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VIA EMAIL

Pierina N. Fayish
NEPA Compliance Officer
Department of Energy, National Energy Technology Laboratory
626 Cochran Mill Rd
Pittsburgh, PA 15236
Pierina.Fayish@netl.doe.gov

RE: Comments on the Revised Draft Environmental Assessment for Project Tundra on Behalf of Sierra Club, CURE, and Dakota Resource Council

Dear Ms. Fayish:

Sierra Club, CURE, and Dakota Resource Council submit these comments on the Revised Draft Environmental Assessment (RDEA) for DOE/EA-2197: North Dakota CarbonSAFE: Project Tundra, dated April 2024.

Sierra Club and CURE previously identified numerous concerns with both Project Tundra itself and the Department of Energy ("DOE")'s inadequate analysis of its environmental consequences in their Comments on the Draft Environmental Assessment of September 19, 2023. Sierra Club, CURE, and Dakota Resource Council incorporate those previous comments by reference.

Unfortunately, despite the DOE's revisions, the RDEA for what "would be the world's largest post-combustion CO2 capture and geologic storage project"[1] still falls short of legal standards under the National Environmental Policy Act ("NEPA") and its implementing regulations. DOE's conclusion that funding Project Tundra will have no significant adverse environmental impacts is unfounded and incorrect.

First, DOE persists in using as its "no action" alternative a plan of operation for the Milton Young plant that is *illegal* under EPA regulations. Without Project Tundra, Milton Young must retire in 2032 or reduce its emissions significantly beginning in 2030 and retire in 2039, but DOE assumed under a "no action" scenario Milton Young would continue to emit greenhouse gasses at current levels for the proposed lifespan of the Project Tundra facility.

Second, the project as designed will not meet the 75% minimum capture threshold to qualify for 45Q tax credits. The Project's proponents have designed what appears to be an attempted end-run around this requirement by claiming it will capture 95% of emissions from Unit 2 as its "unit of design." But the proponents, and the RDEA, erroneously assume the operator will *also* earn 45Q credits for carbon captured from Unit 1 (of which the proposed project is only designed to capture

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[1] U.S. DOE, DOE/EA-2197D Project Tundra Revised Draft Environmental Assessment for North Dakota, CarbonSAFE: Project Tundra, (Apr. 13, 2024), *available at* https://www.energy.gov/nepa/articles/doeea-2197-revised-draft-environmental-assessment-april-2024 (hereinafter "RDEA"), at § 2.5, 2-2.

20% of carbon dioxide emissions). If the proponents are somehow successful in qualifying for tax credits for carbon dioxide captured from Unit 1, RDEA has failed to assess how increased operation of Unit 1 to obtain the economic benefit of those credits will nullify or outweigh any environmental benefits of the capture that does take place.

Third, in calculating the lifecycle carbon emissions associated with the Project, the RDEA improperly assumes the large quantity of electricity used to operate the capture technology will come from the MISO market, rather than Milton Young itself, significantly undercounting the greenhouse gas and other air pollution emissions associated with the Project's electricity usage.

Fourth, the RDEA ignores the adverse environmental impacts associated with the use of captured carbon dioxide for enhanced oil recovery ("EOR"), even though there are no legal or physical limits on the use of carbon dioxide captured from Milton Young for EOR once the gas is inserted into the Summit Carbon Solutions Carbon Express pipeline, and evidence that linking the capture project at Milton Young to the Summit pipeline will directly or indirectly promote the use of carbon dioxide in EOR.

Fifth, the RDEA's conclusion that surface water impacts will not be significant despite the massive water usage required by the proposed project rests on a meaningless comparison, *i.e.* between the project's water usage and *the flow of the entire Missouri River*. When compared to, *e.g.*, total industrial usage in the state of North Dakota, however, it is clear that the impact of the Project's water usage will be significant.

The DOE's putative finding of no significant impact is premised on a faulty and legally inadequate environmental assessment and must be reversed. Sierra Club, CURE, and Dakota Resource Council urge the DOE to address these errors, find the impact of the Project will be significant, and complete a full Environmental Impact Statement process, as NEPA requires.

I. The Project Tundra Revised Draft Environmental Assessment incorporates an erroneous "no-action" alternative

The RDEA assumes that without project funding, *i.e.* in the "no-action alternative," Project Tundra would not be constructed.[2] The RDEA then compares rate of carbon dioxide emissions per MWh produced in the "no-action" and Project Tundra alternatives, and concludes that under the no-action alternative, the life-cycle carbon emissions associated with a single MWh of electricity would be equal to 1,170kg, as compared to 455kg if Project Tundra were constructed and operated as described.[3] This comparison assumes that the plant will operate in the same manner it currently does for the lifespan of the proposed project (20 years). Similarly, for purposes of calculating the social cost of carbon emissions as part of its cumulative impacts analysis in the no-build and build scenarios, the RDEA assumes Milton Young will continue burning coal through 2048.[4]

[2] RDA at § 2.3, 2-1.
[3] RDEA at Table 3-10, 3-14.
[4] *Id.* at § 3.17, 3-58-3-59.

This "no action" alternative is unlawful and unreasonable. NEPA requires that agencies consider "a reasonable range of alternatives to the proposed agency action, including . . . a no action alternative, that are technically and economically feasible."[5] In conducting such an analysis, the agency's evaluation of alternatives "must be bounded by some notion of feasibility.[6]

Under current federal emission standards, 40 C.F.R. Part 60, Subpart UUUUb, if not retrofitted with carbon capture, Milton Young will either have to (a) commit to cease operations by 2039 and co-fire with 40% natural gas by January 1, 2030; *or* (b) cease operation by January 1, 2032. The RDEA ignores these federal requirements entirely, and assumes, under the no-action alternative, Milton Young will continue to emit carbon dioxide (as well as produce greenhouse gas emissions from upstream procurement of coal and other fuels) at the same rate as it currently does for the 20-year lifespan of Project Tundra. But under a "no action" alternative in which Project Tundra is *not* constructed, Milton Young will either be required to significantly reduce its greenhouse gas emissions from 2030-2039, followed by retirement (and thus no emissions) for nine years within the 20 years of Project Tundra analysis *or* will cease emitting greenhouse gasses altogether by 2032. The RDEA assumes a baseline for "no action" that will only be relevant for the first four years of Project Tundra's lifespan (at most), after which the build scenario will entail *greater* greenhouse gas emissions than the retirement scenario.

In other words, instead of evaluating a true "no action" alternative where Milton Young is required to comply with now-final greenhouse gas emission limitations, DOE compares its preferred alternative of retrofitting the facility with CCS to an illegal "no action" alternative in which Milton Young operates without pollution controls until 2048. But that purported "no action" alternative is, "in fact no alternative at all" because "actions that would violate [applicable law] cannot be reasonable alternatives to consider."[7]

This error renders the RDEA's Finding of No Significant Impact invalid. To determine whether the construction of Project Tundra will have a significant adverse environmental impact as a result of increased greenhouse gas emissions, the Department of Energy must re-do its life-cycle carbon emissions and social cost of greenhouse gas analyses with two "no-action" alternatives: one in which Milton Young is retired in 2032, and another in which it co-fires natural gas as required under 40 C.F.R. Part 60, Subpart UUUUb from January 1, 2030 through 2039, followed by retirement. Sierra Club's calculations suggest that such an analysis shows a significant adverse impact due to the construction of Project Tundra, as continuing to operate the plant with partial greenhouse gas capture will result in 8.7 million tons of additional greenhouse gas emissions from the plant itself (*i.e.* not including upstream or lifecycle emissions) relative to a "no-action" alternative in which Project Tundra is not built and Milton Young ceases operation by January 1, 2032, in compliance with federal Clean Air Act standards.

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[5] 42 U.S.C. § 4332(C)(iii).

[6] *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 551 (1978).

[7] *Flaherty v. Bryson*, 850 F. Supp. 2d 38, 72–73 (D.D.C. 2012); *see also Am. Oceans Campaign v. Daley*, 183 F. Supp. 2d 1, 20 (D.D.C. 2000) (holding that the agency failed to consider reasonable alternatives where EAs did "not even consider any alternatives besides the status quo (which would violate the [law]).").

Moreover, as discussed in greater detail below, it is not at all clear that Project Tundra, as designed, will enable Milton Young to comply with 40 C.F.R. Part 60 as a "long term" unit. That is, the Project's design is at odds with federal emission rules for coal-fired electrical generating units, a fact the RDEA also fails to address.

II. The Project Tundra Revised Draft Environmental Assessment continues to rely on a carbon capture configuration that is economically infeasible and legally tenuous under the Clean Air Act

The RDEA suffers from at least two major additional flaws stemming from the Project's multi-unit design: First, the RDEA fails to acknowledge the likely conflict between the project's design, as proposed to be funded, and federal policy. Second, it fails to properly analyze and document economic considerations associated with the project and closely interrelated with its emission impacts because it assumes–incorrectly–that the project will be economically viable on the basis of claimed tax credits for which it is not eligible. This mistake leads the RDEA to drastically understate the economic impacts of the project for Minnkota ratepayers and potentially overstate the amount of carbon capture and thus the purported net economic benefits of the project's operation.

Specifically, the proposed action would fund a project that is constructed to capture only a small fraction of the carbon oxide emissions from Milton Young Unit 1, but which (according to the Project's proponents) would nevertheless claim 45Q revenue for these emissions, in conflict with federal tax policy regarding 45Q credits. This basic error gives rise to at least two conflicts between the proposed action (funding of Project Tundra, as designed) and other federal policies, neither of which are discussed in the RDEA: first, the RDEA assumes that in order to be economically feasible, Project Tundra's operator must be eligible for and receive revenue from the 45Q tax credit for carbon oxide sequestration.[8] Second, the proposed configuration in the RDEA will not meet EPA's finalized New Source Performance Standards for greenhouse gasses, meaning the construction of Project Tundra as designed will lead to the forced retirement of Unit 1 in 2032, but this fact is nowhere discussed in the RDEA. DOE should not fund Project Tundra on the basis of an EA that fails to grapple with the implications of the project's design for both tax and Clean Air Act policy, or which mistakenly assumes the project design is compatible with these other federal requirements..

1. The RDEA fails to assess if Project Tundra will meet the minimum eligibility requirements of the critical 45Q tax credits, where a failure to procure full credits would render it economically infeasible

As noted in our comments on the Draft EA, it is imperative that DOE assess whether Project Tundra is consistent with federal tax policy under section 45Q. A NEPA evaluation is only meaningful if the recipient could actually pursue the project. Without the assurance of the 45Q

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[8] Minnkota Power Cooperative, "Project Tundra Frequently Asked Questions," (2023), *available at* https://www.projecttundrand.com/faq ("The vast majority of capital and operating costs will be funded through the federal 45Q tax credit, which works similarly to the kinds of tax credits that wind and solar projects have utilized for decades. The tax credit provides $85 per ton of CO_2 that is permanently stored underground over a 12-year period").

tax credit, the recipients could not finance, and would not pursue Project Tundra. Conversely, if the project proponents proceed to construct and operate a CCS project (potentially at significant expense to ratepayers) notwithstanding this ineligibility, DOE must knowingly decide to commit taxpayer funds to such an endeavor. And the "no action" alternative (which assumes without funding the project will not proceed) is only meaningful *if* the proposed action makes Project Tundra economically feasible.

According to the proponents, "[t]he $1.45 billion project will primarily be funded through federal 45Q tax credits,"[9] and this assumption remains true in the RDEA. To be eligible for the tax credit under 26 U.S.C. § 45Q(d)(2)(B)(ii), a "qualified facility" (*i.e.* a carbon capture project) at an electricity generating facility must capture at least 18,750 metric tons of CO_2 per year and be designed to capture at least 75 percent of historic (or "baseline") emissions at the unit for which it was designed.[10] Project Tundra fails to meet this minimum criteria.

Project Tundra is sized to capture more emissions than Unit 2 alone, but fewer emissions than would be required if it were sized for both Units 1 and 2. The RDEA states, in response to comments:

> The design of this CCS system to simultaneously accept and process flue gas from Unit 1 and Unit 2 permits the system to capture much more CO_2 than capture systems that are paired with a single generating unit. The CCS is designed and sized to process 100% flue gas from Unit 2 (the larger of the two units at the site) **plus an estimated 20% of the flue gas from Unit 1**…[11]

Despite this acknowledgement, elsewhere the RDEA claims that Project Tundra would have a "design specification of at least 95 percent CO_2 capture from the processed MRY [Milton Young] Unit 1 (250 megawatts gross [MWg] owned by Minnkota) and Unit 2 (455 MWg owned by Square Butte Electric) flue gas, [where] Unit 2 is the principal unit of design."[12]

This is factually incorrect. Project Tundra has a design specification of just 61.4 percent CO_2 capture from MRY Unit 1 and 2. According to the RDEA, "the project would be designed to capture up to 13,000 short tons per day (STPD) of CO_2,"[13] while the maximum daily emissions of Milton Young 1 and 2 are 21,150 short tons per day.[14]

[9] Minnkota Power Cooperative, "Project Tundra receives $100 million loan from state of North Dakota," (May 23, 2022), *available at* https://www.projecttundrand.com/post/project-tundra-receives-100-million-loan-from-state-of-north-dakota.

[10] 26 U.S.C. § 45Q(d)(2)(B)(ii) ("with respect to any carbon capture equipment for the applicable electric generating unit at such facility," the unit must have "a capture design capacity of not less than 75 percent of the baseline carbon oxide production of such unit").

[11] RDEA at Appendix K, K-10 (emphasis added).

[12] *Id.* at § 2.5, 2-2.

[13] *Id.* at § 2.5, 2-3.

[14] *Id.* at Appendix E, E-17, Table 1-2 ("No-Build Scenario" showing emissions from "Coal Electricity Plant" at 1,134 kg CO_2/MWh, or 1.25 short tons CO_2/MWh. At a total capacity of 705 MW, Milton Young has the potential to generate 16,920 MWh, or 21,150 short tons CO_2/day).

Despite the eligibility of the tax credit only to Unit 2, the RDEA assumes that the entire project will be applicable to both stacks of the Milton Young plant for purposes of 45Q credit eligibility.[15] This assessment is in error.

Section 45Q(d)(2)(B)(ii) requires that a carbon capture facility demonstrate that the carbon capture equipment for the applicable generating unit has a capture design capacity of not less than 75 percent of the baseline carbon oxide production of the unit. The purpose of the statutory guardrail requiring "not less than 75 percent of baseline carbon oxide production" is to ensure that tax credits are only distributed to projects that actually have an emissions reduction value. The electricity and steam consumption of carbon capture projects are substantial; in this case, up to 27 percent of Milton Young's energy production, and more than 40 percent of Unit 2's energy production.[16] Unless a very high percentage of carbon oxide emissions from a unit are captured and sequestered, the increase in emissions associated with the additional electrical generation to power the carbon capture mechanism will outweigh the reduction in emissions due to capture from the flue stream. The 75 percent requirement is thus a guardrail designed to ensure that projects do not propose partial capture and subsidize the generation of high emissions power while providing little or no emissions benefit. The statute does not contemplate that a CCS project be constructed to process flue gas streams from multiple units but "apply" only to emissions from a single unit, because *powering* the CCS project to the degree necessary to apply to multiple units without *capturing* the emissions from both units would result in increased net emissions.

The 45Q statute lays out that the baseline for an existing generating unit is calculated as the average of the three highest emissions years in the last twelve years. The statute does not establish if for carbon capture units that apply to multiple units if the emissions from the multiple units are to be aggregated and then averaged, or averaged independently, and then aggregated. If the project goes online in 2028, using just 2016-2023 emissions, the baseline for an aggregated Milton Young is 6.1 million short tons, and the baseline for a disaggregated plant is 6.3 million tons. The 75 percent threshold for these baselines are 4.5 million short tons and 4.8 million short tons, respectively.

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[15] *See id.* at § 3.2.2, 3-4, Table 3-3 (which shows several different possible configurations of Project Tundra, including "all" of Unit 2 and partial capture at Unit 1, all of Unit 1 and partial capture at Unit 2, Unit 1 alone, or Unit 2 alone). *See also id.* at § 3.2.2, 3-4 ("The project would have the consequential benefit of reducing further the emissions of CO_2, SO_2, and particulate matter from the existing MRY Unit 1 and Unit 2 flue gas streams"). *See also*, *id.* at Appendix K, K-10 ("The CCS is designed and sized to process 100% flue gas from Unit 2 (the larger of the two units at the site) plus an estimated 20% of the flue gas from Unit 1 when both generating units are operating at their <u>full capacities</u> including flexible operational mode variations" (emphasis original)).

[16] *See id.* at § 3.3.2, 3-9 ("Energy Consumption at the proposed capture plant has been incorporated as a plant direct emission. The capture plant will require both electricity and steam to operate. Engineering estimates for the capture plant estimate an approximate requirement of 1,848 megawatts [hours] [*sic*] per day of electricity and 2,640 megawatts [hours] [*sic*] electric (MWe) per day of thermal (steam) energy," for a total of 4,488 MWh of gross energy production (electricity and steam, combined). At full output, Milton Young plant would be expected to produce 16,920 MWh before auxiliary loads, and Unit 2 (the "principle unit of design") would produce 10,920 MWh. 4,488 MWh is 27 percent of the total output, and 41 percent of Unit 2's output).

The RDEA proposes that Project Tundra will capture "an annual average of 4.0 million [metric] tons of CO_2"[17] or 4.4 million short tons, and the life cycle assessment suggests that the unit could capture a maximum of 4.7 million short tons per year,[18] or the maximum capture of the project if it operated *every day of the year*. Assuming the entire plant is considered the applicable unit, Project Tundra's capture would have to exceed 75 percent of the baseline. Taken as a whole, Project Tundra is not scoped to capture the minimum 75 percent of baseline emissions as required under 45Q, except in the narrowest of readings.

As noted in our initial comments, the RDEA assumes that Project Tundra's 45Q eligibility will not be calculated on the basis of emissions from the stacks of both Milton Young Units 1 and 2. Pending guidance from the IRS, this interpretation could be critically incorrect, rendering this RDEA moot. To be eligible for a 45Q tax credit, Project Tundra must be sized to capture the minimum emissions from both Units 1 and 2, or applied to just Unit 2 alone. Project Tundra is either ineligible for the tax credit, or oversized relative to its applicable generating unit. If the project is ineligible for the 45Q tax credit, it will either fail to secure financing and not be built, or fail to recoup its capital and operating costs, and be shuttered (potentially at significant cost to rural member-owners with limited ability to shoulder this huge loss). If the project is built as scoped and is only eligible for emissions captured from Unit 2, the proponents will have spent substantially more capital to build an oversized unit, and fail to secure the full extent of the tax credits that appear to underlay the financing proposal.[19] Under both circumstances, Project Tundra would fail to achieve financial viability, rendering the proposed action infeasible, and the RDEA moot. DOE must account for the potential that federal guidance renders the project as proposed ineligible for 45Q. And in any case, the RDEA's failure to address this conflict with federal law renders its RDEA inadequate under NEPA.

2. The RDEA fails to assess if Project Tundra will meet the minimum requirements of the final Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants, or 111(d).

On April 25, 2024, EPA finalized Emission Guidelines for Greenhouse Gases from Existing Electric Generating Units under Section 111(d) of the Clean Air Act. The rule establishes different requirements for subcategories of fossil-fired EGU. Under the final rule, existing coal-fired EGU that intend to operate on or after January 1, 2039 must have an emissions rate comparable to the application of carbon capture with 90% capture, and that rate must be met by January 1, 2032.

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[17] *Id.* at § 3.3.2, 3-6.

[18] *Id.* at Appendix E, E-25 (Assumptions and Data).

[19] At the proposed capture rate of 4 million metric tons per year, the (uninflated) 45Q tax credit would theoretically yield $4.08 billion over the 12 year application period, or up to $4.39 billion if Project Tundra operated at its maximum utilization every day for 12 years (13,000 short tons per day). However, according to the Project Tundra FEED study, DOE estimates that the levelized cost of capture (including capital and operating costs) is $78.46/metric ton, which implies an all-in estimated cost of $4.05 billion for Project Tundra. However, if Project Tundra is only able to recoup 45Q for the operations of Unit 2, even assuming 90% capture and a 90% capacity factor for Milton Young Unit 2, it would only yield $3.73 billion. It is unreasonable to assume that the project could be successful with this lower than required yield.

Project Tundra's proposed carbon capture facility is, on paper, theoretically capable of 90% capture–but only for the stack of either Milton Young Unit 1 *or* Unit 2, not both.[20] The RDEA itself assesses that Project Tundra would capture just 77% of 2021 / 2022 emissions.[21] According to both the technical specifications in the FEED Study as well as the RDEA, Project Tundra would not be compatible with the final GHG emissions requirements. With an expected online date of 2028 or 2029, the project would only be 3 years old at the time the more stringent requirements come into effect in 2032.

For compliance with this rule (not 45Q), the RDEA could assess a scenario where the project is built as specified, but reverts to capture only at Milton Young Unit 2 on January 1, 2032. However, the RDEA would then also have to make an explicit assumption about the fate of the other unit (Milton Young Unit 1, in this case), because under the final rule, such units would either have to commit to cessation of operations by 2032, or fire 40% methane gas by 2030, as discussed above. Both of these options have significant ramifications for emissions and/or leakage, new construction, and the economics of Project Tundra.

Under the condition that Project Tundra is only applied to Unit 2 (as required under the final rule and 45Q), it would be substantially oversized,[22] and potentially fail to recover sufficient 45Q tax credits to make the project viable.

The RDEA states that "DOE does not speculate on the future of proposed 111(b) and 111(d) regulations, the life-cycle decisions of a plant operator, or any other future decisions outside of its delegated statutory authority."[23] Speculation is no longer necessary. 111(d) is no longer a proposed regulation, but final, and in force. The RDEA must account for it and assess a legally viable Proposed Action.

III. The Project Tundra Revised Draft Environmental Assessment still contains substantial errors, impacting emissions assumptions

The initial EA for Project Tundra contained substantial errors in estimating the lifecycle emissions of the proposed action,[24] as discussed below.

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[20] *See* RDEA at § 3.3.2, 3-6 ("Note that a 95 percent unit-wide capture indicates that a 95 percent capture efficiency is occurring at U1 *or* U2 at MRY" (emphasis added)).

[21] *See id.* ("Between 2021 and 2022, the MRY plant emitted flue gas with an average of 5,187,363 tons of CO_2. Electricity generation at MRY and the associated emissions processes are already in operation and would occur with or without construction and operation of the project. The proposed project would not capture and treat 100 percent of the CO_2 produced by the MRY coal plant, however, over the lifetime of the carbon capture facility it is projected to capture an annual average of 4.0 million tons of CO_2").

[22] *Id.* at Appendix K, K-10 ("The design of this CCS system to simultaneously accept and process flue gas from Unit 1 and Unit 2 permits the system to capture *much more CO_2 than capture systems that are paired with a single generating unit.* The CCS is designed and sized to process 100% flue gas from Unit 2 (the larger of the two units at the site) plus an estimated 20% of the flue gas from Unit 1 when both generating units are operating at their full capacities including flexible operational mode variations" (italics added, emphasis original)).

[23] *Id.* at Appendix K, K-9.

[24] RDEA Table 3-7: Proposed Action, Initial Life Cycle Analysis Results (kg of emissions / MWh)

1. The RDEA assumes that the massive energy consumption at the proposed capture plant is associated with energy from Minnkota's generating system, rather than coal or gas at the Milton Young station, which is inconsistent with DOE's FEED study for the facility

Unlike the previous Draft EA, the RDEA now assesses the impact of energy consumption occurring at the carbon capture facility. However, the RDEA miscalculates the substantial emissions associated with energy consumption from the carbon capture equipment by allocating that energy to "purchased electricity" rather than the plant itself or a supplemental boiler, which would be the source of electricity to operate the equipment according to the proposed configurations of Project Tundra.

The RDEA acknowledges that the capture plant will require both substantial electricity and steam to operate, stating

> Energy Consumption at the proposed capture plant has been incorporated as a plant direct emission. The capture plant will require both electricity and steam to operate. Engineering estimates for the capture plant estimate an approximate requirement of 1,848 megawatts per day of electricity and 2,640 megawatts electric (MWe) per day of thermal (steam) energy. The project would be expected to source electricity and thermal energy from the Minnkota generating system. Emissions from energy consumption were calculated following methodology adapted from EPA's Greenhouse Gas Inventory Guidance: Indirect Emissions from Purchased Electricity (EPA 2023b).[25]

The resulting 4,488 MWh electric equivalent[26] per day is roughly one third of the forecast generation of Milton Young–a huge portion of the energy (and emissions) of the power plant. This is not a marginal calculation, but rather core to the emissions estimates of this project. There are at least two inconsistencies in the RDEA that render it incorrect: first, the likely marginal generation resource for of energy consumption at the capture facility is Milton Young itself; and second, even assuming the capture facility will be run on marginal market-based energy generations, the RDEA's estimation of emission rates associated with that energy is incorrect. We address these in reverse order, below.

a) <u>The RDEA's market-based emissions rate appears to be incorrectly calculated or rely on an incorrect set of assumptions</u>

According to the RDEA Life Cycle Analysis (Appendix F), the CO_2 emissions rate associated with electricity consumption and steam consumption at Project Tundra are 265 kg/MWh and 285 kg/MWh, respectively, and states that it is based off of the "historic Minnkota System."[27] This emissions rate of approximately 0.3 tCO_2/MWh is commensurate with a system that is largely low emissions–*i.e.* not that of Minnkota. According to Minnkota's 2023 annual report, the

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[25] RDEA at 3-9.

[26] Assuming that DOE meant that these units should be megawatt-hours (MWh) and units of energy output per day, rather than capacity (MW).

[27] RDEA at Appendix E, E-13.

utility's generation portfolio is 57% coal, 34% wind, 7% hydroelectricity, and 2% "other."[28] With an uncontrolled CO_2 emissions rate of 1,134 kg CO_2/MWh (or 1.25 tCO_2/MWh) at Milton Young,[29] Minnkota's system likely has an aggregate emissions rate of 646.4 kg CO_2/MWh (or 0.71 tCO_2/MWh). As a first matter, the RDEA should have calculated that *Minnkota's system emissions rate is 244% greater* than the factors used in the life cycle assessment.

However, even the erroneously lower emissions rate used by the RDEA is then factored incorrectly or incomplete. According to the final RDEA, electricity consumption associated with the CCS unit accounts for just 49.90 kg CO_2/MWh.[30] However, according to the life cycle analysis appendix, the total emissions from electricity and steam consumption (which may not have been accounted for) amount to a total of 453 million kg per year,[31] spread over approximately 5 million MWh per year,[32] or an emissions rate of 90 kg/MWh. The RDEA total emissions estimate *incorrectly assumes that only electricity requirements produce additional emissions*, and does not include the steam requirements, which are also parasitic on Milton Young and will increase energy inputs and corresponding emissions.

According to the RDEA's response to comments, "although steam is expected to be sourced directly from MRY, the heat rate at the plant will remain unchanged regardless of the operation (or lack of operation) of the CCS."[33] This is an inaccurate portrayal of the operations of CCS. Harnessing steam from a coal boiler deprives the steam turbine of its energy source, which substantially decreases the amount of energy that can be harnessed at the turbine. Keeping the fuel input (MMBtu) the same and decreasing the amount of resulting energy (MWh) mathematically increases the heat rate (in MMBtu/MWh) and decreases the efficiency of the unit overall. Harnessing steam from the coal unit would require that the total output of the plant decreases. Even if the CCS island is considered a separate customer, the coal unit would not be able to sell the same amount of electricity when a substantial amount of steam is pulled from the boiler.

Taking both the parasitic electricity and steam consumption requirements of the carbon capture equipment into account and using Minnkota's actual generation portfolio and average emissions, the resulting energy consumption emissions should be closer to 211 kg/MWh, making the total CO_2 emissions in Table 3-7 closer to 573 kg/MWh, or more than half of the CO_2 emissions of the Milton Young Plant in the "No Action" scenario. This is a substantially different emissions factor than used in the RDEA.

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[28] Minnkota Power Cooperative, Minnkota Power Cooperative: Powerful Voices 2023 Annual Report, (2023), *available at* https://assets.website-files.com/5ef212e2cdca1e094063db4e/6616d1b16d247b52a3ca29dc_MPC-2023%20Annual%20Report-Web.pdf, at 47 (PDF 24).

[29] RDEA at Table 3-9: No Action, Initial Life Cycle Analysis Results (kg of emissions / MWh), 3-13.

[30] *Id.* at Table 3-7: Proposed Action, Initial Life Cycle Analysis Results (kg of emissions / MWh), 3-11.

[31] *Id.* at Appendix E, E-13, addition of 178.8 million kg and 274.4 million kg in electricity and steam consumption tables.

[32] *See id.* at Appendix E, E-11, YOUNG Boiler 1 and Boiler 2 in 2028, for example.

[33] *Id.* at Appendix K, K-28.

b) The RDEA uses emissions from market-based energy sources whereas energy consumption at Project Tundra will largely be from the high-emissions coal plant itself.

The technical specifications of Project Tundra as presented in both Minnkota's public materials as well as the FEED study conducted by DOE both assess that the electricity *and* the steam load required to run Project Tundra will be sourced from either the coal plant itself or a purpose-built gas power plant and boiler, not market energy. The ramifications of these alternatives are higher emissions than characterized in the RDEA.

According to the RDEA's response to comments,

> Energy use associated with the CCS has been incorporated in the revised Initial LCA project scope (Summary Comment 20) and has been incorporated as a new emission category. As an independent operation, the CCS system owners have chosen to purchase the electric and steam energy needed from Minnkota's electricity system. The steam and electricity offering to the CCS system is on terms and conditions similar to other large, unique loads on their system (e.g., computing and server centers). For the Initial LCA analysis, it is assumed that steam will be sourced directly from MRY following terms as agreed upon by the CCS system owners and Minnkota. Similarly, it is assumed that the CCS system will receive electricity from the Minnkota electricity system (*i.e.,* grid) that includes multiple generation sources.[34]

As a first matter, the RDEA inappropriately seeks to dismiss the impact of steam load required to operate the CCS. The steam load sourced at the coal unit must be characterized as an emissions source for its degradation of the coal unit's output. According to DOE's FEED study, the thermal load (*i.e.* steam) was scoped as sourced from either a separate methane gas boiler,[35] or directly from steam at Unit 2.[36] In both cases, the extraction of energy from steam results in a fuel cost and resulting emissions. This could either be characterized as a net decrease in the generation of Milton Young (decreasing the MWh in Table 3-7, and increasing the commensurate emissions) or in a more complicated manner attempting to account for the emissions of that steam separately.

As a second matter, the assumption that "the CCS system will receive electricity from the Minnkota electricity system (*i.e.* grid)..." and then characterization of resulting emissions as market-based is a misrepresentation, or a shell game. The CCS equipment of Project Tundra

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[34] *Id.* at Appendix K, K-28.

[35] *See* Project Tundra, "Front-End Engineering & Design: Project Tundra Carbon Capture System," (May 22, 2023), *available at* https://netl.doe.gov/projects/files/Front-End%20Engineering%20and%20Design%20Project%20Tundra%20Carbon%20Capture%20System.pdf at 12 ("Process 100% of flue gas from Young 2 and natural gas-fired boilers"), 15, 18, 19 (enclosures, including "[b]oiler enclosure" and "gas boilers" away from coal plant), 21 (thermal load in MMBtu/day, "natural gas input"), 25 "Pre-FEED selection of natural gas-fired package boilers… Required three 33% boilers," and "Larger CCS to handle flue gas from package boilers") (hereinafter "Project Tundra FEED Presentation").

[36] *Id.* at 26 ("FEED Steam Source Selection Design/Cost from Two Supply Options").

requires a substantial amount of electricity to operate. The idea that Project Tundra, part of an electrical generator, would assume that electricity required to operate a part of the plant comes from off-system–and therefore allocate emissions off-system–is absurd.[37] In standard utility practice, electricity used at a generation facility–for pumps, fans, lights, and emissions controls–are considered "auxiliary loads," as is the case in Project Tundra's FEED study.[38] Those loads are considered to be part of the operations of the plant itself, and therefore reduce net plant output.[39]

This NEPA assessment seeks to review emissions as a function of delivered electricity,[40] and thus it is critical to characterize delivered electricity appropriately. As a system, Project Tundra and Milton Young produce less delivered electricity due to the extraction of steam and use electricity to operate the CCS unit. Therefore, the emissions on a per MWh produced must be higher, due to the lower denominator.

RDEA Tables 3-9 and 3-7 show at-site CO_2 emissions from Project Tundra as 1,134 kgCO_2/MWh without CCS and 410.8 kgCO_2/MWh[41] with CCS, respectively. Accounting for auxiliary load, the CCS proposed action should show at least 754 kgCO_2/MWh net, or nearly twice the CO_2 emissions rate shown here.[42]

2. The RDEA assumes that the capture unit will not impact the operations or dispatch of the underlying coal unit, inconsistent with economics of the 45Q tax credit and EPA's assumptions

In multiple instances, the RDEA states that Project Tundra will have no impact on the operation or dispatch of Milton Young,[43] a statement which is demonstrably false. If the CCS unit causes the power plant to operate more often, then the emissions benefit of the CCS would be

[37] An equivalent absurd scenario might be if the proposed action was the construction of a new, uncontrolled power plant, with an assumption that the utility would also contract for an equal amount of renewable energy, and assess that the proposed action only had half the emissions rate of a coal-fired power plant because of the assumed emissions free energy. The proposed action has no bearing on if Minnkota also buys a commensurate amount of grid-based energy to offset the energy lost at Project Tundra to auxiliary load, and is therefore inappropriate as an assumption.

[38] Project Tundra Feed Presentation at Table 17, 20. ("Total thermal and electrical auxiliary loads").

[39] *See, e.g.* National Energy Technology Laboratory, "Cost and Performance Baseline for Fossil Energy Plants, Volume 1: Bituminous Coal and Natural Gas to Electricity," (Oct. 14, 2022), *available at* https://www.osti.gov/servlets/purl/1893822/, at 30 ("...the capture cases have a higher auxiliary load requirement than non-capture cases, which serves to further reduce net plant output") (hereinafter "NETL Baseline Vol 1").

[40] RDEA at § 3.3.2.1, 3-7 ("The Initial LCA has been defined as kilograms (kg) of CO_2 stored and as megawatt-hours (MWh) delivered to the grid").

[41] MRY coal plant + CO_2 capture plant + electricity consumption.

[42] In 2032, MRY is projected to produce 5.02 million MWh and 6.28 million short tons CO_2 without carbon capture (at 1,134 kg/MWh). If the project captures 4 million tons per year, it would emit 2.28 million tons CO_2. According to RDEA Appendix E-13, the project would consume an estimated 0.675 million MWh in electricity and 0.964 million MWh equivalent of steam load, reducing net output to 2.74 million MWh. The resulting emissions rate is 0.83 tCO_2/MWh net, or 754 kg CO_2/MWh net.

[43] RDEA at Appendix K, K-11, Summary Comment 11 ("The CCS unit is structured physically and commercially to have no impact on the operation or dispatch of the MRY (see response to summary comment 9). Because the dispatch of the power plant is forecasted based on its market position, and because the project sponsors have structured the CCS project to not impact power plant economics, including impacts due to available tax credits, then in both the "no build" and the "build" cases under the LCA, the dispatch should be the same").

diminished. And this is, in fact, the likely outcome of installing CCS due to the nature of the 45Q tax credit.

Under today's conditions, Milton Young has a marginal operating cost between \$27-31/MWh,[44] which means that in 2023 it would have ideally operated at around a 44% capacity factor to minimize losses during low market price conditions (*i.e.* "to accommodate [zero marginal cost] wind power in the region"[45]). In other words, rather than having generated nearly 5 million MWh (gross) and 5.5 million tons CO_2 in 2023,[46] it should have generated around 3 million MWh–and just 3.3 million tons CO_2.

However, as previously noted, the 45Q tax credit acts as a production tax credit and a substantial subsidy for operations. Indeed at \$85/ton CO_2, the 45Q tax credit represents a marginal cost subsidy of over \$100/MWh. Even accounting for the parasitic or auxiliary load of CCS and the costs of operating the CCS unit, this tax credit reduces the marginal cost of operations to a *negative* value. Simply put, once a CCS unit is installed, the value proposition of burning the next unit of coal in order to sequester some of the carbon and earn a tax credit is far too valuable to not operate. It is highly likely that CCS-retrofit power plants will operate as often as feasible.

At Milton Young / Project Tundra, the CCS unit will incentivize the operations of the power plant and likely result in around-the clock production.[47] The FEED study for Project Tundra assumes an 85% capacity factor, which in effect means operating as often as feasible, but for outages. Even if Project Tundra captured 4 million tons per year, Milton Young would still emit 2.4 million tons CO_2. If this project were to have been in operation in 2023, and Milton Young operated cost effectively in both conditions, it would emit 3.3 million tons CO_2 in the base case, and 2.4 million tons in the CCS case, or just a 28% reduction relative to the baseline.

IV. Summit Carbon Solutions Carbon Express pipeline network

The RDEA's response to commenters' initial comments optimistically states that this project, if connected to a pipeline network, would only *accept* carbon dioxide from the proposed Summit Carbon Solutions' Midwest Carbon Express CO_2 Pipeline Project (Summit Pipeline).[48] Without any information on how this could be designed to be a one-way pipeline, the response to initial comments merely states that using the captured MRY carbon dioxide would not meet the "objective" of this funding and therefore wouldn't be consistent with the funding.[49] This argument is tautological and merely wishful thinking. Indeed, the RDEA in no way describes any assurance, build specifications, legal limitations, or other enforceable controls that would stop

[44] Based on a 2023 delivered coal cost of \$1.95/MMBtu (EIA Form 923), heat rate of ~12 MMBtu/MWh (EIA Form 923) and assumed variable operating cost of between \$3.5-\$7.7/MWh (*see* NETL Baseline Vol 1, at Case B12A, 483).

[45] RDEA at Appendix K, K-10.

[46] U.S. EPA, Clean Air Markets Program Database, (Q4 2023), *available at* https://campd.epa.gov/.

[47] Knight, P. and J. Smith,"Clearing the Air on Coal CCS: New tax credits make partial CO_2 capture viable, potentially increasing emissions," (Oct. 21, 2022), *available at* https://www.reginfo.gov/public/do/eoDownloadDocument?pubId=&eodoc=true&documentID=218396.

[48] RDEA at Appendix K, K-7.

[49] *Id.*

this project from sending captured carbon dioxide to serve enhanced oil recovery (EOR) once it is connected to the Summit Pipeline.

Recent reporting and statements, under oath, by Summit's representatives indicate that its project will be used for EOR. In written testimony to the North Dakota Public Service Commission, Dan Pickering, a consultant providing financial and economic expertise to Summit, assured the regulators that the project would serve EOR and extend the environmental impacts of oil extraction in North Dakota. In response to a question about how the Summit Pipeline will serve state energy needs, Mr. Pickering testified:

> It is likely that more CO_2 will enter North Dakota over time. This CO_2 can support Enhanced Oil Recovery projects (EOR) in the Bakken Shale and conventional fields to generate higher recovery/production volumes and extend the life of these fields. This should result in sustaining or enhancing the benefits currently being generated for the state/population by the energy industry.[50]

In live testimony, and under penalty of perjury, Mr. Pickering suggested that the figures he provided in his written testimony should "be considered minimums" and that the actual impact of the Summit Pipeline would likely be much larger than he had initially estimated.[51] His most explicit example of this was that instead of consuming four million dollars of electricity annually, the project would now consume fourteen million dollars worth of electricity.[52] In addition to landowners receiving payoffs for injection under their ground, and electrical use, Mr. Pickering testified further on the opportunities presented by the Summit Pipeline, stating again that additional carbon in the Summit Pipeline will mean additional EOR in North Dakota.[53]

Mr. Pickering's testimony is consistent with Summit's statements to potential clients that its system will be used both for carbon injection without EOR, and for EOR when a customer wants to transport its carbon for that purpose.[54]

Even if DOE had committed to an actual enforceable limit on using Milton Young / Project Tundra's carbon dioxide for EOR, the connection of this project to the Summit Pipeline has the cumulative effect of promoting EOR in North Dakota for decades to come. This is because DOE

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[50] North Dakota Public Service Commission, *In the Matter of the Application of SCS Carbon Transport LLC for a Certificate of Corridor Compatibility and Route Permit for the Midwest Carbon Express Project in Burleigh, Cass, Dickey, Emmons, Logan, McIntosh, Morton, Oliver, Richland and Sargent Counties, North Dakota*, Direct Testimony of Dan Pickering, (Apr. 22, 2024), *available at* https://www.psc.nd.gov/database/documents/22-0391/528-010.pdf, at 6:4-6:8.

[51] North Dakota Public Service Commission, PU-22-391.535 Electronic Recording of 22 April 2024 Formal Hearing, (Apr. 22, 2024), *available at* https://apps.psc.nd.gov/webapps/cases/psdocketdetail?getId=22&getId2=391&getId3=535, at time stamp 22:40.

[52] *Id*. at time stamp 22:47.

[53] *Id.* at time stamp 30:35.

[54] Leah Douglas, "US carbon pipeline company pledges no oil recovery, but Bakken drillers want it," (Mar. 11, 2024), *available at* https://www.reuters.com/markets/carbon/us-carbon-pipeline-company-pledges-no-oil-recovery-bakken-drillers-want-it-2024-03-11/ ("But Summit has a different message for prospective clients, including North Dakota's oil sector, according to a Reuters review of state regulatory filings and recordings of public appearances by company executives: if you want to use our project for enhanced oil recovery (EOR), where gas is pumped into oil fields to increase production, just write a check").

funding will help to make both projects viable, and by connecting to the Summit Pipeline this project will provide certainty (not to mention valuable pressure in the line) to the Summit Pipeline, allowing more barrels of carbon dioxide to be transported to the oil fields. It is naive to assume that this project will never provide carbon dioxide for EOR when the pipeline literally takes captured CO_2 from Project Tundra the short remaining distance to the oil fields of the state, while it is the avowed public policy of North Dakota to use any carbon dioxide it can get for EOR.[55] Even if that naivete were justified by actual controls on the fungible product Project Tundra will be able to put in the Summit Pipeline, the significant public funding and financial certainty that DOE is providing to this project will accrue to the Summit Pipeline as well.

As a result, a full EIS should be prepared to account for the additional climate, land, and localized air pollution impacts that will be caused by the cumulative impacts of this funding extending EOR and oil production in North Dakota, and oil use throughout the country.

V. Water Use

The RDEA is accompanied by responses to initial comments that states "The 15,000 acre-feet of water requested for the project is 0.10 percent of the mean annual discharge recorded at Garrison Dam and the requested withdrawal rate of 13,480 gallons per minute, or 30.0 cubic feet per second, is 0.14 percent of the mean daily discharge rate." The response goes on to conclude that "the proposed project does not represent a significant change to daily flow or annual discharge."[56] The RDEA similarly suggests that this amount of water is not significant compared with the entire flow of the Missouri River. This conclusion and comparison are absurd when looked at objectively.[57]

The RDEA's logic would suggest that any water usage that is not sufficient to permanently change the *annual* flow of one of the *largest* rivers in the United States is somehow inherently insignificant. This conclusion ignores the fact that rivers are not perfectly uniform all year long and that the project's water usage will likely not be uniform while running the carbon capture system. Water stress in this region can be the worst in the summer months when agricultural needs are greatest.[58] This has been the case in several of the past years,[59] suggesting that using annual average numbers to understate potential impacts and their significance is overly simplistic.

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[55] Dave Thompson, "Helms: ND will need more CO2 for enhanced oil recovery," (Aug. 17, 2023), *available at* https://news.prairiepublic.org/local-news/2023-08-17/helms-nd-will-need-more-co-for-enhanced-oil-recovery.

[56] RDEA at Appendix K, K-13.

[57] *Id.* at 3-34.

[58] U.S. NOAA, National Centers for Environmental Information, Annual 2023 Drought Report, (Jan. 12, 2024), *available at* https://www.ncei.noaa.gov/access/monitoring/monthly-report/drought/202313 (In 2023 "Nationwide, July was driest with more than a fifth of the [continental United States] very dry." The Midwest experienced significant drought variability as well, and was reportedly "dry May-June, September, and November, with parts dry in July-August and December; wet in parts January-March, April, July, October, and December").

[59] In both 2021 and 2023 the Minnesota authorities were forced to restrict surface water appropriations with official Drought Restrictive Phase announcements for certain rivers. *See* Minnesota DNR, Brief Summary of State Drought Task Force Meeting, (Aug. 19, 2021), *available at* https://content.govdelivery.com/accounts/MNDNR/bulletins/2ef378e; Minnesota DNR, News release: Drought continues to deepen in Minnesota, (Sept. 8, 2023), *available at* https://www.dnr.state.mn.us/news/2023/09/08/drought-continues-deepen-minnesota.

The RDEA's discussion of water impacts fails to take a hard look at the foreseeable impacts of this large new water use on existing river water users in the months of most stress on the hydrological system.

Additionally, comparing this project's usage to the entire river flow is a false comparison akin to saying no air pollution source can have climate impacts because the atmosphere is so large, or that no water pollution discharge can impact ocean life because oceans are vast. The Ninth Circuit has previously found an Environmental Assessment inadequate when it purported to dismiss impacts as insignificant by juxtaposing them with a global total, characterizing such a comparison as "opaque."[60]

Commenters do not dispute the fact that the Missouri River is very large, but that is not the point. The point is that this project would newly appropriate 15,000 acre-feet of water for industrial use in a state that recently only permitted 60,494 acre-feet of industrial surface water use.[61] This is an increase of 24.8 percent over historic industrial surface water use for the *entire state* of North Dakota. As already stated by commenters, this is an increase of 4,887,771,428.6 gallons appropriated from the Missouri River every year. That means that, according to EPA figures, this project would use the same amount of water as 163,307 average Americans.[62] That is more than the entire population of Fargo, not to mention every other city in the state of North Dakota.[63] It is absurd to say that one project with the impact of a city larger than any in the state where the project is proposed would have an insignificant impact on water availability. The foreseeable water need of this project necessitates an EIS.

VI. Commenters

The Sierra Club is a national nonprofit organization with 67 chapters, including chapters in North Dakota and Minnesota, and more than 832,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. In North Dakota, we have nearly 3,000 members and supporters; in Minnesota, we have nearly 57,000. Our goals include restoring clean air and water, providing affordable clean energy, supporting family-sustaining jobs, and addressing inequities in our response to climate

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[60] *350 Montana v. Haaland*, 50 F.4th 1254, 1269 (9th Cir. 2022); *see also* 40 C.F.R. § 1508.27 ("[T]he significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality").

[61] North Dakota Water Resources, Biennial Report: July 1, 2019 - June 30, 2021, (Mar. 28, 2022), *available at* https://www.swc.nd.gov/info_edu/reports_and_publications/biennial_reports/pdfs/2019-2021.pdf, at 36 (showing 60,494 acre-feet of approvals from 2019 to 2021).

[62] U.S. EPA, WaterSense, Statistics and Facts, (Apr. 2, 2024), *available at* https://www.epa.gov/watersense/statistics-and-facts (an average American uses 82 gallons per day, multiplied by 365 equals 29,930 gallons, and 4,887,771,428.6 divided by 29,930 is 163,306.7634012696–commenters have rounded this figure up slightly, to avoid positing a partial American).

[63] North Dakota Demographics, North Dakota Cities by Population, (Dec. 7, 2023), *available at* https://www.northdakota-demographics.com/cities_by_population (Fargo's population: 127,319); World Population Review, North Dakota Cities by Population, (2024), *available at* https://worldpopulationreview.com/states/cities/north-dakota (Fargo's population in 2024 estimated at 136,909).

disruptions. A key component of meeting this goal is achieving 80% carbon pollution-free electricity by 2030.

CURE is rural-based, with staff across Minnesota. CURE knows rural people, lands, and ecosystems are vital to helping solve some of the biggest problems faced by Minnesota and the nation. We help to tell the story of a vibrant rural future, lift-up people to lead, and work for policies and laws to make a better future possible for everyone. CURE's work includes a long term focus on rural electric cooperative governance and evolution to advance a clean, healthy, and sustainable energy future. Minnkota Power Cooperative serves member co-ops in North Dakota and Minnesota, providing electricity to the rural Minnesotans that CURE hears from and works with on a regular basis. It is of paramount importance to CURE that the Department of Energy not shortchange these Americans with an inadequate environmental review.

Dakota Resource Council was founded in 1978 in order to protect North Dakota farms and ranches from widespread energy development. DRC's mission is to promote sustainable use of North Dakota's natural resources and family-owned and operated agriculture. To do this DRC builds member-led local groups that empower people to influence the decision-making processes that affect their lives and communities and protects the environment.

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For the reasons identified herein, the RDEA continues to be in error, and the impacts of Project Tundra continue to be significant. DOE must correct the substantial errors in its analysis and conduct a full EIS before moving forward.

Respectfully submitted,

/s/ Hudson Kingston
Hudson B. Kingston
Legal Director
CURE, https://curemn.org/
117 S 1st Street
Montevideo, MN 56265
(320) 269-2984
hudson@curemn.org

/s/ Jeremy Fisher
Jeremy I. Fisher
Principal Advisor, Climate and Energy
Megan Wachspress
Staff Attorney
Sierra Club, https://www.sierraclub.org/
2101 Webster St., Suite 1300
Oakland, CA 94612

(415) 977-5536
jeremy.fisher@sierraclub.org
megan.wachspress@sierraclub.org

/s/Scott Skokos

Scott Skokos
Executive Director
Dakota Resource Council
(406) 850-9755
scott@drcinfo.com