an appropriately efficient regulatory process to permit data centers and any associated backup sources of electricity generation will be critical to the future of our economy."); Initial Comments of LiUNA at 1 ("The likelihood of Minnesota securing this proposed investment . . . is directly affected by the ability of state and local governments to provide a fair, proportional and timely process for reviewing and providing necessary approvals.").

site permit and the completion of environmental review under Chapter 216E or 216I.⁸ Moreover, pursuant to Minn. Stat. § 216B.243, subd. 5, the CN process is required to be completed within 12 months of submission of the application, and it is unlikely that the environmental review and site permit proceedings would be completed before this timeline.

CONCLUSION

In conclusion, a CN is legally required under the law for this proposal. A CN will also provide a public policy benefit as it creates a process for regulators, stakeholders, and the public to determine whether there are ways for Amazon to avoid or reduce building new fossil fuel generation. Moreover, the CN is not likely to result in significant delay given that Amazon is already required go through environmental review and the Commission's site permit process. For these reasons, MCEA respectfully requests the Commission not exempt Amazon from obtaining a CN.

Respectfully submitted,

/s/ Amelia Vohs

Amelia Vohs
Climate Director & Regulatory Attorney
Minnesota Center for Environmental Advocacy
1919 University Avenue W, Suite 515
St. Paul, MN, 55104
(651) 223-5969
avohs@mncenter.org

⁸ MCEA notes that the new Energy Infrastructure Permitting Act and its requirements become effective July 1, 2025.