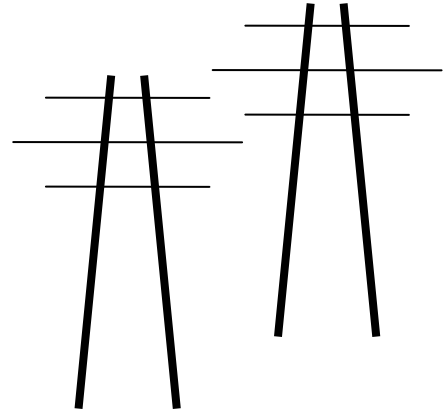


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October 21, 2014

Burl Haar, Executive Secretary
Mike Kaluzniak
Minnesota Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

eFiled and via email: burl.haar@state.mn.us
michael.kaluzniak@state.mn.us

RE: 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

OAH Docket No.: 60-2500-30782
PUC Dockets: ET-6675/TL-12-1337
ET-6675/CN-12-1053

Dear Mr. Kaluzniak and Dr. Haar:

I have reviewed the staff Briefing Papers in the above-entitled matter, and am very concerned about the presentation of the first, and most important, of the No CapX 2020 Exceptions.

In particular, our primary exception, taken from the filed aggregate summary, does not reflect the purpose of the “exception” which is deletion of the declaration that “ITC Midwest is a Minnesota “public service corporation.” ITC Midwest, LLC is not a public service corporation, and deletion of this erroneous portion of the finding is not shown in the Summary provided.

The Finding in the ALJ’s Recommendation is highlighted below, with the false statement that should be deleted in **yellow**:

1. ITC Midwest is a transmission-only utility that owns approximately 6,600 circuit miles of transmission lines and more than 200 transmission substations in Iowa, Minnesota, Illinois, and Missouri. ITC Midwest is a Minnesota “public service corporation,” a “transmission company” and “utility” under state law.² ITC Midwest is also a “public utility” under Section 203 of the Federal Power Act.³ As such, ITC Midwest is subject to plenary rate regulation and other oversight by the Federal Energy Regulatory Commission (FERC).

² Minn. Stat. §§ 301B.01; 216B.02, subd. 10; and 216E.01, subd. 10.

Please carefully check the citations provided by the ALJ regarding this Finding and the Public Service Corporation statute.

This transmission line is proposed by a private company that is not a public service corporation as defined by state law. Minn. Stat. §301B.01. ITC Midwest, LLC, is organized under Chapter 322B as a Limited Liability Company, and not under Chapter 301B.

While a “transmission only” company could arguably be regarded as a “utility” under the Power Plant Siting Act rules, Minn. R. 7850.1000, Subp. 20, an LLC is not included in the definition of utilities found in 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.

Minn. Stat. §216E.01, Subd. 10. When comparing the statute with the rule, it’s apparent that there is no statutory authority for the addition of transmission companies to the definition of “utility” in Minnesota Rules. Further, the definition of “transmission companies” cited by the ALJ specifically separates and distinguishes between “transmission companies” and excludes “transmission companies” from consideration as utilities:

Transmission company. "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, municipal electric utilities, municipal power agencies, cooperative electric associations, or generation and transmission cooperative power associations.*

Minn. Stat. §216B.02, Subd. 10 (emphasis added).

Why is this important? ITC Midwest, LLC, anticipates that it will need to acquire land for this transmission project. Land may only be condemned for a public purpose:

Public use; public purpose.

- (a) "Public use" or "public purpose" means, exclusively:
 - (1) the possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies;
 - (2) the creation or functioning of a public service corporation;** or
 - (3) mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance.

(b) The public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose.

Minn. Stat. §117.025, Subd. 11 (emphasis added).

Correction of this error in the ALJ's Recommendation is crucial, and conveyance of this Exception, showing the erroneous statement, is necessary for understanding of the importance of this correction.

No CapX 2020 had requested oral argument before the Commission when filing its Exceptions.

Please let me know if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law