

PUBLIC VOLUME

ATTACHMENT L

XES LETTER TO ATC DATED JANUARY 17, 2012



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January 17, 2012

Via E-Mail and U.S. Mail

Mr. John Procaro
President and CEO
American Transmission Company LLC
W234 N2000 Ridgeview Parkway Court
Waukesha, WI 53188-1022

Re: North La Crosse – Madison Transmission Line

Dear John:

Recently, the Board of Directors of the Midwest ISO approved the 2011 Midwest ISO Transmission Expansion Plan and approved Multi Value Project status for the North La Crosse – Madison Transmission Project. MISO designated both Northern States Power Company, a Wisconsin corporation, and American Transmission Company as joint owners of the North La Crosse – Madison segment of that project (the “La Crosse – Madison Line” or “Line”).

As you know, Xcel Energy has confirmed to both ATC and the Midwest ISO its willingness to fulfill its obligation under the MISO Transmission Owners Agreement to build and own its proportional share of the La Crosse – Madison Line. Consequently, I have tried to talk with you and others at ATC about resolving the ownership of the project and collaborating and coordinating our efforts on this project. However, I understand that ATC believes that it is entitled to solely own the entire line based on a variety of arguments, including the claim that it has been the only entity that has studied and developed the project to date.

We do not agree with ATC’s apparent position and we think the MISO Tariff and TOA are clear that Xcel Energy is obligated to share in the responsibility for this line. In support of our position, I am attaching a summary of our legal analysis of the issues. However, the purpose of my letter is not to argue our respective company’s legal positions, but instead to inform you of a few things that I think are significant: one, Xcel Energy’s long involvement in the La Crosse – Madison Line; and two, our desire to comply with our regional obligations. As a result of these fundamentals, we request that ATC immediately enter into a dialogue to resolve our respective responsibilities pertaining to the Line.

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To begin with, Xcel Energy has been a longstanding participant in study and analysis for the need for a transmission link between eastern Minnesota and the Madison, Wisconsin area. Xcel Energy's predecessor (Northern States Power Company) began studying the need to reinforce the transmission system from Southeastern Minnesota to connections in Southeastern Wisconsin prior to ATC's formation. Xcel Energy was an active participant in the WIRES Phase II study. Moreover, the 2005 CapX2020 Vision Study specifically identified a connection from the La Crosse area to Madison as an important second-stage project to enhance reliability in the region. The 2007 Minnesota RES Update Study – a study which Xcel Energy led – further refined the project. Xcel Energy also participated with ATC in the 2010 Western Wisconsin Reliability Study. That joint planning effort confirmed the Line is to interconnect with the new CapX2020 345 kV line coming from the west at an Xcel Energy substation north of La Crosse. Xcel Energy's participation in these planning processes involved expenditures of thousands of dollars, with the expectation that the La Crosse – Madison line would be connected to the new facilities being constructed from eastern Minnesota. ATC's suggestion that only ATC has pursued development of a La Crosse to Madison project thus are not supported by the record of Xcel Energy's participation in numerous prior studies.

Xcel Energy recognizes, however, that ATC has engaged in public outreach efforts to raise public awareness of this important regional connection. To that extent, Xcel Energy has repeatedly stated its willingness to participate in those efforts and remains committed to take those actions and incur expenses consistent with Xcel Energy's obligation for the joint construction and ownership of the line. Xcel Energy recognizes, for example, that sharing in project ownership would include reimbursing ATC for expenses incurred to date associated with Xcel Energy's share of the Line. Once an appropriate sharing mechanism has been worked out, we look forward to ensuring that all accounts are trued up reflecting our joint responsibilities for this project. Xcel Energy is also prepared to provide ATC information needed regarding the substation terminus as part of a collaborative effort to permit and construct the Line.

Second, Xcel Energy is interested in immediately resolving our dispute over the Line. Xcel Energy has a long history of collaborating with neighboring transmission owners to plan and construct needed regional transmission infrastructure. The CapX2020 initiative, including the Hampton – La Crosse 345 kV line to which the La Crosse – Madison Line would interconnect, is an example of such collaboration. We believe such collaborative efforts result in the both the most appropriate projects being identified and the engagement of interested stakeholders to constructively resolve issues so that needed transmission can obtain approvals necessary for construction.

There have been several communications between Xcel Energy and ATC personnel regarding the proposed La Crosse – Madison line. It is imperative that our respective companies immediately engage in a dialogue to resolve these issues in order to make progress on this Line. This letter provides you with additional context for Xcel Energy's point of view, because it is Xcel Energy's sincere desire to work collaboratively with ATC in implementing our shared obligation to construct the Line.

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Xcel Energy appreciates ATC's prompt attention to this matter. We request a response to this letter from ATC by not later than January 27, 2012, ten (10) days from today. Xcel Energy sincerely hopes ATC will choose to work with us toward our common goal of ensuring this important transmission facility is successfully permitted and constructed, and a public dispute or litigation between our companies can be avoided.

Please feel free to contact me at (612) 330-7947 if you have any questions about this letter or would like to discuss this issue. We look forward to hearing from ATC as we seek to resolve this issue in a mutually agreeable manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa Mogensen", with a long horizontal flourish extending to the right.

Teresa Mogensen
Vice President, Transmission

TMM/bl

cc: Mark Stoering, NSPW President and CEO
David Sparby, Group President, Senior Vice President
Kent Larson, Senior Vice President, Operations

LA CROSSE – MADISON LINE: ANALYSIS OF OWNERSHIP OBLIGATIONS

Introduction:

On December 8, 2011, the Board of Directors of the Midwest Independent Transmission System Operator, Inc. (“MISO”) approved the 2011 Midwest ISO Transmission Expansion Plan (“MTEP11”). As part of its MTEP11 approval, the MISO Board approved Multi Value Project (“MVP”) status for the North La Crosse – Madison – Cardinal – Spring Green – Dubuque 345 kV Transmission Project. MISO’s informational materials prepared for the Board vote designated Northern States Power Company, a Wisconsin corporation (“Xcel Energy” or “NSPW”) and American Transmission Company (“ATC”) as joint owners of the North La Crosse – Madison segment of that project (the “La Crosse – Madison Line”).¹ Because MISO, pursuant to its Tariff, has designated both Xcel Energy and ATC as owners of this project, this memorandum discusses the nature of both Xcel Energy and ATC’s obligations for ownership and construction of this project.

Background:

The La Crosse – Madison Line is a proposed 145 mile 345 kV transmission line from the Briggs Road Substation north of La Crosse, Wisconsin, to be constructed and owned by Northern States Power Company, a Wisconsin corporation (“Xcel Energy”), to ATC, LLC’s (“ATC”) North Madison Substation north of Madison, Wisconsin. The La Crosse – Madison Line represents the second phase of a long sought after second Twin Cities to Madison transmission link. This transmission link was identified as early as 1999 in the WIRES Phase II study, in which Xcel Energy’s predecessor was an active participant. The Twin Cities to Madison transmission link was also identified as part of the CapX2020 Initiative’s vision study work, in which Xcel Energy played a leading role. The CapX2020 Vision Study identified the Twin Cities to Madison transmission link as a phased project, with the first phase from the Twin Cities to the La Crosse area and the second phase from the La Crosse area to the Madison area.

Based on the outcome of the CapX2020 Vision Study work, the first phase of this west to east link, the Twin Cities – La Crosse Project – an approximately 150 mile 345 kV transmission line from the Hampton Roads Substation, south of the Twin Cities, to a new Briggs Road Substation, North of the La Crosse area and to be wholly owned by Xcel Energy – began to be developed by the CapX2020 Initiative. The Twin Cities – La Crosse Project is currently in the permitting process before the Public Service Commission of Wisconsin (“PSCW”).

While the Twin Cities – La Crosse project was being developed, earnest consideration of the La Crosse – Madison Line began as part of the RES Update Study, for which Xcel Energy was a lead utility. The RES Update Study identified the La

¹ The additional sections of the proposed MVP project (Madison – Cardinal – Spring Green – Dubuque) interconnecting to ITC Midwest, LLC are not at issue here.

Crosse – Madison Line as a critical transmission facility required to provide an eastern outlet for the renewable energy development in western Minnesota and the Dakotas. The high level study work culminating the RES Update Study identified the need to scope the La Crosse – Madison Line. Due to its familiarity with the transmission system in eastern Wisconsin, ATC was selected to lead this scoping work in which Xcel Energy was an active participant.

The outcome of this more detailed study work was the Western Wisconsin Transmission Reliability Study (“WWTRS”). The WWTRS identified two necessary transmission projects to support the reliability of the transmission system in western Wisconsin: the North La Crosse – North Madison – Cardinal Project, of which the La Crosse – Madison Line is the first segment; and the Cardinal – Spring Green – Dubuque Project which extends the La Crosse – North Madison – Cardinal Project into eastern Iowa. The WWTRS characterized the La Crosse – Madison Line as “extending” the Twin Cities – La Crosse Project and needing to connect to this line. Based in part on this study work, both the North La Crosse – North Madison – Cardinal Project and the Cardinal – Spring Green – Dubuque projects were selected as candidate MVPs by MISO.

As required by its Tariff, MISO studied the North La Crosse – North Madison – Cardinal Project to justify an MVP designation. This study work identified the North La Crosse – North Madison – Cardinal Project as beginning at Xcel Energy’s Briggs Road Substation, then proceeding to ATC’s North Madison Substation (the La Crosse – Madison Line), and then proceeding on to ATC’s North Madison Substation and terminating at ATC’s Cardinal Substation. This study work also identified Xcel Energy and ATC as owners of this line. On December 8, 2011, the MISO Board of Directors approved MTEP11. As part of MTEP11, the North La Crosse – North Madison – Cardinal Project was designated as an MVP and both Xcel Energy and ATC were designated as owners of this project. MTEP11 also identified the installation of transformers at Xcel Energy’s Briggs Road Substation to accept this 345 kV circuit as part of the MVP.

With this MVP designation, development work on the La Crosse – Madison Line must now begin in earnest. Based on its understanding of its contractual and Tariff obligations, on several occasions, Xcel Energy has attempted to start a dialogue with ATC on implementing appropriate information sharing mechanisms so that Xcel Energy and ATC may begin their development work. ATC has claimed that Xcel Energy has no construction and ownership obligations for the La Crosse – Madison Line and consequently declined Xcel Energy’s attempt to cooperatively develop the project.

Analysis:

I. Transmission Owner Obligations

As Transmission Owning (“TO”) members of MISO, both NSPW and ATC are signatories to and are subject to obligations under the MISO Transmission Owners Agreement (“TOA”), a rate schedule on file with the Federal Energy Regulatory Commission (“FERC”). Pursuant to the TOA, “[t]he rights of Members in the MISO

shall be subject to all of the terms and conditions of this Agreement.”² Consequently, both Xcel Energy and ATC have contractually agreed to be bound by the terms of the TOA and their rights as TOs are subject to it.

Appendix B of the TOA provides the terms and conditions for MISO’s regional planning. Included in those terms and conditions are provisions for the TOs’ ownership and construction obligations for transmission facilities that are subject to the MISO’s planning process. Specifically, Appendix B, Section VI of the TOA provides, in part:

Ownership and the responsibility to construct facilities which are connected to a single Owner’s system belong to that Owner, and that Owner is responsible for maintaining such facilities. Ownership and the responsibility to construct facilities which are connected between two (2) or more Owners’ facilities belong equally to each Owner, unless such Owners otherwise agree and the responsibility for maintain such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners. Finally, ownership and the responsibility to construct facilities which are connected between an Owner(s)’ system and a system or systems that are not part of the MISO belong to such Owner(s) unless the Owner(s) and the non-MISO party or parties otherwise agree; however, the responsibility to maintain the facilities remains with the Owner(s) unless otherwise agreed. [Emphasis Added.]

The La Crosse – Madison Line satisfies these conditions, and no provision of the TOA suggests it is not applicable to particular types of projects. Specifically, MISO’s approval of the La Crosse – Madison Line in MTEP11 and its designation as an MVP makes it a recommended project subject to MISO’s planning process and therefore subject to the TOA. The context of the above quoted language of TOA Appendix B makes clear it is applicable all TO-owned projects approved in the MTEP, and provides no carve out to make it applicable only to some subset of MTEP approved projects. Therefore, the commitment of the MISO TOs is that to the extent there is a project that will connect the facilities of two member TOs, and those TOs do not agree otherwise, then those TOs shall share equally in the ownership of and obligation to build the project.

The La Crosse – Madison Line (as approved in MTEP11) will connect to the facilities of two MISO TOs – specifically, NSPW’s Briggs Road Substation with ATC’s North Madison Substation³ MISO’s MTEP11 documentation identified the Briggs Road

² TOA, Art. Two, Section V.A.3.

³ The final configuration of the La Crosse – Madison Line will be ultimately decided by the PSCW as part of its transmission facility siting process. Such final configuration could include a point of interconnection of the La Crosse – Madison Line to the Twin Cities – La Crosse Project other than the Briggs Road Substation (such interconnection being necessary for the La Crosse – Madison Line to provide the benefits necessary for it to maintain its MVP status). However, no matter where the La Crosse – Madison Line interconnects to the Twin Cities – La Crosse Project, the La Crosse – Madison Line will connect the

substation as the western terminus of the La Crosse – Madison line, going so far as to identify facilities necessary at Briggs Road to enable the interconnection. As required by the MISO Tariff, Xcel Energy has expressed its willingness and ability to accept its responsibilities for this line. Consequently, unless Xcel Energy and ATC agree otherwise, Xcel Energy and ATC are required by the TOA to share these obligations equally. Any alternative outcome would be counter to the express terms of the TOA, a rate schedule on file with FERC and thus subject to the filed rate doctrine.

This interpretation is also consistent with past practice. As participants in the MTEP process, all MISO TOs have an opportunity to review and comment on the projects proposed in any particular MTEP. To the extent that a project that connects the facilities of two TOs is included in an MTEP, and only one TO is the designated owner, this is because the non-designated TO has acquiesced in foregoing its ownership and construction obligations as is allowed by the TOA. For example, ATC is developing the Monroe County – Council Creek transmission project in Wisconsin. This project has been approved in the MTEP process and will connect to Xcel Energy’s Monroe County substation. Xcel Energy acquiesced to ATC’s sole ownership of that project by not signaling its willingness to fund and own a portion of that project in the MTEP process. And, consistent with its Tariff obligation to designate the owner of a project approved in the MTEP (described further below), MISO therefore designated ATC as the sole owner of this project.

For the La Crosse – Madison Line, however, this is not the case. Xcel Energy has repeatedly advised ATC and MISO that Xcel Energy intends to comply fully with its TOA obligations. Xcel Energy has therefore not acquiesced to ATC’s attempts to exclude NSPW from the project.⁴ Consequently, pursuant to the TOA the ownership of and the responsibility to construct the La Crosse – Madison line belong equally to Xcel Energy and ATC. This application of the TOA has been confirmed by MISO in its designation of Xcel Energy and ATC as owners of this line in MTEP11.

II. MISO Responsibilities

MISO, through issuance of the MTEP, is responsible for designating the entities that will construct and own any particular project included in Appendix A of the MTEP. Section V of Attachment FF of the Tariff provides:

For each project included in the recommended MTEP, the plan shall designate, based on the planning analysis

facilities of Xcel Energy, as an owner of the Twin Cities – La Crosse Project, and ATC and ownership obligations would consequently belong equally to the owners of the Twin Cities – La Crosse Project, including Xcel Energy, and ATC.

⁴ Article Nine, Section E of the TOA provides that “failure of an Owner... to insist upon or enforce strict performance of any of the specific provisions of this Agreement ... shall not be construed as a waiver or relinquishment to any extent of such Owner’s... right to assert or rely upon any such provision...” Therefore, Xcel Energy’s past acquiescence to ATC’s ownership of any prior project is not a waiver of its right to enforce the ownership provisions of the TOA for the La Crosse – Madison Line.

performed by the Transmission Provider and based on other input from participants, including, but not limited to, any indication of a willingness to bear cost responsibility for the project; and any applicable provisions of the ISO Agreement, one or more Transmission Owners or other entities to construct, own and/or finance the recommended project. [Emphasis added]

Based on this language, MISO is responsible for designating the entities with the obligations to own and construct the La Crosse – Madison Line and has done so in MTEP11. Importantly, when making this designation, MISO is required to take into account the applicable provisions of the TOA. Because both Xcel Energy and ATC have expressed willingness to bear cost responsibility for the La Crosse – Madison project, the TOA must be applied through the MISO Tariff.

MISO's authority and responsibility to designate ownership of all MTEP projects is clear from the Tariff and there is no Tariff provision that would indicate that MISO's designation obligation is applicable to only some subset of MTEP projects. This interpretation of the Tariff is consistent with FERC requirements as provided in the TOA and Tariff accepted for filing by FERC.

Specifically, the applicable tariff language provides sufficient flexibility for "third parties to participate in constructing and owning new transmission facilities identified by the plan."⁵ It does so by requiring MISO to weigh several factors in making its ownership designation. These factors include (1) input from participants; (2) indication of willingness to bear cost responsibility; (3) application of the TOA obligations, and (4) consideration of other available entities to "own and/or finance the recommended project." Because the La Crosse – Madison Line will connect the facilities of MISO TOs, MISO must take into consideration any "applicable provision of the TOA." Those provisions include the obligation to share responsibility for facilities that connect the TOs' respective facilities. Consequently, MISO appropriately applied the terms of the TOA to the La Crosse – Madison Line for its ownership designation MTEP11 and confirmed that both Xcel Energy and ATC are jointly responsible for the project.⁶

This interpretation does not discourage multi-party participation in regional transmission development under either the TOA or the MTEP process. First, these provisions work together to ensure that needed transmission is built. While the relevant TOs have certain rights to build, own and share facilities, third parties can also participate, consistent with the TOA, the MISO Tariff and relevant FERC precedent. To the extent that a non-TO third party sought to own and construct any particular MTEP project, the TOA would not apply since the TOA does not apply to those third parties. And, since the TOA both encourages third party participation⁷ and defers to the terms of

⁵ *Midwest Independent Transmission System Operator, Inc.*, 97 FERC ¶ 61,236 at P 62,521 (2001).

⁶ MISO itself stated this position in a September 15, 2011 letter to ATC.

⁷ "Third-parties shall be permitted and are encouraged to participate in the financing, construction and ownership of new transmission facilities..." TOA, App. B, § VI.

the Tariff,⁸ MISO would be within its rights to so designate a third party owner notwithstanding the above quoted language of Appendix B. Therefore, the TOA and Tariff are wholly consistent with applicable FERC requirements and policies.

Further, that the WWTRS was issued under ATC's local planning process provided for in Attachment FF-ATCLLC of the MISO Tariff is immaterial to MISO's ownership designation because under the MISO Tariff the TOA obligations would still be applicable. Specifically, MISO remains responsible for review and approval of projects developed through the local planning processes of all its TOs.⁹ This includes those projects developed by ATC through its local planning process. ATC's local planning process is expressly subject to the TOA and MISO's responsibilities for review and approval of ATC's local planning must include ATC's commitments under the TOA.¹⁰

Therefore MISO is empowered and obligated to designate both Xcel Energy and ATC as responsible for the La Crosse – Madison Line and consistent with these obligations has done so in MTEP11.

Conclusion:

Based on the foregoing, ownership and the responsibility to construct the La Crosse – Madison Line belongs equally to Xcel Energy and ATC under the TOA and Tariff. And, such obligations were appropriately designated by MISO as belonging to both Xcel Energy and ATC.

Prepared at the request of
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Dated: January 17, 2012

⁸ TOA, Art. Two, § 1, C.

⁹ See, MISO Tariff, Attachment FF, I.B.1.b.

¹⁰ MISO Tariff, Attachment FF – ATCLLC, VI.A.8; VI.B.7; VI.C.1; VI.D.10; VI.E.7.