

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

In the Matter of the Joint Petition for
Approval of Transfer of Transmission
Assets of Interstate Power and Light
Company and ITC Midwest LLC

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

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An evidentiary hearing was held before Beverly Jones Heydinger, Administrative Law Judge, on September 24, 25 and 26, 2007, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Appearances:

Kent M. Ragsdale and Jennifer S. Moore, Alliant Energy Corporate Services, Inc., P.O. Box 351, 200 First Street SE, Cedar Rapids, IA 52406-0351, and Michael J. Bradley and Richard J. Johnson, Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4129, appeared on behalf of the Applicant Interstate Power and Light Company (IPL).

Lesley J. Lehr, Kathryn Bergstrom and Gregory R. Merz, Gray, Plant, Mooty, Mooty & Bennett, P.A., 500 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-3796, and Stephen J. Videto, Senior Attorney, ITC Holdings Corp, 39500 Orchard Hill Place, Suite 200, Novi, MN 48375, appeared on behalf of the Applicant ITC Midwest LLC (ITC Midwest).

Julia Anderson, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared on behalf of the Department of Commerce (Department).

Ronald M. Giteck, Assistant Attorney General, Steve Alpert, Assistant Attorney General, and Clark Kaml, Financial Analyst, 445 Minnesota Street, Suite

900, St. Paul, MN 55101, appeared on behalf of the Attorney General's Office, Residential Utilities Division (OAG/RUD).

Benjamin L. Porath, Director, System Operations, 3200 East Avenue S, P.O. Box 817, La Crosse, WI 54602-0817, and Jeffrey L. Landsman and Denis R. Vogel, Wheeler, Van Sickle & Anderson, S.C., 25 West Main Street, Suite 801, Madison, WI 53703, appeared on behalf of Dairyland Power Cooperative (Dairyland).

Chris Duffrin, 823 7th Street East, St. Paul, MN 55106, appeared on behalf of Energy CENTS Coalition (Energy Cents).

Dan L. Sanford, American Transmission Company LLC, N19 W23993 Ridgeview Parkway West, P.O. Box 47, Waukesha, WI 53187-0047 and Jim Bertrand and Brian M. Meloy, Leonard Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, appeared on behalf of American Transmission Company LLC (ATC).

B. Andrew Brown and Sarah J. Kerbeshian, Dorsey & Whitney, LLP, 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402, appeared on behalf of Southern Minnesota Municipal Power Agency (SMMPA).

Priti R. Patel, Assistant General Counsel, Xcel Energy, 414 Nicollet Avenue, 5th Floor, Minneapolis, MN 55401, appeared on behalf of Northern States Power d/b/a Xcel Energy (Xcel Energy).

William J. Black, Minnesota Municipal Utilities Association, 3025 Harbor Lane North, Suite 400, Plymouth, MN 55447-5142 and Cynthia S. Bogorad, David E. Pomper and Rebecca J. Baldwin, Spiegel and McDiarmid, 1333 New Hampshire Avenue Northwest, Washington, D.C. 20036, appeared on behalf of Municipal Coalition¹.

Donna Stephenson, Attorney at Law, 17845 East Highway 10, P.O. Box 800, Elk River, MN 55330, appeared on behalf of Great River Energy.

Commission staff members Louis Sickmann and Chris Fittipaldi, Financial Analysts were present for the evidentiary hearing.

STATEMENT OF THE ISSUE

Is the sale of IPL's transmission service assets to ITC Midwest consistent with the public interest, based on the criteria set forth in Minn. Stat. § 216B.16, subd. 7c, and Minn. Stat. § 216B.50?

¹ The Municipal Coalition includes Midwest Municipal Transmission Group, Missouri River Energy System and Wisconsin Public Power.

The Administrative Law Judge recommends that the Commission disapprove the Transaction because it is not consistent with the public interest.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. On January 18, 2007, IPL and ITC Midwest executed an Asset Sale Agreement (ASA)² that among other things would transfer IPL's ownership interest in its transmission assets to ITC Midwest. Pursuant to the ASA, IPL will sell, and ITC Midwest will purchase, essentially all of IPL's electric transmission-related assets in Minnesota, Iowa, Missouri and Illinois.³ The specific assets are identified in Section 2.1 of the ASA and related schedules, referred to hereafter as "Transmission Assets."⁴ The proposed sale shall be referred to as the "Transaction."

2. On April 27, 2007, IPL and ITC Midwest (collectively, Joint Petitioners) filed a joint petition seeking the approval of the Public Utilities Commission (Commission) for IPL to sell all of its Minnesota transmission facilities to ITC Midwest.

3. On June 19, 2007, the Commission issued a Notice and Order for Hearing referring the matter to the Office of Administrative Hearings to conduct a contested case proceeding. At that time, the parties to the proceeding were IPL, ITC Midwest, the Department and the OAG/RUD. The Joint Petitioners notified the Commission that closing the proposed sale of the transmission assets on or before December 31, 2007, would result in tax benefits that might not be available thereafter. The Notice and Order for Hearing requested that the Administrative Law Judge conduct the proceeding in light of the time constraints.

4. A prehearing conference was held before the Administrative Law Judge on July 2, 2007. On July 5, 2007, the First Prehearing Order was issued granting the Petitions to Intervene filed by Dairyland, SMMPA, ATC and Xcel Energy. The petition filed by Minnesota Power was withdrawn. An expedited schedule for prefilng the testimony and the hearing was agreed upon, subject to revision as necessary to assure a complete record.

5. The hearing was set to commence on August 27, 2007. Also on July 5, 2007, a Protective Agreement and Order was issued.

² Exhibit (Ex.) 2.

³ Exs. 2, 3, 4a and 4b.

⁴ Pursuant to Ex. 2, §7.8, the ASA schedules describing the specific assets may be amended by the Joint Petitioners in accordance with the terms of the ASA up to thirty days prior to closing.

6. On July 16, 2007, the petitions to intervene filed by the Municipal Coalition, Great River Energy and Energy Cents were granted. Otter Tail Power Company filed a Petition to Intervene on July 18, 2007, but withdrew its petition on July 24, 2007. The International Brotherhood of Electrical Workers, Local Union 949 (IBEW), filed a petition to intervene on August 3, 2007, which was granted on August 10, 2007, but IBEW withdrew as intervenor on August 22, 2007.

7. On August 3, 2007, the OAG/RUD filed a Motion to Order Additional Testimony and to Suspend the Proceedings because the Joint Petitioners had filed an "Alternative Transaction Adjustment" (ATA) to the record in the parallel proceedings before the Iowa Utilities Board (IUB), and the OAG/RUD was concerned that the parties to this proceeding did not have opportunity to consider the effect of the ATA on these proceedings. The ATA was offered as an alternative to the Transaction Adjustment (TA) included in the ASA. By Order dated August 15, 2007, the Motion by OAG-RUD to Order Additional Testimony and to Suspend the Proceedings was denied since at that time the ATA had not been included in the Joint Petitioners' prefiled testimony in this proceeding.⁵

8. On August 22, 2007, the Department filed a Motion to Strike the Joint Petitioners' Rebuttal Testimony, or in the alternative, to continue the hearing set to commence on August 27, 2007. This motion was a response to the Joint Petitioners' Rebuttal Testimony which included the ATA and extensive supporting work papers.⁶ On the same day, the OAG/RUD filed a Motion to Continue the Hearing or to Certify the Question to the Public Utilities Commission, requesting that the hearing be postponed. The OAG/RUD Motion was supported by Energy Cents. Joint Petitioners opposed the motions. On August 24, 2007, the Municipal Coalition filed a request to supplement the record regarding the ATA.

9. A hearing on the Department's and OAG/RUD's motions and the Municipal Coalition's request was held on August 27, 2007, the date set for the commencement of the evidentiary hearing. At that time, all parties agreed to postpone the start of the hearing in order to allow the parties additional time to review the Joint Petitioners' Rebuttal Testimony. Based on the agreement of the parties, the hearing was reset to commence on September 24, 2007, to continue as necessary, and the post-hearing briefing schedule was adjusted accordingly.

⁵ Order Denying Motion to Require Additional Testimony and to Suspend the Proceedings, August 15, 2007.

⁶ Introduced at hearing as Ex. 8 (Larsen Rebuttal).

10. On September 20, 2007, the Iowa Utilities Board (IUB) issued its Order approving the Transaction.⁷

11. The hearing was held on September 24, 25 and 26, 2007, as rescheduled.

12. The Joint Petitioners filed their Initial Brief on October 10, 2007. The Department, OAG/RUD, Energy Cents, Dairyland and the Municipal Coalition filed their initial briefs on October 24, 2007. Simultaneous reply briefs were filed on October 31, 2007. Additional submissions were received from the Department and the Joint Petitioners on November 9, 2007, and the hearing record closed on that date.

The Joint Petitioners

13. IPL is an Iowa corporation, headquartered in Cedar Rapids, Iowa. It is a direct, wholly-owned subsidiary of Alliant Energy Corporation (Alliant). Alliant is a public utility holding company with two direct public utility subsidiaries: IPL and Wisconsin Power and Light Company. IPL is primarily engaged in the generation, transmission, distribution and sale of electric energy; the purchase, distribution, transportation and sale of natural gas; and the provision of steam services in Minnesota and Iowa. IPL provides electric service to approximately 41,700 customers and provides natural gas service to 10,500 customers in southern Minnesota. IPL serves a total of approximately 700,000 electric and gas customers in Iowa and Minnesota.⁸

14. At the time of its application, IPL owned 6,791 total miles of transmission lines, approximately 170 substations and 160 interconnections in Minnesota, Iowa, Illinois and Missouri. Approximately 6.87% of the assets are allocated to the Minnesota jurisdiction, based upon System Coincident Peak for the Transmission Assets which reflects the relative system demand.⁹

15. Based on the information contained in Exhibit C, Schedule 1.1-J of the Application,¹⁰ the OAG/RUD calculated that Minnesota's proportionate share of the transmission lines included in the Transaction is about 20%.¹¹

16. ITC Holdings Corporation (ITC Holdings), headquartered in Novi, Michigan, is a holding company whose material assets include ITC Midwest. As of March 1, 2007, approximately 93 percent of ITC Holdings common stock is publicly traded. ITC Holdings and its operating subsidiaries, International Transmission Company (ITC Transmission) and Michigan Electric Transmission

⁷ Ex. 8a (*Interstate Power and Light Co. and ITC Midwest LLC*, IUB Docket No. SPU-07-11, Order Terminating Docket and Recommending Delineation of Transmission and Local Distribution Facilities (Sept. 20, 2007)) (IUB Order).

⁸ Ex. 1 at 12-13.

⁹ Ex. 12 at 7 at Schedule F (Hampsher Direct).

¹⁰ Ex. 4a (Public Version); Ex. 4b (Trade Secret Version).

¹¹ Initial Brief of the Office of the Attorney General at 26-28.

Company (METC), own, operate, maintain and invest in electricity transmission infrastructure. Its stated intent is to improve electric reliability, reduce congestion, and lower the overall cost of delivered electric energy for customers. ITC Holding is the only publicly traded company engaged exclusively in the transmission of electricity in the United States. It is also the largest independent electric transmission company and the eighth largest electric transmission company in the country, based on electric sales.¹²

17. ITC Midwest is a wholly-owned subsidiary of ITC Holdings, incorporated in Michigan as a limited liability company on January 16, 2007, in order to own and operate the transmission assets of IPL governed by the ASA. ITC Midwest will operate as an independent transmission company managing an electric transmission system in Iowa, Illinois, Minnesota and Missouri that will be regulated by the Federal Energy Regulatory Commission (FERC).¹³

18. ITC Holding and its subsidiaries have no ownership or financial interest in electric generation or distribution assets and focus exclusively on the transmission of electricity and investment in transmission infrastructure.¹⁴

19. At the present time, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO or MISO), has functional supervision and control of the Transmission Assets. Under the terms of the ASA, ITC Midwest agrees that it will not remove the assets from MISO for five years from the closing date.¹⁵

Other Parties

20. The Department represents the interests of Minnesota ratepayers in this proceeding. The Department opposes approval of the Transaction because it is not in the public interest. It contends that approval would: increase rates with no corresponding improvement in electric service; cause the Commission to lose jurisdiction and the associated ratepayer protections; have harmful effects on Minnesota renewable energy development; and set harmful regulatory precedent.¹⁶

21. The OAG/RUD represents the interests of residential and small business ratepayers. It opposes the Transaction because it is not in the public interest. It contends that the Joint Petitioners have misrepresented the portion of its assets that are within the Minnesota service area, that approval of the Transaction will divest the Commission of its jurisdiction without any offsetting benefit, that the Transaction will increase the cost to Minnesota ratepayers, and that ratepayers should receive the gain from the sale. It also challenges the validity and wisdom of the Order approving the transaction, issued on

¹² Ex. 1 at 13.

¹³ Ex. 1 at 2; Ex. 24 at 2 (Welch Direct).

¹⁴ Ex. 1 at 14.

¹⁵ Ex. 2, §7.13(b); Ex. 1 at 14, 16.

¹⁶ Department Reply Brief at 14-15, 58.

September 20, 2007 by the Iowa Utilities Board. Its view is that the Joint Petitioners have used a federal tax law incentive and the FERC incentives that promote independent transmission companies to move assets from one company to another at a higher cost to the ratepayers without any corresponding benefit.

22. Dairyland is a not-for-profit generation and transmission cooperative headquartered in La Crosse, Wisconsin. It is owned by and provides the wholesale power requirements for 25 separate distribution cooperatives in northern Iowa, southern Minnesota, western Wisconsin and northern Illinois. In Minnesota, this includes Freeborn-Mower, People's and Tri-County Electric Cooperatives. Dairyland also provides wholesale power requirements for 14 municipal utilities, including St. Charles and Lanesboro, Minnesota.¹⁷

23. Dairyland is directly interconnected with transmission facilities owned by IPL that are proposed to be sold to ITC Midwest. While Dairyland and IPL each operate its own North American Electric Reliability Corporation (NERC) certified control area (CA), Dairyland's and IPL's transmission systems overlap or are highly integrated in many areas. In addition to having loads in the other party's CA, both Dairyland and IPL also own transmission facilities that are physically embedded in each other's CA. Also, even where a party's load is located in its own CA, the transmission system of the other party may be supporting or serving the first party's load.¹⁸

24. Dairyland and IPL have entered into several agreements to enable each utility to serve customers on a least cost basis, to jointly plan and construct transmission facilities, and use each other's transmission systems to deliver generation to their respective loads located in each other's CA. Copies of two agreements have been entered into the record,¹⁹ and are grandfathered agreements under the MISO Transmission and Energy Markets Tariff (TEMT). Dairyland is concerned that the Transaction may adversely affect Dairyland's rights under the agreements. To address that concern, Dairyland and the Joint Petitioners have commenced negotiations regarding how the Transaction may affect the Dairyland-IPL agreements. The Joint Petitioners have committed to respect and preserve the agreements and to negotiate an outcome satisfactory to the Joint Petitioners and Dairyland.²⁰

25. Dairyland's sole interest in this proceeding is to assure that Joint Petitioners' commitment to honor the Dairyland-IPL agreements is an express

¹⁷ Ex. 26 at 2-3 (Porath Direct).

¹⁸ Ex. 26 at 4-5 (Porath Direct).

¹⁹ Ex. 26 at 4, BLP-1 and BLP-2.

²⁰ Ex. 26 at 9 (Porath Direct); T. 1 at 94, 96 (Collins).

condition of the Commission's approval of the Transaction.²¹ Dairyland takes no position on any other issue raised in this proceeding.²²

26. SMMPA is a joint action agency composed of eighteen member municipalities in Minnesota that own and operate municipal electric systems. SMMPA functions as the principal power supplier for its member utilities. Although SMMPA owns a significant amount of transmission within IPL's network, it is dependent for transmission on the IPL network, and has several agreements with IPL. SMMPA does not oppose the Transaction based upon the Joint Petitioners representation in this proceeding that the Joint Petitioners will not seek rate recovery of the acquisition premium paid as part of the purchase price, and commitments made by the Joint Petitioners in the Distribution-Transmission Interconnection Agreement that is part of the Transaction Agreement.²³

27. ATC is a stand-alone electric transmission company that owns and operates transmission facilities in four states, including Minnesota. ATC monitors and controls the operation of transmission facilities located in Minnesota that are owned by IPL and the subject of this proceeding. If the Transaction is approved, the transmission facilities that ATC monitors and controls will be conveyed to ITC Midwest.²⁴

28. ATC is negotiating an Operating Agreement with ITC Midwest to provide service for approximately 18 months following the closing of the Transaction, if it is approved, and cooperate to transfer control to ITC Midwest. ATC has taken no position in this proceeding.²⁵

29. Xcel Energy owns and operates electric transmission lines in Minnesota and interconnects to the IPL transmission system in multiple locations. It purchases transmission services under the MISO tariff to serve retail load in the IPL pricing zone. Xcel Energy has an interest in the rate, cost-of-service, and reliability of the Transaction.²⁶ It has taken no position in this proceeding.

30. The Municipal Coalition intervened in order to address the Transaction's impact on its members' future rates, and the effect on the development of transmission infrastructure to ensure reliability, encourage development of renewable resources and to accommodate energy transfers within and between states. One of its members, the Minnesota Municipal Utilities Association, has fourteen Minnesota municipal members located in the area

²¹ The Iowa Utilities Board Order stated: "The Board expects Joint Petitioners to follow through on all commitments made and considers those commitments to now be part of the joint application for reorganization before the Board." Ex. 8A at 74; T. 1 at 95-96 (Collins).

²² Initial Post-Hearing Brief of Dairyland Power Cooperative at 4.

²³ Petition to Intervene of the Southern Minnesota Municipal Power Agency at 2.

²⁴ Petition to Intervene of American Transmission Company LLC and its Corporate Manager, ATC Management, Inc., at 1-2.

²⁵ Ex. 27 at 1-5 (Chinn Direct).

²⁶ Petition to Intervene of Northern States Power at 1.

served by IPL transmission and would be affected by the quality, nature, quantity and price of service over those facilities.²⁷

31. The Municipal Coalition opposes the Transaction because of its concerns about the increased cost of transmission service, the speculative future energy benefits, and reduced local influence over the transmission system. Although its members are not investor-owned “public utilities,” they provide services to retail customers who may be adversely affected by the Transaction.²⁸

32. Energy Cents is a non-profit organization “dedicated to promoting affordable utility service of low and fixed income people.” It intervened in this proceeding to address the impact of the Joint Petitioners’ proposed sale on retail prices for this demographic group.²⁹

33. Energy Cents’ position is that the Joint Petitioners have not met the burden of proof: the transaction is not in the public interest because its cost-benefit analysis is based on unreasonable assumptions, and the projected benefits are speculative and no greater than the benefits that IPL could obtain through its own investment. Furthermore, it objects to the Commission’s loss of jurisdiction over the transmission rates.

34. Great River Energy is a generation and transmission cooperative corporation that supplies electricity for 28 member cooperatives, located primarily in Minnesota. It owns and operates electric transmission lines that are integrated with IPL’s, is a party to agreements with IPL and purchases network integration transmission service under the MISO tariff to serve a Great River Energy member located in “Alliant Energy West” rate zone operated by IPL.³⁰ Great River Energy took no position in this proceeding.

Legal Standards

35. Review of the transfer is governed by Minn. Stat. § 216B.50, which requires that the Commission approve the sale of the assets if the proposed transaction is “consistent with the public interest.”³¹

36. In 2005, the Legislature required the Commission’s approval of a public utility’s transfer of operational control or ownership of transmission assets and included specific criteria to apply to its evaluation of the public interest.

Transmission assets transfer. (a) Public utility owners of transmission facilities may, subject to Public Utilities Commission approval, transfer operational control or ownership of those

²⁷ Petition to Intervene of the Municipal Coalition at 1-3.

²⁸ Initial Post-Hearing Brief of Municipal Coalition at 1-2, 3-7.

²⁹ Energy Cents’ Motion to Intervene at 1.

³⁰ Petition to Intervene of Great River Energy at 1.

³¹ Minn. Stat. § 216.50.

transmission assets to a transmission company subject to Federal Energy Regulatory Commission jurisdiction.... The Public Utilities Commission may limit, in whole or in part, the transfer of transmission assets or the timing of those transfers by a public utility if it finds the limitation in the public interest. The commission may only approve a transfer if it finds that the transfer is consistent with the public interest. In assessing the public interest, the commission shall evaluate, among other things, whether the transfer:

- (1) facilitates the development of transmission infrastructure necessary to ensure reliability, encourages the development of renewable resources, and accommodates energy transfers within and between states;
- (2) protects Minnesota ratepayers against the subsidization of wholesale transactions through retail rates;
- (3) ensures, in the case of operational control of transmission assets, that the state retains jurisdiction over the transferring utility for all aspects of service under this chapter;
- (4) impacts Minnesota retail rates; and
- (5) protects Minnesota ratepayers from paying capital costs for transmission assets that have already been recovered.

(b) A transfer of operational control or ownership of transmission assets by a public utility under this subdivision is subject to section 216B.50.... If a public utility transfers ownership of its transmission assets to a transmission provider subject to the jurisdiction of the Federal Energy Regulatory Commission, the Public Utilities Commission may permit the utility to file a rate schedule providing for the automatic adjustment of charges to recover the cost of transmission services purchased under tariff rates approved by the Federal Energy Regulatory Commission.³²

37. No one factor is determinative; the overall benefits of the sale should exceed the overall detriments. The public utility seeking approval of the transaction bears the burden of proof.³³

Terms of the Transmission Transaction

38. In reaching a decision to sell its Transmission Assets, IPL considered the opportunity offered by the Federal Energy Policy Act tax incentives. By selling, IPL could monetize the value of its Transmission Assets, use the sale premium for major capital expenditures for generation, and promote regional transmission expansion through sale to a company with a single focus on transmission. It anticipated that transmission expansion within the region

³² Minn. Stat. § 216B.16, subd. 7c (a) and (b).

³³ See Minn. Stat. § 216B.16, subd. 4; Minn. R. 1400.7300, subd. 5; *In re Northwestern Bell Tele. Co.*, 365 N.W.2d 341, 342 (Minn. App. 1985).

would lower IPL's energy costs by facilitating efficient and economic dispatch of generation through MISO and decreasing transmission constraints on the system and would improve reliability on the transmission system.³⁴

39. Section 909 of the American Jobs Creation Act of 2004 created tax incentives for taxpayers that realize qualified gains from sale of transmission assets to an independent transmission company. Those tax incentives, which motivated IPL's decision to sell, apply to qualified sales that close prior to January 1, 2008, and also require that, within four years from closing, the taxpayer reinvest the amount realized from the sale in property used for the generation, transmission, distribution or sale of electricity.³⁵

40. IPL has entered into the ASA to sell to ITC Midwest all of IPL's electric Transmission Assets that are used exclusively to provide electric transmission service in Minnesota, Iowa and Illinois.³⁶ ITC Midwest will pay \$750 million in cash, subject to adjustments defined in Sections 3.2 and 3.3 of the ASA.³⁷ Under the ASA, IPL will assign its rights and duties to certain contracts to ITC Midwest, and ITC Midwest will assume and agree to discharge various liabilities and obligations related to IPL's electric Transmission Assets. Upon completion of the transaction, IPL will no longer provide transmission services or hold the necessary assets to do so.³⁸

41. The Transaction is estimated to result in net book proceeds of approximately \$166 million, the "Acquisition Premium," and is estimated to generate net cash proceeds, after taxes and transaction-related costs, of \$575.4 million.³⁹ IPL intends to use the net cash proceeds to reduce its short-term debt by \$181.8 million and distribute \$393.6 million to its parent, Alliant Energy, for reinvestment, including investment in a coal-fired base-load power plant located in Iowa and additional wind power in Minnesota and Iowa.⁴⁰

42. The sale price is predicated on the transfer of rate base equal to \$418.8⁴¹ million and construction work in progress (CWIP) equal to \$19.1 million at the close of the transaction.⁴² The difference in the \$750 million Transaction

³⁴ Ex. 6 at 6 (Larsen Direct).

³⁵ Ex. 1 at 9, citing Pub. L. 108-367, § 909 (2004); 26 U.S.C. § 451 (i) (and includes similar investment in natural gas); Ex. 6 at 8-9 (Larsen Direct)

³⁶ Exs. 2, 3.

³⁷ Ex. 1 at 11-12.

³⁸ Ex. 1 at 14.

³⁹ Gross proceeds (\$750.0) minus transaction costs (\$8.2) equals gross net proceeds (\$741.8), minus tax on gain (\$210.1) equals net after-tax proceeds of \$531.8, plus present value of tax benefit (\$43.6) with resulting net cash proceeds available of \$575.4. Ex. 15 at 5 (Bacalao Direct).

⁴⁰ As addressed below, the amount retained by IPL may change if the ATA is approved rather than the TA. Ex. 8 at 17 (Larsen Rebuttal).

⁴¹ The Joint Petition reflects a reduction in the net book value of the transmission assets from \$423.2 million to \$418.8 million between the date the sale price was set and the date of the Petition because of two errors in the Revenue Requirement Model. Ex. 14 at 36 (Hampsher Rebuttal). This reduces the gain on the sale by about \$100,000. Ex. 55 at 12.

⁴² Ex. 1 at 16-17, 28; Ex. 6 at 17 (Larsen Direct).

price, minus the estimated transfer of rate base, CWIP, taxes and transaction costs, is the “Acquisition Premium” associated with the Transaction, approximately \$165.7 million.⁴³

43. IPL’s plan for use of the net proceeds was guided by the following principles:

a. The Transaction should not negatively impact IPL’s assigned credit ratings;

b. As a result of the Transaction, IPL will have a higher weighted average cost of capital. The ratepayers should not be adversely affected by the reflection of that higher weighted average in retail rates; and

c. Shareholder value should not diminish as a result of the Transaction.⁴⁴

44. The Joint Petitioners explained the rationale for reducing short-term debt and equity in proportions that did not have an adverse affect on perceived creditworthiness and ability to attract capital, and maintaining IPL’s weighted average cost of capital.⁴⁵

45. ITC Midwest intends to finance the Transaction through proceeds from the sale of common stock of ITC Holdings, and the issuance of debt by ITC Holdings and ITC Midwest.⁴⁶ It is willing to purchase the Transmission Assets for a price that exceeds the book value of the Transmission Assets because, as an independent transmission company subject to FERC jurisdiction, it is entitled to charge rates for transmission service based on a significantly higher return on equity (ROE) than IPL receives through its bundled rates. ITC Midwest’s transmission rate is based on FERC Form 1, using Attachment O to the MISO TEMT.⁴⁷ The amount that the purchase price exceeds the net book value, with adjustments, is the Acquisition Premium.

46. As a condition of the ASA and as reaffirmed by ITC Midwest in this proceeding, ITC Midwest will not attempt to recover the Acquisition Premium through its rates.⁴⁸

⁴³ Ex. 13a at Sched. K (Hampsher Direct Exhibits); Ex. 15 at 5 (Bacalao Direct).

⁴⁴ Ex. 1 at 16-17; Ex. 15 at 5 (Bacalao Direct).

⁴⁵ Ex. 15 at 10 (Bacalao Direct).

⁴⁶ Ex. 17 at 5 (Rahill Direct).

⁴⁷ Ex. 1 at 27; Ex. 20 at 9-12 (Neff Direct).

⁴⁸ Ex. 1 at subs. 7.6(b); T. 2 at 101, 119-120 (Welch). FERC historically has not permitted rate recovery of acquisition premiums. 77 FERC ¶ 61,263, Merger Policy Statement, Order No. 592 at 48, 61 Fed. Reg. 68595, 68604 (Dec. 30, 1996); Duke Energy Moss Landin, LLC *et al*, 83 FERC ¶ 61,318 at 62,304 (1998).

47. The ASA includes a Transition Services Agreement (TSA). Under the TSA, IPL will provide assistance to ITC Midwest to operate the Transmission Assets for approximately one year so that ITC Midwest has adequate time to plan for and assume control. IPL will be compensated by ITC Midwest for this assistance.⁴⁹

48. The Transaction preserves the jobs of all transmission-related IPL employees.⁵⁰

49. The ASA provides that ITC Midwest will not voluntarily withdraw the Transmission Assets from the functional supervision and control of MISO for five years after the closing date.⁵¹

50. The ASA provides that either party may terminate the ASA if the Transaction has not received the necessary regulatory approvals, including FERC approval of ITC Midwest's proposed rate structure, and closed by December 31, 2007.⁵²

51. The Transaction is also contingent upon approval from FERC under sections 203, 204 and 205 of the Federal Power Act.⁵³

52. The ASA spells out a number of other obligations and liabilities assumed by ITC Midwest and those that are retained by IPL.⁵⁴

Transaction Adjustment (TA)

53. As part of the Transaction, the Joint Petitioners proposed a "Transaction Adjustment" (TA) to assure that ratepayers benefited from the Transaction. IPL will place \$60 million from net sale proceeds into a regulatory liability account to offset Allowance for Funds Used During Construction (AFUDC) for: new generation, environmental upgrades needed on IPL's existing generating plants, and IPL's potential investment in Automated Metering Infrastructure (AMI). AFUDC is a component of construction costs that utilities incur when building large infrastructure such as generation or transmission facilities. It includes the net cost of debt funds and a reasonable rate on equity funds used during the period of construction. AFUDC is capitalized until the

⁴⁹ Ex. 1 at 18; Ex. 9 at 4 (Collins Direct).

⁵⁰ Ex. 1 at 18.

⁵¹ Ex. 1 at subs. 7.139(b); Ex. 6 at 15 (Larsen Direct).

⁵² Ex. 2 at 69; Ex. 6 at 15, 18 (Larsen Direct); Ex. 8 at 20 (Larsen Rebuttal); Ex. 20 at 21 (Neff Direct).

⁵³ Ex. 24 at 6-8 (Welch Direct): Section 203: Joint application by IPL, ITC and ITC Midwest for authorization of the acquisition and disposition of jurisdictional facilities; Section 205: Joint application by IPL, ITC, ITC Midwest and MISO for approval to establish FERC-jurisdictional transmission rates under the MISO TEMT, implementing the TEMT Attachment O formula; Section 504: ITC Midwest anticipates filing an application for authorization for the issuance of debt securities.

⁵⁴ Ex. 1 at 15-16.

project is placed in operation and is recovered in the form of depreciation from ratepayers over the service life of the plant to which it applies.

54. The funds placed in the account would accrue interest, and, when IPL files its next rate case, the money in the liability account would be available to reduce the amount of AFUDC, thus reducing the amount of the new investment included in IPL's future rate base. If IPL builds one or more large facilities that require enough lead time to warrant AFUDC, IPL would use up to \$60 million from this regulatory liability account to offset AFUDC in the rate case filed at the time that the new plant goes into service.⁵⁵

55. IPL arrived at \$60 million as the appropriate amount to place in the regulatory liability account by determining IPL's Base Line Revenue Requirement (BLRR) associated with its transmission operations for five years, 2008 through 2012, using traditional ratemaking principles and assuming that the transmission assets were not sold, and recalculating IPL's revenue requirement expected after the sale, the Post-Transaction Revenue Requirement (PTRR).⁵⁶ IPL's analysis shows that the PTRR is approximately \$90.1 million higher than the BLRR.⁵⁷ This difference between the BLRR and the PTRR is the net cost to IPL's customers of the Transaction. These figures were incorporated into the Joint Petitioners' cost benefit analysis, more fully discussed below. The \$60 million TA, coupled with IPL's estimated reduction to its Cost of Capital, is the amount IPL calculated would be needed to ensure that IPL's customers benefit from the Transaction. The net present value of the TA is \$18 million, calculated over a five-year period.⁵⁸

56. There are four primary reasons why the PTRR exceeds the BLRR. First, ITC Midwest will earn a higher ROE (13.88%) than does IPL (blended ROE of 10.80%). Second, ITC Midwest's capital structure will have a higher proportion of common equity (approximately 60%) than does IPL's capital structure (approximately 51%). Third, at the time that the Transaction closes, IPL will eliminate its accumulated deferred income tax (ADIT) liability associated with its transmission assets and ITC Midwest will not have a corresponding ADIT at that time. Fourth, ITC Midwest will have more Cash Working Capital (CWC) under the FERC rate methodology than IPL has under the Minnesota lead-lag study requirements.⁵⁹ For these reasons, ITC Midwest's transmission rates will be higher than IPL's.

⁵⁵ Ex. 1 at 25; Ex. 12 at 7 (Hampsher Direct); Ex. 40 at 10 (Johnson Direct).

⁵⁶ The Minnesota portion of the TA is \$6.5 million. Ex. 12 at 16 (Hampsher Direct); Ex. 13a at Sched. F (Hampsher Direct Exs.)

⁵⁷ Ex. 13a, Sched. F, line 3 (Hampsher Direct Exhibits).

⁵⁸ Ex. 12 at 3-14 (Hampsher Direct); Ex. 13a at Sched. F (Hampsher Direct Exhibits); T. 2 at 194-196 (Hampsher).

⁵⁹ Ex. 12 at 8 (Hampsher Direct).

57. Absent any adjustment, the Transaction would result in an increase to Minnesota customers' retail electric rates of approximately 1.8%.⁶⁰ The TA was designed to offset any adverse effect that the Transaction would otherwise have on Minnesota customers.⁶¹

58. In order to earn the tax benefits of the Transaction and strengthen its business, IPL plans to make significant new investment. The Joint Petitioners believe that the TA will mitigate the rate increase that can occur from large capital investments as they are brought into the utility's rate base. A reduction in AFUDC will reduce the rate base used for rate setting.

59. The TA will not be an immediate benefit to ratepayers. It is offered as an offset to any future AFUDC, and thus available only when the capital investments are made.⁶² The TA will not benefit transmission-only customers.

Alternative Transaction Adjustment (ATA)

60. During the parallel proceedings in Iowa, and then as part of its Rebuttal Testimony in this case, the Joint Petitioners offered an "Alternative Transaction Adjustment" (ATA),⁶³ using an eight-year cost-benefit analysis, in order to address concerns raised by the Department, OAG/RUD, Energy Cents and the Municipal Coalition, that ratepayers would not be adequately protected by the TA. The ATA is offered in lieu of the TA.⁶⁴ Under the ATA, the Joint Petitioners agreed:

a. IPL will refund \$13,040,00 per year to its "full-requirement" customers (retail and wholesale customers, not transmission-only customers) in each of eight years, beginning in the year customers experience an increase in rates related to transmission charges assessed by ITC Midwest;

b. ITC Midwest will provide a rate discount of \$4,125,000 to its customers in each of eight years, beginning in the year customers are affected by ITC Midwest's transmission rates. For this purpose, ITC Midwest's customers are those customers (including IPL) that will take service under the MISO TEMT, including transmission-only customers. ITC Midwest would not attempt to recover this rate discount from customers through its

⁶⁰ Ex. 12 at 15 (Hampsher Direct). The OAG/RUD asserts that, based on IPL's 2005 rate case, this represents a 12.24% increase in **transmission** costs. OAG/RUD Reply Brief at 36.

⁶¹ Ex. 12 at 16 (Hampsher Direct).

⁶² Ex. 40 at 9-10 (Johnson Direct). The Department contends that IPL is only offering the offset for five years. Department's Reply Brief at 27. That is not clear, but the related cost-benefit analysis covers only five years. The Joint Petitioners have stated that they will move ahead with more than \$400 million of investment in the next five years. Ex. 1 at 28. See also Ex. 8 at 12 (Larsen Rebuttal)(The TA represents a future benefit).

⁶³ Ex. 8 at 8 (Larsen Rebuttal); Ex. 25 at 6-7 (Welch Rebuttal).

⁶⁴ Ex. 8 at 8, 11-12 (Larsen Rebuttal).

FERC formula rates. IPL estimates that, in the first year that the rate discount is given, approximately 92% of the discount would be reflected in the rates of IPL's full-requirements customers;⁶⁵

c. IPL will file for no greater than a 50% common equity capital structure in its first electric retail rate proceeding in Minnesota in which rates are set that reflect the Transaction;⁶⁶

d. ITC Midwest will not seek authority from FERC to recover through rates the first \$15 million of transaction costs.⁶⁷

61. Under the ATA, Joint Petitioners estimate that IPL's full requirements customers should benefit from approximately \$13.040 million in refunds and \$3.795 million⁶⁸ in rate discounts, approximately \$16.835 million per year.⁶⁹ The Joint Petitioners projected a net present value of \$15.3 million benefit to ratepayers based on an eight-year cost-benefit analysis, and a net present value of \$6.2 million using a twenty-year cost benefit analysis.⁷⁰

62. As with the TA, the Joint Petitioners' commitment to the ATA is contingent on the Transaction closing by the end of calendar year 2007 and Commission approval of the Transaction in its entirety including:

a. specific approval of a regulatory liability account of approximately \$89 million for the sole purpose of paying IPL's refund obligation and not to reduce the rate base in any general rate proceeding;

b. approval that the interest accrued on the regulatory liability account should not be used for any purpose other than the payment of the refund; and

c. tax savings from the annual refund obligation under the ATA would be explicitly excluded from IPL's revenue

⁶⁵ Because this is a reduction in ITC Midwest's revenue requirement, under some circumstances, IPL's retail customers may receive less than 92% of the savings. Ex. 29 at 27 (Linxwiler Rebuttal). Based on Joint Petitioners' estimate that 6.87% of the benefit should inure to Minnesota customers, Minnesota full-requirement customers would receive \$260,716 per year for eight years. Ex. 55 at 8 (Hampsher Responsive Testimony).

⁶⁶ The cost benefit analysis assumes, however, that the 50% cap on IPL's equity ratio will remain in effect through the eight-year period. Ex. 14c at Sched. F (Hampsher Rebuttal Exs.).

⁶⁷ At the evidentiary hearing ITC Midwest witness Welch agreed that if either the TA or the ATA were selected, ITC Midwest would forego seeking recovery through rates of its transaction costs up to \$15 million. T. 2 at 101-102 (Welch); See also Ex. 25 at 7 (Welch Rebuttal); Ex. 58 at 762, 913 (Iowa Hrg. T. Vol. 3).

⁶⁸ 92% of \$4,125,000.

⁶⁹ Ex. 8 at 9 (Larsen Rebuttal).

⁷⁰ Ex. 8 at 8, 11-12 (Larsen Rebuttal); Ex. 14 at 8 (Hampsher Rebuttal); T. 1 at 25 (Larsen).

requirement in future rate proceedings because the tax savings have been figured into the refund figure.⁷¹

63. The Joint Petitioners offered the ATA to address concerns raised by other parties that IPL's cost-benefit analysis provided either minimal or no benefits to customers over the first five years of the Transaction because of the likely delay in the use of the AFUDC. The ATA extended the cost-benefit analysis from five years to eight years, with \$15 million in customer benefit over an eight-year period in present value terms, and with a portion of the rate discount shared with transmission-only customers. As part of the ATA, IPL agreed that it would not file for a common equity ratio higher than 50% in its first electric rate proceeding reflecting the Transmission Transaction.⁷²

64. To summarize, IPL compared its revenue requirement without the Transaction (its baseline) with its revenue requirement after the transaction. To offset ITC Midwest's higher rates, Joint Petitioners developed the TA and the ATA to assure a net benefit to ratepayers of approximately \$18 million with the TA, and \$15 million with the ATA. Both analyses took into account that the accumulated deferred tax balance would no longer be available to reduce IPL's rate base after the Transaction.⁷³ Neither the TA nor the ATA returned the full Acquisition Premium to ratepayers.

65. Joint Petitioners claim that the Transaction will benefit IPL's customers because the net proceeds from the sale will be shared with them, and because increased investment in transmission will eliminate transmission constraints and lower the cost of energy. The Transaction will provide funds for IPL to invest in new generation, environmental compliance and AMI. The TA will mitigate the rate impact of bringing new generation on-line and other substantial capital investments. The ATA will offset the increased costs of ITC Midwest's higher rates through refunds and offsets. In addition, the Joint Petitioners believe that the Transaction will place the Transmission Assets in the hands of an experienced, independent transmission operator with a proven track record, a regional perspective, and access to capital to invest in transmission infrastructure.⁷⁴

66. The Department, OAG/RUD, Energy Cents and Municipal Coalition all assert that the Transaction, with either the TA or the ATA, is not in the public interest.

67. The effect of the Commission's loss of jurisdiction will be examined first. Then the specific criteria set forth in section 216B.16, subd. 7c (a) will be examined.

⁷¹ Ex. 8 at 9-11 (Larsen Rebuttal).

⁷² Ex. 8 at 12-13 (Larsen Rebuttal).

⁷³ T. 1 at 25-26 (Larsen).

⁷⁴ Ex. 6 at 19-20 (Larsen Direct); Ex. 8 at 3-5 (Larsen Rebuttal).

Loss of Jurisdiction Over the Transmission Assets

68. The statutory provision addressing Commission approval of the sale or transfer of transmission assets states:

Public utility owners of transmission facilities may, subject to Public Utilities Commission approval, transfer operational control or ownership of those transmission assets to a transmission company subject to Federal Energy Regulatory Commission jurisdiction.⁷⁵

69. Although the transfer of Transmission Assets beyond the reach of the Commission's jurisdiction is permissible, the Department, OAG/RUD, Energy Cents and the Municipal Coalition claim that the loss of jurisdiction over IPL's Transmission Assets is not in the public interest because of the terms of this Transaction. Although a relatively small portion of the Transmission Assets is located in Minnesota, one of the lines is considered by the Department to be the "backbone" of the grid in southern Minnesota and a major outlet of wind generation from southwest Minnesota. In addition, other Minnesota utilities' transmission facilities are interconnected or inter-related to IPL's backbone transmission line and may be affected by the Transaction.⁷⁶

70. The Joint Petitioners have three responses to the concerns expressed about the loss of the Commission's jurisdiction. First, they contend that the Commission will continue to have jurisdiction over IPL, and as a public utility, IPL will be required to provide efficient, reliable transmission service.⁷⁷ Second, the Joint Petitioners are confident that the Transaction will benefit ratepayers because a transmission-only company such as ITC Midwest does not have any incentive to discriminate among generators and loads for transmission service, and FERC's policies will stimulate greater investment in transmission. Third, the Joint Petitioners assert that FERC will assume jurisdiction over the transmission component of bundled retail rates in the near future. Thus, they believe that the Commission will soon lose jurisdiction over an integrated utility's bundled transmission rates, regardless of whether IPL sells or holds the transmission assets.

The Commission Will Have Less Authority over ITC Midwest as a Transmission-Only Company Than It Has Over IPL, a "Public Utility."

71. The Commission will continue to have jurisdiction over IPL as a "public utility" following the Transaction, but its authority over ITC Midwest will be limited.

⁷⁵ Minn. Stat. § 216B.16, subd. 7c.

⁷⁶ Ex. 43 at 36-37 (Campbell Surrebuttal); See also Ex. 42 at 11 (Campbell Direct).

⁷⁷ Ex. 6 at 23 (Larsen Direct).

72. The parties agree that ITC Midwest will not be a “public utility,” as defined under Minnesota law,⁷⁸ and the Commission would lose jurisdiction to control certain aspects of the operation and control over the Transmission Assets. For example, the Commission would lose its authority to assure that future transfers of the Transmission Assets by ITC Midwest were consistent with the public interest under Minn. Stat. §§ 216B.50, and 216B.16, subd. 7c, the statutes that govern this proceeding.

73. Some of the Commission’s jurisdiction extends to transmission owners, regardless of whether the owner meets the definition of a “public utility.”

74. The Commission will continue to have authority to grant a certificate of need and route permit for any new transmission lines that ITC Midwest would plan to build in Minnesota.⁷⁹

75. ITC Midwest will participate in the Biennial Transmission Process, which is required of transmission companies that own and operate transmission in Minnesota.⁸⁰

76. The Commission will retain the authority to order ITC Midwest to make infrastructure investments and perform preventative maintenance on its transmission facilities in the state.⁸¹

77. Despite this limited jurisdiction over ITC Midwest, the Department is concerned that the Commission will have less authority to assure that ITC Midwest provides “safe, adequate, efficient, and reasonable service ...” to persons requesting service.⁸²

78. During the course of this proceeding, ITC Midwest agreed to comply with an order from the Commission to invest in a project that the Commission has determined is necessary to ensure safe, adequate, efficient and reliable service.⁸³ ITC Midwest also agreed to build or take the steps necessary to resolve the system constraints in the IPL service territory as reported by MISO.⁸⁴

79. The Department is concerned that the Commission will not have access over ITC Midwest’s books and records to review the appropriate

⁷⁸ Minn. Stat. § 216B.02, subd. 4 defines “public utility” to include entities providing retail electrical service. ITC Midwest would not provide retail service.

⁷⁹ Ex. 42 at 4-5 (Campbell Direct), quoting Minn. Stat. § 216B.243: “No large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission.” See *also*, Minn. Stat. § 116C. 57 (route permit required for a high voltage transmission line).

⁸⁰ Ex. 22 at 12-13 (Schultz Direct); Minn. Stat. § 216B.2425.

⁸¹ Ex. 42 at 5 (Campbell Direct), quoting Minn. Stat. § 216B.79.

⁸² Ex. 42 at 4, 6, 8 (Campbell Direct), quoting Minn. Stat. § 216B.04.

⁸³ T. 2 at 139-141 (Welch).

⁸⁴ T. 2 at 142-143 (Welch).

allocation of costs and revenues between retail and wholesale transactions necessary to determine the appropriateness of the rates charged.

80. At the hearing, Joseph Welch, Chairman and CEO of ITC Holdings, stated that the books and records of ITC Midwest will be open to the Commission and that ITC Midwest will file annual financial information with the Commission.⁸⁵

81. The Department lists other benefits of Commission jurisdiction over IPL's transmission assets. The Commission presents a convenient forum for Minnesota ratepayers and regulators to review operation and rates from a Minnesota perspective, and regulation of vertically bundled public utilities "can allow the natural efficiencies of such integration to be reflected in bundled utility rates."⁸⁶

82. The Department remains concerned that the Commission will lose its authority to ensure appropriate allocation of costs and revenues between retail and wholesale transaction, particularly pertaining to the reasonableness of retail transmission rates.⁸⁷ However, the documentation that IPL files in its subsequent rate cases must appropriately allocate its costs and revenues. If IPL fails to support the proper allocation, the Commission is not obligated to approve its rates.

83. Despite the assurances of ITC Midwest that it will comply with the Commission's directives, the Department remains concerned that the Commission may have insufficient authority to enforce the commitments ITC Midwest made in the course of this proceeding.⁸⁸ Also, the Commission's authority to regulate a FERC-regulated transmission company has not been tested.

84. If the Transaction is approved, the Commission will have authority over many aspects of ITC Midwest's operations in Minnesota, but it will be less authority than the Commission has over IPL.

Increased Cost to Ratepayers and Possible Benefits of FERC Jurisdiction

85. The Department is concerned that the Commission will lose authority to set retail rates and transmission costs as part of a general rate case, as it currently does for IPL,⁸⁹ or to assure that the rates ITC Midwest charges for transmission service are "just and reasonable."⁹⁰ Following the sale, the rates that ITC Midwest will charge to IPL for transmission service will be based on the FERC formula which includes a significantly higher ROE than IPL is currently

⁸⁵ T. 2 at 95, 126, 146 (Welch).

⁸⁶ Department's Reply Brief at 38-39.

⁸⁷ Department's Reply Brief at 54.

⁸⁸ Department's Reply Brief at 40, 53-54.

⁸⁹ Ex. 42 at 4 (Campbell Direct).

⁹⁰ Ex. 42 at 6 (Campbell Direct), quoting Minn. Stat. § 216B.03.

authorized to receive, and those FERC-approved charges would be passed through to IPL's retail customers.⁹¹

86. Although the Department may have standing to participate in FERC proceedings to advance Minnesota's perspective, it has very limited resources to do so and limited influence.⁹²

87. FERC-approved rates for ITC Midwest's transmission will be higher than those currently approved for IPL. Thus, the Department believes that the ratepayers will pay more with no corresponding benefit. The Joint Petitioners contend that FERC's policies, including its higher ROE, provide an incentive to independent transmission operators to invest in transmission infrastructure, which will provide significant benefits to ratepayers by improving the reliability and economic operation of the transmission system. IPL agrees that ITC Midwest's increased investment in transmission will reduce its energy costs by assuring that the most cost-effective generation has access to transmission, and by reducing electrical losses. Whether ITC Midwest's opportunity to earn a higher ROE will stimulate investment and benefit Minnesota is discussed in the section below addressing enhancement of transmission infrastructure.

88. The Joint Petitioners also assert that the Transaction will benefit ratepayers because a transmission-only company such as ITC Midwest does not have any incentive to discriminate among generators and loads for transmission service.

89. IPL is a member of MISO and is currently prohibited from discriminating in access to transmission. In addition, the record demonstrates that IPL does not, in fact, discriminate.⁹³ Although ITC Midwest is not prohibited from withdrawing from MISO at the end of 5 years, it would still be subject to the FERC policies against discrimination.

90. The shift to FERC jurisdiction is not likely to have an impact on discrimination among generators and loads.

FERC's Future Authority Over Retail Transmission Rates

91. The Joint Petitioners contend that it is reasonable to assume that FERC will take over jurisdiction of IPL's rates for bundled transmission service within five years and the Commission will lose its jurisdiction.⁹⁴ The Department,

⁹¹ Ex. 42 at 7, 12 (Campbell Direct); Ex. 9 at 13 (Collins Direct). The Municipal Coalition points out that ITC Midwest was not required to request a higher ROE from FERC for the Transmission Assets, and that requesting such rates is not in the public interest.⁹¹ Although ITC Midwest was not required to request the benefit of the higher ROE, it did so.

⁹² Ex. 42 at 13-14 (Campbell Direct).

⁹³ T. 1 at 40 (Larsen).

⁹⁴ Ex. 11 at 4-5 (Collins Rebuttal).

the OAG/RUD, Energy Cents and the Municipal Coalition dispute that contention.⁹⁵

92. On February 15, 2007, FERC issued a final rule adopting reforms to the open-access transmission regulation. Its Order 890 amends the regulations and open access tariff adopted in Orders 888 and 889. Order 890 specifically retained elements of Order 888, including states' jurisdiction over bundled retail load. Order 890 stated: "The Commission will retain the existing jurisdictional divide that was established in Order No. 888, which has been affirmed by the U.S. Supreme Court and accepted by the industry and state regulatory authorities."⁹⁶

93. Although Joint Petitioners acknowledge Order 890, they claim that a change in FERC's role is foreshadowed in the Supreme Court's decision in *New York v. FERC*,⁹⁷ a review of issues raised by FERC Order 888. In that case, the Supreme Court reviewed two FERC jurisdictional rulings: that unbundled retail transmission of electric energy was within the scope of the open-access requirements; and that FERC would not include bundled retail transmission within its scope. Enron Power Marketing (Enron) challenged FERC's interpretation of the Federal Power Act, claiming that FERC had a duty to extend its authority to bundled retail transmission of electricity. The Supreme Court rejected Enron's arguments on the basis that FERC had made a statutorily permissible choice not to exercise jurisdiction over bundled retail rates, based in part on the "numerous difficult jurisdictional issues" presented.⁹⁸ The Supreme Court further opined:

The issues raised by New York concerning FERC's jurisdiction over unbundled retail transmissions are themselves serious.... It is obvious that a federal order claiming jurisdiction over all retail transmissions would have even greater implications for the States' regulation of retail sales—a state regulatory power recognized by the same statutory provision that authorizes FERC's transmission jurisdiction. See 16 U.S.C. § 824(b) (giving FERC jurisdiction over "transmission of electric energy," but recognizing state jurisdiction over "any ... sale of electric energy" other than "sale of electric energy at wholesale").⁹⁹

94. Joint Petitioners point out that three justices questioned FERC's policy decision to abstain from regulating the transmission component of bundled

⁹⁵ Ex. 43 at 13-14 (Campbell Surrebuttal).

⁹⁶ Order 890, FERC's Final Rule on Preventing Undue discrimination and Preference in Transmission Service, 118 FERC ¶ 61,119, Feb. 16, 2007, Feb. 16., 2007, at 94, citation to *New York v. FERC* omitted; Ex. 43 at 13-14 (Campbell Surrebuttal) and NAC-6, second page.

⁹⁷ 535 U.S. 1, ___ S.Ct. ___ (2002).

⁹⁸ 535 U.S. at 25, quoting Order 888 at ¶ 31,699.

⁹⁹ 555 U.S. at 27.

retail sales.¹⁰⁰ From this it argues that FERC's choice may not be consistent with the law. Assuming that this true, Joint Petitioners present three possible scenarios that could lead FERC to re-examine its policy not to exercise jurisdiction over the transmission component of bundled retail service and concludes that "eventually, the FERC will need to exercise its jurisdiction under the Federal Power Act, as recognized by the United States Supreme Court in *New York v. FERC*, and set the rates for all transmission services (regardless of whether the cost of transmission is bundled in state jurisdictional rates)."¹⁰¹

95. Each of the three scenarios outlined by the Joint Petitioners assumes that either MISO or FERC will change its practices in the future. Only one is tied to a future date certain: the revenue distribution methodology under MISO will change in 2008, and all customers, including vertically integrated utilities taking MISO service, will be charged under the MISO tariff. However, the Joint Petitioners do not claim that state jurisdiction over bundled transmission services will thereby pass to FERC. Both of the other scenarios would require FERC to reconsider and change its existing policies. Although FERC may choose to do so, there is no evidence that proposed changes are under consideration, and the language in Order 890 "retaining the existing jurisdictional divide," is compelling evidence that no change is imminent.

96. The Joint Petitioners have failed to offer persuasive evidence that FERC will assume jurisdiction over the cost of transmission in bundled state-set rates within the next five years and that, therefore, the Commission's loss of jurisdiction over the Transmission Assets is imminent, regardless of whether the Transaction is approved.

Summary – Loss of Jurisdiction

97. Although several parties expressed concern about the Commission's decreased authority over rates, quality, terms and conditions of transmission service, decreased focus on retail customers, and FERC's focus on national issues rather than on Minnesota issues, transfer of transmission assets to FERC jurisdiction was contemplated by the Legislature when section 216B.16, subdivision 7c, was amended in 2005. Although the Commission will have less authority over ITC Midwest than it will have over IPL, its loss of jurisdiction is not *per se* to the detriment of the public interest.

98. The Joint Petitioners have failed to show that FERC jurisdiction over ITC Midwest will benefit Minnesota.

99. Joint Petitioners have failed to show that FERC will take jurisdiction over bundled retail transmission rates in the near future.

¹⁰⁰ Joint Petitioners' Brief at 53-54, citing 535 U.S. at 33.

¹⁰¹ Joint Petitioners' Brief at 56.

100. The loss of jurisdiction must be balanced against the Joint Petitioners' claim that the Transaction will facilitate the development of transmission infrastructure, and that Minnesota ratepayers will not be adversely affected by the Transaction.

101. The IUB conducted a similar analysis concerning its loss of jurisdiction.¹⁰² It concluded that the issue should be examined in the context of the cost-benefit analysis, that is, "whether the benefits of the transaction outweigh any increased costs and loss of Board jurisdiction."¹⁰³ It concluded that ITC Midwest had greater incentives to build transmission to fill both economic and reliability needs. The intangible benefits of a more robust transmission system and independent transmission system operation are difficult to quantify, but they must be weighed into the determination of the benefits of lost jurisdiction.¹⁰⁴ The IUB concluded that the benefits outweighed the costs and the loss of its jurisdiction.¹⁰⁵

Application of the Criteria in Minn. Stat. § 216B.16, subd. 7c (a).

102. In its evaluation of the public interest, the Commission shall consider five specific criteria set forth in section 216B.16, subdivision 7c (a). Because most of the dispute in this proceeding has focused on the development of transmission infrastructure and the effect of the Transaction on ratepayers, those two criteria will be addressed first.

"Facilitates the development of transmission infrastructure necessary to ensure reliability, encourages the development of renewable resources, and accommodates energy transfers within and between states"

103. The Joint Petitioners assert that one of the benefits of the Transaction is that ITC Midwest has greater ability to develop transmission infrastructure necessary to ensure reliability, encourage the development of renewable resources, and accommodate energy transfers within and between the states. Its business is devoted exclusively to transmission, unlike IPL, and therefore ITC Midwest has a greater incentive to plan and build necessary transmission throughout the service area. In contrast, IPL's transmission planning competes for capital with its other service components.

104. Although IPL believes that it is currently meeting its public utility duty to provide "safe, adequate, efficient and reasonable service," it believes that ITC Midwest's focus on transmission planning and development will address both economic and reliability constraints to the transmission system with resulting

¹⁰² Ex. 8a at 58-64.

¹⁰³ Ex. 8a at 62.

¹⁰⁴ Ex. 8a at 62.

¹⁰⁵ Ex. 8a at 81-82.

decreased energy costs to IPL customers, with greater efficiency within the MISO area and reduction in line losses.¹⁰⁶

105. As part of the ASA, the Joint Petitioners have agreed to a Distribution Transmission Interconnection Agreement (DTIA). As to IPL, ITC Midwest agrees that:

Subject to applicable regulatory approvals, including the principles of least-cost long-term planning applicable to maintaining the overall reliability of the transmission and distribution system in the planning horizon, and subject to the oversight and direction of the [Regional Transmission Organization (RTO)] ... where applicable, [ITC Midwest] shall have a public utility duty to operate, maintain, plan and construct the Transmission System so that the system is adequate: (i) to support effective competition in energy markets without favoring any market participant; (ii) to deliver on a reliable basis the reasonable, projected needs of all loads on the electric distribution systems connected to and dependent upon [ITC Midwest's] facilities for delivery of reliable, low-cost and competitively priced electricity to such distribution systems; and (iii) to provide needed support to the distribution systems interconnected to the Transmission System.¹⁰⁷

106. ITC Midwest has also agreed with IPL that ITC Midwest will expand the transmission system to accommodate IPL's planned load growth.¹⁰⁸

107. By giving up its transmission business, IPL will lose access to Minnesota incentives for transmission development.¹⁰⁹ However, ITC Midwest as an independent transmission company will have access to other valuable incentives.¹¹⁰

108. In order to evaluate whether the Transaction is in the public interest, it is necessary to examine whether ITC Midwest will build transmission that will increase reliability, encourage development of renewable resources, and accommodate energy transfers to the same or greater extent than IPL will build.

Development of Infrastructure to Ensure Reliability

109. ITC Holding and its subsidiaries, including ITC Midwest, operate as independent transmission companies, without any affiliation with companies providing generation. Its single focus is on prudently investing in transmission infrastructure to meet increasing demand, connect new load, interconnect

¹⁰⁶ Ex. 8 at 25-26 (Larsen Rebuttal).

¹⁰⁷ Ex. 3, 1.1-A, at 20

¹⁰⁸ Ex. 9 at 15 (Collins Direct).

¹⁰⁹ Initial Brief of the Energy Cents Coalition at 11-13, citing Minn. Stat. §§ 216B.16, subd. 7b, 216B.1545, subd. 2a, and 216B.1636.

¹¹⁰ Joint Petitioners' Reply Brief at 22-23, citing Attachment O rate request filed with FERC.

generation, including renewable resources, and develop competitive wholesale energy markets.¹¹¹

110. ITC Holding has a well-developed process to evaluate existing transmission capacity and its constraints and to foresee the growth of load and new generation, exports or imports of power out of or into the region, and the need for reserves to assure system reliability, tested against the NERC reliability criteria.¹¹²

111. It is the policy of FERC to increase investment in transmission. New transmission investment can improve the reliability of power delivery, lower the costs associated with congestion on otherwise constrained transmission lines and encourage capital investment in generation projects by lowering the risk associated with obtaining adequate transmission capacity. To encourage further investment, in 2005, Congress directed FERC to establish incentives.¹¹³ In its proposed pricing policy, FERC stated:

[T]he transmission business is ideally suited to bring about:

- (1) improved asset management including increased investment;
- (2) improved access to capital markets given a more focused business model than that of vertically integrated utilities;
- (3) development of innovative services; and
- (4) additional independence from market participants.¹¹⁴

112. Since 2003, ITC Holding's subsidiaries have made substantial investments to improve transmission.¹¹⁵

113. IPL also has a planning process to identify projects that will meet the future demands of its transmission system based on projected load growth, new generation and other planned upgrades to comply with its projected changes and to comply with regulatory requirements. IPL projects that forecasted transmission expenditures will exceed more recent historical spending.¹¹⁶

114. Internal competition for capital within IPL has prevented IPL from making significant investment to meet the demands for transmission. It has focused on building transmission facilities to assure reliable service, but has not focused on identifying projects that would relieve congestion, nor has it

¹¹¹ Ex. 24 at 12-13 (Welch Direct).

¹¹² Ex. 22 at 8-10 (Schultz Direct).

¹¹³ Ex. 24 at 10-11 (Welch Direct) (citations omitted).

¹¹⁴ Ex. 24 at 11 (Welch Direct) (citations omitted).

¹¹⁵ Ex. 24 at 17-18, JLW-1, Scheds. A and B (Welch Direct).

¹¹⁶ Ex. 9 at 20-22 (Collins Direct).

developed a comprehensive plan to do so.¹¹⁷ Proceeds from the Transaction will help finance IPL's generation projects and help acquire needed external funding at lower cost.¹¹⁸

115. The Department does not dispute that ITC Midwest will have greater access to capital than IPL, but it does not believe that IPL has had problems accessing capital.¹¹⁹ FERC currently allows vertically integrated public utilities like IPL a higher ROE than its Minnesota jurisdictional rate for transmission investment to provide wholesale transmission service, but the ROE available to IPL (12.38%) is 150 basis points below the ROE available to ITC Midwest (13.88%). Although IPL may access capital, it is quite likely that ITC Midwest, with a higher available ROE, will have greater opportunity to raise funds for transmission investment.

116. Although ITC Midwest may have greater opportunity to raise capital, the Joint Petitioners did not offer evidence of ITC Midwest's specific plans that would enhance or improve system reliability, reduce energy costs, or allow its level of investment to be compared with IPL's.¹²⁰

117. There is no provision in the ASA or in the evidence offered that describes what upgrades will be built. In response to a Department data request, ITC Midwest stated: "Neither the specific amount of transmission to be built by IPL without the Transaction taking place, nor the specific amount of transmission to be built by ITC after the Transaction is approved, is currently known or knowable, and thus no comparison can be made."¹²¹

118. In response to an information request from the OAG/RUD about future transmission investment, ITC replied: "ITC Midwest states that (it) has not yet had the opportunity to thoroughly study the IPL system and has not developed any specific plans or projects for transmission investment. ITC Midwest further states that it cannot speculate about what actions IPL may have or may not have taken in the future without this transaction."¹²²

119. In MISO's planning process, projects are characterized as "exploratory," "proposed," or "planned." Proposed projects are not yet verified and potential alternatives are still being considered. Planned projects have been fully analyzed, detailed engineering has been completed, and there are accurate cost estimates. The planned projects are submitted to MISO for approval, and, if

¹¹⁷ Ex. 11 at 29 (Collins Direct).

¹¹⁸ Ex. 16 at 16 (Bacalao Rebuttal).

¹¹⁹ Ex. 38 at 6, 12 (Ham Direct) (IPL should be able to fund future projects without the proceeds from the sale). Joint Petitioners respond that the proceeds will help finance IPL's generation projects and help acquire needed external funding at lower cost. Ex. 16 at 16 (Bacalao Rebuttal).

¹²⁰ T. 2 at 245-246 (Linxwiler).

¹²¹ Ex. 39 at HKH-09 (Ham Surrebuttal); Ex.29 at JNL-19 (ITC Midwest's Responses to Municipal Coalition's Third Set of Data Requests, July 17, 2007, Iowa Proceeding) (Linxwiler Supplemental).

¹²² Ex. 30 at 13-14 and CDK -1(Kaml Direct).

approved, will be constructed and placed in service. ITC Midwest expects to continue to study IPL's proposed projects and construct IPL's planned projects as proposed.¹²³

120. Most of the generation dispatched to serve load in the Midwest ISO is scheduled through the Midwest ISO Day-Ahead Market, requiring the generation owner to supply energy. A transmission constraint limits the flow of power across the associated transmission facility. It is a binding constraint whenever power flow across the associated transmission facility is at its maximum. When this occurs, more costly generators must be dispatched to avoid overloading the transmission facility and the cost of meeting the demand for electricity increases. There are significant constraints within the IPL area. Transmission projects that alleviate the associated congestion have potential economic benefits to consumers in Minnesota and the MISO region. Improvements to the transmission constraints may also improve the system's reliability and may also reduce electrical losses on the transmission system and reduce the total amount of generation needed to meet load demands.¹²⁴

121. MISO has designated three "narrowly constrained areas" (NCA) within its region. These are areas with significant transmission constraints, and one of them includes portions of northern Iowa, southwestern Wisconsin and southeast Minnesota, within the IPL service territory. Nearly all of the transmission constraints in the NCA are comprised of IPL facilities.¹²⁵

122. ITC Midwest has not committed to address the NCA, but it has stated that it "would consider projects to eliminate significant constraints on the IPL system that make economic sense from a customer standpoint, even if the projects are not presently needed to satisfy a reliability criterion."¹²⁶ In contrast, IPL would normally address only those transmission project required by reliability criteria violations.¹²⁷

123. As part of the ASA, ITC Midwest has agreed that it will join MISO and will not withdraw the IPL assets from MISO for a period of five years, unless both IPL and ITC Midwest agree.¹²⁸ As part of MISO, ITC Midwest would be required to expand or upgrade its transmission system to address any identified problems with the adequacy or reliability of its transmission service.¹²⁹

124. IPL planners have prepared a summary of additional projects not yet part of the MISO planning process.¹³⁰ ITC Midwest's system planner has

¹²³ Ex. 22 at 10-11 (Schultz Direct)

¹²⁴ Ex. 22 at 13-19, RAS-1, Sched. A (Schultz Direct).

¹²⁵ Ex. 9 at 26 (Collins Direct).

¹²⁶ Ex. 22 at 22 (Schultz Direct).

¹²⁷ Ex. 9 at 29 (Collins Direct); Ex. 22 at 22 (Schultz Direct).

¹²⁸ Ex. 9 at 15-16 (Collins Direct), citing Ex. 2 at § 7.13(b).

¹²⁹ Ex. 9 at 15 (Collins Direct), citing MISO Open Access Transmission and Energy Market Tariff (TEMT), §§ 13.5 and 15.4.

¹³⁰ Ex. 9 at 30, DCC-1, Sched. H (Collins Direct).

concluded that the projects are prudent and should be constructed, and that ITC Midwest would expect to proceed to implement the plan after the Transaction is completed, as well as other projects identified by MISO, including projects to facilitate transmission of wind and ethanol generation.¹³¹

125. Throughout the proceeding, ITC Midwest repeated its general business philosophy to construct transmission that would eliminate constraints on the transmission system, reduce congestion cost, and enable more efficient transport of energy, and IPL expressed its confidence that ITC Midwest would improve service reliability and its energy costs would decline if the Transaction were approved.¹³²

126. During discovery in the Iowa proceeding, IPL was asked to quantify the annual energy savings IPL's customers would realize from the transaction. IPL responded that it did not have the resources to conduct the analysis. It continued:

Although common sense along with known historic congestion that has occurred in eastern Iowa dictates that the construction of new transmission will lead to more economic dispatch within the MISO footprint and perhaps even beyond this footprint, the quantification of the savings to customers resulting from this investment is impossible to quantify in any workable timeframe.¹³³

127. In this proceeding, IPL repeated that it did not quantify the expected energy savings from the Transaction.¹³⁴

128. There is no concrete evidence that ITC Midwest will build more or better transmission facilities than IPL.¹³⁵

129. Both IPL and ITC Midwest agreed to comply with Commission orders to build transmission needed to assure reliability of the transmission system, and both agreed to satisfy their MISO responsibilities.¹³⁶

130. The Commission has general knowledge about the relative value of integrated and unbundled electric utility service and Minnesota transmission planning that goes beyond the scope of this proceeding. That knowledge may assist its evaluation of ITC Midwest's claim. However, the Joint Petitioners failed to show that the Transaction will facilitate the development of transmission infrastructure necessary to ensure reliability.

¹³¹ Ex. 22 at 23-24 (Schultz Direct); Ex. 9 at 32 (Collins Direct).

¹³² See e.g., Ex. 6 at 6 (Larsen Direct); Ex.29 at JNL-19 (Linxwiler Supplement).

¹³³ Ex. 30 at CDK-2 (Kaml Direct).

¹³⁴ T. 1 at 189 (Hampsher).

¹³⁵ Ex.29 at JNL-19 (ITC Midwest's Responses to Municipal Coalition's Third Set of Data Requests, July 17, 2007, Iowa Proceeding) (Linxwiler Supplemental).

¹³⁶ T. 1 at 121 (Collins); T. 2 at 139-140 (Welch).

Development of Renewable Energy

131. The Joint Petitioners contend that approval of the Transaction will encourage the development of renewable resources.

132. IPL projects that a portion of the proceeds from the sale will be reinvested in renewable resources, specifically that it will use the proceeds of the Transaction to invest at least \$200 million to develop a minimum 100 MW of new wind generation.¹³⁷ As a public utility, IPL has an obligation to develop renewable resources regardless of whether the Transaction is approved.¹³⁸ The Joint Petitioners did not offer a comparison of investment to support renewable energy with and without the Transaction.

133. The Department takes issue with the Joint Petitioners' claim that ITC Midwest will do a better job of investing in transmission facilities that will facilitate renewable resources than IPL would if the Transaction were not approved. ITC Midwest has represented that its Tariff Sheets, approved by FERC for interconnection in Michigan, allow ITC Midwest to pay 100% (instead of 50%) of all transmission interconnection costs associated with interconnecting any generator, including renewables, and it will seek the same approval for Iowa, Minnesota and Illinois. It asserts that this will encourage development of new generation. The Department is concerned about ITC Midwest's commitment to extend the benefits to Minnesota, but it is also concerned that ITC Midwest's proposal is inferior to the interconnection proposal being developed by MISO. In particular, the Department prefers MISO's allocation of costs for upgrades between generators and transmission users based on a broad cost-sharing mechanism.

134. To counter the Department's concerns, ITC Midwest agreed at hearing that it would offer Minnesota customers the option of taking service either under the MISO tariff or the FERC-approved ITC Midwest tariff.¹³⁹

135. If the MISO proposal takes effect, IPL would have a greater incentive to invest than it does currently, and its investment would be at a lower cost to ratepayers than similar investment by ITC Midwest because of its lower rate structure.¹⁴⁰

136. Minnesota transmission operators are required to file information on "transmission upgrades to support development of renewable energy resources required to meet objectives under section 216B.1691 [the Renewable Energy

¹³⁷ Ex. 6 at 9, 19 (Larsen Direct).

¹³⁸ Minn. Stat. § 216B.1691.

¹³⁹ T. 2 at 102-103 (Welch).

¹⁴⁰ Ex. 43 at 16, NAC-8 (Campbell Surrebuttal).

Objectives].”¹⁴¹ If the Transaction is approved, ITC Midwest will bear this responsibility; if the Transaction is denied, IPL must file the required information.

137. The Joint Petitioners failed to show that the Transaction will facilitate the development of renewable energy.

Energy Transfer Within and Between States

138. The Joint Petitioners contend that the Transaction will improve energy transfer within and between the states. It asserts that the Department’s focus on the Transaction’s impact on Minnesota is too narrow. Furthermore, the Joint Petitioners contend that the clear trend at MISO and FERC is to encourage independent regional system operation and independent ownership of transmission assets that are more market-based. The governing statute allows for the transfer of ownership of transmission assets to a FERC-regulated company. Although the provision does not require approval of such sales, it demonstrates the Legislature’s recognition of a shift to more regionally or nationally-based regulation of the transmission system. Whether the Commission favors independent ownership is a policy decision.

139. The Joint Petitioners did not offer any specific plans that would facilitate energy transfer.

140. The Joint Petitioners failed to show that the Transaction will facilitate energy transfer within and between states.

Summary of the Effect of the Transaction on the Development of Infrastructure

141. The Joint Petitioners claim that ITC Midwest’s position as a transmission-only company and its parent company’s record as an aggressive investor in transmission are evidence that the Transaction will facilitate the development of transmission infrastructure. Although there is no reason to question the sincerity of their claim, there was no evidence of concrete plans for investment that will improve reliability, encourage the development of renewable energy or facilitate energy transfer in Minnesota.

“Impacts Minnesota retail rates”

142. The parties disputed the appropriate way to determine whether the Minnesota ratepayers would be adversely affected by the Transaction. The Joint Petitioners were not confident that a cost-benefit analysis would be useful because of the rapidly changing regulation and pricing of the transmission industry. They contend that ITC Midwest is committed to investing in transmission infrastructure at a higher level than IPL will invest. New investment will lower the cost of power in IPL’s service territory and the energy cost savings

¹⁴¹ Minn. Stat. § 216B.2425, subd. 7.

passed on to IPL's customers will exceed any increase in the higher rates that result from the Transaction.¹⁴² Although the Joint Petitioners concede that those benefits are unquantifiable, they assert that the benefits are still significant and should be considered. Although it is appropriate to consider unquantifiable benefits, it is necessary to evaluate the Transaction's quantifiable costs and benefits.

143. In order to comply with the requirement of the Iowa Administrative Code, a five-year cost benefit analysis was included in the Application. In response to concerns raised in Iowa, the Joint Petitioners also prepared an eight-year cost-benefit analysis incorporating the ATA in lieu of the TA, and a twenty-year cost-benefit analysis based on the same assumptions. The Joint Petitioners maintain that each of the cost-benefit analyses demonstrates that the Transaction will have no negative effect on ratepayers because the difference between the BLRR and the PTRR is covered by the TA or the ATA.

144. In constructing both the five-year and eight-year cost-benefit analyses, the Joint Petitioners applied assumptions that they assert would understate the quantifiable benefits to ratepayers, including:

- a. That ITC Midwest's FERC-approved rate structure will not change over the study period, that is, that the incentives currently allowed by FERC will not change;
- b. That the ratemaking principles that currently govern IPL's transmission rate structure will not change;
- c. That the cost of money remains constant;
- d. That IPL will not experience any cost savings from new investment in Minnesota and Iowa which will be built if the Transaction is approved;
- e. That IPL will file a rate case in 2008 and each year thereafter reflecting higher transmission costs for IPL and its customers;¹⁴³
- f. That there is no regulatory lead time between when IPL incurs higher transmission costs and when those increase are reflected in rates.¹⁴⁴

¹⁴² Ex. 6 at 6 (Larsen Direct); Ex. 14 at 2-4 (Hampsher Rebuttal).

¹⁴³ Because new investment is reflected at a higher cost than what is depreciated, it increases the rate base. When rate base is increasing, the differential between the BLRR and PTRR increases. The TA was set at a level that intended to offset this increasing differential. Ex. 14 at 26 (Hampsher Rebuttal).

¹⁴⁴ Ex. 14 at 26 (Hampsher Rebuttal).

145. The analysis followed traditional ratemaking principles and assumed the same capital budgeting over the first five years of the transaction.¹⁴⁵

146. The Department, OAG/RUD, Energy Cents and the Municipal Coalition challenged the Joint Petitioners' cost-benefit methodology. The challenges may be summarized:

- a. the time periods selected for the cost-benefit analysis were too short;
- b. the \$60 million TA for AFUDC was not a present value and not matched with the associated costs in the five-year analysis;
- c. the cost-of-capital reduction was over-stated;
- d. the claimed Administrative and General (A&G) benefit was overstated; and
- e. the analysis did not properly account for ADIT and ADITC;
- f. 100% of the gain from the sale, the Acquisition Premium, should be returned to ratepayers.

147. Also, the Municipal Coalition challenged the five-year cost-benefit analysis because it did not consider the impact of the Transaction on transmission-only customers.

148. Since the Joint Petitioners disagreed that the Acquisition Premium should not benefit the ratepayers, they did not include it in the cost-benefit analyses. The treatment of the Acquisition Premium will be addressed separately.

Analysis of the Transaction with the TA

149. The Joint Petitioners initially selected a five-year timeframe because the electric utility industry, particularly transmission, is rapidly changing, and it is highly likely that the industry will operate under different assumptions and rules five years from now. Thus, it was difficult for the Joint Petitioners to select assumptions that can be expected to apply for a longer period. Moreover, the rules of the IUB required a five-year cost-benefit analysis.¹⁴⁶

150. The Joint Petitioners also selected a five-year timeframe because they believe that FERC will take over jurisdiction of bundled transmission within

¹⁴⁵ Ex. 12 at 7 (Hampsher Direct); Ex. 13a, Sched. F (Hampsher Direct Exhibits).

¹⁴⁶ Ex. 14 at 4 (Hampsher Rebuttal).

five years.¹⁴⁷ As set forth above, the Joint Petitioners failed to demonstrate that they had a solid basis for that assumption.

151. Although the benefits of ITC Midwest's additional investment and transmission expertise cannot be quantified, the Joint Petitioners are convinced that, beyond the five-year timeframe, the additional benefits will more than offset any additional costs associated with the sale.¹⁴⁸

152. The Department, OAG/RUD, Energy Cents and the Municipal Coalition challenge the selection of the five-year period as the basis for the cost-benefit analysis. It is their view that a longer period will provide a more complete picture of the Transaction costs and benefits to ratepayers.

The AFUDC Offset

153. In particular, they challenge the use of a five-year analysis period that includes the TA because the benefits of the AFUDC offset may extend beyond five years. They argue that the actual customer benefits that are associated with the liability account will not begin until IPL has made the qualifying capital investments that will deplete the value of the liability account and the projects become part of IPL's rate base.¹⁴⁹ Since the actual projects are not known, the AFUDC is not matched against associated costs. Ratepayers would receive the TA only if IPL builds large energy facilities within the five-year timeframe, with enough lead time to allow accumulation of the AFUDC. If the Joint Petitioners' assumptions are correct, the net present value to ratepayers of the AFUDC offset is \$12.5 million.¹⁵⁰

154. Because the average service life of new investment is much longer than five years, a five-year analysis is too short. The higher costs associated with the Transaction would affect current customers in the first few years following the Transaction, but the benefits would not accrue for several years and would benefit future customers.¹⁵¹ To rectify this, the Joint Petitioners could either include \$0 benefit over the first five years of the transaction or look at a longer study period that would capture the full benefit of the \$60 million TA, tied to the useful life of the investments.¹⁵² However, the other parties could not quantify the present value of the future benefits because the projected future investments are not known.

155. Based on its five-year cost benefit analysis without the TA as an offset, the Joint Petitioners estimated that the average residential customer's

¹⁴⁷ Joint Petitioners' Brief at 50-56.

¹⁴⁸ Ex. 11 at 2-3 (Collins Rebuttal).

¹⁴⁹ Ex. 40 at 10 (Johnson Direct); Ex. 28 at 17 (Linxwiler Direct);

¹⁵⁰ T, 2 at 196 (Hampsher).

¹⁵¹ See Ex. 28 at 21 (Linxwiler Direct).

¹⁵² Ex. 28 at 18 (Linxwiler Direct);

monthly bill would increase by 64 cents in 2008 and remain stable for about five or six years.¹⁵³

156. If the cost-benefit analysis with the TA is extended to twenty years, there is a rate impact of negative \$79.1 million.¹⁵⁴ The Joint Petitioners estimate that with a rate impact of negative \$79.1 million, a ratepayer would see a monthly increase of 34 cents on the average residential monthly bill of \$86.42.¹⁵⁵

157. As addressed above, IPL does not have a specific plan with associated timelines for investment that would qualify for AFUDC.¹⁵⁶ However, Section 909 of the American Jobs Creation Act of 2004 allows taxpayers that realize gains from a “qualifying electric transmission transaction” to elect to recognize all or part of the gain over an eight-year period beginning with the year of the transaction so long as the gain is reinvested within four years. The Joint Petitioners expect the Transaction to qualify for this tax treatment.¹⁵⁷

158. Although the tax incentive is not a guarantee that the investment will be made, it is a powerful incentive. IPL’s lead witness in this proceeding testified that IPL intends to invest the proceeds in a minimum of \$600 million in new generation in Minnesota and Iowa over the next seven years (including at least \$200 million in a minimum of 100 megawatts of new wind generation), make capital investments to meet environmental compliance with new air emissions rules, and implement Advanced Metering Infrastructure in the IPL service territory.¹⁵⁸

159. Assuming that the investments are made, it is apparent that it is more appropriate to evaluate the transaction over a period longer than five years. Based on the twenty-year analysis with the TA, there is a significant negative effect on the ratepayers.

160. The Joint Petitioners claim that its opponents fail to assign any value at all to the benefits associated with correcting and improving the transmission system, and the certainty of changes to the transmission industry that will increase costs to the ratepayers, regardless of whether the Transaction is approved.¹⁵⁹ Although unquantifiable benefits may be considered, it is difficult to balance them against a specific dollar value and there is insufficient evidence in the record to do so.

Cost-of-Capital Reduction

¹⁵³ T. 1 at 205 (Hampsher); Ex. 14c, Sched. D (Hampsher Rebuttal Exhibits).

¹⁵⁴ Ex. 14 at 6 (Hampsher Rebuttal); Ex. 40 at 6 (Johnson Direct).

¹⁵⁵ Ex. 14 at 6-7 (Hampsher Rebuttal).

¹⁵⁶ See *also* Ex. 15 at 12 (Bacalao Direct) (Because IPL does not have an alternative short-term use for the proceeds, it is prudent to distribute the special dividend payment to Alliant so that it can be more productively deployed.)

¹⁵⁷ Ex. 1 at 9, citing Pub. L. 108-367, § 909 (2004); 26 U.S.C. § 451 (i).

¹⁵⁸ Ex. 6 at 9, 13, 18-19 (Larsen Direct).

¹⁵⁹ Ex. 14 at 6 (Hampsher Rebuttal).

161. The Department, OAG/RUD, and the Municipal Coalition were also concerned about the cost of capital reduction in the five-year analysis.

162. In its cost-benefit analysis, the Joint Petitioners estimated that IPL's overall cost of capital would be reduced by \$48 million because some of the proceeds from the Transaction would reduce both IPL's short-term debt and the equity component of IPL's capital structure. The Joint Petitioners' exhibit shows that IPL's shift in capital structure would decrease Iowa retail rates and rates overall, but it also shows that the change in capital structure would increase Minnesota rates.¹⁶⁰

163. IPL is proposing to pay down most of its short-term debt, the least costly component of its Minnesota jurisdictional capital structure, and increase its proportional share of more costly long-term debt and preferred stock. Even when partially offset by a reduction in IPL's common equity ratio, the net effect of the capital structure changes is to increase IPL's average cost of capital for Minnesota ratemaking from 8.458% to 8.484%.¹⁶¹

164. IPL's witness acknowledged that the cost-of-capital reduction used in the five-year cost-benefit analysis resulted from IPL's proposed use of net cash proceeds, but it was not a firm commitment to that capital structure.¹⁶²

165. The Municipal Coalition also objected to the five-year cost-benefit analysis because transmission-only customers received no benefit.

Analysis of the Transaction with the ATA

166. The Joint Petitioners offered the ATA to address concerns that IPL's cost-benefit analysis provided either minimal or no benefits to customers over the first five years of the Transaction because of the likely delay in the use of the AFUDC. The Joint Petitioners extended the cost-benefit analysis to eight years, and offered the ATA in lieu of the TA. A portion of the ATA rate discount would be shared with IPL's transmission-only customers. To address the concern that the cost-benefit analysis over-stated the cost-of-capital reduction, IPL committed that, as part of the ATA, IPL would include a common-equity ratio no higher than 50% in its first electric rate filing following the close of the Transaction.

167. Based on its assumptions, the Joint Petitioners estimated a net value of \$15.3 million for ratepayers.¹⁶³

¹⁶⁰ Ex. 13a, Sched. J (Hampsher Direct Exhibits).

¹⁶¹ *Id.*

¹⁶² Ex. 8 at 17 (Larsen Rebuttal).

¹⁶³ Ex. 14c, Sched. E at 1 (Hampsher Rebuttal Exhibits).

168. The opposing parties argue that eight years is too short a time period for the cost benefit analysis, for the same reasons that they assert that five years is too short.¹⁶⁴ In addition, the eight years of analysis covers only the years that the Transaction's effects would be mitigated by the refunds and credits offered under the ATA. Although the refunds and credits will be offered for only eight years, the higher transmission costs will extend much longer.

169. The IUB concluded that there was no single correct time frame for the analysis, but the most credible time frame for analysis of a long-term asset was 10 to 20 years, recognizing that the longer the analysis, the more speculative it becomes.¹⁶⁵

170. At the request of the IUB, the Joint Petitioners provided an additional twenty-year cost-benefit analysis, using the identical assumptions that were used in the eight-year analysis, and applying the ATA.¹⁶⁶ Based on those assumptions, there was a present value cost-benefit to ratepayers of \$6.2 million.¹⁶⁷

Effect of FERC Rates in 2013

171. In its eight-year cost-benefit analysis, the Joint Petitioners assumed that FERC would take over jurisdiction of the transmission portion of IPL's bundled rates by 2013, and IPL would earn the FERC-allowed 12.38% ROE from that date forward. This had the effect of increasing the BLRR in the last three years of the analysis. That is, if the Transaction were not approved and IPL continued to hold the Transmission Assets, IPL assumed that FERC would take control of transmission rates by 2013, allowing IPL an increase from its currently-approved 10.4% ROE to 12.38% ROE, thereby increasing the BLRR.¹⁶⁸ By increasing the BLRR, the difference between the BLRR and the PTRR decreased.

172. The Municipal Coalition's witness estimated that the assumption that the ROE would increase to 12.38% raised the BLRR by about \$10 million per year in the last three years of the eight-year cost benefit analysis, with a cumulative present value of about \$17.8 million. Based on his calculation (obtained by subtracting the \$17.8 million from the Joint Petitioners' calculated net benefit of \$15.3 million), the eight-year analysis would yield a net present-value detriment to ratepayers of \$2.5 million.¹⁶⁹

¹⁶⁴ Ex. 29 at 6-9 (Linxwiler Supplement); Ex. 41 at 4 (Johnson Surrebuttal); Ex. 31 at 14 (Kaml Surrebuttal).

¹⁶⁵ Ex. 8a at 42.

¹⁶⁶ Ex. 55 at 15-16 (Hampsher Responsive Test.)

¹⁶⁷ Ex. 8 at 15 (Larsen Rebuttal); Ex. 14 at 8 (Hampsher Rebuttal); T. 1 at 25 (Larsen); Ex. 14a, CAH-2, Sched. A (Hampsher Rebuttal Exhibits).

¹⁶⁸ Ex. 14 at 7-8 (Hampsher Rebuttal); Ex. 55 at 15-16 (Hampsher Responsive Testimony)

¹⁶⁹ Ex. 29 at 11 (Linxwiler Supplemental).

173. The Joint Petitioners calculate that the ATA produces a positive benefit of \$4.2 million for ratepayers even if the assumption is removed that IPL will earn a higher ROE by 2013. However, it was not able to produce the back-up documentation to support that calculation.¹⁷⁰

174. Like the eight-year analysis, the twenty-year analysis assumed that IPL's ROE for its transmission assets would increase in year six because FERC would assume jurisdiction over transmission pricing by that date.¹⁷¹ The Joint Petitioners' twenty-year analysis, without the higher ROE beginning in 2013, shows a detriment to ratepayers of \$36.85 million, approximately 16 cents per average monthly residential bill.¹⁷²

175. The Joint Petitioners have failed to demonstrate that FERC will take over the transmission portion of bundled rates by 2013. Thus the eight-year (and twenty-year) cost-benefit analyses should be evaluated without the increase to IPL's ROE beginning in 2013.¹⁷³

Cost-of-Capital Reduction

176. In response to criticism of the cost-of-capital reduction in the five-year analysis, as part of the ATA, the Joint Petitioners offered an equity cap: IPL will file for no greater than a 50% common equity capital structure in its first electric retail rate proceeding in Minnesota in which rates are set that reflect the Transaction.¹⁷⁴

177. The eight-year cost-benefit analysis assumes, however, that the 50% cap on IPL's equity ratio will remain in effect through the eight-year period.¹⁷⁵ Assuming that the dollar amount of the reduction remains constant, as IPL makes new investments and increases its total equity, the claimed reduction will have less effect on the common equity ratio. That is, the savings will be diluted by the addition of new capital unless the common equity ratio is maintained. Since IPL's future investments that could affect its Minnesota rate base are not known, it is difficult to project the longer-term effect of the agreement to maintain the 50% common equity capital structure through only one rate case filing. Moreover, Minnesota's recognition of short-term debt (not recognized in the Iowa capital structure) already brings IPL below the 50% equity cap. In Minnesota, the effect of the change in capital structure would be to

¹⁷⁰ T. 2 at 199 (Hampsher); Ex. 55 at 4 (Hampsher Supp. Test.)

¹⁷¹ Ex. 14a, CAH-2, Sched. A and Ex. 14c, CAH-2, Sched. E (Hampsher Rebuttal Exhibits).

¹⁷² Ex. 14 at 7 (Hampsher Rebuttal); Ex. 29 at 19 (Linxwiler Supp.).

¹⁷³ IPL conducted its own decision-making analysis that did not incorporate the assumption that FERC would take jurisdiction by 2013. Confidential Ex. 31 (TRADE SECRET).

¹⁷⁴ Ex. 14 at 17 (Hampsher Rebuttal);

¹⁷⁵ Ex. 14c at Sched. F at 2 (Hampsher Rebuttal Exs.).

increase the common equity portion from 49.754% to 50.000%, and increase the average cost of capital from 8.458% to 8.573%.¹⁷⁶

178. The Municipal Coalition's witness calculated that if the cost-of-capital reduction was removed from the eight-year and twenty-year analyses, the study would yield net detriment to ratepayers.¹⁷⁷

179. The Department is also concerned that, with the sale of its transmission assets, IPL will be a smaller company, with reduced regulated assets. Typically, a decrease in rate base will raise the investment risk and, accordingly, raise the cost of capital. This in turn may lead to higher rates for IPL's ratepayers in future rate cases.¹⁷⁸

180. The OAG/RUD contends that IPL will divest assets that earn a 10.8 percent ROE and redeploy the proceeds in assets with a greater potential for increased return on equity.¹⁷⁹ Although this may occur, the off-setting benefits of such future investments are unknown.

ADIT and ADITC

181. In each cost-benefit analysis, the Joint Petitioners calculated the Total Income Tax Expense for the Transaction as \$133.0 million. It included current tax expense of \$210.1, reduced by \$74.8 million for reversal of Accumulated Deferred Income Taxes (ADIT) related to the difference in related depreciation, and reduced by reversal of ADIT Credit (ADITC) of \$2.23 million.¹⁸⁰

182. IPL has collected the taxes from ratepayers based on the life of the assets. For tax purposes, IPL was allowed to accelerate the depreciation expense taken on the assets even though the depreciation expense in IPL's rates and on its financial books was amortized over a longer time period. The ADIT is a result of the timing difference between tax accounting and accounting for the book value. The ADIT balance reduces the rate base upon which the utility's return is applied. In this way, ratepayers are fairly compensated for taxes paid to the utility, but not yet paid by the utility to the IRS.¹⁸¹

183. The Department, the OAG/RUD and the Municipal Coalition assert that the ADIT should not be used by IPL to offset its tax obligation.¹⁸² Instead, they claim that the ADIT reflects a prepayment of taxes by the ratepayers

¹⁷⁶ *Id.*

¹⁷⁷ Ex. 29 at 21 (Linxwiler Supp.).

¹⁷⁸ Ex. 38 at 14 (Amit Direct).

¹⁷⁹ Initial Brief of the Attorney General at 16.

¹⁸⁰ Ex. 13a at Sched. K (Hampsher Direct Exhibits).

¹⁸¹ Ex. 43 at 24-27 (Campbell Surrebuttal).

¹⁸² See Ex. 42 at 25-26 (Campbell Direct); Ex. 32 at 4-6 (Nelson Surrebuttal).

because of IPL's accelerated depreciation schedule and that the prepayment should be returned to the ratepayers.¹⁸³

184. The Joint Petitioners disagree. It is their view that the ADIT is a "loan" from the government that must be repaid, that the sale is a taxable event, and that tax law would preclude refunding the ADIT to the ratepayers.¹⁸⁴ They cite several Commission decisions where the Commission did not require the seller to refund to ratepayers any part of the ADIT or ADITC.¹⁸⁵

185. The Department argues that the ADIT offset is improper because IPL's tax liability may be offset by other tax losses.¹⁸⁶ It also claims that ITC Midwest's rate base will be higher than IPL's without the ADIT balance as an offset. Since the assets would be in the rate base, ratepayers will pay the taxes twice.¹⁸⁷ The Joint Petitioners disagree with this analysis. The Department's point seems to be that, under ITC Midwest's ownership, the assets will be depreciated again, and the ADIT will accumulate again, and thus, ratepayers will pay the taxes on the same asset twice. However, it is not clear that the ratepayers will be disadvantaged by that re-accumulation so long as there is a corresponding offset to rate base, and so long as the book value that is transferred reflects the depreciated value.

186. The Joint Petitioners acknowledge that the status of the ADITC is in flux, but it maintains that the IRS Code does not allow the ADITC to be returned to customers.¹⁸⁸

187. It is difficult to determine which party correctly interprets the IRS code and whether the offsets are proper. If, in fact, IPL must refund the ADIT to the IRS, and the IRS does not allow the return of the funds to ratepayers, the offset is proper. If the Transaction is approved, it should be conditioned on an accounting by IPL of its ultimate tax obligation, and the effect of the ADIT and ADITC on its obligation. In the event that the amount owing to the government is less than the Joint Petitioners' estimate, the difference should be returned to the ratepayers.

Reduction in A&G costs

188. The Joint Petitioners' cost-benefit analysis includes a reduction to A&G costs of \$3.8 million attributed to the Transaction.¹⁸⁹ IPL did not anticipate that it would reduce its A&G costs in each account as shown, but used the calculation as a method of estimating the magnitude of A&G reductions

¹⁸³ Ex. 28 at 708 (Linxwiler Direct); Ex. 42 at 22-23 (Campbell Direct).

¹⁸⁴ Ex. 14 at 28-30, 32 (Hampsher Rebuttal); Ex. 55 at 14 (Hampsher Supp.).

¹⁸⁵ Brief of Joint Petitioners at f.n. 231, citations omitted.

¹⁸⁶ Ex. 42 at 23 (Campbell Direct).

¹⁸⁷ Ex. 42 at 36 (Campbell Direct).

¹⁸⁸ Ex. 14 at 30-32 (Hampsher Rebuttal); Ex. 55 at 14.

¹⁸⁹ Ex. 13a at Sched. F-1(a) (Hampsher Direct Exhibits);

associated with the Transaction.¹⁹⁰ IPL stated that it did expect some cost reductions, but preferred to look at the reductions from the standpoint of growth potential because IPL is planning to expand its generation, environmental compliance measures and other investments. The expansion will result in an increase in overall A&G costs that will be mitigated by the A&G savings from the Transaction.¹⁹¹ The Department, the OAG/RUD and Municipal Coalition challenged the assumed reduction.

189. To the extent employees provide services on behalf of ITC Midwest in 2008 under the Transition Services Agreement, the A&G expenses associated with those employees will be paid by ITC Midwest.¹⁹² However, the actual A&G savings from the Transaction are difficult to quantify. The Joint Petitioners have used an estimate based on the assumption that 5.23% of its total labor costs are attributable to transmission service.

190. The Department also points out that the cost-benefit analysis failed to show the corresponding increase to ITC Midwest's A&G expenses, although the IPL transmission employees will be offered the opportunity to transfer. Those new costs may increase ITC Midwest's rates, but are not reflected in the cost-benefit analysis.¹⁹³

191. The IUB concluded that the Transaction might reduce IPL's A&G expenses, but the amount was uncertain, and many of the expenses would be taken over by ITC Midwest and included in its revenue requirement. Thus, overall savings to ratepayers were uncertain.¹⁹⁴

192. The Joint Petitioners have failed to show that they have a reasonable basis for allocating \$3.8 million in savings for A&G to the cost-benefit analyses. Decreasing the A&G would increase the negative impact of the TA and ATA on ratepayers.

Higher ROE on Existing Transmission

193. One of the criticisms of the Transaction was that ratepayers would pay a higher ROE for the Transmission Assets under ITC Midwest ownership than it does under IPL ownership. ITC Midwest will earn a higher ROE on the existing assets than IPL is allowed in its revenue requirement. The Department objected that such an increase does not benefit the ratepayers in any way.

194. The Joint Petitioners reply that ITC Midwest's higher rates are "not relevant" because they are fully accounted for in the PTRR in each cost-benefit

¹⁹⁰ Ex. 12 at 13 (Hampsher Direct); Ex. 14 at 22-23 (Hampsher Rebuttal).

¹⁹¹ Ex. 9 at 24 (Collins Direct).

¹⁹² Ex. 9 at 24 (Collins Direct); Ex. 11 at 3-4 (Collins Rebuttal).

¹⁹³ Ex. 41 at 9 (Johnson Surrebuttal).

¹⁹⁴ Ex. 8a at 46.

analysis and offset by the TA or ATA.¹⁹⁵ To the extent that all of the assumptions that the Joint Petitioners have applied to the cost-benefit analyses are correct, including the benefits to ratepayers from the TA and ATA, the Joint Petitioners are essentially arguing that the higher rates are neutralized, and thus not relevant. However, the increases are certainly relevant. If ITC Midwest could not earn a higher ROE and charge higher rates than IPL can charge, the results of the cost-benefit analyses would be dramatically different.

Effect on Transmission-Only Customers

195. In the eight-year analysis, transmission-only customers benefit from a portion of the rate reduction but do not benefit from the rate refund. The cost-benefit analysis does not measure the effect on these customers.¹⁹⁶ The Municipal Coalition's witness estimated that, over eight years, the total adverse impact of the Transaction with the ATA would be \$21.1 million.¹⁹⁷ An increase in rates to transmission-only customers may indirectly affect the retail rates of the wholesale purchasers.

Summary of Cost-Benefit Analyses

196. The five-year cost-benefit analysis fails to tie the AFUDC offset to specific capital investment and is too short to fairly reflect the costs of the TA. The twenty-year cost-benefit analysis with the TA has a negative effect on ratepayers of \$79 million, an increase of approximately 34 cents per month on an average residential customer's bill.

197. The eight-year cost-benefit analysis better aligns increased costs with specific rate refunds and discounts and extends a portion of the ATA to transmission-only customers. The assumption that FERC will assume jurisdiction over retail rates in 2013 is not substantiated. Without that assumption the Joint Petitioners estimate that the benefit to ratepayers is \$4.2 million but failed to provide documentation to support that calculation.

198. The twenty-year cost-benefit analysis with the ATA, without the assumption that FERC will assume jurisdiction over retail rates in 2013, has a negative effect on ratepayers of \$36.8 million, an increase of approximately 16 cents on an average residential customer's bill.

199. The negative effect of the TA and ATA is greater if the A&G savings are removed or reduced.

¹⁹⁵ Ex. 8 at 20-21 (Larsen Rebuttal).

¹⁹⁶ Ex. 29 at 21 (Linxwiler Supp.)

¹⁹⁷ Ex. 29 at 17 (Linxwiler Supp.), derived from Ex. 14c, Sched. E (Hampsher Rebuttal Exhibits).

200. The negative effect of the TA or ATA for Minnesota customers is greater than the effect in Iowa because the TA or ATA will increase the cost-of-capital in Minnesota.

201. Although both the TA and the ATA have a negative effect on Minnesota ratepayers, the negative effect of the ATA is less.

202. As all parties concede, predicting the future costs of service is difficult. Although the cost-benefit analyses show the effect of the Transaction on transmission rates, none of them capture any of the anticipated, unquantifiable, benefits of increased transmission investment, including increased efficiency and less system congestion which may reduce energy cost. Based on its experience in Michigan, ITC Midwest is certain that productivity improvements alone will more than off set any rate increase due to a higher ROE.¹⁹⁸ IPL expects energy cost savings as a result of ITC Midwest's "commitment to build additional infrastructure" to offset any increases that result from ITC Midwest's higher rates.¹⁹⁹ Thus, because of the changing nature of the transmission industry, and the inability to quantify the benefits of future improvements to the transmission system, the Joint Petitioners advocate for limited use of the cost-benefit analyses in this proceeding.²⁰⁰

203. Although there may be unquantifiable benefits, the Joint Petitioners have failed to demonstrate cost savings from investment to offset the negative effect of the Transaction on ratepayers.

204. The IUB concluded that the benefits provided by the TA and the ATA were more accurately termed offsets to cost increases from the Transaction, rather than benefits. It concluded that, of the two, the ATA will provide the most benefit to all customers, as well as providing some benefit to wholesale transmission customers, which the TA did not. It concluded that under the ATA, ratepayers would be "held harmless" for eight years, or possibly longer if IPL delayed filing its next rate case.²⁰¹

205. The IUB found that "[h]aving considered all of the analyses submitted in this record, the Board concludes that the proposed transaction is most likely to have a negative net present value to ratepayers."²⁰² The majority held that the negative net present value would be outweighed by anticipated, unquantified energy savings. It concluded that ITC Midwest was more likely to make the necessary transmission investment to support renewable energy, reduce line losses, provide greater market access, and relieve transmission constraints. The increased costs to ratepayers would be mitigated for at least the

¹⁹⁸ Ex. 25 at 3, JLW-2, Sched. B and C (Welch Rebuttal); T. 2 at 99-100 (Welch).

¹⁹⁹ Ex. 8 at 15 (Larsen Rebuttal).

²⁰⁰ Ex. 14 at 5 (Hampsher Rebuttal).

²⁰¹ Ex. 8a at 44-45.

²⁰² Ex. 8a at 47.

first eight years following the close of the Transaction by the ATA, which it concluded was superior to the TA.²⁰³

206. Although they oppose the Transaction, the OAG/RUD concludes that the TA has greater benefit to the public than the ATA, and the Department and the Municipal Coalition conclude that the ATA has greater benefit to the public than the TA.

“Protects Minnesota ratepayers against the subsidization of wholesale transactions through retail rates”

207. IPL does not currently recover transmission-related investment costs through its Fuel Adjustment Clause.²⁰⁴ At the present time, the capital costs associated with transmission investment, as reflected in the book value of IPL’s Transmission Assets, are included in its rate base. At the time that the Transaction closes, the Transmission Assets will be removed from IPL’s books, but ratepayers will not see the impact of the decrease in rate base until IPL’s next general rate case. No decision has been made about when IPL will file its next rate case.²⁰⁵

208. IPL flows market-related costs and credits for transmission through the Fuel Adjustment Clause, consistent with Commission practices and rules.²⁰⁶

209. ITC Midwest has agreed that it will charge IPL the same transmission rates that are currently in IPL’s Attachment O through calendar year 2008.²⁰⁷

210. Although the record is not entirely clear, it appears that after calendar year 2008, ITC Midwest will charge IPL for transmission service under ITC Midwest’s FERC tariff but IPL’s rates and charges to its retail customers will be based on its current rates until it files its next rate case. At that time, the rate base will be decreased by the book value of the Transmission Assets. IPL must seek the Commission’s approval to recover the cost of transmission services under the FERC-approved rates through an automatic adjustment.²⁰⁸

211. ITC Midwest’s wholesale transmission rates, terms, and conditions of services will be regulated by FERC. As a transmission-only company, ITC Midwest will not engage in purchase or sale of any energy, either for wholesale or retail use. Thus, there can be no subsidization of ITC Midwest’s wholesale transactions through retail rates. The Commission will also retain jurisdiction over IPL’s retail rates and review the rates to assure that no subsidization occurs.

²⁰³ Ex. 8a at 48.

²⁰⁴ Ex. 6 at 23 (Larsen Direct).

²⁰⁵ T. 1 at 210-211 (Hampsher); Ex. 6 at 23 (Larsen Direct); T.1 at 39 (Larsen).

²⁰⁶ Ex. 1 at 27.

²⁰⁷ T. 1 at 210 (Hampsher).

²⁰⁸ See Minn. Stat. § 216B.16, subd. 7c (b).

IPL serves one small wholesale customer in Minnesota, and its wholesale rates are based on the MISO FERC-approved Attachment O ratemaking formula.²⁰⁹

212. The Joint Petitioners have demonstrated that the Transaction will not require Minnesota retail ratepayers to subsidize wholesale transactions.

“Ensures, in the case of operational control of transmission assets, that the state retains jurisdiction over the transferring utility for all aspects of service under this chapter”

213. This criterion applies to a transfer of operation control and has no application to a change of ownership to a company that will be subject to FERC jurisdiction.²¹⁰ The effect of the loss of jurisdiction from change of ownership is fully discussed above.

“Protects Minnesota ratepayers from paying capital costs for transmission assets that have already been recovered”

214. The parties dispute the proper characterization of the acquisition premium and the gain that IPL will receive from the sale. As more fully discussed above, the Joint Petitioners have committed that the ratepayers will not pay any portion of the Acquisition Premium in ITC Midwest’s rates. Going forward, the book value of the Transmission Assets will be deducted from IPL’s rate base and the same amount added into ITC Midwest’s rate base. Thus, ratepayers will not pay capital costs for the Transmission Assets that have already been recovered from them.

Proper Treatment of the Acquisition Premium

215. The parties disagree about whether the ratepayers should benefit from IPL’s receipt of the Acquisition Premium. The Department, OAG/RUD, and Energy Cents contend that the Acquisition Premium should be refunded to ratepayers or used to buy down their rates and should not benefit the shareholders. Their argument is based on the assumption that the value of an asset paid for by the ratepayers has increased, and thus, the ratepayers should benefit.

216. The Joint Petitioners disagree. It is their view that the ratepayers have paid for the cost of capital used to invest in the Transmission Assets at an appropriate rate, and that the ratepayers have received the full benefit of the rate paid. The Acquisition Premium was not paid because of any increase in the book value of the assets but because the buyer, ITC Midwest, can earn more from the same book value than the seller, IPL, can earn.

²⁰⁹ Ex. 12 at 16 (Hampsher Direct).

²¹⁰ Joint Petitioners’ Initial Brief at 41; OAG/RUD Reply Brief at 43.

217. In determining the appropriate treatment of the gain, one must balance two interests. The investors have an interest in protecting the integrity of their investment and are entitled to a fair opportunity for a reasonable return on that investment. The ratepayers are entitled to government protection against unreasonable charges for the monopolistic service that they receive.²¹¹

218. Typically, when there is a gain on a depreciable asset, that increase is accounted for in a way that benefits the ratepayers because the investors have received a fair rate on their initial investment of capital, and to compensate them further would provide a higher rate of return than had been deemed just and reasonable. Also, typically the risk of loss of the asset falls on the consumer. Thus, if through loss, damage or obsolescence, additional investment is required, the investors are entitled to recoup the full value of their investment and the consumers must pay more.²¹²

219. However, there are instances, and this is one, where the typical concepts of gain and loss on an asset do not clearly apply. Here, the book value of the assets will remain the same in the hands of the buyer as they have in the seller. The Acquisition Premium will not be reflected in the cost of the Transaction Assets as that cost carries over to ITC Midwest's rate base.

220. ITC Midwest will pay IPL the Acquisition Premium, not because the fair market value of the asset has increased, but because the buyer has an opportunity to earn a higher ROE on that same asset. Thus, it is more appropriate to examine how the economic benefit follows the economic burden. If IPL's approved ROE rose, as set through its Minnesota rates, the ratepayers would pay more, and correspondingly, the investors would have the opportunity to earn more. The converse is also true. If IPL were granted a lower ROE, the ratepayers would pay less, and the investors would earn less.

221. In this case, IPL is receiving from ITC Midwest the negotiated value placed on the right to obtain a higher ROE and more favorable cost of capital. It is the investor and not the ratepayer who has the opportunity to earn the higher return on investment.²¹³

222. The Department sets forth three factors that should be considered in determining if the Acquisition Premium should be paid to the ratepayers.

- a. Whether the regulated asset was in the rate base, earning a return;

²¹¹ *Democratic Central Committee v. Washington Metro. Area Transit Comm'n*, 485 F.2d 786, 806 (D.C. Cir. 1973).

²¹² *Id.* at 806-808.

²¹³ *Accord, Missouri ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n*, 262 U.S. 276, 290, 43 S.Ct. 544, 547 (1923)

b. Whether ratepayers were paying for the costs of the asset such as depreciation, taxes, operation and maintenance; and

c. Whether as a result of the transaction, the ratepayers are made whole.

223. Here, the regulated assets were in the rate base, earning a return, and the ratepayers were paying the associated costs. Under the terms of the Transaction, the book value of the Transmission Assets is being transferred and its value will not be inflated in the hands of the buyer. The ratepayers did not create the new value that supports the Acquisition Premium: the opportunity to earn a higher rate of return and to benefit from a different capital structure. If IPL had the opportunity to earn a higher ROE, it would not benefit the ratepayers; it would result in higher rates charged to them.

224. The Joint Petitioners argue that the Acquisition Premium should not be treated as a gain because the Transaction involves the sale of an “entire system.” That characterization of the Transaction is not determinative. The amount of the assets that are sold is not critical, it is whether the premium paid is attributable to the increase in the book value of the assets or to some other factor.

225. The Minnesota Supreme Court addressed a similar question in deciding that ratepayers should not benefit from the good will that a utility had created. It stated that the cost of furnishing utility service typically includes: “labor, materials and supplies, taxes, insurance, and depreciation,” and may also include the financing cost of money invested in the utility’s plant and equipment.²¹⁴ It concluded that “good will” was not a “cost” of rendering service and the costs associated with it had not been borne by ratepayers. The fact that the company had value that exceeded its book value did not inure to the ratepayers.²¹⁵

226. In her dissent, Justice Gardebring asked, if the ratepayers had not paid the costs that resulted in the good will, who did? The ratepayers had funded the salaries, training and other activities that led to establishing favorable name recognition and that name benefited the associated unregulated businesses that used the name.²¹⁶ Thus, she concluded that the value of the good will used by the utility’s unregulated businesses should be imputed to the utility.

227. The facts here present a stronger case that the Acquisition Premium should not be returned to the ratepayers because there is no reasonable argument that the costs paid by the ratepayers have led to the opportunity for a higher rate of return by ITC Midwest. In this case, the opportunity has been created by the development of federal energy policy that

²¹⁴ *Minnegasco v. Public Utilities Comm’n*, 549 N.W.2d 904, 909 (1996)(citations omitted).

²¹⁵ *Id.*

²¹⁶ *Id.* at 911-912 (Gardebring, concurring in part, dissenting in party).

allows greater incentives to independent transmission companies than Minnesota has allowed to its integrated utilities.

228. The purchase of the right to receive a higher ROE distinguishes this case from the cases cited by the Department, Energy Cents and OAG/RUD that awarded the ratepayers the benefit of the gain on the sale of depreciable assets. In those cases, the gain was tied to the book value of the assets, the ratepayers had borne the burden of a decrease in that book value, and it was equitable to allow them to share in the increased value.²¹⁷

229. Allowing IPL to retain the Acquisition Premium rather than distribute it to the ratepayers is consistent with the Commission's prior decisions that required that the buyer exclude the Acquisition Premium from its rates, but did not require the seller to return the Acquisition Premium to the ratepayers.²¹⁸

230. The OAG/RUD argues that in the prior cases where the Commission has not required the acquisition premium to be returned to the ratepayers, the Commission either maintained jurisdiction over the company that purchased the assets, thus assuring that the Commission would continue to monitor and protect Minnesota ratepayers, or the selling company would no longer be doing business in Minnesota, thus protecting Minnesota ratepayers from being affected by the gain.²¹⁹ These distinctions are not compelling. In this case, IPL will continue to be under Minnesota jurisdiction, and the Commission can assure that the gain that IPL receives is accounted for in a way that does not adversely affect ratepayers. If it is assumed that IPL will invest in new generation and system improvements, the ratepayers will pay for those investments through the ordinary rate-setting mechanisms tied to such investments, and only to the extent that those investments are tied to service. The receipt of the gain should have no direct effect on the ratepayers, and the Commission can assure that it does not.

231. The OAG/RUD also maintains that, in cases where the Commission allowed the seller to keep the acquisition premium, the Commission retained jurisdiction over the buyer and could assure that ratepayers were protected from rate increases tied to the expense. However, in this case, the rates charged by ITC Midwest will not include the Acquisition Premium.

232. The OAG/RUD's argument that ratepayers are unaffected when the seller stops doing business in the state is illogical.²²⁰ In that case, it's true that the gain has been entirely removed from any possible detriment to ratepayers, but it is equally true that the ratepayers did not receive any benefit from it.

²¹⁷ See Ex. 42 at 25 (Campbell Direct) citations omitted.

²¹⁸ See e.g. Order Approving Sale Subject to Conditions, *In the Matter of the Sale of Aquila, Inc.'s Minnesota Assets to Minnesota Energy Resources Corp.*, Docket No. G-007,011/M-05-1676 (June 1, 2006).

²¹⁹ Initial Brief of the Attorney General at 43, and cases cited therein.

²²⁰ Initial Brief of the Attorney General at 43.

233. The OAG/RUD witness testified that the value of the rate-base-regulated utility asset “cannot change simply because the ownership changes,” and he correctly notes that the useful life of the assets has not changed by virtue of the sale. However, he concludes that the acquisition premium reflects the under depreciated book value plus the salvage value of the plant. That is factually incorrect.²²¹ The book value of the assets will remain the same following the Transaction and will be transferred to ITC Midwest. The Acquisition Premium will not affect the book value; instead, it reflects ITC Midwest’s opportunity to benefit from a higher ROE and different capital structure. IPL’s sale of its Duane Arnold facility, and the accounting for the gain in that transaction, is similarly distinguishable.²²²

234. The OAG/RUD acknowledges this: “In this case, the increase in value is clearly created by a change in the regulation of the assets as the authorized capital structure and cost of capital components are changed by the transaction. The fact that IPL is selling these particular assets does not change their useful life.”²²³

235. It is incorrect to conclude, as the OAG/RUD does, that the Acquisition Premium reflects the under depreciated book value plus the salvage value of the plant. There will be no change in the book value; it is the opportunity to earn a return on that book value that will change. For this reason, the Transaction differs from the sale addressed by the District of Columbia Circuit in *Democratic Central Committee v. Washington Metropolitan Area Transit Commission*,²²⁴ which involved land that had appreciated in value.

236. The cases relied upon by the Department and Energy Cents that required the gain to be recorded back to ratepayers through a reduction in net plant, by crediting the depreciation reserve or as an offset to an outstanding liability, are similarly distinguishable. Ratepayers have not been charged for the planning, construction or maintenance of the investment that generated the Acquisition Premium.²²⁵

237. It may appear that the investors have obtained more from their initial investment than they were entitled to receive. The investors provided capital that was invested in infrastructure and they were awarded the opportunity to earn a certain rate of return on that investment through approved rates. If one looks at the Acquisition Premium as a return on the investment in that

²²¹ Ex. 31 at 9 (Kaml Surrebuttal).

²²² Initial Brief of the Attorney General at 48, citing *In the Matter of the Joint Application for Approval and Consent of Interstate Power and Light Company and FPL Energy Duane Arnold LLC*, Docket No. E001/PA-05-1272, IPL reply comments, December 1, 2005.

²²³ Initial Brief of Attorney General at 51.

²²⁴ 485 F.2d 786 (D.C. Cir. 1973).

²²⁵ Ex. 42 at 25 (Campbell Direct); Initial Brief of Energy Cents at 22; *In the Matter of Minnesota Power’s Petition for Review of an Agreement Between Minnesota Power and American Transmission Co.*, Docket No. E-015/PA-04-2020 (Dec. 2, 2005) at 5.

infrastructure, it is clear that the investors have received a return that significantly exceeds the awarded ROE. If the book value of the assets increased, that analysis would be correct and the ratepayers, not the investors, should benefit from the gain. But in this instance, the Acquisition Premium was paid for the right to earn a higher ROE in the future.

238. This analysis is consistent with the obvious point made by the Joint Petitioners. If the Acquisition Premium is paid to the ratepayers, the Transaction will not go forward. The benefit to IPL from the sale is that it will receive funds that can be used for new investment and allow it to focus on the generation and distribution aspects of its business. If the investors can not keep the Acquisition Premium, the opportunity presented by the Transaction will not be available, and they will not receive the benefit of selling the opportunity to earn a higher rate of return.

239. If the Acquisition Premium were paid to the ratepayers because it is considered to be an increase in the book value of the Transmission Assets, the net book value would rise for ITC Midwest, and it would be able to include the Acquisition Premium in its rate base. If the ratepayers received the Acquisition Premium, and ITC Midwest was also prohibited from including the premium in the rate base, the ratepayers would benefit twice from the Transaction.²²⁶

240. Although it could be argued that IPL does not have the opportunity to earn a higher rate of return on the same Transmission Assets, that fact does not change this analysis. Because ITC Midwest has a greater opportunity to benefit from the asset it is willing to pay the Acquisition Premium. Because ITC Midwest is willing to pay for that opportunity, IPL is willing to sell it.

241. The Joint Petitioners have demonstrated that the Acquisition Premium should not be returned to the ratepayers and that Minnesota ratepayers are not paying capital costs for transmission assets that have already been recovered.

Iowa Utility Board's Approval of Transaction

242. On September 20, 2007, the IUB issued an order allowing the Transaction to proceed.²²⁷ It determined that, pursuant to Iowa Code § 476.77, the parties' joint application for reorganization was not disapproved, with the

²²⁶ The Joint Petitioners claim that this would be two bites of the apple. However, that analogy is incorrect. The ratepayers would be getting a bite from two different apples: through receipt of the Acquisition Premium, a benefit taken from IPL shareholders, and through reduced rates, a benefit taken from ITC Midwest's shareholders.

²²⁷ Ex. 8a (*Interstate Power and Light Co. and ITC Midwest LLC*, IUB Docket No. SPU-07-11, Order Terminating Docket and Recommending Delineation of Transmission and Local Distribution Facilities (Sept. 20, 2007)).

dissent of the Chair.²²⁸ The IUB selected the ATA over the TA as part of its approval. The IUB concluded:

There are costs to this reorganization, but these increased costs to all IPL transmission system users, both retail and wholesale, will be mitigated for at least eight years following the transaction's closing under the ATA. The benefits of the transaction are substantial. Transmission investment crucial to the continued development of Iowa's renewable industry, including wind generation, will be made. One such investment is IPL's planned 100 MW of wind generation, to be on line by 2010. ITC Midwest is better positioned than IPL to move forward on new transmission projects, in part because ITC Midwest is a transmission-only company and will not have to compete for investment with other business units, such as generation and distribution. Congestion will be reduced because ITC Midwest will pursue economic projects that IPL has not. Reduced congestion and a more robust transmission system will stimulate the wholesale market, which should bring prices down (or mitigate increases) for all electricity users. Freeing up IPL's capital for generation and other investment should help to reduce IPL's reliance on purchased power.²²⁹

243. The IUB stated that one of the most significant benefits is that the transmission system will be under the control of an independent operator that will have no motive to discriminate in favor of or against any transmission user, which should benefit small producers, renewable energy, and other wholesale users of the transmission system. In its view, "[t]he ratepayer and public benefits of this transaction far outweigh the upfront costs to Iowa ratepayers."²³⁰

244. The IUB also stated that: "any material change in the proposed transaction sale" resulting from conditions imposed by another regulatory authority "may change the basis for the conclusions the IUB has reached and may require submission of a revised proposal."²³¹

245. Because of this reservation, the Joint Petitioners have taken the position that if the Commission places any conditions on the transaction that would benefit Minnesota ratepayers more than the Iowa Order benefits Iowa ratepayers, or differed from the terms of the Iowa Order in any significant way, the Transaction will not go forward.²³² However, notwithstanding the IUB's

²²⁸ The applicable statute states: "[a] reorganization shall not take place if the board disapproves." Iowa Code § 476.77.

²²⁹ Ex. 8a at 82.

²³⁰ Ex. 8a at 82.

²³¹ Ex. 8a at 83.

²³² T. 1 at 31 (Larsen).

selection of the ATA as the more favorable option, both the TA and ATA remain available for the Minnesota Commission to select.²³³

246. The Department did not find the IUB Order persuasive. First, it argued that MISO is already an independent operator of IPL's transmission assets, mitigating the significance of ITC Midwest's status as a transmission-only company.²³⁴ The IUB acknowledged that IPL no longer has any ability to discriminate in favor of its own load. However, the IUB also found that a transmission-only company had greater incentive to build transmission that would serve regional needs, beyond IPL's incentive to serve its own retail customers.²³⁵

247. Second, the Department pointed out that, although Minnesota ratepayers were a small percentage of IPL's generation or load, the Minnesota IPL transmission system is an important integrated part of Minnesota's transmission grid.²³⁶ For example, Xcel Energy's transmission costs related to its use of IPL's pricing zone transmission service would rise an estimated 9.7%, which Xcel would include in its next rate case.²³⁷ Thus, although a large percentage of the Transmission Assets are in Iowa, the smaller percentage in Minnesota is not insignificant. The high degree of integration supports the Department's view that the Commission should take a close look at the effect of the Transaction in Minnesota. The Joint Petitioners respond that the high degree of integration supports its view that the Transaction will benefit the transmission system.

248. Third, the Department contended that the Transaction does not serve the public interest, and the Iowa statute contains no such standard. Further, the Department contends that, under Minnesota law, the benefit of the doubt must go to the ratepayers.²³⁸ Although the Iowa statute may be different, it is clear that the majority of the Iowa Board concluded that the Transaction would benefit the public. As quoted above, it concluded that the benefits outweighed the upfront costs to the ratepayers.²³⁹

249. Fourth, the Department did not believe that the detrimental loss of the Minnesota Commission's jurisdiction over the Transmission Assets was outweighed by the public benefit.²⁴⁰ The loss of jurisdiction and its likely impact is fully addressed above.

250. Fifth, the Department is concerned that Iowa approved the Transaction without a record of solid, credible facts and assumptions that show

²³³ T. 1 at 195-196 (Hampsher). See also Joint Petitioners' Reply Brief at 34.

²³⁴ Department's Reply Brief at 10.

²³⁵ Ex. 8a at 62.

²³⁶ Department's Reply Brief at 10, citations omitted.

²³⁷ Ex. 38, HKH-02 (Ham Direct).

²³⁸ Department's Reply Brief at 11; Minn. Stat. § 216B.03.

²³⁹ See also Ex. 8a at 39 (citations omitted), stating that its required analysis must consider the effect on the public interest, defined to mean the public at large, distinct from the ratepayers.

²⁴⁰ Department's Reply Brief at 11-12.

that the ratepayers were held harmless. It fears that, should the Commission also approve the Transaction based on this record, it will set a poor precedent for review of similar petitions in the future.²⁴¹ No doubt the Commission will conduct an independent review of the record to determine if approval of the Transaction is warranted.

251. Sixth, the Department contends that the Joint Petitioners have not adequately addressed the significant effect that the Transaction will have on transmission service across southern Minnesota, and the IUB Order does not purport to do so. IPL's existing high voltage transmission line across southern Minnesota is a major transmitter of wind generation from Minnesota's best wind resource area. Although IPL customers may benefit from the TA or ATA, sale of the Minnesota line will likely affect the price the other generators that use the IPL transmission line will pay for transmission service. Moreover, unlike the record in Iowa, there is no evidence that sale of the line will encourage or enhance renewable energy development in Minnesota, and, in fact, ITC Midwest's proposal may be inferior to MISO's plans.²⁴² The Department also asserts that ITC Midwest's higher transmission costs may actually discourage renewable energy development by other Minnesota public utilities, including municipal utilities.²⁴³

252. The Joint Petitioners point out that the IUB determined that the Transaction would benefit the development of renewable energy in Iowa, reduce line losses and relieve transmission constraints, with costs offset by the ATA for at least eight years, and encourage transmission development crucial to Iowa's renewable energy industry.²⁴⁴

253. Ultimately, the Department challenges the Iowa Board's decision because it is not convinced that the benefits of the Transaction will outweigh the costs to the ratepayers.

254. The OAG/RUD challenges the impartiality of the IUB's decision, claiming conflicts of interest between the decision makers and their staff with Joint Petitioners or their counsel. Such a collateral challenge goes beyond the scope of this proceeding.

255. The citations to exhibits in the Findings are not intended to indicate that all evidentiary support in the record has been cited.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

²⁴¹ Department's Reply Brief at 12-13.

²⁴² Department's Reply Brief at 13-14; T. 3 at 124-126 (Ham), citing enactment of Minn. Stat. § 216C.05, setting the State's energy policy goals.

²⁴³ Department's Reply Brief at 14.

²⁴⁴ Joint Petitioners' Reply brief at 30-31, citing Ex. 8a at 48 and 81.

CONCLUSIONS

1. The Public Utilities Commission and Administrative Law Judge have jurisdiction to consider the Joint Petitioners' Petition for Approval of Transfer of Transmission Assets.²⁴⁵

2. No public utility shall sell any plant as an operating unit or system in Minnesota for total consideration in excess of \$100,000 without being authorized to do so by the Commission.²⁴⁶

3. IPL is a public utility that is seeking to sell its transmission system for consideration in excess of \$100,000. The sale is subject to the Commission's approval.

4. The Commission shall give its consent and approval by order in writing if the proposed sale is "consistent with the public interest."²⁴⁷ In assessing the public interest, the commission shall evaluate several statutory criteria.²⁴⁸

5. The public utility seeking approval of the transaction bears the burden of proof that the statutory criteria are met.²⁴⁹

6. The Joint Petitioners have failed to show by a preponderance of the evidence that the Transaction facilitates the development of transmission infrastructure necessary to ensure reliability, encourage the development of renewable resources, and accommodate energy transfers within and between the states.

7. The Joint Petitioners have shown by a preponderance of the evidence that the Transaction protects Minnesota ratepayers against the subsidization of wholesale transactions through retail rates;

8. The Joint Petitioners have shown by a preponderance of the evidence that the Transaction does not involve transfer of operational control of transmission assets.

9. The Joint Petitioners have failed to show by a preponderance of the evidence that the Transaction will not have a negative impact on Minnesota retail rates.

²⁴⁵ Minn. Stat. §§ 216B.16, subd. 7c, 216B.50 and 14.50.

²⁴⁶ Minn. Stat. § 216B.50, subd. 1.

²⁴⁷ Minn. Stat. §§ 216B.50, subd. 1, 216B.16, subd. 7c.

²⁴⁸ Minn. Stat. § 216B.16, subd. 7c.

²⁴⁹ See Minn. Stat. § 216B.16, subd. 4; Minn. R. 1400.7300, subd. 5; *In re Northwestern Bell Tele. Co.*, 365 N.W.2d 341, 342 (Minn. App. 1985).

10. The Joint Petitioners have shown by a preponderance of the evidence that the Transaction protects Minnesota ratepayers from paying capital costs for transmission assets that have already been recovered.

11. The Joint Petitioners have failed to show that the loss of jurisdiction over the Transmission Assets is outweighed by the benefits of the Transaction.

12. The Joint Petitioners have failed to show by a preponderance of the evidence that the Transaction is in the public interest.

13. If the Commission approves the Transaction, it is in the public interest to condition approval upon the Joint Petitioners' agreement to meet the commitments made in the course of the Proceeding, specifically:

a. That ITC Midwest will give the Commission access to its books and records;

b. That ITC Midwest will file annual financial information with the Commission;

c. That ITC Midwest will comply with a directive from the Commission to invest in a project that the Commission has determined is necessary to ensure safe, adequate, efficient and reliable service;

d. That ITC Midwest will resolve the system constraints in the IPL service territory as reported by MISO.

e. That ITC Midwest will honor IPL's contractual agreements related to the Transmission Assets;

f. That ITC Midwest forego recovery through rates of its Transaction costs, up to \$15 million;

g. That ITC Midwest will offer Minnesota customers a choice of taking service under the MISO tariff or the FERC-approved ITC Midwest tariff;

14. If the Commission approves the Transaction with the TA, IPL shall place \$60 million in a regulatory liability account solely to offset AFUDC on new generation built for the benefit of IPL's customers.

15. If the Commission approves the Transaction with the ATA, approval shall include:

a. specific approval of a regulatory liability account of approximately \$89 million for the sole purpose of paying IPL's

refund obligation and not to reduce the rate base in any general rate proceeding;

b. approval that the interest accrued on the regulatory liability account will not be used for any purpose other than the payment of the refund; and

c. tax savings from the annual refund obligation under the ATA will be excluded from IPL's revenue requirement in future rate proceedings.

16. If the Commission approves the Transaction, IPL shall file with the Commission an accounting of taxes paid on the Transaction, including the final accounting for ADIT and ADITC.

17. Any of the Findings more properly designated Conclusions are hereby adopted as such.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

1. That the Commission disapprove the Transaction because it is not consistent with the public interest;

2. That access to Exhibit 31a, created by IPL, shall be limited to the Commission and Commission Staff, the Office of Administrative Hearings, the Department of Commerce, the Office of the Attorney General-Residential and Small Business Utilities Division, Energy Cents Coalition and the Municipal Coalition. Specifically, it shall not be released to any other parties, including ITC Midwest, notwithstanding the terms of the Protective Agreement dated July 5, 2007. The Protective Order dated July 5, 2007, shall remain in effect; and

3. That, if the Commission approves the Transaction, it shall require the Joint Petitioners to meet the commitments made in the course of the Proceeding.

Dated: November 16, 2007

/s/ Beverly Jones Heydinger
Beverly Jones Heydinger
Administrative Law Judge

Reported: Shaddix & Assoc., 3 volumes

MEMORANDUM

By virtue of its background and experience, the Commission may have information about the Minnesota transmission system that will assist its evaluation of the Joint Petitioners' assertions about the unquantifiable benefits of the Transaction.²⁵⁰ Although the Joint Petitioners presented general information about the need for transmission infrastructure in the Midwest region, there was little evidence of constraints or limitations on transmission in Minnesota, or plans by other companies that may address them. It is appropriate for the Commission to consider whether the unquantifiable benefits outweigh the increase in rates and the Commission's loss of jurisdiction over the Transmission Assets.

B. J. H.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Minnesota Public Utilities Commission and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed by the date set by the Commission with the Executive Secretary, Minnesota Public Utilities Commission, 350 Metro Square, 121 - 7th Place East, St. Paul, Minnesota 55101, or electronically filed.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if it is held.

The Commission may accept or reject the Administrative Law Judge's recommendation and this recommendation has no legal effect unless expressly adopted by the Commission as its final order.

²⁵⁰ *Reserve Mining Co.*, 256 N.W.2d 808, 824. Minn. 1977.