STATE OF MINNESOTA

September 23, 2014

Burl Haar, Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

RE: Exceptions of the Minnesota Department of Commerce, Division of Energy Resources
OAH Docket No. 60-2500-30782
MPUC Docket No. ET6675/CN-12-1053

Dear Dr. Haar:

On behalf of the Minnesota Department of Commerce, Division of Energy Resources (DOC DER), enclosed please find the Exceptions of DOC DER that are hereby efiled and served in the above matter.

Sincerely,

/s/ JULIA E. ANDERSON
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Attorney for Minnesota
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Division of Energy Resources

JA/ja
cc: Service List
Enclosure

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

In the Matter of the Application of ITC Midwest LLC for a Certificate of Need and Route Permit 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

EXCEPTIONS TO THE ALJ RECOMMENDATIONS OF THE MINNESOTA DEPARTMENT OF COMMERCE, DIVISION OF ENERGY RESOURCES

SEPTEMBER 23, 2014

I. INTRODUCTION

On September 8, 2014 the Administrative Law Judge (ALJ) filed the ALJ's *Findings of Fact, Conclusions of Law and Recommendations* (Report) in this matter. The Report recommended that the Minnesota Public Utilities Commission (Commission) conclude:

- that all relevant statutory and rule criteria necessary to obtain the certificate of need (CN) for the facilities proposed in this proceeding (known as the Minnesota - Iowa 345kV Project) have been satisfied; and
- that there are no statutory or other requirements that preclude granting a CN based on the record.

Minnesota Rules 7829.2700 states that "In cases subject to statutory deadlines, exceptions must be filed and served within 15 days of the filing of the report." Since Minnesota Statutes §216B.243 subd. 5 requires that the Commission approve or deny a CN petition within 12 months, exceptions are due September 23, 2014.

In response to Minnesota Rules, below are the Exceptions to the Report of the Minnesota Department of Commerce, Division of Energy Resources, Energy Regulation and Planning unit (Department or DOC-DER).

II. DOC DER EXCEPTIONS

A. PROJECT COST ESTIMATE

A key focus of DOC DER's Exceptions is on the unfortunate reality that there is no reliable cost estimate of the proposed project in the record of this matter. In its short twelve page Reply Brief, appended as Attachment A for the convenience of the Minnesota Public Utilities Commission (Commission), the Department highlighted ITCM's (Applicant's) use of the words "cost," "cost estimates," "cost savings," and the likely "cost" to Minnesota ratepayers. While these words appear to convey facts, the Commission, cannot rely on arguments or conclusions drawn from these terms since ITCM's President Douglas Collins made clear that the Applicant's cost numbers simply cannot be relied upon as any commitment by ITCM as to the cost of the proposed facility.

Below is an excerpt from the Department's Reply Brief that highlights President Collins' disavowal of ITC's cost estimates provided in the record, together with the Department's assessment of that testimony:

> ITC President Mr. Douglas C. Collins provided remarkable and unequivocal rebuttal testimony, stating that ITC's "$283 million cost estimate modeled for comparison of options in the Certificate of Need *cannot be viewed as a budget-quality number* and it would *not be just and reasonable to use that number as a cap or proxy for actual final cost*."[1] Nonetheless, ITC as well as MISO err in their Initial Briefs by repeating ITC "cost estimate" numbers as if those figures are meaningful, reliable or in some way are proxies for the likely final cost of the Proposed Project. For example, ITC's Initial Brief argues that total final Project costs of its Route A are approximately $285 million, but that ITC used a "bandwidth of plus/minus 30 percent" around that $285 million midpoint to account for uncertainties associated with the route selected, as follows:[2]
>
>> The final cost of the entire MN-IA 345 kV Project is highly dependent on a number of factors that are outside of ITC Midwest's control, including the final route (which impacts final design), the timing of construction, and availability of construction crews, and the cost of materials. [citation omitted] In light of these uncertainties, ITC Midwest provided approximate Project costs using a bandwidth of a plus/minus 30 percent.
>
> This statement, quoted immediately above, is pointless. A plus/minus 30 percent contingency "bandwidth" around a figure of $285 million that is not a reliable cost estimate is a fictional math exercise; it bears no correlation to ITC's Proposed Project costs. President Mr. Collins disavowed that any ITC cost estimate is reliable or is a reasonable proxy for final cost of the Proposed

[1] ITC Ex. 30 at 16-17 (Collins Rebuttal) (emphasis added).
[2] ITC Initial Brief at 22-23.

Project. If, for example, the Proposed Project were to cost $500 million or more, which apparently it might since ITC expressly offered no upper bound on cost,[3] then 30 percent more than $500 million is $650 million; the "bandwidth" has no meaning because the midpoint number is completely subject to change. ITC's proclaimed "bandwidth" may offer a false sense of security, but it gives ratepayers no protection from exorbitant final Project costs.

Similarly, ITC's Initial Brief argues erroneously that Minnesota ratepayers are likely to pay only about $7.0 million of the final Project costs annually, according to ITC's estimated first year revenue requirement, as follows:[4]

> All but $7.4 million of the ITC Midwest costs for MVP 3 will be recovered regionally, pursuant to MISO's Federal Energy Regulatory Commission ("FERC") approved tariffs. Minnesota ratepayers' share of the annual revenue requirement is determined by the percent of total MISO energy used in Minnesota, which has been estimated at approximately 13.3 percent based on MISO's posted 2010 energy withdrawal data for the MISO Classic footprint. [citation omitted]
>
> Mr. Grover estimated the total annual first year revenue requirement for the Project will be approximately $52.4 million. [citation omitted] Of this amount, approximately $7.0 million will be collected from Minnesota ratepayers. [citation omitted]

Again, ITC's claims in the above-quoted paragraph now are without record support due to ITC President Mr. Collins' clear explanation that no reliable ITC cost estimates exist and there are none that are reasonable proxies of final Project cost. The ALJ and Commission must reject ITC's calculations or quantifications that are grounded on the very cost estimates that ITC itself rejects as unreliable. President Mr. Collins refused to commit to ITC's cost figures as being a reasonable proxy for final Project cost and, therefore, and it is unclear why ITC expects the ALJ and Commission to do so.

As to MISO's statements of the Proposed Project costs, its Initial Brief includes the plainly erroneous claim, without citation, that: [5]

> …the record demonstrates that the Project . . . is the least-cost means of satisfying these needs.

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[3] ITC witness Ms. Ashbacker acknowledged that "it is too early to speculate" about how expensive the proposed Project might actually be. Tr. Evid. Hearing at 29-30 (Ashbacker). Also, ITC has an economic incentive to increase the costs of the Proposed Project – it receives a FERC-granted return on the equity portion of its investment in rate base of 12.38 percent. Tr. at 185-186 (Grover) (Fairmont Public Hearing).

[4] ITC Initial Brief at 23.

[5] MISO Initial Brief at 4.

> The record does not show the Proposed Project to be least-cost. ITC's cost estimates are not reliable or representative of final Project cost and, thus, there is no record basis for MISO's claim that the Proposed Project is "least-cost". There is no means in the record to evaluate or compare the likely cost of the Proposed Project. ITC's failure to provide reasonable cost estimates are not cured by other parties' citation to ITC's testimony.

Therefore, DOC DER takes exception to the Report to the extent that it includes proposed findings regarding the Project's costs, estimated costs, savings to ratepayers, likely costs to ratepayers, etc. The record simply does not support such proposed findings. Rather, DOC DER recommends that, if the Commission chooses to approve the proposed Project, the Commission make a finding that ITCM demonstrated the reasonableness of its proposed Project *only* to the extent of ITCM's initial cost estimates, and not as later disavowed by President Collins. Otherwise, the record includes no reliable cost estimate of the proposed Project in the record, contrary to CN criteria.

B. RELIANCE ON MISO'S ANALYSIS

The Report also takes no notice of the lack of credibility of MISO's analysis that underlies ITCM's proposed Project. Dr. Rakow testified in detail regarding MISO's unexplained and incomplete analysis. Below is an excerpt from the Department's Initial Brief that highlights issues with MISO's analysis.

> …the Department's review of MISO's analysis of same voltage (345 kV) alternatives indicated a distinct preference on the part of MISO to approve for further detailed analysis the longer (and more expensive) options rather than to also fully analyze shorter, cheaper alternatives. For example MISO's *Midwest ISO Transmission Expansion Plan 2009* (MTEP09) at page 194 indicated that the shorter Lakefield Junction—Rutland 345 kV line had a benefit/cost ratio of 2.52 while the longer, Lakefield Junction—Fox Lake—Rutland—Winnebago—Adams 345 kV alternative had a significantly lower benefit/cost ratio of 0.90. These results mean that the shorter line had benefits greater than costs (was cost-effective) while the longer line was not cost-effective.

In the Petition ITC attempted to screen out the more cost-effective Lakefield Junction—Rutland alternative by stating that the termination of the 345 kV line at Rutland resulted in constraints farther east on the 161 kV system, increasing loading on the 161 kV line between Rutland and Winnebago Junction. However, MISO's MTEP09 already addressed ITC's "constraints" concern. Thus, the shorter line was determined by MISO in MTEP09 to be the best alternative; yet as noted below MISO provided no reasonable basis for alter dropping consideration of the shorter, more cost-effective alternative in favor of a longer line.

Subsequently, in the Midwest ISO Transmission Expansion plan 2010 (MTEP10), MISO restudied the issues related to the Fox Lake—Rutland 161 kV flowgate. In MTEP10 the Lakefield Junction—Rutland alternative was not considered as a stand-alone option by MISO despite being the best option in MTEP09.

* * *

As Dr. Rakow explained, MISO essentially combined a short, cost effective segment with other short, non-cost effective segments to create larger transmission projects that could be cost effective when considered together. In essence the cost-effective Lakefield Junction—Rutland segment was used to subsidize other segments of a larger project that were not cost-effective. However, one lesson of MTEP10 is that, in this instance, other shorter more localized alternative perform better economically than longer alternatives. This result is demonstrated by the fact that, in MTEP10, only the 2nd Fox Lake—Rutland—Winnebago 161 kV alternative (with a ratio of 10.23) had a benefit/cost ration greater than 1.

MISO's MRTEP 10 concluded at page 205 that "the Lakefield Junction—Winnebago project as well as a variation of the Lakefield Junction—Winnebago—Webster—Blackhawk—Hazelton 345 kV project are currently proposed to be included in the Candidate MVP Portfolio analysis to be studied for MVP eligibility." Once again MISO dropped from consideration the shorter alternative that performed best in favor of carrying forward to subsequent stages of analysis longer projects with benefit/cost ratio less than 1.0 (meaning that costs were greater than benefits). [citations omitted]

The Report overlooks these fundamental issues regarding the lack of credibility of MISO's analysis underlying the proposed Project.

C. CONDITIONS

The Report recommends that no conditions on the certificate of need are necessary. However, at a minimum to ensure that the Commission's CO_2 internal cost and externality values are considered appropriately in any future CN filing, DOC DER continues to recommend that the Commission order ITCM to make a compliance filing containing a spreadsheet that ITCM can use to calculate the cost of alternatives in future CN filings in a consistent manner. The spreadsheet should enable ITCM to include the Commission's CO_2 internal cost and externality values in its initial petition so that all parties are able to assess that information sooner, rather than later in the proceeding.

Also, the Department disagrees with the Report's conclusion that, essentially, DOC DER has a burden to demonstrate the reasonableness of ITCM's proposed Project or to offer an alternative. DOC DER has no such burden. The Report stated at page 122 incorrectly:

> The DOC DER is justifiably concerned about the cost of the Project. The DOC DER, however, has failed to identify a reasonably prudent alternative.

ITCM, not DOC DER, failed to demonstrate the reasonableness of the cost of the proposed Project *unless* the Commission finds that ITCM's cost estimates – as filed and not as disavowed by President Collins -- are the limit of the extent to which ITCM showed the reasonableness of its proposed Project.

Moreover, the solution to the risk of cost over-runs for Minnesota is not limited to selecting a different alternative. Another solution is for the Commission to rely upon its standard practice of holding utilities, in rider filings, to the CN cost estimate and only allowing costs above the CN-approved estimate to be recovered in a subsequent rate case. This solution would mean that, between rate cases, Minnesota regulated utilities would not be allowed rider treatment for any transmission cost overruns. Therefore, the Department continues to recommend that the Commission require utilities subject to the Commission's ratemaking authority to recover through their Transmission Cost Riders (TCRs) no more than the amount of cost shown to be reasonable in this CN proceeding—the Company's initial cost estimate (however unreliable ITCM now claims it to be)—before justifying to the Commission's satisfaction why it would be appropriate to charge Minnesota ratepayers for any ITC cost-overruns through a rider.

III. DEPARTMENT RECOMMENDATION

In summary, the Department maintains the recommendations contained in the Department's Initial Brief on page 41. Below is an excerpt from the Department's Initial Brief that provides the recommendations.

> The Department takes no position regarding which alternative best meets the criteria established by Minnesota States and Minnesota Rules. The data available in the record indicate that the proposed Project would allow a wind farm with a Commission-approved PPA (the Odell Wind Farm) to be interconnected albeit at costs that may greatly exceed the cost estimates provided by ITC. Unfortunately, ITC and MISO failed to provide transmission data regarding the ability of the 161 Rebuild to interconnect the Odell Wind Farm.
>
> The Department recommends the Commission allow utilities subject to the Commission's ratemaking authority to recover through their TCRs only the amount of cost shown to be reasonable in this CN proceeding—the Company's cost estimate—or to justify to the Commission's satisfaction why it would be appropriate to charge Minnesota ratepayers for any ITC cost-overruns through a rider.
>
> Also, the Department recommends that the Commission order ITC to make a compliance filing containing a spreadsheet ITC can use to calculate the cost of alternatives in future CN filings in a consistent manner. The spreadsheet should enable ITC to include the Commission's CO_2 internal cost and externality values. In addition the Department recommends that the Commission order ITC to use the Commission's externality values and cost of future CO_2 regulation value in future CN proceedings.

Dated: September 23, 2014

Respectfully submitted,

/s/ Julia E. Anderson

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ATTORNEY FOR MINNESOTA
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CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Exceptions

Docket No. **ET6675/CN-12-1053**

Dated this 23rd day of September 2014

/s/Sharon Ferguson

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