

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of ITC Midwest LLC
for a Route Permit for the Minnesota – Iowa 345 kV
Transmission Line Project in Jackson, Martin, and
Faribault Counties, Minnesota

**DEPARTMENT OF COMMERCE
ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS STAFF
REPLY COMMENTS**

The Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) staff submits these Reply Comments regarding the proposed Minnesota – Iowa 345 kilovolt (kV) transmission line project (project). These comments address the proposed Findings of Facts, Conclusions of Law, and Recommendations of ITC Midwest LLC (ITCM or Applicant) in this proceeding and ITCM’s Post-Hearing Brief.

These Comments consist of four parts. Part one discusses the routes and alignments for the project and the merits of these routing options relative to the routing factors of Minnesota Rule 7850.4100. Part two discusses the route permit conditions that are appropriate for inclusion in the Commission’s route permit for the project. Part three, attached (Attachment A), is an edited version (underline and strikethrough) of ITCM’s proposed Findings of Fact, conclusions of law, and recommendations. References to specific findings in the following discussion are to the findings as numbered in EERA staff’s edited findings (Attachment A). Part four, attached (Attachment B), is a map depicting EERA staff’s route and alignment recommendations for the project.

I. ROUTES AND ROUTING FACTORS

The discussion here of routes and routing factors follows, generally, the segment analysis of the environmental impact statement (EIS). Routing options in the Lakefield to Huntley segment of the project are discussed first, and then those in the Huntley to Iowa Border segment.

A. Organization of the Application of Routing Factors to Routing Options

ITCM's proposed Findings of Fact apply the routing factors of Minnesota Rule 7850.4100 to the project as a whole.¹ Thus, for example, potential agricultural impacts for the entire 73-mile length of the project are discussed in one section.² Due to the length of the project, the multiplicity of routing options, and the organization of the analysis of the project in the environmental impact statement (EIS), EERA staff recommends that the application of routing factors to routing options be organized by the segments of the project – (1) the application of routing factors to routing options in the Lakefield to Huntley segment of the project and (2) the application of routing factors to routing options in the Lakefield to Huntley segment of the project.³ EERA staff believes this type of organization would greatly aid the clarity and usefulness of the Findings of Fact.

EERA staff recognizes that to reorganize ITCM's proposed findings in this manner would make recommended edits difficult to follow and understand. Accordingly, where EERA staff recommends edits to ITCM's proposed findings, it notes the segment(s) to which the findings apply (Attachment A).

¹ ITC Midwest LLC's Proposed Finding of Fact, Conclusions of Law and Recommendation, Section XIV, eDockets Number [20147-101419-11](#) (hereinafter ITCM Proposed Findings).

² ITCM Proposed Findings, Section XIV, Part C.1.

³ *See, e.g.*, Findings of Fact, Conclusion of Law, and Recommendation, In the Matter of the Route Permit Application for the CapX 2020 Hampton – Rochester – La Crosse 345 kV Transmission Line, TL-09-1448, February 8, 2012, eDockets Number [20122-71372-01](#).

B. Description of Routes Evaluated

Section IV of ITCM's proposed Findings of Fact describe the routes evaluated in the environmental review process for the project.⁴ EERA staff recommends edits to the descriptions of the I90 route alternatives to note that the extent to which these alternatives will be able to follow the alignment of the existing 69 kV transmission line along Interstate (I-90) is uncertain (Findings 143,144, 146-148, 362). The extent to which the new 345 kV line would follow the alignment of the existing 69 kV line, if an I90 route alternative were selected for the project, depends upon final engineering of the line, the extent of Minnesota Department of Transportation (MnDOT) ROW along I-90, which varies along I-90, and the application of MnDOT's accommodation policy for utilities. ITCM notes that it believes some of the H-frame poles used by the 69 kV line are less than 10 feet from the MnDOT ROW.⁵ Whether this is true and whether the new single pole structures for the 345 kV line will be able to be placed at a distance from the MnDOT ROW similar to that of the H-frame poles used by the existing 69 kV line, for all or part of the 345 kV line's extent along I-90, is uncertain at this time.⁶

C. Application of Routing Factors to Route Alternative I90-2 and Modified Route A

Section VII of ITCM's proposed Findings of Fact apply the routing factors of Minnesota Rule 7850.4100 to the routes evaluated for the project.⁷ EERA staff recommends edits to this section to further describe the relative merits of route alternative I90-2 and modified route A (MRA) with respect to:

- Effects on Human Settlements (Aesthetic Impacts) (Findings 241-249)
- Effects on Land-Based Economies (Agricultural Impacts) (Findings 283-288)

⁴ ITCM Proposed Findings, Section IV.

⁵ Ex. 116D, Attachment A at 16 (Applicant Comments Received on DEIS).

⁶ Ex. 117, Appendix M at 121 (FEIS).

⁷ ITCM Proposed Findings, Section VII.

- Effects on the Natural Environment (Impacts to Fauna) (Findings 326, 327, 329)
- Electrical System Reliability (Findings 362-365)
- Use of Existing Transportation, Pipeline, and Electrical System Rights-of-Way (Findings 351, 352)

As described in EERA staff's Initial Comments, EERA staff believes the record demonstrates that the aesthetic impacts of I90-2 and MRA are similar, that I90-2 minimizes agricultural impacts when I90-2 is utilized to remove the existing 161 kV line from Fox Lake and Lake Charlotte, that the impacts to fauna are similar because I90-2's impact on the Krahmer Wildlife Management Area (WMA) is incremental, that the relative difference in electrical system reliability between MRA and I90-2 is uncertain, and that I90-2 makes the best use of existing highway and transmission line ROW.⁸

Thus, EERA staff recommends editing ITCM's proposed Findings of Fact to indicate that I90-2, with the removal of the existing 161 kV line from Fox Lake and Lake Charlotte and double-circuiting of this line with the new 345 kV line, and following MRA-JA with the JA-2 alignment at the Des Moines River and the alignment of MRA-FL near Fox Lake has the greatest merit relative to the routing factors of Minnesota Rule 7850.4100, and is the most appropriate route for the Lakefield to Huntley segment of the project (Findings 409, 423).

D. Removal of Existing 161 kV Line from Fox Lake and Lake Charlotte

As discussed in EERA staff's Initial Comments, the analysis in the EIS finds that one transmission line ROW at Fox Lake and Lake Charlotte, rather than two ROWs, best avoids and minimizes potential impacts of the project.⁹ Based on the guidance of the DNR and the Martin

⁸ Department of Commerce, Energy Environmental Review and Analysis Staff Initial Comments at 1-8, eDockets Number [20147-101373-02](#) (hereinafter EERA Initial Comments).

⁹ EERA Initial Comments at 6-7.

County Board of Commissioners, EERA staff concludes that using MRA or I90-2 to remove the existing 161 kV line from the Fox Lake and Lake Charlotte and double-circuiting this line with the new 345 kV line best minimizes potential impacts of the project.¹⁰

In its comments on the draft EIS, ITCM indicated that it was agreeable to relocating the existing 161 kV line from Fox Lake and Lake Charlotte “in the future when existing 161 kV structure maintenance occurs or other operational conditions warrant or should the Commission require this relocation as part of the [p]roject.”¹¹ In its proposed Findings, ITCM indicates that removing the existing 161 kV line from Fox Lake and Lake Charlotte “at this time is not necessary as part of the [p]roject.”¹² ITCM notes that the 161 kV line can be relocated when the line needs “to be rebuilt due to age or other considerations.”¹³

EERA staff believe that leaving the removal of the 161 kV line from Fox Lake and Lake Charlotte until an uncertain future date does not implement the mitigation supported by the EIS; EERA staff recommends that removal of the existing 161 kV line be required as part of the Commission’s routing decision in this matter.¹⁴ EERA staff recommends editing ITCM’s proposed Findings of Fact to include discussion of the potential impacts of the project at Fox Lake and Lake Charlotte, the removal of the 161 kV line from Fox Lake and Lake Charlotte, and the timing of this removal (Findings 145, 209, 246-248, 287-288, 329, 375-378, 414).

¹⁰ *Id.*

¹¹ Ex. 116D at 15 (Applicant Comments Received on DEIS).

¹² ITCM Proposed Findings, Findings 145 and 378.

¹³ ITCM Proposed Findings, Finding 145.

¹⁴ EERA Initial Comments at 7-8.

E. Route and Alignment at the Des Moines River / Jackson Municipal Airport

In that part of the project area north of the Jackson Municipal, EERA staff and ITCM concur that (1) the most appropriate route for the project is MRA (identified as MRA-JA in the EIS) and (2) a special permit condition regarding the Des Moines River crossing is appropriate.¹⁵ However, EERA staff believes that the record to date supports use of the alignment of route variation JA-2 across the Des Moines River, instead of the alignment of MRA.¹⁶ EERA staff recommends editing ITCM's proposed Findings of Fact to discuss the Des Moines River crossing and use of the JA-2 alignment across the river (Findings 330, 336-338).

F. Anticipated Alignment at Fox Lake

In that section of the project along I-90, near the city of Sherburn and south of Fox Lake, EERA staff and ITCM concur that the alignment of MRA (identified as MRA-FL in the EIS), crossing to the south side of I-90 in Section 5 of Manyaska Township, Martin County and then back to the north side of I-90 at the western edge of Section 3 of Manyaska Township, and moving an existing 69 kV line to follow this alignment, minimizes aesthetic impacts in this area of the project.¹⁷ EERA staff recommends editing ITCM's proposed Findings of Fact to discuss this alignment (Finding 250).

G. Blue Earth River and Route MRA-HI1

In that section of the project south of the proposed Huntley substation site, near the Blue Earth River in Section 23 of Verona Township, Martin County, EERA staff and ITCM concur that the alignment of MRA (identified as MRA-HI1 in the EIS), best avoids and minimizes

¹⁵ EERA Initial Comments at 8-10; ITCM Proposed Findings, Findings 292, 293, 386; ITC Midwest LLC's Post-Hearing Brief in Support of its Application for a Route Permit at 32-33, 40-42, eDockets Number 20147-101419-07 (hereinafter ITCM Post-Hearing Brief).

¹⁶ EERA Initial Comments at 8-10; Ex. 117 at 234-236 (FEIS).

¹⁷ EERA Initial Comments at 10-12; ITCM Post-Hearing Brief at 8-9, 23.

potential impacts of the project.¹⁸ EERA staff recommends editing ITCM's proposed Findings of Fact to add a discussion of this alignment (Findings 251, 289, 322, 331).

H. Faribault Substation and Variation HI-2

EERA staff believes that alignment variation HI-2 minimizes potential aesthetic impacts of the project and is the most appropriate alignment for the project just south of the Faribault substation in Section 26 of Jo Daviess Township, Faribault County.¹⁹ EERA staff recommends editing ITCM's proposed Findings of Fact to indicate the use of HI-2 for this section of the project (Findings 252, 290, 408, 410, 423).

I. Iowa Border and Route Variation HI-5

EERA staff believes that route variation HI-5 minimizes potential aesthetic impacts of the project and is the most appropriate route for the project in Sections 26 and 35 of Pilot Grove Township, Faribault County.²⁰ EERA staff recommends editing ITCM's proposed Findings of Fact to indicate the use of HI-5 for this section of the project (Findings 253, 291, 408, 410, 423).

II. ROUTE PERMIT CONDITIONS

This section discusses the route permit conditions that EERA staff believes are appropriate for inclusion in the Commission's route permit for the project. Discussion here follows the order of discussion in EERA staff's Initial Comments.

A. Right-of-Way Width

As discussed in EERA staff's Initial Comments, EERA staff believes that ITCM has not demonstrated the need for an ancillary easement area.²¹ Accordingly, EERA staff recommends editing ITCM's proposed Findings of Fact to require that the permitted ROW for the 345 kV line

¹⁸ EERA Initial Comments at 13-14; ITCM Post-Hearing Brief at 9-10, 32-33.

¹⁹ EERA Initial Comments at 14-15.

²⁰ EERA Initial Comments at 15-17.

²¹ EERA Initial Comments at 17-21.

be 150 feet and the ROW for the 161 kV portions of the project be 100 feet (Findings 167-169, 172, 173, 412). EERA staff has the following additional observation and recommendations regarding the required right-of-way for the project.

First, in EERA staff's Initial Comments, staff noted that if permittees have obtained vegetation management rights outside of the permitted ROW, then these rights must have been obtained through voluntary agreements with landowners and not through the power of eminent domain associated with the Commission's route permit.²² To EERA staff's understanding, such voluntary agreements are a tool in a permittee's vegetation management toolkit. The reason this is so is that there may be relatively tall trees just outside of a transmission line ROW which, were they to fall, could reach and impact a transmission line conductor. Such trees are often referred to as "danger trees." Permittees must work on a case-by-case basis with landowners to discuss possible danger trees and, as these trees are outside of the permitted ROW, come to voluntary agreements regarding their management (e.g., trimming, topping, or removing the trees). The extent of consultations with landowners regarding danger trees for a specific transmission line is determined by a number of factors, including, but not limited to, the route for the project and the types of vegetation through which the route passes. EERA staff notes that for ITCM's project, the project area is, by land cover, approximately 98 percent agricultural with windbreaks near residences and forested areas near the Des Moines River and Blue Earth River.²³

Second, in EERA staff's Initial Comments, staff recommended – if the Commission determines that an ancillary easement area is appropriate to grant through the permit for this project – that the Commission's generic route permit template be modified to clarify whether references in the permit template to the "permitted right-of-way" and "easement" were

²² EERA Initial Comments at 19-20.

²³ Ex. 108A at 87, 107-109 and 191-194 (DEIS).

references to the easement area, the ancillary easement area, or both.²⁴ EERA staff recommends that the permit template also be modified to distinguish and describe the types of activities and management that will be allowed in the easement area and the ancillary easement area and the objective criteria that will be used to perform this management. EERA staff reaffirms its Initial Comments noting that there is no basis for an ancillary easement area that includes structure management rights.²⁵

Finally, EERA staff and ITCM concur that a vegetation management plan should be included as a special condition in the Commission's route permit for the project (Section II.D, below). EERA staff recommends that the vegetation plan describe how vegetation will be managed within the permitted ROW and outside of this ROW and the objective criteria that will be used to perform this management (Finding 417).

B. Des Moines River Crossing

EERA staff and ITCM concur that a special permit condition regarding the Des Moines River crossing is appropriate for inclusion in the Commission's route permit for the project, and have proposed special permit condition language.²⁶ EERA staff believes that its proposed language better describes the purpose of the recommended consultation between ITCM and the DNR regarding the river crossing, and places this consultation in the record through ITCM's plan and profile filings with the Commission. Accordingly, EERA staff recommends editing ITCM's proposed Findings of Fact to include the language suggested by EERA staff for the special permit condition (Finding 419).

C. Agricultural Impact Mitigation Plan.

²⁴ EERA Initial Comments at 21.

²⁵ EERA Initial Comments at 20-21.

²⁶ EERA Initial Comments at 22-23; ITCM Post-Hearing Brief at 54; ITCM Proposed Findings, Finding 386.

EERA staff and ITCM concur that the agricultural impact mitigation plan (AIMP) approved for the project should be included as a special condition in the Commission's route permit.²⁷ EERA staff recommends editing ITCM's proposed Findings of Fact to include the language suggested by EERA staff for the AIMP special permit condition (Finding 415).

D. Vegetation Management Plan

EERA staff and ITCM concur that a vegetation management plan should be included as a special condition in the Commission's route permit for the project.²⁸ EERA staff recommends editing ITCM's proposed Findings of Fact to include language suggested by EERA staff for the vegetation management plan special permit condition (Finding 417).

E. Avian Mitigation Plan

EERA staff and ITCM concur that an avian mitigation plan should be included as a special condition in the Commission's route permit for the project.²⁹ EERA staff recommends editing ITCM's proposed Findings of Fact to include the language suggested by EERA staff for the avian mitigation plan special permit condition (Finding 416).

F. Construction Environmental Control Plan

EERA staff and ITCM concur that a construction environmental control plan (CECP) should be included as a special condition in the Commission's route permit for the project, and have proposed special permit condition language.³⁰ The language proposed by EERA staff and ITCM is very similar. EERA staff recommends editing ITCM's proposed Findings of Fact for the CECP to, among other things, provide for the possibility of more than one environmental

²⁷ EERA Initial Comments at 23; ITCM Post-Hearing Brief at 52-53; ITCM Proposed Findings, Finding 381.

²⁸ EERA Initial Comments at 23-25; ITCM Post-Hearing Brief at 52-53; ITCM Proposed Findings, Finding 383.

²⁹ EERA Initial Comments at 25-26; ITCM Post-Hearing Brief at 52-53; ITCM Proposed Findings, Finding 382.

³⁰ EERA Initial Comments at 26-27, ITCM Post-Hearing Brief at 52-53; ITCM Proposed Findings, Finding 385.

monitor and lengthen the time for Commission review of the CECP from 10 to 30 days (Finding 418).

G. Archaeological and Historic Resources

The Minnesota State Historic Preservation Office (SHPO) recommends that a Phase 1 archaeological survey be conducted for the project.³¹ This recommendation is not included in ITCM's proposed Findings of Fact. EERA staff recommends editing ITCM's proposed Findings of Fact to include SHPO's correspondence and recommendation (Findings 215, 216).

Based on SHPO's recommendation and on the Commission's route permit for the Brookings County to Hampton transmission line project, EERA staff recommends a special permit condition that addresses archaeological resources be included in the Commission's route permit for the project.³² ITCM's proposed Findings of Fact do not include such a condition. ITCM notes that it objects to training construction workers in the handling of archaeological resources as a mitigation measure for potential impacts to such resources, but does not object to informing construction workers of known archaeological resource areas.³³ EERA staff recommends editing ITCM's proposed Findings of Fact to include the language suggested by EERA staff for an archaeological resources special permit condition (Finding 420).

H. Notification to Landowners Concerning Rights-of-Way

As discussed in EERA staff's Initial Comments, EERA staff recommends that a special condition regarding information on landowner rights and ROW negotiations be included in the Commission's route permit for the project.³⁴ ITCM's proposed Findings of Fact do not include

³¹ Ex. 116B (Agency Comments Received on DEIS), Comment Letter from SHPO.

³² EERA Initial Comments at 27-29.

³³ ITCM Post-Hearing Brief at 54-55; ITCM Proposed Findings, Finding 387.

³⁴ EERA Initial Comments at 29.

such a condition. EERA staff recommends editing ITCM's proposed Findings of Fact to include the language suggested by EERA staff for this special permit condition (Finding 421).

I. Stormwater Pollution Prevention Plan

ITCM's proposed Findings of Fact indicate that requiring ITC Midwest to prepare a Stormwater Pollution Prevention Plan (SWPPP) is appropriate for the project.³⁵ An SWPPP is required by the Minnesota Pollution Control Agency (MPCA) from all applicants for a National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) permit.³⁶ An NPDES/SDS permit is required whenever construction activities for a project disturb more than one acre of soil.³⁷ ITCM's proposed project will require an NPDES/SDS permit.³⁸ Thus, the project will require an SWPPP that is approved by the MPCA. Accordingly, there is no need, or jurisdiction, for the Commission to determine that preparation of an SWPPP is appropriate for the project. EERA staff recommends editing ITCM's proposed Findings of Fact to remove this finding.³⁹

J. Noise Standards and Project Construction Hours

ITCM has requested that Section 4.2.4 of the Commission's generic route permit template be amended for the project to allow for construction activities outside of daytime working hours (7 a.m. to 10 p.m.) if ITC Midwest is required to work around customer schedules, line outages, or has been significantly impacted due to other factors.⁴⁰ EERA staff is unaware of any Commission route permit which has included a variance for construction

³⁵ ITCM Proposed Findings, Finding 384.

³⁶ Stormwater Program for Construction Activity, Minnesota Pollution Control Agency, <http://www.pca.state.mn.us/index.php/water/water-types-and-programs/stormwater/construction-stormwater/index.html>.

³⁷ *Id.*

³⁸ Ex. 117 at 10-11 (FEIS).

³⁹ ITCM Proposed Findings, Finding 384; Attachment A, deleted Finding 380.

⁴⁰ ITCM Post-Hearing Brief at 52; ITCM Proposed Findings, Finding 379.

activities and associated noises outside of daytime working hours. Additionally, EERA staff believes that including a variance for significant impacts “due to other factors” is overly broad. Accordingly, EERA staff recommends editing ITCM’s proposed Findings of Fact to remove the findings supporting this variance.⁴¹

K. Interference with Communication Devices

ITCM has requested that Section 4.7.3 of the Commission’s generic route permit template be amended for the project to clarify that ITCM “will restore electronic reception where degradation in reception is determined to be caused by the project.”⁴² ITCM’s proposed amendment is as follows:⁴³

Should electronic interference with radio or television, satellite, wireless internet, GPS-based agriculture navigation systems or other communication devices occur as a result of the presence or operation of the transmission line, ITC Midwest will work with affected landowners on a case-by-case basis to assess the cause of the interference and, to the extent practicable, restore electronic reception to pre-Project quality.

The text of Section 4.7.3 of the Commission’s generic route permit template is as follows:⁴⁴

If interference with radio or television, satellite, wireless internet, GPS-based agriculture navigation systems or other communication devices is caused by the presence or operation of the transmission line, the Permittee shall take whatever action is feasible to restore or provide reception equivalent to reception levels in the immediate area just prior to the construction of the line.

EERA staff finds these two texts to be nearly identical in operation. Both incorporate causation by the project (“Should interference... occur as a result of” vs. “If interference... is

⁴¹ ITCM Proposed Findings, Findings 379, 390, 391; Attachment A, deleted Findings 377, 384, 385.

⁴² ITCM Post-Hearing Brief at 52.

⁴³ ITCM Proposed Findings, Finding 380.

⁴⁴ Ex. 117, Appendix B1 (FEIS).

caused by”). The texts use similar bars for the extent to which the permittee must restore reception (“practicable” vs. “feasible”). The text of Section 4.7.3 does require that the permittee “restore *or provide*” equivalent reception (emphasis added), whereas ITCM’s text requires only restoration. On whole, EERA staff does not perceive a need or reason to modify Section 4.7.3 of the Commission’s generic route permit template other than, perhaps, wordsmithing. Accordingly, EERA staff recommends editing ITCM’s proposed Findings of Fact to remove the findings supporting this modification.⁴⁵

EERA staff appreciates the opportunity to submit these reply comments.

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Respectfully Submitted,

s/ Linda S. Jensen

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⁴⁵ ITCM Proposed Findings, Findings 380, 390, 391; Attachment A, deleted Findings 378, 384, 385.