

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

American Transmission Company, LLC,	)	
	)	
Complainant	)	
	)	
v.	)	Docket No. EL13-9-000
	)	
Midwest Independent Transmission	)	
System Operator, Inc. and	)	
	)	
Xcel Energy Services Inc., Northern	)	
States Power Company, a	)	
Wisconsin Corporation and	)	
Northern States Power Company,	)	
A Minnesota Corporation,	)	
	)	
Respondents	)	

**MOTION TO INTERVENE AND COMMENTS  
OF THE MISO TRANSMISSION OWNERS**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214, and the Commission’s October 3, 2012 Notice of Complaint, the MISO Transmission Owners<sup>1</sup> file this motion to intervene and comments in response to the

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<sup>1</sup> The 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; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; International Transmission Company d/b/a *ITCTransmission*; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northwestern  
(continued . . .)

October 1, 2012, Complaint and Request for Fast Track Processing of American Transmission Company LLC (“Complaint” and “ATC”)<sup>2</sup> against the Midwest Independent Transmission System Operator, Inc. (“MISO” or “Midwest ISO”) and Xcel Energy Services Inc. (“XES”), on behalf of its operating company affiliates Northern States Power Company, a Minnesota corporation (“NSPM”) and Northern States Power Company, a Wisconsin corporation (“NSPW,” and together with XES and NSPM, “Xcel Energy”). The Complaint involves NSPM’s and ATC’s respective rights and obligations regarding the construction and ownership of two proposed 345 kV electric transmission lines that were approved in different years in the MISO Transmission Expansion Plan (“MTEP”) that, once constructed, will be located in Minnesota and Wisconsin.<sup>3</sup>

ATC states that the Complaint presents the question of what constitutes the facilities between ATC and NSPM that are subject to the “Share Equally Provision”<sup>4</sup> of

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(. . . continued)

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. Individual MISO Transmission Owners may file separate comments or pleadings in this proceeding.

<sup>2</sup> ATC filed a correction to the Complaint on October 2, 2012.

<sup>3</sup> The projects in question are Twin Cities – La Crosse Project and the La Crosse – Madison Project, both of which are described further below, and referred to collectively as the “Projects.”

<sup>4</sup> The “Share Equally Provision” of the MISO Owners Agreement refers to Appendix B, Section VI, which describes the Owners’ obligation or right to construct facilities when the facilities are connected between two or more Owners’ facilities as belonging equally to each Owner, unless such Owners otherwise agree.

the MISO Owners Agreement.<sup>5</sup> The MISO Transmission Owners as a group take no position with respect to Xcel Energy's or ATC's claims to responsibility for the Projects, and the MISO Transmission Owners' comments should not be construed as supporting either Xcel Energy or ATC. However, because the Complaint presents issues relating to the impact of MISO's determinations under MTEP on the right to own and construct transmission projects, the MISO Transmission Owners submit comments to address these issues.

## **I. BACKGROUND**

ATC is a Wisconsin corporation that is a transmission-only corporation, as well as a transmission owner in MISO and a signatory to the Owners Agreement. NSPM and NSPW are Minnesota and Wisconsin corporations, respectively, that provide electric generation, transmission, and distribution services, and are transmission owners in MISO and signatories to the Owners Agreement.

As ATC states in the Complaint, the two different Projects that are at issue in the proceeding were approved in different years and different MTEP planning cycles.<sup>6</sup> One project, a 345 kV transmission line, will traverse from NSPM's newly authorized Hampton Substation located just south of the Twin Cities region of Minnesota to NSPW's newly authorized Briggs Road Substation located just north of La Crosse,

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<sup>5</sup> Complaint at 2. The full name of the Transmission Owners Agreement is the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation. The Owners Agreement is posted on MISO's website at <https://www.midwestiso.org/Library/Repository/Tariff/Rate%20Schedules/Rate%20Schedule%2001%20-%20Transmission%20Owners%20Agreement.pdf>.

<sup>6</sup> Complaint at 3, 20-21.

Wisconsin (the “Twin Cities – La Crosse Project”).<sup>7</sup> The Twin Cities – La Crosse Project was approved by the MISO Board of Directors in Appendix A of MISO’s 2008 Transmission Expansion Plan as a Baseline Reliability Project, Project ID 1024.<sup>8</sup> The transmission owners designated for this project by MISO are Xcel Energy, along with Dairyland Power Cooperative (“DPC”), Rochester Public Utilities (“RPU”), Southern Minnesota Municipal Power Agency (“SMMPA”), and WPPI Energy (“WPPI”).<sup>9</sup> The other project at issue is a 345 kV transmission line starting at NSPW’s planned Briggs Road Substation to ATC’s North Madison Substation (the “La Crosse – Madison Project”).<sup>10</sup> It has been approved by the MISO Board of Directors in the 2011 MISO Transmission Expansion Plan as part of Project ID 3127, the N. LaCrosse–N. Madison–Cardinal & Dubuque Co.–Spring Green–Cardinal Multi Value Project.<sup>11</sup> The La Crosse – Madison Project is identified as Facility ID 5626, and Xcel Energy and ATC are

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<sup>7</sup> Complaint at 3, 8.

<sup>8</sup> *MTEP08 Midwest ISO Transmission Expansion Plan 2008* (“MTEP08”), Midwest Independent Transmission System Operator, Inc., 6 (November 2008), <https://www.midwestiso.org/Planning/Pages/StudyRepository.aspx>; *id.*, Appendix A at 25 (listing the projects that have been approved by the MISO Board of Directors for construction).

<sup>9</sup> *Id.*, Appendix A at 25. The Twin Cities – La Crosse Project is part of the CapX2020 Transmission Capacity Expansion Initiative (“CapX2020”), and each of these owners is a participant in CapX2020. *See* Complaint at 8. An overview of the CapX2020 Project is available at [http://www.capx2020.com/documents/CapX2020\\_project\\_overview\\_06.20.2012.pdf](http://www.capx2020.com/documents/CapX2020_project_overview_06.20.2012.pdf).

<sup>10</sup> Complaint at 13-15.

<sup>11</sup> *See MISO Transmission Expansion Plan 2011* (“MTEP11”), Midwest Independent Transmission System Operator, Inc., Table 4.1-3 (December 2011), <https://www.midwestiso.org/Planning/TransmissionExpansionPlanning/Pages/MT/EP11.aspx>.

identified as the responsible transmission owners for this portion of Project ID 3127.<sup>12</sup> Subsequent MTEPs do not alter the prior determinations as to the designated transmission owners for a project once that project has been approved in Appendix A of an MTEP, and MTEP11 continued to identify the entities responsible for the Twin Cities – La Crosse Project, Project ID 1024, as Xcel Energy, DPC, RPU, SMMPA, and WPPI.<sup>13</sup>

With respect to the obligation or right to construct facilities, Appendix B, Section VI of the Owners Agreement states:

The Planning Staff shall present the Midwest ISO Plan, along with a summary of relevant alternatives that were not selected, to the Board for approval on a biennial basis, or more frequently if needed. The proposed Midwest ISO Plan shall include specific projects already approved as a result of the Midwest ISO entering into service agreements with transmission customers where such agreements provide for identification of needed transmission construction, its timetable, cost, and Owner or other parties' construction responsibilities. 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, and the responsibility for maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners.

In two recent orders, the Commission found that "Appendix B, section VI of the Transmission Owners Agreement is unambiguous as to ownership and the responsibility of owners to build facilities."<sup>14</sup>

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<sup>12</sup> MTEP11, Appendix A, Project Tab at 5. It should be noted that three transmission owners, ATC, Xcel Energy, and ITC Midwest LLC, are identified as responsible for the entirety of Project ID 3127.

<sup>13</sup> *Id.*, Appendix A, Project Tab at 18; *id.*, Appendix A, Facilities Tab at 40.

<sup>14</sup> *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057, at P 97 (2012) ("*Pioneer*"); *Xcel Energy Servs. Inc. v. Am. Transmission Co. LLC*, 140 FERC ¶ 61,058, at P 60 (2012) ("*Xcel Energy*").

Attachment FF of the MISO Tariff, Section V (Designation of Entities to Construct, Own and/or Finance MTEP Projects) states:

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 indications of a willingness to bear cost responsibility for the project; and applicable provisions of the ISO Agreement, one or more Transmission Owners or other entities to construct, own and/or finance the recommended project.

In addition, MISO's Transmission Planning Business Practice Manual, BPM-020-r6 ("Transmission Planning BPM")<sup>15</sup> states "[o]nce a project is approved by the Transmission Provider Board as an Appendix A project, the project is implemented in accordance with the Owners Agreement and the Tariff."<sup>16</sup>

## **II. MOTION TO INTERVENE**

Under the Commission's rules, intervention is appropriate where "[t]he movant has . . . an interest which may be directly affected by the outcome of the proceeding." 18 C.F.R. § 385.214(b)(2)(ii). The MISO Transmission Owners are a group of investor-owned transmission owners, stand-alone transmission owners, cooperatives, and municipals that own transmission facilities over which MISO provides transmission service. As stated above, this proceeding involves a dispute between Xcel Energy and ATC regarding certain provisions of the Owners Agreement and Tariff. As transmission owners within MISO and parties to the Owners Agreement, each of the MISO Transmission Owners may be affected by the outcome of this proceeding. Consequently,

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<sup>15</sup> The Transmission Planning BPM is posted at <https://www.midwestiso.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>.

<sup>16</sup> Transmission Planning BPM at 19.

each of the MISO Transmission Owners has a direct interest in this case that cannot be adequately represented by any other party. Therefore, the Commission should allow the intervention of each MISO Transmission Owner.

The MISO Transmission Owners request that the Commission place the following individuals on the official service list for these proceedings:

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### **III. COMMENTS**

#### **A. The Tariff Establishes MISO's Right to Designate the Entitie(s) to Construct and Own Projects Approved in MTEP, and the Commission Should Not Take Steps that Interfere with That Designation**

Tariff, Attachment FF, Section V states that “[f]or each project included in the recommended MTEP, the plan shall designate . . . one or more Transmission Owners or other entities to construct, own and/or finance the recommended project.” Appendix B, Section VI of the Owners Agreement also states that when new facilities will connect to a single transmission owner’s system, that transmission owner has the right and responsibility to own and construct those facilities.

These provisions of the Tariff and Owners Agreement are clear and unambiguous, and consistent with court and Commission precedent, these provisions control issues of

who has the right and obligation to construct and own transmission facilities.<sup>17</sup> As noted above, the Commission in *Pioneer* and *Xcel Energy* found that the Share Equally Provision of Appendix B, Section VI of the Owners Agreement is “unambiguous as to ownership and the responsibility of owners to build facilities.”<sup>18</sup> In an earlier decision, the Commission recently found that where a provision of the Owners Agreement is unconditional, “the Commission must construe the Transmission Owners Agreement as it is made by the parties themselves, and to give language that is ‘clear, simple and unambiguous the force and effect which the language clearly demands.’”<sup>19</sup>

In this instance, the Twin Cities – La Crosse Project and the La Crosse – Madison Project were evaluated in separate MTEP planning cycles and approved in separate MTEP reports that were issued three years apart. In MTEP08, MISO designated Xcel Energy, DPC, RPU, SMMPA and WPPI, but not ATC as the entities to construct, own, and/or finance the Twin Cities – La Crosse Project. As ATC acknowledges, this project will connect to NSPM’s Briggs Road Substation on the eastern end of the project, and NSPM’s Hampton Substation on its western end,<sup>20</sup> and not to any facilities owned by ATC. In MTEP11, MISO designated both Xcel Energy and ATC as the entities to build the La Crosse – Madison Project, with the Project to connect to NSPM’s Briggs Road

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<sup>17</sup> See *Pioneer* at P 97; *Xcel Energy* at P 60; see also *Colo. Interstate Gas Co. v. FERC*, 599 F.3d 698, 701 (D.C. Cir. 2010) (stating that when tariff language is unambiguous, that language controls and the court “must give effect to the unambiguously expressed intent of the parties” (citation omitted) (internal quotation marks omitted)).

<sup>18</sup> *Pioneer* at P 97; *Xcel* at P 60.

<sup>19</sup> *Duquesne Light Co.*, 138 FERC ¶ 61,111, at P 25 (2012).

<sup>20</sup> See Complaint at 2-3, 8.



Substation on the western end, and to an existing ATC substation at the eastern end. Given the plain language of Attachment FF, Section V of the Tariff and Appendix B, Section VI of the Owners Agreement, the entities for purposes of the right to construct, own, and/or finance the Twin Cities – La Crosse Project are Xcel Energy, DPC, RPU, SMMPA and WPPI, but not ATC. Similarly, the entities for purposes of the right to construct, own, and/or finance the La Crosse – Madison Project are Xcel Energy and ATC.<sup>21</sup>

Moreover, any contention that the Share Equally Provision provides a transmission owner with the right to own and construct a facility with which it does not connect is contrary to the Commission’s findings in the *Pioneer* and *Xcel Energy* orders. Appendix B, Section VI states that “[o]wnership 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.” Both the *Pioneer* and *Xcel Energy* orders found that “Appendix B, section VI of the Transmission Owners Agreement is unambiguous as to ownership and the responsibility of owners to build facilities.”<sup>22</sup> Thus, the transmission owner(s) with the right and obligation to construct the Twin Cities – La Crosse Project are Xcel Energy, DPC, RPU, SMMPA and WPPI;

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<sup>21</sup> These designations are also consistent with the Transmission Planning BPM, which states “[o]nce a project is approved by the Transmission Provider Board as an Appendix A project, the project is implemented in accordance with the Owners Agreement and the Tariff.” Transmission Planning BPM at 19.

<sup>22</sup> See *supra* n.14.

for the La Crosse – Madison Project, the transmission owners are Xcel Energy and ATC. This is the conclusion mandated by both the Owners Agreement and to the Commission’s express findings in *Pioneer* and *Xcel Energy*, and any arguments seeking a different finding are inconsistent with the Owners Agreement and the Commission’s orders.

**B. Reopening MTEP Determinations Can Introduce Unneeded Uncertainty, Increase Project Risk, and Create Delays in Executing Projects, Which Results in Increased Project Costs and Potential Harm to Reliability**

The Twin Cities – La Crosse and La Crosse – Madison Projects were approved as distinct and separate Appendix A projects under different MTEPs issued three years apart. In MTEP08, MISO designated Xcel Energy, DPC, RPU, SMMPA, and WPPI, and not ATC, as the entities to own, construct and/or finance the Twin Cities – La Crosse Project, and in MTEP11, designated Xcel Energy and ATC as the entities to own, construct and/or finance the La Crosse – Madison Project.<sup>23</sup> Allowing a previous MTEP approval and determination of the entities to own, construct, and/or finance an Appendix A-approved project to be subject to revision based on the approval of additional projects in a subsequent year or years will introduce uncertainty and increased project risk into the MTEP process, which would inhibit efficient, cost-effective project execution, and the development of necessary transmission.

Pursuant to the Owners Agreement, Appendix B, Section VI, the transmission owner(s) designated in an MTEP to construct a project has an obligation to construct the project. Consistent with this obligation, when a project is approved as an Appendix A

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<sup>23</sup> ATC states as much in the Complaint, “[t]he two line segments were approved by MISO in different planning cycles.” Complaint at 3. *See also id.* at 21 (“MISO approved the line segments through separate MTEP cycles.”).

project, the transmission owner(s) will take the necessary steps, including investing significantly large amounts of money and resources, and obtaining state and other approvals, to construct the project and comply with their obligations under the Owners Agreement and place the project into service to meet the needs that were identified by the MTEP planning process. If the Commission decides that an entity can challenge MISO's determination of the transmission owner(s) to construct a project approved in a prior MTEP Appendix A based on the approval of a project in a subsequent MTEP, this would introduce substantial risk and uncertainty into the project development, siting, and construction processes, and the process of obtaining the necessary state and other regulatory approvals. There would be additional delays as the original transmission owners are forced to readjust earlier project decisions to account for the subsequent project and designee(s). The resultant delays could be detrimental to reliability and increase costs to Transmission Customers. In addition, this uncertainty and increased risk would inhibit the ability for the transmission owners to proceed in entering binding contracts to build the needed transmission. The added uncertainty causes investors to view a project as more risky, which can increase the project's financing costs.

For these reasons, each MTEP and its approval must stand alone to allow the entities designated to construct to fulfill their contractual obligations. The MISO transmission system is highly interconnected with each MTEP building upon the last to further the development of efficient and cost effective transmission. For the MTEP process to work effectively, any challenges to ownership or otherwise should be raised and fully vetted prior to MISO's designation of the responsibility to construct and the MISO Board of Directors's approval of such Appendix A project(s). If after even one year, MISO were to decide to designate different owners, the work the originally-

designated transmission owner has underway to move a project forward from the planning process to construction would be delayed as new owners were integrated into the project. This would further result in delays in completing the project and cost increases. Allowing the revision of the obligation to construct based on the approval of additional projects in subsequent MTEPs, could jeopardize the currently effective MISO planning process with the ultimate potential consequence of impacting reliability and increasing costs to Transmission Customers.

#### **IV. CONCLUSION**

For the foregoing reasons, the MISO Transmission Owners request that the Commission grant their motion to intervene in this proceeding and consider these comments.

Respectfully submitted,

/s/ David S. Berman

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**Attorneys for the  
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October 22, 2012

## **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 Washington, D.C., this 22<sup>nd</sup> day of October, 2012.

/s/ David S. Berman  
David S. Berman

**Attorney for the  
MISO Transmission Owners**