

## **PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of ITC Midwest LLC for Authority to Become an Electric  
Utility

2707-NC-100

### **FINAL DECISION AND CERTIFICATE OF AUTHORITY**

This is the Final Decision and Certificate of Authority on the application of ITC Midwest LLC (ITC Midwest) requesting that the Commission grant a Certificate of Authority under Wis. Stat. § 196.49(1), a Certificate of Necessity under Wis. Stat. § 196.50, if required, and all other necessary approvals for ITC Midwest to become a public utility, independent transmission owner and foreign transmission provider under Wisconsin law.

#### **Introduction**

ITC Midwest is a Michigan limited liability company, a transmission-owning member of the Midcontinent Independent System Operator, Inc. (MISO), and a direct subsidiary of ITC Holdings Corporation (ITC Holdings), which is based in Novi, Michigan. ITC Midwest was formed in 2007 by ITC Holdings to acquire the transmission assets of Alliant Energy Corporation's subsidiary, Interstate Power and Light Company. ITC Midwest currently owns approximately 6,600 miles of transmission lines and more than 200 electric transmission substations in Iowa, Minnesota, Illinois, and Missouri.

ITC Midwest is regulated as a public utility under Section 203 of the Federal Power Act (FPA) and is rate regulated by the Federal Energy Regulatory Commission (FERC) under Sections 205 and 206 of the FPA. ITC Midwest continually assesses its transmission systems

against standards established by the North American Electric Reliability Corporation (NERC), as well as the standards of applicable regional entities under NERC that have been delegated certain authority for the purpose of proposing and enforcing reliability standards. In addition, ITC Midwest is subject to regulatory oversight by certain Iowa, Illinois, Minnesota, and Missouri state agencies as well as various local authorities.

ITC Midwest is a wholly-owned subsidiary of ITC Holdings. ITC Holdings is not a participant in the energy market or owned by market participants. ITC Holdings' operating subsidiaries own and operate high-voltage transmission facilities, and its other subsidiaries focus on expansion in areas where significant transmission system improvements are needed.

In MISO Transmission Expansion Plan 11, adopted in December 2011, MISO developed a portfolio of Multi-Value Projects throughout the MISO footprint. One of the portfolio projects includes a 130-plus-mile, 345 kilovolt transmission line between ITC Midwest's Hickory Creek Substation in Dubuque, Iowa, and American Transmission Company LLC's (ATC) Cardinal Substation in Middleton, Wisconsin (Dubuque-Cardinal Transmission Line). Approximately 85 percent of the Dubuque-Cardinal Transmission Line, which has a planned in-service date at the end of 2018, is expected to be located in Wisconsin. MISO designated ITC Midwest and ATC as the two transmission owners equally responsible for building and owning the line under MISO's regulatory framework. FERC confirmed MISO's designation in its Order in docket EL13-13 (142 FERC ¶ 61,096), dated February 7, 2013.

Under Wis. Stat. § 196.49(1)(am), ITC Midwest must first obtain a Certificate of Authority from this Commission authorizing it to transact public utility business prior to commencing construction of the Dubuque-Cardinal Transmission Line currently being planned.

On August 19, 2013, ITC Midwest filed its application in this proceeding. On November 4, 2013, the Commission issued a Notice of Proceeding. On February 14, 2014, the Commission issued a Notice of Hearing. On March 12, 2014, technical and public hearings were held in Madison, Wisconsin. The Commission considered this matter at its open meeting of April 17, 2014.

### **Findings of Fact**

1. ITC Midwest is a Michigan limited liability company and a transmission-owning member of MISO. ITC Midwest is also a direct subsidiary of ITC Holdings, which is the sole member of ITC Midwest. ITC Midwest does not presently own transmission assets in Wisconsin.

2. It is reasonable and in the public interest to condition the granting of the Certificate of Authority as described in this Final Decision.

3. It is reasonable for ITC Midwest to keep the Commission informed of securities issuance matters by copying the Commission on its FPA Section 204 filings.

### **Conclusions of Law**

1. Wisconsin Stat. §§ 196.02, 196.395 and 196.49 authorize the Commission to issue this Final Decision and Certificate of Authority.

2. The following statutes are not applicable to ITC Midwest due to its restriction as a transmission-only utility: Wis. Stat. §§ 196.09, 196.19, 196.192, 196.20, 196.21, 196.37(1), 196.37(3), 196.371, 196.374, 196.375, 196.377, 196.378, 196.495, 196.496, 196.635, 196.643, 196.645, and 196.86.

3. Except for the provision of reasonably adequate services and facilities, under Wis. Stat. § 196.03(1), Wis. Stat. § 196.03 is not applicable to ITC Midwest because it does not provide retail electric service.

4. ITC Midwest shall comply with Wis. Stat. §§ 196.06 and 196.08 by: (1) making all books and records of all entities in the holding company structure readily available for Commission review in a reasonable manner; (2) maintaining its accounts consistent with FERC's Uniform System of Accounts; and (3) refraining from restricting Commission access to the information and audits it conducts on ITC Midwest and its affiliates.

5. ITC Midwest shall comply with Wis. Stat. §§ 196.07 and 196.12 by: (1) filing its annual FERC Form No. 1 financial statement and separately providing a schedule of Wisconsin-specific year-end utility plant balances by May 1; (2) providing the necessary in-state revenues data for purposes of calculating its share of remainder assessment; and (3) providing any other such reports deemed necessary by the Commission.

6. As they relate to ITC Midwest, Wis. Stat. §§ 196.80(1m)(e) and 196.81 apply only to its Wisconsin-located facilities.

### **Opinion**

#### **Certificate of Authority under Wis. Stat. § 196.49(1)(am)**

Under Wis. Stat. § 196.49(1)(am), ITC Midwest must first obtain a Certificate of Authority from the Commission authorizing it to transact public utility business prior to commencing construction of the Dubuque-Cardinal Transmission Line currently

being planned. Wisconsin Stat. § 196.53 prohibits the granting of or transferring to a foreign corporation any license, permit or franchise to own, operate, manage, or control any plant or equipment for the transmission of power to a foreign corporation, unless the foreign corporation is an independent system operator or independent transmission owner and controls transmission facilities.

ITC Midwest is a foreign corporation under Wis. Stat. § 196.53. The record in this proceeding is uncontested that ITC Midwest meets the definition of independent transmission owner under Wis. Stat. § 196.485(1)(dm). However, Commission staff questioned whether ITC Midwest would have the control as intended under Wis. Stat. § 196.53. ITC Midwest argued that it had sufficient control over its facilities, noting that the only control that it transferred to MISO was functional control, sometimes known as operational control.

Chapter 196 of the Wisconsin Statutes uses the term “control” somewhat inconsistently. Depending upon the context in which you read “control,” ITC Midwest may or may not actually control its facilities. As Commission staff noted, control is sometimes used to refer to operational control of the type that ITC Midwest has generally transferred to MISO. However, the balance of canons of statutory construction support ITC Midwest’s interpretation of “control.”

First, and most importantly, ITC’s interpretation of “control” is consistent with the plain meaning of the word. ITC Midwest provided substantial evidence that, while it has transferred some duties to MISO, it retains a substantial number of rights and responsibilities over its facilities. ITC Midwest is responsible for the planning, permitting and routing of its facilities; it is responsible for the physical construction and maintenance of its facilities; it physically controls the operation of its facilities; it is responsible for compliance with federal reliability standards; it is responsible for the

safety of its facilities relative to the public and its workers; and it retains title of and all rights to income from its facilities. While ITC Midwest has joined MISO and is bound by MISO tariffs, ITC Midwest may withdraw from MISO for any reason. The Commission is persuaded that ITC Midwest controls its facilities as the plain language of the statute contemplates.

Further, as ITC notes, to interpret control as Commission staff urges would be a *de facto* prohibition on foreign ownership of a transmission line, rendering the statutory exception to allow that ownership meaningless and creating an absurd result.

Because ITC Midwest meets the statutory definition to be an independent transmission owner and it has demonstrated sufficient control over its facilities, it is reasonable to issue a Certificate of Authority to ITC Midwest under Wis. Stat. § 196.49(1)(am). Chairperson Montgomery dissents.

### **Conditions Related to Certification**

To be a public utility, ITC Midwest must have utility plant. Neither has the application been filed nor the approval granted for the Dubuque-Cardinal Transmission Line. Continued effectiveness of ITC Midwest's certification as a public utility is conditioned upon the eventual approval of the Dubuque-Cardinal Transmission Line. If ITC Midwest decides not to own or is otherwise prevented from owning and constructing the Dubuque-Cardinal Transmission Line, the Certificate of Authority shall expire.

The scope of public utility business which may be undertaken under Wis. Stat. ch. 196 is broader than the provision of transmission service that ITC Midwest currently plans to provide. The granting of a certificate to a public utility that provides retail electric service to the public raises substantial policy concerns that were not addressed in this case. Further, many of the legal

conclusions required for the resolution of this case are impacted significantly by the status of ITC Midwest as a transmission-only company. As a result, it is reasonable that ITC Midwest's certification under Wis. Stat. § 196.49(1)(am) be limited to transmission ownership and service. ITC Midwest shall seek further Commission approval before engaging in any business in Wisconsin other than transmission service. Furthermore, ITC Midwest shall be restricted from bypassing the distribution facilities of an electric utility or providing service directly to a retail customer.

ITC Midwest qualifies for certification as a Wisconsin public utility based on it being an independent transmission owner, as defined in Wis. Stat. § 196.485(1)(dm). That definition requires ITC Midwest and its affiliates to abstain from certain operations, including owning electric generation facilities and selling electric generation capacity or energy. ITC Midwest's continued public utility certification as granted in this docket is conditioned upon ITC Midwest continuing to meet the requirements of Wis. Stat. § 196.485(1)(dm) as an independent transmission owner. ITC Midwest shall file a notice with the Commission, within ten business days, of any event which would cause it to no longer meet the definition of an independent transmission owner.

Lastly, ITC Midwest shall file with the Commission verification of its registration with the Wisconsin Secretary of State as a foreign corporation.

#### **Foreign Transmission Provider under Wis. Stat. § 32.02(5)**

ITC Midwest requested a Commission determination that it qualifies as a "foreign transmission provider" under Wis. Stat. § 32.02(5). Under this section of Wisconsin's Eminent Domain statutes, condemnation rights for public utilities are limited to Wisconsin corporations and

foreign transmission providers. ITC Midwest argued that a Commission determination was necessary for it to function as a transmission provider in Wisconsin because the exercise of condemnation rights is fundamental to the ability of ITC Midwest to build transmission facilities in this state. However, a Commission determination on this issue is not necessary for the resolution of this case. The Commission declines to determine whether ITC Midwest meets the definition of “foreign transmission provider” under Wis. Stat. § 32.02(5).

Commissioner Callisto dissents. He believes the analysis under Wis. Stat. § 32.02(5) is functionally no different than that under Wis. Stat. § 196.53, and that the conclusion should be the same—ITC Midwest controls its transmission facilities. It follows that ITC Midwest should be designated a “foreign transmission provider.”

### **Regulatory Oversight**

As a Wisconsin public utility, ITC Midwest is subject to Wis. Stat. chs. 196 and 201, as well as various administrative codes. ITC Midwest maintains that the focus of these statutes and codes is primarily on protecting retail ratepayers and, in some cases, the statutes may be preempted by federal jurisdiction. Consequently, ITC Midwest requested that the Commission confirm the applicability of such statutes to ITC Midwest as a transmission-only provider.

The Commission agrees that certain provisions of Wis. Stat. ch. 196 that would otherwise apply to Wisconsin electric public utilities would not apply to ITC Midwest given that its certification will be restricted to the provision of transmission service. The statutory sections that will not apply to ITC Midwest are the following:



- Wis. Stat. § 196.09 (Depreciation rates and practices)
- Wis. Stat. § 196.19 (Publish schedules; regulations; files; joint rates)
- Wis. Stat. § 196.192 (Market-based rates compensation, rates and contracts)
- Wis. Stat. § 196.20 (Rules on service; changes in rates)
- Wis. Stat. § 196.21 (Publicity of revised [rate] schedules pursuant to Wis. Stat. § 196.19)
- Wis. Stat. § 196.37(1) and (3) (Lawful rate; reasonable service)
- Wis. Stat. § 196.371 (Rate-making principles for electric generation facilities)
- Wis. Stat. § 196.374 (Energy efficiency and renewable resource programs)
- Wis. Stat. § 196.375 (Adequate service reasonable rates)
- Wis. Stat. § 196.377 (Renewable energy sources)
- Wis. Stat. § 196.378 (Renewable resources)
- Wis. Stat. § 196.495 (Avoidance of duplication in electric facilities [pertaining to primary and secondary voltage])
- Wis. Stat. § 196.496 (Distributed generation facilities)
- Wis. Stat. § 196.635 (Unbilled utility service)
- Wis. Stat. § 196.643 (Owner responsibility for service to retail dwelling unit)
- Wis. Stat. § 196.645 (Rate changes)
- Wis. Stat. § 196.86 (Assessment for air quality improvement program)

Further clarification of Commission continued jurisdiction and ITC Midwest's obligations is needed for several statutes. First, Wis. Stat. § 196.03 (Utility charges and service; reasonable and adequate) relates to both rates and adequate service. While this Commission will not regulate ITC Midwest's transmission rates, the obligation to furnish reasonable adequate service and facilities should apply to ITC Midwest. Consequently, Wis. Stat. § 196.03(1), regarding the provision of reasonably adequate service and facilities, will apply to ITC Midwest, but the remainder of Wis. Stat. § 196.03 will not apply.

Second, ITC Midwest requested clarification that the provisions of Wis. Stat. § 196.05 (Public utility property; valuation; revaluation) would not be applicable. Commission staff proposed that the Commission retain the right to make property revaluations under this section as necessary to make any appropriate determinations under Wis. Stat. § 196.795, and in particular Wis. Stat. § 196.795(5)(g). ITC Midwest argued that such revaluation will affect FERC rates, while Commission staff argued that the revaluation will not affect FERC rates. The Commission will reserve judgment on this issue and directs ITC Midwest and Commission staff to work together to resolve any disagreement on the potential impact of the application of Wis. Stat. § 196.05 to ITC Midwest, to ensure that any application of this statutory provision does not interfere with the authority of FERC over ITC Midwest's rates. After their discussions, if ITC Midwest and Commission staff are in agreement, the Commission delegates to the Administrator of the Gas and Energy Division the authority to implement that agreement. If ITC Midwest and Commission staff are unable to reach an agreement, this issue shall come back to the Commission for a determination.

Third, relating to Wis. Stat. §§ 196.06 (Uniform accounting; forms; books; office) and 196.08 (Audit and inspection), ITC Midwest requested accommodations to reflect its out-of-state headquarters and lack of Wisconsin rates. Under such circumstances, a reasonable application of Wis. Stat. §§ 196.06 and 196.08 is to require that: (1) all of the books and records of all entities in the holding company structure be readily available for Commission review in a reasonable manner; (2) ITC Midwest maintain its accounts consistent with FERC's Uniform System of Accounts; and (3) the Commission not be restricted in the information and audits it conducts on ITC Midwest and its affiliates.

Fourth, relating to Wis. Stat. §§ 196.07 (Balance sheet filed annually) and 196.12 (Report by public utilities; items), the Commission requires that ITC Midwest shall meet its reporting requirements under these statutes by: (1) ITC Midwest filing its annual FERC Form No. 1 financial statement and separately providing a schedule of Wisconsin-specific year-end utility plant balances by May 1; and (2) ITC Midwest providing the necessary in-state revenue data for purposes of calculating its share of the remainder assessment. The Commission has the right to require ITC Midwest to provide such reports, as deemed necessary, taking into consideration ITC Midwest's function as an independent transmission owner.

Fifth, the record is uncontested that Wis. Stat. §§ 196.80(1m)(e) and 196.81 do not apply to ITC Midwest's out-of-state facilities. These statutes relate to the abandonment, sale, acquisition, leasing, or renting of public utility plant or property and will be applicable only to ITC Midwest's Wisconsin-located facilities.

Sixth, Wis. Admin. Code § PSC 112.05(2) relates to the advance notification of out-of-state construction projects. Among the issues considered was whether the Commission would ever require either a Certificate of Authority or Certificate of Public Convenience and Necessity for an ITC Midwest out-of-state project; what would be the minimum cost threshold requiring the advance notice of an out-of-state project; what types of out-of-state projects would require advance notice; what would be the probable impact on Wisconsin transmission allocations of any ITC Midwest out-of-state project; and current Commission policy for other Wisconsin utilities. The Commission determines that the applicability of Wis. Admin. Code. § PSC 112.05(2) should be waived at this time. ITC Midwest has substantial out-of-state transmission assets and will only own one transmission line in Wisconsin for the foreseeable

future. The Commission recognizes that, under current circumstances, ITC Midwest's out-of-state projects are unlikely to have a significant impact upon Wisconsin public utility ratepayers. However, the Commission will retain jurisdiction to rescind the waiver and impose these requirements at a future date if circumstances warrant.

Commissioner Callisto dissents. He does not believe the record supports waiver of Wis. Admin. Code § PSC 112.05(2). He supports ITC Midwest providing advance notice of out-of-state projects exceeding the cost threshold if a significant portion of the costs would be allocated to Wisconsin customers and notice by ITC Midwest of all out-of-state projects not impacting Wisconsin ratepayers after receipt of approval of such projects.

Lastly, Wis. Stat. ch. 201, grants the Commission jurisdiction over the securities of public service corporations. Upon certification as a Wisconsin public utility, ITC Midwest will meet the Wis. Stat. § 201.01(2) definition of a public service corporation. The Commission considered whether it should defer to FERC regarding approval of future issuances of securities; whether it should decide to apply, not waive, the applicability of Wis. Stat. § 201.11 relating to impaired capital to ITC Midwest; and whether Wisconsin jurisdiction over securities issuances and dividend restrictions is preempted by FERC jurisdiction. The Commission declines to determine the extent to which it has or will exercise its jurisdiction over any financial health and securities issues as contemplated in Wis. Stat. ch. 201, including without limitation, Wis. Stat. § 201.11. However, the Commission will require ITC Midwest to keep the Commission informed of such matters by filing copies of its FPA Section 204 filings. The Commission intends to expeditiously review such filings and also expeditiously determine whether to assert jurisdiction.

Commissioner Callisto dissents. He concludes that the Commission's jurisdiction over securities under Wis. Stat. ch. 201 is preempted by the FPA, provided that Midwest ITC seeks relevant FERC approval over securities issuances. However, he concludes the Commission retains jurisdiction to enforce Wis. Stat. § 201.11 related to actions addressing impaired capital.

### **Certificate of Authority**

Pursuant to Wis. Stat. § 196.49(1)(am), the Commission grants ITC Midwest LLC a Certificate of Authority to operate as a public utility, as defined in Wis. Stat. § 196.01(5), and to transact public utility business. By this Certificate of Authority, ITC Midwest is authorized to commence operation as an independent transmission owner, as defined in Wis. Stat. § 196.485(1)(dm), subject to the conditions stated below.

### **Order**

1. ITC Midwest's certification as a public utility is conditioned upon the eventual approval of the Dubuque-Cardinal Transmission Line. If ITC Midwest decides not to own or is prevented from owning and constructing the Dubuque-Cardinal Transmission Line, the Certificate of Authority shall expire.

2. ITC Midwest's certification as a public utility under Wis. Stat. § 196.49(1)(am) shall be limited to transmission ownership and service. ITC Midwest shall seek further Commission approval before engaging in any business in Wisconsin other than transmission service.

3. ITC Midwest shall not bypass the distribution facilities of a Wisconsin electric public utility or provide service directly to a Wisconsin retail electric customer.

4. ITC Midwest shall file with the Commission verification of its registration with the Wisconsin Secretary of State as a foreign corporation.

5. ITC Midwest's continued qualification as an independent transmission owner is conditioned upon ITC Midwest's continuing to meet the requirements of Wis. Stat.

§ 196.485(1)(dm). ITC Midwest shall file a notice with the Commission, within ten business days, of any event which would cause it to no longer meet the definition of an independent transmission owner.

6. The following statutes are not applicable to ITC Midwest: Wis. Stat. §§ 196.09, 196.19, 196.192, 196.20, 196.21, 196.37(1), 196.37(3), 196.371, 196.374, 196.375, 196.377, 196.378, 196.495, 196.496, 196.635, 196.643, 196.645, and 196.86.

7. Except for the provision of reasonably adequate services and facilities, under Wis. Stat. § 196.03(1), Wis. Stat. § 196.03 is not applicable to ITC Midwest.

8. ITC Midwest shall work directly with Commission staff to resolve any disagreement on the application of Wis. Stat. § 196.05 relating to Wis. Stat. § 196.795, to ensure that any application of this statutory provision does not interfere with the authority of FERC over ITC Midwest's rates. If ITC Midwest and Commission staff are able to reach an agreement, the Commission delegates to the Administrator of the Gas and Energy Division the authority to implement that agreement. If ITC Midwest and Commission staff are unable to reach an agreement, this issue shall be returned to the Commission for a determination.

9. ITC Midwest shall meet the requirements of Wis. Stat. §§ 196.06 and 196.08 as follows: (1) all books and records of all entities in the holding company structure shall be readily available for Commission review in a reasonable manner; (2) ITC Midwest shall

maintain its accounts consistent with FERC's Uniform System of Accounts; and (3) the Commission shall not be restricted in the information and audits it conducts on ITC Midwest and its affiliates.

10. ITC Midwest shall meet the requirements of Wis. Stat. §§ 196.07 and 196.12 as follows: (1) ITC Midwest shall file its annual FERC Form No. 1 financial statement and separately provide a schedule of Wisconsin-specific year-end utility plant balances by May 1; (2) ITC Midwest shall provide the necessary in-state revenue data for purposes of calculating its share of remainder assessment; and (3) the Commission shall have the right to require ITC Midwest to provide such reports, as deemed necessary by the Commission, taking into consideration ITC Midwest's function as an independent transmission owner.

11. The applicability of Wis. Stat. §§ 196.80(1m)(e) and 196.81 to ITC Midwest shall be limited to Wisconsin-located facilities.

12. The applicability of Wis. Admin. Code. § PSC 112.05(2) is waived; however, Commission jurisdiction is retained to rescind the waiver and impose these requirements at a future date if circumstances warrant.

13. ITC Midwest shall keep the Commission informed of securities issuance matters by providing copies of its FPA Section 204 filings.

14. Jurisdiction is retained.

**Concurrence and Dissent**

Chairperson Montgomery concurs in part and dissents in part and writes separately (attached).

Dated at Madison, Wisconsin, this 8<sup>th</sup> day of May, 2014.

By the Commission:

A handwritten signature in black ink, reading "Sandra J. Paske". The signature is written in a cursive, flowing style.

Sandra J. Paske  
Secretary to the Commission

SJP:LJH:jlt:DL: 00921930

See attached Notice of Rights



PUBLIC SERVICE COMMISSION OF WISCONSIN  
610 North Whitney Way  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.<sup>1</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

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<sup>1</sup> See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

## **PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of ITC Midwest LLC for Authority to Become an Electric  
Utility

2707-NC-100

### **CONCURRENCE AND DISSENT OF CHAIRPERSON PHIL MONTGOMERY**

I join my colleagues in approving the application of ITC Midwest LLC (ITC Midwest) for authority to become an electric utility and be issued a Certificate of Authority. I write separately because I would have conditioned the certification upon ITC Midwest either reincorporating in Wisconsin or legislative revision of Wisconsin law to remove or clarify the control requirement for independent transmission owners. Wisconsin Stat. § 196.53 prohibits a foreign corporation from operating a public utility in Wisconsin unless it is an independent transmission owner and it “controls transmission facilities.” Wisconsin Stat. ch. 196 uses the term control somewhat inconsistently, and a reasonable question is raised, I think, regarding whether ITC Midwest will have sufficient control over transmission facilities under Wisconsin law to be granted a certificate as a Wisconsin public utility. Because the law is not clear, I would have preferred the state legislature, not the Commission, clarify the control requirement for independent transmission owners.

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