STATE OF MINNESOTA

BEFORE THE COURT OF ADMINISTRATIVE HEARINGS

In the Matter of the Application for a Certificate of Need for the PowerOn Midwest 765 kV and 345 kV High Voltage Transmission Line Project	CAH File No. 28-2500-41617 Docket No. E002, ET2, ET6675/CN-25-117

OBJECTION BY MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC. TO NRG AND NO765MN MOTION TO COMPEL MISO APPEARANCE AT PUBLIC HEARINGS AND/OR SUBPOENA REQUEST

Pursuant to Minnesota Rules 1400.6600 and .7000, subp. 3, now comes Midcontinent Independent System Operator, Inc. ("MISO"), by and through its counsel, and provides its Objection to NRG and NO765MN's Motion to Compel MISO Appearance at Public Hearings and/or Subpoena Request in this docket. As fully discussed herein, NRG and NO765MN ("Movants") fail to present a legal basis to support granting the request and it would be unduly burdensome for MISO's witness to appear at the public hearings.

The Court should deny Movant's request seeking to compel MISO's witness Jeanna Furnish to attend the upcoming public hearings.

ARGUMENT

I. MOVANTS PROVIDE NO LEGAL AUTHORITY SHOWING THAT WITNESSES MUST PARTICIPATE IN THE PUBLIC HEARINGS.

Movants assert that state law, administrative rules, and Commission orders encourage public participation, including opportunities to testify, present exhibits, and cross-examine witnesses.[1] Movants' reliance on these authorities is misplaced as applied to public hearings for a certificate of need proceeding. None of these sources require any party to present its witnesses for

[1] NRG and NO765MN Motion Memorandum ("Mot. Mem.") at 4–5, 7.

examination at the public hearings. Movants principally cite Minn. Stat. § 216I.16 and Minnesota Rules chapter 1405 as support for their assertions[2] but these provisions are not applicable here.

Chapter 216I sets out provisions for the siting or routing of large energy infrastructure facilities and does not apply to need determinations.[3] Even if chapter 216I was applicable, nothing in section 216I.16 requires witness participation. On the contrary, the provision simply requires the Commission to facilitate broad public participation which the Commission has certainly satisfied here through its October 19, 2026 Notice of Public Hearings.[4] The Commission has scheduled eight public hearings and has been accepting public comments since early 2026. Again, while MISO does not dispute and indeed supports the Commission's mandate to facilitate such public participation, this mandate does not require witnesses to appear at public hearings.

The 1405 rules are similarly inapplicable and do not apply in this proceeding. These rules do not provide a basis for NRG and NO765MN's request and are only applicable to "the siting of large electric power generating plants [and] the routing of high voltage transmission lines."[5]

Therefore, Movants' request is unsupported and lacks merit. On this basis alone, the Court should deny the motion.

II. MISO IS NOT AN APPLICANT AND MISO DOES NOT HAVE A BURDEN OF PROOF IN THIS PROCEEDING.

Movants suggest that MISO should be treated like an applicant in this proceeding because MISO itself identified the PowerOn Midwest project through MISO's own stakeholder-driven processes and therefore MISO's witness should be present at the public hearings.[6] Movants fail to

[2] Mot. Mem. at 4–5.
[3] *Compare* Minn. Stat. § 216I.03, subd. 2 and .04, subd. 1 *with* Minn. Stat. § 216B.243.
[4] *Notice of Hearings and Environmental Report Availability* at 3 (Oct. 19, 2026) (eDocket no. 202610-237730-01).
[5] Minn. R. 1405.0300 (2025).
[6] Mot. Mem. 2–4, 8–11.

present legal authority to support this assertion and as argued in Section I above, regardless of whether a party is an applicant, no authority compels witnesses to attend public hearings.

There is no dispute that MISO is not a project applicant. MISO did not file a certificate of need application. MISO will not construct, maintain, or own any of the project. MISO has only a limited role in any state processes or proceedings. As a federally approved Regional Transmission Organization ("RTO"), MISO is responsible for planning transmission system improvements in coordination with state authorities to ensure efficient, reliable, and non-discriminatory transmission service.[7] MISO also exercises functional control over the transmission system to ensure safe, reliable, and non-discriminatory transmission service access.[8] Consistent with its federal obligations, MISO intervened in this proceeding to offer limited testimony on local and regional impacts and project attribute details.[9] Therefore, MISO's role is to assist the project developers and the Commission consistent with its RTO obligations under federal law but the burden is on the Applicants to establish the project's need in this proceeding.

Setting aside that MISO is not an applicant, no authority requires parties to this certificate of need proceeding to produce their witnesses. Moreover, the existence of rules for other types of proceedings that do in fact require witness participation cautions against extending that requirement here.[10] In short, Movants are asking the Court to create new party obligations that lack a legal basis and the Court should reject Movants' unsupported request.

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[7] *See* 18 C.F.R. § 35.34(k)(7).
[8] *Regional Transmission Organizations*, 89 FERC ¶ 61,285 at p. 3 (FERC Dec. 20, 1999) ("FERC Order 2000").
[9] MISO Intervention Petition at 2 (May 7, 2026) (eDocket no. 20265-231554-02).
[10] *See* Minn. Stat. § 645.19 (2026); *Harris v. County of Hennepin*, 679 N.W.2d 728, 731 (Minn. 2004) ("the expression of one thing indicates the exclusion of another").

III. IT WOULD BE UNDULY BURDENSOME ON MISO'S WITNESS JEANNA FURNISH TO ATTEND EIGHT DAYS OF PUBLIC HEARINGS.

In considering whether to compel attendance, the Court must consider the burden that would be placed on the witness to attend the lengthy public hearings located in Southern Minnesota. Indeed, subpoenas should only be granted when the testimony sought has the potential to elicit relevant evidence.[11] Public comments do not become part of the formal evidentiary hearing "record" in this proceeding.[12] Instead, public comments are incorporated into the broader "contested case record" under section 14.61, but they are not evidence.[13]

The purpose of these public hearings is primarily to educate the public about the project and for the public to share concerns with applicants and decisionmakers. If the purpose was, as Movants seem to claim, to build the evidentiary record, then the value of a separate evidentiary hearing would be limited.[14] Therefore, because public hearings do not create the evidentiary record in this proceeding, there is no legal basis to compel witness attendance through a subpoena.

Even if legal grounds existed to grant Movants' request, the Court should refrain from doing so. Courts deny subpoenas when they are "unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and whether or not there are alternative methods of obtaining the desired testimony or evidence."[15]

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[11] Minn. R. 1400.7000, subp. 1; *see also In re Braun Data Practices Compl.*, CAH 71-0305-38542, ORDER DENYING SUBPOENA REQUESTS at 3 (Nov. 4, 2022); *Blissenbach v. Quotable Kids Pediatric Therapy Clinic*, CAH 22-1901-38929, ORDER GRANTING MOTION IN PART AND MODIFYING SUBPOENA at 4 (Aug. 30, 2023).
[12] *See* Minn. Stat. § 14.60, subd. 2.
[13] *See* Minn. Stat. § 14.61; *see also*, *In re Midwest Oil of Minn.*, No. A06-1731, 2007 WL 2245818, at *3 (Minn. Ct. App. Aug. 1, 2007) (distinguishing between the evidentiary "record" and contested case hearing record).
[14] Minn. R. 1400.8607, subp. 1 (excluding "unduly repetitious" evidence).
[15] Minn. R. 1400.7000, subp. 3.

Movants' request is unreasonable and burdensome within the rule's meaning. There are alternative methods of obtaining the desired testimony or evidence. MISO witness Ms. Furnish has already offered pre-filed testimony and will be available for cross examination by the parties at the evidentiary hearings. This eliminates any possible prejudice to Movants. The costs and burdens placed on MISO and its witness, in contrast, would be significant. Requiring Ms. Furnish to attend all eight public hearings would likely require her to travel from Indiana to Minnesota for a total of approximately ten calendar days. Attendance would force MISO to incur significant expenses that are eventually recovered from retail customers. Therefore, by compelling MISO to appear and/or granting the subpoena, significant burdens would be imposed on MISO without meaningfully contributing to the record.

MISO is willing to accommodate questions from the public. If a public commenter raises a question that can only be addressed by Ms. Furnish, MISO would not object to the Judge exercising his discretion to permit that individual to ask that question again during the evidentiary hearing under Minn. R. 1400.7150. Nor would MISO object to Movants re-asking Ms. Furnish the commenter's question at the evidentiary hearing.

CONCLUSION

For these reasons, the Court should deny Movants' motion to compel and subpoena request. Movants' effort to compel witness attendance at these certificate of need public hearings has no support in the governing law or rules, serves no evidentiary purpose, alleviates no prejudice to Movants, and would impose substantial and unnecessary burdens on MISO and its witness. The Court should decline to create new party obligations that lack a legal basis in this proceeding.

Dated: October 30, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

This certifies that on the 30th day of October, 2026, a true and correct copy of Objection by Midcontinent Independent System Operator, Inc. to NRG and NO765MN Motion to Compel MISO Appearance at Public Hearings and/or Subpoena Request has been efiled by posting the same on eDockets in the above-referenced docket. The Objection has also been served on the Service Lists on file with the Minnesota Public Utilities Commission.

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