Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: November 24, 2014..**Agenda Item **12**

Companies:	ITC Midwest LLC and Interstate Power & Light
Docket No.	ET-6675/CI-11-1178 In the Matter of ITC Midwest LLC Compliance with Commitments in Docket E001/PA-07-540 to Improve the Transmission System and Relieve Constraints Docket No. E-001/PA-07-540 In the Matter of the Joint Petition for Approval of Transfer of Transmission Assets of Interstate Power and Light Company to ITC Midwest LLC
Issue(s):	Whether the Commission should the find that the Company has met its construction commitments; Whether the Commission should confirm that the financial penalties provided for in the Commission's February 7, 2008 Order do not apply; and Whether the Commission should take any other actions?
Staff:	Andrew Bahn 651-201-2249

Relevant Documents

Order Approving Transfer of Transmission Assets, E001-/PA-07-540...............................February 7, 2008
Initial Filing by ITC Midwest, Status Report, ET6675/CI-11-1178.................................December 2, 2011
Staff Briefing Papers— May 3, 2012 Agenda Meeting ....April 23, 2012
Order Requiring Filings, E001-/PA-07-540, ET6675/CI-11-1178..May 15, 2012
ITC Compliance Filing ....June 28, 2012
ITC Compliance Filing ....August 30, 2012
ITC Compliance Filing .... October 23, 2012
ITC Compliance Filing ....December 28, 2012
ITC Compliance Filing and Request for Finding of Compliance ....April 29, 2013
Department of Commerce Letter, ...May 7, 2013
ITC Status Report, ... November 5, 2014

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STATEMENT OF THE ISSUES

Whether the Commission should the find that the Company has met its construction commitments;

Whether the Commission should confirm that the financial penalties provided for in the Commission's February 7, 2008 Order do not apply; and

Whether the Commission should take any other actions?

PROCEDURAL BACKGROUND

On February 7, 2008, the Commission issued an order, in Docket 07-540, permitting Interstate Power and Light Company (IPL), a regulated utility, to sell its transmission assets to ITC Midwest LLC (ITC), an independent transmission company.[1] The order imposed conditions on the sale, which were set forth in the order itself and in an incorporated Settlement Agreement between IPL, ITC, the Minnesota Department of Commerce, and a coalition of municipal-utility transmission owners.[2]

On December 1, 2011, ITC filed a report on its compliance with the February 7 order. That report stated that ITC would miss the December 31, 2011 deadline to complete construction of the Salem-Lore-Hazelton line and expected to complete the line during the first half of 2013.

On May 15, 2012, the Commission issued an order stating it would not invoke the penalty provisions of the February 7, 2008 order, but it would take immediate action to strengthen its ability to monitor ITC's management of transmission facilities affecting Minnesota ratepayers and ITC's compliance with the requirements of the February 7 order. The Commission established reporting requirements and put ITC on notice that it may invoke the penalty provisions of that order if further delays in compliance occurred.

Between June 28, 2012 and April 29, 2013, ITC filed several compliance reports and in its April 29, 2013 Petition, ITC informed the Commission that the Salem-Hazleton Project was completed and placed in service on April 25, 2013. In addition, ITC requested that the Commission find that the Company has complied with its construction commitments and confirm that the financial penalties provided for in the Commission's February 7, 2008 Order do not apply.

On May 7, 2013, the Department filed Comments and concluded that ITC met its construction commitments identified in the Commission's February 7, 2008 Order. The Department recommended that the Commission find that the Company has met its construction commitments

[1] Docket 07-540, Order Approving Transfer of Transmission Assets, with Conditions (February 7, 2008)
[2] The members of the coalition were the Midwest Municipal Transmission Group, Missouri River Energy Services, and Wisconsin Public Power, Inc.

and confirm that the financial penalties provided for in the Commission's February 7, 2008 Order do not apply.

On November 5, 2014, ITC filed a status report on the construction projects related to the 2007 IPL transaction proceeding, which it claimed demonstrated compliance with commitments made in the proceeding and again requested confirmation that the financial penalties provided for in the Commission's February 2008 Order in Docket No. E-001/PA-07-540 do not apply

HISTORICAL BACKGROUND

The conditions imposed upon the sale of IPL's transmission assets to ITC in the February 7, 2008 Order were designed to address two major public-interest concerns: (1) protecting Minnesota ratepayers from potentially adverse financial consequences of the change in ownership; and (2) ensuring that ITC would make the significant infrastructure investments necessary to relieve existing transmission constraints, improve reliability and efficiency, lower retail energy costs, and facilitate the development of renewable energy.

The construction of the 81-mile, 345-kV Salem- Hazelton line in northeastern Iowa was determined necessary both to meet reliability standards and to relieve the transmission congestion raising retail rates in northern Iowa and southern Minnesota. Under the terms of the Settlement Agreement, incorporated into the Commission's February 7, 2008 order, ITC was required to complete the line by December 31, 2011 or incur financial penalties in the form of a retrospective reduction in its rate of return on equity. This obligation was subject to ITC's ability to "acquire all needed regional transmission organization approvals and acceptances, permits, and regulatory approvals," using "commercially reasonable best efforts."[3]

In its December 1, 2011 filing, ITC stated the Company would miss the December 31 deadline to complete construction of the Salem-Hazelton line, and that the delay was due to circumstances beyond its control; mainly unexpected difficulties and delays in obtaining regulatory approvals from the Iowa Utilities Board.

In its May 15, 2012, the Commission established reporting requirements to ensure that Minnesota regulators and stakeholders would be fully informed of any future delays in or changes to projects deemed critical under the February 7, 2008 order. The Commission put ITC on notice that it may invoke the penalty provisions of that order if further delays in compliance occurred. In ordering paragraphs 1-6 from its May 15 Order, The Commission required the following actions from ITC:

> 1. As a condition in the February 7, 2008 order and the Settlement Agreement it incorporates, ITC must resolve all system constraints in the IPL service territory as reported by the Midwest Independent Transmission System Operator (MISO) and comply with a directive from the Commission to invest in any project the Commission has determined is necessary to ensure safe, adequate, efficient, and

[3] Offer of Settlement, § 4.2, f; § 4.2 g.

reliable service. To determine which binding constraints still exist in the MN NCA and what projects are still needed to resolve these constraints, ITC shall file the following reports by June 30, 2012:

a. A report on the current state of the transmission system in IPL service territory, including all binding constraints, the current impact of these constraints on Minnesota in terms of annual cost differential for energy flow into Minnesota, the duration of the constraint if no longer 500 hours or no longer fully mitigated, as well as the magnitude of that constraint in MWs that are not getting to Minnesota.

b. A report on MISO projects that address constraints in the MN NCA and ITC's plans to implement such projects, including its plans for the Lakefield-Fox Lake-Rutland-Winnebago-Hayward-Adams 161 kV line. This report should include proposed timelines for each project with the incremental steps already taken and to be taken toward the completion of the project, such as filings for state and local permits, public notices, public hearings, easement acquisitions, petitions for franchise approvals, requests for eminent domain, construction, and other relevant actions.

c. A reconciliation of ITC Midwest's assessment of the project costs and benefits during the 07-540 proceeding and why its assessment differed from MISO's 2008 assessment of the Salem-Lore-Hazelton project that had only a 1.23 B/C ratio.

d. Based on current data, an estimated projected savings over the next 15 years in Minnesota from the completions of (i) the Salem-Hazelton Project and (ii) the Arnold-Vinton Rebuild; and additionally, the extent to which constraints in the area are mitigated by these projects. If they are not fully mitigated, state by how many of the 500 hours annually this area will see constraints with and without the projects.

2. By June 30, 2012, ITC shall file a report on the impact of rerouting the Salem-Lore-Hazelton project around the Lore substation and provide the Commission with evidence that the rerouting of the project did not impact the purpose of the project as defined by the Settlement Agreement.

3. On June 30, 2012 and December 31, 2012, ITC shall file a report on the investment projects ITC has completed as part of its requirement to make $250 million in capital investments in transmission infrastructure in the IPL service territory during the five years following closing of the transaction transferring IPL's transmission facilities to ITC.

> 4. ITC shall file status reports on the progress of the construction of the Salem-Hazelton Project on June 30, 2012, December 31, 2012, every six months thereafter, and upon the completion of the project.
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> 5. ITC shall notify the Commission in the future about any changes to the Salem-Hazelton Project that are conveyed to the Midwest Independent Transmission System Operator or the Iowa Utilities Board, including such things as siting or line path changes.
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> 6. For any project reasonably related to the settlement agreements incorporated into the February 7, 2008 order, ITC shall clearly and fully identify the operative and essential assumptions the Company is making when committing to project completion dates.

STAFF COMMENT

In its February 7, 2008 Order Approving Transfer, in 07-540, the Commission approved ITC Midwest's acquisition of transmission assets owned by IPL, subject to commitments included in the Settlement Agreement, as well as additional commitments made during the course of the Commission's hearings in 07-540. To address transmission issues and binding constraints, ITC Midwest made the following commitments to the Commission in the Settlement Agreements in 07-540:

- Re-conductor/rebuild the Arnold-Vinton by December 31, 2009;[4]
- Construct the Salem-Lore-Hazelton 345 kV line by December 31, 2011 and take, at least, specific actions outlined in the Settlement Agreement which were necessary to complete the project;[5]

To ensure that ITC would meet the commitment's above, ITC agreed that if it failed to complete either project within specified time periods, and such failure was not due to circumstances beyond its control, ITC would be subject to penalties through discount and refund provisions outlined in the settlement agreement. Specifically, ITC Midwest agreed that if it failed to satisfy these commitments it would:

> . . . discount the ROE component of its formula rate to 10.39 percent, until such time as that commitment is satisfied; and …refund with interest to all ITC Midwest customers any amounts collected by ITC Midwest that exceed amounts that would have been collected if the 10.39 percent ROE had been used in ITC Midwest's formula rate since the close date of the Transaction.[6]

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[4] 07-540, Revised Offer of Settlement, December 12, 2007, Section 4.2 (d), p. 11. ITC Midwest noted in its status report that the Arnold-Vinton Rebuild had been completed and the line energized in December 2009, consistent with the schedule provided for in the Settlement Agreement. See fn 14 above.
[5] Id., Section 4.2 (f)(i-vi), p. 12-13.
[6] Id., Section 4.2 (g), p. 13

In addition, ITC also agreed to the following commitments addressing transmission issues and binding constraints in the settlement agreement:

- Resolve the system constraints in the IPL service territory as reported by MISO;[7]
- Comply with a directive from the Commission to invest in any project the Commission has determined is necessary to ensure safe, adequate, efficient and reliable service;[8] and
- Make at least $250 million in capital investments in transmission infrastructure in the IPL service territory during the five years following closing of the Transaction.[9]

A. Whether the Commission should the find that the Company has met its construction commitments?

The February 7, 2008 Order required the following construction commitments from ITC:

1. Re-conductor/rebuild the Arnold-Vinton by December 31, 2009;
2. Construct the Salem-Lore-Hazelton 345 kV line by December 31, 2011 and take, at least, specific actions outlined in the Settlement Agreement which were necessary to complete the project; and
3. Make at least $250 million in capital investments in transmission infrastructure in the IPL service territory during the five years following closing of the Transaction.

Consistent with the Order and the schedule provided for in the Settlement Agreement, the Arnold-Vinton Rebuild had been completed and the line energized in December 2009. As noted in ITC's April 29, 2013 Petition, the Salem-Hazleton Project was complete and was placed in service on April 25, 2013. Finally, in response to the Commission's May 15, 2012 Ordering paragraph 3, ITC stated that it had completed capital investments in transmission infrastructure that were well beyond the $250 million it had committed to in the previous Order. Ordering Paragraph 3 of the May 15, 2012 Order stated the following:

> *3. On June 30, 2012 and December 31, 2012, ITC shall file a report on the investment projects ITC has completed as part of its requirement to make $250 million in capital investments in transmission infrastructure in the IPL service territory during the five years following closing of the transaction transferring IPL's transmission facilities to ITC.*

In its June 28th, 2012 Report, ITC stated that through May 2012, it had completed transmission infrastructure capital investment projects totaling $658,096,697 following closing of the IPL/ITC Midwest transaction in December 2007. In addition, ITC stated it had incurred $176,707,844 for additional capital expenses still recorded as construction-work-in-progress (CWIP) for projects that are not yet completed, including $93,411, 181 for the Salem-Hazleton 345 kV project.

[7] Id., Section 4.2 (a), p. 10.
[8] Id., Section 4.2 (c), p. 11.
[9] 07-540, Additional Stipulated Terms, December 17, 2007, Section 3.

According to ITC these totals also include $23,735,797 of capital property acquisitions and $15,879,768 of CWIP that was transferred from IPL to ITC Midwest in December 2007.

In its December 28th, 2012 Report ITC stated that, through November 30, 2012, ITC Midwest had completed transmission infrastructure capital investment projects totaling $769,591,380 following the close of the IPL/ITC Midwest transaction in December 2007. In addition, ITC stated it had incurred $213,741,150 for additional capital expenses that are currently still recorded as CWIP for projects that are not yet completed, including $99,598,965 for work that was then underway to complete the Salem-Hazleton 345 kV project.

In its November 5, 2014 status report, ITC stated it had completed approximately $1,563 million in transmission infrastructure capital investment projects through June 30, 2014, following the close of the IPL/ITC Midwest transaction in December 2007.

Staff believes that ITC has met its current construction commitments from the Settlement agreement. Staff notes, however, that in addition to the Arnold-Vinton rebuild, the Salem-Hazelton project and the $250 in capital investments, ITC also was required to resolve the system constraints in the IPL service territory as reported by MISO and to comply with any directive from the Commission to invest in any project the Commission determines is necessary to ensure safe, adequate, efficient and reliable service. The Commission may wish to consider whether to continue to monitor ITC's progress toward resolving the system constraints that impact Minnesota rate payers.

B. Whether the Commission should confirm that the financial penalties provided for in the Commission's February 7, 2008 Order do not apply?

Under the terms of the Settlement Agreement, incorporated into the Commission's February 7, 2008 order, ITC was required to complete the Salem-Hazelton line by December 31, 2011 or incur financial penalties in the form of a retrospective reduction in its rate of return on equity. This obligation was subject to ITC's ability to "acquire all needed regional transmission organization approvals and acceptances, permits, and regulatory approvals," using "commercially reasonable best efforts."[10]

To ensure that ITC would meet this commitment's above, ITC agreed that if it failed to complete the project on time, and such failure was not due to circumstances beyond its control, ITC would be subject to penalties through discount and refund provisions outlined in the settlement agreement.

ITC Midwest filed a status report with the Commission in 07-540 on December 2, 2011 that stated "the projected in-service date for the Salem-Hazleton Project to move out beyond the timeline contained in the original commitment."[11]

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[10] Offer of Settlement, § 4.2, f; § 4.2 g.

[11] 07-540, ITC Midwest's Status Report, December 1, 2011, p. 2-3. ITC Midwest also noted in its status report that the Arnold-Vinton Rebuild had been completed and the line energized in December 2009, consistent with the schedule provided for in the Settlement Agreement., p. 2.

ITC Midwest informed the Commission that although it acted diligently, using commercially reasonable best efforts, to move forward in a timely manner with Salem-Lore-Hazleton Project, it experienced a number of unanticipated delays resulting from circumstances beyond its control, that were related to delays in receiving required regulatory approvals from the Iowa Utilities Board ("IUB").[12] ITC Midwest assured the Commission in its filing that Construction on the Project commenced in October 2011 and, barring further delays, ITC Midwest expected that the Project would be completed during the first half of 2013.

In its May 15 Order, the Commission concluded that it would not invoke the penalty provisions of the February 7, 2008 order, but did take immediate action to strengthen its ability to monitor ITC's management of transmission facilities affecting Minnesota ratepayers and ITC's compliance with the requirements of the February 7 order and it put ITC on notice that it may invoke the penalty provisions of that order if further delays in compliance occur.

In response to the Commission's May 15, 2012 ordering paragraph 4, ITC filed periodic status reports on the Salem-Hazelton project. Ordering Paragraph 4 of the May 15, 2012 Order stated the following:

> *4. ITC shall file status reports on the progress of the construction of the Salem-Hazelton Project on June 30, 2012, December 31, 2012, every six months thereafter, and upon the completion of the project.*

In its June 28th, 2012 report, ITC stated it was still working diligently to complete the Salem-Hazleton 345 kV transmission line project by mid-2013, as reported in December 2011. ITC stated there was on-going litigation in Iowa relating to eminent domain proceedings in Dubuque County that might impact the project construction schedule. Further ITC stated it was continuing to work with landowners to acquire voluntary easements, and has been able to reach agreement with 2 of the 9 landowners involved in the condemnation process reducing the numbers not settled to 9 parcels and 7 landowners.

In its December 28, 2012 report, ITC stated that the Salem-Hazleton 345 kV transmission line was still expected to be in service by mid-2013, as reported in December 2011 and June 2012. ITC reported that majority of project materials have already been received and estimated that 10, as of June 10, 2012, 277 (47%) of the 592 foundations have been poured, 207 (35%) of poles have been set, and 20 miles (25%) of conductor has been strung.

In ITC's April 29, 2013 Petition, the Company informed the Commission that the Salem-Hazleton Project was complete and was placed in service on April 25, 2013. ITC reiterated its claim that the delay in the completion of the project the delay was the result of circumstances beyond ITC Midwest's control.

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[12] State of Iowa Department of Commerce Utilities Board, Dockets No. E-21948, E-21949, E-21950, and E-21951. Petitions for Franchises to Erect, Maintain and Operate an Electric Transmission Line in Dubuque, Delaware, Jackson, and Buchanan Counties, Iowa.

Staff notes that there were no further delays in the project after the May 15, 2012 Order and that ITC met its expectations to complete the project during the first half of 2013.

C. Whether the Commission Should Take Other Actions to Resolve Any Remaining System Constraints in the IPL Service Territory as Reported by MISO?

In the Settlement Agreement, ITC Midwest committed to resolve all the system constraints in the IPL service territory as reported by MISO and to comply with any directive from the Commission to invest in a project that the Commission had determined to be necessary to ensure safe, adequate, efficient and reliable service.[13]

As such, in its May 15, 2012 Order, the Commission required ITC to file a report on the current state of the transmission in IPL's service territory. Specifically, ordering Paragraph 1(a) of the May 15, 2012 Order stated the following:

> 1(a) *Report on the current state of the transmission system in IPL service territory, including all binding constraints, the current impact of these constraints on Minnesota in terms of annual cost differential for energy flow into Minnesota, the duration of the constraint if no longer 500 hours or no longer fully mitigated, as well as the magnitude of that constraint in MWs that are not getting to Minnesota.*

In order to provide the information responsive to this request, ITC stated it needed to obtain information from MISO. Following receipt of the request from ITC, MISO performed a historical review of the ITC transmission system from January, 2011 to August 2012. The MISO report was filed with the Commission on August 30, 2012. The review consisted of analyzing ITC Midwest binding constraints which impacted Minnesota load and generation in MISO's Day-Ahead Energy Market. A total of 261 binding constraints were identified, and these constraints resulted in a net congestion cost of $46.78 million in 2011 and $35.37 million in 2012 through August. There was a total of 9649 binding hours in 2011 and a total of 12,382 binding hours in 2012 through August.

Staff notes that ITC indicated in its Nov. 5, 2014 status report that it had made approximately $750 Million in additional transmission infrastructure capital investment projects from August 2012 through June 30, 2014. The Commission may wish to consider whether these investments have resolved all the system constraints in IPL service territory as reported by MISO. To make the determination that the constraints have been resolved, the Commission would need an updated report from ITC and/or MISO on the current state of the transmission system in IPL's service territory.

[13] 07-540, Revised Offer of Settlement, December 12, 2007, Section 4.2 (a)(c), p. 10-11.

DECISION ALTERNATIVES

I. Whether the Commission should the find that the Company has met its construction commitments;

   A. Find that the Company has met its construction commitments;
   B. Find that the Company has not met its construction Commitments; or
   C. Take no action.

II. Whether the Commission should apply that the financial penalties provided for in the Commission's February 7, 2008 Order;

   A. Apply the financial penalties provided for in the Commission's February 7, 2008 Order;
   B. Do not apply the financial penalties provided for in the Commission's February 7, 2008 Order; or
   C. Take no action.

III. Whether the Commission should take any other actions?

   A. Require ITC to file a report on or before November 1, 2015 on the current state of the transmission system in IPL service territory, including all binding constraints, the current impact of these constraints on Minnesota in terms of annual cost differential for energy flow into Minnesota, the duration of the constraint if no longer 500 hours or no longer fully mitigated, as well as the magnitude of that constraint in MWs that are not getting to Minnesota; or
   B. Take no action