

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger  
David C. Boyd  
Nancy Lange  
J. Dennis O'Brien  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of ITC Midwest LLC for a Certificate of Need for the Minnesota-Iowa 345 kV Transmission Line Project in Jackson, Martin, and Faribault Counties

ISSUE DATE: June 27, 2013

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

ORDER GRANTING EXEMPTION,  
FINDING APPLICATION COMPLETE,  
GRANTING VARIANCES, AND  
FINDING JOINT PROCEEDINGS IN  
THE PUBLIC INTEREST

**PROCEDURAL HISTORY**

On March 22, 2013, ITC Midwest LLC (ITC) filed an application for a certificate of need for a 345-kilovolt, approximately 75-mile transmission line in Jackson, Martin, and Faribault Counties. The project is intended to relieve grid congestion caused by surplus power from wind farms operating in the Buffalo Ridge area of southwestern Minnesota and northwestern Iowa. In its application, ITC requested that the certificate-of-need review proceedings be coordinated with the associated route-permit proceedings for the project.<sup>1</sup>

On March 27, 2013, the Commission issued a notice soliciting comments on whether ITC's application was complete.

On April 19, 2013, the Midwest Independent Transmission System Operator, Inc. (MISO) filed comments recommending that the Commission find ITC's certificate-of-need application complete.

On May 1, 2013, the Minnesota Department of Commerce filed comments requesting supplemental information from ITC. The Department recommended that the Commission refer the matter to the Office of Administrative Hearings for a contested-case proceeding once ITC supplied the requested information. It stated that it had no objection to combining the certificate-of-need and route-permit proceedings.

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<sup>1</sup> *In the Matter of the Application of ITC Midwest LLC for a Route Permit for the Minnesota-Iowa 345 kV Transmission Line Project in Jackson, Martin, and Faribault Counties, Docket No. T-6675/TL-12-1337.*

On May 8, 2013, ITC filed reply comments and a supplement to its application providing most of the information that the Department requested. However, ITC sought an exemption from Minnesota Rules part 7849.0280(A) and (H), which require a certificate-of-need application to include certain resource-planning information.

On May 23, 2013, the matter came before the Commission.

## **FINDINGS AND CONCLUSIONS**

### **I. Regulatory Background**

Before building a large energy facility in Minnesota, a utility must secure a certificate of need based on a finding that the facility is needed.<sup>2</sup> The term “large energy facility” includes any transmission line of at least 100 kV with at least ten miles in Minnesota.<sup>3</sup> ITC’s proposed transmission line qualifies as a large energy facility, triggering the certificate-of-need requirement. The information required in a certificate-of-need application, as well as the ultimate criteria for demonstrating need, are set forth at Minnesota Rules chapter 7849.

### **II. ITC’s Exemption Request**

A utility applying for a certificate of need is entitled to an exemption from any application content requirement if the utility shows that the requirement is “unnecessary to determine the need for the proposed facility or may be satisfied by submitting another document.”<sup>4</sup> Under Commission rules, exemption requests must be filed at least 45 days before the certificate-of-need application.<sup>5</sup> However, the Commission may vary time periods established by rule.

Before submitting its application, ITC requested exemptions from several content requirements. However, it neglected to include Minnesota Rules part 7849.0280(A) and (H) in that request. Part 7849.0280(A) requires that an application include “a brief discussion of power planning programs.” Part 7849.0280(H) requires graphs of the monthly adjusted net demand and capability and of “the difference between the adjusted net capability and actual, planned, or estimated maintenance outages of generation and transmission facilities” for specified time periods before and after the proposed facility starts operating.

ITC believed it could meet these requirements by explaining in its application that, as a transmission-only utility, it does not engage in resource-adequacy planning. However, the Department believes that ITC should have sought an exemption. ITC therefore asks the Commission to vary the deadline and grant it an exemption from part 7849.0280(A) and (H).

The Commission finds good cause to extend the exemption-request deadline. ITC failed to request an exemption in time because it believed the requirement did not apply to transmission-only

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<sup>2</sup> Minn. Stat. § 216B.243, subd. 2.

<sup>3</sup> Minn. Stat. § 216B.2421, subd. 2(3).

<sup>4</sup> Minn. R. 7849.0200, subp. 6.

<sup>5</sup> *Id.*

utilities. Its application explains why it does not maintain resource-adequacy data. The Department does not object to a variance, and a variance would not prejudice anyone's interests.

The Commission further finds that the information required by part 7849.0280(A) and (H) is unnecessary to determine the need for the proposed transmission line. The information is intended to help the Commission evaluate whether the proposed facility will increase ITC's capability to meet future energy demand. However, the project's purpose is to address transmission issues resulting from increased generation in a particular region—not to address inadequate generation. The Commission will therefore grant ITC's request for an exemption from the content requirements of part 7849.0280(A) and (H).

### **III. Application Completeness**

Having carefully examined the record, the Commission concurs with the parties that, with the supplemental information provided by ITC, and with the exemption from Minnesota Rules part 7849.0280(A) and (H), ITC's application is substantially complete under the certificate-of-need statute and rules.

### **IV. Referral to the Office of Administrative Hearings**

Having found the application complete, the Commission concurs with the Department that it should be referred to the Office of Administrative Hearings for contested case proceedings. Although there appear to be no disputed fact issues at this time, several considerations favor using the exhaustive process that a contested case proceeding will provide:

- The project is a significant upgrade. The proposed transmission line will operate at 345 kilovolts and will extend for 75 miles.
- ITC is the first transmission-only utility to apply to the Commission for a certificate of need.
- MISO has given the proposed transmission line a Multi-Value Project (MVP) designation, indicating that the project will provide regional benefits.

Due to the project's size, uniqueness, and regional importance, contested fact issues may emerge later in the certificate-of-need review process. Initiating contested case proceedings now will prevent potential delay later in the case. Finally, ITC does not object to the referral; its application assumes that the Commission will use a contested case process.

By separate order, the Commission will refer this matter to the Office of Administrative Hearings for contested case proceedings before an Administrative Law Judge. The Commission concurs with ITC that coordinating these proceedings with those of the associated route-permit docket is in the public interest. The Commission will therefore order joint proceedings and combined environmental review for ITC's certificate-of-need and route-permit applications.

### **V. Extending the Time for Commission and Department Action**

Finally, the Commission will extend the time for it to determine whether ITC's application is complete and for the Department to hold a public meeting on the application. Under its rules, the

Commission must determine whether a certificate-of-need application is complete within 30 days of receiving it.<sup>6</sup> Similarly, the Department is required by rule to hold a public meeting and begin the process of preparing an environmental report within 40 days of receiving an application.<sup>7</sup> However, the Commission may vary time periods established by rule.

There is good cause in this case to vary these time frames. More than 40 days were needed to receive the parties' comments and supplemental information, review those submissions, and schedule a Commission meeting. The Commission will therefore extend the time frames for determining application completeness and holding a public meeting.

### **ORDER**

1. The Commission hereby varies the time period of Minnesota Rules part 7849.0200, subpart 6; grants ITC an exemption from the content requirements of Minnesota Rules part 7849.0280(A) and (H); and accepts ITC's application as complete.
2. The Commission hereby varies Minnesota Rules part 7849.0200, subpart 5, to extend the 30-day time limit for determining application completeness.
3. The Commission hereby varies Minnesota Rules part 7849.1400, subpart 3, to extend the 40-day time limit for the Department to conduct a public meeting.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary



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<sup>6</sup> Minn. R. 7849.0200, subp. 5.

<sup>7</sup> Minn. R. 7849.1400, subp. 3.