UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Municipal Transmission Group, *Complainant* *v.* Interstate Power and Light Company, and Midwest Independent Transmission System Operator, Inc., *Respondents*	Docket No. EL07-____

**COMPLAINT AND
MOTION FOR CONSOLIDATION OF
MIDWEST MUNICIPAL TRANSMISSION GROUP**

Pursuant to Federal Power Act § 206, 18 U.S.C. § 824e and 18 C.F.R. § 385.206, Midwest Municipal Transmission Group ("MMTG") hereby files a complaint regarding a stated component of the formula rate used in determining the annual transmission revenue requirement ("ATRR") of Interstate Power and Light Company ("IPL"), and the resulting rates charged by the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO" or "MISO") for network transmission service to unbundled transmission customers serving loads located in its "Alliant West" zone. The Complaint is Part I below. Specifically, it concerns the return on equity used by IPL for that particular ATRR and zone. In Part II, MMTG moves for consolidation with Docket Nos. EC07-89 and ER07-887. Contact information and a description of MMTG is provided in Part III. In a separate document that accompanies this one, MMTG is also presenting an Offer of Settlement.

I. COMPLAINT

A. Request for Relief and Limitation of Scope

This Complaint concerns the Midwest ISO's transmission pricing in one zone — the zone that is now called Alliant West, in which IPL is currently the transmission owner — to the extent that pricing is based on IPL revenue requirements. MMTG requests that the return on equity applicable in determining the IPL transmission revenue requirement that drives rates in the Alliant West pricing zone be reduced from the now-applicable 12.38% to the current cost of equity capital invested by IPL in its transmission facilities, reflecting current financial market conditions. Other Midwest ISO zones are outside the scope of this complaint. Other Midwest ISO transmission owners, except to the extent they succeed IPL in ownership, are also outside the scope of this complaint. Although the Midwest ISO is named as a second Respondent because it is the Transmission Provider charging the rates at issue, the resulting revenue collections are remitted to IPL as the transmission owner, and we submit that IPL is therefore the principal Respondent-party-in-interest.

Through the Section 203 and 205 filings currently pending in Docket Nos. EC07-89 and ER07-887, IPL and ITC Midwest have jointly applied for a disposition of IPL's transmission facilities to ITC Midwest. As part of that joint application, IPL and ITC are requesting that the return on equity ("ROE") for the subject zone rise to 13.88%, *i.e.*, to 12.38% plus 150 basis points. Without conceding that an above-cost incentive would be appropriate, MMTG maintains that the current cost-based ROE for the subject investments, and thus the appropriate starting point for any incentive ROE that may be considered in those dockets, is below 12.38%. MMTG is filing this Complaint both in order to obtain a just and reasonable starting point for the rates at issue in those proceedings, and in order to obtain just and reasonable rates prior to or in the absence of a disposition to ITC Midwest. *Cf. Bangor Hydro-Electric Co.*, 120 F.E.R.C. ¶ 61,093 (July 26, 2007) (granting Section 206 refund relief that updated the base ROE to which incentive adders were applied, obviating the "last clean rate" doctrine for the Section 206 refund period).

The single-zone, single-owner scope of this Complaint has four bases. First, the filing in Docket Nos. EC07-89 and ER07-887 is limited to the IPL-owned facilities in the Alliant West zone. Second, only in that zone, and only for that transmission owner, has the transmission owner sought to disturb the rate status quo. Third, IPL's admissions of poor performance as a grid developer, summarized below, are limited to its share of the Alliant West zone. Fourth, the network service loads which MMTG seeks to protect through this Complaint are located in that zone.

The effects of updating to reflect current financial market conditions are demonstrated in a recent study sponsored by IPL, which is attached as Appendix A hereto. IPL's study applies the Commission's one-stage DCF model to a "Midwest ISO Group" proxy group that was identified by IPL's witness and accords with Commission policy. Based on that study, and with the three patently necessary arithmetic corrections discussed in the accompanying affidavit of J. Bertram Solomon (Appendix B hereto) and the Municipal Coalition's June 20, 2007 Protest in Docket Nos. EC07-89 and ER07-887 (Appendix C hereto), the cost-based return on equity is 8.74% (Median) or 9.36% (Midpoint). Both of these results are significantly below the currently-effective 12.38%. The difference reflects the fact that utility equity markets have recovered from the Enron- and California-related perturbations that affected the record in Docket No. ER02-485, and the fact that Aquila did not join the Midwest ISO.

In the attached IPL-sponsored recent study, Dr. Jonathan A. Lesser applied a "FERC-approved One-Stage DCF Model" to a "proxy group" consisting of "all eight of the current Midwest ISO integrated utilities," which he labeled the "Midwest ISO Group."[1] These eight

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[1] *See* Prepared Direct Testimony of Jonathon A. Lesser, Ph.D., Exh. IT-4 at 27 and 36, and the associated "Schedule 3," Docket No. EC07-89 (May 11, 2007) (attached hereto at Appendix A).

firms are the same group as the nine-member MISO TO group relied upon in Docket No. ER02-485 in setting the existing MISO-wide unbundled transmission ROE of 12.38%, minus Aquila (*a.k.a.* Utilicorp) which ultimately did not join the Midwest ISO.[2] Reference to this group accords with Commission policy, which requires that an ROE for use in RTO rates be based on "a proxy group … comprised of transmission owners with a direct link to the same RTO or ISO in which the applicant is located," and allows for deviation from this policy only if there is "compelling evidence," vetted through a trial-type evidentiary hearing, for adding or subtracting DCF proxies. *Commonwealth Edison Co.*, 119 F.E.R.C. ¶ 61,238, PP 78-79 (June 5, 2007) ("*ComEd*"); *Trans-Allegheny Interstate Line Co.*, 119 F.E.R.C. ¶ 61,219, P 40 (May 31, 2007) ("*TrAIL*"). As the Commission explained, this policy is based on its Midwest ISO precedent (as established in Docket No. ER02-485, hereafter "*Midwest ISO ROE*"):

> In *Midwest Independent Transmission System Operator, Inc.*,[77] the Commission accepted a proxy group of Midwest ISO transmission owners in setting an ROE applicable to the participating transmission owners in the Midwest ISO.[78]
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> [77] 100 FERC ¶ 61,292 (2002) (*Midwest ISO ROE Order*), *order on reh'g*, 102 FERC ¶ 61,143 (2003), *order on remand*, 106 FERC ¶ 61,302 (2004), *aff'd*, *Public Service Comm'n of Kentucky v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005).
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> [78] *See Midwest ISO ROE Order*, 100 FERC ¶ 61,292 at P 32.

ComEd at P 78; *see also TrAIL* at P 40 & n.43.

The ostensible results of that study indicated that the zone of reasonableness extended up to 14.96%, and IPL — along with ITC Holdings Corp. ("ITC") and ITC Midwest LLC ("ITC Midwest") (all three firms referred to collectively as "Applicants") — submitted it on May 11,

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[2] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 99 F.E.R.C. ¶ 63,011, at Appendix A, (2002) ("*Midwest ISO ROE Initial Decision*"), *modified*, 100 F.E.R.C. ¶ 61,292 (2002) ("*Midwest ISO ROE Order*"), *order on reh'g*, 102 F.E.R.C. ¶ 61,143 (2003), *order on remand*, 106 F.E.R.C. ¶ 61,302, P 10 (2004), *aff'd in part sub nom Pub. Serv. Comm'n of Ky. v. FERC*, 397 F.3d. 1004 (D.C. Cir. 2005). Cinergy has been merged into Duke Energy, and the group composition reflects that succession.

2007 in Docket Nos. EC07-89 and ER07-887 in support of that proposition. However, that conclusion rested on three indisputably erroneous arithmetic mistakes, and correcting those errors establishes that the zone extends no higher than 12% and centers at approximately 9%. Specifically,

- Only one of the sixteen Implied Cost of Equity ("ICOE") data points that IPL's witness found for the Midwest ISO proxy group extended above 13.88%, but to reach that data point, he combined the dividend yield for DTE Energy with the growth rate for MDU Resources. This error is patent, and admitted by IPL's own workpapers.
- Only one other IPL-calculated ICOE for the Midwest ISO proxy group extended above 12.38%, an ostensible 13.08% ICOE for Duke Energy. But as is plainly visible in IPL's workpapers, that ICOE reflects an erroneous dividend yield. It resulted from dividing share price data that was retrospectively adjusted for Duke's January 2, 2007 stock split (associated with the spin-off of its Spectra natural gas business) into the annual dividend level that predated the spin-off and was substantially reduced upon spin-off.
- All of the IPL-calculated ICOEs were marginally affected by the failure to account for compounding in calculating the annual rate of growth in shares, *i.e.*, the *s* in *br* + *sv* growth. Once compounding is reflected, all sixteen of the ICOEs for IPL's Midwest ISO proxy group fall below 12%.

These three clearly necessary corrections result in the following array of ICOEs:

Midwest ISO Transmission Owners ICOEs
(Third Revised)

Company	ICOE-low	ICOE-High
Allete Inc. (ALE)	**8.16%**	**9.95%**
Alliant Energy (LNT)	**7.90%**	**9.24%**
DTE Energy (DTE)	**6.76%**	**10.43%**
Duke Energy (DUK)	**6.82%**	**10.34%**
MDU Resources (MDU)	**9.16%**	**11.96%**
Otter Tail (OTTR)	**7.55%**	**8.91%**
Vectren (VVC)	**7.00%**	**8.58%**
Xcel Energy (XEL)	**8.05%**	**10.36%**
Average	**8.82%**	
Minimum	**6.76%**	
Maximum	**11.96%**	
Median	**8.74%**	
Midpoint	**9.36%**	

Once the effect of the two main corrections came to Applicants' attention, they sought to disown the study they had previously sponsored through sworn testimony. They submitted an "amended" version of Dr. Lesser's testimony that omitted his study of the proxy group required under Commission policy. On July 13, 2007, Applicants submitted further testimony in which Dr. Lesser contended that ITC (in contrast to IPL) was "unique" and therefore should have its post-acquisition rates set on a different basis. But Dr. Lesser's sworn May 2007 testimony remains compelling evidence that the cost of equity capital invested by Alliant in IPL-owned transmission facilities is in the single digits, and nowhere near the currently-applicable 12.38%.

For purposes of the present Section 206 complaint, the focus must be on the center of the ICOE results array, or its lower end, not on the upper end to which Applicants have pointed in their filing under Section 203 and 205. In that filing, IPL admits that it has been a poor steward of its transmission system. The Applicants argue that the transaction is needed to enable ITC Midwest to make the investments IPL is unwilling to make in the IPL grid. Applicants' testimony details the results of IPL's apparent neglect. According to IPL witness Larsen (Exh. IP-1at 8, lines 5-6 and at 11 lines 2-3), IPL has been unwilling to invest in the grid even where doing so would lower IPL's own energy costs. ITC witness Schultz describes how constraints on IPL's system have resulted in designation of a new MISO Narrow Constrained Area (Exh. IT-3 at 20-21), and how ITC Midwest would construct the projects identified by IPL planners as needed, but which IPL was not budgeted to build. *Id.* at 21-22.

In testimony before the Iowa Utility Board, IPL witness Collins graphically describes IPL management as failing to make "additions that IPL's Planning Department recognizes as necessary."[3] Specifically, Mr. Collins' testimony explains that IPL management has chosen not to address constraints on the IPL system that have led to the designation of IPL's system as a new Narrow Constrained Area with congestion and significant TLR issues (involving more than 5000 hours of non-firm curtailments and 200 hours of firm curtailments from 2001 through 2004). Mr. Collins explains: [4]

> Internal competition for capital within IPL has prevented IPL from making the significant investment of capital needed to support the demands being placed on the transmission system by market transactions.

Mr. Collins (Iowa Testimony at 36-37) goes on to explain that not only does IPL management avoid its responsibility to address severe TLRs and constraints, it even seeks to avoid upgrades required for reliability.

> Q. Other than projects for congestion relief, do you believe that there are any other differences between the capital

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[3] Direct Testimony of Douglas C. Collins before the Iowa Utilities Board, Docket No. SPU-07-110, at 37-38, filed March 30, 2007 (excerpts attached hereto as Appendix D) ("Collins Iowa Direct Testimony"). (References in Mr. Collins' Iowa Testimony to Confidential Schedule H correspond to Confidential Schedule C filed by Applicants with this Commission in Docket Nos. EC07-89-000 and ER07-887-000.) *Id.* at 37-38.

[4] Collins Iowa Direct Testimony at 36.

investment plan that IPL would pursue versus the plan that ITC Midwest would pursue?

A. Yes, there are. For instance, IPL recognizes that existing facilities do not last forever and that provisions must be made to invest in the replacement of aging infrastructure. IPL's Planning Department has presented proposals to IPL management to accelerate this replacement cycle, but due to the internal competition for capital, the replacement cycle remained unchanged. …

Q. Can you give an indication of why IPL's Planning Department felt that the replacement cycle needed to be accelerated?

A. Yes. One area of concern is 500 miles of 34.5/69kV lines were constructed prior to 1940. That means those facilities are at least 67 years old. In addition, IPL's 115kV system in central Iowa has been identified as being in poor condition and needs to be rebuilt. There are over 300 miles of 115 kV line in that area.

Mr. Collins further observed that ITC Midwest found the proposals that IPL management had rejected to be "prudent and appropriate." Collins Iowa Testimony at 37.

Mr. Collins' Iowa testimony goes on to describe additional upgrades deferred by IPL, despite the recommendation of its planning department (Collins Iowa Testimony at 37-38):

Q. Were there other recommendations contained in IPL's Planning Department's presentation for ITC Midwest?

A. Yes, in addition to the acceleration of the replacement cycle, the presentation also identified some facilities additions that IPL Planning Department recognized as necessary.

Q. Are the additions that were identified ones that IPL would build?

A. Yes, these additions would all be built by IPL, but over a longer time frame than optimal due to constrained capital budgets.

Mr. Collins claims IPL provides a reliable system by reliance on operating guides, but his own description makes clear that IPL's evidently long term reliance on those guides is undue.

> A. While operating guides can be effective in maintaining reliability, they should be used only on a short term basis to address either a temporary situation or an unexpected problem where the facility addition can not be built in the needed time frame. Operating guides indicate that the margin of reliability is reduced (the system is operating closer to the edge) and operating flexibility is reduced providing less options under abnormal operating conditions that arise – like the recent ice storms.

Collins Iowa Testimony at 38. Mr. Collins also indicated that ITC Midwest had reviewed the presentation, discussed the projects, and concluded they should be implemented. *Id.* at 39.

In sum, IPL's own testimony concedes that IPL has neglected its transmission system. The ROE for IPL's zone therefore should reflect at <u>most</u> the center of the ICOE results array.

If this proceeding is resolved on the papers without a trial-type evidentiary hearing, MMTG is willing to stipulate to an ROE at the center of the above array, and to further stipulate to accept as that center the 9.36% midpoint rather than the 8.74% median. In the event of a trial-type evidentiary hearing, we reserve the right to seek a lower ROE, including one that is lower than either measure of central tendency. Such a downwards adjustment would fairly reflect IPL's poor record as recited above. It would also sharpen the incentive for other transmission owners to build the robust, competition-supporting grid that RTO transmission owners are supposed to furnish, and enable the Commission to reward transco formation without rewarding vertically-integrated transmission owners for the shortcomings that make a change in ownership appear so desirable.

Reducing the pre-divestiture ROE will encourage divestiture, by creating room within the zone of reasonableness (which, as demonstrated in the attached Protest, tops out well below the

13.88% ROE that ITC is requesting) for a differential between the pre-divestiture ROE and the post-divestiture ROE. In Order 679-A,[5] at P 130, the Commission held that it will consider incentive structures that include penalties for poor performance, but provided guidance that such proposals should be justified "in terms of their capability to attract investment and either ensure reliability or reduce the cost of delivered power by reducing congestion." ITC and IPL assert that divestiture to ITC Midwest will achieve those objectives, and have filed in Docket Nos. EC07-89 and ER07-887 extensive testimony to that effect. If this testimony is credited, then it follows that reducing the pre-divestiture ROE will promote those objectives, by making divestiture to ITC Midwest a precondition to extending the applicability of a return that exceeds current costs.

B. Refund Effective Date

A reduced ROE for the Alliant West zone should take effect on the refund effective date. Under Federal Power Act Section 206 as amended by Section 1285 of the Energy Policy Act of 2005, the refund effective date must fall within a five-month window that opens upon "the date of the filing of such complaint," *i.e.*, today. Because rates should not exceed costs, at least without a valid reason established in advance, the refund effective date should be today.

C. Contents Required for Complaints

In fulfillment of the eleven enumerated requirements for complaint contents set forth at 18 C.F.R. § 385.206(b), MMTG states as follows.

Identification and Explanation of Violation, 18 C.F.R. § 385.206(b)(1)-(2): For service to network loads in the Alliant West zone, the Midwest ISO is charging a formula rate

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[5] *Promoting Transmission Investment through Pricing Reform*, Order No. 679-A, 72 Fed. Reg. 1,152 (Jan. 10, 2007), III F.E.R.C. Stat. & Regs. ¶ 31,236, *clarified*, 119 F.E.R.C. ¶ 31,062 (2007) ("Order 679-A").

reflecting an IPL revenue requirement formula that states a return on equity, which stated return on equity exceeds the current cost of equity. This exceedance is demonstrated by IPL's own witness in testimony filed by IPL *et al.* on May 11, 2007. The resulting formula rate is unjust and unreasonable. Furthermore, in ongoing Iowa proceedings, IPL has presented testimony asserting that it is inappropriate and unsustainable policy to maintain a transmission rate differential between those Midwest ISO transmission customers who purchase bundled requirements power from IPL at retail and those who do not.[6] If IPL's testimony is correct, then it follows that it is unduly discriminatory to require unbundled transmission customers to pay an ROE that is substantially above the current cost of equity capital while bundled IPL retail customers pay a lower ROE of 10.7%.

Effect of Violation on Complainant, 18 C.F.R. § 385.206(b)(3): Municipal distribution systems that participate in Complainant MMTG , and for which it serves as their associational representative, are paying the excessive rates at issue.

Good Faith Quantification of Financial Impact, 18 C.F.R. § 385.206(b)(4): The precise financial impact of reducing the ROE for the IPL zone will depend on future billing determinants and on the inputs for the remainder of the applicable MISO Attachment O formula, neither of which is currently known. However, a good-faith estimate of the unit rate effect can be developed using the Attachment O data that became effective on June 1, 2007, which is the most recent data posted by the Midwest ISO on the "Pricing Analysis" portion of its website. There, the Alliant West zonal network service rate based on an IPL ATTR that reflects a 12.38% ROE was $2.446/kW-month. Modifying the "ALTW" tab of that spreadsheet by substituting the

[6] See Rebuttal Testimony of Douglas C. Collins before the Iowa Utilities Board, Docket No. SPU-07-110, at 13-17, dated June 29, 2007.

8.74% median ROE from the above table yields $2.09/kW-month. Substituting the 9.36% midpoint ROE from the above table yields $2.158/kW-month.

Nonfinancial Impact, 18 C.F.R. § 385.206(b)(5): Not directly applicable. The rate impacts at issue are financial impacts. Indirectly, those financial impacts would encourage other transmission owners to meet their grid development obligations, as discussed above.

Other Proceedings, 18 C.F.R. § 385.206(b)(6): As discussed above (and in the Motion for Consolidation set forth below), Dockets Nos. EC07-89 and ER07-887 are relevant. However, full relief is not available in those proceedings. The rate effective date associated with those proceedings is contingent on closing of the disposition and will follow such closing. The "last clean rate" for purposes of those proceedings will, absent relief here, serve as a floor on the rate outcome of those proceedings. In addition, absent relief here, Applicants may assert there that the existing ROE should be deemed to constitute a just and reasonable cost-based platform to which incentives should be added.

Relief Requested, 18 C.F.R. § 385.206(b)(7): See Part I.A above.

Documentary Support, 18 C.F.R. § 385.206(b)(8): See the appendices hereto, including the May 11, 2007 testimony sponsored by IPL and the attached affidavit of J. Bertram Solomon.

Alternative Dispute Resolution Efforts, 18 C.F.R. § 385.206(b)(9): Because IPL did not confer with MMTG before deciding to pursue a rate-increasing disposition to ITC and file a proposed rate increase in Dockets Nos. EC07-89 and ER07-887, MMTG has not conferred with IPL before filing this complaint. However, an Offer of Settlement accompanies this complaint.

Form of Notice, 18 C.F.R. § 385.206(b)(10): A proposed form of notice, Appendix E hereto, is being filed electronically with this Complaint.

Support for Fast Track Processing, 18 C.F.R. § 385.206(b)(11): Not applicable. MMTG is not requesting Fast Track processing. However, pursuant to Federal Power Act Section 206(b), we do ask the Commission to "give to the decision of such proceeding the same preference as provided under section 205 of this Act and otherwise act as speedily as possible," and in particular that it act on this Complaint contemporaneously with any action in Dockets Nos. EC07-89 and ER07-887.

II. MOTION FOR CONSOLIDATION

This matter and Dockets Nos. EC07-89 and ER07-887 present common operative facts. The outcome of the present "EL" docket should identify the cost of equity capital that will function as the pre-disposition baseline for any above-cost incentive that may be approved in those "EC" and "ER" dockets. Furthermore, the admissions made by IPL in its May 11, 2007 filing in those dockets are an important element of the dispositive, or at least *prima facie*, case submitted through this Complaint. Accordingly, all three dockets should all be considered together, and consolidated for purposes of decision and any evidentiary hearing(s) that may be ordered.

III. DESCRIPTION OF COMPLAINANTS AND CONTACT INFORMATION

MMTG was formed by and has as members two statewide associations of municipal utilities (the Iowa Association of Municipal Utilities ("IAMU"), the Minnesota Municipal Utilities Association ("MMUA")) and one municipal power supply agency (the Central Minnesota Power Supply Agency ("CMMPA")), which intervene along with and as part of MMTG. MMTG represents the interests of over 77 cities and governmental entities in Iowa and Minnesota and one in Illinois that depend upon adequate and equitably priced transmission and thus have a vital interest in assuring that transmission is available on fair, non-discriminatory and non-preferential terms and at just and reasonable rates. MMTG members have approximately 677 MW of load within the Upper Midwest and what was once the proposed TRANSLink footprint. A significant number of the municipal electric systems represented by MMTG are located on the IPL grid, some of which are also wholesale power customers of IPL. Thus, MMTG members are entities representing or serving load dependent on the IPL transmission system and/or participating in the ownership of resources located on the IPL system.

MMTG's reason for being is to strengthen municipal utilities' access to markets, by getting them the rights and opportunities to invest in transmission. MMTG was formed to further non-discriminatory municipal ownership of transmission, including through participation in TRANSLink. MMTG is actively participating in CAPX-2020 efforts. Many municipal systems represented by MMTG own transmission that contributes to the grid and generation that supports the grid.

Communications regarding this proceeding should be directed to:[7]

[7] To the extent necessary, we request waiver of 18 C.F.R. § 385.203(b)(3) to allow multiple addressees to be placed on the official service list, because this motion to intervene is filed on behalf of multiple entities and in order to expedite communications.

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IV. CONCLUSION

For the foregoing reasons, this new docket should be consolidated with existing Dockets Nos. EC07-89 and ER07-887, and the ROE for the IPL revenue requirement in the Alliant West zone should be significantly reduced, effective immediately.

Respectfully submitted,

/s/ David E. Pomper

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July 31, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have on this 31st day of July, 2007, caused the foregoing document to be sent to

- Respondents;
- Iowa Utilities Board;
- Minnesota Public Utilities Commission; and
- Each addressee (including representatives of ITC Midwest) who is on the service list for any of the following proceedings.
  - The FERC proceedings (Docket Nos. EC07-89 and ER07-887) concerning the proposed transmission asset sale from respondent IPL to ITC Midwest and the future rates for transmission over those facilities;
  - The Iowa Utilities Board proceedings related to that sale, IUB Docket No. SPU-07-11; and
  - The Minnesota Public Utilities Commission proceedings related to that sale, MPUC Docket No. E-0001/PA-07-540.

Service on respondents is being effected electronically; service to other addressees is being effected electronically where email addresses are available and otherwise by other expedited means. Because each entity that considers itself materially affected by FERC-jurisdictional transmission rates in the Alliant West zone of the Midwest ISO presumably is represented in one or more of these proceedings, such service satisfies the requirements of 18 C.F.R. § 385.206(c).

/s/ David E. Pomper

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Submission Contents