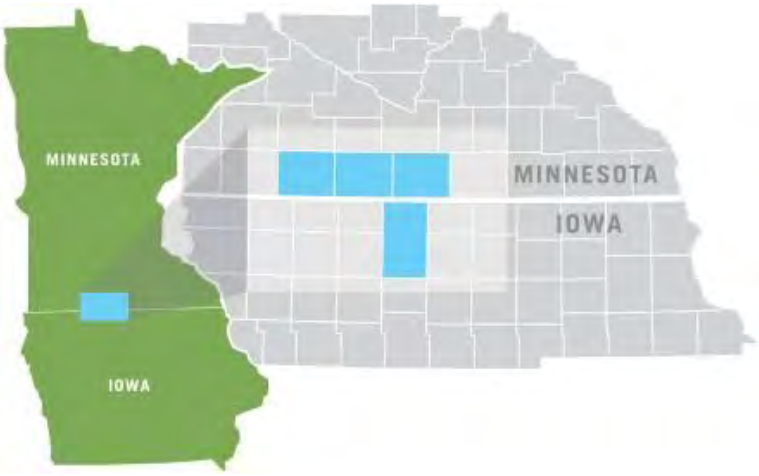
ITC Midwest's DEIS Comment Letter

ITC Midwest LLC

Agricultural Impact Mitigation Plan

Minnesota – Iowa 345 kV Transmission Project and Associated Facilities in Jackson, Martin, and Faribault Counties



Docket Nos. ET6675/CN-12-1053 & ET6675/TL-12-1337

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Introduction

ITC Midwest LLC ("ITC Midwest") developed this Agricultural Impact Mitigation Plan ("AIMP") with the Minnesota Department of Agriculture ("MDA") in compliance with Minnesota Statutes Section 216E.10, subdivision 3(b). The AIMP identifies measures ITC Midwest will take during construction of its Minnesota – Iowa 345 kV Transmission Project in Jackson, Martin, and Faribault counties, Minnesota ("Project") to avoid, mitigate, minimize, repair, or provide compensation for impacts on Agricultural Land. The AIMP and its provisions will be implemented during construction and restoration activities that ITC Midwest undertakes for the Project prior to filing notice of completion of construction with the Minnesota Public Utilities Commission.

Capitalized words and other defined terms have the meanings given to them in this AIMP and its appendix. Use of "Landowner" in this AIMP may be construed to read "Landowner and/or Tenant."

This AIMP and its construction standards and policies apply only to construction activities occurring on privately owned Agricultural Land. If agricultural tile is encountered, whether on Non-Agricultural Land or Agricultural Land, ITC Midwest will implement construction standards relating to the repair of tile on Agricultural Lands discussed further in this AIMP. Portions of this AIMP that identify standards and policies as they apply to Organic Agricultural Land apply only to the types of lands defined in the National Organic Program Rules (7 C.F.R. Parts 205.100; 205.101, and 205.202). Further, construction standards and policies identified in this AIMP can be modified through Easement or other agreement between ITC Midwest and the Landowner of Agricultural Land, as appropriate. In such case, the Easement or other agreement will control.

Generally

ITC Midwest will negotiate in good faith with each Landowner of Agricultural Land to secure an agreement containing the conditions or provisions necessary to implement the provisions of this AIMP. The mitigative actions set forth in this AIMP are subject to negotiation and approval or change by Landowner of Agricultural Land, so long as such changes are negotiated with and acceptable to ITC Midwest. Mitigative actions will be executed by qualified contractors retained by ITC Midwest, unless otherwise specified or agreed upon by Landowner. ITC Midwest and Landowner may agree that certain activities will be performed by Landowner. ITC Midwest maintains a damage claim policy outlining compensation policies for damage to property, including but not limited to crop damages, and will provide a copy of this policy to the Landowner during Easement acquisition negotiations.

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Unless otherwise specified in this AIMP or in an Easement or other agreement negotiated between ITC Midwest and Landowner, construction standards and policies or mitigative actions will be implemented within 90 days after completion of Final Clean-up activities on Agricultural Land. Weather conditions or other circumstances identified by mutual agreement between Landowner and ITC Midwest may delay implementation of mitigative actions after final cleanup. Where practicable, ITC Midwest may make temporary repairs. These temporary repairs may be made to minimize additional property damage or interference with the Landowner's access to the subject Agricultural Land.

ITC Midwest or its contractors will implement the construction standards and policies or mitigative actions identified within this AIMP so long as such activities do not conflict with any applicable Federal or State rules, regulations, permits, licenses, approvals, or conditions obtained by ITC Midwest for the Project. Should any activity within this AIMP be determined to be unenforceable due to Federal or State rules, regulations, permits, licenses, approvals, or conditions, ITC Midwest will inform the Landowner and will identify a reasonable alternative activity.

Prior to Right-of-Way preparation for, or construction of, the Project, ITC Midwest will make a good faith effort to provide each Landowner with contact information, including a phone number and address, that can be used to contact ITC Midwest regarding any impacts to Agricultural Land or other construction-related concern or question. ITC Midwest will provide updated information to the Landowner within a reasonable time of any change to ITC Midwest contacts.

Construction Standards

Mitigative Actions
ITC Midwest will reasonably restore and/or compensate Landowner, as appropriate, for damages caused by ITC Midwest as a result of transmission line construction, and as outlined in this plan. ITC Midwest will decide whether to restore land and/or compensate Landowner after a discussion with the Landowner.

Advance Notice of Access
ITC Midwest will make good faith efforts to provide notice to the Landowner in advance of the commencement of construction activities on Agricultural Land. Notice may include personal contact, email, letter, or telephone contact.

Agricultural Monitor
An Agricultural Monitor shall be retained and funded by ITC Midwest but will report directly to the MDA. The Agricultural Monitor's primary function will be to audit ITC Midwest's compliance with this AIMP. The Agricultural Monitor will not have the authority to direct construction activities and will not have authority to stop

construction. The Agricultural Monitor will notify ITC Midwest's Inspector if s/he believes a compliance issue has been identified. The Agricultural Monitor will have full access to Agricultural Land crossed by the Project and will have the option of attending meetings where construction on Agricultural Land is discussed. Specific duties of the Agricultural Monitor will include, but are not limited to the following:

1. Participate in preconstruction training activities sponsored by ITC Midwest.
2. Monitor construction and restoration activities on Agricultural Land for compliance with provisions of this AIMP.
3. Report instances of noncompliance with the AIMP to ITC Midwest's Inspector.
4. Prepare regular compliance reports and submit to MDA, as requested by the MDA.
5. Coordinate communication of Landowner concerns to the MDA, if necessary.
6. Maintain a written log of Landowner concerns reported by the ITC Midwest Inspector and/or land rights agent regarding compliance with this AIMP. The written log should record whether the Agricultural Monitor reported each logged concern to the MDA.
7. Be responsible for determining whether weather conditions have caused the soil to become so wet that the activity to alleviate compaction would reduce the future production capacity of the land and advising ITC Midwest's Inspector of these conditions. ITC Midwest will be solely responsible in making the decision on whether it will proceed with construction under these conditions. Compensation for Landowner, as appropriate, will be determined as described in the "Procedures for Determination of Damages and Compensation" section of this AIMP.
8. In disputes between ITC Midwest and a Landowner over restoration, advise the MDA on whether the agricultural restoration is reasonably adequate in consultation with the ITC Midwest Inspector and ITC land agent.

Qualifications and Selection of the Agricultural Monitor

The Agricultural Monitor will have a bachelor's degree in agronomy, soil science or equivalent work experience. The Agricultural Monitor will have demonstrated practical experience with pipeline or electric transmission line construction and restoration on Agricultural Land. The MDA and ITC Midwest will jointly select the Agricultural Monitor.

ITC Midwest Inspector
The ITC Midwest's Inspector will:

1. Be full-time member of ITC Midwest inspection team.
2. Be responsible for verifying ITC Midwest compliance with provisions of this AIMP during construction.
3. Work collaboratively with other members of ITC Midwest's construction team, land right agents, and the Agricultural Monitor in achieving compliance with this AIMP.
4. Observe construction activities on Agricultural Land on a regular basis.
5. Have the authority to stop construction activities that are determined to be out of compliance with provisions of this AIMP.
6. Document instances of noncompliance and work with construction personnel to identify and implement appropriate corrective actions as needed.
7. Provide construction personnel with training on provisions of this AIMP before construction begins.
8. Provide construction personnel with field training on specific topics as needed.

Pole Placement
During the design of the Project, ITC Midwest's engineering, land rights and permitting staff will seek input from Landowner, as practicable, to address pole placement issues. Prior to construction, the land rights agents will review the staked pole locations with the Landowner when requested to do so by the Landowner.

Pole Removal
If the Project is constructed along an existing 69 kV or 161 kV transmission line, and ITC Midwest determines the existing facilities can be reasonably co-located, ITC Midwest may remove existing transmission line structures. For transmission line structures that do not have a footing, ITC Midwest will extract the pole from the ground if possible. In the event a pole cannot be extracted by pulling, ITC Midwest will excavate an area to uncover approximately 60 percent of the buried pole and an attempt will be made to extricate an excavated pole entirely. If an excavated pole cannot be removed in its entirety, the pole will either be cut off at the excavated depth (in the range of approximately five feet) or pushed over if the pole cannot be cut. If an existing transmission structure to be removed for purposes of the Project has a concrete footing, ITC Midwest will work with the Landowner to determine at what depth the footing must be removed so farming operations can continue on the property.

If ITC Midwest removes an existing pole, all support anchors for the structure will be removed. In these instances, ITC Midwest will work with the Landowner to identify any tile lines located near anchors prior to removal of the anchors. Additionally, if any damage to tile occurs as a result of pole or anchor removal, ITC Midwest will adhere to the "Agricultural Tile" section of this AIMP.

Substation Construction

The Project will require construction and/or expansion at two substation locations. During construction and expansion of the Huntley and Lakefield substations, respectively, ITC Midwest will segregate Topsoil that must be removed for ground work. At ITC Midwest's sole discretion, excess Topsoil may be made available to a Landowner who wishes to use this Topsoil on his or her property. If the Topsoil is made available to a Landowner in other areas of the Project, it will be provided "as is" and the Landowner, not ITC Midwest, will be responsible for verifying that the quality of the Topsoil meets the Landowner's farming requirements. The Landowner is solely responsible for obtaining any required local, state, or federal permits or permissions that may be necessary for the placement of Topsoil on his or her property.

Agricultural Tile

ITC Midwest will contact an affected Landowner for their knowledge of tile locations prior to installation of the transmission line. ITC Midwest will attempt to identify tile if the Landowner does not know if tile is located at the proposed pole location. Tile that is damaged, cut, or removed as a result of ITC Midwest's location efforts will be promptly repaired. The repair will be reported to the Inspector.

If tile is damaged by Project construction, the tile will be repaired –with materials of the same quality as that which was damaged. If tiles on or adjacent to the transmission line construction area are adversely affected by construction, ITC Midwest will take such actions as are necessary to restore the tile function, including the relocation, reconfiguration, and replacement of the existing tile. ITC Midwest will correct tile repairs, as needed, after completion of the transmission line construction, provided the repairs were made by ITC Midwest or their agents or designees.

The affected Landowner may elect to negotiate a fair settlement with ITC Midwest for the Landowner to undertake the responsibility for repair, relocation, reconfiguration, or replacement of damaged tile. In the event the Landowner chooses to undertake the responsibility for repair, relocation, reconfiguration, or replacement of the damaged tile, ITC Midwest will have no further liability for the identified damaged tile.

The following standards and policies apply to the tile repairs completed by ITC Midwest:

1. Tiles will be repaired with materials of the same or better quality as that which was damaged.

2. If water is flowing through a damaged tile, temporary repairs will be promptly installed and maintained until such time that permanent repairs can be made.

3. Before completing permanent tile repairs in an area where a Landowner, the Agricultural Monitor, or ITC Midwest has identified a potential concern arising from Project construction, tiles will be examined within the work area to check for tile that might have been damaged by construction equipment. If tiles are found to be damaged, they will be repaired so they operate as well after construction as before construction began.

4. ITC Midwest will make efforts to complete permanent tile repairs within a reasonable timeframe after Final Clean-up, taking into account weather and soil conditions.

5. Following completion of the Final Clean-up and damage settlement, ITC Midwest will be responsible for correcting and repairing tile breaks, or other damages to tile systems that are discovered on the Right-of-Way to the extent that such breaks are the result of Project construction. These damages are usually discovered after the first significant rain event. ITC Midwest will provide the Landowner with contact information should tile damage issues be identified after Final Clean-up. ITC Midwest will not be responsible for tile repairs performed by the Landowner.

ITC Midwest will be responsible for installing additional tile or other drainage measures, including adding topsoil, as necessary to properly drain wet areas along the Right-of-Way caused by the construction of the Project.

Soil Compaction/Rutting

Compaction will be alleviated as practicable on cropland traversed by construction equipment. ITC Midwest will work with the Landowner to alleviate compaction during suitable weather conditions in a mutually agreeable manner.

ITC Midwest will repair damage incurred due to compaction, ruts, erosion, and/or washing of soil caused by electric line construction. If, by mutual agreement, the Landowner repairs such damage, ITC Midwest will reimburse the Landowner for the reasonable cost of labor and the use of equipment to repair damage incurred due to compaction, ruts, erosion, and/or washing of soil caused by electric line construction. ITC Midwest will make such payments within a reasonable period of time following completion of project construction and after receiving a statement substantiating the Landowner's repair costs.

ITC Midwest will pay for the reasonable cost of repairs to the Landowner's equipment if the equipment is damaged during repair of compaction, ruts, erosion, and/or washing of soil by materials or debris ITC Midwest left on the right of way during construction.

If there is a dispute between the Landowner and ITC Midwest as to what areas need to be ripped or chiseled, the depth at which compacted areas should be ripped or chiseled, or the necessity for, or rates of, lime, fertilizer, and organic material application, ITC Midwest will consult with the Agricultural Monitor prior to making a final decision.

Excess Soil and Rocks
Excess soil and rock will be removed from the site unless otherwise requested by the Landowner. After Final Clean-up and restoration of Agricultural Lands, ITC Midwest will make good faith efforts to obtain written acknowledgement of completion of such activities from the Landowner.

Construction Debris
ITC Midwest will remove construction-related debris and material which is not an integral part of the transmission line from the Landowner's property at ITC Midwest's cost. Such material may include excess construction materials or litter generated by the construction crews.

Procedures for Determination of Damages and Compensation
ITC Midwest will maintain a procedure for processing Landowner claims for construction-related damages, including but not limited to crop damages. The procedure is intended to standardize and minimize Landowner concerns regarding the recovery of damages, to provide a degree of certainty and predictability for Landowner and ITC Midwest, and to foster good relationships among ITC Midwest and Landowner over the long term. A copy of the procedure will be provided to Landowner during Easement acquisition negotiations.

Damage claim negotiations between ITC Midwest and any affected Landowner will be voluntary in nature. ITC Midwest will offer to compensate Landowners according to the terms of ITC Midwest’s damage claim policy in effect at the time the Easement is executed and recorded. The compensation offered is only an offer to settle, and the offer shall not be introduced in any proceeding brought by the Landowner to establish the amount of damages ITC Midwest must pay.

Weed Control
When requested, ITC Midwest will work with neighboring Landowner to determine adequate weed control measures on lands owned by ITC Midwest for substation facilities. The intent of such weed control measures is to prevent the spread of weeds

onto adjacent Agricultural Land. Any weed control spraying will be in accordance with State of Minnesota regulations.

Soil Conservation Practices
Soil conservation practices such as terraces and grassed waterways which are damaged by the transmission line's construction will be restored to their pre-construction condition as near as possible. ITC Midwest will attempt to work with the Landowner to identify and document the pre-construction conditions of these features.

Irrigation
If the transmission line and/or temporary work areas intersect an operational (or soon to be operational) spray irrigation system, ITC Midwest will work with the Landowner to establish an acceptable amount of time the irrigation system may be out of service.

If, as a result of the transmission line construction activities, an irrigation system interruption results in crop damages either on the Right-of-Way or off the Right-of-Way, compensation to Landowner, as appropriate, will be determined as described in "Procedures for Determination of Damages and Compensation" section of this AIMP.

If it is feasible and mutually acceptable to ITC Midwest and the Landowner, temporary measures will be implemented to allow an irrigation system to continue to operate across land on which the transmission line is also being constructed. ITC Midwest will not allow an irrigation system to continue operation across land on which the transmission line is also being constructed if the ITC Midwest Inspector, land agent, or field supervisor determine that such operation would be unsafe.

Temporary Roads
The location of temporary roads to be used for construction purposes will be discussed with the Landowner.

A. The temporary roads will be designed so as to not impede proper drainage and will be built to mitigate soil erosion on or near the temporary roads.

B. After Final Clean-up, temporary roads may be left intact through mutual agreement of the Landowner and ITC Midwest unless otherwise restricted by Federal, State, or local regulations.

C. If a temporary road is to be removed, the Agricultural Land upon which the temporary road is constructed will be returned to its previous use and restored to equivalent condition as existed prior to construction.

Organic Farms

ITC Midwest recognizes that Organic Agricultural Land is a unique feature of the landscape and will treat this land with a similar level of care as other sensitive environmental features. This section identifies mitigation measures that apply specifically to farms that are Organic Certified or farms that are in active transition to become Organic Certified, and is intended to address the unique management and certification requirements of these operations. This section supplements and is in addition to all other protections provided in this AIMP.

The provisions of this section will only apply to Organic Agricultural Land for which the Landowner has provided to ITC Midwest a true, correct and current version of the Organic System Plan within 60 days after the signing of the Easement or 60 days after the first contact by ITC Midwest after the Commission issues a Route Permit, whichever occurs first.

Organic System Plan
ITC Midwest recognizes the importance of the individualized Organic System Plan to the Organic Certification process. ITC Midwest will work with the Landowner, the Landowner's Certifying Agent, and/or a mutually acceptable third-party Organic consultant to identify site-specific construction practices that will minimize the potential for Decertification as a result of construction activities. Possible practices may include, but are not limited to: equipment cleaning, planting a deep-rooted cover crop in lieu of mechanical decompaction, applications of composted manure or rock phosphate, preventing the introduction of disease vectors from tobacco use, restoration and replacement of beneficial bird and insect habitat, maintenance of organic buffer zones, use of organic seeds for any cover crop, or similar measures. ITC Midwest recognizes that Organic System Plans are proprietary in nature and will respect the need for confidentiality.

Prohibited Substances
ITC Midwest will avoid the application of Prohibited Substances onto Organic Agricultural Land. No herbicides, pesticides, fertilizers or seed will be applied to Organic Agricultural Land unless requested and approved by the Landowner. Likewise, ITC Midwest will avoid refueling, fuel or lubricant storage, or routine equipment maintenance on Organic Agricultural Land. Equipment will be checked prior to entry to make sure that fuel, hydraulic and lubrication systems are in good working order before working on Organic Agricultural Land. If Prohibited Substances are used on land adjacent to Organic Agricultural Land, these substances will be used in such a way as to prevent them from entering Organic Agricultural Land.

Temporary Road Impacts
Topsoil and Subsoil layers that are removed during construction on Organic Agricultural Land for temporary road impacts will be stored separately and replaced in the proper sequence after the transmission line is installed. Unless otherwise specified in the site-specific plan described above, ITC Midwest will not use this soil for other purposes, including creating access ramps at road crossings. No Topsoil or Subsoil (other than incidental amounts) may be removed from Organic Agricultural Land. Likewise, Organic Agricultural Land will not be used for storage of soil from non-Organic Agricultural Land.

Erosion Control
On Organic Agricultural Land, ITC Midwest will, to the extent feasible, implement erosion control methods consistent with the Landowner's Organic System Plan. On land adjacent to Organic Agricultural Land, ITC Midwest' erosion control procedures will be designed so that sediment from adjacent non-Organic Agricultural Land will not flow along the Right-of-Way and be deposited on Organic Agricultural Land. Treated lumber, non-organic hay bales, non-approved metal fence posts, etc. will not be used for erosion control on Organic Agricultural Land.

Weed Control
On Organic Agricultural Land, if ITC Midwest determines weed control is necessary during construction activities, ITC Midwest will, to the extent feasible, implement weed control methods consistent with the Landowner's Organic System Plan. Prohibited Substances will not be used for weed control within 50 feet of posted Organic Agricultural Land.

Monitoring
In addition to the responsibilities of the Agricultural Monitor described in the AIMP, the following will apply:

A. The Agricultural Monitor will monitor construction and restoration activities on Organic Agricultural Land for compliance with the provisions of this section and will document any activities that may result in Decertification.

B. Instances of non-compliance will be documented according to Independent Organic Inspectors Association protocol consistent with the Landowner's Organic System Plan, and will be made available to the MDA, the Landowner, the Landowner's Certifying Agent, ITC Midwest Inspector and to ITC Midwest.

If the Agricultural Monitor is responsible for monitoring activities on Organic Agricultural Land, s/he will be trained, at ITC Midwest's expense, in organic inspection, by the Independent Organic Inspectors Association, unless the Agricultural Monitor received such training during the previous three years.

Compensation for Construction Damages

The settlement of damages will be based on crop yield and/or crop quality determination and the need for additional restoration measures. ITC Midwest will first work with the Landowner of Organic Agricultural Land to determine crop yield. In the event ITC Midwest and the Landowner of Organic Agricultural Land cannot determine crop yield, at ITC Midwest's expense, a mutually agreed upon professional agronomist will make crop yield determinations, and the MDA Fruit and Vegetable Inspection Unit will make crop quality determinations. If the crop yield and/or crop quality determinations indicate the need for soil testing, the testing will be conducted by a commercial laboratory that is properly certified to conduct the necessary tests and is mutually agreeable to ITC Midwest and the Landowner. Field work for soil testing will be conducted by a professional soil scientist or professional engineer licensed by the State of Minnesota. ITC Midwest will be responsible for the cost of sampling, testing and additional restoration activities, if needed. Additional restoration activities will be completed according to the terms of its damage claim policy in effect at the time the Easement is executed and recorded.

Compensation for Damages Due to Decertification

Should any portion of Organic Agricultural Land be Decertified as a result of construction activities, ITC Midwest will pay damages for crops and/or livestock within the area impacted by the lost Certification equal to the full difference between the market value of conventional crops and/or livestock and the market value of the organic crops and/or livestock lost for three years or the period of time necessary for the Landowner or Tenant to regain Certification, whichever comes first. The market value of the crop will be determined as set forth in the damage claim policy. At the request of ITC Midwest, the Landowner shall provide verification of its loss of organic Certification through the accredited certifying agent prior to any compensation for organic crop loss being paid.

Definitions

Agricultural Land	Land that is actively managed for cropland, hayland, or pasture, and land in government set-aside programs.
Agricultural Monitor	Monitor retained and funded by ITC Midwest, reporting directly to the Minnesota Department of Agriculture ("MDA") and responsible for auditing ITC Midwest's compliance with provisions of this AIMP.
Certifying Agent	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.2.
Cropland	Land actively managed for growing row crops, small grains, or hay.
Decertified or Decertification	Loss of Organic Certification.
Easement	The agreement(s) and/or interest in privately owned Agricultural Land held by ITC Midwest by virtue of which it has the right to construct, operate and maintain the transmission line together with such other rights and obligations as may be set forth in such agreement.
Final Clean-up	Transmission line activity that occurs after the power line has been constructed. Final Clean-up activities may include: removal of construction debris, de-compaction of soil as required, installation of permanent erosion control structures, final grading, and restoration of fences and required reseeding. Once Final Clean-up is finished, Landowner will be contacted to settle all damage issues and will be provided a form to sign acknowledging final construction settlement.
Inspector	Full-time on-site inspector retained by ITC Midwest to verify compliance with requirements of this AIMP during construction of the transmission line. The Inspector will have demonstrated experience with transmission line construction on Agricultural Land.
ITC Midwest	ITC Midwest LLC, a Michigan limited liability company. May also include agents and contractors of ITC Midwest, where appropriate.

Landowner	Person(s), or their representatives, holding legal title to Agricultural Land on the transmission line route from whom ITC Midwest is seeking, or has obtained, a temporary or permanent Easement. "Landowner" includes Tenant, if any.
Non-Agricultural Land	Any land that is not "Agricultural Land" as defined above.
Organic Agricultural Land	Farms or portions thereof described in 7 CFR Parts 205.100, 205.202, and 205.101.
Organic Buffer Zone	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.2.
Organic Certification or Organic Certified	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.100 and 7 CFR Part 205.101.
Organic System Plan	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.2.
Prohibited Substance	As defined by the National Organic Program Standards, Federal Regulations 7 CFR Part 205.600 through 7 CFR 205.605 using the criteria provided in 7 USC 6517 and 7 USC 6518.
Right-of-Way	The Agricultural Land included in permanent and temporary Easements which ITC Midwest acquires for the purpose of constructing, operating and maintaining the transmission line.
Subsoil	Soil that is not Topsoil, and located immediately below Topsoil.
Tenant	Any Person(s) lawfully renting or sharing land for agricultural production which makes up the "Right-of-Way" as defined in this AIMP.
Tile	Artificial subsurface drainage system.
Topsoil	The uppermost horizon (layer) of the soil, typically with the darkest color and highest content of organic matter.