

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION
OF ITC MIDWEST LLC FOR A
CERTIFICATE OF NEED FOR THE
MINNESOTA-IOWA 345 KV
TRANSMISSION LINE PROJECT IN
JACKSON, MARTIN AND FARIBAULT
COUNTIES

PUC DOCKET No. ET-6675/CN-12-1053
OAH DOCKET No. 60-2500-30782

ITC MIDWEST LLC'S RESPONSE BRIEF

IN SUPPORT OF ITS APPLICATION FOR A CERTIFICATE OF NEED

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. DISCUSSION	2
A. MISO	2
B. CEI	5
C. DOC DER.....	7
1. Rule 7849.0120 Criteria	8
2. Statutory Requirements.....	18
D. CETF/No.....	20
III. CONCLUSION	24

I. INTRODUCTION

ITC Midwest LLC (“ITC Midwest”) respectfully submits this response to the briefs of the following parties: Midcontinent Independent System Operator, Inc. (“MISO”); Wind on the Wires, Fresh Energy, Izaak Walton League of America – Midwest Office, and the Minnesota Center for Environmental Advocacy (“Clean Energy Intervenors” or “CEI”); and Department of Commerce Division of Energy Resources (“DOC DER”). ITC Midwest also responds to the brief of NoCapX and Citizens Energy Task Force (“CETF/No”), limited parties in this proceeding.

The briefs confirm that ITC Midwest has satisfied its burden under the relevant Minnesota statutes and rules of proving that the Minnesota – Iowa 345 kV Project (“Project”) and the other segments of Multi-Value Project (“MVP”) 3 are needed to: 1) improve local and regional reliability; 2) provide generation outlet to serve installed wind generation, interconnect planned wind generation (including 750 MW for Minnesota) and support future wind development to meet renewable energy standard (“RES”) requirements in Minnesota and renewable portfolio standards in other MISO states; and 3) improve the efficiency of the energy supply in Minnesota.

No full party to the proceeding questions the need for new transmission facilities in southwest Minnesota and the record demonstrates that MVP 3 meets

all of the identified needs. In addition, no party introduced any reasonable alternative into the record for consideration. While DOC DER raises issues regarding cost estimates and the 161 kV Rebuild Alternative, in the end, DOC DER concluded that the 161 kV Rebuild Alternative is not a reasonable alternative to the Project.¹ Therefore, the Project is the only alternative on the record that meets the identified needs.

The Administrative Law Judge (“ALJ”) should recommend, and the Minnesota Public Utilities Commission (“Commission”) should grant, a Certificate of Need for the Project. ITC Midwest’s responses to other parties’ briefs are provided below. ITC Midwest has separately filed revised findings to reflect additional points made in this submission.

II. DISCUSSION

A. MISO

MISO’s brief reaffirms its position that the Project is “necessary to provide adequate, reliable, and efficient transmission service” to support public policy objectives and to promote development of efficient markets and competition.² MISO also provides facts and analyses demonstrating that the Project satisfies

¹ Ex. 209 at 1 (Rakow Statement) (the 161 kV Rebuild Alternative “has not been demonstrated to be a reasonable alternative to the Project”).

² MISO Brief at 4.

Minnesota's statutory criteria for granting a Certificate of Need.³ ITC Midwest agrees with and appreciates MISO's analysis and participation in this proceeding.

MISO reviews key record evidence regarding local and regional reliability needs, which were unchallenged at the hearing. MISO witness Digaunto Chatterjee testified that MVP 3 along with MVP 4 ("Mid-MISO MVPs") will alleviate 37 constraints on the transmission system in Minnesota and Iowa.⁴ In Minnesota, the Mid-MISO MVPs will resolve thermal overloads in Redwood, Nicollet, and Wantonan counties in Minnesota, primarily driven by contingencies involving loss of the 345 kV transmission lines connecting at the Wilmarth Station in Blue Earth County.⁵

The Mid-MISO MVPs also address heavy thermal loading on the 69 kV and 161 kV systems in Martin, Faribault, Freeborn, and Mower counties, in Minnesota.⁶ The Mid-MISO MVPs are necessary to maintain reliability in Minnesota and Iowa, and to "ensure the continued reliable operation of the ITC [Midwest] and MidAmerican transmission systems into the future".⁷ Reliability will also be enhanced in Minnesota by the anticipated retirement of existing

³ MISO Brief at 4.

⁴ Ex. 401 at 3 (Chatterjee Rebuttal); *see* Ex. 22 at 5-7 (Berry Direct).

⁵ Ex. 400 at 23 (Chatterjee Direct).

⁶ Ex. 400 at 23 (Chatterjee Direct).

⁷ Ex. 400 at 22 (Chatterjee Direct).

Special Protection Schemes (“SPSs”) due to and following construction of this Project.⁸

MISO also correctly details the application of Minnesota Statutes Section 216B.243, subdivision 3(9) to the Project, which requires the Commission to consider:

(9) with respect to a high-voltage transmission line, [1] the benefits of enhanced regional reliability, [2] access, or [3] deliverability to the extent these factors improve the robustness of the transmission system or lower costs for electric consumers in Minnesota[.]

MISO notes DOC DER witness Adam Heinen’s testimony that construction of MVP 3 will “result in increased deliverability to other markets in MISO and would result in decreased [Local Marginal Prices] for Minnesota retail customers.”⁹ Mr. Chatterjee similarly testified that the Mid-MISO MVPs will “improve the efficiency of both the transmission system and provision of generation supply that will provide net benefits to Minnesotans and others in the region”.¹⁰

MISO further confirms that denial of a Certificate of Need for the Project would significantly impact the regional planning process. If, for example, the 161 kV Rebuild Alternative were approved, 2,797 MW of planned wind generation in

⁸ MISO Brief at 7 (citing Ex. 401 at 9 (Chatterjee Rebuttal)).

⁹ Ex. 201 at 13-14 (Heinen Direct).

¹⁰ MISO Brief at 7 (citing Ex. 400 at 22 (Chatterjee Direct)).

the MISO interconnection queue would have to be restudied because the base plan used to identify necessary upgrades to connect this generation includes MVP 3 and the other MVPs in the portfolio.¹¹

No witness challenged MISO's engineering testimony, and MISO's engineering expertise should carry great weight in this proceeding given its role as the regional transmission planning authority. ITC Midwest agrees with MISO's analysis and conclusion that the Project is needed for reliability and generation outlet and to reduce energy costs.¹² ITC Midwest further agrees with MISO's conclusion that denial of the Certificate of Need would have adverse reliability and economic impacts in Minnesota and the greater region.¹³

B. CEI

CEI similarly reviews Minnesota statutory and rule criteria and concludes that ITC Midwest had met its burden of proof for the grant of a Certificate of Need.¹⁴ CEI also concludes that the record does not contain evidence of a more reasonable or prudent alternative to the Project.¹⁵ ITC Midwest agrees with the

¹¹ MISO Brief at 13 (citing Ex. 401 at 8 (Chatterjee Rebuttal)).

¹² MISO Brief at 3 (citing Ex. 300 at 13 (Goggin Direct)).

¹³ MISO Brief at 2 (citing Ex. 400 at 18-22 (Chatterjee Direct)).

¹⁴ CEI Brief at 3.

¹⁵ CEI Brief at 1.

points and arguments CEI makes in its brief and generally supports CEI's proposed factual findings 22-36.

ITC Midwest agrees with CEI's conclusion that the Project will enhance the reliability, access, and deliverability of the energy supply in Minnesota, factors contained in Minnesota Statutes Section 216B.243, subdivision 3(9).¹⁶ CEI notes that the Project is included in the most recent Minnesota Biennial Transmission Report, which identified the Project as a "Needed Project".¹⁷ Moreover, CEI notes that between 6,841 and 9,422 MWs of incremental wind capacity will be required to satisfy the RESs in MISO states through the year 2025, including between 1,120 MW and 1,388 MW of wind capacity to satisfy the Minnesota RES.¹⁸

CEI also rightly concludes that wind generation and transmission can lower energy costs for Minnesota consumers.¹⁹ CEI further supports the Project based on its positive environmental benefits: "by increasing the amount of wind

¹⁶ CEI Brief at 3.

¹⁷ CEI Brief at 5. The Minnesota Biennial Transmission Projects report is available at www.minnelectrans.com/report-2013.html.

¹⁸ CEI Brief at 4 (citing Ex. 300 at 10 (Goggin Direct); Ex. 304 at 6 (Goggin Surrebuttal)).

¹⁹ CEI Brief at 5. *See also* CEI Brief at 6-7 (citing Ex. 300 at 31-32 (Goggin Direct) (citing studies by Charles River Associates, International; Poyry, *Wind Energy and Electricity Prices*; and Synapse Energy Economics, Inc., *The Potential Rate Effects of Wind Energy and Transmission in the Midwest ISO Region*)).

energy, the Project has the potential to lower harmful pollutants in Minnesota and the region.”²⁰

CEI also shows that that there is no reasonable and prudent alternative to the Project, citing Dr. Rakow’s written statement and agreement that the record did not support a finding that the 161 kV Rebuild Alternative could meet the identified needs.²¹

CEI’s testimony and analysis confirm the generation outlet and reliability needs, and that the Project will also provide certain environmental benefits. ITC Midwest agrees with CEI’s analysis.

C. DOC DER

As discussed in its brief, DOC DER raised questions throughout this proceeding regarding the potential merits of the 161 kV Rebuild Alternative and ITC Midwest’s cost estimates, resulting in a thorough record for the Commission. DOC DER’s brief provides a detailed chronological accounting of the development of its positions on these issues. DOC DER ultimately reached two determinative conclusions that support granting a Certificate of Need for the Project. First, DOC DER concludes that a high voltage transmission line is

²⁰ CEI Brief at 11. *See* CEI Brief at 12 (citing Ex. 37 at 78-79 (MISO Multi Value Project Portfolio, Results and Analyses, Jan. 10, 2012) and Ex. 23 at 24 (Schatzki Direct).)

²¹ CEI Brief at 10 (citing Ex. 209 (Rakow Statement)).

needed in southwest Minnesota.²² Second, DOC DER concludes that, based on the record, the 161 kV Rebuild Alternative is not “a reasonable alternative” to the Project.²³ ITC Midwest agrees with both of these conclusions.

Below, ITC Midwest addresses DOC DER’s analysis of the statutory and rule criteria to highlight the full record evidence for granting a Certificate of Need for the Project. ITC Midwest notes that DOC DER’s findings appear to mirror DOC DER’s brief and the response provided herein is intended to apply equally to DOC DER’s proposed findings.

1. *Rule 7849.0120 Criteria*

In its brief, DOC DER reviews the Minnesota Rule 7849.0120 criteria, including the specific factors under each criterion. With the exception of the DOC DER’s analysis of Minnesota Rule 7849.0120(B), ITC Midwest generally concurs with the DOC DER’s analysis and conclusions.

(a) *Minnesota Rule 7849.0120(A)*

With respect to Minnesota Rule 7849.0120(A), DOC DER agrees ITC Midwest demonstrated that the probable result of denial of the Certificate of Need would adversely affect “the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant’s customers, or to the people of

²² Ex. 200 at 14 (Heinen Direct).

²³ Ex. 209 (Rakow Statement.)

Minnesota and neighboring states“ considering five factors.²⁴ In its analysis of the first factor, accuracy of the forecast, DOC DER summarizes Mr. Heinen’s testimony and determined a new transmission line is needed:

Regarding transmission issues in general, Department witness Mr. Adam Heinen’s analysis of recent operations estimated that there were 12 constraints, for a total of 1,981 hours, in calendar year 2011 and 3 constraints, for a total of 1,242 hours, in calendar year 2012 for the area near the proposed Project. Based on this analysis of historical data Mr. Heinen concluded that the number and magnitude of constraints suggest that additional transmission capacity is needed. Specifically, Mr. Heinen stated ‘I conclude that construction of a transmission line in the Project area would likely improve deliverability and reduce constraints on the transmission system’.²⁵

DOC DER specifically found that the factors were satisfied:

A(1). The demand forecast is not relevant to the identified need because the situation is current rather than forecast needs, therefore “the construction of a new transmission line is appropriate and needed”;

A(2). Conservation will not meet the claimed need;

A(3). Promotional practices did not give rise to the needs current and planned facilities will not meet the needs;

A(4). Current and planned facilities. DOC DER notes that the 161 kV Rebuild is not relevant to this criterion. Upon review, ITC Midwest agrees that the 161 kV Rebuild is better reviewed under Rule 7798.0120(B); and

²⁴ DOC DER Brief at 16.

²⁵ DOC DER Brief at 11 (citing Ex. 200 at 7 and 14 (Heinen Direct)).

A(5). The Project will result in the efficient use of resources. Specifically, DOC DER concluded the Project will “enable the use of the most efficient wind resources in the state”.²⁶

(b) Minnesota Rule 7849.0120(B)

DOC DER then addresses Minnesota Rule 7849.0120(B) which provides, in relevant part:

B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record . . .

As detailed in ITC Midwest’s, MISO’s, and CEI’s opening briefs, the only alternative that was given serious consideration in this proceeding, the 161 kV Rebuild Alternative, is wholly inadequate to meet the identified needs.²⁷ ITC Midwest determined the alternative was not a reasonable alternative to the Project in its 2013 Multi-Value Project #3 Planning Study.²⁸ At the hearing, Dr. Rakow agreed, providing the following written testimony regarding the 161 kV Rebuild Alternative, confirmed it is not a reasonable alternative to the Project: ²⁹

²⁶ DOC DER Brief at 14-15.

²⁷ ITC Midwest Brief at 18-19; MISO Brief at 11-12; CEI Brief at 10.

²⁸ Ex. 6 at Appendix J (ITC Midwest LLC Multi- Value Project #3 Planning Study) at 22.

²⁹ MISO and ITC Midwest also screened the Lakefield Junction – Rutland 345 kV alternative. Ex. 33 at 2 (Schatzki Rebuttal); Ex. 401 at 7-9 (Chatterjee Rebuttal). Dr. Rakow sought additional information in testimony and after reviewing Mr. Berry’s responsive testimony agreed that it was not a reasonable alternative. Ex. 209 (Rakow Statement).

New facts presented at the Jackson public hearing in this matter require my reassessment of the current record and my acknowledgement that I can no longer conclude that the 161 kV Rebuild has been demonstrated to be a reasonable alternative to the Project.³⁰

Dr. Rakow testified that he modified his recommendation based on comments made at the public hearing that the Odell wind farm depends on the Project.³¹ This means that, in addition to the current general need to increase transmission capacity as confirmed by Mr. Heinen, there is a near-term need for higher transmission transfer capacity to accommodate the 200 MW Odell wind farm.³²

ITC Midwest respectfully suggests that the DOC DER's conclusion that there is no reasonable alternative to the Project is dispositive of ITC Midwest's satisfaction of this criterion. Nevertheless, ITC Midwest provides the following responses to some of the issues DOC DER raises regarding evaluation of the 161 kV Rebuild Alternative. Consistent with the Rule, DOC DER's analysis focused on (i) the size, type, and timing of the Project; (ii) its costs; and (iii) reliability relative to other alternatives.

³⁰ Ex. 209 at 1 (Rakow Statement). Dr. Rakow previously agreed after reviewing additional testimony from Mr. Berry that the one other alternative which he testified may have been a reasonable alternative, the Lakefield Junction - Rutland 345 kV line, "does not merit detailed analysis." DOC DER Brief at 22.

³¹ Ex. 209 (Rakow Statement).

³² Ex. 209 at 1-2 (Rakow Statement).

(i) Size, Type, and Timing

Prior to concluding that the 161 kV Rebuild is not a reasonable and feasible alternative to the Project, DOC DER provided testimony that the 161 kV Rebuild “better matches the needs demonstrated by the status of compliance with the Minnesota RES.”³³ ITC Midwest respectfully disagrees with this conclusion, which DOC DER’s brief also references.³⁴ The record evidence supports a 2017 in-service date and a finding that the Project is needed to support existing wind generators, Commission-approved projects, and future wind development.

The need for additional transmission capacity to support generation currently being curtailed is undisputed.³⁵ On December 13, 2013, the Commission approved Xcel Energy’s power purchase agreements with several wind farm projects, totaling 750 MW, and specifically found Xcel Energy will use the energy generated from each of the wind projects to meet its RES obligations.³⁶ All of these wind projects rely upon MVP 3 as an underlying facility.³⁷ If the Project is not approved, new studies will be required to determine alternative

³³ Ex. 208 at 34 (Rakow Surrebuttal).

³⁴ DOC DER Brief at 23.

³⁵ ITC Midwest Brief at 14; DOC DER Brief at 12.

³⁶ Ex. 209 at 1 (Rakow Statement) (citing *In the Matter of the Petition of Northern States Power Company for Approval of the Acquisition of 600 MW and 150 MW of Wind Generation*, Docket No. E002/CN-13-603, ORDER APPROVING ACQUISITIONS WITH CONDITIONS (Dec. 13, 2013)).

³⁷ Ex. 535 (Stability Analysis Report for August 2012 West MISO DPP, March, 29, 2013); see Ev. Hrg. Tr. at 53-54 (Porter).

transmission improvements to enable the wind generators to interconnect.³⁸ The 750 MW of projects include the 200 MW Odell wind farm for which the Commission granted a site permit on July 17, 2014.³⁹ The 200 MW Pleasant Valley Wind Project is also included in this group and the Commission recently completed its review of Pleasant Valley's pre-construction compliance filings.⁴⁰

The Project also provides necessary capacity for future projects. As Mr. Chatterjee testified, there is 2,797 MW of planned wind generation that relies upon construction of the Mid-MISO MVPs.⁴¹

(ii) Cost

DOC DER repeats its concerns regarding Project costs which appear to focus on the fact ITC Midwest provided estimates within a band of plus/minus 30 percent. ITC Midwest witness Amy Ashbacker testified at length about the steps undertaken to develop the estimates, the uncertainties at this stage of project development, and ITC Midwest's commitment to cost containment.⁴² As

³⁸ Ex. 401 at 8 (Chatterjee Rebuttal).

³⁹ *In the Matter of the Application of Odell Wind Farm, LLC for a Site Permit for a 200 MW Large Wind Energy Conversion System for the Odell Wind Farm in Cottonwood, Jackson, Martin, and Watonwan Counties*, Docket No. IP-6914/WS/13-843, ORDER ISSUING SITE PERMIT AND APPROVING AVIAN AND BAT PROTECTION PLAN (Jul. 17, 2014).

⁴⁰ *In the Matter of the Application of Pleasant Valley Wind LLC For a LWECS Site Permit for the 300 MW Pleasant Valley Project in Dodge and Mower Counties*, Docket No. IP-6828/WS-09-1197, REVIEW OF PRECONSTRUCTION COMPLIANCE FILINGS (Jun. 10, 2014).

⁴¹ Ex. 402 at 13 (Chatterjee Surrebuttal).

⁴² Ex. 28 at 3-10 (Ashbacker Rebuttal).

she noted, ITC Midwest disagrees with DOC DER's characterization that any cost exceeding the mid-point estimate is an "overrun" given that cost estimates at this stage are subject to multiple uncertainties, including but not limited to unknown potential costs associated with regulatory requirements, materials, and labor.⁴³ At the hearing, she reaffirmed that ITC Midwest has confidence in its cost estimates and believes them to be reasonable and appropriate.⁴⁴

Nonetheless, the uncertainty of key facts at the Certificate of Need stage and the need for flexibility are borne out in this proceeding. This is exemplified by the fact that the Department of Commerce, Energy Environmental Review and Analysis ("EERA") recommends in its brief in the route permit proceeding that ITC Midwest be required to remove existing 161 kV facilities across Lake Charlotte and Fox Lake. This condition was not originally part of the Project proposal and would add approximately \$7 million to the cost of the Project if it were to be required in the route permit.⁴⁵ This example illustrates the practicality of providing a bandwidth of costs at this point in the Project development process.

⁴³ See, e.g., DOC DER Brief at 27. ITC Midwest also notes that certain cost issues relating to ITC Midwest's acquisition of Interstate Power and Light Company transmission assets in Docket No. E001/PA-07-540 has been addressed separately in IP&L's rate case. E001/GR-10-276.

⁴⁴Ev. Hrg. Transcript at 29-30 (Ashbacker).

⁴⁵ Ex. 24 at 33 (Coeur Direct).

ITC Midwest continues to stand by the cost estimates in this proceeding and believes the record fully supports the Project and enables the Commission to make a sound decision.⁴⁶ A bandwidth of costs is also consistent with prior Certificate of Need proceedings, which typically include a range of anticipated project costs.⁴⁷ These costs have been used to analyze alternatives when, unlike here, there have been competing reasonable alternatives that can meet the needs.⁴⁸

⁴⁶ Ev. Hrg. Transcript at 25 (Ashbacker).

⁴⁷ See, e.g., *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy and the City of Glencoe for a Certificate of Need for 115kV Transmission Line Upgrades to the Glencoe-Waconia 69 kV System*, Docket No. E-002/CN-09-1390, APPLICATION TO THE MINNESOTA PUBLIC UTILITIES COMMISSION FOR A CERTIFICATE OF NEED FOR 115 kV TRANSMISSION LINE UPGRADES TO THE GLENCOE – WACONIA 69 kV SYSTEM at 39 (Nov. 30, 2010) (providing costs for the preferred and alternative system option with a range of +/- 30 percent); *In the Matter of the Application of Xcel Energy and Great River Energy for a Route Permit for the Southwest Twin Cities Chaska Area 115 kV Transmission Line*, Docket No. E002/CN-11-826, APPLICATION TO THE MINNESOTA PUBLIC UTILITIES COMMISSION FOR A CERTIFICATE OF NEED FOR THE UPGRADE OF THE SOUTHWEST TWIN CITIES (SWTC) CHASKA AREA 69 KILOVOLT TRANSMISSION LINE TO 115 KILOVOLT CAPACITY at 17 (May 15, 2012) (“Applicants estimate that the overall cost of the proposed improvements will fall within a range of \$13 to \$27 million.”); *In the Matter of the Request by Minnesota Power for a Certificate of Need for the Great Northern Transmission Line*, Docket No. E015/CN-12-1163, APPLICATION FOR A CERTIFICATE OF NEED at 27 (“Minnesota Power estimates that construction of the Project ... will cost between \$406 million and \$609 million (2013 dollars), with a mid-point of \$507 million”).

⁴⁸ *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy and the City of Glencoe for a Certificate of Need for 115kV Transmission Line Upgrades to the Glencoe-Waconia 69 kV System*, Docket No. E-002/CN-09-1390, COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE, DIVISION OF ENERGY RESOURCES at 12 (Apr. 29, 2011) (utilizing the costs provided by the Applicants in their Certificate of Need Application which included a +/- 30 percent contingency to compare alternatives); *In the Matter of the Application of Xcel Energy and Great River Energy for a Route Permit for the Southwest Twin Cities Chaska Area 115 kV Transmission Line*, Docket No. E002/CN-11-826, COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE, DIVISION OF ENERGY RESOURCES at 13 (Jan. 28, 2013) (utilizing \$18.5 million as the initial capital cost for the project which was in the middle of the \$13 to \$27 million range provided by the applicants).

Based on its cost concerns, DOC DER recommended that the Commission allow utilities subject to its ratemaking authority to recover only the costs determined to be reasonable in this proceeding through their Transmission Cost Recovery Rider (“TCR”) pursuant to Minnesota Statutes Section 216B.16, subdivision 7b.⁴⁹ However, ITC Midwest takes no position on the Commission’s authority over transmission cost recovery riders.⁵⁰

(iii) Effects Upon the Natural and Socioeconomic Environments

The DOC DER also recommends that ITC Midwest be required to develop a spreadsheet for future Certificate of Need filings to calculate costs of alternatives that include internal costs and externalities, reflecting the Commission’s externality values.⁵¹ ITC Midwest is open to such a requirement

⁴⁹ As detailed in Doug Collins’ Rebuttal Testimony, Ex. 30, ITC Midwest opposes a cap on its ability to recover the total Project costs pursuant to the federally-regulated MISO tariffs since such a Certificate of Need condition would be preempted by federal law. *See* Federal Power Act §§ 201(b)(1), 205(a), and 206(a); 16 U.S.C. §§ 824b(1), 824d(a), and 824e(a) (2012) (granting FERC exclusive jurisdiction over interstate transmission electric rates, including the authority to determine whether such rates are just, reasonable, and unduly discriminatory or preferential).

⁵⁰ *See* ITC Midwest Brief at 82-84 for further discussion of this issue.

⁵¹ DOC DER Brief at 32.

when appropriate and feasible given analysis tools.⁵² ITC Midwest is committed to working with DOC DER to develop a format for supplying such data and anticipates beginning discussions after the filing of this brief.

(iv) Relative Reliability Benefits

DOC DER acknowledges that the Project better addresses reliability issues, relative to the 161 kV Rebuild, pointing to the testimony of Mr. Chatterjee stating that the Project will allow the retirement of the existing SPSs. In contrast, the 161 kV Rebuild would require that the SPSs be reconfigured to protect different elements rather than be retired.⁵³

(c) Minnesota Rule 7849.0120(C)

DOC DER concludes that the Project also satisfies the factors in Rule 7849.0120(C):⁵⁴

C(1). Relationship to overall state energy needs: DOC DER recognizes that the Project would not conflict with meeting state energy needs.

⁵² ITC Midwest Brief at 82. ITC Midwest respectfully states that the analysis of social costs included in the testimony of Dr. Schatzki accounted for changes in CO₂ and NO_x emissions using the Commission's values. This testimony also accounted for additional emissions (i.e. mercury) for which the Commission has not yet developed values. Lacking values from the Commission, Dr. Schatzki adopted values used by DOC DER Witness Dr. Rakow in a prior proceedings. Ex. 23 at (Schatzki Direct) (citing Direct Testimony of Dr. Stephen Rakow, IN THE MATTER OF THE APPLICATION FOR CERTIFICATES OF NEED FOR THREE 345 kV TRANSMISSION LINE PROJECTS WITH ASSOCIATED CONNECTIONS, Docket No. CN-06-1115 (May 23, 2008)).

⁵³ DOC DER Brief at 33 (citing Ex. 22 at 9 (Berry Direct)).

⁵⁴ DOC DER Brief at 36.

C(2). No build: DOC DER determines that constructing a new transmission line would have superior impacts on the natural and socioeconomic environments than the no build.

C(3) Inducing future development: DOC DER recognizes the Project will support economic development.

C(4). Socially beneficial uses of the output: The Project would “have socially beneficial uses that included protection or enhancement of environmental quality”.⁵⁵

(d) Minnesota Rule 7849.0120(D)

Lastly, DOC DER determined that the Project would satisfy Rule 7849.0120(D), requirements of other agencies. DOC DER agrees that the proposed Project will comply with the relevant policies, rules, and regulations of other state and federal agencies and local governments.⁵⁶ As noted in ITC Midwest’s Opening Brief, the Project will further various state and federal policies.⁵⁷

2. Statutory Requirements

DOC DER also rightly found that ITC Midwest satisfies the renewable preference requirements of Minnesota Statutes Sections 216B.2422, subdivision 4 (renewable preference) and 216B.243, subdivision 3A.⁵⁸

⁵⁵ DOC DER Brief at 34-36.

⁵⁶ DOC DER Brief at 37-38.

⁵⁷ ITC Midwest Brief at 75.

⁵⁸ DOC DER Brief at 38-39.

DOC DER also analyzed Minnesota Statutes Section 216B.243, subdivision

9. The DOC DER recommended:

. . . that the Commission find that the proposed Project would improve the robustness of the transmission system and lower costs for electric consumers in Minnesota, if and only if actual costs do not exceed the cost estimates provided by ITC.⁵⁹

ITC Midwest respectfully disagrees with DOC DER's recommendation. The statute requires consideration of "[1] the benefits of enhanced regional reliability, access, or [2] deliverability to the extent these factors improve the robustness of the transmission system or [3] lower costs for electric consumers in Minnesota."⁶⁰

All three factors in subdivision 9 support the need for the Project. There is no dispute on the record that the Project will enhance regional reliability⁶¹ and increase generation access, and that these factors will improve the robustness of the transmission system.⁶² Such benefits accrue separate from cost considerations. In addition to ITC Midwest witness Dr. Todd Schatzki's

⁵⁹ DOC DER Brief at 40 (emphasis added).

⁶⁰ Minn. Stat. § 216B.243, subd. 9

⁶¹ Ex. 400 at 24-27 (Chatterjee Direct); Ex. 22 at 11 (Berry Direct); Ex. 302 at 6-7 (Porter Rebuttal).

⁶² Ex. 30 at 10 (Collins Rebuttal); Ex. 22 at 22 (Berry Direct).

testimony, Mr. Heinen also testified that the Project will lower costs for Minnesota electric customers.⁶³

ITC Midwest appreciates DOC DER's thorough evaluation of the Project and its ultimate conclusions that 1) there is a need for a new transmission line and 2) that there is no reasonable alternative on the record that meets the identified needs.

D. CETF/No

For the most part, CETF/No's brief raises issues similar to those DOC DER raises, which ITC Midwest addressed above. Several additional claims CETF/No makes, primarily without citation to the record or law, warrant clarification.

First, CETF/No suggests that Minnesota will only pay its share of the MVP Portfolio if Minnesota approves the Project.⁶⁴ ITC Midwest notes that Minnesota ratepayers will pay for their allocated share of all MVP Portfolio costs through the Schedule 26A charges under MISO's tariff regardless of the outcome of this

⁶³ Ex. 200 at 12 (Heinen Direct). DOC DER also suggests that ITC Midwest or MISO should have provided evidence that the 161 kV Rebuild Alternative would not meet the transmission requirements for the Odell wind farm. DOC DER Brief at 41. A party advocating for an alternative to the proposed Project bears the burden of demonstrating it is a more reasonable alternative. *See* ITC Midwest Brief at 66-77 for discussion of standards. The record demonstrates that the 161 kV Rebuild Alternative does not meet the identified needs. *See* ITC Midwest Brief at 66-77 for discussion of standards.

⁶⁴ CETF/No Brief at 2.

case.⁶⁵ Denial of this Certificate of Need application, however, will reduce the benefits that Minnesota could receive from the MVP Portfolio.

Second, CETF/No claims that the Project will be “double circuited with either two 345 kV phases or one 345 kV and a 161 kV phase”.⁶⁶ The statement regarding two 345 kV lines is false. As Ms. Ashbacker emphasized at the public hearings, the proposed Project structures will not physically be capable of carrying a second 345 kV circuit, and in this proceeding, ITC Midwest is seeking approval for a single 345 kV line.⁶⁷

Third, CETF/No contends that because ITC Midwest is a transmission only company, the Project “by definition” is for a private purpose.⁶⁸ As with prior statements, CETF/No lacks evidentiary and legal citation for the assertion. ITC Midwest is public utility under federal law⁶⁹ and a transmission company under Minnesota Statutes Section 216B.02, subdivision 10.⁷⁰ Like investor-owned

⁶⁵ Ex. 31 at 2 (Grover Rebuttal).

⁶⁶ CETF/No Brief at 7.

⁶⁷ Public Hearing Transcript (Blue Earth) at 69, May 13, 2014.

⁶⁸ CETF/No Brief at 20.

⁶⁹ See Federal Power Act § 201(e) (defining public utility); § 203 (regulation of public utilities); §§ 205 and 206 (rate regulation of public utilities).

⁷⁰ Minn. Stat. § 216B.02, subd. 10:

“Transmission company” means persons, corporations, or other legal entities and their lessees, trustees, and receivers, engaged in the business of owning, operating, maintaining, or controlling in this state equipment or facilities for furnishing electric transmission service in Minnesota, but does not include public

utilities in the state, ITC Midwest is also a public service corporation under Minnesota law. Public service corporations are organized to serve public purposes, including supplying the public with water, light, heat, or power.⁷¹ Therefore, ITC Midwest’s business model is to serve public, not private needs. ITC Midwest is also a “utility” under the Power Plant Siting Act, along with investor owned companies, cooperatives, and municipal utilities.⁷²

Fourth, CETF/No states that MVP 3 is the first MVP project to be presented to the Commission.⁷³ For clarification, ITC Midwest notes that the

utilities, municipal electric utilities, municipal power agencies, cooperative electric associations, or generation and transmission cooperative power associations.

⁷¹ Minn. Stat. § 301B.01 provides, in relevant part:

A corporation may be organized to construct, acquire, maintain, or operate internal improvements, including railways, street railways, telegraph and telephone lines, canals, slackwater, or other navigation, dams to create or improve a water supply or to furnish power for public use, and any work for supplying the public, by whatever means, with water, light, heat, or power, including all requisite subways, pipes, and other conduits, and tunnels for transportation of pedestrians.

⁷² Minn. Stat. § 216E.01, subd. 10 (“Utility” shall mean any entity engaged or intending to engage in this state in the generation, transmission, or distribution of electric energy including, but not limited to, a private investor-owned utility, cooperatively owned utility, and a public or municipally owned utility.”).

⁷³ CETF/No Brief at 19.

Commission approved the Brookings County to Hampton 345 kV Project, which is part of the MVP Portfolio, prior to its designation as an MVP project.⁷⁴

Fifth, CETF/No contends that congestion on the “Fox Lake line” does not justify the Project.⁷⁵ CETF/No’s argument is too narrow. There are multiple needs for the Project in Minnesota and the region, as fully discussed in ITC Midwest’s opening brief. In southwest Minnesota specifically, the constraints on the Fox Lake – Rutland – Winnebago 161 kV transmission line not only lead to congestion that results in higher Locational Marginal Prices, they create reliability concerns on the transmission system, necessitate SPSs, and preclude the interconnection of additional generation in southwest Minnesota.⁷⁶

Finally, CETF/No makes a number of unsubstantiated assertions, such as wind capacity in Illinois⁷⁷ and likelihood coal would use capacity.⁷⁸ Such allegations must be disregarded because they are merely the argument of counsel.

⁷⁴ *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects*, Docket No. ET-2, E-002, *et al.*/CN-06-1115, ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS at 44 (May 22, 2009); MISO Transmission Expansion Plan 2011 (MTEP 11) at 17.

⁷⁵ CETF/No Brief at 20.

⁷⁶ Ex. 6 at Appendix J (ITC Midwest LLC Multi-Value Project #3 Planning Study) at 1.

⁷⁷ CETF/No Brief at 28 (stating that “Illinois has had significant wind development, Chicago has long been known as the ‘Windy City,’ and ‘Wind on the Wires’ exported from Minnesota and Iowa could have a detrimental impact on wind development in Illinois”).

⁷⁸ CETF/No Brief at 24-28 (arguing that the Project enables coal).

For these reasons, CETF/No's arguments should be rejected.

III. CONCLUSION

ITC Midwest respectfully requests that the ALJ recommend that a Certificate of Need be granted for the Project and that the ALJ adopt ITC Midwest's revised proposed findings.

Dated: August 8, 2014

Respectfully submitted:

BRIGGS AND MORGAN, P.A.

By: /s/ Lisa Agrimonti
Lisa M. Agrimonti (#0272474)
Kodi Jean Church (#0391056)
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 977-8400

Attorneys for ITC Midwest LLC