
**State of Minnesota
In Court of Appeals**

APPROVING THE FINDINGS OF FACT AND
RECORD OF DECISION FOR ARCHER
DATACENTERS ENVIRONMENTAL
ASSESSMENT WORKSHEET (EAW) AND
NEGATIVE DECLARATION CONCERNING
THE NEED FOR AN ENVIRONMENTAL
IMPACT STATEMENT (EIS)

RESPONDENT CITY OF FARIBAULT'S BRIEF

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¹ Available online at:
https://www.epa.gov/system/files/other-files/2022-09/calculator_tool.xlsx.

² Available online at:
https://www.eqb.state.mn.us/sites/eqb/files/2024_eaw_climate_guidance_2.pdf.

STATEMENT OF LEGAL ISSUES

I. Whether this certiorari appeal should be dismissed because MCEA lacks standing?

a. Standing is a jurisdictional doctrine. It is evident from the record and Relator's briefing that it lacks standing, which deprives this Court of jurisdiction.

b. Most apposite cases:

- *Matter of Sandy Pappas Senate Committee*, 488 N.W.2d 795 (Minn. 1992)
- *In re Cottonwood Cty.'s Dec. on Need for Envotl. Impact State. for Proposed Sioux Rock Quarry Expansion Project in Delton Township*, No. A25-0806, 2025 WL 2901586 (Minn. App. Oct. 13, 2025)

II. Whether the City of Faribault took a hard look at the issues involved, and genuinely engaged in reasoned decision-making when it determined the Archer Datacenters Project does not have the potential for significant environmental effects?

a. The issue of whether the Project required an Environmental Impact Statement ("EIS") was raised through an Environmental Assessment Worksheet. Public agencies and citizens submitted comments regarding greenhouse gas emissions, cumulative effects, air quality, and noise during the 30-day comment period. *Admin. R.* 13-316, 344, 405-424, 762-781. The Faribault City Council issued a Negative Declaration on the need for an EIS, adopting Findings of Fact and a Record of Decision concluding the Project does not have the potential for significant environmental effects. *Admin. R.* 829-841. The issue was preserved by the City's publication of its Negative Declaration in the EQB Monitor, and Relator's subsequent filing and service of a petition for a writ of certiorari challenging the City's decision not more than 30 days after notice of the final decision in the EQB Monitor. *Admin. R.* 829-841.

b. Most apposite cases:

- *Citizens Advocating Responsible Dev. ("CARD") v. Kandiyohi Cnty. Bd. of Comm'rs*, 713 N.W.2d 817 (Minn. 2006)

- *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378 (Minn. App. 2009)
- *In re Enbridge Energy, Ltd. P'ship*, 930 N.W.2d 12 (Minn. App. 2019)

STATEMENT OF THE CASE

Respondent City of Faribault (“City”), acting through its City Council, is the Responsible Governmental Unit (“RGU”) charged with the environmental review for the proposed Archer Datacenters SPE2, LLC (“Archer”) Faribault Campus project (“Project”). Relator Minnesota Center for Environmental Advocacy (“MCEA”) challenges the City’s decision regarding the need for an Environmental Impact Statement (“EIS”) for the Project, located on approximately 84.3 acres south of 150th Street West and east of Acorn Trail in Faribault, Minnesota.

The City prepared a draft Environmental Assessment Worksheet (“EAW”) for the Project pursuant to Minnesota law. Following public comments, responses to comments, review by the City’s Environmental Commission, and supplemental submissions in response to the City’s request for additional information, the City issued a revised EAW. After additional review by the Environmental Commission, as well as the City’s Planning Commission, the City Council evaluated whether the Project could cause significant environmental effects requiring an EIS. On August 12, 2025, the City Council issued a negative declaration on the need for an EIS and adopted Findings of Fact and a Record of Decision supporting its conclusion the Project does not have the potential for significant environmental effects. The decision was published in the EQB Monitor on September 2, 2025. MCEA filed this certiorari appeal on October 2, 2025.

STATEMENT OF FACTS

A. The Proposed Archer Datacenters Faribault Campus.

Archer proposes to construct a data center campus on approximately 84.3 acres of agricultural and woodland property located south of 150th Street West and east of Acorn Trail in Faribault, Minnesota. *Admin R.* 1234-1237. The Project involves the construction of up to 500,000 square feet of data center buildings, a substation, and associated infrastructure. *Id.* Because the Project exceeds 450,000 square feet of industrial construction, state rules required the City to serve as the RGU, in preparation and review of environmental documents, including an EAW. *Minn. R.* 4410.4300, subp. 14.

B. The City Publishes a Draft EAW and Solicits Public Comment.

Archer, assisted by the engineering firm Kimley-Horn, prepared a draft EAW for the Project (the “Draft EAW”). *Admin. R.* 8; *see also Admin. R.* 13-316. On May 13, 2025, the Faribault City Council unanimously adopted Resolution 2025-122, declaring the Draft EAW complete for distribution. *Id.* The City published the Draft EAW in the EQB Monitor on May 20, 2025, opening a 30-day public comment period. *Admin. R.* 317, 405; *see also Minn. R.* 4410.1600.

The Draft EAW contained a list of all federal, state, county, and city permits which must be obtained for the Project, *Admin. R.* 26, and included preliminary estimates for greenhouse gas (“GHG”) emissions and analyses of air and noise

impacts. *See Admin. R.* 13-316. Specifically, the Draft EAW estimated Scope 2 (purchased electricity) emissions based on a preliminary electricity usage input of 1,050,000,000 kilowatt-hours per year (kWh/year). *Admin. R.* 202. This preliminary input yielded a total GHG estimate of approximately 530,000 metric tons of CO₂ equivalent (“CO₂e”) emissions per year. *Id.*

During the comment period, the City received submissions from the Minnesota Department of Natural Resources, the Minnesota Pollution Control Agency, the City’s own Environmental Commission, and nine members of the public, but not any comments from the Minnesota Center for Environmental Advocacy. *Admin. R.* 405-424, 762-781.

C. The City Reviews the EAW, Identifies Data Errors, and Requests Additional Information.

Following the comment period, the City’s Environmental Commission noted that the Draft EAW’s projected CO₂e emissions appeared disproportionately high compared to other data centers. *See Admin. R.* 1560. This review revealed the Draft EAW’s calculation was based on an error regarding the facility’s operational design and electricity inputs. *Admin. R.* 1260-1262, 1560.

Consequently, on July 16, 2025, the City issued a memorandum determining additional data was necessary to make a reasoned decision. *Admin. R.* 344. The City extended the decision deadline by 30 days and requested that Archer provide:

- Information related to potential emissions, including emissions from either diesel or natural gas power generation. This information must be provided to assess the potential for air quality impacts and confirm that the project does not trigger the mandatory EAW category for air pollution.
- Information related to current and anticipated sound levels in the project area.
- Information related to the projected water demand and wastewater generation potential from the proposed project, including the cumulative effect when combined with other facilities in the vicinity of the project area.

Id.

D. The Final EAW Corrects GHG Calculations Using EPA Methodology.

In response to the City’s request and public comments, Archer revised the EAW (the “EAW” or “Final EAW”). *See Admin. R. 345.*

To correct the Draft EAW’s calculation error, the Final EAW estimated GHG emissions using the U.S. Environmental Protection Agency’s Simplified GHG Emissions Calculator (“SGEC”). *Admin. R. 1260.* The SGEC is a method recommended by the Environmental Quality Board (“EQB”) and MPCA for estimating energy intensity. *Admin. R. 878-879, 1260; see also Minn. Env’t Quality Bd., Environmental Assessment Worksheet (EAW) Guidance: Developing a Carbon Footprint and Incorporating Climate Adaptation and Resilience, at 13 (2024).* The SGEC provides a method for estimating energy usage by utilizing data from the Energy Information Administration, specifically the Commercial Building Energy

Consumption Survey, which provides average annual energy intensity (per square foot) by building type. Ctr. for Corp. Climate Leadership, U.S. Env't Prot. Agency, *Simplified GHG Emissions Calculator* (2022). Users select the relevant principal building activity and geographic region, and the product of multiplying the resulting figure by the total square footage serves as a proxy when specific data is unavailable. *Id.* Using the SGEC, the Final EAW corrected the electricity input to 14,140,000 kWh/year. *Admin. R.* 1260-1262. This correction resulted in a revised Scope 2 emissions estimate of 7,097 tons of CO₂e per year. *Id.* The record includes the specific calculation sheets detailing emission factors, square footage, and usage inputs. *Admin. R.* 1415-1424.

The Final EAW identified potential mitigation strategies, including energy-efficient cooling technology, building shells, and renewable energy credits. *Admin. R.* 1262-1263. The City noted these strategies would be evaluated based on feasibility and code requirements to reduce emissions where practicable. *Id.*

E. The City Analyzes Air Quality, Noise, and Cumulative Effects.

The Final EAW also analyzed the Project's cumulative potential effects, air emissions, and noise impacts.

Regarding stationary source air emissions, the Final EAW noted the project might utilize backup emergency generators but stated the exact "size, type, and quantity" were not yet determined. *Admin. R.* 372-373. Nevertheless, the record

includes information on emissions anticipated from combustion diesel generators and combustion from natural gas. *Admin. R.* 878-879. The City concluded stationary source emissions were anticipated to be minimal based on the mechanical equipment and a full analysis would occur during the mandatory MPCA permitting process, as the Project would require an MPCA Air Registration Permit. *Admin. R.* 372-377, 845.

On noise impacts, the City identified ventilation systems and occasional generator testing as the main operational noise sources. *Admin. R.* 881-882. The EAW analyzed existing conditions, noting the site is currently agricultural land where the primary noise source is roadway traffic. *Id.* The City determined changes in traffic noise are not expected to be perceptible because traffic volumes either lack sensitive receptors or are too low to cause noticeable sound increases. *Id.* Regarding operational noise, the City concluded, based on its “previous development experience,” *Admin. R.* 846, noise attenuation measures, such as sound walls, increased setbacks, berms, or dense landscaping, “may be incorporated into project design to ensure that MPCA noise rules and City noise ordinances are followed.” *Admin. R.* 881-882.

The EAW also addressed cumulative potential effects by analyzing impacts resulting from the Project in addition to other projects in the “environmentally relevant area.” *Admin. R.* 844-845. The City conducted a “What’s in My

Neighborhood” analysis, which identified existing sites but found no major sources compounding the Project’s impacts. *Admin. R.* 870-900. A traffic study analyzed background growth but identified no specific conflicting developments. *Admin. R.* 1043-1154. The City found no reasonably foreseeable projects in the relevant area to aggregate, the City marked the specific discussion of cumulative effects as “Not Applicable.” *Admin. R.* 49.

As to the project’s impact on GHG emissions, the Draft EAW estimated Scope 2 (purchased electricity) emissions based on an electricity usage input of 1,050,000,000 kWh/year. *Admin. R.* 202. This input resulted in a total GHG estimate of approximately 530,000 metric tons emissions per year. *Id.*

F. The City Approves the Negative Declaration.

On July 28, 2025, the Environmental Commission reviewed the Final EAW and unanimously voted to approve Resolution ENV2025-01, recommending the findings of fact. *Admin. R.* 433. On August 4, 2025, the Planning Commission reviewed the record, including the City’s responses to comments, and voted to recommend approval. *Admin. R.* 437-445. On August 12, 2025, the City Council adopted the Findings of Fact and its Record of Decision. *Admin. R.* 829-841. The City concluded that the EAW analysis was adequate and the Project did not have the potential for significant environmental effects. *Admin. R.* 837-846. Accordingly,

the City issued a Negative Declaration, determining an Environmental Impact Statement (“EIS”) was not required. *Admin. R.* 829-846.

The decision was published in the EQB Monitor on September 2, 2025. *Admin. R.* 1219. This certiorari appeal follows.

STANDARD OF REVIEW

When faced with “a negative declaration regarding the need for an EIS,” the Court reviews “the proceedings before the RGU decision-making body[.]” *Friends of Twin Lakes v. City of Roseville*, 764 N.W.2d 378, 381 (Minn. App. 2009), this Court must affirm the City’s conclusion if it “is reasonable on the basis of the record.” *Pfoser v. Harpstead*, 953 N.W.2d 507, 514 (Minn. 2021). The Court’s role is to determine whether the RGU took “a hard look at the problems involved, and whether it has genuinely engaged in reasoned decision-making.” *Citizens Advocating Responsible Dev. (“CARD”) v. Kandiyohi Cnty. Bd. of Comm’rs*, 713 N.W.2d 817, 832 (Minn. 2006) (quotation omitted).

In doing so, the Court accords “substantial deference” to the RGU’s decision. *Id.* The decision is only reversed if it reflects “an error of law, the findings are arbitrary and capricious,³ or the findings are unsupported by substantial

³ A ruling is arbitrary and capricious if the RGU “(a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view.” *CARD*, 713 N.W.2d at 832 (Minn. 2006) (quotation omitted).

evidence.^[4]” *Id.* (citing Minn. Stat. § 14.69). The party challenging an RGU’s decision, “has the burden of proving that its findings are unsupported by the evidence as a whole.” *Id.* at 833; *see also In re Env’t Impact Statement*, 849 N.W.2d 71, 75 (Minn. App. 2014) (same).

ARGUMENT⁵

I. THE CITY’S DETERMINATION THE PROJECT DID NOT HAVE THE POTENTIAL FOR SIGNIFICANT ENVIRONMENTAL EFFECTS WAS REASONABLE AND BASED ON SUBSTANTIAL EVIDENCE IN THE RECORD

An EAW is “a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required” for a particular project. Minn. Stat. § 116D.04, subd. 1a(c) (2024). The Minnesota Environmental Policy Act of 1973 (MEPA), Minn. Laws Ch. 412 (1973) requires an RGU to prepare an EIS before engaging in any major governmental action that creates the “potential for significant environmental effects.” *Id.*, subd. 2a.

The Minnesota Environmental Quality Board (MEQB) has set forth four criteria that an RGU is required to analyze when determining whether a proposed

⁴ “Substantial evidence consists of: 1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than some evidence; 4) more than any evidence; and 5) evidence considered in its entirety.” *CARD*, 713 N.W.2d at 832 (Minn. 2006) (quotation omitted).

⁵ In the interest of brevity and to promote judicial economy, the City respectfully adopts and incorporates by reference the comprehensive arguments presented by Respondent Archer Datacenters SPE2, LLC.

project has the potential for significant environmental effects: (1) the “type, extent, and reversibility of environmental effects”; (2) the “cumulative potential effects of related or anticipated future projects”; (3) “the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority”; and (4) “the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.” Minn. R. 4410.1700, subp. 7.

Here, the City conducted a thorough environmental review, followed the mandatory EAW process, considered the public’s comments, and—with expert consultation—issued a declaration on the need for an EIS. The City analyzed the requisite criteria and determined: “The Archer Datacenters development as described in the EAW does not have potential for significant environmental impacts. An Environmental Impact Statement will not be required.” *Admin. R.* 839.

The City’s decision was based on a robust administrative record, including a Revised EAW, which addressed initial data discrepancies and incorporated mitigation measures. MCEA challenges this decision by demanding a level of granular certainty not required at the EAW stage and by asking this Court to substitute its judgment for the City’s. MCEA cannot meet its burden because the record establishes the City took a hard look at the relevant issues and reasonably concluded the Project does not create the potential for significant environmental

effects. Moreover, the City's Findings of Fact are supported by substantial evidence in its Record of Decision and are not arbitrary or capricious. Therefore, because the City genuinely engaged in reasoned decision-making, the City respectfully requests the Court affirm the negative declaration.

A. The City reasonably determined greenhouse gases generated by the Project do not have the potential for significant environmental effects.

An environmental assessment sufficiently analyzes a project's potential environmental impacts when it addresses both the direct and indirect impacts on climate change and greenhouse-gas emissions. *In re Enbridge Energy, Ltd. P'ship*, 930 N.W.2d 12, 29 (Minn. App. 2019).

Here, the Final EAW determined potential GHG emissions through reliance on a calculator which has been endorsed and recommended by the EQB and the MCPA. MCEA, however, claims the City's reliance on the EPA Simplified GHG Emissions Calculator ("SGEC") was arbitrary, capricious, and unsupported because the City was required to use MCEA's preferred methodology. *Relator's Br.* at 23-25. MEPA, however, instructs the EQB—not MCEA—to establish the form and content of EAWs, and the City wisely relied on a methodology endorsed by the EQB, albeit not MCEA's preferred methodology. *See* Minn. Stat. § 116D.04, subd. 5a(2).

Next, MCEA claims the "City offered no explanation on the record for how it estimated the Archer Data Center's purchased electricity[,] or "data, methods,

or sources at all to explain how it assessed the project's electricity consumption," in the Final EAW. *Relator's Br.* at 25.

This assertion is simply false. The EAW projected GHG emissions on an average annual basis using the CO₂ equivalent and include the proposer's best estimate of average annual emissions over the proposed life/design service life of future development. *Admin. R.* 1260-1262. Moreover, the EAW explicitly states: "Emissions were estimated using the US Environmental Protection Agency's Simplified GHG Emissions Calculator (SGEC)." *Admin. R.* 1260. The SGEC specifically provides a method for estimating energy usage by utilizing data from the Energy Information Administration, specifically the Commercial Building Energy Consumption Survey, which provides average annual energy intensity (per square foot) by building type. Users select the relevant principal building activity and geographic region, and the product of multiplying the resulting figure by the total square footage serves as a proxy when specific data is unavailable. *Id.* The record not only contains all the information MCEA claims it lacks, but it also includes the specific calculation sheets supporting the estimates, which detail the specific emission factors, the square footage, and the usage inputs. *Admin. R.* 1415-1424. The City was entitled to rely on these technical submissions. MCEA refers to this generally accepted scientific methodology as a "bare assertion," but the evidence is not judged by a party's willingness to accept it.

Indeed, this Court generally does not endeavor to weigh conflicting evidence or make credibility determinations, but merely attempts to ensure a decision has support in the record. “It is not the function of” this Court to resolve “a conflict in the evidence.” *Dep’t of Nat. Res. v. Todd County Hearings Unit*, 356 N.W.2d 703, 709 (Minn. App. 1984). It is the City which is tasked with distinguishing between “unsupported fears” and potential effects to the environment before determining “whether the project, *as proposed*, had the potential for causing significant environmental effects.” *See CARD*, 713 N.W.2d at 833–35 (emphasis added). Stated differently, this Court will neither compel an RGU “to prepare an EIS on the basis of speculative factors[,]” nor will it remand the decision to require the RGU utilize “the best available scientific methodology.” *Iron Rangers for Responsible Ridge Action v. Iron Range Res.*, 531 N.W.2d 874, 881 (Minn. App. 1995). “Where there are *technical disputes* and *uncertainties*, the court **must** assume that **the agency or RGU has exercised its discretion appropriately.**” *Id.* (emphasis added). The City received and considered all evidence, gave all sides an opportunity to be heard, and could reasonably conclude the EAW’s electricity estimate was the most accurate representation. Courts defer to the RGU’s judgment on conflicting evidence, “even though [the court] may have reached a different conclusion had it been the fact-finder.” *In re Am. Iron & Supply Co.’s*

Proposed Metal Shredding Facility in Minneapolis, Minn., 604 N.W.2d 140, 144 (Minn. App. 2000); *see also Friends*, 764 N.W.2d at 381–82.

The reason the Court must assume an RGU has exercised its discretion appropriately in the face of technical disputes and uncertainties is readily apparent from MCEA's burden of proof. *Iron Rangers*, 531 N.W.2d at 881. The issue before the Court is whether the City reasonably concluded the Project would not present any potential significant environmental effects. It is MCEA's burden to prove the City's decision is unsupported by and contrary to the evidence; or if there is conflicting evidence the record evidence is so compelling and one-sided it only leaves room for one reasonable conclusion. *Friends*, 764 N.W.2d at 381. But if the record evidence leaves room for different, but equally reasonable opinions, MCEA does not carry its burden. *Id.* Likewise, the decision to credit an expert opinion can hardly be viewed as "so implausible that it could not be explained as a difference in view..." *Id.* Notably, however, this appeal does not present precisely this scenario because MCEA's opinion is not reasonable.

The record evidence does not leave room for different, but equally reasonable opinions here because MCEA's arguments are entirely unsupported. In contrast to the evidence in the record supporting EAW's electricity estimate, no record evidence supports MCEA's claim the electricity estimate is "implausible." *Relator's Br.* at 26. But MCEA does not rely on any data or scientific methodology

whatsoever to support this assertion. Instead, MCEA argues the City's GHG analysis is arbitrary because the emissions estimate dropped significantly between the Draft EAW and the Final EAW. The Draft EAW contained a preliminary estimate of ~530,000 metric tons of CO₂e. *Admin. R.* 202. During the review process, this figure was identified as being based on error, which did not reflect the actual operational design of the Archer Project. The Final EAW corrected the electricity input to 14,140,000 kWh/year. *Admin. R.* 1260-1262. This correction resulted in a revised Scope 2 emissions estimate of 7,097 tons/year. *Id.*

To the extent MCEA indicates there is something nefarious about this correction, it is wrong. The purpose of the EAW process is to uncover facts and refine analysis. "[T]he environmental-review process is not an adversarial proceeding; rather, the purpose of the proceedings is for the RGU to gather information on the possible environmental impacts of a project." *In re Declaring a Negative Need for an Env't Impact Statement for Proposed Living Word Bible Camp Project*, No. A13-1153, 2014 WL 3557954, at *8 (Minn. App. July 21, 2014). "[P]reparing an EAW, making the decision whether the EAW requires an EIS, and the ultimate preparation of an EIS are essentially an information gathering and analytical process." *Minnesota Ctr. for Env't Advoc. v. Minnesota Pollution Control Agency*, 644 N.W.2d 457, 468 (Minn. 2002). It is not arbitrary for an RGU to base its

decision on accurate data, to correct data errors, or refine estimates based on better information.

Aside from attempting to pass a data error off as scientific evidence, MCEA relies on extra-record evidence contained in a daily periodical.⁶ It is unclear whether MCEA accurately summarizes this paywall protected publicly inaccessible article, but even assuming it does, MCEA's arguments are entirely irrelevant to the purpose of environmental review. The article MCEA cites apparently refers to ten data center projects in Minnesota and describes them as being "between 120 MW to 600 MW campuses." *Relator's Br.* at 27. To compare these data centers to the Project, MCEA apparently divided the EAW's 14,140 mWh (14,140,000 kWh) figure by 8,760 (hours in a year) to reach a conclusion the EAW suggests "just 1.6 MW of average power use." *Relator's Br.* at 11. According to MCEA this figure is incompatible "with other data centers' power consumption[,]" whereas "114 MW of average power usage" would fall well within range of expected power consumption for large data centers, based on other Minnesota proposals." *Relator's Br.* 28. Unfortunately for MCEA, this data—in

⁶ The Court may take judicial notice of or otherwise refer to public documents not included in the record on appeal, *State v. Rewitzer*, 617 N.W.2d 407, 411 (Minn. 2000), but this Star Tribune article is located behind a paywall and is not a public document. *See, e.g., State v. Cao*, 788 N.W.2d 710, 718 n.2 (Minn. 2010).

addition to being inaccurate⁷ –has no bearing on this case whatsoever. In conducting an environmental review, megawatt-hours are used instead of megawatts because megawatts measures instantaneous power, like a generator’s size, while megawatt-hours measures energy consumption over time. Stated differently, no one –MCEA included –could calculate a total environmental impact or carbon footprint by looking at the peak power (megawatts), because it is necessary to know how much energy is used or saved (megawatt-hours), and megawatt-hours directly relates to total environmental impact, emissions, and resource displacement, making it suitable for assessing energy usage and long-term effects.

Finally, MCEA argues the City’s decision was arbitrary, capricious, and unsupported because “the City committed to no climate mitigations at all.” *Relator’s Br.* at 29. Strangely, MCEA presents the potential mitigation measures in the Draft EAW with approval, but suggests the very same language in the final

⁷ The City could follow MCEA’s lead and rely on extra-record evidence to rebut this argument. For instance, the City could point out the Farmington Technology Park AUAR estimated electricity purchased at 51,106,000 kWh for a 2,530,000 square foot facility, which – using the analysis MCEA conducted here – would result in 0.0202 MW figure for what MCEA calls average power use. In comparison to the 1.6 MW figure MCEA attaches to the Project here it is apparent the City drastically over-estimated the electricity purchased, contrary to MCEA’s claims otherwise. While reliance on a publicly available document in the EQB’s Environmental Review Projects Database would be more appropriate than relying on a paywall protected publicly inaccessible article, the City will rely on the record evidence as the parties are required to do.

EAW creates some sort of legal deficiency. MCEA's apparent issue with these potential mitigation measures is they fall "far short of embracing commitments that would be 'specific, targeted, and certain to be able to mitigate the environmental effects' from the Archer Data Center." *Relator's Br.* at 29 (citing *CARD*, 713 N.W.2d at 835). Here again MCEA's argument has no bearing on this appeal whatsoever. The statement MCEA cites from *CARD* was made in reference to Minn. R. 4410.1700, subp. 7.C.⁸ See *CARD*, 713 N.W.2d at 835 ("When an RGU considers mitigation measures as offsetting the potential for significant environmental effects under Minn. R. 4410.1700, it may reasonably do so only if those measures are specific, targeted, and are certain to be able to mitigate the environmental effects."). The problem with MCEA's argument here is the EAW never suggests the potential mitigation measures for offsetting the potential for significant environmental effects under Minn. R. 4410.1700, subp. 7.C. *Admin. R.* 1263. Rather they were merely provided to comply with best management practices for new construction and reduce GHG emissions where practicable during operations. *Id.* It would be contrary to the MEPA's purposes to conclude a

⁸ Minn. R. 4410.1700, subp. 7.C ("In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered: . . . the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project.").

project proposer cannot implement any mitigation measures unless they are sufficient to offset the potential for significant environmental effects. The City took a hard look at the potential environmental effects caused by GHG emissions and engaged in reasoned decision-making.

B. The City’s determination the project does not have the cumulative potential for significant environmental effects was reasonable and not arbitrary or capricious.

MEPA requires an RGU to consider the cumulative potential effects of related or anticipated projects. *See* Minn. R. 4410.1700, subp. 7.B. In determining whether a project’s cumulative potential effects has the potential for significant environmental effects, an RGU considers:

[W]hether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project.

Minn. R. 4410.1700, subp. 7.B.

MCEA claims the City failed to analyze cumulative potential effects. This mischaracterizes the record. The City considered potential cumulative effects but found them insignificant because there were no applicable projects to aggregate.

The analysis required by Minn. R. 4410.1700, subp. 7.B implies there are “other contributions[,]” i.e., other projects, in the surrounding area interacting

with the proposed project to create a cumulative potential effect. If this were not already clear, the meaning of cumulative potential effects makes it so:

“Cumulative potential effects” means the effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or for which a basis of expectation has been laid It is not required to list or analyze the impacts of individual past actions, unless such information is necessary to describe the cumulative potential effects. In determining if a basis of expectation has been laid for a project, an RGU must determine whether a project is reasonably likely to occur and, if so, whether sufficiently detailed information is available about the project to contribute to the understanding of cumulative potential effects. In making these determinations, the RGU must consider: whether any applications for permits have been filed with any units of government; whether detailed plans and specifications have been prepared for the project; whether future development is indicated by adopted comprehensive plans or zoning or other ordinances; whether future development is indicated by historic or forecasted trends; and any other factors determined to be relevant by the RGU.

Minn. R. 4410.0200, subp. 11a.

An RGU is “required to analyze only those projects ‘actually planned or for which a basis of expectation has been laid.’” *In re Enbridge*, 930 N.W.2d at 35 (quoting Minn. R. 4410.0200, subp. 11a.). When no known future projects are anticipated, “any effects they may have . . . are speculative, and any consideration of these effects is equally speculative.” *White v. Minnesota Dep’t of Nat. Res.*, 567

N.W.2d 724, 732 (Minn. App. 1997). Likewise, when a relator fails to show there “are other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources” such projects “are speculative.” *In re Env’t Impact Statement*, 849 N.W.2d at 79. “[U]nsupported fears do not require a full-blown investigation[,]” and an RGU “cannot be compelled to prepare an EIS on the basis of speculative factors.” *CARD*, 713 N.W.2d at 833 (quotation omitted). Instead, “[t]hey must produce specific facts which establish the existence of a genuine issue.” *White*, 567 N.W.2d at 735 (quotation omitted). If “there is no basis, beyond speculation, for” other projects, the relator fails to meet “its burden to demonstrate the” RGU “with respect to its analysis of cumulative potential effects.” *In re Enbridge*, 930 N.W.2d at 35.

MCEA fails to meet its burden because it can point to no past projects, or future projects reasonably likely to occur, in the relevant geographic area. Instead, MCEA again relies on extra-record evidence, which was not accessible to the public or the City. Still, even if the City had access to the map of other potential data center projects across the state, MCEA does not meet its burden to identify projects in the relevant geographic area, which might reasonably be expected to affect the same environmental resources.

In contrast to MCEA’s unsupported allegations, the City explicitly addressed the cumulative potential effects criterion: “Cumulative effects result

from the incremental impact of the proposed project when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions.” *Admin. R.* 844-845. The traffic study analyzed background growth but did not identify specific conflicting developments. *Admin. R.* 1043-1154. The “What’s in My Neighborhood” analysis identified existing sites but no major sources, which would compound the Project’s impacts. *Admin. R.* 870-900. “The City of Faribault finds that the analysis completed for the EAW and the additional information considered in this document of findings of fact and conclusions are adequate to determine whether the project has the potential for significant environmental effects.” *Admin. R.* 844-845. MCEA points to no specific reasonably foreseeable project the City ignored and the record confirms the absence of conflicting nearby projects. Therefore, MCEA’s argument should be rejected because the City’s determination was reasonable, supported by the record, and not arbitrary or capricious.

C. The City’s determination the project does not have the potential for significant effects on air quality and noise generation was reasonable.

MCEA argues the City “unlawfully deferred” air quality analysis and “repeated the mistake” in conducting its noise analysis. *Relator’s Br.* at 38-41, 44-46. MCEA’s argument misstates the applicable law, but—as an initial matter—there is no support for the premise the City deferred any analysis.

Despite MCEA's claim the City's noise analysis was "insignificant" and unsupported, the record demonstrates otherwise. *Relator's Br.* at 46-48. The City considered noise impacts and determined they would not be significant based on the project design and regulatory requirements. The EAW addresses existing noise levels, sensitive receptors, compliance with state standards, and quality of life, in addition to identifying measures to reduce or mitigate construction and operational noise impacts. *Admin. R.* 881-882. The EAW study area "is currently agricultural land" and the "existing noise sources at the site consist mainly of the surrounding roadways." *Id.* The EAW establishes changes in traffic noise are not expected to be perceptible because traffic volumes either lack sensitive receptors or are too low to cause noticeable sound increases. *Id.* Regarding operational noise, the EAW concluded "the main source of noise is ventilation systems" and occasional generator testing. *Id.* Based on its "previous development experience," *Admin. R.* 846, the City concluded noise attenuation measures, such as sound walls, increased setbacks, berms, or dense landscaping, "may be incorporated into project design to ensure that MPCA noise rules and City noise ordinances are followed." *Admin. R.* 881-882. The City's determination noise could be controlled to insignificant levels through standard engineering practices and enforced through standard state and local regulations was reasonable.

Likewise, regarding air quality, the City analyzed potential air pollution and concluded these effects can be anticipated and controlled. After the MPCA noted the air quality analysis in the draft EAW was deficient, *Admin. R. 788*, the City requested additional information, *Admin. R. 344*, and the analysis was updated. *Admin. R. 372-373*. The final EAW noted the Project “may consist of some type of back up emergency generator[,]” but “[i]t is not known at this time what size, type, and quantity of back up emergency generators will be utilized by the project.” *Admin. R. 372-373*. Nevertheless, the record includes information on emissions anticipated from combustion diesel generators and combustion from natural gas. *Admin. R. 878-879*. It is unclear whether MCEA believes the potential emissions from the potential emergency generators has the potential for significant environmental effects, because MCEA ignores the reality the EAW analyzed these emissions. It is clear, however, the City took a hard look at the problems involved, and genuinely engaged in reasoned decision-making when it determined the potential emissions do not pose the potential for significant environmental effects in view of the Project as a whole. Though the City conducted the required analysis and reached a reasonable conclusion, even if the City deferred analysis on either of these issues, its determination should still be upheld under controlling precedent.

The City did not defer any analysis, but it is also not required to duplicate work. Minnesota law distinguishes between regulatory oversight designed to prevent environmental effects before they occur and oversight, which would only address problems after they have already occurred. While the latter is impermissible because the government cannot wait to act until “significant environmental effects did occur[,]” *Trout Unlimited, Inc. v. Minnesota Dep’t of Agric.*, 528 N.W.2d 903, 909 (Minn. App. 1995), the former is acceptable because the already applicable specific standards exist to prevent environmental effects before they occur. *CARD*, 713 N.W.2d at 834 (holding county sufficiently addressed air pollution concerns where it relied on state emission control regulations set and enforced by MPCA, and its own zoning ordinance’s dust and noise “that would be discussed during the permitting process” because the county was not required to resolve specific compliance issues where “there appear to be pre-existing standards for dust, traffic, and noise control.”). MCEA conflates this distinction, but “caselaw supports the use of pre-existing regulatory oversight as a means of preventing significant environmental effects before they occur.” *Friends*, 764 N.W.2d at 382. In such circumstances, an RGU is justified in concluding “any significant environmental effects . . . would be mitigated.” *Watab Twp. Citizen All. v. Benton County Bd. of Comm’rs*, 728 N.W.2d 82, 92 (Minn. App. 2007).

MCEA claims the City reserved these issues for future study, but this claim misstates the record. Instead, the EAW buttresses the analysis the City conducted by noting pre-existing regulatory oversight will prevent significant environmental effects before they occur. For instance, the EAW notes the Project is subject to Minnesota State Noise Standards (Minn. R. 7030) and local regulations. *Admin. R. 1545*. Similarly, the record acknowledges the Project will require an MPCA Air Registration Permit. *Admin. R. 845*. The City's reliance on these regulatory oversight frameworks to prevent significant environmental impacts before they occur is explicit in the record: "The mitigation of environmental impacts will be designed and implemented in coordination with regulatory agencies and will be subject to the plan approval and permitting process." *Id.*

The City's determination the project poses no potential for significant environmental effects from noise or air pollution should be upheld because the City neither deferred its environmental obligations nor misapplied the law. The record confirms the City took a hard look at both noise and air quality impacts, providing a reasoned basis for its conclusions. The EAW thoroughly analyzed noise, sensitive receptors, and generator emissions. The City reinforced this analysis by reasonably relying on pre-existing regulatory authority, such MPCA permits and its authority to require noise attenuation measures during permitting, to prevent environmental impacts before they occur. MCEA's argument conflates

the impermissible postponement of study with the legally protected reliance on established regulatory oversight. Because the City's decision-making process was transparent, thorough, and supported by the administrative record, there is no basis to conclude the City incorrectly determined the project poses no potential for significant environmental effects.

CONCLUSION

The City took the requisite hard look at the criteria, and analyzed all of the environmental aspects of the Project, including the physical activities required to complete and maintain the Project, the environmental impacts of those activities, and appropriate mitigation measures. The administrative record, including an extensive environmental assessment worksheet and specific responses to numerous written comments, contains substantial evidence supporting the City's determination the proposed project does not have the potential for significant environmental effects. In light of the record and the deferential standard of review, the Court should affirm the City's determination an environmental impact statement was unnecessary for the Project.

Dated: January 7, 2026

Respectfully submitted,

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