BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
Saint Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
Saint Paul, Minnesota 55101-2147

In the Matter of the Application of Minnesota Power for a Certificate of Need and a High Voltage Transmission Line (HVTL) Route Permit for the HVDC Modernization Project in Hermantown, St. Louis County

OAH Docket No. 5-2500-39600
MPUC Docket Nos. E-015/CN-22-607 and E-015/TL-22-611

REPLY TO MINNESOTA POWER MOTION TO TAKE ADMINISTRATIVE NOTICE

June 6, 2024

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American Transmission Company LLC by and through its corporate manager ATC Management Inc. ("ATC") files this Reply to the May 22, 2024 Motion of Minnesota Power ("MP") to Take Administrative Notice ("Motion"). In its Motion, MP requests that the Administrative Law Judge ("ALJ") and Minnesota Public Utilities Commission ("Commission") take administrative notice of an action taken by the Federal Energy Regulatory Commission ("FERC") on May 8, 2024 in Docket No. ER24-1440-000 accepting for filing certain Facilities Construction Agreements ("FCAs") entered into by the Midcontinent Independent System Operative, Inc. ("MISO") and MP ("FERC Acceptance"). The Motion should be denied because taking administrative notice of the FERC Acceptance is both procedurally improper and entirely unnecessary because, by its own terms, the FERC Acceptance has no probative value whatsoever.

First, the Motion should be denied because ATC has not been afforded an opportunity to contest the facts underlying the FCAs, the FERC Acceptance of which MP asks the ALJ and Commission to take official notice. An Administrative Law Judge "may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed." Minn. R. 1400.7300, subp. 4. Likewise, "[a]gencies may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge." Minn. Stat. § 14.60, subd. 4. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Minn. R. Evid. 201(b).

Here, the subject matter of the FCAs are not "generally known" and ATC has not had the opportunity to contest any potentially relevant facts underlying the FCAs. Consequently, official notice of the FERC Acceptance may not be taken unless and until ATC is permitted the opportunity to present its own relevant, contradicting facts and evidence. As discussed further below, such a process is unnecessary given the immateriality of the FERC Acceptance and would needlessly delay this contested case proceeding. *See In Re Quantification of Env't Costs Pursuant to L. of Minnesota 1993, Chapter 356, Section 3*, No. E-999/CI-93-583, 1997 WL 34658085 (Jan. 3, 1997) (denying request to take administrative notice of certain facts because, among other reasons, "the time involved in allowing parties to contest the facts to be noticed would interrupt the deliberation phase and would unnecessarily prolong an already extensive proceeding.").

Second, like all evidence admitted into the record, the judicially cognizable facts sought to be admitted must possess probative value, and "evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded." Minn. R. 1400.7300, subp. 1. Here, even if taking administrative notice of the FERC Acceptance were procedurally proper, the Motion should nevertheless be denied because the FERC Acceptance is wholly immaterial to the sole question before the Commission: which of two interconnection alternatives should be utilized as part of the HVDC Modernization Project?

Indeed, the FERC Acceptance—which merely accepts the FCAs for filing and nothing more—expressly states that it "does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed document(s)" and is not "deemed as recognition of any

claimed contractual right or obligation affecting or relating to such service or rate." Moreover, the FERC Acceptance is, again by its own express terms, "without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicant(s)."

Simply put, the FERC Acceptance at issue in the Motion is immaterial to this proceeding and has no probative or evidentiary value. Each party has already advanced their respective, substantive arguments related to the FCAs and transmission service request ("TSR") process and the record is complete in that regard. The FERC Acceptance is immaterial and the Motion should be denied. In the alternative, the sole judicially cognizable fact that should be taken notice of is the fact that FERC accepted the FCAs for filing.

Dated: June 6, 2024

WINTHROP & WEINSTINE, P.A.

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