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Via Electronic Filing

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Minnesota Public Utilities Commission
121 7th Place East, Suite 350
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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, Docket No. PT7151/CN-24-435

Initial Comments of CURE

Mr. Seuffert:

CURE submits the following initial comments in response to the Public Utilities Commission's (Commission) request for comments on the above-captioned matter. We thank Commission staff for allowing time for a normal comment period, as this is a matter of first impression for the Commission and merits full attention and serious review.

1. Is a certificate of need required for ADS's proposed data center and backup generators under Minnesota Statutes Chapter 216B?

Yes. Amazon Data Services, Inc. ("ADS" or "the Applicant") proposes to install 250 diesel generators as "emergency backup generators" at its proposed data center in Becker, Minnesota, which would be capable of meeting the facility's peak daily load requirement of 600 megawatts (MW). According to ADS, these generators would not be connected to the grid but would only be

“behind-the-meter.”¹ The generators would only be used if ADS cannot obtain electricity from its supplier, Xcel, for “testing and routine maintenance purposes,” and during other electricity outages.² Despite ADS’s portrayal of its operations, the proposal is functionally the same as constructing a new, 600 MW, diesel-fired power plant. It is inconceivable that the Commission would not require such a facility to undergo the certificate of need (CN) process.

Minnesota Statutes § 216B.243, subdivision 2, prohibits the siting or construction of a large energy facility without first obtaining a CN. A large energy facility is defined as “any electric generation 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.” Minn. Stat. § 216B.2421, subd. 2(1); *see also* Minn. R. 7849.0010, subp. 13. The project proposed by ADS is a large energy facility and is therefore required to obtain a CN from the Commission under the clear language of the statute.

Still, the Applicant asks the Commission for an exemption to this unambiguous legal standard, citing no valid statutory authority for support. The Applicant bases its argument on an inapplicable interpretation of the definition of “nominal generating capability” in Minn. R. 7849.0010, subp. 20, claiming that because the data center would purportedly use all the energy produced by the diesel generators it would not reach the threshold of 50MW of “output power level, net of in plant use.”³ But the Applicant’s proposed data center is not a power plant. It is large-load energy user that seeks to co-locate next to a new large energy facility, in this case 600 MW of diesel generators. 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.”

This proposed diesel large energy facility is twelve times the threshold for a required CN and more than fifty-four times the size of the example ADS proffers, discussed further below. The fact that a second massive facility is put next to a power plant does not make the power plant

¹ Amazon Data Services, Inc., *Petition for an Exemption from Certificate of Need Requirements*, at 2, PUC Docket No. 24-435, Dec. 27, 2024, eDockets No. [202412-213305-01](#) [hereinafter “ADS Petition”].

² *Id.*

³ *Id.* at 7–9.

invisible to regulators or insignificant to the human environment. Allowing this interpretation of “nominal generating capability” to swallow any co-located industry, and by doing so deregulate large energy facilities, would be an invitation to create a second dirty and unregulated power fleet that could eventually dwarf the facilities that the Commission oversees and holds to legal standards.

A. Inapplicable Prairie Island Example

The only example of past Commission practice the Applicant does cite is entirely distinguishable, regarding much smaller emergency generators (with less than 11 MW of capacity, combined) *at a power plant* that was subject to the Commission’s CN procedures in the first place. Those emergency generators were required by federal regulators,⁴ while this proposed 600 MW plant is not. Those generators would genuinely only be used when the plant they are associated with had experienced a dangerous shut-down, and would be used to “cool the nuclear reactor core” and prevent a nuclear disaster. Here, the generators proposed would merely assure Amazon’s cloud computing customers can have uninterrupted access to some kind of internet content,⁵ which the Applicant admits is covered by data backups and redundancy in other locations,⁶ during an unexpected failure of Xcel’s entire generation and transmission system. Importantly, the Commission not only has ongoing regulatory authority over the Prairie Island nuclear plant referenced in ADS’s example, but it also has periodically-updated CN authority when the plant applies for additional storage of nuclear waste—that type of ongoing and periodic review is absent in this docket.

So, though the Commission may have found that much smaller generators (comprising 1.8% of the generating capacity of the currently-proposed project) with only actual emergency use

⁴ *Id.* at 8.

⁵ ADS’s customers use cloud computing for a wide variety of applications, so losing access to data due to a power outage would undoubtedly be difficult for some, but it does not plausibly compare to a nuclear meltdown and catastrophic failure. Amazon also claims that it is committed to helping its customers lower their carbon footprint, a goal shared by the state of Minnesota. Amazon, *Why AWS Sustainability?*, <https://aws.amazon.com/sustainability/> (last visited Jan. 31, 2025).

⁶ ADS Petition at 3.

potential were worthy of a CN exemption, by contrast, the exemption requested here would instead remove all Commission ability to determine the overall need and justification of this much larger and unjustified, electric generating plant. The Commission's past CN exemption has no direct bearing on the proposal in this docket.

B. Future Similar Projects

The Commission should also weigh the fact that its decision on this matter will have an impact on many other similar projects in Minnesota in the years to come. As the applicant states:

ADS believes this issue is likely to appear before the Commission again soon. Data center development is rapidly expanding across the country, and many of those facilities will require the type of reliable, on-site backup generation that ADS seeks to implement. The Commission should resolve this issue now to provide clarity and transparency for the stakeholder community.⁷

CURE agrees with ADS's assessment of the overall industry trajectory. As the applicant here admits, many other companies are similarly situated and will use this decision to determine whether or not to build large amounts of polluting, non-renewable, generation alongside the data centers they are planning. This decision will have a precedential effect for years to come.

Moreover, once the 600 MW generating plant is built, the Commission may not be able to impose a CN requirement on this generation source if ADS changes its mind and chooses to feed electricity onto the grid. There is reason to believe that other data center proposers, if not this one, have already made plans to build now and connect later. The New York Times recently reported on Chevron's plans to build "behind-the-meter" power plants at data centers, and further reported:

In this case, the plants would be located alongside the data centers they power. Like Exxon, the partners expect their facilities would not be connected to the electric grid to start, so the plants can get up and running more quickly. It can take years for grid managers to approve connection requests.

⁷ *Id.* at 7.

Eventually though, they aim to secure grid hookups, said Chris James, Engine No. 1's chief investment officer. "A grid interconnect allows us to be able to supply power back to the grid when it needs it," he said.⁸

The Commission should not and cannot assume that this project will remain behind-the-meter for the entirety of its operation, and must treat it like any other new, 600 MW, diesel-generated large energy facility. As reported, Chevron plans to build bespoke gas plants for data centers like this within three years,⁹ the Commission should not make a decision in this proceeding that will so quickly and predictably turn out to have been in error.

This industry pressure is discussed further in CURE's answer to question #3, below.

C. A Back-door Violation of State Carbon-free Energy Policy

As the Commission is well aware, Minnesota has taken a clear position on the need to rapidly decarbonize the energy sector by 2040.¹⁰ Ironically, so has the Applicant.¹¹ Allowing a grid-connected facility to build its own highly-polluting power plant and use it as it sees fit to mitigate the cost of energy it receives from the grid flies in the face of the 100-percent-carbon-free electricity standard enshrined in state law.

How can the Commission administer and enforce a "100 percent" standard if every large energy customer could exploit this interpretation and build its own oil, coal, or gas generation—and end-run the CN process—rather than taking electricity from an associated grid connection? Simply stated, the Commission must have some authority over this kind of grid-adjacent power generation, or else the carbon-free electricity standard will mean nothing for the state of Minnesota. Utilities will be held to a strict standard, but their customers with power plants of the same size and effect on society will be without serious regulatory oversight. The legislature surely

⁸ Rebecca F. Elliott, *Chevron Joins Race to Generate Power for A.I.*, NEW YORK TIMES, Jan. 28, 2025, <https://www.nytimes.com/2025/01/28/business/energy-environment/chevron-power-plant-ai.html>.

⁹ *Id.*

¹⁰ Minn. Stat. § 216B.1691, subd. 2g.

¹¹ Amazon, *Driving climate solutions*, <https://sustainability.aboutamazon.com/climate-solutions> (last visited Jan. 31, 2025).

could not have meant for this result when they passed this ambitious and across-the-board legislation meant to clean up carbon pollution in the energy sector.

By contrast, by undertaking a robust CN process and a fulsome environmental review, the Commission can assure that all generation, including so-called “emergency” generation,¹² is as clean as possible. By assessing the no action alternative and other cleaner sources of electrical generation and storage, the Commission can assure itself that this applicant is proposing something that aligns with the careful balance that is applied to other large generation units on the grid.

Although it falls below the 50 MW threshold at issue here (and thus was not subject to a CN), the behind-the-meter solar field at Flint Hills’ Pine Bend Refinery is a useful counterexample of what could be possible if this Applicant was required to grapple with an alternatives analysis and CN procedure. There, the facility has installed 45 MW of solar that can all be used on-site behind-the-meter.¹³ The Applicant here has made no showing of whether or not some or all of its professed need for electricity could similarly be met with clean generation or storage. It is questionable why a company with a commitment to decarbonization cannot clear a bar set by a major representative of the oil and gas industry.

Instead of being a climate loss, this co-located facility could very well be part of Minnesota’s economic and climate solutions. Energy parks with clean energy, storage, and significant load have

¹² While ADS claims that its compliance with federal and state air permit requirements will minimize pollution to a point, ADS Petition footnotes 1 and 4, it’s notable that the company suggests it will run all generators for 15 hours per year for testing and maintenance, while MPCA guidance suggests testing and maintenance operation can be limited to one hour (or a half hour twelve times per year). This should be fully explained. *Compare* ADS Petition at 2 to MPCA, Emergency generators and stationary engines: Recommended practices, Document No. aq1-51, <https://www.pca.state.mn.us/sites/default/files/aq1-51.pdf> (“One hour or less of operation should be sufficient to fulfill most requirements. Locations with utility contracts may be able to do routine testing for only 15 or 20 minutes. Emergency units should follow NFPA 110-2010 Standard for Emergency and Standby Power Systems, which requires monthly tests of not less than 30 minutes.”).

¹³ AFPM Communications, *Q&A: Discussing the largest-of-its-kind solar complex in the United States*, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, Oct. 24, 2024, <https://www.afpm.org/newsroom/blog/qa-discussing-largest-its-kind-solar-complex-united-states>.

been identified as ripe places to create stronger grids and accelerate decarbonization.¹⁴ ADS has the resources and knowhow to propose viable overlapping technologies that could leverage their scale and technological capacity to bring a better project before the Commission for approval. While 600 MW of solar is a vast amount (and would cover a large amount of land) with well-designed solar plus energy storage it's possible that the professed need could be met with the appropriate amount of clean energy and an appropriate amount of co-located batteries or other storage technologies. Without a full CN process the Commission cannot know what is possible.

D. An Additional Burden on Local Government Resources

To the extent that the Commission does not pick up the mantle of exercising some oversight over high-polluting large energy infrastructure behind-the-meter, this burden will fall on local governments with no expertise in energy permitting matters. The principal permitting authority for this facility other than the Commission is a local government—specifically the City of Becker, which is seeking to replace property tax revenue that it may lose as Xcel's Sherco Plant moves towards retirement.¹⁵ This local government does not have the resources of a multinational corporation with the backing of Wall Street investors, nor does it have the experience with energy systems regulation that the Commission enjoys.

In some instances, local governments also have been caught up by conflicts of interest that arise from the incentive to attract large new projects to increase property tax base.¹⁶ Though local governments would of course not intentionally act in ways that harm their communities, in the search for economic benefits, transparency about environmental, social, and human health impacts that will be borne by neighbors of this new industry may be overlooked. It is simply not fair to place all of the permitting responsibility and onus on local zoning officials who may have

¹⁴ ENERGY INNOVATION POLICY & TECHNOLOGY LLC, ENERGY PARKS: A NEW STRATEGY TO MEET RISING ELECTRICITY DEMAND, Dec. 9, 2024, <https://energyinnovation.org/report/energy-parks-a-new-strategy-to-meet-rising-electricity-demand/>.

¹⁵ ADS Petition at 3.

¹⁶ For example, Peculiar, Missouri's local government was severely stressed by locals' accusations of secretive approval of a proposed data center that ultimately was not built. Eli Tan, *A Rural Missouri Town Fights Big Tech, and Itself*, NEW YORK TIMES, Oct. 29, 2024, <https://www.nytimes.com/2024/10/29/technology/data-center-peculiar-missouri.html>.

limited information and insufficient experience vetting issues such as the air pollution, water use, noise, and other environmental impacts that would be foreseen in a CN process.

2. If it is determined a certificate of need is required, should the Commission approve the exemptions to the certificate of need application content requirements requested by ADS?

The Applicant argues that even if it is subject to the CN requirements, it should nevertheless be exempt from several application requirements outlined in Minnesota Rules chapter 7849. CURE believes that some of the alternatives identified by the Applicant are reasonable, including the proposal to omit a system map and instead submit a map showing the proposed site of the Project and its location relative to the power grid and omit a system demand forecast in favor of information regarding the Project's peak demand and annual electrical consumption.¹⁷ Rather than system capacity, under Minnesota Rule 7849.0280, CURE would ask that the Applicant provide information on how its need could be met with grid capacity plus on-site storage. Rather than discussing the impact on the electrical system of a delay in construction, under Minnesota Rule 7849.0300, it would be appropriate for the Applicant fully discuss alternatives such as demand-response and storage meeting some of the identified electrical need. And while the Applicant does not have sufficient information to explain potential rate impacts to other customers in this instance, the Commission should consider ordering 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.

However, CURE strongly opposes the Applicant's requests for an exemption from the "no facility" alternative and conservation plans.¹⁸ While ADS may not be an electric utility with retail customers, its use of up to 600 MW of diesel-generated electricity would nevertheless have real impacts on nearby communities. Energy waste will impact Minnesotans through the additional

¹⁷ CURE does not oppose the Applicant's request for full exemption from the promotional activity requirements of the applicable regulation.

¹⁸ ADS Petition at 13, 14. To the extent that some part of the facility could conserve energy and partially ramp down in the event of an extraordinary power outage that information is directly relevant to the Commission's consideration of need for a full 600 MW plant.

pollution caused by unnecessary diesel generator use. As with any large energy facility, the Applicant should be required to show that there is no less polluting alternative to the proposed diesel generators. The Commission should perform a rigorous review and require ADS to disprove the availability of clean alternatives, which are ostensibly also required by the Applicant's oft-touted climate pledge.¹⁹ According to the company: "Driven by the urgency of climate change, we co-founded The Climate Pledge in 2019 and committed to achieve net-zero carbon emissions by 2040."²⁰ Requiring ADS to make a CN showing that is consistent with its own commitment is not an unreasonable standard.

3. Are there any additional issues or concerns related to this matter?

Fossil fuel and tech interests should demonstrate need before building high-polluting power plants in Minnesota. Ignoring the merger of tech and fossil fuels will not aid the Commission in its work to protect the public interest.

In spite of general optimistic claims that technology companies' preference for "clean" electricity sources will accelerate the development of renewable energy, the past year alone demonstrates the folly of such assumptions, with the tech sector contracting with gas-fired generators, nuclear power, and even coal-fired power stations.²¹ New gas-fired generators in particular are increasingly seen as an expeditious route for meeting tech companies' purported energy needs. In addition to the Chevron deal discussed above, in just the past two months both

¹⁹ Amazon, Driving climate solutions, <https://sustainability.aboutamazon.com/climate-solutions> (last visited Jan. 31, 2025).

²⁰ *Id.*

²¹ Darrell Proctor, *Power Demand from Data Centers Keeping Coal-Fired Plants Online*, POWER, Oct. 16, 2024, <https://www.powermag.com/power-demand-from-data-centers-keeping-coal-fired-plants-online/>.

ExxonMobil²² and NextEra Energy²³ have announced partnerships with GE Vernova which would build multiple gigawatts of new, behind-the-meter gas generation for data centers.

Some of these companies, including both ExxonMobil and Chevron, have explicitly said that they will eventually incorporate carbon capture and sequestration into their generation assets.²⁴ To the extent that the Commission does not have CN authority over either the large energy facility, nor the pipeline associated with its carbon sequestration, there could be a glut of proposals that the Commission is obligated to site without any consideration of whether the facilities are needed or in the public interest. Allowing both generation and pipelines to be built without considering their need, when Minnesota Statute and the public interest dictate the opposite, would hamstring the Commission's role as a check on the development of unjustifiable large energy infrastructure.

Moreover, the likelihood raised by experts and analysts²⁵ about the risk of overbuilding energy generation to meet the unsubstantiated claims of tech companies was further validated

²² Zachary Skidmore, *ExxonMobil plots natural gas power plant to exclusively power data centers*, DATA CENTER DYNAMICS, Dec. 12, 2024,

<https://www.datacenterdynamics.com/en/news/exxonmobil-plots-natural-gas-power-plant-to-exclusively-power-data-centers/>.

²³ Emma Penrod, *NextEra partners with GE Vernova to build 'gigawatts' of gas generation*, UTILITY DIVE, Jan. 27, 2025, <https://www.utilitydive.com/news/nextera-ge-vernova-gas-earnings/738316/>.

²⁴ Rebecca F. Elliott, *Chevron Joins Race to Generate Power for A.I.*, NEW YORK TIMES, Jan. 28, 2025, <https://www.nytimes.com/2025/01/28/business/energy-environment/chevron-power-plant-ai.html>.

²⁵ IEEFA, DATA CENTERS DRIVE BUILDOUT OF GAS POWER PLANTS AND PIPELINES IN THE SOUTHEAST: RATEPAYERS AT RISK OF SUBSIDIZING UNNEEDED ELECTRIC INFRASTRUCTURE FOR DATA CENTERS, (January 29, 2025) <https://ieefa.org/sites/default/files/2025-01/UPDATED-REVIEWED-Southeast%20Gas%20Infrastructure%20and%20Data%20Cente.pdf>; Kate Aronoff, *What If Tech Execs Don't Really Need All These Data Centers?*, THE NEW REPUBLIC, Dec. 17, 2024, https://newrepublic.com/article/189460/ai-data-centers-coal-fossil-fuels-energy?utm_source=Twitter&utm_campaign=SF_TNR&utm_medium=social; Robinson Meyer, *A Skeptic's Take on AI and Energy Growth*, HEATMAP, Apr. 3, 2024, <https://heatmap.news/podcast/shift-key-episode-10-ai-data-centers>.

this week by the efficiency breakthrough demonstrated by Chinese AI startup DeepSeek.²⁶ As Todd Snitchler, president and CEO of the Electric Power Supply Association, recently argued:

Alan Greenspan is quoted as saying in 1996 that the stock market experienced irrational exuberance around the dot com bubble... In many ways, the race to power our artificial intelligence-driven future is showing the same thing. There is no doubt that the growth of AI will be driven or limited by how quickly we can ensure sufficient power to enable the expansion and operation of data centers, but the magnitude of the energy needed is still much more in question than many seem to think.²⁷

Providing tech companies and energy developers an avenue to build new fossil fuel generation with reduced scrutiny risks burdening the state, the climate, and our communities with a wave of GHG-belching facilities that serve no public purpose or need. Checking irrational exuberance in large infrastructure development is why we have CNs in the first place, it is not time to discard such a useful regulatory tool.

Conclusion

Ultimately, the co-location of data centers with behind-the-meter energy generation may be the most efficient, sustainable option for *some* projects under *some* conditions. But given the rapid pace of unprecedented hyperscaler data center development and the lax regulatory and planning standards for this sector, the Commission must not abdicate its responsibility to ratepayers, communities, regulated utilities, and the larger public by creating a regulatory loophole the size of the Amazon River, that would allow large-scale energy development with little oversight or transparency.

²⁶ Dan Gearino, *DeepSeek's Emergence Shows the Power Sector's AI Dreams May Not Proceed as Expected*, INSIDE CLIMATE NEWS, Jan. 30, 2025, <https://insideclimatenews.org/news/30012025/inside-clean-energy-china-deepseek-ai/>.

²⁷ Todd Snitchler, *Load forecasts from data centers risk falling into irrational exuberance territory*, UTILITY DIVE, Jan. 15, 2025, <https://www.utilitydive.com/news/load-forecasts-data-centers-risks-consumers-cost-epsa/737280/>.

CURE encourages the Commission to set a strong precedent for other similar applicants and work with ADS to conduct a top-notch CN proceeding that illustrates the available clean technologies that may be able to meet some or all of the demand the Applicant would like to cover with its diesel generators.

Sincerely,

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