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August 8, 2014

VIA ELECTRONIC FILING

Hon. James LaFave
Administrative Law Judge
Minnesota Office of Administrative Hearings
600 North Robert Street
St. Paul, Minnesota 55164-0620

Re: *In the Matter of the Application of ITC Midwest for a Certificate of Need for the Minnesota-Iowa 345 k V Transmission Project in Jackson, Martin, and Faribault Counties*, Docket No. ET6675/CN-12-1053, OAH 60-2500-30782: Responsive Brief of MISO

Dear Judge LaFave:

The Midcontinent Independent System Operator, Inc. (MISO), hereby submits its responsive brief in the above-captioned case to support the Application submitted by ITC Midwest LLC (ITCM) for the Minnesota portion of the Minnesota-Iowa 345 kV Project (MN-IA Project). Attached is the Affidavit of Service.

Please do not hesitate to contact me if I can be of any further assistance in this matter.

Sincerely,

/s/ Warren J. Day
Warren J. Day

Attorney for
Midcontinent Independent System Operator

CERTIFICATE OF SERVICE

I, Warren J. Day hereby certify that on the 8th day of August, 2014, a true and correct copy of the Responsive Brief of the Midcontinent Independent System Operator was filed by means of eDockets (www.edockets.state.mn.us) in the below-referenced dockets. The Brief was also served via U.S. Mail and email (E-Service option) through the eDockets system as designated on the Official Service Lists on file with the Minnesota Public Utilities Commission in these dockets.

/s/ _____

Warren J. Day, Attorney

Docket Number **ET-6675/CN-12-1053 and ET-6675/TL-12-1337**
Dated this **8th day of August, 2014**

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In the Matter of the Application of ITC Midwest LLC) Docket No. ET6675/CN-12-1053
for a Certificate of Need for the Minnesota-Iowa 345)
kV Transmission Project in Jackson, Martin, and) OAH Docket No. 60-2500-30782
Faribault Counties.)

**RESPONSE BRIEF,
AND
SUBSTITUTE/SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW
BY
THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC.**

I. INTRODUCTION

As stated in MISO's Post-Hearing Brief ("MISO Brief") filed on July 11, 2014, MISO supports approval of ITCM's planned MN-IA Project.¹ The evidentiary hearing conducted on May 19, 2014 provided record support for approval of ITCM's Application that seeks a Certificate of Need for the MN-IA Project uunder Minnesota Statute § 216B.243.²

Briefs were filed in support of the Application in this proceeding by the Applicant (ITCM) as well as MISO. MISO conducts regional transmission planning in its footprint (including Minnesota), and its independent Board of Directors approved the Project as part of the

¹ The abbreviations used in the MISO Post-Hearing Brief are adopted in this Response Brief.
² Expert testimony regarding the need for the Project was presented by ITCM, the Department of Commerce – Division of Energy Resources ("DOC-DER"), Clean Energy Intervenors ("CEI") (composed of Wind on the Wires, Fresh Energy, Izaak Walton League of American – Midwest Office, and the Minnesota Center for Environmental Advocacy), and MISO.

MVP Portfolio of transmission projects.³ Intervenor CEI states that “[the Project] will enhance regional deliverability of electricity and lower consumer costs, . . . the record does not contain evidence of a more reasonable or prudent alternative to the Project, and . . . the Project and the renewable energy it will transmit will protect and enhance environmental quality.”⁴ The DOC-DER Brief concludes that the Division “takes no position regarding which alternative best meets the criteria by Minnesota,” but notes that the record supports only the Project as permitting certain wind development.⁵

Only the Citizens Energy Task Force/NoCapX2020 (“CETF,” a limited party to this proceeding that did not sponsor expert testimony) submitted a brief that opposes the issuance of a Certificate of Need for the Project.⁶

II. REQUIREMENTS FOR A CERTIFICATE OF NEED AND OVERVIEW

ITCM’s Application for the Project, supported by the ITCM Brief, satisfies the requirements of Minnesota Statute § 216B.243 for a Certificate of Need. An order should be issued that determines the existence of need for the facilities and authorizes the construction of the proposed high voltage transmission facilities.

ITCM has demonstrated in the Application and the evidentiary record that the Project is needed and addresses multiple elements of the Minnesota statute and associated rules for the evaluation of need stated in Minn. R. 7849.0120. The demonstrated need for the Project – its contribution to providing adequate, reliable, and efficient transmission service; support for policy objectives related to renewable sources of generation; satisfaction of needs by least-cost means;

³ MISO Ex. 400 at 8 (Chatterjee Direct).

⁴ CEI Brief at 1.

⁵ DOC-DER Brief at 41.

⁶ CETF does not have its own testimony to support its arguments, and its brief contains many conclusory statements without record support.

and development of an effectively competitive electricity market that operates efficiently – were addressed in the MISO Post-Hearing Brief.

III. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

MISO supports the Project, and accordingly supports ITCM’s “Statement of Facts and Conclusions of Law” (“ITCM Statement”) associated with the need for the Project.

MISO proposes that the ITCM Statement be supplemented to further mention the Project’s contribution to meeting federal requirements regarding the control of carbon emissions. On the subject of carbon dioxide emissions, responsive to the elements of Minn. Stat. § 216B.243, Subd. 3(5) and 3(7) (“protect or enhance environmental quality” and support “policies, rules, and regulations of other state and federal agencies”), the Project assists the development of renewable generation and is likely to help Minnesota respond to Federal environmental requirements. MISO’s planning anticipated the possible benefit of upgrading the transmission system in order to accommodate wind power development as one means by which carbon emissions could be limited.⁷ This benefit is recognized in paragraph 291 of the ITCM Statement, which cites to the testimony of MISO Witness Chatterjee.

The supplemental paragraph would note the transmission system reliability benefits of the Project to address conditions that could result from federal environmental regulations. MISO proposes that the ITCM Statement be supplemented as follows:

158b. Also stated in the Direct Testimony of MISO witness Mr. Chatterjee, if federal “environmental regulation leads to the retirement of some coal-fired plants, transmission investment through the Mid-MISO MVPs provides a robust transmission supply that will be available to provide needed support to maintain reliable service.”⁸

⁷ MISO Ex. 400 at 37-38 (Chatterjee Direct), cited in MISO Brief at 9.

⁸ MISO Ex. 400 at 37-38 (Chatterjee Direct).

The Commission should issue an order finding the need for the Project and authorize construction of the Project, supplementing the ITCM Statement as stated above.

IV. NEED FOR THE PROPOSED FACILITIES

The record supports granting a certificate of need based upon the elements contained in Minn. Stat. § 216B.243, Subd. 3. The Project will be reviewed under the applicable portions of the statute, focusing on the arguments in briefs submitted on July 11, 2014.

CEI evaluated the need for the Project under Minn. Stat. § 216B.243, Subd. 3(3) that considers the fit of transmission proposals into regional transmission needs stated in a transmission plan. Relying upon the Minnesota Biennial Transmission Projects Report, CEI states that it “identified the Project as a ‘Needed Project’ to meet . . . renewable energy needs.”⁹ MISO Witness Chatterjee concluded that the “facilities proposed by ITCM are necessary to meet the reliability needs of the system in the southern Minnesota area” and that the facilities “also fit well as a component of the MISO Regional Plan for the continued development of a reliable and efficient regional transmission system.”¹⁰

Only CETF envisions any applicability of Minn. Stat. § 216B.243, Subd. 3(4) (“promotional activities that may have given rise to the demand for this facility”) to this case. Without citation, CETF states that “the Applicant developed this marketing plan to reap the benefits of regional transmission.”¹¹ CETF’s assertion is not supported by the record. MISO’s independent Board of Directors approved the Project as part of the MVP portfolio of transmission projects following collaborative transmission planning with its members and other

⁹ CEI Brief at 5.

¹⁰ MISO Ex. 400 at 40-41 (Chatterjee Direct). The MVP portfolio was approved by MISO’s Board of Directors. *Id.* at 8. *See also*, ITCM Ex. 29 at 7-8 (Berry Rebuttal) (“addresses multiple reliability and efficiency needs”).

¹¹ CETF Brief at 19.

stakeholders.¹² As pointed out by MISO Witness Chatterjee, the State of Minnesota participated in a key step along the path toward development of the MVP portfolio – study and issuance of reports by the Upper Midwest Transmission Development Initiative.¹³ These planning activities identified the Mid-MISO MVPs as an important link that is needed to support renewable mandates in the MISO footprint and ensure the continued reliability of the transmission system in Minnesota as well as the surrounding region. ITCM did not create the demand that the Project is designed to serve, but the State of Minnesota was involved by enacting RES requirements and participating in the planning process.

The Project will provide important benefits related to “increased reliability of energy supply in Minnesota and the region,” as stated in Minn. Stat. § 216B.243, Subd. 3(5). ITCM states, supported by the testimony of Mr. Joe Berry, that existing local reliability issues are indicated in part by the curtailment of installed wind generation in southern Minnesota.¹⁴ The increased robustness of the regional “highway” is supported in ITCM’s Brief based on the testimony of Mr. Berry concerning the need to respond to increased demands placed on the transmission system to deal with intermittent (wind) generation resources.¹⁵ MISO Witness Chatterjee testified that the Mid-MISO MVPs resolve thermal overloads throughout southern Minnesota, “ensur[ing] that the bulk power flows remain on the 345 kV system under contingent

¹² See, e.g., MISO Ex. 400 at 9 and 21 (Chatterjee Direct).

¹³ MISO Ex. 400 at 20, footnote 20.

¹⁴ ITCM Brief at 24-25, *citing* ITCM Ex. 22 at 6 (Berry Direct).

¹⁵ ITCM Brief at 27, *citing* ITCM Ex. 22 at 9-10 (Berry Direct) and Ex. 29 at 8 (Berry Rebuttal).

loss of facilities.”¹⁶ Thirty-seven constraints on the 69 kV as well as 161 kV transmission systems are mitigated by the Mid-MISO MVPs, including eighteen constraints in Minnesota.¹⁷

ITCM notes that the constraints in southern Minnesota “have prompted adoption of two Special Protection Schemes (“SPS”s) (Fieldon Capacitor Bypass and Nobles County-Wilmarth) that allowed additional wind generation to interconnect in the absence of needed transmission facilities.”¹⁸ The reliability benefits of the Project include removal of these SPSs.¹⁹ Supported Mr. Berry’s testimony, ITCM notes that SPSs create a barrier to development of wind generation in Minnesota and their removal would improve reliability by enhancing operational “flexibility for maintenance outages of other transmission lines in the area.”²⁰

The Project will support the development of renewable generation that is required by the laws of Minnesota and its neighboring states, satisfying the elements of Minn. Stat. § 216B.243, Subd. 3(5) and 3(7) – “protect or enhance environmental quality” and support “policies, rules, and regulations of other state and federal agencies.” ITCM’s Brief and testimony support MISO’s conclusion that the Mid-MISO MVPs provide an important contribution to satisfying renewable portfolio standards in Minnesota and other nearby states, which will enhance environmental quality in the region.²¹ The CEI Brief states that Commission consideration of the

¹⁶ MISO Ex. 400 at 24 (Chatterjee Direct); *see generally* MISO Ex. 400 at 23-25.

¹⁷ MISO Ex. 401 at 3 (Chatterjee Rebuttal). *See also*, ITCM Ex. 22 at 5-7 (Berry Direct).

¹⁸ ITCM Brief at 25.

¹⁹ MISO Ex. 401 at 9 (Chatterjee Rebuttal). *See also*, ITCM Ex 22 at 9 (Berry Direct). An alternative discussed in testimony, the “161 Rebuild Project” (*see e.g.*, MISO Ex. 402, Chatterjee Surrebuttal at 10, *citing to* DOC Ex. 207 Rakow Rebuttal at 13), “would require the reconfiguration of the SPS” (Transcript at 61-62) and could result in the addition of SPSs in Southern Minnesota (Transcript at 62).

²⁰ ITCM Brief at 26-27, *citing* ITCM Ex. 22 at 9 (Berry Direct).

²¹ ITCM Brief at 40-41. *See* MISO Ex. 400 at 33 (Chatterjee Direct); *accord*, CEI Ex. 300 at 6-8 (Goggin Direct) (Direct at 6, “dispatch to displace generation from the generator with the

Project’s contribution to environmental quality is “[o]f paramount importance to CEI,”²² noting that “this Project will increase the ability to develop and utilize additional renewable energy facilities, which are needed to meet the RESs of the region.”²³

The DOC-DER Brief reflects concern over the immediacy of the Project’s contribution to meeting the RES for Minnesota.²⁴ DOC-DER incorrectly asserts in its Brief that “Dr. Rakow’s rebuttal testimony demonstrates that the utilities serving Minnesota do not need to add significant amounts of wind for RES compliance until after 2020.”²⁵ As stated in MISO Witness Chatterjee’s Surrebuttal Testimony:

Much of the wind generation required to meet the RES has not yet been constructed, and is the subject of MISO interconnection studies. These studies currently assume that the MVP portfolio is constructed according to a timeline. In the event the MID-MISO MVPs are not approved and constructed, some of the wind generation that is relied upon by Minnesota utilities to meet the RES will be curtailed or not interconnected.²⁶

Mr. Chatterjee provides the example of the Xcel Energy plan to comply with Minnesota RES requirements, stating that the plan is dependent upon completion of the Mid-MISO MVPs.²⁷ The DOC-DER Brief itself states that “only the proposed project has been studied in terms of the

highest marginal cost of production at that time, which is almost always the least efficient fossil-fired power plant.”).

²² CEI Brief at 11.

²³ *Id.* at 14. CETF suggests that the Project is unconnected with meeting RPS requirements. CETF Brief at 12, *citing* Transcript at 94-95 (Chatterjee). At that point in the record, Mr. Chatterjee states that “[i]n the *context of MVP analysis* where you’re transferring *renewables . . .*” *Id.* at 95 (emphasis added).

²⁴ DOC-DER Brief at 22-23. CETF states that the MVPs are not ““for wind.”” CETF Brief at 11. DOC-DER states that “[g]iven the location of the proposed Project such [interconnected, new generating] facilities are overwhelmingly likely to be wind facilities.” DOC-DER Brief at 35.

²⁵ DOC-DER Brief at 22. CETF relies upon this false statement. CETF Brief at 25.

²⁶ MISO Ex. 402 at 4 (Chatterjee Surrebuttal), *accord*, CEI Ex. 304 at 6-7 (Goggin Surrebuttal).

specific needs of the Odell Wind Farm, whose energy is currently contracted to be purchased by Xcel Energy.”²⁸

Finally regarding Minn. Stat. § 216B.243, Subd. 3(5) and 3(7), MISO’s supplemental paragraph 158b to ITCM’s Statement notes that the Project appears well suited to help Minnesota respond to Federal environmental requirements that would limit carbon dioxide emissions.²⁹

Alternatives to the Project are the subject of Minn. Stat. § 216B.243, Subd. 3(6). The “161 kV Rebuild alternative” was extensively addressed in DOC-DER Witness Rakow’s testimony.³⁰ The DOC-DER Brief states that “[t]he Department no longer recommends that the Commission deny ITC’s Petition,”³¹ but still states that the smaller alternative “better match[es] the . . . Minnesota RES and the state’s overall energy needs.”³² MISO Witness Chatterjee disagreed, and addressed the Project and the 161 kV Rebuild alternative in testimony.³³

As noted in my Rebuttal Testimony [MISO Ex. 401 at 7], the 161 kV Rebuild would only alleviate two (2) of the thirty-seven (37) constraints throughout central Minnesota and Iowa and is inconsistent with achieving a robust 345 kV overlay across the upper MISO footprint.

As noted in my Direct Testimony [MISO Ex. 400 at 23-25], contingent overloads mostly driven by 345 kV outages result in constraints both on the 161 kV as well as 69 kV transmission systems in Minnesota. These

²⁷ MISO Ex. 402 at 4-6, *citing and quoting from: In the Matter of the Petition of Xcel Energy for Approval of the Acquisition of 600 MW of Wind Generation and In the Matter of the Petition of Xcel Energy for Approval of the Acquisition of 150 MW of Wind Generation*, Case Nos. M-13-603 and M-13-716, Order (December 13, 2013).

²⁸ DOC-DER Brief at 35.

²⁹ The United States Environmental Protection Agency proposed rules on the release of carbon dioxide on June 18, 2014. Carbon Pollution Emission Guidelines, 40 C.F.R. Part 60 (June 18, 2014), available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-06-18/pdf/2014-13726.pdf>.

³⁰ *See generally*, DOC-DER Ex. 205 at 21-34 (Rakow Direct).

³¹ DOC-DER Brief at 33.

³² *Id.* at 35.

³³ MISO Ex. 402 at 10 (Chatterjee Surrebuttal).

constraints were identified in Redwood, Nicollet, Watonwan, Jackson, Martin, Faribault, Freeborn, Redwood, and Mower counties. A specific example highlighting why a rebuild of Lakefield to Winnebago 161 kV is not comparable to the Mid-MISO MVPs, even as it relates to Minnesota constraints, is documented in my Direct Testimony (page 25, lines 476 to 491).

The Project is needed to meet the Minnesota RES and the RPSs of other states, and will help Minnesota upon the implementation of federal environmental mandates. MISO Witness Chatterjee testified that “[r]eplacing the MN-IA Project with the 161 kV Rebuild would trigger re-studies of over 2,797 MWs of planned wind generation currently in MISO interconnection queue”³⁴ As acknowledged in the DOC-DER Brief, the Mid-MISO MVPs would eliminate the need for two SPSs in southern Minnesota, while a “161 kV Rebuild” could result in the addition of SPSs in the area.³⁵ The “161 Rebuild alternative” does not match Minnesota’s overall energy needs.

The record reveals “benefits of enhanced regional reliability, access, [and] deliverability . . . that improve the robustness of the transmission system or lower costs for electric consumers in Minnesota,” as stated in Minn. Stat. § 216B.243, Subd. 3(9). As stated in the ITCM Brief, the Project reduces losses and reduces energy production costs.³⁶ CEI also enumerates the regional improvements and expected effect of lowering costs for Minnesotans.³⁷ Increased deliverability,

³⁴ MISO Ex. 402 at 13 (Chatterjee Surrebuttal).

³⁵ Transcript (May 19, 2014) at 62-63, *acknowledged in* DOC-DER Brief at 33.

³⁶ ITCM Brief at 41-45. Additional economic benefits were identified by MISO Witness Chatterjee. *See* MISO Ex. 400 at 32 (Chatterjee Direct). *See also*, ITCM Ex. 23 (Schatzki Direct). Dr. Schatzki’s testimony, relied upon extensively by ITCM (ITCM Brief at 42-45) reports lower expected LMPs (ITCM Ex. 23 at 19-21) and production costs (ITCM Ex. 23 at 22-23). Minn. Stat. § 216B.243, Subd. 3(9) regarding improvements in transmission system is also implicated in testimony on a MISO study in late 2013 that revealed an increase in import and export capabilities of the load zone in which Minnesota is located as the result of the Mid-MISO MVPs. MISO Ex. 400 at 27 (Chatterjee Direct).

³⁷ CEI Brief at 7-9.

part of Subd. 3(9), Minn. Stat. § 216B.243., is also noted by DOC-DER regarding construction of the Project as planned.³⁸

V. COST CONTAINMENT CONCERNS

DOC-DER states that the costs of the Project “may greatly exceed the cost estimates provided by ITC.”³⁹ The basis of this conclusion is somewhat unclear, but seems to rely upon concerns over ITCM’s initial ownership of transmission facilities serving Minnesota as well as ITCM’s efforts to provide estimates within a band of plus or minus thirty percent.⁴⁰ DOC-DER does not appear to finally recommend cost containment conditions on ITCM itself.⁴¹

Nonetheless, the DOC-DER’s first concern is related to the sale of Interstate Power and Light’s transmission assets to ITCM and not to construction of any ITCM transmission project. ITCM has a greater incentive than ever to maintain a reputation of reliably holding to its estimates in a utility environment where transmission projects will be competitively bid under FERC Order 1000 and where cost overruns are considered in the selection of transmission developers.⁴² The proposed band of costs simply recognizes the uncertainties at this stage in project development, including uncertainties related to route selected by the Commission.⁴³

As detailed in ITCM Witness Collins’ Rebuttal Testimony, cost containment procedures are available to the State of Minnesota through a MISO – and ultimately through FERC –

³⁸ DOC-DER Brief at 11 and 40.

³⁹ *Id.* at 41.

⁴⁰ *Id.* at 26.

⁴¹ DOC-DER recommends justification of transmission cost flow-throughs by “utilities subject to the Commission’s ratemaking authority.” DOC-DER Brief at 41.

⁴² *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, Order on Rehearing and Compliance Filings, 147 FERC ¶ 61,127 at 349 (May 15, 2014) (“allow MISO to evaluate . . . whether a transmission developer is likely to avoid major cost overruns during project implantation”).

⁴³ ITCM Ex. 28 at 3-10 (Ashbacker Rebuttal).

process.⁴⁴ Mr. Collins describes how “the MISO Tariff requires information sharing procedures and review by interested parties,” and “the MISO Tariff explicitly identifies state regulatory commission as interested parties and provides them standing to both conduct discovery and challenge calculation of the inputs to the formula rate at FERC.”⁴⁵ The testimony also provides a commitment by ITCM to “provide the Commission with updated cost estimates” on the Project as well as “notice of any submission the Company makes to MISO or FERC that pertains to costs for the Project.”⁴⁶

VI. CONCLUSION

ITCM has demonstrated that the Project is needed and addresses the multiple elements of the Minnesota statute for the evaluation of need. The Project is needed for its contribution to providing adequate, reliable, and efficient transmission service; supporting policy objectives related to renewable sources of generation; satisfaction of needs by least-cost means; and development of an effectively competitive electricity market that operates efficiently. MISO respectfully requests, as stated in the MISO Brief and elsewhere in this Response Brief, that the Commission grant a Certificate of Need to ITCM and issue an order that authorizes or directs construction of the Project.

⁴⁴ ITCM Ex. 30 (Collins Rebuttal). *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).

⁴⁵ ITCM Ex. 30 at 22 (Collins Rebuttal).

⁴⁶ *Id.*

Dated: August 8, 2014

Respectfully submitted,

THE MIDCONTINENT INDEPENDENT
SYSTEM OPERATOR, INC.

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