

140 FERC ¶ 61,058  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Xcel Energy Services Inc. and Northern States Power Company, a Wisconsin corporation      Docket No. EL12-28-000

v.

American Transmission Company, LLC

ORDER GRANTING COMPLAINT

(Issued July 19, 2012)

1. On February 14, 2012, pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> and Rule 206 of the Commission's Rules of Practice and Procedure,<sup>2</sup> Xcel Energy Services Inc. (Xcel), on behalf of itself and its operating company affiliate Northern States Power Company, a Wisconsin corporation (Northern States), filed a complaint (Complaint) against American Transmission Company, LLC (American Transmission). Xcel opposes American Transmission's claim to construction and ownership of the entirety of a proposed 145-mile, 345 kV electric transmission line connecting Northern States' facilities near La Crosse, Wisconsin, with American Transmission's facilities near Madison, Wisconsin (La Crosse-Madison Line). First, Xcel requests that the Commission find that American Transmission has not complied with the express terms and conditions of: (1) the Midwest Independent Transmission System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff); and (2) the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (Transmission Owners Agreement). Second, Xcel requests that the Commission direct American Transmission to enter into negotiations with Xcel and Northern States to develop final terms and conditions for the ownership and construction

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> 18 C.F.R. § 385.206 (2011).

of the La Crosse-Madison Line, in a manner compliant with the Transmission Owners Agreement and Tariff. For the reasons discussed below, the Commission grants the Complaint.

## **I. Background**

2. Northern States is a Wisconsin corporation and a vertically-integrated utility that provides electric generation, transmission, and distribution services. Northern States is a subsidiary of Xcel Energy Inc. and provides electric service to approximately 250,000 retail and wholesale electric customers in western Wisconsin, as well as a portion of the Upper Peninsula of Michigan. Northern States has 2,600 miles of transmission lines and operates 157 substations at transmission voltage in Wisconsin and Michigan. Northern States is a transmission-owning member of MISO and a signatory to the Transmission Owners Agreement. Northern States provides transmission service over its facilities pursuant to the Tariff. Xcel is a subsidiary of and the service company for the Xcel Energy Inc. holding company system, and an affiliate of Northern States.

3. American Transmission is a Wisconsin limited liability company that owns, controls, and operates more than 9,400 miles of transmission lines in the States of Wisconsin, Illinois, Minnesota and Michigan. American Transmission is also a transmission-owning member of MISO and a signatory to the Transmission Owners Agreement. American Transmission also provides transmission service over its facilities pursuant to the Tariff.

## **II. Complaint**

4. Xcel contends that the Transmission Owners Agreement and Tariff permit Xcel to construct and own 50 percent of the La Crosse-Madison Line. Xcel states that on December 8, 2011, MISO approved the La Crosse-Madison line as a Multi-Value Project (MVP)<sup>3</sup> in the 2011 MISO Transmission Expansion Plan (MTEP) and designated both Northern States and American Transmission as joint owners. Xcel states that American Transmission disputes MISO's designation and has commenced development work on the La Crosse-Madison Line without the involvement of Xcel, despite Xcel's attempts to coordinate activities with American Transmission. Xcel asserts that American Transmission's actions are contrary to both the Transmission Owners Agreement and MISO's designation authority under its Tariff.

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<sup>3</sup> MVPs are a category of transmission projects that enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws and/or address multiple economic issues affecting multiple transmission zones, and/or address at least one economic issue affecting multiple transmission zones and one reliability issue. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010), *order on reh'g*, 137 FERC ¶ 61,074 (2011).

5. Xcel contends that the following language in section VI of Appendix B to the Transmission Owners Agreement gives it investment and ownership rights to a portion of the La Crosse-Madison Line:

Ownership and the responsibilities 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.[<sup>4</sup>]

6. Xcel asserts that this language provides that if a project approved through the MISO planning process connects the facilities of two transmission owners, each of the transmission owners has an equal right to own and corresponding responsibility to construct that project.<sup>5</sup> However, those transmission owners may agree to some other arrangement. Xcel asserts that this provision is not a backstop authority for MISO to ensure transmission projects approved in the MTEP are constructed. To the contrary, Xcel asserts that the provision represents the agreement of the MISO transmission owners as to how to allocate ownership rights and construction responsibilities for all projects approved in the MTEP. Xcel asserts that the Commission has found these provisions to be just and reasonable.<sup>6</sup>

7. Xcel argues that additional provisions of the Transmission Owners Agreement support its interpretation. The Transmission Owners Agreement provides that “[i]f the designated owner is financially incapable of carrying out its construction responsibilities or would suffer demonstrable financial harm from such construction, alternate construction arrangements shall be identified.”<sup>7</sup> Xcel asserts that this language contemplates that a particular project will be designated and that the designated owner is required to meet its construction obligations barring extraordinary circumstances. In Xcel’s view, this provision would be superfluous if the Transmission Owners Agreement did not represent the agreement of the MISO transmission owners as to how to designate ownership and construction responsibilities for all MTEP projects.

8. Xcel adds that section V of Attachment FF (Transmission Expansion Planning Protocol) of the Tariff provides, in part:

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<sup>4</sup> Transmission Owners Agreement at App. B § VI.

<sup>5</sup> Xcel Complaint at 22-25.

<sup>6</sup> *Id.* at 23 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,169 (2003)).

<sup>7</sup> Transmission Owners Agreement at App. B. § VI.

For each project included in the recommended MTEP, the plan shall designate, based on the planning analysis 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 [Transmission Owners Agreement], one or more Transmission Owners or other entities to construct, own and/or finance the recommended project.<sup>[8]</sup>

9. Xcel asserts that this language gives MISO authority to designate who should own a particular MTEP project after taking into account the totality of circumstances surrounding a project. Xcel states that in the 2011 MTEP, MISO appropriately exercised its authority relating to the La Crosse-Madison Line and designated both Xcel and American Transmission as owners of the project.<sup>9</sup>

10. Xcel concludes that pursuant to the Tariff, when making its ownership designation, MISO must take into account at least: (1) input from participants, (2) an indication of a willingness to bear cost responsibility, and (3) the applicable provisions of the Transmission Owners Agreement. Here, Xcel and American Transmission provided input as participants in the planning process; Xcel has indicated its willingness to bear cost responsibility; and the provisions of the Transmission Owners Agreement are directly applicable to the La Crosse-Madison Line. According to Xcel, based on the totality of circumstances, MISO appropriately designated both Xcel and American Transmission as owners of the La Crosse-Madison Line and this determination deserves deference.<sup>10</sup>

### **III. Notice and Responsive Pleadings**

11. Notice of the Complaint was published in the *Federal Register*, 77 Fed. Reg. 10,489 (2012), with protests and interventions due on or before March 5, 2012.

12. Timely motions to intervene were filed by: Exelon Corporation; Midwest Independent Transmission System Operator, Inc.; NextEra Energy Resources, LLC; Wisconsin Electric Power Company; Pioneer Transmission, LLC (Pioneer); Duke Energy Corporation; Dairyland Power Cooperative; Wisconsin Public Service Corporation and Upper Peninsula Power Company; LS Power Transmission, LLC; and Southern Minnesota Municipal Power Agency. Motions to intervene and comments were filed by: Duke-American Transmission Company LLC (Duke-American Transmission); MISO Transmission Owners;<sup>11</sup> Northern Indiana Public Service Company (NIPSCO); and ITC

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<sup>8</sup> Tariff at Attachment FF § V (emphasis added by Xcel).

<sup>9</sup> Xcel Complaint at 28.

<sup>10</sup> *Id.* at 29.

Companies.<sup>12</sup> The Indiana Utility Regulatory Commission and the Illinois Commerce Commission each filed a notice of intervention. The Public Service Commission of Wisconsin (Wisconsin Commission) filed a notice of intervention and motion for extension of time for comments.

13. On March 5, 2012, American Transmission filed an answer to the Complaint.
14. On March 7, 2012, Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC (PSEG Entities) filed a joint motion to intervene out-of-time and Alliant Energy Corporate Services, Inc. (Alliant) filed a motion to intervene out-of-time.
15. On March 20, 2012, Xcel filed an answer to American Transmission's answer.
16. On March 23, 2012, Wisconsin Commission filed comments out-of-time.
17. On April 4, 2012, American Transmission filed a motion to reject Xcel's answer or, in the alternative, a motion to respond and response.
18. On April 16, 2012, Xcel filed an answer to American Transmission's motion.

**A. American Transmission's Answer**

19. American Transmission requests that the Commission: (1) dismiss the Complaint because Xcel does not demonstrate a right under the FPA to the relief sought; (2) dismiss the Complaint because Xcel's claim is based on an incomplete and therefore erroneous interpretation of the Transmission Owners Agreement, and a correct interpretation does

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<sup>11</sup> MISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; Big Rivers Electric Corporation; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC (collectively, ITC Companies); Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

<sup>12</sup> ITC Companies consist of: International Transmission Company; Michigan Electric Transmission Company, LLC; and ITC Midwest LLC.

not support the relief sought; or, in the alternative (3) determine that American Transmission has the same rights that Xcel seeks and grant American Transmission 50 percent ownership of all the CAPX2020 projects.<sup>13</sup>

20. American Transmission argues that section VI of Appendix B does not give an interconnecting transmission owner an unlimited right to ownership of transmission facilities proposed by another entity.<sup>14</sup> American Transmission asserts that the “obligation to build” language<sup>15</sup> applies only to projects that the MISO planning staff “creates” in carrying out its express transmission planning obligations, not to those projects that the transmission owners themselves proposed to build.<sup>16</sup> American Transmission states that at the time the relevant language was written in 1996 through 1998, and agreed upon by the transmission owners that formed MISO, there was a significant lack of new transmission construction in the Midwest and elsewhere. Stakeholders in the MISO formation process were concerned that MISO would not be effective in transmission planning if its planning staff identified transmission projects to be included in the MISO MTEP that no other party had proposed. The fear was that no one would agree to build them.<sup>17</sup>

21. American Transmission thus argues that the language in section VI is not a general “grant” of ownership entitlement simply because a transmission line proposed by one transmission owner may interconnect with transmission facilities owned by another transmission owner. Rather, the language applies only in instances where the MISO planning staff creates a new project that is substantially different from the ones originally proposed by one or more transmission owners (or by no transmission owner at all). In that limited circumstance, Appendix B imposes an “obligation to build,” authorizing

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<sup>13</sup> CAPX2020 is a comprehensive regional planning initiative by eleven utilities in the MISO region.

<sup>14</sup> American Transmission Answer at 16.

<sup>15</sup> *Id.* American Transmission cites the following language of Appendix B, section VI of the Transmission Owners Agreement as resulting in an “obligation to build:”

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 responsibilities to construct facilities which are connected between two (2) or more Owners’ facilities belong equally to each Owner, unless such Owners otherwise agree. . . .

<sup>16</sup> American Transmission Answer at 18.

<sup>17</sup> *Id.* at 19.

MISO to direct the interconnecting transmission owners to build the MISO planned transmission project as contemplated in section VI of Appendix B. That language was not intended to create a right to ownership.

22. In further support of its argument, American Transmission points to the Commission order granting regional transmission organization (RTO) status to MISO,<sup>18</sup> in which the Commission stated, in relevant part:

Merchant transmission projects are only possible if the TOs in direct contact with the proposed project are financially incapable of carrying out the construction or would suffer demonstrable financial harm from such construction... [W]e find that our long term competitive goals are better served by RTO expansion plans that allow for third party participation as well as permit merchant projects outside the plan. Accordingly, [MISO] must revise its Planning Framework to make it possible for third parties to participate in constructing and owning new transmission facilities identified by the plan.<sup>[19]</sup>

23. American Transmission points out that MISO added the following language to Appendix B in compliance with the Commission's directive: "[t]hird parties shall be permitted and are encouraged to participate in the financing, construction and ownership of new transmission facilities as specified in the Midwest ISO Plan." American Transmission states that the Commission accepted MISO's proposed language noting that MISO had "added language to Appendix B to allow and encourage third parties (including merchant transmission) to fully participate in the planning process including participation in the financing, construction and ownership of new transmission facilities."<sup>20</sup> American Transmission asserts that Xcel's interpretation applying the "obligation to build" of section VI to all transmission projects is inconsistent with the MISO RTO Order because it presumes that only interconnecting transmission owners can own projects, unless the transmission owners otherwise agree or are financially incapable -- exactly the restriction on transmission construction that the Commission sought to eliminate in the MISO RTO Order.<sup>21</sup>

24. American Transmission continues that if, as interpreted by Xcel, American Transmission is compelled to surrender 50 percent ownership of a transmission project

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<sup>18</sup> *Id.* at 20 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 97 FERC ¶ 61,326, at 62,520 (2001) (MISO RTO Order)).

<sup>19</sup> *Id.* at 21 (citing MISO RTO Order, 97 FERC ¶ 61,326 at 62,521).

<sup>20</sup> *Id.* at 22 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,169 (2003) (order accepting compliance filing)).

<sup>21</sup> *Id.*

that it proposed merely because it “interconnects” with another transmission owner’s facilities, then no “third party” would have the right to construct and own facilities in the MISO region in their own right because by definition they are not an owner of the facilities to which the proposed transmission line would interconnect.<sup>22</sup>

25. American Transmission also asserts that Order No. 890<sup>23</sup> required RTOs to encourage participation and investment by third parties in transmission planning.<sup>24</sup> It argues that the Commission held that the focus of Order No. 890 was to facilitate the ability of all stakeholders to participate in the planning process and to offer solutions to reliability and economic concerns on the grid and more broadly, that the Commission has encouraged the construction and ownership of facilities by third-party transmission owners.<sup>25</sup> American Transmission contends that Xcel’s position that interconnecting transmission owners are entitled to construct and own half of projects even though they may have done little or nothing by way of either planning or development of the project, as is the case with the La Crosse-Madison Line, simply because their facilities interconnect is in direct conflict with the Commission’s declared policy allowing third parties to own transmission.

26. American Transmission also argues that MISO’s authority to order American Transmission to give a portion of its ownership interests in the La Crosse-Madison Line to any other entity does not exist. American Transmission notes that in MISO’s request for rehearing of Order No. 1000,<sup>26</sup> MISO stated in relevant part:

[S]tate laws give to states the authority to decide who should build such facilities. State law, not federal, governs the preconditions associated with the siting and construction of transmission and the appurtenant rights associated with such construction including, but not limited to, the right of eminent domain. MISO therefore submits that its appropriate role under

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<sup>22</sup> *Id.* at 22-23.

<sup>23</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>24</sup> American Transmission Answer at 24.

<sup>25</sup> *Id.* (citing *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028, at P 40 (2008)).

<sup>26</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012).



Order No. 890 is to implement and manage a comprehensive, open, and fair transmission planning process. It is not for MISO to determine who should build specific transmission projects identified through its transmission planning process. While MISO may approve plans that include needed transmission expansion, MISO has not been vested with any rights by any state legislature or state commission regarding the construction of the facilities that may be deemed necessary as a result of the MTEP process, or any other plan developed by MISO and its stakeholders.<sup>[27]</sup>

27. American Transmission argues that Xcel's interpretation of the Transmission Owners Agreement is also unjust and unreasonable and unduly discriminatory in light of MISO's historic interpretation of section VI of Appendix B.<sup>28</sup> American Transmission asserts that MISO has never before implemented section VI of the Appendix B planning structure to require a transmission owner to give ownership interests to another transmission owner. American Transmission points to several examples of transmission lines that were approved in previous MTEPs that connected between two or more owners, but no other party asserted an ownership interest in any of those lines, nor did MISO allocate any ownership or construction rights prior to approval of the lines by the MISO Board for inclusion in the MTEP.<sup>29</sup> American Transmission argues that Xcel's interpretation of section VI is neither consistent with the original intent of Appendix B nor how ownership has been historically attributed to projects built in the MISO region under the Transmission Owners Agreement.

28. American Transmission asserts that Xcel's interpretation of the Transmission Owners Agreement would have a negative effect on transmission development in the Midwest.<sup>30</sup> To the extent that projects are developed and sponsored by individual transmission owners through their local planning processes or otherwise, there will be a perverse incentive for planning entities to ensure that their projects *will not* interconnect to another transmission owner's system, for fear of losing 50 percent ownership entitlement of that project. Transmission owners or other entities would have no incentive to undertake costly and time consuming project development activities if such a result were possible, which would lead to the balkanized planning processes that both Order Nos. 890 and 1000 were intended to root out.<sup>31</sup>

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<sup>27</sup> American Transmission Answer at 25 (citing MISO, Request for Rehearing of Order No. 1000, Docket No. RM10-23-000, at 7-8 (filed Aug. 22, 2011)).

<sup>28</sup> *Id.* at 27-28.

<sup>29</sup> *Id.* at 27.

<sup>30</sup> *Id.* at 28-29.

<sup>31</sup> *Id.* at 29.

29. American Transmission states that in 2011, American Transmission and Duke Energy Transmission Holding Company, LLC entered into a joint venture —Duke-American Transmission. On September 12, 2011, Duke-American Transmission announced a proposal for seven new transmission lines in the Midwest, strategically planned to fill in “gaps” in the existing transmission grid that will improve reliability, provide economic benefits to local utilities by decreasing congestion, and boost the interconnection of renewables. American Transmission asserts that if Xcel’s interpretation is upheld in this proceeding, and thereafter applied to other planned transmission projects in a similar manner, Duke-American Transmission will likely not be entitled to construct and own any of them, which is directly contrary to the Commission’s MISO RTO Order and contrary to Order No. 1000. American Transmission concludes that the interpretation advanced by Xcel will also affect any number of pending projects in the MTEP and projects that have not yet been proposed, while providing a windfall to transmission owners who just happen to be connected to the proposed projects but have done nothing to further the construction of the projects.

30. American Transmission argues that Xcel’s interpretation of Appendix B results in involuntary joint ventures.<sup>32</sup> American Transmission asserts that Xcel does not even try to show that its interpretation of the Transmission Owners Agreement serves the public interest by promoting market entry, operational efficiencies or other benefits that would not otherwise occur without the joint venture structure that it seeks to require. American Transmission adds that Xcel does not show that a joint venture is necessary or even consistent with the objectives in section VI of Appendix B of efficient and cost effective transmission projects.

31. American Transmission asserts that in fashioning remedies, the Commission has recognized that laches and other equitable considerations can be taken into account in determining an appropriate outcome.<sup>33</sup> American Transmission asserts that here, Xcel cannot assert that the operation of the ownership provision of the Transmission Owners Agreement is automatic and unavoidable, since Xcel has not claimed ownership of other new transmission lines that interconnected with its “facilities” that, aside from MVP cost allocation assignment, are indistinguishable in this respect from the La Crosse-Madison Line. Moreover, Xcel has not permitted American Transmission co-ownership of the

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<sup>32</sup> *Id.* at 30-32.

<sup>33</sup> American Transmission Answer at 32-35 (citing *Grynberg v. Rocky Mtn. Natural Gas Co.*, 90 FERC ¶ 61,247, at 61,826, *reh’g denied*, 93 FERC ¶ 61,180 (2000) (requested relief may be barred “if the person bringing the claim has delayed for such a time that permitting it to prosecute the claim would be inequitable.”); *see also ARCO Prods. Co. v. SFPP, L.P.*, 93 FERC ¶ 63,020 at 65,076 (2000); and *City of Lebanon v. Cincinnati Gas & Electric Co.*, 64 FERC ¶ 61,341 at 63,445 (1993) (declining to exercise equitable discretion not to grant refunds for a tariff violation on a finding that delay by the party seeking such relief was “excusable.”)).

Brookings and Twin Cities-La Crosse lines or any other proposed CAPX2020 transmission projects. Thus, Xcel's own conduct under the Transmission Owners Agreement, as well as the Commission's inherent authority, implies a measure of Commission discretion in granting Xcel any relief in this case, even if the Commission were to agree with Xcel's interpretation of section VI of Appendix B.

32. American Transmission argues that if the Commission rules in favor of Xcel's interpretation of section VI of the Transmission Owners Agreement, American Transmission should be afforded the same rights that Xcel seeks and be granted 50 percent ownership of all the CAPX2020 projects that Xcel asserts are elements of the same planning analysis.

### **B. Comments and Protests**

33. ITC Companies agree with Xcel that Appendix B, section VI of the Transmission Owners Agreement requires that Xcel and American Transmission share in the ownership and construction of the La Crosse-Madison Line unless they otherwise agree.<sup>34</sup>

34. NIPSCO agrees with Xcel that if a project is approved in the MISO planning process and connects the facilities of two transmission owners, each of the transmission owners has an equal right to own and construct the project. NIPSCO argues that American Transmission's unwillingness to share the obligation to own and construct the La Crosse-Madison Line with Xcel is a breach of the Transmission Owners Agreement and a clear violation of the Tariff. NIPSCO states that Xcel is also correct that Appendix A of the 2011 MTEP is controlling authority related to MISO's designation of responsibility to own and construct planned projects.<sup>35</sup>

35. Duke-American Transmission opposes the relief requested by Xcel. Duke-American Transmission argues that Xcel's interpretation of the Appendix B provision in the Transmission Owners Agreement is opportunistic in that it allows interconnecting transmission owners to co-opt ownership rights of MVPs or other projects developed by other entities. Duke-American Transmission claims that Xcel's interpretation will adversely impact regional transmission planning and new transmission investment, and cause substantial harm to third-party developers.<sup>36</sup> Duke-American Transmission states that the Appendix B language was originally developed to avoid the full financial

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<sup>34</sup> ITC Companies Comments at 3. ITC Companies note that the La Crosse-Madison Line is part of a larger MVP portfolio project that ultimately continues to ITC Midwest LLC. ITC Companies state that under this same provision, American Transmission and ITC Midwest LLC should share equally in the ownership and construction of the Dubuque-Madison segment of this MVP Project.

<sup>35</sup> NIPSCO Comments at 3-4.

implications of MISO's excessive planning authority, but now is being used to deny third parties' rights to construct by allowing interconnected transmission owners to claim ownership of projects that have been designated for regional cost allocation because it is economically advantageous to do so.<sup>37</sup>

36. Duke-American Transmission states that allowance of third-party construction in MISO has long been the Commission's policy. Duke-American Transmission points out that in the MISO RTO Order granting RTO status to MISO, the Commission required changes to remove obstacles to third-party construction and ownership. Duke-American Transmission argues that Xcel's interpretation of the Appendix B language is inconsistent with that order.<sup>38</sup>

37. Duke-American Transmission argues that prior to the approval of the MISO MVP process, there are no instances in the history of the MISO's implementation of the Appendix B planning framework where MISO has taken a position that compels one transmission owner to give another transmission owner 50 percent ownership rights in a fully developed, locally planned project, and thus, Xcel's interpretation is inconsistent with how ownership has historically been attributed to projects built in the MISO region under the Transmission Owners Agreement.<sup>39</sup>

38. Duke-American Transmission argues that if Appendix B is interpreted to provide an exclusive right to build, it is more appropriately construed as a "right of first refusal" for transmission owners to own projects that interconnect with their systems.<sup>40</sup> Duke-American Transmission argues that as a "right of first refusal" provision, it is inconsistent with the Commission's MISO RTO Order, Order No. 890, and Order No. 1000.

39. Lastly, Duke-American Transmission argues that allowing Xcel's interpretation to stand will have a negative effect on transmission development in the nation, including the Midwest,<sup>41</sup> and will cause immediate harm to American Transmission and Duke-American Transmission. Duke-American Transmission states that it was created to plan and develop strategic transmission projects across the U.S. and Canada. If Xcel's interpretation prevails, Duke-American Transmission states that it might have to convey billions of dollars of its proposed new transmission facilities to others, and this is not in

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<sup>36</sup> Duke-American Transmission Comments at 4.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 4-5.

<sup>39</sup> *Id.* at 5-6.

<sup>40</sup> *Id.* at 6.

<sup>41</sup> *Id.*

accord with the Commission's efforts to permit third parties to plan, construct and own transmission facilities under the Transmission Owners Agreement.<sup>42</sup>

40. MISO Transmission Owners interpret the Transmission Owners Agreement to provide that the obligation to construct a transmission project is to be determined in accordance with the express provisions of the Transmission Owners Agreement.<sup>43</sup> MISO Transmission Owners state that the Appendix B, section VI language is clear and unambiguous, and means that if a transmission project connects between two or more transmission owners' facilities, the transmission owners share equally in the responsibility to construct, own, and maintain the facilities, unless otherwise agreed.<sup>44</sup> MISO Transmission Owners further state that they interpret the plain language of the Tariff to give MISO the authority to designate an entity responsible for projects that the MISO Board of Directors approves through the MTEP.<sup>45</sup>

41. Wisconsin Commission focused its comments on a state-federal jurisdiction question that it states is an important part of the landscape of this dispute. Wisconsin Commission posits that neither side comes to grips with the question of what exactly the term "ownership" in Appendix B of the Transmission Owners Agreement refers to. Wisconsin Commission submits that at least one interpretation of "ownership" would be incorrect – namely that "ownership" would mean title ownership of the physical transmission line. Wisconsin Commission explains that title ownership of the physical asset in Wisconsin initially derives from its grant of a certificate of public convenience and necessity (CPCN) under the Wisconsin statute, followed by consummation of construction according to the CPCN by the authorized applicant(s);<sup>46</sup> that certificated applicant(s) is the owner of the physical transmission line. Thus, according to Wisconsin Commission, it follows that during the planning stage at issue in this complaint, the project is still intangible and simply a plan or opportunity. Wisconsin Commission urges the Commission to strictly adhere to the text of the Transmission Owners Agreement in order to resolve this dispute while acknowledging that Wisconsin state law controls the ownership of the La Crosse-Madison Line as a physical asset under the applicable state CPCN process.<sup>47</sup>

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<sup>42</sup> *Id.* at 7.

<sup>43</sup> MISO Transmission Owners Comments at 3.

<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.* at 7.

<sup>46</sup> Wisconsin Commission Comments at 3.

<sup>47</sup> *Id.* at 3-4.

**C. Xcel's Answer to American Transmission's Answer**

42. Xcel states that American Transmission wrongly assumes that the relevant portion of the Transmission Owners Agreement applies only to a small subset of projects proposed by MISO planning staff.<sup>48</sup> Xcel argues that these provisions are comprehensive and apply to all projects in the MISO MTEP without exception. Xcel states that American Transmission has identified no provisions to the contrary.<sup>49</sup>

43. In addition, Xcel argues that American Transmission is only partially correct that the relevant portion of the Transmission Owners Agreement provides an “obligation to build” and that there is no need for such an obligation to build for transmission projects that transmission owners themselves proposed to build.<sup>50</sup> First, Xcel states that American Transmission’s interpretation is contrary to the plain language of the Transmission Owners Agreement. Second, Xcel states that American Transmission’s interpretation assumes a project will proceed voluntarily. However, according to Xcel, the Transmission Owners Agreement and the Tariff provide mechanisms to ensure follow through, since implementation of a project in an MTEP is assumed in modeling for subsequent planning cycles where each successive MTEP builds upon the transmission system assumed and approved in previous MTEPs.<sup>51</sup> Xcel argues that without a good faith “duty to implement,” there is no mechanism to hold parties accountable for following through with their responsibilities to construct once an MTEP is approved.<sup>52</sup> Xcel states that by imposing a good faith “duty to implement,” the Tariff mitigates risks and allows stakeholders to rely on approved projects getting built and recourse if the projects do not get built.

44. Xcel also argues that American Transmission incorrectly characterizes MISO’s authority and duties under the Tariff. Xcel argues that the plain language of the Tariff gives MISO the authority to designate an entity responsible for projects that the MISO Board of Directors approves through the MTEP.<sup>53</sup> Xcel argues that the Transmission Owners Agreement and Tariff are structured to accommodate state authority over

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<sup>48</sup> Xcel Answer at 6.

<sup>49</sup> *Id.* at 7.

<sup>50</sup> *Id.* at 8.

<sup>51</sup>*Id.* at 9.

<sup>52</sup> *Id.* In its Answer, Xcel refers to the following language of the Transmission Owners Agreement as the “duty to implement”: “[t]he affected Owner[s] shall make a good faith effort to design, certify, and build the designated facilities to fulfill the approved [MISO] Plan.” Transmission Owners Agreement at App. B § VI.

<sup>53</sup> Xcel Answer at 11.

construction approvals, but that state authority is immaterial to the instant proceeding.<sup>54</sup> Xcel argues that because the Transmission Owners Agreement and Tariff are Commission jurisdictional, it is for the Commission to decide the rights and obligations under them. Xcel states that once the rights under the Transmission Owners Agreement and Tariff are adjudicated by the Commission, Northern States and American Transmission, together, would seek approval for the project from Wisconsin Commission.<sup>55</sup> Xcel states that while Wisconsin Commission retains its authority to make a final decision regarding whether the project meets the requirements of Wisconsin law, and regarding the final route, both Northern States and American Transmission are contractually obligated to support MISO's designation under their "duty to implement."<sup>56</sup>

45. Xcel also states that American Transmission wrongly asserts that the "share equally provisions" would impede transmission investment.<sup>57</sup> Xcel argues that the cooperative and collaborative transmission planning and development process envisioned by the "share equally provisions" have not impeded investment in new transmission facilities and, instead have led to collaborative development in the MISO region.<sup>58</sup>

46. In addition, Xcel argues that the "share equally provisions" do not preclude third-party ownership. Xcel distinguishes between transmission owners, who sign and are thus bound by the terms of the Transmission Owners Agreement and third-parties, who have not signed and are not bound by the terms of the Transmission Owners Agreement. In Xcel's view, the bargain struck between the interconnecting transmission owners under the "share equally provisions" does not apply to a third party. The "share equally provisions" also do not require MISO to designate the interconnecting transmission owners as the parties responsible for a project that connects to their facilities. Rather, MISO retains the authority to designate a third party based on the totality of the circumstances it must consider under section V of attachment FF of the Tariff. The terms of the Transmission Owners Agreement do not trump MISO's designation authority under the Tariff because article two, section C of the Transmission Owner Agreement provides that "[i]n the event of a conflict between this Agreement, including any

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<sup>54</sup> *Id.* at 12.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> In its Answer, Xcel refers to the following language of the Transmission Owners Agreement as the "share equally provisions": "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 . . ." Transmission Owners Agreement at App. B § VI.

<sup>58</sup> Xcel Answer at 13.

appendices, and the Tariff, the Tariff shall prevail as the intent of the signatories.”<sup>59</sup> Thus, Xcel argues that MISO’s ownership designation authority under the Tariff allows MISO to designate a third party as an owner of an MTEP-approved transmission project and the Transmission Owners Agreement does not trump this authority.<sup>60</sup>

47. Xcel states that collaborative development of a project need not result in a joint venture as American Transmission claims.<sup>61</sup> Xcel states, for instance, that Northern States and American Transmission could decide to share equally in the project by each owning a discrete portion of the project and permitting and/or constructing such portions separately. Xcel argues that collaboration between the two utilities could take many forms and that utilities in the upper Midwest have collaborated in a variety of ways in the past. Xcel also questions why American Transmission is willing to collaborate in a joint venture with Duke Energy through the formation of Duke-American Transmission Company, LLC, but is unwilling to collaborate with Xcel.<sup>62</sup>

48. Xcel states that no transmission owner should be able to disregard the Transmission Owners Agreement and the Tariff. Xcel states that American Transmission was fully aware of MISO’s interpretation prior to the La Crosse-Madison Line being approved in the MTEP and that if American Transmission disagreed with MISO’s interpretation and the project’s planned designation, American Transmission was free to initiate dispute resolution under the Tariff or bring a complaint to the Commission upon approval of the 2011 MTEP.<sup>63</sup> Instead, Xcel argues that American Transmission simply declared that it “will own the line.”<sup>64</sup>

49. Lastly, Xcel states the Commission should reject American Transmission’s alternative relief request for the Commission to grant American Transmission rights to share in several projects as part of CAPX2020.<sup>65</sup> Xcel notes that American Transmission specifically singles out the Brookings and the Twin Cities – La Crosse projects because these facilities will “ultimately” interconnect with American Transmission’s North Madison substation. Xcel argues that “facilities” are not “all of the transmission lines

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<sup>59</sup> *Id.* at 15.

<sup>60</sup> *Id.* at 16.

<sup>61</sup> *Id.* at 17.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 19.

<sup>64</sup> *Id.* at 19-20.

<sup>65</sup> *Id.* at 26.



that interconnect with its existing facilities” as American Transmission claims.<sup>66</sup> Xcel argues that no reading of the Transmission Owners Agreement can support this outcome. Xcel argues that the certainty needed to commence development of any particular project would never exist if, at some future point in time, a new line would be planned to connect to a transmission owner’s facilities and the transmission owner would then need to divest itself of ownership of its current and planned facilities.<sup>67</sup>

50. Xcel adds that American Transmission had the opportunity to invest in the CapX2020 initiative but chose not to do so. The CAPX2020 utilities discussed American Transmission’s participation, but American Transmission chose not to invest the resources necessary to participate. Xcel asserts that in any event, the Twin Cities–La Crosse project was approved in the 2008 MTEP and ownership was designated by MISO at that time.<sup>68</sup> Xcel asserts that if American Transmission was interested in claiming an ownership stake in that project it should have done so then or filed a complaint against MISO at that time. Xcel also asserts that American Transmission gave no prior indication of any interest in the Brooking Project because the project is separated from American Transmission’s facilities by 150 miles.

**D. American Transmission’s Response to Xcel’s Answer**

51. American Transmission asserts that the Transmission Owners Agreement must be read as a whole and in conjunction with the MISO RTO Order and the intent of the parties who negotiated the agreement.<sup>69</sup> American Transmission states that it is not attempting to use any extrinsic evidence to contradict the language in the Transmission Owners Agreement, but rather to provide background support showing the interpretation that was intended when the entire Transmission Owners Agreement was negotiated.<sup>70</sup>

52. American Transmission contends that Xcel’s argument that the Transmission Owners Agreement does not apply to third parties is directly counter to its argument that the “clear and unambiguous” provisions of the Transmission Owners Agreement are “comprehensive in nature and apply to all projects approved in the MTEP” and for which “there are no exceptions.”<sup>71</sup> American Transmission states that it agrees with Xcel that

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<sup>66</sup> *Id.* at 27 (citing American Transmission Answer at 36).

<sup>67</sup> *Id.* at 27-28.

<sup>68</sup> *Id.* at 29.

<sup>69</sup> American Transmission Response at 4.

<sup>70</sup> *Id.* at 5.

<sup>71</sup> *Id.* at 6 (citing Xcel Answer at 7.)

the Appendix B, section VI language constitutes an “obligation to construct,” but that obligation applies to a narrower set of circumstances than Xcel contends.<sup>72</sup>

53. American Transmission disagrees with Xcel’s statement that American Transmission was provided an opportunity to participate in the CAPX2020 projects but declined because of lack of capital and staff resources.<sup>73</sup> Further, American Transmission disagrees with Xcel’s claim that the Transmission Owners Agreement has not impeded transmission development. It argues that because the issues in this Complaint and the complaint filed by Pioneer have only surfaced in the past few months, past history is not necessarily a good predictor of future development.<sup>74</sup>

#### **E. Xcel’s Answer to American Transmission’s Response**

54. Xcel states that American Transmission continues to make public statements of its sole ownership of the project and continues developing the project on its own. Xcel notes that American Transmission has scheduled open houses for public outreach to begin in mid-April 2012, including sessions that will occur in communities served by Xcel Energy. Xcel claims that American Transmission has made assertions before Wisconsin Commission that are directly contrary to American Transmission’s commitments under MISO’s Tariff and Transmission Owners Agreement and has continued with transmission studies and other engineering work to refine possible routes for the La Crosse-Madison Line. Xcel claims that American Transmission’s continued actions related to the La Crosse-Madison Line highlight the urgency for prompt Commission action. Xcel asserts that American Transmission’s continued public pronouncements will cause considerable stakeholder confusion and urges the Commission to act on Xcel’s complaint prior to June 15, 2012.

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<sup>72</sup> *Id.* at 7.

<sup>73</sup> *Id.* at 10.

<sup>74</sup> *Id.* at 12. On February 8, 2012, Pioneer filed a complaint against NIPSCO and MISO in Docket No. EL12-24-000. An order on that filing is being issued concurrently with this order. See *Pioneer Transmission, LLC v. Northern Indiana Public Service Company and Midwest Independent Transmission System Operator, Inc.*, 140 FERC ¶ 61,057 (2012).

#### **IV. Discussion**

##### **A. Procedural Matters**

55. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

56. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the PSEG Entities' and Alliant's late-filed motions to intervene and Wisconsin Commission's late-filed comments given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

57. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Xcel and American Transmission because they have provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

58. Appendix B, section VI of the Transmission Owners Agreement provides, in relevant part:

Ownership and the responsibilities 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.<sup>[75]</sup>

59. We find that this language supports Xcel's position as to ownership and the responsibility of owners to build facilities when such facilities are connected between two or more owners' facilities.

60. To determine whether an agreement is ambiguous, the Commission must look within the four corners of the agreement and not to outside sources.<sup>76</sup> Furthermore, the Commission must review the entire agreement and particular words should be considered, not as if isolated from the context, but in light of the obligations as a whole

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<sup>75</sup> Transmission Owners Agreement at App. B § VI.

<sup>76</sup> *Ophthalmic Surgeons, Ltd. v. Paychex, Inc.*, 632 F.3d 31, 35 (1st Cir. 2011). See, e.g., *Duquesne Light Co.*, 138 FERC ¶ 61,111, at P 27 (2012) (*Duquesne*) (citing *Ophthalmic Surgeons, Ltd.*, 632 F.3d at 35).

and the intention of the parties as manifested therein.<sup>77</sup> An agreement is ambiguous where it “could suggest more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.”<sup>78</sup> We find that Appendix B, section VI of the Transmission Owners Agreement is unambiguous as to ownership and the responsibility of owners to build facilities. The courts and the Commission have found that, when the terms of a contract are clear and unambiguous, the terms of the contract control and the Commission is not to consider parol evidence to interpret the contract’s intention.<sup>79</sup>

61. We are not persuaded by American Transmission’s argument that the relevant portion of the Transmission Owners Agreement applies only to a small subset of projects proposed by MISO planning staff. There is no provision in the Transmission Owners Agreement that limits section VI of Appendix B in this way.

62. Likewise, we are not persuaded by American Transmission’s arguments that Xcel’s position conflicts with the MISO RTO Order which required MISO to make it possible for third parties to participate in constructing and owning new transmission facilities identified by the plan. We are also not persuaded that if American Transmission is “compelled to surrender” 50 percent ownership of a project because it interconnects with another transmission owner’s facilities, then no third party would have the right to construct and own facilities in the MISO region.<sup>80</sup> A plain reading of the applicable language does not conflict with the MISO RTO Order. The Transmission Owners Agreement permits third parties to “participate in the financing, construction and ownership of new transmission facilities as specified in the Midwest ISO Plan,” albeit, when read in conjunction with the “share equally provisions,” only if the interconnecting transmission owner is unwilling or unable to assume responsibility for the project.<sup>81</sup>

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<sup>77</sup> *Id.*

<sup>78</sup> *Bank of N.Y. v. First Millennium, Inc.*, 607 F.3d 905, 914 (2d Cir. 2010).

<sup>79</sup> *See, e.g., Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 547 (D.C. Cir. 2010) (when a contract is unambiguous, that language controls and the court “must give effect to the unambiguously expressed intent of the parties”); *Pac. Gas & Elec. Co.*, 107 FERC ¶ 61,154, at P 19 (2004) (stating “when the language of a contract is explicit and clear . . . then the court may ascertain the intent from its written terms and not go further”); *Mid-Continent Area Power Pool*, 92 FERC ¶ 61,229, at 61,755 (2000) (stating when a contract’s terms are clear, it is to be construed according to its literal terms and extrinsic evidence cannot be used to alter or contradict the contract’s express terms).

<sup>80</sup> American Transmission Answer at 22.

<sup>81</sup> *See* Transmission Owners Agreement at App. B § VI.

Although the Commission directed MISO to “revise its Planning Framework to make it possible for third parties to participate in constructing and owning new transmission facilities identified by the plan,”<sup>82</sup> the Commission did not prescribe the terms and conditions of third-party participation.

63. American Transmission argues that prior to the approval of the MISO MVP process, there are no identified instances in the history of MISO’s implementation of the Appendix B planning framework where MISO or any of the transmission owners have taken a position that compels one transmission owner to give another transmission owner 50 percent ownership rights in a locally planned project, and thus Xcel’s position is neither consistent with the original intent of the language nor how ownership has been historically attributed to projects in the MISO region. American Transmission argues that in its Complaint, Xcel made no policy arguments in support of its interpretation. Despite American Transmission’s assertions, the plain language of the Transmission Owners Agreement prevails. The fact that MISO or the transmission owners may not have previously enforced a provision because circumstances had not previously arisen that required MISO or the transmission owners to do so, does not take away the legal force of that provision.

64. American Transmission argues that if section VI of Appendix B to the Transmission Owners Agreement is interpreted as Xcel proffers, it is more appropriately construed as a “right of first refusal” for transmission owners to own 50 percent of projects merely because the proposed transmission project interconnects with the transmission owner’s existing facilities. American Transmission argues that as a “right of first refusal” provision, it is inconsistent with the Commission’s orders directing changes to the language of section VI and both Order Nos. 890 and 1000.<sup>83</sup> We note that the Commission previously accepted MISO’s compliance filing in response to the Commission’s orders directing changes to the language of section VI and Order Nos. 888 and 890.<sup>84</sup> With respect to Order No. 1000, we agree with American Transmission that the language in section VI, Appendix B of the MISO TOA acts to establish a right of first refusal. In Order No. 1000, the Commission stated that it is unjust and unreasonable to grant incumbent transmission providers a federal right of first refusal with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation because doing so may result in the failure to consider more efficient or cost-effective solutions to regional needs and, in turn, result in the inclusion of higher-cost solutions in the regional plan.<sup>85</sup> In Order No. 1000-A, the Commission stated that its rationale for requiring the elimination of federal rights of first refusal was not based

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<sup>82</sup> MISO RTO Order, 97 FERC ¶ 61,326 at 62,521.

<sup>83</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323.

<sup>84</sup> See MISO RTO Order, 97 FERC ¶ 61,326; *Midwest Indep. Transmission. Sys. Operator, Inc.*, 130 FERC ¶ 61,073 (2010).

solely on the economic incentives of incumbent transmission developers/providers, but was also “based on the belief that expanding the universe of transmission developers offering potential solutions can lead to the identification and evaluation of potential solutions to regional needs that are more efficient or cost-effective.”<sup>86</sup> The Commission therefore directed public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.<sup>87</sup>

65. We note that Order No. 1000 requires public utility transmission providers to implement a planning process that evaluates competing projects in a way that is sufficiently detailed for stakeholders to understand why a particular transmission project was selected or not selected in the regional transmission plan for purposes of cost allocation.<sup>88</sup> By requiring an open and transparent transmission planning process that produces a regional transmission plan, “Order No. 1000 will provide the Commission and

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<sup>85</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 284.

<sup>86</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 83.

<sup>87</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313. The Commission stated that it was not requiring removal from Commission-jurisdictional tariffs and agreements of federal rights of first refusal as applicable to a local transmission facility. Additionally, the Commission explained that the reforms do not affect the right of an incumbent transmission provider to build, own, and recover costs for upgrades to its own transmission facilities, such as in the case of tower change outs or reconductoring, regardless of whether an upgrade has been selected in a regional transmission plan for purposes of cost allocation. The Commission further noted that the reforms are not intended to alter an incumbent transmission provider’s use and control of its existing rights-of-way, the retention, modification, or transfer of which remain subject to the relevant law or regulation that granted the right-of-way. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 318-319. *See also* Order No. 1000-A, 139 FERC ¶ 61,132 at P 427.

<sup>88</sup> *Id.* P 328.

interested parties with a record that we believe will be able to highlight whether public utility transmission providers are engaging in undue discrimination against others.”<sup>89</sup>

66. We further note that the Order No. 1000 compliance filing deadline is October 11, 2012. Thus, while the Commission did require the elimination of a federal right of first refusal in Order No. 1000, it did so on a prospective basis upon Commission acceptance of the compliance filings due on October 11, 2012.<sup>90</sup> The Commission will scrutinize the Order No. 1000 compliance filings and related implementation to ensure that Commission-jurisdictional tariffs and agreements are just and reasonable and not unduly discriminatory.

67. We disagree with American Transmission’s argument that MISO does not have the authority to require American Transmission to share the La Crosse-Madison Line with Xcel. Under the Tariff, MISO is responsible for approving a regional expansion plan that designates the transmission owners responsible for particular facilities.<sup>91</sup> In similar vein, Wisconsin Commission avers that Wisconsin state law controls the ownership of the La Crosse-Madison Line. Although we do not dispute Wisconsin Commission’s statement that a prospective builder must receive a CPCN in order to build transmission facilities in Wisconsin, the issue before the Commission is whether the Transmission Owners Agreement requires American Transmission and Xcel to share responsibility for the La Crosse-Madison Line and whether MISO has appropriately exercised its designation authority in a manner consistent with the Transmission Owners Agreement and the Tariff – not whether a prospective builder must receive a CPCN in order to build transmission facilities in Wisconsin. We find that the Transmission Owners Agreement does require MISO transmission owners to share responsibility for interconnecting facilities and that MISO has exercised its designation authority in accordance with the Transmission Owners Agreement and the Tariff in designating both American Transmission and Xcel as the parties responsible for the La Crosse-Madison Line.

68. American Transmission argues that Xcel’s interpretation of the Transmission Owners Agreement will immediately affect the La Crosse-Madison Line, could affect American Transmission’s proposed Dubuque-Spring Green line, and could directly impact other recently proposed projects that Duke-American Transmission recently submitted to MISO. Whether the proper interpretation of the relevant agreements may affect other projects is not dispositive of the issue raised by the Complaint. American Transmission further requests that if the Commission rules in favor of Xcel, American Transmission should be afforded the same rights that Xcel seeks and be granted

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<sup>89</sup> Order No. 1000-A, 139 FERC ¶ 61,132 at P 267.

<sup>90</sup> Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 65.

<sup>91</sup> MISO Tariff at Attachment FF § V.

50 percent ownership of all of the CAPX2020 projects (starting with those facilities originating at the Brookings substation in South Dakota that Xcel asserts are elements of the same planning analysis). We note that American Transmission's request is beyond the scope of the Complaint, and instead is more appropriately characterized as a complaint related to the CAPX2020 projects. The Commission discourages the combination of complaints with other types of filings.<sup>92</sup> Accordingly, we will reject American Transmission's request pertaining to this issue, without prejudice.

69. Based on the foregoing, we grant the Complaint.

The Commission orders:

The Complaint is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>92</sup> See *MidAmerican Energy Co.*, 137 FERC ¶ 61,250, at P 71 (2011); see also *Entergy Servs., Inc.*, 104 FERC ¶ 61,084, at P 13 (2003); *Yankee Atomic Elect. Co.*, 60 FERC ¶ 61,316, at 62,096 n.19 (1992); *Midwest Energy Co.*, 55 FERC ¶ 61,464, at 62,533 (1991).