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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

PUBLIC SERVICE COMMISSION

Green Power Express LP

| Docket No. ER09-681-000

**MOTION TO INTERVENE AND COMMENTS  
OF MIDWEST TDUS**

On February 9, 2009, Green Power Express LP (“GPE”), a wholly-owned indirect subsidiary of ITC Holdings Corp. (“ITC”), filed under Federal Power Act Section 205<sup>1</sup> seeking a rate formula to establish the annual revenue requirement for a potential future 765 kV transmission project that is still in the early planning stages, and seeking associated rate incentives. The potential project’s location(s) are not yet known, and it has not yet undergone regional planning review or siting review, but it might be sited in the Dakotas, Minnesota, Iowa, Wisconsin, Illinois, and perhaps Missouri and/or Indiana, largely in the Midwest Independent Transmission System Operator (“Midwest ISO” or “MISO”) region and partly in neighboring areas. Pursuant to Rules 211, 212 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212 and 385.214, and the Commission’s February 12, 2009 Combined Notice of Filings, Great Lakes Utilities (“GLU”), Lincoln Electric System (“LES”), Madison Gas & Electric Company (“MGE”), Midwest Municipal Transmission Group (“MMTG”), Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), Missouri River Energy Services (“MRES”), Southern Minnesota Municipal Power Agency (“SMMPA”), and WPPI Energy (“WPPI”) (collectively, “Midwest TDUs”) move to intervene in this proceeding and submit their comments.

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<sup>1</sup> 16 U.S.C. § 824d.

Major expansion of transmission capacity in the MISO region and its surrounds is necessary, and enabling Midwestern population centers to better tap the Midwest's wind resources would advance multiple national priorities. As a general proposition, therefore, GPE's eagerness to build is laudable. GPE deserves further commendation for proposing the same return on equity (12.38%) that is the prevailing Midwest ISO transmission return, and is in line with the resolution that GPE's affiliate ITC Midwest reached with the applicable Midwest TDUs in Docket Nos. EC07-89 and related state-commission proceedings.

Notwithstanding Midwest TDUs' general support for transmission development funded through the prevailing rate of return, Midwest TDUs are not convinced that a 765 kV overlay in the locations to which this filing points is necessarily the right answer — and more importantly, they are convinced that this is not the forum where the answer should be formulated. Instead, the answer should be developed through regional planning, and then reviewed by this Commission. In the same general area that GPE is targeting, the CapX 2020 group — a broad consortium of utilities serving that area's load — has also been planning major transmission additions. In that same area, the Upper Midwest Transmission Development Initiative (“UMTDI”) is undertaking a systematic transmission scoping effort, including consideration of wind resources sited on the Great Lakes, closer to Midwestern population centers and therefore potentially obviating 765 kV lines to the Dakotas. Duplicative investment and uncoordinated planning are in nobody's interest. Given the potential incompatibility between GPE and these existing, regionally-grounded planning efforts, it is cause for concern that the filing is insufficiently clear as to whether GPE's facilities will be reviewed through all applicable existing regional planning processes, as to whether GPE's facilities will be regionally operated if constructed, and as to the

Commission's authority to ensure that the proposed rate treatments do not become rewards for shunting regional planning aside.

Accordingly, while Midwest TDUs generally do not oppose the rate treatments requested by GPE here, Midwest TDUs believe that several clarifications are in order. The Commission should make clear that

- GPE will be held to its “commit[ment] to work through ... a Commission-approved regional planning process.” See Part II.A, below.
- Consistent with its representation that it “will need local utility partners”<sup>2</sup> and “has already begun seeking partnerships with local utilities,”<sup>3</sup> GPE will be required to provide a reasonable opportunity for ownership participation of affected load-serving entities in the GPE entity or its assets, on reasonable terms that need not include active management control. See Part II.B.
- Consistent with the basis on which GPE claims a 12.38% ROE, GPE's facilities are to be placed under RTO Tariff(s). See Part II.C.
- If GPE subsequently seeks “abandoned plant” recovery, the Commission will retain authority to reduce the resulting charges so as to exclude, if sought, above-cost components, see Part II.D.1, and expenditures that became wasted because GPE's spending outpaced regional planning approvals, see Part II.D.2.
- GPE's formula rate inputs and resulting charges will be subject to review through reasonable formula rate monitoring protocols, to be developed through Settlement Judge mediation (or if necessary, hearing procedures) at an appropriate time. See Part II.E.

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<sup>2</sup> Filing Vol.1 of 3, Part 1 of 2, Direct Testimony of Joseph Welch, Exh. GPE-100, at 15-16.

<sup>3</sup> *Id.*

**I. MOTION TO INTERVENE**

**A. Communications**

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**B. Description of Midwest TDUs and Their Interests in These Proceedings**

Descriptions of each Midwest TDU are provided in Attachment A hereto. Each of the Midwest TDUs (or in some cases, their members) serve member load, using network integration

transmission service, in MAPP and/or MISO. In addition, several of the Midwest TDUs own transmission facilities located in MAPP and/or MISO, or are engaged in consortium efforts to build such facilities, or own shares of the American Transmission Company.

In these various roles, all of the Midwest TDUs pay transmission rates that may be increased by the rate treatments requested in the present filing, depending on cost allocation decisions that will be made elsewhere. In addition, they are all affected by, and seek to actively participate in, transmission planning for the Midwest ISO and MAPP regions and adjacent areas.

## II. COMMENTS

### *A. The Approvals Requested Here Should Be Kept Both Formally and Practically Subordinate to Commission-Approved Regional Planning*

GPE presents an elaborate case for the value of adding transmission capacity from the upper Great Plains to the more populated portions of the Midwest. But that case establishes, at most, that the grid would be stronger with the GPE project than without it. The regional planning processes that have yet to review the GPE project are designed to answer a more probing question: Of the infinitude of system improvements that could be made, which improvements should be selected as the most worthwhile ways to spend electricity consumers' finite resources? GPE has made no showing that its proposed projects, to a greater degree than the competing projects that may emerge from the regional planning process, will ensure reliability or reduce the cost of delivered power by reducing transmission congestion.

Accordingly, the Commission should make clear that it will hold GPE to its "commit[ment] to work through ... a Commission-approved regional planning process"<sup>4</sup> and its concession that "Unless a broader one-stop planning process is developed, the Project will also

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<sup>4</sup> Filing Letter at 63.

need to be considered in the regional planning processes of the Midwest ISO, PJM, and areas not covered by an RTO, such as the Mid-Continent Area Power Pool.”<sup>5</sup>

Clarification is necessary because after stating its commitment to regional plan vetting, GPE proceeds to assert that “[t]he size, scope, and purpose of the Green Power Express falls outside the currently approved planning process,”<sup>6</sup> and to suggest that existing regional planning processes are not “appropriate for the Project, a network that will implicate the MAPP, Midwest ISO and PJM.”<sup>7</sup> Note also that in his recent technical conference testimony, Joseph Welch, the Chairman, President and CEO of GPE’s parent holding company (and GPE’s lead witness here), was sharply critical of the Order 890 approach to planning, both generally and as implemented in MISO. He asserted that “the voluntary nature of RTO membership and the stakeholder-driven planning process ... promotes an undue influence of market participants in the development of regional plans,”<sup>8</sup> and claimed that MISO itself has a “conflict of interest” because it is “responsible for both transmission planning and energy markets.”<sup>9</sup> Accordingly, he urged the Commission to replace MISO’s existing, Order-890-based process with a primarily top-down process under which this Commission would become the primary transmission planner, with MISO’s plans placed under the Commission’s substantive “instruction.”<sup>10</sup>

Notwithstanding its CEO’s skepticism regarding regional planning, reading together the GPE statements quoted in the second paragraph above, we understand GPE to be committing to

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<sup>5</sup> Filing Letter at 11.

<sup>6</sup> *Id.* at 66.

<sup>7</sup> *Id.* at 63.

<sup>8</sup> March 2, 2009 Written Comments of Joseph L. Welch in *Technical Conference on Integrating Renewable Resources Into the Wholesale Electric Grid*, Docket No. AD09-4, at 5 (eLibrary Submittal No. 20090302-4007).

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 6-7.

proceed only if (a) all applicable existing Commission-approved planning processes, including that of MISO, approve its plans, and/or (b) to the extent the Commission rules that approval by a new multi-regional planning process would substitute for approval by those existing processes, GPE proceeds to secure approval under that Commission-endorsed substitute. If that is the commitment, it provides a reasonable framework. GPE is entitled to contend for a new planning process. But the existing processes are the product of lengthy Commission and stakeholder consideration, in which the ITC companies had every opportunity to participate, and are enshrined in approved tariff provisions such as Midwest ISO Tariff Attachment FF. Unless and until GPE succeeds in overturning existing tariffs and in otherwise securing the Commission's approval for a substitute process, the existing Commission-approved processes govern, and must be honored. "So long as the filed rate is not changed in the manner provided by the Act it is to be treated as though it were a statute, binding upon the seller and the purchaser alike."

*Northwestern Public Serv. Co. v. Montana-Dakota Utilities Co.*, 181 F.2d 19, 22 (8th Cir.1950), *aff'd*, 341 U.S. 246 (1951). GPE's preference for a new, top-down process does not by itself relieve GPE of the obligation to have its plans vetted by MISO, MAPP, PJM, and others, and the Commission should make this clear.

Regional planning is essential for many reasons; they are familiar to the Commission and recited in Order 890, and need not be repeated here. Two, however, bear emphasis in this particular context.

First, given the indefiniteness and scope of GPE's proposed projects, and the wide publicity and receptiveness that has attended President Obama's call for infrastructure linking the Midwest's wind resources and population centers, there are multiple potential builders of the transmission facilities sketched by GPE, including the broad CapX 2020 consortium, which the

multiple utilities that serve load in the proposed GPE footprint have built from the bottom up. It will not advance the public interest if competing plans lead to an imbroglio resembling that now taking place in Kansas between competing plans of ITC Great Plains and Westar.<sup>11</sup> The existing approved regional planning processes will provide an orderly process for determining not only what should be built, but who is responsible for building what.

Second, regional planning processes will address the cost allocation issue, *i.e.*, who will be responsible for the costs of the regionally-approved project(s). Midwest TDUs are not opposing GPE's request to defer the cost allocation issue for the moment. Nonetheless, leaving that question hanging for too long, while the tab to be split piles up, is all too likely to result in surprise and controversy, and to delay siting approvals while each jurisdiction with veto power questions whether the project will be worthwhile if it turns out that its constituents must pick up a large portion of the ultimate cost. Thus, the looming cost allocation issue makes it all the more important to insist that GPE proceed through regional planning, and do so before sinking too much into project development costs that GPE will then seek to collect from ratepayers.

***B. Green Power Express Should Be Held to its Commitment to Seek Partnerships with Local Utilities***

Joseph Welch, the Chairman, President and CEO of GPE's parent holding company, makes clear that GPE is open to partnering with load-serving utilities (and with wind developers, the market participants at the other end of the proposed transmission lines). Indeed, he testifies that a principal reason GPE decided to file for rate-related approvals now was to facilitate such partnering:

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<sup>11</sup> See Mr. Welch's Open Letter to the Governor of Kansas and others regarding this controversy, at <http://www.itcgreatplains.com/pdfs/letterOfImportance.pdf>.

The Green Power Express is the first of its kind and is meant to truly serve a regional need. As such, in order to advance the Green Power Express, we will need local utility partners with whom we can collaborate and develop support for the project. ITC has already begun seeking partnerships with local utilities and wind developers such as NorthWestern Energy and Iberdrola Renewables. This is one of the primary drivers behind our decision to pursue this application. Having certainty around rate elements will provide us the foundation from which we can discuss and secure partnerships. With approval of this application and the development of partnerships in the region, we will be able to expeditiously move the Green Power Express forward.

Filing Vol.1 of 3, Part 1 of 2, Direct Testimony of Joseph Welch, Exh. GPE-100, at 15-16.

ITC's apparent openness to co-investment is welcome, and is important for multiple reasons. First, by inviting a consortium approach, it promises to present state siting authorities with a unified and well-directed proposal, easing their burden and expediting approvals. "Engaging all LSEs in the planning process and the resulting investment not only ensures that the grid meets the needs of all consumers, but also broadens support in the often contentious siting process. ... by minimizing conflicts and opening up the planning and expansion process, the inclusive stand-alone and shared system models bring a broader perspective to meeting the transmission needs of the participants and the region."<sup>12</sup> Second, it will provide new sources of capital, from entities that have strong credit ratings and a reliable stream of existing ratepayer revenues, which is especially important in these financially troubled times.<sup>13</sup> Third, by enabling load-serving entities to share in GPE's costs as passive co-owners rather than ratepayers, it opens avenues through which they can hedge the large rate increases that GPE's proposed multi-

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<sup>12</sup> Transmission Access Policy Study Group, *Effective Solutions for Getting Needed Transmission Built at Reasonable Cost* (2004), at 13 (available at <http://www.tapsgroup.org/sitebuildercontent/sitebuilderfiles/effectivesolutions.pdf>)

<sup>13</sup> *See id.* at 12.

billion-dollar investment inevitably will entail.<sup>14</sup> Fourth, it will help to avoid dueling proposals to build the same facility, as in the “bloody Kansas” situation noted above.<sup>15</sup> Fifth, it will enable the LSEs neighboring the proposed facilities, whose transmission and distribution systems may well have to be strengthened to address contingencies associated with GPE’s facilities, to mitigate their resulting costs.

Midwest TDUs are concerned, however, that if and when GPE has Commission approvals in hand, its openness to co-investment may diminish. The Commission should make clear that any approvals are contingent on GPE’s good-faith follow-through on its commitment to seek partnerships, and should require GPE to file periodic status reports summarizing its efforts in that regard.

***C. The Project’s Facilities Should be Placed Under RTO Operation***

GPE states that it “fully expects that the Project will be placed under the operational control of RTOs.”<sup>16</sup> But it phrases this statement as a prediction rather than a commitment, and thereby creates unnecessary uncertainty that, among other things, will devalue the extent to which wind developers and LSEs can count on de-pancaked access to GPE facilities as they make their own long-term plans. Given that GPE’s “expectation” relates to an occurrence that is almost entirely within GPE’s control, it would be fair and appropriate, and provide a clarification that is in the public interest, for the Commission to expressly take GPE’s expectation as a commitment to pursue RTO participation diligently and in good faith.

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<sup>14</sup> See *id.* at 14 (“Grid investment also provides TDUs with a long-term, steady revenue stream that hedges against rising power supply costs, in the same manner as vertically integrated, investor-owned utilities enjoy.”).

<sup>15</sup> While there may be value to competition between alternative plans on technical, financial, or other such grounds, it should be hashed out within the regional planning process. A solitary-builder approach makes resolution of such healthy competition less likely.

<sup>16</sup> Filing Letter at 39.

Such clarification is especially important with respect to the portions of GPE's planned facilities that extend west of the existing MISO footprint. The contemplated geographic scope of GPE's facilities lies primarily within MISO, but extends into what are now non-MISO portions of MAPP, and thus not currently within any RTO's transmission footprint.<sup>17</sup> Nonetheless, GPE seeks a 12.38% ROE for all of its regulatory assets and facilities, including those related to non-MISO MAPP. This ROE request is expressly based on RTO participation, in two respects. First, GPE emphasizes that it is the same MISO-standard ROE that is received by ITC Midwest and other MISO TOs.<sup>18</sup> Second, GPE reaches 12.38% by starting with a 10.78% cost of equity capital and adding 160 basis points that include 50 points for RTO participation.<sup>19</sup> The *quid pro quo* for extending to GPE's MAPP-area facilities a return based on MISO's ROE and on RTO participation incentives should be that those facilities are placed under MISO's tariff and MISO's functional control, much as the facilities of ITC's existing MISO-area operating companies have been integrated into the MISO transmission footprint.<sup>20</sup>

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<sup>17</sup> See Filing Letter at 62 (the Project "lies within or connects with facilities in the non-RTO area of MAPP; the Midwest ISO; and PJM").

<sup>18</sup> See Filing Letter at 42 ("the 12.38 percent rate is ... the current Commission-approved ROE for the transmission owners within the Midwest ISO and the rate that was approved as a settlement in ITC's acquisition of the transmission assets for the Partnership's affiliate ITC Midwest").

<sup>19</sup> See Exh. GPE-300 at 8-9 ("I recommend that the Commission allow a base level ROE equal to 10.78 percent. To this base, I recommend adding a policy-based incentive of 160 bps. The Commission has routinely allowed ROE adders of 50 basis points for RTO membership (and turning assets over to RTO functional control) and 100 bps for being an independent transmission company. In addition to those, the Partnership is requesting a modest risk incentive ROE adder of 10 bps.").

<sup>20</sup> Midwest TDUs recognize that GPE is structured to be market-independent and that the Commission has allowed the existing Midwestern ITC operating companies to enter relationships with MISO under which certain RTO functions are delegated to the operating company, pursuant to an agreement under Appendix I to the MISO TO Agreement. By referring to MISO functional control, Midwest TDUs are not opposing the establishment of an Appendix I relationship between MISO and GPE, with attendant "slicing-and-dicing" of transmission functions. But any such relationship should provide for de-pancaked rates and otherwise be consistent with *TRANSLink Transmission Company, L.L.C.*, 99 F.E.R.C. ¶ 61,106 (2002), including its determination that "the RTO ... must have the ultimate authority regarding planning and expansion for its region," *id.* at 61,472.

Regional integration is in the public interest. The Commission recently rejected MISO's "Market Service" proposal, partly on the ground that by "prevent[ing] transmission owners from joining as full members" of MISO, it would have institutionalized a seam between MAPP and MISO, with pancaked rates and other hurdles to wind deliveries across that seam:

It is not apparent to the Commission that Market Service would provide an effective vehicle for additional wind energy into the market. MidAmerican states that its proposed MITS-comparable rate would, during certain conditions, result in lower transmission rates than are currently paid by generators (including wind) in the MidAmerican service territory under the status quo. However, such generators may want to mitigate the risk of congestion payments by acquiring FTRs, which would require payment of an additional point-to-point charge. Some, such as Iberdrola, further argue that Market Service would increase wind energy's participation in the markets by providing it an imbalance market into which to sell and thus would increase the construction of wind generators. However, others such as Mr. Wahle of Missouri River Energy Services (on behalf of Midwest TDUs) argue that the continued use of pancaked rates would institutionalize a seam in the market that would discourage wind development in the Midwest regions of the Dakotas. As noted above, we agree that approval of Market Service could prevent transmission owners from joining as full members and thus that Market Service could institutionalize the seam.

*Midwest Independent Transmission System Operator, Inc.* 126 F.E.R.C. ¶ 61,139, P 71 (2009).

The same considerations weigh heavily in favor of GPE's participation in the MISO transmission footprint. Recovery of the revenue requirement for GPE's MISO- and MAPP-area facilities should be handled through the MISO tariff, using a reasonable, non-pancaked cost allocation structure to be determined in future proceedings.<sup>21</sup>

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<sup>21</sup> To be clear, Midwest TDUs are not opposing GPE's request to defer cost allocation issues to a future proceeding, and their comments herein assume that that is how the Commission will stage its decisions regarding GPE cost recovery. We also note that a relatively small portion of GPE's facilities may be built within what is currently the PJM footprint. Because MISO and PJM have already reciprocally de-pancaked their transmission access charges, the question whether GPE's easternmost facilities would be under the MISO tariff is less critical than is the case for GPE's westernmost facilities. However, FTR allocations, ancillary service charges, and other seams management

Moreover, the reasons for insisting on GPE participation in MISO extend beyond avoidance of pancaked rates. ITC's current business model is based on developing and owning transmission facilities which are operated by RTOs. Its proposals to develop a vast 765 kV grid through GPE and other operating companies is ambitious aplenty, without adding the complication of simultaneously taking on the transmission operation functions that it would have to perform if it were to become a stand-alone TO. Furthermore, the planning considerations that weigh in favor of regional planning before GPE's facilities are built will continue to apply in the future. For example, if GPE's plan is built, the connections to its new lines and accommodating strengthening of existing lines should be regionally planned.

***D. The Requested Abandoned Plant Incentive Should Be Clarified***

GPE seeks "approval for the recovery of prudently-incurred costs associated with the Green Power Express in the event the Project must be abandoned for reasons outside of the Partnership's control,"<sup>22</sup> and commits "to make a section 205 filing before recovering abandoned plant costs, including any unrecovered costs associated with the regulatory asset, and will demonstrate that such costs were just and reasonable."<sup>23</sup> Midwest TDUs do not oppose abandoned plant protection, or the establishment of an associated regulatory asset, provided that the limitations proposed by GPE are maintained and clarified as discussed below.

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issues may arise if GPE facilities are split between the two RTOs. Whether that split is appropriate, and, if so, how resulting seams issues should be minimized, should be addressed in due course.

<sup>22</sup> Filing Letter at 3 (emphasis added).

<sup>23</sup> Filing Letter at 37.

1. Recovery for abandoned plant should be limited to cost, not including above-cost incentives

The purpose of transmission incentives is to encourage completion of facilities that enter commercial service, not to reward spending on abandoned plant.<sup>24</sup> And the purpose of abandoned plant protection is to encourage steps towards completing facilities, by providing that transmission developers who cannot complete their projects for reasons beyond their control are held harmless for their prudently incurred pre-commercial costs.<sup>25</sup> But holding harmless is different from enriching. It follows that if this proceeding leads to a future Section 205 proceeding for abandoned plant recovery rather than to used and useful plant, the Commission should not be obliged to allow recovery exceeding GPE's actual costs, at its actual costs of debt and equity applied to its actual capital structure. The Commission reserved the right to so limit abandoned cost recovery and other pre-commercial costs in *Tallgrass Transmission, LLC*, 125 F.E.R.C. ¶ 61,248, PP 62-67 (2008) ("In that proceeding Tallgrass and Prairie Wind must demonstrate that such abandoned plant costs are just and reasonable"), and it should do so here as well.

2. The abandoned plant incentive should not fund circumvention of regional planning

Where GPE's spending gets ahead of the regional planning process, it should be at risk of disallowance. Expressly retaining the potential for such disallowance is not inconsistent with what GPE has requested. GPE seeks "approval for the recovery of prudently-incurred costs

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<sup>24</sup> See, e.g., Order No. 679, *Promoting Transmission Investment through Pricing Reform*, 116 F.E.R.C. ¶ 61,057 P 41 (2006) ("The purpose of section 219 of the FPA is to benefit consumers by promoting transmission capital investments that result in reliable and economically efficient transmission and generation." (emphasis added)).

<sup>25</sup> See, e.g., *id.* P 163 (applicants "may request 100 percent of prudently-incurred costs associated with abandoned transmission projects can be included in transmission rates if such abandonment is outside the control of management," in order "encourage transmission development by reducing the risk of non-recovery of costs") (emphasis added).

associated with the Green Power Express in the event the Project must be abandoned for reasons outside of the Partnership's control,<sup>26</sup> and commits “to make a section 205 filing before recovering abandoned plant costs, including any unrecovered costs associated with the regulatory asset, and will demonstrate that such costs were just and reasonable.”<sup>27</sup> It may not be prudent, just, and reasonable to spend, in advance of regional planning approval, substantial funds for things like detailed studies and route selection efforts that will lose their value if approval is not obtained. And since nobody is forcing GPE to race ahead of the regional process, such loss of value should not be considered to be outside GPE's control. Clarifying now that the Commission reserves the right to disallow spending that overtakes regional planning processes would avoid subsequent controversy, maintain a fair and healthy competition of regional planning ideas, and preserve GPE's incentive to work within regional planning. Doing so is therefore in the public interest.

To be clear, Midwest TDUs are not asserting that expenditures should have to follow completion of regional planning in order to be eligible for consideration in an abandoned plant Section 205 filing. Project planning and development is an iterative process, in which it may well be prudent to make limited expenditures to prepare the studies that approved regional planning processes require, in order to secure approvals that make it prudent to then take the next steps in project development. Even if no GPE line ultimately enters service, recovery of such necessary, seed-money expenditures may be reasonable. However, the Commission has previously held that it would “make any resulting incentive-rate treatment contingent on the

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<sup>26</sup> Filing Letter at 3 (emphasis added).

<sup>27</sup> Filing Letter at 37.

project's being approved under the regional planning process,"<sup>28</sup> and that "[b]ecause the actual recovery of CWIP will occur either under a rate on file or a rate to be filed under FPA section 205, parties will have an opportunity to raise any concerns with regard to actual expenditures vis-a-vis construction progress at that time."<sup>29</sup> The Commission should not promise GPE that it will disregard these limitations, at least not without knowing more about what GPE has spent and will spend, and to what end. And more generally, if and when a future Section 205 proceeding considers allowing recovery of GPE's early expenditures towards a subsequently abandoned facility, all of the facts and circumstances bearing on the prudence and reasonableness of such expenditures should be considered. In such a proceeding, one relevant factor will be whether GPE was spending funds necessary to pursue regional planning approval, or prematurely assuming approval and spending funds towards ultimate construction. To the extent the Commission addresses abandoned plant issues now, it should make clear that it is not conceding the appropriateness of the latter type of spending.

This clarification is necessary lest the approvals presently being sought bias the regional planning review processes that have not yet reviewed GPE's project and the many alternatives. Regional planning should be a merits-based competition among alternative ways to develop the system, based primarily on engineering, land use, and least-cost considerations. But crowning a vague concept with too much recovery assurance could prejudice that competition before it starts. A prospective builder who was assured of recovery for all expenditures that would be considered prudent if regional approval were assumed could afford to race ahead of alternative developers — for example, springing for blueprints when alternative developers are still

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<sup>28</sup> *Tallgrass* at PP 40-41 at P 29, citing Order No. 679 at P 58 n.39.

<sup>29</sup> Order No. 679 at P 118.

participating in regional scoping, pre-ordering materials and supplies when alternative developers are still participating in regional planning, and/or securing land rights when alternative developers are still securing regulatory approvals. Consequently, the regional planning process so carefully constructed through RTO formation and Order 890<sup>30</sup> would become, at best, an after-the-fact review. The real competition would be a “race to the Commission” to see which project sponsor can get the Commission to give it a head start.

Here, in particular, the Application should not be allowed to place the Commission in the untenable position of having to effectively decide, within a 60-day review period, whether a 765 kV overlay within and near the existing Midwest ISO regional grid should be built, and whether GPE should be the one to build it. Perhaps affirmative answers to both questions may ultimately prove to be the right planning solution, but those questions should not be decided without first undertaking a searching regional planning process to review alternatives, including projects led by others, additions at the 345 kV voltage already in widespread use in MISO, and alternatives other than new transmission corridors, including the development of wind resources located closer to population centers, such as on the Great Lakes. The still rather inchoate concepts advanced by GPE should have to compete against such alternatives within the regional planning process, and should do so through a process not biased by a premature award of incentives.

***E. The Commission Should Provide for Reasonable Formula Rate Monitoring Protocols***

In *Tallgrass Transmission, LLC*, 125 F.E.R.C. ¶ 61,248, P 92 (2008), the Commission determined that the formula rate protocols filed therein might be unjust and unreasonable, and set

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<sup>30</sup> Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 Fed. Reg. 12,266 (Mr. 15, 2007), [2006-2007 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31.241 (“Order 890”), *order on reh’g and clarification*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008) [2006 – 2007 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,261, *order on reh’g*, Order No 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 F.E.R.C. ¶ 61,299 (2008),

the protocols for settlement judge procedures. It should do the same here, at the appropriate time. The protocols submitted by GPE are even less defined and customer-protective than those filed by Tallgrass and Prairie Wind. Moreover, unlike other MISO TOs and unlike the operating company affiliates of Tallgrass and Prairie Wind, GPE lacks retail rates set by local governments or regulated by state commissions, which makes it all the more important that its discretionary accounting decisions and their effects on formula rate outcomes be subject to review through the formula rate protocols.

However, a timing difference from the *Tallgrass* procedures may be appropriate here, in light of the geographically broad scope and cost allocation deferral being proposed here. The stakeholders who will be subject to the resulting rates should be represented in determining formula rate monitoring procedures, and it would be both an inefficient use of Commission and participant resources and conducive to needless controversy to insist that every entity potentially subject to GPE's formula weigh in now. Accordingly, it would be appropriate to defer the formula rate monitoring protocol issues until the cost allocation is determined through other, later RTO and/or Commission proceedings. For now, it would suffice to clarify that any approvals granted here are subject to those future protocols.

### **III. CONCLUSION**

For the reasons stated above, Midwest TDUs respectfully request the Commission to: grant Midwest TDUs' request for intervention and provide the clarifications discussed above.

Respectfully submitted,

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March 6, 2009

Attachment A

**ATTACHMENT A**  
**DESCRIPTION OF MIDWEST TDUS**

**Great Lakes Utilities (“GLU”)** is a municipal electric company formed under Section 66.0825, Wis. Stats., for the purpose of developing bulk power supplies to benefit its contracting members. The members of GLU are the following municipalities: Clintonville, Kiel, Manitowoc, Marshfield, Medford, Rice Lake, Shawano, and Wisconsin Rapids, Wisconsin. Each of the members is a Wisconsin municipal electric utility.

**Lincoln Electric System (“LES”)** is a municipal electric generation, transmission, and distribution system owned by the City of Lincoln, Nebraska, and serves load in and around that City. LES’s load and facilities are located within the area of the Mid-Continent Area Power Pool (“MAPP”), in which LES has participated for many years.

LES’s mix of power supply resources includes both purchased power and owned resources. Its current and near-term purchases include purchases from the Nebraska Public Power District, purchases from the Western Area Power Administration, and purchases through MAPP. LES’s generation ownership includes interests in the Missouri Basin Power Project, including the Laramie River Generating Station. LES also owns generation in or near the City of Lincoln consisting of three combustion turbines at Rokeby Generation Station and a combined cycle unit and combustion turbine at Salt Valley Generation Station. LES is also a participant in MidAmerican Energy's new base load coal plant, Walter Scott Unit 4.

LES owns approximately 236 circuit-miles of networked 345 kV, 161 kV, and 115 kV transmission facilities, along with a participation share in the Missouri-Iowa-Nebraska Transmission Project comprising 105 miles of 345 kV transmission. Since 1996, LES’s transmission facilities have participated in the FERC-approved Regional Transmission Group

(“RTG”) arrangement for the MAPP area. *See Mid-Continent Area Power Pool*, 76 F.E.R.C. ¶ 61,261 (1996). In addition, for several years LES has offered reciprocal open-access transmission service pursuant to a non-jurisdictional tariff, based on the Commission’s pro forma OATT, that LES submitted to the MAPP RTG. LES’s transmission facilities were financed using tax-exempt debt, and are therefore subject to restrictions on “private use.”

LES has executed a Membership Agreement with Southwest Power Pool (“SPP”) and intends to transfer functional control of its transmission facilities to SPP by April 1, 2009.

**Madison Gas & Electric Company (“MGE”)** is a public utility organized under the laws of the State of Wisconsin. MGE is engaged in the generation, purchase, and distribution of electric energy, and the distribution of natural gas, in an area of southern Wisconsin that has Madison as its hub. MGE provides electric service to residential, commercial, and industrial customers in an area covering approximately 250 square miles, with a 2006 peak load of 742 MW, and annual sales of approximately 3 million MWh. MGE also distributes natural gas throughout a 1,325 square mile area.

MGE is a member of and operates a control area within the Midwest Reliability Organization and also belongs to MAPP. Before formation of American Transmission Company, LLC (“ATCLLC”), MGE was Wisconsin’s second largest EHV transmission owner, but it had to depend on transmission service from Wisconsin’s three other external interface transmission owners for access to bulk power markets. MGE transferred its transmission facilities to ATCLLC in exchange for an ownership share of ATCLLC. By virtue of ATCLLC’s membership in MISO, MGE now takes transmission service under the MISO Tariff.

**Midwest Municipal Transmission Group (“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, much of which it anticipates will contribute to and be served by MISO transmission. Many MMTG members own transmission that contributes to the grid and generation that supports the grid.

**Missouri Joint Municipal Electric Utility Commission (“MJMEUC”)** is a joint action agency and a political subdivision of the State of Missouri authorized by legislation to construct, operate and maintain jointly owned transmission and generation facilities for the production and transmission of electric power for its members, to purchase and sell electric power and energy, and to enter into agreements with any person for transmission of electric power. It is organized on a statewide basis to promote efficient wheeling, pooling, generation, and transmission arrangements to meet the power and energy requirements of municipal utilities in the state. MJMEUC has 57 municipal utility members, and Citizens Electric Corporation, a rural electric cooperative with more than 21,000 customers, is an Advisory Member of MJMEUC. Together, MJMEUC’s members serve some 347,000 retail customers, with a combined load of 2,100 MW.

Since January 1, 2000, pursuant to its authority under state law, MJMEUC has been administering a power pool formed by some of MJMEUC’s members. The Missouri Public Energy Pool #1 (“MoPEP”) currently has 26 members, whose 2005 summer peak load was

expected to be approximately 370 MW. MoPEP is the full-requirements supplier for its members, and meets their capacity and energy requirements through generating and purchased-power resources contributed by the pool members, and through additional resources arranged for by MoPEP. MoPEP has pool loads and/or resources located within the transmission systems of several members of MISO and SPP.

**Missouri River Energy Services (“MRES”)** is a municipal joint action agency formed under Chapter 28E of the Iowa Code and a member of MAPP. MRES is comprised of 60 full-member, and eighteen associate-member, municipal utilities located in the States of Iowa, Minnesota, North Dakota, and South Dakota. MRES provides firm supplemental power supply to 57 of its member systems, all of which are located within the MAPP region. MRES also engages in short-term energy transactions from its generation resources. Many of its members are surrounded by and dependent on transmission facilities owned by MISO transmission owners, and thus are directly impacted by the policies and procedures established by MISO.

**Southern Minnesota Municipal Power Agency (“SMMPA”)** is a joint action agency comprised of 18 member municipalities in Minnesota which own and operate municipal electric systems. SMMPA is a non-profit political subdivision of the State of Minnesota organized under Chapter 453 of the Minnesota Statutes. SMMPA functions as the principal power supplier for its members and met the 528 MW 2006 peak load of its members with 652 MW of generating resources owned by SMMPA or its members and a portfolio of power purchases from other sources, including an allocation of power from the Western Area Power Administration. SMMPA is a MISO Market Participant.

SMMPA owns over 282 miles of transmission lines ranging from 69 kV to 230 kV that are integrated with those of other members of MAPP and MISO, as well as several transmission

substations at varying transmission voltages, reflecting an investment of approximately \$100 million in facilities integrated in the MAPP/MISO grid. Although it owns portions of the network representing significant contributions to the regional grid, and although SMMPA is itself a MISO Transmission-Owning Member with a transmission ownership area, SMMPA is transmission-dependent upon the facilities of other MAPP and MISO members because many of SMMPA's members are located in the transmission ownership areas of Xcel Energy, ITC Midwest, Dairyland Power Cooperative, and Great River Energy.

**WPPI Energy ("WPPI")**, formerly known as Wisconsin Public Power Inc., is a municipal electric company formed pursuant to Sec. 66.0825, Wis. Stats. WPPI provides bulk power and other services to its 49 members (48 municipalities and one cooperative), each of which operates a distribution utility and sells electricity at retail to the residences, businesses, and industries in and around its municipality. These members are located within the Wisconsin, Michigan and/or Iowa service territories of four large investor-owned utilities: Northern States Power-Wisconsin, Wisconsin Electric Power Company ("WEPCO"), Integrys Energy Group (Wisconsin Public Service Corp. ("WPS") and Upper Peninsula Power Co.), and Alliant Energy (Wisconsin Power & Light Co. ("WP&L") and Interstate Power and Light Co.). Approximately 80 MW of WPPI load located within the WPS geographic service area and about 300 MW of WPPI load located in the WP&L territory is electronically moved into the WEPCO control area. WPPI supplies the bulk power and energy requirements of its municipal members from generation resources owned by WPPI and through purchased power contracts.

WPPI is a member of MISO, with both generation and load within the MISO footprint, and is a participating owner of ATCLLC, which was formed pursuant to 1999 Wisconsin Act 9

with WPPI's support. ATCLLC has been accepted into MISO as a transmission-owning member effective January 1, 2001.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated March 6, 2009.

*/s/ David E. Pomper*

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