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April 29, 2013

Dr. Burl W. Haar
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101-2147

Via: E-File

Re: In the Matter of ITC Midwest LLC Compliance with Commitments in Docket E001/PA-07-540 to Improve the Transmission in System and Relieve Constraints
MPUC Docket No. ET-6675/CI-11-1178

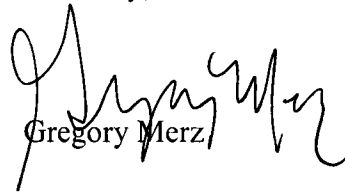
In the Matter of the Joint Petition for Approval of Transfer of Transmission Assets of Interstate Power and Light Company to ITC Midwest LLC
MPUC Docket No. E-001/PA-07-540

Dear Dr. Haar:

Enclosed for e-filing please find ITC Midwest's Compliance Filing and Request for Finding of Compliance with Construction Commitments and an Affidavit of Service in the above-referenced dockets.

Thank you for your consideration of this matter.

Sincerely,



Gregory Merz

cc: Service Lists

GP:3406269 v1

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA

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

In the Matter of ITC Midwest LLC Compliance
with Commitments in Docket No. E 001/PA-07-540
to Improve the Transmission System and Relieve
Constraints

Docket No. ET-6675/CI-11-1178

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

Docket No. E-001/PA-07-540

**COMPLIANCE FILING AND REQUEST FOR FINDING OF COMPLIANCE WITH
CONSTRUCTION COMMITMENTS**

INTRODUCTION

ITC Midwest LLC (“ITC Midwest”) respectfully submits this Compliance Filing and Request for Finding of Compliance with Construction Commitments, pursuant to the Commission’s May 15, 2012, Order Requiring Filings.¹ As required by that Order, ITC Midwest hereby formally advises the Commission that the Salem-Hazleton Project is complete and was placed in service on April 25, 2013.

Although completion of the Salem-Hazleton Project was delayed beyond the deadline established by the Commission in its February 7, 2008 order approving ITC Midwest’s acquisition of the transmission assets of Interstate Power & Light (“IPL”), the delay was the result of circumstances beyond ITC Midwest’s control. Accordingly, ITC Midwest asks that the

¹ As directed by the Commission’s Order Requiring Filings, ITC Midwest made previous compliance filings on June 28, 2012; August 30, 2012; and December 28, 2012.

Commission find that ITC Midwest has complied with its construction commitments and confirm that the financial penalties provided for in the Commission's February 2008 Order do not apply.

DISCUSSION

Pursuant to the Commission's Order approving ITC Midwest's acquisition of the IPL transmission assets, ITC Midwest committed, among other things, to complete two specific construction projects: 1) re-conductoring/rebuilding a 161 kV line in eastern Iowa running from Arnold, through Vinton and Dysart, to Washburn (the "Arnold-Vinton Rebuild"); and 2) construction of an 81 mile 345 kV line in northeastern Iowa running between the Salem and Hazleton substations (the "Salem-Hazleton Project").

Pursuant to the Order Approving Transfer, the Arnold-Vinton Rebuild was to be completed two years after closing of the transaction (*i.e.*, by December 31, 2009). The Arnold-Vinton Rebuild Project, which did not require state siting approvals or acquisition of additional easements or rights of way, was completed in December 2009, consistent with the schedule set out in the Settlement Agreement.

Construction of the Salem-Hazleton Project was substantially more complex and, in recognition of that fact, the Order Approving Transfer provided that the Project was to be completed by the later of December 31, 2011, or three years after approval by the Midwest Independent Transmission System Operator ("MISO") Board of Directors, "provided ITC Midwest is able to acquire all needed regional transmission approvals, acceptances, permits and regulatory approvals."² The Order Approving Transfer further provided that if the Project was not completed by the due date, and such failure was not the result of circumstances beyond ITC Midwest's control, substantial financial penalties could apply.

² Settlement Agreement ¶ 4.f.

At the Commission's public agenda meeting on April 29, 2010, ITC Midwest updated the Commission on the status of its commitments made in the Order Approving Transfer, including that the Arnold-Vinton Rebuild project had been completed on schedule by the end of 2009. At this meeting, ITC Midwest also advised the Commission, that although work on the Salem-Hazleton Project had begun, it was likely that project completion would be delayed beyond December 31, 2011, due to factors beyond ITC Midwest's control. On December 1, 2011, ITC Midwest filed a status report with the Commission detailing further the then-current status of the Salem-Hazleton Project. In that filing, ITC Midwest reported that although the Arnold-Vinton Rebuild project had been completed on schedule, there had been unanticipated delays relating to the Salem-Hazleton Project and that, in light of those delays, it was now expected that the Project would not be completed until mid-2013. ITC Midwest's status report also described in detail the reasons for its delay in completing the Project, explaining that the delay had been the result of circumstances beyond ITC Midwest's control, and described the remaining obstacles that could delay project completion beyond mid-2013.

By a notice dated December 2, 2011, the Commission solicited comments regarding ITC Midwest's compliance with its commitments regarding the Salem-Hazleton Project. Comments were filed by IPL and the Division of Energy Resources of the Department of Commerce ("DER DOC") on January 5, 2012, and reply comments were filed on January 19, 2012, by IPL, DER DOC, and ITC Midwest. On May 1, 2012, ITC Midwest filed a letter providing additional information responding to certain issues raised by the staff briefing papers prepared in connection with the Commission's consideration of the matter at its May 3 agenda meeting.

In its various filings, ITC Midwest described the reasons for the delay that had been experienced on the Project, arising from delays in obtaining necessary regulatory approvals. In

particular, ITC Midwest was delayed by difficulty in obtaining all of the necessary easements on a voluntary basis, which required ITC Midwest to commence eminent domain proceedings, and also by the decision of the Iowa Utilities Board (“IUB”) to not separately consider ITC Midwest’s franchise petitions in Delaware, Buchanan, and Jackson Counties until all of the objections were resolved and the right of eminent domain granted in the Dubuque County docket. ITC Midwest acquired 100% voluntary easements in Delaware, Buchanan, and Jackson Counties and requested franchise approval from the IUB prior to the decision in the Dubuque County docket so that construction could commence in the counties where ITC Midwest had obtained the necessary easements. The IUB, however, effectively combined the Delaware, Buchanan, Jackson, and Dubuque County petitions into one docket, eliminating the possibility of ITC Midwest commencing construction in the uncontested counties as anticipated by the construction schedule. In addition, on March 9, 2011, the IUB required that MISO perform an updated review of the Salem-Hazleton Project to reflect current system conditions as compared to conditions at the time MISO originally approved the Project. This additional delay also had the effect of delaying the commencement of construction. In its December 1, 2011 filing to this Commission, ITC Midwest related these facts and advised the Commission that, barring further delays, it expected that the Project would be completed during the first half of 2013.

In its May 15, 2012 Order Requiring Filings, the Commission declined to invoke the penalty provisions relating to the construction commitment but instead took “action to strengthen its ability to monitor ITC’s management of transmission facilities affecting Minnesota’s ratepayers and ITC’s compliance with the requirements of the February 7 order [approving acquisition of the IPL assets].”³ To that end, the Commission established a number of reporting requirements, including the requirement to report regularly regarding the status of the Salem-

³ Order Requiring Filings, at p. 3.

Hazleton Project.⁴ In that Order, the Commission stated that it was putting ITC Midwest “on notice that it may invoke the penalty provisions of the [February 7] order if further delays in compliance occur.”⁵

In June 2012, ITC Midwest made its first compliance filing, reporting on the status of project construction toward the revised mid-2013 in service date, but also noting that a partial stay of the IUB decision granting ITC Midwest the right of eminent domain over certain land parcels in Dubuque County had been continued indefinitely by the Dubuque County District Court and could threaten mid-2013 project completion if the stay were not lifted by mid-August 2012. The Court subsequently affirmed the IUB decision and lifted the stay in late July 2012, such that acquisition of all necessary easements by ITC Midwest was completed in September 2012. ITC Midwest reported as much to the Commission in October 2012.

In its most recent compliance filing on December 28, 2012, ITC Midwest reported no further delays, and that, as of December 9, 2012, 76% of the foundations had been poured, 73% of the poles had been set, and 59% of the conductor had been strung for the 81 mile project. Over the past four and one-half months, the remaining project construction has been completed and the Salem-Hazleton Project was placed into service this month. ITC Midwest now requests that the Commission find that ITC Midwest has complied with the specific construction commitments set forth in the Commission’s Order Approving Transfer, that the delay in completion of the Salem-Hazleton Project was the result of circumstances beyond ITC Midwest’s control and, accordingly, that the financial penalty does not apply.

Under the terms of the Commission’s Order Approving Transfer, circumstances beyond ITC Midwest’s control include:

⁴ *Id.*, at p. 4, Ordering Paragraph 4.

⁵ *Id.* at p. 3.

[A]ny action, order, or injunction of any federal, state, local or other governmental or regulatory authority, or court, rendering the project illegal or otherwise prohibiting, preventing, or inhibiting the timely completion of the project or a commitment stated herein related to pursuing completion of the project, provided that ITC Midwest must use commercially reasonable best efforts to pursue timely completion of the project or a commitment stated herein in relation to pursuing completion of the project.

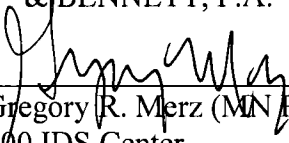
Further, ITC Midwest's construction obligation was conditioned on its ability "to acquire all needed regional transmission approvals, acceptances, permits and regulatory approvals."⁶

As reflected in the substantial factual record developed by ITC Midwest's prior filings, the delay in completion of the Salem-Hazelton Project is attributable primarily to the actions of the IUB and the Iowa state courts with respect to ITC Midwest's efforts to obtain necessary regulatory approvals. ITC Midwest has acted in a commercially-reasonable matter to resolve these regulatory and judicial proceedings as expeditiously as possible in order to avoid any further delay, and in fact completed the Project well within the revised schedule provided to the Commission in 2011 once the impediments to construction were successfully removed. Therefore, the Commission should find that ITC Midwest's commitment to construct the two projects has been met.

⁶ Settlement Agreement ¶ 4.f.

Dated: April 29, 2013

GRAY, PLANT, MOOTY, MOOTY
& BENNETT, P.A.



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