

**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

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Chair
Commissioner
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In the Matter of Possible Amendments to Rules Governing Certificates of Need and Site and Route Permits for Large Electric Power Plants and High-Voltage Transmission Lines, Minnesota Rules, Chapters 7849 and 7850; and to Rules Governing Notice Plan Requirements for High-Voltage Transmission Lines, Minnesota Rules, Part 7829.2550

MPUC Docket No. E,ET,IP-999/R-12-1246

**ITC MIDWEST LLC'S
INFORMAL COMMENTS**

I. INTRODUCTION

ITC Midwest LLC (“ITC Midwest”) appreciates this opportunity to provide informal comments on the proposed changes to Minnesota Rules Chapters 7849 and 7850 and Minnesota Rule 7829.2550. When the Minnesota Public Utilities Commission (“Commission”) began this rulemaking process in 2012, it stated a desire to review both chapters holistically to streamline and enhance the effectiveness and efficiency of the Certificate of Need (“CN”) and route permit processes. This rulemaking proceeding also allows the Commission to incorporate more recent statutory criteria governing CNs and clarify various aspects of its permitting processes. ITC Midwest submits these comments to highlight a few areas where we believe the draft rules can be further revised or clarified to address these broader goals. The comments are organized to address overarching issues and then individual parts of Minn. R. Ch. 7849 (certificates of need) and Minn. R. Ch. 7850 (site and route permits). While ITC Midwest has provided a number of clarifying changes in the redlines included as Attachments 1 and 2, these comments focus primarily on:

- procedural changes incorporated since the last draft reviewed by the Advisory Committee;
- provisions addressing review of alternatives; and
- the environmental review process.

II. OVERALL COMMENTS

A. Process Schedules

The draft rules remove many specific timeframes provided for Commission action and instead require a “process schedule” to be developed by the Commission, Minnesota Department of Commerce (“Department”) and applicant. (*See* 7849.1000, subp. 4 and 7850.1680, subp. 3). ITC Midwest believes that the establishment of a schedule early in the process will help alleviate some of the timeline variances and other administrative inefficiencies in the current process.

To provide more procedural and scheduling certainty, ITC Midwest recommends that the Commission create a standard contested case schedule with specific milestones and durations. Doing so will reduce the likelihood of procedural delays and allow all parties to plan accordingly. ITC Midwest has included an illustrative contested case schedule, demonstrating how the contested case and environmental review processes can be integrated, assuming a joint CN and route permit proceeding (Attachment 3).

ITC Midwest further recommends that in contested case proceedings that the Commission establish a date by which the Administrative Law Judge (“ALJ”) must submit a report to the Commission and that the standard contested schedule be populated with specific proposed dates when the matter is referred to the ALJ. Setting a schedule early in the process will clarify that all parties and state agencies are required to adhere to the timelines. The current rule provides that such a schedule is a “proposed schedule.” Changing this schedule to an established schedule will provide more predictability to the process for all participants. Also,

recognizing that the schedule may require minor adjustments as the matter progresses, the ALJ should be empowered to refine the schedule when good cause is shown for a variance.

ITC Midwest's specific proposals for Rules 7849.1000, Subp. 4, and 7850.1680, Subp. 2, are as follows:

7849.1000, Subp. 4. **Process Schedule.** Upon receipt of a certificate of need application, commission staff must consult with the department and the applicant to establish ~~set~~ a ~~proposed~~ schedule for completing the certificate of need process within applicable statutory deadlines and must make the schedule available in the commission's electronic filing system. ~~If applicable, the Commission shall set a date by which the administrative law judge shall submit a report to the commission and include dates for the contested case milestones required under Minnesota Rules Chapter 1400.~~ If an application includes a request by the applicant that joint proceedings be held on multiple applications filed under chapters 7849 and 7850, the commission must set a process schedule at the time the commission determines whether to hold joint proceedings under rule part 7850.2140. ~~Once the matter is referred to an administrative law judge for an informal or contested case proceeding, the administrative law judge may modify the schedule for good cause shown.~~

7850.1680, Subp. 2. **Process Schedule.** Upon receipt of a draft permit application, commission staff must consult with the department and the applicant to ~~set~~ establish a ~~proposed~~ schedule for completing the permitting process within applicable statutory deadlines and must make the schedule available in the commission's electronic filing system. ~~If applicable, the Commission shall set a date by which the administrative law judge shall submit a report to the commission and include dates for the contested case milestones required under Minnesota Rules Chapter 1405.~~ If an application includes a request by the applicant that joint proceedings be held on either multiple permit applications or on both a certificate of need and a permit application, the commission must set a schedule at the time the commission determines whether to hold joint proceedings under part 7850.2140. ~~Once the matter is referred to an administrative law judge for an informal or contested case proceeding, the administrative law judge may modify the schedule for good cause shown.~~

B. Alternative Environmental Review

The proposed rules amend the Environmental Quality Board ("EQB") approved alternative form of environmental review for power plant and high voltage transmission line

(“HVTL”) CN and site and route permits.¹ These changes largely leave in place the structure of the alternative form of environmental review, but better integrate it with the Commission’s permitting process.

ITC Midwest recommends that the EQB, as part of its periodic review process under Minn. R. 4410.3600, subp. 2, to review these rule changes and confirm that the environmental review conducted by the Commission for a CN and route or site permit continues to serve as an approved form of alternative environmental review under Minn. R. Ch. 4410. Minn. Stat. § 116.04, subd. 4a, and Minn. R. 4410.3600 both give the EQB the authority to approve and review alternative forms of review. Facilitating EQB review of the rule changes will ensure that the provisions in Minn. R. 7849.2000, 7850.2500, subp. 5, and 7850.3700, subp. 8, meet alternative review requirements.²

C. Associated Facilities Definition

ITC Midwest recommends that the Commission amend the definitions of “associated facilities” in the draft rules 7849 and 7850 to consistently define the term. ITC Midwest suggests the definitions of associated facilities be changed as follows:

7849.0010, subp. 6a. **Associated facilities.** “Associated Facilities” means buildings, equipment, and other physical structures that are necessary to the

¹ See Minn. R. 4410.3600 (providing for alternative form of environmental review; Minn. R. 4410.4400, subp. 3 (“For construction of a large electric power generating plant, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.”); Minn. R. 4410.4400, subp. 6 (“For construction of a high voltage transmission line, environmental review shall be conducted according to parts 7849.1000 to 7849.2100 and 7850.1000 to 7850.5600.”)).

² Note, while Chapter 7850 is now under the Commission, and the environmental report is now prepared by the Commission, the alternative forms of environmental review in Chapters 7849 and 7850 were approved by the EQB as alternative forms of environmental review prior to the Revisor moving of these rules into their current chapters. See Minn. R. 4410.7065 (2005) (now Minn. R. 7849.2000) (environmental report approved as alternative form of review); Minn. R. 4400.2750, subp. 7 (2005) (now Minn. R. 7850.2500, subp. 5 (where Commission has issued a CN, environmental review shall not address questions of need); Minn. R. 4400.1700, subp. 12 (2005) (now Minn. R. 7850.3700, subp. 8) (additional environmental review not required).

operation of a large electric generating facility or large high voltage transmission line, including, but not limited to, other facilities necessary for the normal operation of the conductor, such as insulators, towers, substations, and terminals and other transmission lines directly associated with a large electric generating facility that are necessary to interconnect the plant to the transmission system.

7849.0010, subp. 14. ~~Large h~~**High voltage transmission line; LHVTL.** "~~Large h~~**High voltage transmission line**" or "~~L~~**HVTL**" means a conductor of electrical energy as defined by Minnesota Statutes, section 216B.2421, subdivision 2, clause (2) and (3), and associated facilities ~~necessary for normal operation of the conductor, such as insulators, towers, substations, and terminals.~~

7850.1000, subp. 3. **Associated facilities.** "Associated facilities" means buildings, equipment, and other physical structures that are necessary to the operation of a large electric power generating plant or a high voltage transmission line, including, but not limited to, other facilities necessary for the normal operation of the conductor, such as insulators, towers, substations, and terminals, and other transmission lines directly associated with a large electric generating facility that are necessary to interconnect the plant to the transmission system.

7850.1000, subp. 9. **High voltage transmission line or HVTL.** "High voltage transmission line" or "HVTL" means a conductor of electric energy and associated facilities designed for and capable of operating at a nominal voltage of 100 kilovolts or more either immediately or without significant modification, and is greater than 1,500 feet in length. ~~Associated facilities shall include, but not be limited to, insulators, towers, substations, and terminals.~~

ITC Midwest notes that the definition of HVTL includes a last sentence clarifying that associated facilities include, but are not limited to, "insulators, towers, substations, and terminals." ITC Midwest recommends that this language be moved to and included in the definition of associated facilities in both Chapters 7849 and 7850.

D. Miscellaneous Changes

ITC Midwest has identified a number of minor clarifications or inconsistencies in the draft rules that could be addressed during this informal comment period. These smaller items are identified within the proposed redlines of Chapters 7849 and 7850 and are included as Attachments 1 and 2.

III. CERTIFICATE OF NEED (7849)

A. Alternatives

Consideration of alternatives is an important part of the CN process, as alternatives must be considered in both the environmental review and the evaluation of the overall criteria before the Commission can grant a CN. The proposed rules update the process for proposing, evaluating, accepting and excluding alternatives as part of the scoping process set forth in Minn. R. 7849.1400 and 7849.1410. ITC Midwest believes these changes are helpful. However, proposed Minn. R. 7849.0110 states that the Commission shall consider alternatives to the project that are proposed before the close of the *public hearing* and for which substantial evidence exists on the record. The amended rule also removes the word “only” from the alternatives that must be considered, leaving open the door that alternatives for which record evidence does not exist relating to Minn. R. 7849.0120 could be considered. Relatedly, Minn. R. 7849.0120 (C) requires an applicant to demonstrate that the proposed project is more reasonable and prudent than “any proposed alternative” as demonstrated by a preponderance of the evidence on the record, without clarifying that the analysis must be confined to alternatives in the record.

This disconnect between consideration of alternatives as part of the scoping process and alternatives introduced at the public hearing creates a gap, as it is possible that alternatives considered and excluded as part of the scoping process could be reintroduced at the public hearing, or that alternatives never introduced as part of the scoping process could be introduced at the hearing. In either case, the alternatives would not have been evaluated as part of the environmental report or EIS, as appropriate.

ITC Midwest suggests that the Commission amend 7849.0110 to state:

The commission ~~shall~~ must consider ~~only~~ only those alternatives included in the scoping decision under Minn. R. 7849.1425 and for which there exists substantial evidence on the record with respect to ~~each~~ of the criteria listed in part 7849.0120.

A conforming change should then be made to 7849.0120 (C) to ensure that the applicant need only demonstrate that its proposed project is more reasonable and prudent than other alternatives in the record and that have substantial evidence with respect to each of the criteria in Minn. R. 7849.0120. This ensures that the applicant is not required to “prove the negative”, that no alternative anywhere is more feasible and prudent:

C. B whether the proposed project is a more reasonable and prudent than any other alternative included in the scoping decision under Minn. R. 7849.1425 and for which there exists substantial evidence on the record with respect to each of the criteria listed in this part 7849.0120 ~~alternative to the proposed facility has not been, as demonstrated by a preponderance of the evidence on the record considering;~~

These clarifications will help avoid confusion, prompt early identification of alternatives, and better ensure the Commission has a full environmental review and evidentiary record before it issues a CN decision.

B. Environmental Review in Joint Proceedings

Under proposed rule 7849.1800, the environmental report, environmental assessment or Environmental Impact Statement (“EIS”) prepared pursuant to 7849.1900 must be made available before any public hearing can be held or final decision can be made in the CN proceeding. The only time an EIS is prepared is when there is a joint proceeding. In such case, Minn. R. 7849.1900, subp. 3, provides that the procedures in Minn. R. 7850.1000 to 7850.5600 apply when preparing an EIS for a joint proceeding. Under Minn. R. 7850.2570, subp. 1, the public hearing must be held after the draft EIS is filed. Consistent with Minn. R. 7849.1900, subp. 3, the draft EIS has been completed and made available prior to the hearing in the joint proceeding. ITC Midwest recommends that the word “draft” be inserted before “EIS” in Rule

7849.1800 to be consistent with the process requirements established by Minn. R. 7849.1900 and Commission practice.³

C. Transmission Company Definition

Draft rule 7849.0010, subp. 30, adds a definition of “Transmission Company.” ITC Midwest appreciates this addition and the revised definition of “utility,” clarifying that transmission companies are included as utilities for the purposes of the CN rules.

For clarification, ITC Midwest suggests that the new definition of “Transmission Company” be revised slightly. Currently, it nearly mirrors the definition of “Transmission Company” provided in Minn. Stat. § 216B.02, subd. 10. The more substantive difference is that the proposed rule adds to the list of entities that are not transmission companies “any other entity serving end user customers.” There is no definition of “end user customers” in the draft rules, but there is a definition of “ultimate consumers” in proposed rule 7849.0010, subp. 31. For clarification, the Commission should amend the definition of “transmission company” to change the phrase “end user customers” to “ultimate consumers.” As amended, the definition of transmission company would read:

Transmission company. “Transmission company” means any person engaged in the business of owning or operating, maintaining, or controlling in this state facilities for the purpose of furnishing electric transmission service in Minnesota other than a public utility, municipal electric utility, municipal power agency, cooperative electric association, or generation and transmission cooperative power association, or any other entity serving ~~end-user customers~~ ultimate consumers.

It may also be helpful for the Statement of Need and Reasonableness (“SONAR”) to reflect that this additional phrase in the definition is intended to expand the list of entities that are not

³ A contrary interpretation of this rule would also significantly affect the timing of the final decision. If the rule were interpreted to require a final EIS to be available prior to the public hearings, the newly adopted rules could not comply with the overall 12-month decision timeline provided in Minn. Stat. § 216B.243, subd. 5.

transmission companies, acknowledging that there may be additional entity structures used in the future that serve ultimate consumers.

D. Project Notice Content – Eminent Domain

Draft Rule 7849.0130 sets forth the information that must be included in the project notice sent to landowners, local officials and other interested persons prior to submittal of a CN application. Both subparts C (7) and (10) of this rule require statements related to eminent domain. Subpart C (7) requires applicants to make a statement regarding whether they will be “retaining the option to exercise eminent domain to acquire property rights for the project” and, if so, to provide contact information for the applicant’s land agents. Subpart C (10) requires that the notice include a statement that the proposed project could affect landowners and residents in the area and that the applicant could use eminent domain proceedings to obtain land for the project. As discussed further in Section IV.C below, eminent domain is a matter reserved for the state courts. Further, it would be imprudent for applicants to waive the right to use eminent domain. As a result, if the rule were enacted, notices would uniformly state that the applicant retains its authority of condemnation. Instead, ITC Midwest suggests that subpart C (7) be deleted and, instead, that the statement in subpart C (10) be amended to add the contact information for the applicant’s land agents.

E. Conservation Program Data

ITC Midwest suggests that the Commission amend draft rule 7849.0290, subp. C, to exclude transmission company applicants from providing information related to conservation programs otherwise required by this section. The Commission has previously recognized that this information is not applicable to transmission companies because they do not serve ultimate

consumers.⁴ Making this change will eliminate repeated requests for an exemption from these data requirements.

IV. SITING/ROUTING (7850)

A. Draft Application Process and Content

Submitting a draft application to the Department of Commerce, Energy Environmental Review and Analysis (“DOC-EERA”) unit for informal comments has been a longstanding practice that helps ensure complete applications for the Commission’s review. Accordingly, ITC Midwest does not object to publicly filing the draft application 45 days prior to formally submitting its application with the Commission.

Providing wide public notice and adding a public comment and reply comment period on this draft application, however, does not appear to serve the same purpose as DOC-EERA’s review and, instead, is likely to create confusion both in the public and within the process. The purpose of submitting the draft application is to ensure it meets the data requirements under the rules and generally follows DOC-EERA’s application guidelines. Substantive comments regarding the merits of the application are not appropriate until after the Commission has accepted the application as complete. Nonetheless, it will be difficult for members of the public to avoid such topics, particularly those unfamiliar with the Commission process, out of concern that they may be “waiving” an opportunity to do so. Further, the rules, as proposed, would provide no means by which to resolve comments that go beyond the issue of completeness.

Draft rule 7850.2110 provides for a public comment period immediately following the completeness determination. This early comment period is appropriately timed after a formal

⁴ See e.g., Order, *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, Minnesota*, MPUC Docket No. ET-6675/CN-12-1053 (February 8, 2013) and Order, *In the Matter of Prairie Rose Wind, LLC's Request for Exemption from Certificate of Need Content Requirements*, MPUC Docket No. ET-6838/CN-10-80 (May 14, 2010).

application has been submitted and deemed complete, ensuring the proceedings are starting from the basis of an application that includes all information required by the rules. This post-completeness public comment period will allow the public to raise procedural issues with the Commission and become involved early in the route permit review process.

ITC Midwest requests that the Commission amend the proposed rules to strike the notice requirements related to the draft application in part 7850.1650 and amend 7850.1680, subp. 1 and 2 as follows:

7850.1680. COMMENTS AND PROCESS.

Subpart 1. Comments. The ~~commission department~~ must ~~request provide~~ comments on the completeness of the draft application ~~and on whether the commission should appoint an advisory task force for the proceeding under part 7850.2400~~ to the applicant within 21 days of the filing.

~~Subp. 2. Notice of comment period. The commission must mail notice of the comment period to the general list, the project contact list, the public agency contact list, the landowner list, and the local and tribal government list. Initial comments must be filed within 21 days of the notice. Reply comments must be filed within 10 days of the expiration of the initial comment period. If the commission appoints an advisory task force, the commission must determine the charge of the task force under part 7850.2400.~~

B. Pre-Application Meetings

Draft Rule 7850.1620, subp. 1, requires applicants to hold pre-application public outreach meetings concerning routes under consideration by the applicant in each county where a HVTL would be located. ITC Midwest respectfully requests that the Commission amend this draft rule to remove the requirement that these meetings be held in each county and instead require at least one meeting in the project area.

Pre-application meetings have been a useful and productive opportunity to engage early and informally with the public and local officials to inform routing proceedings. ITC Midwest as a practice has engaged in extensive pre-application outreach, including public meetings and

supports the addition of these meetings within the draft rules. ITC Midwest believes it is important to maintain flexibility in the locations and how many pre-application meetings are required. It is not always practical or necessary to meet in each county potentially crossed, particularly in sparsely populated areas or areas with only limited potential impacts near population centers in neighboring counties. ITC Midwest believes providing flexibility regarding these locations will allow for more efficient use of resources without negatively impacting public participation.

C. Draft Application Content

After the conclusion of the Advisory Committee's review, a new rule 7850.1640, subp. 3 (V) was proposed. It provides, in relevant part:

V. if the applicant is retaining the option to exercise eminent domain:

(1) the percentage of property within each proposed route that the applicant has obtained under contract; and

(2) for a HVTL with capacity of 200 kilovolts or more, the percentage of contiguous land within each proposed route that is subject to a fee interest by condemnation under Minnesota Statutes, section 216E.12, subd. 4.

These provisions are problematic for several reasons. First, as the Commission has recognized, it "has no jurisdiction over eminent domain proceedings,"⁵ and questions of eminent domain are outside the scope of the Commission's jurisdiction. Second, the condemnation authority provided to public service corporations in the State of Minnesota is the result of a legislative policy decision: landowners receive just compensation for their land rights and project proponents are able to obtain necessary land rights in a predictable manner. Without the power of condemnation, a needed transmission line could be delayed due to a single landowner who

⁵ 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, ET-6675-CN-12-1053 at 8 (Nov. 25, 2014).

refused to grant an easement, or the public service corporation would have to pay a price far above market-holdout value—a cost that would be passed along to electric consumers. Third, it is not possible at the time of application to determine whether and to what extent condemnation may need to be used. Land acquisition efforts typically commences after the Commission issues a route permit for a project, after consideration of multiple alternatives. Therefore it is unlikely that any utility applicants would state that any percentage of right-of-way has been obtained.⁶ Moreover, the amount of condemnation used for a transmission line or power plant is not relevant to the Commission’s ultimate decision—it is not a routing or siting factor by rule or statute.

Further, ITC Midwest does not believe it is practical, and perhaps not even possible, to provide the data requested in 7850.1640, subp. 3(V)(2), which requires applicants to provide “the percentage of contiguous land within each proposed route subject to a fee interest in condemnation under Minnesota Statutes, § 216E.12, subd. 4.” Attempting to gather such data would require applicants, at the outset of the permitting process, to estimate which parcels may go to condemnation and then acquire an enormous number of title commitments on vast sections of land to attempt to identify contiguous parcels. For example, ITC Midwest recently acquired approximately 360 easements for its Minnesota-Iowa 345 kV Transmission Project in Jackson, Martin, and Blue Earth counties in Southern Minnesota. With respect to the segments under construction, ITC Midwest has been able to voluntarily acquire all but three of the necessary easements and only one property owner has elected Buy-the-Farm. ITC Midwest’s chance of success in obtaining voluntary easements was unknown at the outset of the proceeding, and

⁶ ITC Midwest is aware that some independent power producers commence real estate acquisition prior to any site/route application for a generator or transmission line.

given the numerous routes under consideration, ITC Midwest could have been required to conduct thousands of title searches, when only a handful of parcels ended up in condemnation. It is unclear what additional purpose this data would serve within the Commission's permitting process, yet it would create significant burden and expense while providing minimally relevant information.

D. Application Content

ITC Midwest suggests that the Commission amend draft Rule 7850.1900, subp. 2 E. This subpart currently requires applicants to describe any change made to the information provided in the draft application and the reason for each change. ITC Midwest believes this rule is overly broad and unlikely to add to the substantive record in the case. Such changes could include formatting changes, the addition or removal of information, reorganization or route changes. Instead, ITC Midwest suggests this subpart be amended to require applicants to describe changes, if any, to the routes proposed in the draft and final applications. This will highlight any substantive changes to route proposals prompted by DOC-EERA's review while avoiding unnecessary emphasis on wording changes, minor data updates or corrections, and other more copy-editing changes made between the draft and final applications.

E. Commission Referral to OAH and Process Schedule

ITC Midwest suggests that the Commission provide a date for the ALJ report to be submitted to the Commission and any updates to the process schedule developed under draft Rule 7850.1680, subp. 3, when it refers a routing matter to the Office of Administrative Hearings under draft rule 7850.2120. As discussed above in Section II.A., ITC Midwest recommends that the Commission issue a project specific schedule that would be adjusted, only to the extent necessary, by the ALJ for good cause. Close coordination and clear direction on scheduling expectations will help ensure the amended permitting process meets statutory timeframes and

other procedural requirements of the statute and rules and to better align the timing of Commission decisions with the statutory requirements.

F. Termination of a Citizen Advisory Task Force

Draft Rule 7850.2400, subp. 4, appears to indefinitely extend the duration of a citizen advisory task force, if appointed. ITC Midwest recommends that the Commissions strike the new language in this subpart. As stated in subpart 3 of this section, the purpose of a citizen advisory task force is to identify additional sites or routes or potential impacts that should be evaluated in the EIS. To ensure this objective is met and that routes or sites developed by the task force are evaluated, it is imperative that the task force complete its work during the scoping period so its recommendations are appropriately presented to the Commission and reflected in the scoping decision. At that point, the advisory task force should terminate.

G. Alternatives Included in the EIS or EA.

Draft Rule 7850.3730, subp. 3, requires that any alternative identified by the Commission or applicant must be included in the scope of the EA in the alternative review process. In contrast, draft rule 7850.2520 only requires the Department to include alternatives proposed by the Commission in the scope of an EIS under the full review process. ITC Midwest recommends that the Commission amend 7850.2520 so that in both the full and alternative review processes proposed by the Commission and applicant are considered in the environmental review document. This will provide an opportunity for the applicant to develop alternatives based on scoping comments that may better minimize project impacts.

H. Applicant Comments on Alternatives

ITC Midwest appreciates that the draft rules continue to provide an opportunity for applicants to provide information regarding the feasibility of alternatives proposed during the scoping process in the full process. Similarly, the Commission should add language to draft

Rule 7850.3700, subp. 3, directing the applicant to provide information regarding feasibility of alternatives proposed under the alternative review process.

In addition, both draft Rules 7850.2540, subp. 1, and 7850.3740, subp. 1, require applicants to provide additional information regarding accepted alternatives “to support equivalent comparison of all routes under consideration.” It is unclear what information would be necessary to support “equivalent comparison” of the applicant’s proposed route and alternatives suggested through the scoping process. For example, applicants typically conduct a desktop review of available data regarding human and environmental impacts. In addition, they often complete some level of land acquisition (*i.e.*, ownership) research, detailed engineering studies, and field surveys for cultural and environmental impacts, as well as other due diligence. It is neither practical nor cost effective to engage in the same level of field survey and detailed engineering for all alternatives that may be proposed. ITC Midwest recommends that these provisions be amended to clarify that for alternatives included in the scoping decision, applicants must provide additional “publicly available desktop data to support a comparison of all routes under consideration.”

I. Meeting Efficiencies

Draft Rule 7850.2550 requires the Department to schedule and hold environmental review meetings to provide an opportunity for the public to comment on the DEIS. Proposed Rule 7850.2570 requires that after the DEIS has been filed, the ALJ hold a public hearing to receive testimony and exhibits regarding the application. As shown in Attachment 3, the DEIS environmental review meetings and public hearings will have to occur either sequentially or be combined. Landowners frequently seek clarification regarding the relevant topics open for discussion and whether comments given at one meeting will be available in the other. To avoid duplication, and to create efficiencies for the attending public and ensure that the overall

permitting timeline can be completed within the statutory window, ITC Midwest believes the Commission should clarify that these meetings can be combined.

J. FEIS Comments

Proposed Rule 7850.2650 provides a 25-day public comment period after issuance of the FEIS. This draft Rule should be revised to clarify that comments submitted after issuance of the FEIS should be focused on issues of adequacy. Under Minn. R. 7850.2700, subp. 3, FEIS is adequate if it reasonably addresses the issues and alternatives raised in scoping, responds to timely substantive comments received during the DEIS review process, and complies with the procedural requirements. Further, the time period should be shortened to 10 days to better match draft Rule 7850.2700, subp. 3, which states that a Commission decision on adequacy must be made at least 10 days after issuance of the FEIS. If the comment period remains at 25 days, it is likely to delay the ALJ report.

K. Agency Exceptions

As currently proposed, draft rule 7850.2675, subp. 2, appears to allow state and federal agencies to provide substantive comments at the same time other parties file exceptions to the ALJ report. ITC Midwest recommends this section be amended to clarify that an agency also may file exceptions to the ALJ report. Substantive recommendations regarding permit conditions, route or site recommendations and similar matters should be submitted as early as possible, but in all cases prior to the close of the public hearing record, so they are available to be considered by the ALJ.

CONCLUSION

ITC Midwest respectfully requests that the Commission consider the additional changes and clarifications discussed in these informal comments. ITC Midwest is available to answer any questions the Commission may have and looks forward to ongoing participation in the formal rulemaking process.

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Respectfully submitted,

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