

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

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

**ANSWER OF
THE MIDWEST INDEPENDENT TRANSMISSION
SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.213 (2012), the Midwest Independent Transmission System Operator, Inc. (“MISO”) submits this Answer to the Complaint and Request for Fast Track Processing filed in the above-captioned docket on October 1, 2012, by American Transmission Company LLC (“ATC”) against MISO and Xcel Energy Services, Inc. (“Xcel”), on behalf of its operating company affiliates Northern States Power Company Wisconsin (“NSPW”) and Northern States Power Company Minnesota (“NSPM”) (“Complaint” or “ATC Complaint”).¹

¹ Unless otherwise specified, MISO will use the term “Xcel” to refer to both Xcel Energy Services, Inc., and its operating company affiliates: NSPW and NSPM.

I. SUMMARY OF RESPONSE

The ATC Complaint is the latest controversy surrounding the application of certain language in Section VI of Appendix B of the MISO Transmission Owners Agreement² that pertains to the division of ownership and construction responsibilities for facilities connecting two or more transmission-owning members of MISO. This language, which is referred to in the ATC Complaint as the “Share Equally Provision,” states as follows:

Ownership and the responsibility to construct facilities which are connected between two (2) or more Owners’ facilities belong equally to each Owners, 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.³

ATC believes that two different MISO transmission projects, which previously were approved in separate MISO transmission planning cycles -- one in 2008 and another in 2011 -- in fact comprise a single “345 kV transmission project that will interconnect NSPM’s facilities with ATC’s facilities.”⁴ Based on this assumption, ATC asserts that it must be designated, together with Xcel, as a joint owner for this unrecognized combined “project.” ATC asks the Commission to direct Xcel to enter into negotiations with ATC for the purpose of concluding the claimed joint ownership arrangement. In addition, ATC requests that MISO be directed to designate Xcel and ATC as the joint owners for the combined facility, thereby effectively reclassifying and reconfiguring the two previously approved projects.

² The term “MISO Transmission Owners Agreement” or “TOA” refers to the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation, MISO FERC Electric Tariff, First Revised Rate Schedule No. 1.

³ TOA, App. B, Section VI. Unless otherwise defined herein, all capitalized terms shall have the meaning as set forth in the TOA or MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff” or “MISO Tariff”)

⁴ Complaint at 2.

Only recently, the Commission has had a chance to consider two disputes implicating the Share Equally Provision.⁵ In both cases, MISO’s position consistently has been that such disputes should be resolved, in the first instance, between the affected Owners. In this proceeding, ATC has decided to name MISO as a respondent, but the Complaint fails to identify and explain the specific action or inaction by MISO that allegedly has violated applicable statutory, regulatory, tariff or contractual requirements. Clearly, there is no allegation in the Complaint that the two original projects were somehow improperly approved or designated in their respective planning cycles. To the extent ATC alleges that MISO is now required to merge these approved projects and view them as one, MISO respectfully submits that it has no such authority under the Tariff. The Complaint, therefore, fails to meet the minimum requirements of Rule 206 of the Commission’s Rules of Practice and Procedure to identify and explain the alleged violation,⁶ and, in any event, ATC has failed to sustain its burden of proof under Section 206 of the Federal Power Act (“FPA”),⁷ at least as far as MISO is concerned. Accordingly, MISO submits that it should be dismissed from this proceeding.

Although MISO believes that it is not a proper respondent, it will offer its response in hopes that it may assist the Commission with the disposition of the ATC Complaint. In MISO’s view, ATC’s proposed construction of the Share Equally Provision is untenable. This construction is not anchored in either the text of the TOA or the parties’ course of performance thereunder. Instead, ATC would construe words in isolation from the surrounding context to support its theory. MISO is concerned that, if adopted, the ATC construction would undermine

⁵ See Complaint of Pioneer Transmission LLC, Docket No. EL12-24-000 (February 8, 2012); Complaint and Request for Fast Track proceeding of Xcel Energy Services, Inc. and Northern States Power Company, a Wisconsin Corporation, Docket No. EL12-28-000 (February 14, 2012).

⁶ 18 C.F.R. § 385.206(b)(1) and (2)(2012). In addition, ATC has not initiated a dispute resolution process under the Tariff prior to filing its Complaint.

⁷ See 16 U.S.C. § 824e (b) (“In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant.”)

the transmission expansion planning process in the MISO region, adversely affect its Owners' (and other parties') settled expectations, and weaken the current FERC-approved MISO Transmission Expansion Plan ("MTEP") procedures. ATC's interpretation of the Share Equally Provision risks substantial confusion by opening the door to *post hoc* reclassifications and scope changes in MTEP-approved projects. Such a course would also be inconsistent with the cost allocation procedures set forth in the Tariff. Accordingly, MISO respectfully requests that the Commission reject the Complaint's proposed construction of Section VI of the TOA Appendix B.

II. BACKGROUND

As stated above, MISO does not believe that it is a proper respondent in this Complaint action. It is not privy to the dispute between Xcel and ATC and it does not know all of the factual specifics of the two companies' relationship. Accordingly, MISO will limit its background discussion to explaining the MTEP process and describing the two MTEP-approved projects that lie at the heart of ATC Complaint. Where necessary, MISO also will correct factual misstatements.

A. MISO's Responsibilities In The MTEP Process

MISO is registered with NERC as a Planning Coordinator and, as such, fully evaluates and plans for the reliability of the transmission system in accordance with the NERC planning standards. MISO develops an annual regional expansion plan based on expected use patterns and analysis of the performance of the Transmission System in meeting both reliability needs and the needs of the competitive bulk power market, under a wide variety of contingency conditions. These services are provided collaboratively with member Transmission Owners, consistent with the TOA. This analysis and planning process integrates into the development of

the regional plan many factors, including: (i) the transmission needs identified by the Transmission Owners in connection with their planning analyses in accordance with local planning processes to provide reliable power supply to their connected load customers and to expand trading opportunities, and to better integrate the grid and alleviate congestion; (ii) the transmission planning obligations of a Transmission Owner, imposed by federal or state laws or regulatory authorities; (iii) plans and analyses developed by MISO to provide for a reliable Transmission System and to expand trading opportunities, and to better integrate the grid and alleviate congestion; (iv) the inputs provided by the Planning Advisory Committee; and (v) the inputs, if any, provided by the state regulatory authorities having jurisdiction over any of the Transmission Owners and by the Organization of MISO States.

MISO performs its regional planning responsibilities in accordance with several guiding documents. Appendix B of the TOA contains the Planning Framework, which describes the planning responsibilities of MISO and its transmission-owning members. Attachment FF of the Tariff contains the MISO Transmission Expansion Planning Protocol, which is based on the TOA Appendix B Planning Framework and which has been developed and continuously improved over many years by MISO stakeholders in a collaborative process in conformity with the Commission's guiding mandates, such as Order No. 890, Order No. 1000, and many MISO-specific orders and directives. By following the procedures established in these FERC-approved documents, MISO provides an open and transparent regional planning process, which results in recommendations for expansion that are reported in the MTEP, and ensures that all participants in this process are treated fairly and without undue discrimination or unlawful preference.

MISO uses a "bottom-up, top down" approach in developing the MTEP. This means that individual Owners continuously review and plan to reliably and efficiently meet the needs of

their local systems. MISO then reviews these local planning activities with stakeholders and performs a top-down review of the adequacy and appropriateness of the local plans in a coordinated fashion with all other local plans to most efficiently ensure that all of the needs are cost effectively met. In addition, MISO considers, together with stakeholders, opportunities for improvements and expansions that would reduce consumer costs by providing access to new low cost resources that are consistent with, and required by, evolving legislative energy policies. MISO's planning process also focuses on and examines congestion that may limit access to the most efficient resources, and considers improvements that may be needed to meet applicable statutory energy requirements.

The MTEP consists of the many individual projects or portfolios of projects that reflect these priorities and needs and that are eventually recommended by the MISO staff to the MISO Board of Directors ("MISO Board"). There are several categories of projects that may be included in the MTEP and each of these categories is subject to a unique, FERC-approved set of cost allocation procedures. The categories are as follows:

- Baseline Reliability Projects ("BRPs"). These projects are Network Upgrades identified in the base case as required to ensure that the Transmission System is in compliance with applicable national Electric Reliability Organization ("ERO") reliability standards and reliability standards adopted by Regional Reliability Organizations and applicable within the Transmission Provider Region. BRPs include projects that are needed to maintain reliability while accommodating the ongoing needs of existing market participants and Transmission Customers.⁸
- New Transmission Access Projects. These projects are defined as Network Upgrades identified in Facilities Studies and agreements pursuant to requests for transmission delivery service or transmission interconnection service under the Tariff. New Transmission Access Projects include projects that are needed to maintain reliability while accommodating the incremental needs associated with requests for new transmission or interconnection service, as determined in Facilities Studies associated with such requests.⁹

⁸ See Tariff Attachment FF, Section II.A.1.

⁹ See Tariff Attachment FF, Section II.A.2.

- Market Efficiency Projects. These projects are economic Network Upgrades that meet certain specified criteria, including that the project costs \$5 million or greater, primarily involves facilities with a voltage of 345 kV or greater, and meets a defined benefit-to-cost requirement.¹⁰
- Multi Value Projects (“MVPs”). MVPs are Network Upgrades that address a common set of Transmission Issues and satisfy certain specified conditions. Generally, MVPs are evaluated as a portfolio of projects, whose benefits are spread broadly across the MISO footprint, and are designated under the MTEP process as serving more than one purpose, including state public policy purposes.¹¹

Each of these MTEP projects may have one or several owners. As part of its MTEP development responsibilities, MISO lists owners for individual projects. Where there are two or more owners, MISO relies on the owners of the project to inform MISO of their ownership arrangement under TOA Appendix B.¹² As a result, MISO’s listing of owners for a particular MTEP project indicates that such owners have agreed to participate in the project and that MISO is not aware of any claim to the contrary.

Once the MISO Board has approved a MTEP, such approval acts as certification that the MTEP meets the transmission needs of all stakeholders, subject to any required approvals by federal or state regulatory authorities. MISO’s plan development responsibilities with respect to the approved MTEP then end, and upon a project being included in Appendix A of MTEP,¹³ the identified party(ies) has (have) an obligation to construct the project.

¹⁰ See Tariff Attachment FF, Section II.C.

¹¹ See Tariff Attachment FF, Section II.C.

¹² Section V of Tariff Attachment FF provides: “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 [TOA], one or more Transmission Owners or other entities to construct, own and/or finance the recommended project.”

¹³ “Appendix A projects are projects that have been justified to be the preferred solution to an identified reliability, policy or other need, or to achieve an identified cost savings or other benefit and that have been approved by the Transmission Provider Board.” MISO Transmission Planning BPM-020-r6 at p. 18.

B. The Twin Cities – La Crosse Project

The Twin Cities – La Crosse Project is formally known as the SE Twin Cities – Rochester, MN – La Crosse, WI 345 kV Project (MISO Project ID 1024)¹⁴ and consists of the following facilities (as specified in MTEP08):

- Facility ID 2983 – New Hampton Corner (now called Hampton) Substation;
- Facility ID 1673 – New 345 kV transmission line from the Hampton Corner to the North Rochester Substations;
- Facility ID 1675 – New transformer and terminal works in the North Rochester Substation;
- Facility ID 1676 – New transformer and terminal works in the North La Crosse (now Briggs Road) Substation;
- Facility ID 2984 – New North Rochester Substation;
- Facility ID 1678 – New 161 kV transmission line between the North Rochester and Chester Substations;
- Facility ID 1677 – New 161 kV transmission line between the North Rochester and Northern Hills Substations and terminal works; and
- Facility ID 2647 – New 345 kV line between the North Rochester and North La Crosse (now Briggs Road) Substations and terminal works.¹⁵

The Twin Cities – La Crosse Project was approved by the MISO Board as an Appendix A project in MTEP08.¹⁶ When approved, this project was designated as a BRP consistent with the MISO Tariff.¹⁷ Xcel, Dairyland Power Cooperative, WPPI, RPU and SMMPA are listed as the entities that indicated agreement to participate in ownership of the project.¹⁸ To MISO's knowledge, this ownership listing has never been challenged.

¹⁴ This project is referenced herein as "Project 1024."

¹⁵ MTEP08, Appendix A, Facilities Tab at lines 892-899.

¹⁶ MTEP08 at p. 184.

¹⁷ *Id.*

¹⁸ MTEP08, Appendix A, Facilities Tab at lines 892-899.

C. The La Crosse – Madison Line

The La Crosse – Madison Line is a subset of the separate North La Crosse – North Madison – Cardinal – Spring Green – Dubuque area 345 kV Project (MISO Project 3127).¹⁹ This larger project is also known as project MVP-5 and is one of the projects certified in MTEP11 as an MVP. The La Crosse – Madison Line is comprised of the following facilities:

- Facility ID 5626 – Construct a North La Crosse – North Madison 345 kV line; and
- Facility ID 6573 – Terminate North Madison - North La Crosse 345 kV line into Briggs Road, create 345 kV breaker ring bus, add second 345/161 kV transformer, and 50 MVAR of 34.5 kV reactors on the tertiary.²⁰

The La Crosse – Madison Line, as a subset of Project 3127, was approved by the MISO Board as an Appendix A project in MTEP11 and designated a MVP for cost allocation purposes.²¹ The ownership and construction responsibilities with respect to these facilities have been in dispute between ATC and Xcel. On February 14, 2012, Xcel filed a complaint against ATC in Docket No. EL12-28-000, seeking designation as a joint owner pursuant to the Shared Equally Provision. The Commission granted Xcel’s complaint in an Order issued on July 19, 2012,²² and consistent with that FERC decision, MISO listed Xcel and ATC as the parties jointly responsible for the facilities comprising the La Crosse – Madison Line (*i.e.* MISO Facilities 5626 and 6573).²³ ATC, however, has sought rehearing and its rehearing request is pending before the Commission.²⁴

¹⁹ This project is referenced herein as “Project 3127.”

²⁰ MTEP11, Appendix A, Facilities Tab at lines 267, 268. The remainder of Project 3127 is comprised of facilities completing the portion of the project from the North Madison Substation on to the Cardinal Substation then to the Spring Green Substation and on to the Dubuque County Switching Station. These facilities are identified as MISO Facility IDs 5628, 5627, 5060, 5065, 5064, 5063, 5062, 5061, 4978, 5059, 5480, 5481, 5483, 5484, 4977, 5482 and 4976.

²¹ MTEP11 at p. 106.

²² *Xcel Energy Services, Inc. v. American Transmission Company, LLC*, 140 FERC ¶ 61,058 (2012) (“*Xcel Order*”). ATC is seeking rehearing of the *Xcel Order*.

²³ MTEP11, Appendix A, Facilities Tab at lines 267, 268.

²⁴ See Petition for Rehearing, Request for Expedited Action and Provisional Motion for Stay of American Transmission Company LLC, Docket No. EL12-28-001 (August 20, 2012).

Contrary to the statement in the “Request for Fast Track Processing” section of the Complaint, MISO did not request a December 2017 in-service date for the La Crosse-Madison line.²⁵ The project was approved in MTEP11 with an in-service date of December 2018. ATC submitted, in January 2012, a change to the in-service date moving it to December 2017. As of the date of this Answer, the date change is not final, as MTEP12 has not been approved yet.

III. ANSWER

A. ATC Has Failed To State A Claim Against MISO Upon Which Relief Can Be Granted; MISO Should Be Dismissed As A Respondent.

While there appears to be a dispute between ATC and Xcel, the nature of the ATC grievance vis-à-vis MISO is more elusive. Unlike the Xcel complaint in Docket No. EL12-28-000, which did not name MISO as a respondent, or the Pioneer complaint in Docket No. EL12-24-000, which alleged that MISO had improperly refused to allow Pioneer to become a signatory to the TOA,²⁶ the ATC Complaint describes no specific wrong allegedly perpetrated by MISO. Instead, the Complaint contains a number of allegations, which, even if read together, establish no *prima facie* case against MISO.

In the “Summary” section of its Complaint, ATC asks the Commission to “direct MISO to apply the [Share Equally Provision] to enable ATC to participate on an equal basis in a 345 kV transmission project that will interconnect NSPM’s facilities with ATC facilities.”²⁷ This statement is echoed in the “Conclusion” section where ATC requests the Commission to “find that MISO has not complied with the express provisions of the Transmission Owners Agreement

²⁵ See Complaint at 24.

²⁶ See *Pioneer Transmission LLC v. Northern Indiana Public Service Co.*, 140 FERC ¶ 61,057 (2012) (“*Pioneer Order*”).

²⁷ ATC Complaint at 2.

and the MISO Tariff.”²⁸ In between these two fairly generic statements, there is little describing (let alone convincingly demonstrating) any alleged failure of compliance by MISO.

As explained in more detail Section II *supra*, MISO took two separate actions that are putatively relevant to this Complaint. In December 2008, the MISO Board approved MTEP08. One of the BRPs included in Appendix A of MTEP08 was Project 1024. The review and approval of this project, including the listing of Owners indicating the agreement to own, was performed in strict conformance with MISO Tariff Attachment FF and Appendix B of the TOA. To MISO’s knowledge, no entity has ever disputed or complained regarding MISO’s actions with respect to Project 1024. There is no allegation in the ATC Complaint that any action taken by MISO at the time the project was approved, including the listing of owners, was inconsistent with any of the provisions of the MISO Tariff or the TOA.

In December 2011, the MISO Board approved MTEP11. One of the MVPs included in Appendix A of MTEP11 was Project 3127. Again, MISO’s review and approval of this project, including the listing of the Owners with facilities in their service territories, was performed in strict conformance with MISO Tariff Attachment FF and Appendix B of the TOA. While there was a dispute between Xcel and ATC with respect to the joint ownership of the North LaCross – North Madison segment of the Project, that dispute was resolved by the Commission in the *Xcel Order*. Although ATC is challenging the *Xcel Order* on rehearing, it admits that, unless changed by the Commission or overturned on appeal, the *Xcel Order* is a valid and enforceable regulatory order.²⁹

It is, therefore, undisputed that MISO’s actions with respect to both Project 1024 and Project 3127 are valid. No statutory, regulatory, contractual or tariff violation has been alleged

²⁸ *Id.* at 25. The statement repeated almost verbatim in Section V.C (Relief Requested). *See* Complaint at 23.

²⁹ *See* Complaint at 19.

with respect to the process that led to the approval of these two projects. It appears that ATC complains that MISO has not reclassified, *sua sponte*, Project 1024 and the North LaCross – North Madison segment of Project 3127 into a single new project, with Xcel and ATC as joint owners.³⁰ It is not clear when and how MISO was supposed to effectuate this reclassification and, in any event, MISO submits that it has no authority to take no such action.

As a prefatory matter, MISO was not even aware of ATC’s claims and legal interpretations until the filing of this Complaint. In the Complaint, ATC asserts that the issue is centered on the interpretation of the term “facilities,” as used in the Share Equally Provision.³¹ If that is the case, then it was incumbent upon ATC to present its alternative interpretation to MISO and describe the alleged non-compliance. As noted, both Project 1024 and Project 3127 were approved in accordance with the Tariff and the TOA, and there was no question, at least at the time of these projects’ approval, that the term “facilities” was then correctly interpreted and applied. If ATC believed that any subsequent action or inaction by MISO with respect to these projects was somehow inconsistent with the Tariff or the TOA, it was incumbent on ATC to give notice to MISO and/or initiate a dispute resolution process. ATC’s failure to take this step undermines its Complaint against MISO.³²

ATC seems to contend that the pleadings filed by Xcel in the previous docket, Docket No. EL12-28, provide a legal basis for its “single 345 kV project” theory.³³ The *Xcel Order*, however, contains no directive to MISO to reclassify or reconfigure the two projects or re-designate their owners. On the contrary, the Commission expressly declined to address the ATC

³⁰ According to ATC, “the Commission should direct MISO to designate Xcel Energy (on behalf of NSPM and NSPW) and ATC as the parties responsible for developing, constructing and owning the 345 kV line between NSPM’s existing Hampton Substation and ATC’s existing Cardinal Substation.” Complaint at 21.

³¹ See Complaint at 2.

³² Under 18 C.F.R. § 385.206(b)(9), complainants are required to explain why tariff-base dispute resolution mechanisms were not used. ATC has attempted an explanation in Section V.E of the Complaint, but only vis-à-vis Xcel. See Complaint at 23-24. There is no explanation as far as MISO is concerned.

³³ See Complaint at 15.

argument that Xcel’s interpretation of the Share Equally Provision, which was adopted by the Commission, would “immediately affect the La Crosse-Madison Line.”³⁴ Consequently, MISO is, and has been, in compliance with the *Xcel Order*.

Finally, MISO does not believe it has the authority to unilaterally reconfigure already approved projects, particularly if such projects belong to different categories, such as BRPs and MVPs. Under both Section VI of Appendix B and Attachment FF of the Tariff, MISO presents its MTEP to the MISO Board for approval, which then “certifies it as the Transmission Provider plan for meeting the transmission needs of all stakeholders subject to any required approvals by federal and state regulatory authorities.”³⁵ After that approval, the MISO Board “shall allow the Transmission Owners . . . to optimize the final design of specific facilities and their in-service dates if necessary to accommodate changing conditions, provided that such changes comport with the approved MTEP and provided that any such changes are accepted by the Transmission Provider.” There is no authority to merge and/or reclassify approved projects.³⁶

Under the Commission’s regulations, ATC is required to “clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements” and “explain how the action or inaction violates applicable statutory standards or regulatory requirements.”³⁷ Moreover, Section 206 of the FPA imposes a high burden on ATC to demonstrate that the MISO action complained about is “unjust, unreasonable, unduly discriminatory, or preferential.”³⁸ The ATC Complaint against MISO fails to meet these

³⁴ See Xcel Order at P 68.

³⁵ Tariff, Attachment FF, Section VI.C. See also TOA, App. B, Section VI.

³⁶ ATC is free, of course, to argue that any provision in Attachment FF is no longer just and reasonable, but that is different from claiming that MISO has violated the Tariff. Under Section 206 of the FPA, relief, if granted, is prospective only and retroactive changes are barred by the filed rate doctrine and the rule against retroactive ratemaking. See 16 U.S.C. § 824e.

³⁷ 18 C.F.R. § 385.206(b)(1) and (2).

³⁸ 16 U.S.C. § 824e(b).

requirements because establishes no violation or actionable wrong by MISO. Accordingly, the Commission should dismiss ATC's Complaint against MISO.

B. In The Event The Commission Decides To Consider The Merits Of The ATC Complaint, MISO Recommends That ATC's Construction Of The "Share Equally Provision" Be Rejected.

As noted, MISO believes that disputes involving the application of the Share Equally Provision should be resolved, in the first instance, between the affected Owners. MISO is not indifferent, however, to the consequences and implications of these disputes. In this case, the consequences are significant and MISO believes that compelling legal and policy reasons require that ATC's construction of the Share Equally Provision be rejected.

First, the ATC theory ignores the fact that under the MISO transmission planning process projects are approved on a planning cycle basis. Section VI of TOA Appendix B, which includes the Share Equally Provision, is titled "Development of the Midwest ISO Transmission Plan." It describes the preparation of MTEP for one planning cycle. As the Commission only recently explained in the *Pioneer Order* and the *Xcel Order*, when interpreting the TOA and, specifically, the Share Equally Provision, it will "review the entire agreement and particular words should be considered, not as if isolated from context, but in light of the obligations as a whole and the intention of the parties as manifested therein."³⁹ Accordingly, the term "facilities" cannot be interpreted in isolation, but must considered in the context of the entire Section VI and its purposes. When so read, it is clear that this term, as used in the Share Equally Provision, refers to facilities included in a particular MTEP. Contrary to ATC's argument, it cannot justify, in the absence of express authorization, any merger or reclassification of projects already approved in prior planning cycles.

³⁹ *Pioneer Order* at P 97; *Xcel Order* at P 60.

Second, the broad interpretation of the term “facilities” advocated by ATC, if adopted, will lead to unjust and unreasonable results and will undermine one of the key goals of the MTEP – establishing a clear, certain and transparent transmission expansion planning process in MISO. If the ATC interpretation prevails, then virtually any approved transmission project, regardless of its category, could be reopened, reclassified or reconfigured in a subsequent planning cycle. In a densely interconnected transmission network, such as the MISO grid, this would greatly increase uncertainty. No Transmission Owner would ever know what portion of an approved project it may own because that portion (or the entire project) could be joined with a potential future project that MISO might approve years down the road.

Third, the ATC construction of the Share Equally Provision would weaken the certainty of the MISO cost allocation process. As part of the preparation of the MTEP for a particular planning cycle, MISO has the authority to designate the facilities that constitute a project for the purposes of describing the entirety of the project and its costs.⁴⁰ This is an important provision in controlling the categorization of a project as eligible for cost sharing under a particular project category or not based on cost criteria thresholds. Allowing retroactive addition of facilities to a project or knitting together separate projects into one could render a previously non-eligible project suddenly eligible for cost sharing based on scope.

The specific projects implicated in the ATC Complaint illustrate the problem neatly. As noted, Project 1024 is a BRP that includes 345 kV and 161 kV transmission facilities. Under the Tariff, the costs of 345 kV BRPs are allocated in the following fashion: 20 percent of the project cost is allocated on a system-wide load-ratio share basis, and 80 percent is allocated on a sub-regional basis to all Transmission Customers in designated pricing zones based on a calculation

⁴⁰ See Tariff Attachment FF Sections II.A.1 and II..A.2,

of flow impacts of the project.⁴¹ For 161 kV BRP facilities, 100 percent of the project costs are allocated on the sub-regional basis to all Transmission Customers in designated pricing zones. In contrast, Project 3027 is a MVP.⁴² The Tariff provides that 100 percent of the annual revenue requirements of the MVPs are allocated on a system-wide basis to Transmission Customers that withdraw energy, including External Transactions sinking outside of the Transmission Provider's region.⁴³ Joining such projects together would change their cost allocation. In any event, the MISO Tariff does not permit different cost allocation classifications for a single project.

Finally, the two projects were never contemplated or justified as segments of a single project in any MISO transmission planning cycle. Project 1024 was approved as a stand-alone BRP and was described in MTEP 2008 as follows:

This project has an estimated cost of \$360 million, which is eligible for cost sharing as a Baseline Reliability Project, and extends 345 kV transmission system support to growing load areas of Rochester Minnesota and La Crosse Wisconsin. Each of these areas has been experiencing load growth that will outstrip the ability of the existing lower voltage systems to reliably supply the loads. The proposed project resolves these reliability issues by providing additional transformation in the Rochester area and by introducing 345 kV supply into the La Crosse area, relieving heavily loaded 161 kV class lines in each area. Similar to the issues driving the Fargo line described above, this line is needed to resolve a lengthy list of NERC contingency based violations that, without this project will result in severe overloads in some cases within the five year planning horizon.⁴⁴

The project was justified in the MTEP based strictly on a reliability analysis. Contrary to ATC's statements on pp. 17-18 of its Complaint, MISO did not identify economic benefits of the Twin Cities – La Crosse Project as part of its justification for including it in MTEP08. Further, there was no mention of any future extension or segment for this project in MTEP08. In fact, at the time Project 1024 was approved, Project 3127, including the North La Crosse – North Madison segment, not only was not approved but also had not even been studied by MISO.

⁴¹ See Tariff Attachment FF Section III.A.2.c.

⁴² *Id.*

⁴³ See Tariff Attachment FF Section III.A.2.g.

⁴⁴ MTE08 at 6.

When the North La Crosse – North Madison line was approved in MTEP11, it was not justified as part of the previously approved Project 1024. While it is true that the justification of Project 3127 assumed the completion of the previously approved Project 1024, just as it assumed the completion of every other approved MTEP project with a prior in-service date, this assumption does not make them a single project.

IV. NOTICE AND COMMUNICATIONS

All correspondence and communications in this matter should be addressed to:

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V. ADMISSIONS AND DENIALS; AFFIRMATIVE DEFENSES

A. Admissions and Denials

Pursuant to Rule 213(c)(2) of the Commission’s Rules of Practice and Procedure, to the extent practicable and to the best of MISO’s knowledge and belief at this time, MISO admits or denies below the alleged material facts stated in the Complaint, to the extent they pertain to ATC’s claims against MISO. To the extent that any fact or allegation in the Complaint is not specifically admitted in this Answer, it is denied.

- MISO denies that it “has now approved the construction of a single 345 kV transmission line interconnecting the facilities of ATC with those of NSPM, with a new substation to be built in the middle.” MISO further denies that any such single project exists.

- MISO denies that it identified any economic benefits of the Twin Cities-La Crosse Project.
- MISO denies that any facility included in any MTEP-approved project is a “segment” in the claimed singled 345 kV project.
- MISO denies that “the regional reliability and economic benefits projected to result from the Twin Cities-La Crosse segment are inextricably linked to and interdependent upon the La Crosse-Madison segment that was at issue in the Xcel Order.”
- MISO admits that Project 1024 was approved by the MISO Board in MTEP08 as a BRP.
- MISO admits that Project 3127 (including the La Crosse – Madison Line) was approved by the MISO Board in MTEP11 as a MVP.
- MISO denies that any of the owners of any segment or facility included in Project 1024 or Project 3127 are incorrectly listed.
- MISO denies that it violated any statutory, regulatory, tariff or contractual requirement, including, specifically, the Share Equally Provision, in connection with listing any of the owners of any segment or facility included in Project 1024 or Project 3127. MISO further denies that it “has not complied with the express provisions of the Transmission Owners Agreement and the MISO Tariff.”
- MISO denies that it identified the economic benefits of Project 1024 as part of its justification for including it in MTEP08.
- MISO denies that “the facts presented that support [the ATC] Complaint should be viewed as uncontroverted.”

- MISO denies that the ATC Complaint has demonstrated the interdependency of Project 1024 and the La Crosse-Madison line.
- MISO denies that the ATC Complaint has demonstrated that “the Twin Cities-La Crosse and La Crosse-Madison segments make up a single 345 kV project.”
- MISO denies that it requested “the December 2017 in-service date for the La Crosse-Madison segment.”

B. Affirmative Defenses

Pursuant to Rule 213(c)(2)(ii) of the Commission’s Rules of Practice and Procedure, MISO sets forth the following affirmative defenses, subject to amendment and supplementation:

- The Complaint fails to state a claim against MISO upon which relief can be granted.
- The Complaint does not meet the minimum requirements applicable to complaints under the FERC regulations.
- The relief sought by ATC is not authorized under the MISO Tariff or the MISO Transmission Owners Agreement.
- ATC has failed to carry its burden under Section 206 of the FPA to demonstrate that MISO has violated any statutory, regulatory, contractual or tariff requirement.

VI. CONCLUSION

WHEREFORE, the Midwest Independent Transmission System Operator, Inc., respectfully requests that the Commission: (1) deny the relief sought by ATC, or (2) to the extent the Commission finds that ATC’s claims against Xcel merit further examination, dismiss MISO as a respondent in this complaint action.

Respectfully submitted,

/s/ Ilia Levitine

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Counsel for
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System Operator, Inc.

Dated: October 22, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day e-served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 22nd day of October, 2012, in Washington, D.C.

/s/ Matthew R. Dorsett