

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

American Transmission Company LLC)	Docket No. EL13-9-000
)	
Complainant)	
)	
v.)	
)	
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 Company)	
)	
Respondents)	

**MOTION TO INTERVENE AND COMMENTS
OF SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY**

Pursuant to Rules 211, 212, and 214 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ and the Commission’s October 3, 2012 Notice of Complaint, Southern Minnesota Municipal Power Agency (“SMMMPA”) hereby files this Motion to Intervene and Comments in response to the October 1, 2012 complaint filed in the above-referenced docket by American Transmission Company LLC (“ATC”) against the Midwest Independent Transmission System Operator, Inc. (“MISO”) and Xcel Energy Services Inc., on behalf of its operating company affiliates Northern States Power Company Wisconsin (“NSPW”) and Northern States Power Company Minnesota (“NSPM”) (collectively, “Xcel”).² In its complaint, ATC requests that the Commission direct MISO to apply the “Share Equally

¹ 18 C.F.R. §§ 385.211, 385.212, 385.214 (2012).

² Complaint and Request for Fast Track Processing of American Transmission Company LLC, Docket No. EL13-9-000 (filed Oct. 1, 2012) (“Complaint” or “ATC Complaint”).

Provision” in Section VI of Appendix B to the MISO Transmission Order Agreement³ to allow ATC to participate on an equal basis in the proposed CapX2020, 125-mile, 345 kV transmission line that will run from NSPM’s Hampton Substation near the Twin Cities in Minnesota to NSPW’s Briggs Road Substation near La Crosse, Wisconsin (“La Crosse Project”).⁴ ATC’s position is purportedly premised on the record and legal arguments raised by Xcel and ATC in Docket No. EL12-28 concerning Xcel’s claim that the Share Equally Provision entitles Xcel to a 50-percent ownership interest in the proposed 145-mile, 345 kV transmission line running from the NSPW-owned Briggs Road Substation near La Crosse, Wisconsin to the ATC-owned North Madison Substation near Madison, Wisconsin (“La Crosse-Madison Project”).⁵ ATC has initiated this proceeding eight years into the CapX2020 initiative, four years after MISO’s approval of the La Crosse Project’s ownership and cost allocation in the MISO Transmission and Expansion Project Plan 2008 (“MTEP 2008”), and two months before the La Crosse Project participants (including SMMPA) plan to close on their interests in the transmission line.

SMMPA has reviewed and supports the Answer being submitted by Xcel in response to the ATC Complaint. SMMPA is also a participant in the Joint Answer being submitted by the MISO Transmission Owners in response to the ATC Complaint. SMMPA believes that the legal and policy positions advanced by Xcel and the MISO Transmission Owners warrant that the Commission dismiss the ATC Complaint with prejudice. SMMPA, however, is submitting its

³ “Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation,” designated as Rate Schedule No.1 under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff” or “MISO Tariff”), Fifth Rev. Vol. No. 1 (“MISO TOA”).

⁴ The CapX2020 initiative consists of 11 transmission-owning utilities in Minnesota and the surrounding region. Besides SMMPA and Xcel Energy, these participants include Central Minnesota Municipal Power Agency, Dairyland Power Cooperative, Great River Energy, Minnesota Power, Minnkota Power Cooperative, Missouri River Energy Services, Otter Tail Power Company, Rochester Public Utilities, and WPPI Energy.

⁵ Complaint and Request for Fast Track Processing of Xcel Energy Services Inc. and Northern States Power Company, a Wisconsin Corporation, Docket No. EL12-28-000 (filed Feb. 14, 2012) (“Xcel Complaint”); *Xcel Energy Servs. Inc. v. Am. Transmission Co., LLC*, 140 FERC ¶ 61,058 (2012) (“Xcel Order”), *reh’g pending*.

own comments in this proceeding to ensure that the Commission is fully aware of the *business* implications of the ATC Complaint on the La Crosse Project's participants, particularly on SMMPA as a municipal utility. The ATC Complaint unnecessarily and unfairly injects an unreasonable level of regulatory uncertainty into the final stages of closing on the La Crosse Project, particularly with respect to securing financing arrangements. ATC's approach to assert a claim of ownership in the La Crosse Project is inherently unreasonable and should be dismissed with prejudice.

I. BACKGROUND

SMMPA is a nonprofit political subdivision of the State of Minnesota and a joint action agency comprised of 18 member municipalities in Minnesota that own and operate municipal electric systems.⁶ SMMPA is a MISO Transmission Owner and a participant in the CapX2020 initiative, which is a joint regional transmission development effort comprised of 11 companies.⁷ CapX2020 has proposed to build a number of transmission lines to expand the electric transmission grid and ensure sustainable electric reliability in the Upper Midwest, including the La Crosse Project. SMMPA is one of five participants in the La Crosse Project. The other four participants are Xcel, Dairyland Power Cooperative, the Rochester Public Utilities, and WPPI Energy.

The La Crosse Project consists of a 125-mile new double-circuit capable 345 kV transmission line that will run between a new Hampton Substation near Hampton, Minnesota, and a new North Rochester Substation north of Pine Island, Minnesota, and that will continue on

⁶ These members are: Austin Utilities, Blooming Prairie Public Utilities, Fairmont Public Utilities, Grand Marais Public Utilities, Lake City Utilities, Litchfield Public Utilities, Mora Municipal Utilities, New Prague Utilities Commission, North Branch Municipal Water & Light, Owatonna Public Utilities, Preston Public Utilities, Princeton Public Utilities, Redwood Falls Public Utilities, Rochester Public Utilities, Saint Peter Municipal Utilities, Spring Valley Public Utilities, Waseca Utilities, and Wells Public Utilities.

⁷ See *supra* note 4.

to cross the Mississippi River near Alma, Wisconsin. The La Crosse Project will continue in Wisconsin with a single circuit 345 kV transmission line running from the state border to a new substation in the La Crosse area, near Holmen, Wisconsin. The La Crosse Project also consists of a new 161 kV line between the new North Rochester Substation (located between Pine Island and Zumbrota) and the existing Northern Hills Substation in Rochester, and an additional 161 kV line between the new North Rochester Substation and the existing Chester Substation (located east of Rochester). Construction of the La Crosse Project is expected to start in early 2013, and the La Crosse Project is expected to be energized in 2015. SMMPA expects its total investment in the La Crosse Project to be approximately \$64 million, which is 13 percent of the project's estimated total cost of approximately \$500 million.

The ownership and cost allocation of the La Crosse Project was approved in MTEP 2008.⁸ The Minnesota Public Utilities Commission ("MPUC") approved the required Certificate of Necessity ("CON") and routing permits for the Minnesota portion of the La Crosse Project on May 22, 2009 and May 30, 2012, respectively.⁹ The Public Service Commission of Wisconsin ("PSCW") approved the required Certificate of Public Convenience and Necessity ("CPCN") for the Wisconsin portion of the La Crosse Project on May 30, 2012.¹⁰ ATC raised no claim of ownership to the La Crosse Project in any of these proceedings.

⁸ MISO, MTEP08: THE MIDWEST ISO TRANSMISSION EXPANSION PLAN (Nov. 2008), available at <https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP08/MTEP08%20Report.pdf> ("MTEP 2008").

⁹ *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects*, MINN. PUB. UTILS. COMM'N, Docket No. E-002/CN-06-1115, ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS (May 22, 2009); *In the Matter of Xcel Energy's Application for a Route Permit for the CAPX 2020 Hampton-Rochester-La Crosse High Voltage Transmission Line*, MINN. PUB. UTILS. COMM'N, Docket No. E-002/TL-09-1448, ORDER ISSUING ROUTE PERMIT AS AMENDED (May 30, 2012).

¹⁰ *Joint Application of Dairyland Power Cooperative, Northern States Power Company-Wisconsin, and Wisconsin Public Power, Inc., for Authority to Construct and Place in Service 345 kV Electric Transmission Lines and Electric Substation Facilities for the CapX Twin Cities-Rochester-La Crosse Project, Located in Buffalo, Trempealeau, and La Crosse Counties, Wisconsin*, PUB. SERV. COMM'N OF WIS., Docket No. 5-CE-136, FINAL DECISION (May 30, 2012).

The La Crosse Project is one of seven pilot projects identified by President Obama's Interagency Rapid Response Team for Transmission ("RRTT") program.¹¹ The RRTT program was created to ensure "fast-track," streamlined processing of federal permitting and construction for transmission projects satisfying certain national energy policy criteria such as addressing reliability, providing capacity for new commercial scale renewable and clean energy sources, and exhibiting opportunities to expand or improve agency cooperation because of a project's unique permitting challenges and/or near-term critical milestones.¹²

In Docket No. EL12-28, ATC argued that the Share Equally Provision entitled ATC to a 50-percent ownership in all four of the CapX2020 projects if the Share Equally Provision entitled Xcel to a 50-percent interest in the La Crosse-Madison Project.¹³ The Commission dismissed ATC's claim without prejudice.¹⁴ The Commission explained that ATC's request was essentially a new complaint beyond the scope of Docket No. EL12-28.¹⁵ The ATC Complaint reflects ATC's attempt to assert that the Share Equally Provision entitles ATC to a 50-percent interest in the La Crosse Project. ATC does not assert an ownership claim to the other three CapX2020 projects.

II. COMMUNICATIONS

Correspondence and communications with respect to this proceeding should be sent to, and SMMPA requests the Secretary to include on the official service list, the following:¹⁶

¹¹ *Obama Administration Announces Job-Creating Grid Modernization Pilot Projects*, ENERGY.GOV, Oct. 5, 2011, <http://www.doe.gov/articles/obama-administration-announces-job-creating-grid-modernization-pilot-projects>.

¹² *See id.*; Whitehouse.gov, Interagency Rapid Response Team for Transmission, <http://www.whitehouse.gov/administration/eop/ceq/initiatives/interagency-rapid-response-team-for-transmission> (last visited Oct. 22, 2012).

¹³ *See* Answer of Am. Transmission Co. LLC under EL12-28, Docket No. EL12-28-000 (filed Mar. 5, 2012) at PP 35-37; Xcel Order at P 1.

¹⁴ Xcel Order at P 68.

¹⁵ *Id.*

¹⁶ To the extent necessary, SMMPA requests waiver of 18 C.F.R. § 385.203(b)(13) in order to allow all four parties who have been identified in this Section II to receive service in this proceeding.

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III. MOTION TO INTERVENE

Under Rule 214, intervention is appropriate where “[t]he movant has . . . an interest which may be directly affected by the outcome of the proceeding.”¹⁷ SMMPA is a signatory to the MISO TOA, a MISO Transmission Owner, and an investor of substantial capital in the La Crosse Project. This proceeding involves a question of the correct interpretation of the Share Equally Provision, as may be applied to grant ATC a potential ownership interest in the La Crosse Project. As a MISO TOA signatory and MISO Transmission Owner, and as a participant in the La Crosse Project, SMMPA may be directly affected by the outcome of this proceeding. Consequently, SMMPA has a direct interest in this case that cannot be adequately represented by any other party. Therefore, the Commission should grant SMMPA’s Motion to Intervene in this proceeding.

IV. COMMENTS

SMMPA supports the legal and policy arguments raised by Xcel in response to the ATC Complaint. SMMPA is also a signatory of the joint response to the ATC Complaint being submitted by the MISO Transmission Owners and supports the legal and policy arguments asserted therein. SMMPA, however, is submitting its own comments in this proceeding to ensure that the Commission is aware of the full business implications of ATC's decision to inject an unreasonable level of regulatory uncertainty into the closing process for the La Crosse Project.¹⁸

SMMPA and the other La Crosse Project participants currently anticipate closing on their interests in the La Crosse Project on December 18 or 19, 2012. As acknowledged in the Complaint, the CapX2020 parties have been coordinating among themselves and MISO for nearly eight years with respect to the four CapX2020 Projects, including the La Crosse Project.¹⁹ ATC did not object to MISO's ownership and cost allocation determinations with respect to the La Crosse Project in the MTEP 2008 process. ATC did not seek ownership of any interest in the La Crosse line before the MPUC or the PSCW concerning the required CON/CPCNs or permitting of the La Crosse Project in Minnesota or Wisconsin. Now—*eight years into* the CapX2020 process, *four years after* the approval of MTEP 2008, and *two months before* closing—ATC is filing its Complaint. The Commission should dismiss the Complaint because it threatens to undermine years of coordinated effort by the La Crosse Project participants that

¹⁷ 18 C.F.R. § 385.214(b)(2)(ii) (2012).

¹⁸ SMMPA notes that in addition to the inherent unreasonableness of the Complaint, ATC has failed to satisfy 18 C.F.R. § 385.206(c). This rule requires a complainant to serve a copy of the complaint on all persons “the complainant reasonably knows may be expected to be affected by the complaint.” 18 C.F.R. § 385.206(c) (2012). ATC has failed to serve SMMPA with the Complaint. SMMPA is clearly a party that could reasonably be impacted by ATC seeking ownership of the La Crosse Project. SMMPA's participation in the La Crosse Project is public knowledge and well-known to ATC. SMMPA has invested substantial time and capital into the La Crosse Project and thus may reasonably be “expected to be affected” by the Complaint. ATC's failure to serve SMMPA renders the Complaint procedurally deficient and subject to dismissal on procedural grounds.

reasonably relied on the finality of the FERC-approved MTEP process and, regarding ownership of the La Crosse Project, the uncontested nature of the MPUC and PSCW proceedings granting CON/CPCNs and routing permits. Any other action by the Commission may encourage a regulatory environment that allows third parties to sit on the sidelines for years and then, once a potentially viable project is about to close, attempt to inject themselves as participants to reap the potential benefits.

Importantly, SMMPA is not suggesting that the Commission should hold transmission project participants harmless from all risks inherently associated with developing transmission infrastructure. The Commission, however, should strive to create a regulatory environment that does not encourage *unreasonable* risk. The approach that ATC is taking in the Complaint is inherently unreasonable. ATC had numerous occasions to assert an ownership interest in the La Crosse Project and failed to do so. The other participants in the La Crosse Project are ready to close on their investments and should not be held hostage by the regulatory uncertainty created by the timing of the ATC Complaint.

Delaying closing would almost certainly delay construction of this important new transmission facility. At the state level, the MPUC and PSCW have already identified the reliability and renewable energy benefits associated with the La Crosse Project in granting CON/CPCNs and route permits.²⁰ At the federal level, the La Crosse Project has been recognized through the RRTT program as one of the most important new transmission facilities in the country addressing our national reliability and renewable energy goals.²¹ A delay in closing and construction would thus impede on the construction of a transmission project that has

¹⁹ Complaint at 9–10.

²⁰ See *supra* notes 9–10.

²¹ See *supra* notes 11–12.

been identified by state and federal governmental agencies as promoting reliability and the development of renewable energy resources.

The delay and/or regulatory uncertainty created by the Complaint may have a comparatively higher impact on SMMPA as a municipal utility. Like many municipal entities, SMMPA's preferred method of financing large transmission projects is through tax-exempt bonds, which generally are its lowest-cost financing option. One of the Internal Revenue Service's ("IRS") fundamental requirements for the use of tax-exempt bonds, however, is that the issuer of such bonds has a reasonable expectation that the taxable status of the asset being financed will not change during the relevant bond's term. If SMMPA issues tax-exempt debt to finance its share of the La Crosse Project, and FERC subsequently compels SMMPA to transfer a portion of its share of the La Crosse Project to ATC, SMMPA would likely need to take resource-intensive remedial action at the IRS under IRS Regulations sections 1.141-12 and/or 1.141-2(d)(2)(ii) to attempt to preserve the SMMPA's financing for the La Crosse Project.²² Indeed, the IRS does offer several forums and procedures that may allow SMMPA to defease and/or issue special calls to replace tax-exempt debt with taxable debt and/or equity to replace any tax-exempt bonds with taxable financing. Those remedies, however, are not guaranteed. The necessary remediation cannot be calculated at this time and would be applied after-the-fact, thereby potentially depriving SMMPA of its economic expectations with respect to the La Crosse Project. In addition, it is not even clear that the IRS would permit SMMPA to remediate without paying a substantial financial penalty, which would further add to the cost.

For all of the above reasons, ATC's approach in this proceeding is inherently unreasonable, and anything other than an outright dismissal of the ATC Complaint with

²² See 26 C.F.R. §§ 1.141-2(d)(2)(ii), 1.141-12 (2012).

prejudice risks chilling and/or thwarting investment in transmission projects. The Commission accordingly should dismiss the Complaint with prejudice.

V. CONCLUSION

For the foregoing reasons, the Commission should dismiss the ATC Complaint.

Respectfully submitted,

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October 22, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of October, 2012, served the foregoing Motion to Intervene and Comments of Southern Minnesota Municipal Power Agency upon each person designated on the official service list compiled by the Secretary of the Commission in this proceeding.

/s/ Joseph Hall
Joseph Hall