

February 10, 2025

**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. PT7151/CN-24-435**

Dear Mr. Seuffert:

Amazon Data Services, Inc. (ADS or Applicant) respectfully submits these reply comments concerning ADS's Petition for an Exemption from Certificate of Need Requirements filed in the above referenced docket.

These reply comments have been e-filed through [www.edocket.state.mn.us](http://www.edocket.state.mn.us). A copy of this filing is also being served upon the persons on the Official Service List of record.

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

Sincerely,

FREDRIKSON & BYRON, P.A.



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

<b>Katie Sieben</b>	<b>Chair</b>
<b>Hwikwon Ham</b>	<b>Commissioner</b>
<b>Audrey Partridge</b>	<b>Commissioner</b>
<b>Joseph K. Sullivan</b>	<b>Commissioner</b>
<b>John Tuma</b>	<b>Commissioner</b>

*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. PT7151/CN-24-435**

**REPLY COMMENTS**

This proceeding involves a Petition for Exemption from Certificate of Need Requirements (Petition), filed by Amazon Data Services Inc. (ADS or Applicant) for its proposed emergency backup generators in Becker, Minnesota. As discussed in the Petition, the emergency backup generators will exclusively serve ADS's planned data center and provide power only in the extraordinary event of utility outages and other power interruptions and minimally for required testing and maintenance. ADS offers these reply comments in support of its Petition 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 ADS's proposed Becker data center; or (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.

Initial comments were filed by the Minnesota Department of Commerce, Division of Energy Resources (Department), Minnesota Office of Attorney General – Residential Utilities Division (OAG-RUD), Minnesota Center for Environmental Advocacy (MCEA), LiUNA of North

Dakota and Minnesota (LiUNA), the Local 49 and Carpenters (Labor Groups), and the City of Becker.<sup>1</sup> These reply comments respond to two main points identified by commenters: (1) the interpretation of the phrase “net of in-plant use” in the Commission’s rules; and (2) if a CN is required, the applicability of certain CN application data requirements. As ADS stated in its Petition, the Commission should find that its emergency backup generators are exempt from the CN requirement because net of in-plant (i.e., data center) use does not exceed the statutory 50 MW threshold for large energy facilities.

## RESPONSE TO COMMENTS

### A. A Certificate of Need is Not Required for ADS’s Proposed Emergency Backup Generators.

The Department, OAG-RUD, MCEA, and CURE argue that a CN is required based on a narrow definition of the word “plant.” The Department, for example, concludes that the phrase “net of in-plant use” in Minnesota Rules 7849.0010, subp. 20, does not refer to retail load, even retail load at the same location.<sup>2</sup> Instead, the phrase “net of in-plant use” refers to electricity used by the power plant itself; hence the term “in-plant.”<sup>3</sup> OAG-RUD, MCEA and CURE all advance similar, although slightly different interpretations of this phrase.<sup>4</sup>

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<sup>1</sup> Department Comments (Jan. 31, 2025) (eDocket No. [20251-214796-01](#)); OAG-RUD Comments (Jan. 31, 2025) (eDocket No. [20251-214822-02](#)); MCEA Comments (Jan. 31, 2025) (eDocket No. [20251-214801-02](#)); LiUNA Minnesota/North Dakota Comments (Feb. 3, 2025) (eDocket No. [20251-214829-01](#)); City of Becker Comments (Jan. 16, 2025) (eDocket No. [20252-214921-01](#)).

<sup>2</sup> Department Comments at 4 (“The Department concludes that the phrase “net of in-plant use” in Minnesota Rules 7849.0010, subp. 20 does not refer to retail load, even retail load at the same location.”).

<sup>3</sup> Department Comments at 4.

<sup>4</sup> OAG-RUD Comments at 3-4 (“While the Commission’s rules or statutes do not directly define “plant,” the term is used throughout chapters 216B and 7849 to be generally synonymous with ‘power plant.’”); MCEA Comments at 3 (“Minnesota Rule 7849.0030 seems to say that the size of a large energy facility should be understood as its nominal generating capability, which is the facility’s “average output power level, net of in-plant use” that can be maintained for 4 continuous hours of operation.”); CURE Comments at 2 (“Since the diesel “plant” is not inclusive of the 600 MW of consumption from a co-located but exterior power user, it is not appropriate to bend this rule out of shape to fit the largest data center ever conceived of for Minnesota into the unambiguous phrase ‘in plant use.’”).

As these various positions illustrate, the term “net of in-plant use” used in Minn. R. 7849.0010, subp. 10, is ambiguous and subject to the Commission’s interpretation.

**1. The Commission’s Interpretation of its Rules Should Consider the Context of the CN Statute and Rules and the Facts in ADS’s Petition.**

The central focus of comments on ADS’s Petition was on the meaning of an ambiguous term “net of in-plant use,” in the Commission’s rule, Minn. R. 7849.0010, subp. 20. The Commission has the expertise and experience to interpret its own rules, so the Commission’s interpretation of its own rule will be subject to deference.<sup>5</sup> Considering the purpose of a CN and the context of the rule, the best interpretation of the phrase “net of in-plant use” does not subject emergency backup generation within the ADS data center to a CN proceeding.

As commenters consistently noted, Large Energy Generating Facility (LEGF)<sup>6</sup> is defined by statute to include “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> The Commission has interpreted “combined capacity of 50,000 kilowatts or more” as referring to the “nominal generating capability” of an LEGF.<sup>8</sup> Nominal generating capability is further defined 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.”<sup>9</sup> “Net of in-plant use” and “plant” are not defined in Minnesota Rules Chapter 7849.

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<sup>5</sup> See *St. Otto’s Home v. Dept Hum. Servs.*, 437 N.W.2d 35, 39 (1989) (“When the agency’s construction of its own regulation is at issue, however, considerable deference is given to the agency interpretation, especially when the relevant language is unclear or susceptible to different interpretations.”).

<sup>6</sup> See Minn. R. 7849.0010, subp. 13 (defining “Large electric generating facility” as “an electric power generating unit or combination of units as defined by Minnesota Statutes, section 216B.2421, subdivision 2, clause (1)”).

<sup>7</sup> See Minn. Stat. § 216B.2421 (2024).

<sup>8</sup> See Minn. R. 7849.0030, subp. 1 (“The nominal generating capability of an LEGF is considered its size.”).

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

The Commission’s interpretation of “net of in-plant use” and “plant” should be informed by the context and purpose of a CN, to effectuate the intention of the Legislature.<sup>10</sup> The statute shows that the Legislature envisioned a process for reviewing the need for energy generation facilities that were grid connected and part of the state’s broader system.<sup>11</sup> To evaluate a CN, the Legislature directed the Commission to consider, “the accuracy of the long-range energy demand forecasts,” “relationship of the proposed facility to overall state energy needs,” and “benefits of this facility, including . . . to increase reliability of energy supply in Minnesota and the region.”<sup>12</sup> When considering this exemption request, the Commission should consider the overall purpose of a CN proceeding, which focuses on evaluating whether there is need for an energy infrastructure project in light of the overall state and regional energy needs.<sup>13</sup>

With the purpose of evaluating need for the generation in mind, the Commission can reasonably conclude that “net of in-plant use” should be interpreted using the broad, common definition of plant. “Plant” means “a factory or workshop for the manufacture of a particular product.”<sup>14</sup> When power is used within an industrial process, like a data center, it is not available to the grid. It is not a Qualifying Facility, nor is it accredited any capacity by the Midcontinent

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<sup>10</sup> See *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 929 N.W.2d 1, 10 (Minn. App. 2019) (quoting Minn. Stat. § 645.16 (2018) ), review denied (Minn. Aug. 6, 2019) (“[W]hen considering the statute, we focus on the words of the law, using their most natural usage, ‘to ascertain and effectuate the intention of the legislature.’”).

<sup>11</sup> See Labor Group Comments at 1-2.

<sup>12</sup> Minn. Stat. § 216B.243, subd. 3(5).

<sup>13</sup> *In re Enbridge Energy, LP for a Certificate of Need and a Routing Permit for Proposed Line 3 Replacement*, 964 N.W.2d 173, 192 (Minn. App. 2021) (“The goal of this requirement is a systematic evaluation of Minnesota’s energy needs and an orderly way to fulfill those needs, consistent with environmental and resource considerations.”) (citing *In re Wilmarth Line of C U Project*, 299 N.W.2d 731, 733 (Minn. 1980)); see also Minn. R. 7849.0020 (“The purpose of parts 7849.0010 to 7849.0400 is to specify the content of applications for certificates of need and to specify criteria for the assessment of need for large electric generating facilities and large high voltage transmission lines.”).

<sup>14</sup> See Plant, Merriam Webster <https://www.merriam-webster.com/dictionary/plant>; see also Plant, American Heritage Dictionary (“A building or group of buildings for the manufacture of a product; a factory,;” or “The buildings, fixtures, and equipment, including machinery, tools, and instruments, necessary for an industrial operation or an institution.”).

Independent System Operator. And when, as here, power is generated only in the event of an outage, it will have no impact on load either. ADS will not be providing power back to the grid—the emergency generators will not be connected to the grid, only the data center. Since the purpose of a CN is to evaluate whether the power is necessary to meet Minnesota’s energy needs, “net of in-plant use” should be interpreted to exclude emergency backup generation used wholly within an industrial facility as proposed here by ADS.

The ADS data center is an industrial facility that provides critical services such as storage and processing of data. Emergency backup generation is necessary to operate the data center because it provides customers, including hospitals and first responders, with reliable and secure access to their critical applications and data even in the event of a power outage. Thus, the emergency backup generation is a critical part of the data center, which is a single industrial plant.

This broad interpretation of “plant” is consistent with the Commission’s interpretation of Minn. Stat. § 216B.50, which applies to almost every type of tangible asset and many intangible assets, not just utility’s power plants. In relevant part, Minn. Stat. § 216B.50 provides that:

No public utility shall sell, acquire, lease, or rent any *plant* as an operating unit or system in this state for a total consideration in excess of \$1,000,000, or merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the commission.

(Emphasis added.) The Commission consistently applies this definition to land, general industrial buildings, transformers, and office buildings.<sup>15</sup> The Commission should apply a similarly broad definition here.

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<sup>15</sup> See e.g., *In the Matter of the Petition of Minnesota Power for Approval of a Purchase Agreement for the Sale of the Aurora Service Center to Lakehead Constructors, Inc.*, Docket No. E-015/PA-17-457, Order Approving Purchases and Sales with Conditions (Feb. 8, 2018) (approving sale of service centers, land, and cold storage buildings); *In the Matter of Northern States Power Company’s Petition to Sell Used Electrical Equipment to Sunbelt Solomon Services, LLC Maple Grove Service Center*, Docket No. E-002/PA-22-629, Order (Apr. 12, 2023) (approving sale of transformers); *In the Matter of Otter Tail Power Company’s Petition for Approval of the Transfer of Property to the City of Wahpeton*, Docket No. E-017/PA-98-1345, Order Finding Jurisdiction and Approving

While the Department and other commenters seek to distinguish this case from the 1993 Order cited in ADS's Petition, that decision provides a framework and analysis the Commission could certainly follow again here. While it is true, as the Department notes, that the Commission's decision in Prairie Island Nuclear Generating Plant applied only to the particular set of facts before the Commission,<sup>16</sup> in that case, the Commission also applied the same rules in ruling that emergency backup diesel generators were not subject to CN requirements. The Commission observed that the backup generators "will not be connected to the transmission grid for the purpose of generating power," and that "[t]he 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."<sup>17</sup> In other words, consistent with the purposes of a CN, in the 1993 docket the Commission considered whether backup generators would be connected to the grid or would maintain an output level of power in determining whether there the "net of in-plant use." The Applicant requests that the Commission engage in the same analysis of whether its emergency backup generation would be connected to the grid to evaluate the propriety of a CN for this facility.

And, while CURE raised examples of "behind-the-meter" generation at data centers and other facilities in other states that eventually may provide generation to the grid, those are not the facts or circumstances before the Commission in this Petition.<sup>18</sup> Unlike the Chevron example cited by CURE, which discusses delays in interconnection requests as a reason for delaying connection

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Property Transfer (Dec. 14, 1998) (concluding that the statute applied to a Division Office because it was an essential part of the regulated utility's operating system).

<sup>16</sup> ADS agrees that the Commission could limit its decision here to just this applicant and set of facts involving emergency backup diesel generation that is not connected to the grid. Like all the Independent Power Producer (IPP) CN data exemption proposals, others may bring their own petitions in the future, just as ADS has done.

<sup>17</sup> 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 also Petition, Attachment A.

<sup>18</sup> See CURE Comments at 4 & 6-7.

to the grid for generation that was otherwise intended to be connected, ADS has no intention of providing power back to the grid.<sup>19</sup> The facility will not be *capable* of providing power back to the grid. If the Commission has concerns that future generators may later try to convert behind-the-meter generation to providing generation to the grid, it can address those concerns through a narrow decision in this case.<sup>20</sup>

In short, the Commission has the expertise and authority to interpret the phrase “net of in-plant use” in the context of the broader CN statute and rules and find that ADS’s proposal for emergency backup generation, which is not grid connected and will only supply power to ADS’s onsite data center in limited circumstances, is not a large energy facility requiring a CN.

**2. There are Strong Policy Reasons to Find ADS’s Proposed Backup Generators are Exempt from CN Requirements.**

The City of Becker, Labor Groups, and LiUNA agree that a CN is not required in this specific instance. The City of Becker, noting a number of potential benefits to the local community, urged “swift approval” of the exemption request.<sup>21</sup> The Labor Groups observed that “there is no public interest policy rationale for requiring a certificate of need in the present case.”<sup>22</sup> “Unlike utility-owned assets, the costs of the backup generation will be paid for entirely by ADS with no risk to Minnesota ratepayers.”<sup>23</sup> The Labor Groups also noted that rate-related concerns are better addressed in other proceedings, and that the Commission can narrow its exemption based on facts specific to this proposed facility.<sup>24</sup> LiUNA argues that ADS’s request to be exempt from a CN is “reasonable, and consistent with both the language and intent of the CN statute as well as

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<sup>19</sup> See CURE Comments at 4 & 6-7.

<sup>20</sup> The Commission also has other avenues to address this issue. While ADS does not concede it is necessary or appropriate here, because the facility will not be able to return power to the grid, the Commission could craft a condition in its order to address this concern.

<sup>21</sup> City of Becker Comments at 1.

<sup>22</sup> See *generally* Labor Group Comments.

<sup>23</sup> Labor Group Comments at 2.

<sup>24</sup> See *generally* Labor Group Comments.



the Commission’s past treatment of off-grid emergency generation facilities.”<sup>25</sup> As LiUNA observes, the requirements for a CN “align poorly with the actual plans and use for the facility.”<sup>26</sup>

ADS appreciates and agrees with the technical and policy arguments advanced by the City of Becker, the Labor Groups, and LIUNA.

**B. An Exemption from Certain CN Application Data Requirements is Warranted.**

If the Commission finds that ADS is required to obtain a CN, it should grant exemptions from certain CN application data requirements pursuant to Minn. R. 7849.0200, subp. 6. Specifically, ADS has requested exemptions from the following data requirements that are specific to the operation and regulation of facilities proposed by utilities:

- 7849.0240, subp. 2(B): Promotional Activities;
- 7849.0250 (C)(7): Effect of Project on Rates Systemwide;
- 7849.0250 (D): Map of Applicant’s System;
- 7849.0270: Peak Demand and Annual Consumption Forecast;
- 7849.0280: System Capacity;
- 7849.0290: Conservation Programs;
- 7849.0300: Consequences of Delay; and
- 7849.0340: The Alternative of No Facility.

At the outset, no commenter opposed ADS’s request to be exempt from the requirements regarding Promotional Activities (7849.0240, subp. 2(B)), providing a Map of the System (7849.0250 (D)), or Peak Demand and Annual Consumption Forecast (7849.0270), with the alternatives identified in ADS’s petition. The Department agreed with ADS’s analysis and recommended all of the exemptions be granted. OAG-RUD and CURE submitted written comments regarding specific CN data exemptions.

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<sup>25</sup> LiUNA Comments at 1.

<sup>26</sup> LiUNA Comments at 2.

## 1. Department

The Department, the agency that typically reviews CN data exemption requests, recommends that the Commission grant the Applicant's requested CN data exemptions and proposals to provide alternative data. ADS appreciates the comments of the Department. As noted in the Department's comments, ADS's data exemption requests are similar to those granted several times in the past to independent power producers (IPPs) proposing merchant power plants.<sup>27</sup> ADS concurs that these IPP exemption examples are applicable to ADS here.

## 2. OAG-RUD

The OAG-RUD recommends that the Commission deny ADS's requested exemption from Minn. Rule 7849.0250(C)(7) (Effect of Project on Rates Systemwide) and "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."<sup>28</sup>

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 ADS does not have a "system" as defined by Minnesota Rules, and it is not a utility with retail rates for the backup power it plans to generate.<sup>29</sup> In addition, ADS will be solely responsible for costs related to the generators.<sup>30</sup>

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<sup>27</sup> Department Comments at 5.

<sup>28</sup> OAG-RUD Comments at 1, 8.

<sup>29</sup> See Minn. R. 7849.0010, subp. 29 ("System" means the service area where the utility's ultimate consumers are located and that combination of generating, transmission, and distribution facilities that makes up *the operating physical plant of the utility*, whether owned or nonowned, for the delivery of electrical energy to ultimate consumers." (emphasis added)).

<sup>30</sup> Petition at 11.

ADS recognizes that the Commission has plenary authority over Minnesota utility rates and tariffs.<sup>31</sup> However, OAG-RUD's recommendation that the Commission order ADS to work with Xcel Energy to analyze the effect of building emergency backup generation on electricity rates generally makes little sense and is outside the parameters of the Commission's rules and precedents in seeking to address statewide rate increases and statewide resource planning in a CN proceeding. If the Commission determines this facility is subject to Minn. Stat. § 216B.243, it does not follow that the Commission can regulate the rates ADS pays for its own backup generation, nor is ADS subject to resource planning requirements under Minn. Stat. § 216B.242. But that is what the OAG-RUD seeks by recommending denial of this standard exemption. The OAG-RUD's recommendation would create unnecessary confusion in the docket with limited value to the Commission's determination of whether the facility meets the criteria under Minn. Stat. § 216B.243. Any separate and distinct electric service agreements or other tariff arrangements between Xcel Energy and ADS will be addressed in filings under Minn. Stat. § 216B.05, subd. 2a or as part of other rate filings, and are not applicable or relevant to the CN evaluation.<sup>32</sup>

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<sup>31</sup> See *In the Matter of Minnesota Power's Petition for Interpretation of Terms and Conditions of Service to Verso Minnesota Wisconsin LLC*, Docket No. E-015/M-21-593, Order Interpreting Electric Service Agreement (Nov. 15, 2021) (citing *In the Matter of Minnesota Power's Petition in Response to the Minnesota Public Utilities Commission's September 5, 2008 Order in Docket No. E-015/M-08-321*, Docket No. E-015/M-08-1344, Order Accepting Petition, Modifying Electric Service Agreement Procedures, and Closing Docket No. E-15/M-08-321, at 6 (Feb. 26, 2009)).

<sup>32</sup>To the extent that OAG-RUD seeks to preemptively address rate concerns associated with the data center, this is not the proper proceeding. "The ESA is an electric service contract subject to Commission approval and filing requirements under Minn. Stat. § 216B.05 and, as a contract affecting a charge or compensation demanded by a public utility for a service, the ESA constitutes a 'rate' under Minn. Stat. § 216B.02, subd. 5." *In the Matter of Minnesota Power's Petition for Interpretation of Terms and Conditions of Service to Verso Minnesota Wisconsin LLC*, Docket No. E015/M-21-593 (Order Interpreting Electric Service Agreement dated November 15, 2021). ("Therefore, the Commission has broad authority to regulate the ESA as a part of Minnesota Power's approved tariffed rates, like any other tariff in Minnesota Power's rate book. Further, the Commission has previously determined that its jurisdiction over electric service contracts 'encompasses a present and continuing authority to review such agreements.'").

As noted in the Petition, this exemption has been frequently approved for IPPs that do not have a “system.” In prior CN applications, the Commission has granted this data exemption even for projects with a power purchase agreement (PPA) or off-taker. For example, in Nobles 2, Minnesota Power selected the Project through a wind competitive bid process. Nonetheless, the Commission granted Nobles 2 an exemption from the requirements of Minn. R. 7849.0250(C)(7) because it does not have a “system” as defined by the Rules, and it was not a utility with retail rates.<sup>33</sup> Similarly, for Walleye Wind, the Commission granted Walleye Wind an exemption because Walleye Wind did not operate a system.<sup>34</sup> Unlike Nobles 2 and Walleye Wind, ADS will never have a purchaser of its output because it will not sell excess generation back to Xcel Energy or deliver onto the grid. ADS will only be utilizing its own backup generation for the very limited purposes set forth in the exemption request. If projects with a PPA or off-taker can be exempted from the requirement to provide data about the effect on rates systemwide because they do not have a “system,” then ADS’s emergency backup generation, which will not, and by design cannot, provide power to the grid, should certainly be exempted from this requirement.

Accordingly, the Applicant requests that the Commission approve the requested CN data exemptions and deny OAG’s recommendation that “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.”<sup>35</sup> OAG’s request is far outside the purpose of a CN proceeding and is better addressed in other proceedings.

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<sup>33</sup> See *In the Matter of the Application of Nobles 2 Power Partners, LLC for a Certificate of Need for the up to 300 MW Nobles 2 Wind Project and Associated Facilities in Nobles and Murray Counties*, Docket No. IP-6964/CN-16-289, Order (May 25, 2016).

<sup>34</sup> See *In the Matter of the Petition of Walleye Wind, LLC for Exemption from Certain Certificate of Need Application Requirements*, Docket No. IP-7026/CN-20-269, Order (Apr. 8, 2020).

<sup>35</sup> See OAG-RUD Comments at 9.

### 3. CURE

CURE opposes the Applicant's request for data exemptions from Minnesota Rules 7849.0290 (Conservation Programs) and 7849.0340 (No-Facility Alternative). With respect to the Applicant's request for exemptions from Minnesota Rules 7849.0250(C)(7) (Effect of Project on Rates Systemwide), 7849.0280 (System Capacity), and 7849.0300 (Consequences of Delay), CURE asks the Commission to require ADS to examine alternatives and asks the Commission to require Xcel Energy to appear in this docket.

First, ADS did not ask to be exempt from a consideration of alternatives required by Minn. R. 7849.0250(B), so CURE's arguments that Applicant must be required to consider alternatives miss the mark. CURE inappropriately suggests alternatives to several of ADS's data exemption requests:

- **Minnesota Rule 7849.0300** requires an 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.” CURE acknowledges that this data requirement is not applicable to the Applicant and instead recommends that “rather than discussing the impact on the electrical system of a delay in construction,” the Applicant be required to “fully discuss alternatives such as demand-response and storage meeting some of the identified electrical need.”<sup>36</sup>
- **Minnesota Rule 7849.0280** requires an 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.” CURE acknowledges that system capacity data is not applicable to ADS and instead recommends that “rather than system capacity,” ADS be required to provide “information on how its need could be met with grid capacity plus onsite storage.”<sup>37</sup>
- **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.<sup>38</sup> As discussed in ADS's Petition, the Commission has observed that this Rule is designed to ensure regulated utilities give the same consideration to conservation as new generation. CURE does not

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<sup>36</sup> CURE Comments at 8.

<sup>37</sup> CURE Comments at 8.

<sup>38</sup> CURE Comments at 8.

explain how ADS would consider conservation in the context of emergency back-up generation.

- **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 transmission facilities, system, and operations.<sup>39</sup> CURE fails to explain how ADS would consider the “no facility” alternative, when, as here, the emergency back-up generation is a necessary component of the data center.

Again, ADS did not request an exemption from the alternatives analysis.<sup>40</sup> Accordingly, if the Commission ultimately concludes that a CN is required, ADS is prepared to show that there are no reasonable and prudent alternatives to diesel generators that meet the needs of the Becker data center facility. But the requirement for an alternatives analysis is not related to the other exemption requests identified by CURE, so the consideration of alternatives is not a reason to deny these exemption requests.

Second, as discussed, 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.” CURE acknowledges that the Applicant “does not have sufficient information to explain potential rate impacts to other customers in this instance,” and proposed that the Commission “order Xcel to submit that information to clarify what rate impacts are anticipated by both this new load and the Applicant’s proposed large energy facility.”<sup>41</sup> As described in the Petition and in response to OAG-RUD above, the Applicant 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.<sup>42</sup> Further, the Applicant will be solely responsible for costs related to the generators, which will not be grid connected; and other utility customers will not be exposed to these costs.<sup>43</sup>

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<sup>39</sup> CURE Comments at 8.

<sup>40</sup> See Minn. R. 7849.0250.

<sup>41</sup> CURE Comments at 8.

<sup>42</sup> Petition at 11–12.

<sup>43</sup> Petition at 11–12.

CURE’s proposed alternative data requirement would not aid the Commission’s determination of need for the Project. ADS therefore opposes CURE’s recommendation that the Commission order Xcel Energy to provide “sufficient information to explain potential rate impacts.”

### **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.

Dated: February 10, 2025

*Respectfully submitted,*

*/s/ Christina K. Brusven*

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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. PT7151/CN-24-435**

***CERTIFICATE OF SERVICE***

Maia Martinez certifies that on the 10th day of February, 2025, she e-filed a true and correct copy of the following documents on behalf of Amazon Data Services, Inc. via eDockets (www.edockets.state.mn.us):

1. Filing Letter and Certificate of Service; and
2. Reply Comments.

Said documents were also served as designated on the Official Service List on file with the Minnesota Public Utilities Commission and as attached hereto.

Executed on: February 10, 2025

*Signed: /s/ Maia Martinez*

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



#	First Name	Last Name	Email	Organization	Agency	Address	Delivery Method	Alternate Delivery Method	View Trade Secret	Service List Name
1	David	Bell	david.bell@state.mn.us		Department of Health	POB 64975 St. Paul MN, 55164 United States	Electronic Service		No	CN-24-435
2	Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron		60 S 6th St Ste 1500 Minneapolis MN, 55402- 4400 United States	Electronic Service		No	CN-24-435
3	Generic	Commerce Attorneys	commerce.attorneys@ag.state.mn.us		Office of the Attorney General - Department of Commerce	445 Minnesota Street Suite 1400 St. Paul MN, 55101 United States	Electronic Service		Yes	CN-24-435
4	Water Programs	Coordinator	waterprograms.bwsr@state.mn.us		Minnesota Board of Water and Soil Resources	520 Lafayette Road N St. Paul MN, 55155 United States	Electronic Service		No	CN-24-435
5	Randall	Doneen	randall.doneen@state.mn.us		Department of Natural Resources	500 Lafayette Rd, PO Box 25 Saint Paul MN, 55155 United States	Electronic Service		No	CN-24-435
6	Kate	Fairman	kate.fairman@state.mn.us		Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul MN, 55155-4032 United States	Electronic Service		No	CN-24-435
7	Annie	Felix Gerth	annie.felix-gerth@state.mn.us			Board of Water & Soil Resources 520 Lafayette Rd Saint Paul MN, 55155 United States	Electronic Service		No	CN-24-435
8	Sharon	Ferguson	sharon.ferguson@state.mn.us		Department of Commerce	85 7th Place E Ste 280 Saint Paul MN, 55101- 2198 United States	Electronic Service		No	CN-24-435
9	Chris	Green	chris.green@state.mn.us	Minnesota Pollution Control Agency		504 Fairgrounds Rd Suite 200 Marshall MN, 56258 United States	Electronic Service		No	CN-24-435
10	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-24-435
11	Kari	Howe	kari.howe@state.mn.us		DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul MN, 55101 United States	Electronic Service		No	CN-24-435
12	Hudson	Kingston	hudson@curemn.org			PO Box 712 Ely MN, 55731 United States	Electronic Service		No	CN-24-435
13	Raymond	Kirsch	raymond.kirsch@state.mn.us		Department of Commerce	85 7th Place E Ste 500 St. Paul MN,	Electronic Service		No	CN-24-435

#	First Name	Last Name	Email	Organization	Agency	Address	Delivery Method	Alternate Delivery Method	View Trade Secret	Service List Name
						55101 United States				
14	Richard	Kolodziejski	rkolodziejski@ncsrcc.org	North Central States Regional Council of Carpenters		700 Olive St St. Paul MN, 55130 United States	Electronic Service		No	CN-24-435
15	Chad	Konickson	chad.konickson@usace.army.mil	U.S.Army Corps of Engineers		332 Minnesota St. Suite E1500 Saint Paul MN, 55101 United States	Electronic Service		No	CN-24-435
16	Stacy	Kotch Egstad	stacy.kotch@state.mn.us		MINNESOTA DEPARTMENT OF TRANSPORTATION	395 John Ireland Blvd. St. Paul MN, 55155 United States	Electronic Service		No	CN-24-435
17	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-24-435
18	Sarah	Mooradian	sarah@curemn.org	CURE		117 South 1st Street Montevideo MN, 56265 United States	Electronic Service		No	CN-24-435
19	Kevin	Pranis	kpranis@liunagroc.com	Laborers' District Council of MN and ND		81 E Little Canada Road St. Paul MN, 55117 United States	Electronic Service		No	CN-24-435
20	Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us		Office of the Attorney General - Residential Utilities Division	1400 BRM Tower 445 Minnesota St St. Paul MN, 55101-2131 United States	Electronic Service		Yes	CN-24-435
21	Stephan	Roos	stephan.roos@state.mn.us		Minnesota Department of Agriculture	625 Robert St N Saint Paul MN, 55155-2538 United States	Electronic Service		No	CN-24-435
22	Nathaniel	Runke	nrunke@local49.org			611 28th St. NW Rochester MN, 55901 United States	Electronic Service		No	CN-24-435
23	Will	Seuffert	will.seuffert@state.mn.us		Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul MN, 55101 United States	Electronic Service		Yes	CN-24-435
24	Ryan	Shrout	shroutr@amazon.com	Amazon Data Services, Inc.		410 Terry Avenue North Seattle WA, 98109 United States	Electronic Service		No	CN-24-435
25	Aaron	Toro	aatoro@amazon.com	Amazon Data Services, Inc.		410 Terry Avenue North Seattle WA, 98109 United States	Electronic Service		No	CN-24-435
26	Jayme	Trusty	execdir@swrdc.org	SWRDC		2401 Broadway Ave #1 Slayton MN,	Electronic Service		No	CN-24-435

#	First Name	Last Name	Email	Organization	Agency	Address	Delivery Method	Alternate Delivery Method	View Trade Secret	Service List Name
						56172 United States				
27	Jen	Tyler	tyler.jennifer@epa.gov	US Environmental Protection Agency		Environmental Planning & Evaluation Unit 77 W Jackson Blvd. Mailstop B-19J Chicago IL, 60604-3590 United States	Electronic Service		No	CN-24-435
28	Amelia	Vohs	avohs@mncenter.org	Minnesota Center for Environmental Advocacy		1919 University Avenue West Suite 515 St. Paul MN, 55104 United States	Electronic Service		No	CN-24-435
29	Cynthia	Warzecha	cynthia.warzecha@state.mn.us	Minnesota Department of Natural Resources		500 Lafayette Road Box 25 St. Paul MN, 55155-4040 United States	Electronic Service		No	CN-24-435
30	Isaac	Weston	isaac.weston@state.mn.us			null null, null United States	Electronic Service		No	CN-24-435
31	Alan	Whipple	sa.property@state.mn.us		Minnesota Department Of Revenue	Property Tax Division 600 N. Robert Street St. Paul MN, 55146-3340 United States	Electronic Service		No	CN-24-435
32	Jonathan	Wolfgram	jonathan.wolfgram@state.mn.us		Office of Pipeline Safety	445 Minnesota St Ste 147 Woodbury MN, 55125 United States	Electronic Service		No	CN-24-435