

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Xcel Energy Services Inc. and)	
Northern States Power Company, a)	
Wisconsin Corporation,)	
)	
Complainants,)	
)	
v.)	Docket No. EL12-28-000
)	
American Transmission Company, LLC,)	
)	
Respondent.)	
)	

COMMENTS OF THE PUBLIC SERVICE COMMISSION OF WISCONSIN

On March 5, 2012, the Public Service Commission of Wisconsin (PSCW) filed its “Notice of Intervention of the Public Service Commission of Wisconsin and Motion to Request for Extension of Due Date to March 26, 2012, for Filing of its Comments or Protest.” As of this writing, the PSCW has not received a ruling on the extension request from the Federal Energy Regulatory Commission (FERC). Nonetheless, the PSCW has proceeded in good faith to promptly consider its position and file these substantive comments.¹

The PSCW respectfully renews its Motion under Rule 212 for acceptance of these comments as, it is respectfully submitted, they are likely to aid FERC in its consideration of the issues. Both the Complainants and Respondent are Wisconsin certificated public utilities and the

¹ Due to time constraints and the observance of open meeting laws, the PSCW is not addressing any matters raised in the March 20, 2012, answer of Xcel Energy Services, Inc., and Northern States Power Company-Wisconsin (collectively, Xcel) to the answer filed by American Transmission Company, LLC (ATCLLC). The PSCW hereby reserves and does not waive any of its rights, claims, and arguments that may arise out of the referenced Xcel pleading.

transmission project at issue, the La Crosse-Madison Line,² is wholly within the State of Wisconsin and subject ultimately to certification as required by the public convenience and necessity under Wis. Stat. § 196.491.

COMMENTS

Upon review of the complaint of Xcel Energy Services, Inc., and Northern States Power Company-Wisconsin (Xcel), and the answer of American Transmission Company, LLC (ATCLLC), the PSCW respectfully submits this comment regarding a state-federal jurisdiction question that is an important part of the landscape of this dispute.

The central issue of this dispute is the interpretation of the Transmission Owners Agreement (TOA) and the disputed language of TOA Appendix B regarding the planning framework of the Midwest Independent Transmission System Operator, Inc. (MISO). The core of Xcel's claim to ownership of half of the La Crosse-Madison Line is based on language in Appendix B, Section VI: "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 maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners." (Xcel Complaint, at 7-8 and 22-25.) ATCLLC, in contrast, argues that Xcel's reliance on this language misconstrues the purpose of the sentence and fails to correctly interpret Section VI as a whole. (ATCLLC Answer, at 3-4 and 15-26.)

Both parties' arguments deal with the term "ownership," especially in the sentence quoted in the preceding paragraph. But neither side comes to grips with the question of what, exactly, does the term "ownership" refer to? A tangible "in the ground" transmission line? An

² For convenience only, the PSCW will refer to the line description used by Complainant Xcel rather than "Badger Coulee." No inference adverse to Respondent American Transmission Company, LLC, should be drawn from the project name used.

intangible “investment opportunity”? Or a contractual right of some sort arising out of the TOA as a contract?

The PSCW submits that at least one interpretation of “ownership” would be incorrect, namely that “ownership” as used in Appendix B would mean title ownership of the physical transmission line. In the first place, title ownership of the physical asset in Wisconsin initially derives from the PSCW’s grant of a certificate of public convenience and necessity (CPCN) under, in this case, Wis. Stat. § 196.491,³ followed by consummation of construction according to the CPCN by the authorized applicant(s). That certificated applicant(s) is the owner of the physical transmission line. Without a CPCN, a person cannot proceed in Wisconsin to construct the physical line and without construction there is no tangible physical asset to “own.” Appendix B in its second sentence states quite plainly that, “Nothing in this Appendix is intended to restrict or expand existing state laws or regulatory authority.” Accordingly, Appendix B disavows any intent to abridge state law that determines at least title ownership of the physical line. It follows that during the planning stage at issue in this complaint docket, the “project” is still intangible and inchoate; it is simply a plan or an opportunity. It is Wisconsin law that dictates, ultimately, ownership.

The PSCW respectfully urges that FERC strictly adhere to the text of the TOA and Appendix B in order to resolve this dispute while acknowledging the proper role in ownership determination held by the PSCW. Clearly, the original signatories of the MISO TOA foresaw the situation where transmission would have to be constructed between facilities of two different

³ Wis. Stat. § 196.491 authorizes the PSCW to grant a CPCN to any “person” who seeks to construct a high-voltage transmission line (100 kilovolt or greater). In a 1993 case, the PSCW essentially determined the ownership of a new generation facility (also covered by Wis. Stat. § 196.491) when competing proposals were presented and only one applicant was ultimately selected to receive the CPCN. *See, generally*, Findings of Fact, Conclusions of Law and Order, *Investigation on the Commission’s Own Motion into Barriers to Contracts Between Electric Utilities and Nonutility Cogenerators and Certain Related Policy Issues*, PSCW Docket. No. 05-EI-112, 1993 Wisc. PUC LEXIS 79 (Dec. 28, 1993).

signatories. FERC should look to the terms of the TOA to determine its meaning in the first instance, including, potentially, its contractual methods for dispute resolution, renegotiation and/or judicial contract interpretation that FERC accepted in approving the MISO tariff.

CONCLUSION

The PSCW respectfully requests that FERC, in the course of its deliberations, determine that in this case, by the terms of the TOA and its Appendix B, Wisconsin state law controls the ownership of the La Crosse-Madison Line as a physical asset under the applicable state CPCN process.

Dated at Madison, Wisconsin, this 22nd day of March, 2012.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF
WISCONSIN



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CERTIFICATE OF SERVICE

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

Dated at Madison, Wisconsin, this 23rd day of March, 2012.



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