BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

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

ISSUE DATE: November 25, 2014

DOCKET NO. ET-6675/CN-12-1053

ORDER GRANTING CERTIFICATE OF NEED WITH CONDITIONS

PROCEDURAL HISTORY

On March 22, 2013, ITC Midwest LLC (ITC Midwest or the Applicant) filed an application for a certificate of need for the Minnesota - Iowa 345 kV Transmission Line Project in Jackson, Martin, and Faribault Counties.[1] Because the Minnesota – Iowa 345 kV Transmission Line Project (Project) is a large energy facility,[2] it must acquire a certificate of need from the Commission before proceeding.[3]

On April 9, 2013, ITC filed a supplement to its certificate of need application.

On June 27, 2013, the Commission issued an Order Granting Exemption, Finding Application Complete, Granting Variances, and Finding Joint Proceedings in the Public Interest. On the same date, the Commission also issued a Notice and Order for Hearing on both the certificate of need and route permit proceedings and referred the matters to the Office of Administrative Hearings for joint proceedings.

The following parties participated in this certificate of need proceeding:

[1] ITC filed an application for a route permit for this Project on March 28, 2013. Docket No. ET-6675/TL-12-1337. By separate order issued this date, the Commission has issued a route permit for this Project.

[2] The project is a large energy facility as defined in Minn. Stat. § 216B.2421, subd. 2(3) because it is a high-voltage transmission line with a capacity of 100 kV or more with more than 10 miles of its length in Minnesota or that crosses a state line.

[3] Under Minn. Stat. § 216B.243, subd. 2, no large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission.

- Midcontinent Independent System Operators (MISO)[4]
- No CapX 2020 (No CapX) and Citizens Energy Task Force
- Clean Energy Intervenors
- Department of Commerce Division of Energy Resources (DOC DER or Department)
- ITC Midwest

On May 13 and 14, 2014, Administrative Law Judge (ALJ) James LaFave held public hearings in the cities of Fairmont, Jackson, and Blue Earth on the joint proceedings. The ALJ accepted written comments into the record until May 30, 2014.

On September 8, 2014, the ALJ filed his Findings of Fact, Conclusions of Law, and Recommendations (ALJ Report) regarding both the certificate of need proceeding and the route permit proceeding.

On September 23, 2014, the DOC DER and No CapX 2020, a limited intervenor in the proceedings, filed exceptions to the ALJ Report specifically related to the certificate of need proceedings.

On October 21, 2014, No CapX filed additional comments in support of its exception to the status of Applicant as a public service corporation.

On October 22, 2014, the Applicant filed comments in reply to No CapX.

On October 23, 2014, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary

Finding that Applicant has demonstrated the need for building the proposed 75-mile 345-kV transmission line in Jackson, Martin, and Faribault counties, the Commission grants ITC Midwest a certificate of need with the following conditions:

- Allow utilities subject to the Commission's ratemaking authority to recover through their transmission cost riders no more that $284 million or an amount in excess of that to the extent justified to the satisfaction of the Commission.
- Order ITC Midwest to work with the Department to develop a spreadsheet and make a compliance filing containing a spreadsheet ITC can use to calculate the cost of alternatives, including the Commission's CO_2 internal cost and externality values, in future certificate of need filings in a consistent manner.
- Order ITC Midwest to use the Commission's externality values and cost of future CO_2 regulation value in future certificate of need proceedings.

[4] MISO is a not-for-profit, member-based, regional transmission organization (RTO), providing reliability and market services over transmission lines in 15 states and one Canadian province.

II. The Proposed Project

The Applicant proposes to build approximately 75 miles of new 345 kV transmission line that would run east from the existing Lakefield Junction substation near the city of Lakefield in Jackson County, and cross Martin County to a new Huntley substation near the city of Winnebago in Faribault County. From the Huntley substation, the transmission line would proceed south crossing the Minnesota – Iowa border near Elmore. The Project also includes expansion of the existing Lakefield Junction substation, construction of a new Huntley substation, reconfiguring several existing 69 and 161 kV transmission lines, and decommissioning the Winnebago substation.

The Project was designed as a portion of a 17-project Multi Value Project (MVP) portfolio designed by the Midcontinent Independent System Operator (MISO). The Project is designated MVP 3. The Applicant states that the proposed Project is designed to enhance reliability, increase the outlet capacity for new generation, alleviate constraints of the transmission system in southern Minnesota and the region, and support renewable energy mandates.

III. Legal Standard for a Certificate of Need

A. The Original Statutory Factors

As initially enacted, the certificate-of-need statute identified eight factors for the Commission to consider in evaluating the need for a proposed large energy facility[5] and directed the Commission to "adopt assessment of need criteria to be used in the determination of need for large energy facilities pursuant to the section."[6]

The statute also prohibited the Commission from granting any certificate of need unless the application demonstrated that the need for electricity could not be met more cost effectively through energy conservation and load management.[7]

B. The Commission's Rules

In 1983, the Commission, in compliance with its statutory obligation to establish assessment-of-need criteria, adopted the certificate-of-need rules, Minn. R. Ch. 7849. One of those rules, Minn. R. 7849.0120, addressed the eight factors identified in the statute and directed the Commission to issue a certificate of need when the applicant demonstrates that:

> A. the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;
>
> B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record;

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[5] Minn. Stat. § 216B.243, subd. 3.

[6] *Id*., subd. 1.

[7] *Id*., subd. 3.

C. by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health; and

D. the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

C. Additional Statutory Factors

After the Commission adopted these rules, the Legislature amended Chapter 243 to add four more factors for the Commission to evaluate in assessing need:

> (9) with respect to high-voltage transmission lines, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of the transmission system or lower costs for electric customers in Minnesota;
>
> (10) whether the applicant or applicants are in compliance with applicable provisions of sections 216B.1691 and 216B.2425, subdivision 7, and have filed or will file by a date certain an application for certificate of need or for certification as a priority electric transmission project under section 216B.2425 for any transmission facilities or upgrades identified under section 216B.2425, subdivision 7;
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> (11) whether the applicant has made the demonstrations required under subdivision 3a; and
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> (12) if the applicant is proposing a nonrenewable generating plant, the applicant's assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs associated with that risk.

IV. The ALJ's Report

On September 8, 2014, the ALJ filed his Findings of Fact, Conclusions of Law, and Recommendations (ALJ's Report), recommending that the Commission issue a certificate of need. The ALJ Report is well reasoned, comprehensive, and thorough. The ALJ made some 578 findings of fact, 33 conclusions of law, and six recommendations. Some 117 findings of fact specifically address the certificate of need criteria set forth above (Findings 214-321). The ALJ Report also included a summary of public comments and government agency participation.

The ALJ Report documented that all procedural requirements for a certificate of need were addressed, and presented findings on each of the decision criteria under Minn. R. 7849.0120 as enumerated above. The ALJ also addressed how the Project would help the Applicant meet its Renewable Energy Standards (RES) requirements. The ALJ Report concluded that:

> The record in this proceeding demonstrates that the Project will address multiple needs. The Project and the other segments of MVP 3 will: (1) enhance local and regional reliability by supporting a more robust transmission system; (2) provide outlet capability to a) transmit power from existing wind farms, b) enable the

> interconnection of Commission approved projects necessary to meet Minnesota RES requirements, including Commission approved projects totaling 750 MW and c) meet longer term demand for interconnections in the Buffalo Ridge area to reliably transfer renewable energy required to meet state renewable energy standards throughout the MISO footprint; and (3) to improve the efficiency of energy supply in Minnesota and neighboring states by reducing losses, congestion, and production costs.[8]

Finally, the ALJ Report recommended the following with respect to the proposed certificate of need:

> That the Commission conclude that all relevant statutory and rule criteria necessary to obtain the Certificate of Need for the Minnesota – Iowa 345 kV Project have been satisfied and that there are no statutory or other requirements that preclude granting a Certificate of Need based on the record.[9]

V. Summary of Unresolved Issues

In this proceeding, the DOC DER and No CapX have raised concerns regarding the following issues:

- The amount of the transmission costs to be recovered by utilities under their transmission cost recovery riders;
- Future requirements for consideration of costs in subsequent certificate of need applications by the Company;
- ITC Midwest's status as a public service corporation; and
- Project benefits.

VI. Commission Action

A. Limiting Project Costs Recoverable under Transmission Cost Recovery Rider

1. Positions of the Parties

The DOC DER took no position regarding which alternative considered in the certificate of need proceeding best meets the criteria established by Minnesota Statutes and Minnesota Rules.

In its exceptions, the DOC DER focused on its position that there is no meaningful or reliable cost estimate of the proposed Project in the record for this matter, noting that the Applicant had used a bandwidth of plus or minus 30 percent around the total cost figure used in the proceedings. Importantly, the DOC DER further argued that the cost estimates for the Project put forward by the Applicant were essentially disavowed by its president during the course of this proceeding.[10]

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[8] ALJ Report, Conclusion of Law 6, page 114.

[9] ALJ Report, Recommendation 1, page 120.

[10] ITC Ex. 30 at 16-17 (Collins Rebuttal).

The DOC DER argued that the Applicant has failed to demonstrate the reasonableness of the proposed Project, unless the Commission finds that its cost estimate is limited to the extent of its initial cost estimate in this Proceeding.

The DOC DER also recommended limiting cost recovery in riders to the amount of cost shown to be reasonable in this certificate of need proceeding – the Applicant's original cost estimate – or to justify to the Commission's satisfaction why it would be appropriate to charge Minnesota ratepayers for any cost-overruns through a rider. The DOC DER recommended that the Commission limit the amount of recoverable costs for the Minnesota portion of this Project to the amount of ITC's original cost estimate for this Project (approximately $284,000,000), without the additional 30 percent bandwidth. Further, the DOC DER recommended that the Applicant be required to justify to the Commission's satisfaction why it would be appropriate to charge Minnesota ratepayers for any cost-overruns through a rider.

No CapX raised similar concerns about the reliability of the cost estimates for the Project provided by the Applicant and adopted by the ALJ. No CapX argued that there is no basis for any cost estimate in the record.

2. Commission Action

The Commission recognizes that the ALJ's Findings with respect to the cost of the proposed Project contain little certainty, noting that the final cost of the Project is 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; the availability of construction crews; and the cost of materials.[11]

Nonetheless, the Commission agrees with the DOC DER's recommendation to condition its approval of the certificate of need by imposing the cost recovery limitation set forth below. The Commission concurs with the Department that it should continue its practice of limiting utilities seeking to recover transmission costs through transmission cost recovery riders to the costs put forward by applicants in certificate of need proceedings -- here, $284,000,000. The Commission continues to believe the fiscal discipline these limits impose benefits ratepayers and that the limits help protect the integrity of the certificate of need process.

At the same time, the Commission recognizes that routing realities cannot always be foreseen with certainty, cost overruns can be prudently incurred, and that recovery over the $284,000,000 level could be justified under some circumstances. The Commission will therefore permit utilities to seek higher recovery levels in future proceedings, with proper documentation and explanation in their rider filings.

Accordingly, the Commission will order the following as a part of this Proceeding:

- Allow utilities subject to the Commission's ratemaking authority to recover through their TCRs no more than $284,000,000, or an amount in excess of that to the extent justified to the satisfaction of the Commission.

[11] ALJ Report, Finding of Fact 125.

B. Requirements for Consideration of Costs in Future Certificate of Need Proceedings

The DOC DER also made certain recommendations for future certificate of need applications by ITC Midwest. The Department noted that its usual practice in certificate of need proceedings is to use the Commission's externality values and estimated cost of complying with future carbon dioxide (CO_2) regulations to compare the overall impact of the proposed project alternatives on a uniform basis. The Department observed that Applicant had not used the Commission's values to compare costs.

In its exceptions, the Department recommended that the Commission require the Applicant to make a compliance filing containing a spreadsheet ITC Midwest can use to calculate the cost of alternatives in future certificate of need filings in a consistent manner, including the Commission's CO_2 internal costs and externality values. The Department also recommended that the Commission require Applicant to use the Commission's externality values and cost of future CO_2 regulation value in future certificate of need proceedings in Minnesota.

During the proceedings, ITC Midwest committed to work with DOC DER and discuss development of a form that will provide the information that will best facilitate review of future projects by DOC DER and the Commission.[12]

The Commission concurs that these recommendations are reasonable, and will assist ITC Midwest and participants in future certificate of need proceedings to impose consistency in the consideration of the costs of proposed alternatives. Accordingly, the Commission will require the following:

- ITC Midwest will work with the Department to develop a spreadsheet and make a compliance filing containing a spreadsheet ITC can use to calculate the cost of alternatives, including the Commission's CO_2 internal cost and externality values, in future certificate of need filings in a consistent manner.
- ITC Midwest will use the Commission's externality values and cost of future CO_2 regulation value in future certificate of need proceedings.

Finally, based on these modifications to the certificate of need, the Commission will strike Conclusion 11 of the ALJ Report that indicates no conditions to the certificate of need are necessary.

C. ITC Midwest's Status as a Public Service Corporation

In its exceptions, No CapX argued that ITC Midwest is not a public service corporation as indicated in the ALJ's Finding of Fact 1, and therefore does not have the authority to exercise the power of eminent domain, if issued a permit.

Prior to the Commission meeting on the matter, the Applicant filed a response to the argument regarding its status as a public service corporation, arguing that it is an entity organized to acquire, construct, maintain, and operate transmission lines which are used for supplying the public with

[12] ALJ Report, Finding of Fact 318.

light, heat, or power. As such, ITC Midwest argued that it is a public service corporation pursuant to Minnesota Statutes §§ 301B.01 and 117.025, subd. 10.

The Commission concurs with the ALJ that ITC Midwest appears to be a public service corporation under state law. Further, as the Commission has no jurisdiction over eminent domain proceedings, it will not address the issues related to the Applicant's future use of eminent domain, as such issues will be determined, if they arise, in other legal forums.

D. Identification of Project Benefits

No CapX requested that the certificate of need be denied, claiming that the Applicant has not met its burden of proof and production and asking that the matter be remanded to the ALJ to build a more thorough record. No CapX asserted that the record does not contain a specific identification of the Project benefits to Minnesota and questioned the level of dependence of this Project on related Multi Value Projects MVP 4 and MVP 5 to provide benefits.

In arguing that the ALJ Report does not adequately discuss Project benefits, No CapX referred to two criteria in the certificate of need statute that address project benefits to Minnesota and the region.[13] No CapX claims that the ALJ did not properly focus his analysis on the benefits of the Project to Minnesota.

The Commission has thoroughly reviewed the ALJ Report and its discussion of the benefits to be derived from the proposed Project. The ALJ Report does not, as argued by No CapX, misconstrue the claimed economic benefits of the Project with the statutory criteria regarding benefits of the Project. Instead, the ALJ Report discusses each of the statutory criteria pertaining to need, and the necessary consideration of the benefits to be derived from the Project, including reliability, societal and public policy benefits, and economic benefits. The Report discusses, inter alia, the following benefits to be derived from the Project:

- The Project is an integral part of the MISO Regional Plan to develop a regional transmission system and meet generation interconnection needs; [14]
- The Project is designed to meet constraints on the transmission system and address reliability needs;[15] and
- The Project will bring societal and economic benefits to communities in southwest Minnesota, including community benefits and job growth, as a result of wind development projects that will need the increased transmission capability.[16]

Finally, the ALJ Report specifically discusses the societal benefits of the Project in his discussion of Minn. R. 7849.0120(C)(1), (C)(2), (C)(3) and (C)(4).[17]

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[13] Minn. Stat. 216B.243, Subd. 3, (5) and (9),

[14] ALJ Report, FOF 135, 136.

[15] ALJ Report, FOF 145-162.

[16] ALJ Report, FOF 189-198.

[17] See ALJ Report, FOF 274-289.

In short, the Commission concludes that the state, local, and regional benefits of the Project are substantial and have been adequately developed in the record.

E. Miscellaneous

Finally, No CapX argued that the ALJ's findings improperly relied on comments not made under oath at the public hearings. The Commission notes that under Minn. R. 7850.3800, subp. 2, persons may testify at the public hearing without being sworn and that typically they are not sworn. Further, the public hearing statements cited as evidence by the ALJ did not relate to contested issues of material fact, but to conclusions, policy issues, public opinion, and similar concerns.

VII. Environmental Impact Statement

Minn. R. 7849.1200 requires the Department of Commerce to prepare an environmental report on a proposed high voltage transmission line at the certificate of need stage. When, as in this matter, there are two applications before the Commission for a single transmission project (a certificate of need and a route permit application), the Department of Commerce Energy Environmental Review and Analysis unit (EERA) may elect to combine the environmental review required for each application.

On June 27, 2013, the Commission ordered joint environmental review of the certificate of need and route permit applications in these matters.[18] The EERA established an advisory task force to assist in determining the scope of the Environmental Impact Statement (EIS) and potential site and route alternatives.

On October 14, 2013, the deputy commissioner of the Department of Commerce issued the EIS Scoping Decision, in accordance with Minn. R. 7850.3700, subp. 2. The EERA filed a Draft EIS on the proposed project on March 21, 2014; the EERA filed the Final EIS on July 11, 2014.

The Commission finds that the EIS and the record created in this matter are adequate for purposes of this proceeding. The adequacy of the Final EIS is addressed in the Commission Order Issuing Route Permit, issued simultaneously with this Order, in Docket No. ET-6675/TL-12-1337.

VIII. Commission Action

Based on the record, the Commission makes findings on these four points:

First, based on a consideration of the factors set forth in Minn. R. 7849.0120(A), the Commission concludes that denying the application would likely harm the future adequacy, reliability, or efficiency of the energy supply to ITC Midwest's customers.

Second, based on a consideration of the factors set forth in Minn. R. 7849.0120(B), the Commission concludes that a more reasonable and prudent alternative to the Project has not been demonstrated by a preponderance of the evidence in the record.

[18] Order Granting Exemption, Finding Application Complete, Granting Variances, and Finding Joint Proceedings in the Public Interest, Docket No. ET-6675/CN-1053 (June 27, 2013).

Third, based on a consideration of the factors set forth in Minn. R. 7849.0120(C), the Commission concludes that the preponderance of the evidence in the record demonstrates that the Project will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health.

Fourth, based on a consideration of the factors set forth in Minn. R. 7849.0120(D), the Commission concludes that the record does not demonstrate that the design, construction, or operation of the Project, or a suitable modification of the Project, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

ORDER

1. The Commission grants ITC Midwest LLC a certificate of need for its 345 kV Transmission Line Project, with the following conditions:

   - Utilities subject to the Commission's ratemaking authority shall recover through their transmission cost riders no more that $284 million or an amount in excess of that to the extent justified to the satisfaction of the Commission.
   - ITC Midwest to shall work with the Department to develop a spreadsheet and make a compliance filing containing a spreadsheet ITC can use to calculate the cost of alternatives, including the Commission's CO_2 internal cost and externality values, in future certificate of need filings in a consistent manner.
   - ITC Midwest shall use the Commission's externality values and cost of future CO_2 regulation value in future certificate of need proceedings.

2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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