

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

American Transmission Company LLC)	
)	
Complainant,)	
v.)	
Midwest Independent Transmission)	
System Operator, Inc. and)	
)	
Xcel Energy Services Inc., Northern States)	Docket No. EL 13-9-000
Power Company, a Wisconsin corporation,)	
and Northern States Power Company, a)	
Minnesota corporation)	
)	
Respondents)	

**ANSWER OF XCEL ENERGY SERVICES INC., NORTHERN STATES POWER
COMPANY, A WISCONSIN CORPORATION, AND NORTHERN STATES POWER
COMPANY, A MINNESOTA CORPORATION**

The Twin Cities – La Crosse and the La Crosse – Madison transmission lines “are separate and distinct transmission lines, no different than any other separate and distinct transmission lines that at some point interconnect as part of the transmission network.”¹ Just because they interconnect “does not mean one line is an extension of the other.”² These are American Transmission Company LLC’s (“ATC”) own words submitted to a State regulatory agency, and they contradict ATC’s current assertion that these two transmission lines are a single “facility” under the Midwest Independent Transmission System Operator, Inc.’s (“MISO”) Open Access Transmission Energy and Operating Reserve Markets Tariff (“Tariff” or “MISO Tariff”).

¹ *In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-La Crosse High Voltage Transmission Lines*, MPUC Docket No. E-002/TL-09-1448 (“*Minnesota Route Permit Proceeding*”) RESPONSE TO OBJECTION OF AMERICAN TRANSMISSION COMPANY LLC AND ITS CORPORATE MANAGER, ATC MANAGEMENT INC. at pp. 3-4 (May 31, 2011) (“ATC Route Permit Objection”). See Attachment A.

² *Minnesota Route Permit Proceeding*, PETITION TO INTERVENE OF AMERICAN TRANSMISSION COMPANY LLC AND ITS CORPORATE MANAGER, ATC MANAGEMENT INC. at p. 3 (May 2, 2011) (“ATC Route Permit Intervention”). See Attachment B.

With ATC's admissions firmly in mind, Xcel Energy³ submits this Answer to ATC's October 1, 2012 Complaint and Request for Fast Track Processing filed in the above-referenced proceeding (the "ATC Complaint") pursuant to Rules 206(f) and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission").⁴ The ATC Complaint should receive fast track processing and be promptly dismissed.

I. SUMMARY OF ANSWER

First, the ATC Complaint is an impermissible collateral attack on the Commission's July 19 Order in Docket No. EL12-28-000,⁵ which confirms "belong equally"⁶ responsibility by NSPW and ATC for the La Crosse – Madison Line under the MISO Tariff. Paragraph 68 of the July 19 Order acknowledged that ATC argued in that proceeding for "50 percent ownership of all of the CapX2020 projects." The Commission dismissed that claim without prejudice but the ATC Complaint goes well beyond its prior claim and seeks to undo the July 19 Order:

- The July 19 Order settled ATC and NSPW's obligations vis-à-vis the La Crosse – Madison Line,⁷ applying the Belongs Equally Provisions. ATC reinterprets the July 19

³ This Answer is submitted by respondent 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, Wisconsin corporation ("NSPW" and collectively with NSPM, the "NSP Companies"). The NSP Companies and XES are collectively referred to as "Xcel Energy."

⁴ 18 C.F.R. §§ 385.206(f); 385.213 (2012).

⁵ *Xcel Energy Services Inc. and Northern States Power Company, a Wisconsin corporation v. American Transmission Company LLC*, 140 FERC ¶ 61, 058 (2012) ("July 19 Order").

⁶ Section VI, Appendix B of the Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation, ("TOA") designated as Rate Schedule No. 1 under the MISO Tariff, Fifth Revised Volume, No. 1 constitutes the "Belong 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, and the responsibility for maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners.

⁷ The La Crosse – Madison Line is designed to connect NSPW's Briggs Road Substation near La Crosse, Wisconsin with ATC's North Madison Substation in southeastern Wisconsin. July 19 Order at P 1. The La Crosse – Madison Line is a subset of what ATC refers to as the "Badger Coulee" project and is a portion of what MISO analyzed and designated as Project 3127. MISO Transmission Expansion Plan 2011("MTEP11"), Appendix A, Project Tab at line 142, available at: <https://www.midwestiso.org/Planning/TransmissionExpansionPlanning/Pages/MTEP11.aspx>.

Order to accommodate its new theory that the Twin Cities – La Crosse Project⁸ and the La Crosse – Madison Line are a single “facility” that should “belong equally” to both.

- ATC collaterally attacks a binding filed rate, seeking to override MISO’s MTEP process as set forth in the MISO Tariff. And if ATC is suggesting that MISO breached the TOA, that claim is barred by the applicable statute of limitations.
- ATC seeks to effectively overturn final, binding and non-appealable orders of the Minnesota Public Utilities Commission (“MPUC”) and the Public Service Commission of Wisconsin (“PSCW”), both of whom specified ownership and construction responsibility for the Twin Cities – La Crosse Project pursuant to applicable State law.

Second, the ATC Complaint fails on the merits. The connection point of two Transmission Owners’ projects is critical to the designation of the “facilities” that “belong equally” under the MISO Tariff. The July 19 Order⁹ and its companion Pioneer Order¹⁰ establish the importance of the connection point in applying the Belong Equally Provisions:

- The Belong Equally Provisions tie to the “Midwest ISO Plan”¹¹ or MTEP. Thus, the “facilities” are those approved by MISO’s Board of Directors in the relevant MTEP.
- In MTEP08, MISO identified **Facilities 1673, 1675, 1676, 1678, 2647, 2983 and 2984** as the Twin Cities – La Crosse Project and designated Xcel Energy and other CapX2020 participants¹² as responsible for that project.
- In MTEP11, MISO identified **Facility 5626** (“Construct a North La Crosse – North Madison 345 kV Line”) and **Facility 6573** (“Terminate ... 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”) as the La Crosse – Madison Line and designated Xcel Energy and ATC as jointly responsible.¹³

⁸ The Twin Cities – La Crosse Project is the 345 kV project from the new NSPM Hampton Substation in the Twin Cities to Rochester and terminating at the new NSPW Briggs Road Substation in La Crosse, Wisconsin. Midwest Independent Transmission System Operator, Inc., Midwest ISO Transmission Expansion Plan 2008 (“MTEP08”) at p. 6, available at: <https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP08/MTEP08%20Report.pdf>.

⁹ July 19 Order at P 59.

¹⁰ *Pioneer Transmission, LLC v. Northern Indiana Public Service Company and Midwest Independent Transmission System Operator, Inc.*, 140 FERC ¶ 61,057 at P 99 (2012) (“Pioneer Order”).

¹¹ See, TOA, Appendix B, Section VI.

¹² The CapX2020 utilities participating in the Twin Cities – La Crosse Project are Dairyland Power Cooperative (“DPC”), Rochester Public Utilities (“RPU”), WPPI Energy (“WPPI”), Southern Minnesota Municipal Power Agency (“SMMPA”) and the NSP Companies.

¹³ MTEP11, Appendix A, Facilities Tab at lines 267 and 268; July 19 Order at P 67.

- ATC has admitted “ATC correctly stated that its planned ‘Badger Coulee Transmission Line’ is ‘not an extension of the [Twin Cities – La Crosse Project]’. This is accurate.”¹⁴

Third, the passage of time and subsequent system development preclude reopening the MISO’s MTEP08 designation for the Twin Cities – La Crosse Project:

- MISO classified the Twin Cities – La Crosse Project as a “Baseline Reliability Project”¹⁵ in MTEP08 that is needed primarily to meet load-serving and regional reliability needs.¹⁶ By contrast, MISO classified the La Crosse – Madison Line as a Multi Value Project (“MVP”) for a variety of public policy benefits, three years later in MTEP11.¹⁷
- ATC actively participated in the Minnesota and Wisconsin routing proceedings for the Twin Cities – La Crosse Project and always argued the two lines were distinct projects.¹⁸
- ATC fails to name as respondents all of the utilities MISO designated as responsible for the Twin Cities – La Crosse Project. This is an independent ground for dismissal.

Fourth, if each new project requires revising prior MTEPs, MISO’s orderly, sequential and methodical study process would be disrupted, harming transmission development for years.¹⁹

- Projects are routinely separately justified, sequentially planned, and implemented with different cost allocations, often years apart (as occurred here).
- Separate projects do not become a single “facility” just because they “at some point interconnect as part of the transmission network.”²⁰

Under ATC’s current theory, all new transmission lines and new substations in current and future planning cycles could be deemed the same “facility” for application of the Belong Equally Provisions. The implications of ATC’s position have no logical stopping point and

¹⁴ ATC Route Permit Objection at p. 3.

¹⁵ MTEP08 at p. 184.

¹⁶ MTEP08 at p. 6 (“without this project [system conditions] will result in severe overloads in some cases within the five year planning horizon”).

¹⁷ MTEP11, Appendix A, Facilities Tab at lines 267, 268.

¹⁸ ATC Route Permit Objection at pp. 3-4.

¹⁹ Indeed, “[t]he Midwest ISO has been assigned a clear and prominent roles in a collaborative process to develop transmission system plans” for much this reason. Order No. 2000 Compliance Filing at p. 74, Docket No. RT01-87-000 (January 16, 2000). “One of the major benefits of RTOs is their ability to address long-term reliability through the transmission planning process.” *Id.* at p. 73. *See, generally, Regional Trans. Org.*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000).

²⁰ ATC Route Permit Objection at pp. 3-4.

places at risk projects approved in prior MTEPs. This outcome would be absurd, particularly where ATC has admitted separate lines can meet “as part of the transmission network.”²¹

The ATC Complaint should receive fast track processing, as requested, but in the form of a Commission order promptly and unequivocally dismissing it. Prompt dismissal is important to avoid unnecessary delay and cost to the Twin Cities – La Crosse Project, a project that is well advanced, has been fully permitted and is nearly ready for construction to begin. The uncertainty created by the ATC Complaint risks delay in implementing this important network addition.

II. COMMUNICATIONS AND SERVICE

XES respectfully requests that the following persons be placed on the official service list in this proceeding:

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²¹ ATC Route Permit Objection at p. 4.

III. BACKGROUND

A. The Parties

Respondent NSPW is a Wisconsin corporation and a vertically integrated utility that, *inter alia*, provides electric generation, transmission, and distribution services in Western Wisconsin (including the La Crosse area) and the Upper Peninsula of Michigan. NSPM is a Minnesota corporation and a vertically integrated utility that, *inter alia*, provides electric generation, transmission, and distribution services in Minnesota, North Dakota and South Dakota. The NSP Companies are each first-tier subsidiaries of Xcel Energy Inc. The NSP Companies are transmission owning members of MISO, signatories to the TOA, and provide transmission service over their facilities pursuant to the MISO Tariff. The NSP Companies operate an integrated electric system (the “NSP System”) pursuant to an Interchange Agreement on file with the Commission.²² XES is also a first tier subsidiary of Xcel Energy Inc., and is the service company for the Xcel Energy Inc. holding company system and an affiliate of the NSP Companies. XES performs an array of services on behalf of the NSP Companies and the other Xcel Energy utility operating companies.²³ Among other things, XES makes filings with and appears in proceedings before the Commission on behalf of NSPW, NSPM.

Respondent MISO is a Commission-approved Regional Transmission Organization (“RTO”) that is, *inter alia*, responsible for administering the regional transmission planning provisions of the TOA and Tariff. MISO is responsible for analyzing and finalizing transmission expansion plans necessary to meet the needs of the MISO Transmission System. Pursuant to the

²² The exact title of the Interchange Agreement is the “Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).” The most recent annual update to the Interchange Agreement formula rates was accepted for filing in Docket No. ER12-1348-000, delegated Letter Order (May 23, 2012).

²³ The other utility operating company subsidiaries of Xcel Energy Inc. are Public Service Company of Colorado and Southwestern Public Service Company.

MISO Tariff²⁴, MISO is required to designate those entities responsible for the development of a particular facilities and projects approved in MISO's planning process.²⁵

Complainant ATC is a Wisconsin corporation and a creature of Wisconsin statute.²⁶ It is a Commission-jurisdictional, transmission-only public utility created by the transfer of transmission assets of a number of public utilities, municipal electric companies and electric cooperatives in Wisconsin.²⁷ ATC is a transmission owning member of MISO, a signatory to the TOA, and provides service over its transmission facilities pursuant to the MISO Tariff.

B. The Twin Cities – La Crosse Project

The Twin Cities – La Crosse Project (MISO Project ID 1024) consists of the following facilities²⁸: (i) **Facility** ID 2983 – New Hampton Corner (now called Hampton) Substation; (ii) **Facility** ID 1673 – New 345 kV transmission line from Hampton to North Rochester; (iii) **Facility** ID 1675 – New transformer/terminal works in the North Rochester Substation; (iv) **Facility** ID 1676 – New transformer/terminal works in the Briggs Road Substation; (v) **Facility** ID 2984 – New North Rochester Substation; (vi) **Facility** ID 1678 – New 161 kV line between North Rochester and Chester Substations; (vii) **Facility** ID 1677 – New 161 kV line/terminal works between North Rochester and Northern Hills Substations; and (viii) **Facility** ID 2647 – New 345 kV line/terminal works between North Rochester and Briggs Road Substations.

²⁴ TOA, Appendix B.

²⁵ MISO Tariff, Attachment FF, Section V.

²⁶ See, Wis. Stat. § 196.485(3m) (2011).

²⁷ The entities that have transferred their assets in exchange for an equity stake in ATC are: Adams-Columbia Elec. Coop.; Alger Delta Coop. Elec. Assoc.; City of Algom; Badger Power Marketing Auth.; Central Wisconsin Elec. Coop.; Cloverland Elec. Coop.; City of Columbus; City of Kaukauna; Madison Gas & Electric Co.; Manitowoc Pub. Util.; Marshfield Elec. and Water Dep't; City of Menasha; City of Oconto Falls; Ontonagon County Rural Elec. Assoc.; City of Plymouth; Rainy River Energy Corp.; City of Reedsberg; Rock Energy Coop.; City of Sheboygan Falls; Stoughton Util.; City of Sturgeon Bay; City of Sun Prairie; Upper Peninsula Power Co.; Upper Peninsula Pub. Power Agency; Wisconsin Electric Power Co.; Wisconsin Power & Light Co.; Wisconsin Public Service, Corp.; City of Wisconsin Rapids; and WPPI. NSPW and DPC have not transferred their transmission facilities to ATC.

²⁸ MTEP08, Appendix A, Facilities Tab at lines 892-899.

The Twin Cities – La Crosse Project was approved by MISO as an Appendix A project²⁹ in MTEP08.³⁰ It was designated as a “Baseline Reliability Project” consistent with the MISO Tariff.³¹ MISO designated Xcel Energy (NSPM and NSPW), DPC, WPPI, RPU and SMMPA as the entities jointly responsible for each facility comprising Project 1024.³² Prior to the instant Complaint, this MTEP08 MISO designation has never been challenged.

In 2009, the MPUC granted a Certificate of Need (“CON”) for the Twin Cities – La Crosse Project.³³ NSPM then sought a Minnesota route permit. ATC intervened in the Minnesota Route Permit Proceeding, arguing the Twin Cities – La Crosse Project and La Crosse – Madison Line are separate, in response to parties who sought to treat them as one project.³⁴ In May 2012, the MPUC granted a route permit to NSPM.³⁵ ATC did not seek rehearing or appeal.

In 2011, NSPW, WPPI and DPC sought a Certificate of Public Convenience and Necessity (“CPCN”) from the PSCW for the Wisconsin segment. ATC intervened, sponsored witnesses³⁶ and actively advocated to keep the Twin Cities – La Crosse Project separate from the

²⁹ “Appendix A projects have been justified as the preferred solution to an identified need and have been approved by the Transmission Provider Board.” MISO Transmission Planning BPM-020-r6 at p. 18.

³⁰ MTEP08 at p. 184.

³¹ *Id.* Baseline Reliability Projects are those projects found by MISO to be required to meet applicable reliability standards. The costs for 345 kV Baseline Reliability Projects are allocated under the MISO Tariff as 80% to the specific area primarily benefiting from the project, and 20% to the remainder of the MISO footprint.

³² MTEP08, Appendix A, Facilities Tab at lines 892-899.

³³ *In the Matter of the Application for Northern States Power Company and Great River Energy for Certificates of Need for Three 345 kV Transmission Line Projects and Associated System Connections*, MPUC Docket No. ET-2, E-002, *et. al.* CN-06-1115 ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS, (May 22, 2009)(“*Minnesota CON Proceeding*”).

³⁴ *See*, ATC Route Permit Intervention; ATC Route Permit Objection.

³⁵ *See*, *Minnesota Route Permit Proceeding*, Order Issuing Route Permit As Amended (May 30, 2012).

³⁶ *See, e.g., Joint Application of Dairyland Power Coop., Northern States Power Co.-Wisconsin, and Wisconsin Public Power 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*, PSCW Docket No. 5-CE-136 (“*Wisconsin CPCN Proceeding*”), DIRECT TESTIMONY OF PETER H. HOLTZ ON BEHALF OF [ATC] (January 9, 2012)(“*CPCN Holtz Direct*”); *Wisconsin CPCN Proceeding*, DIRECT TESTIMONY OF DALE W. BURMESTER ON BEHALF OF [ATC] (January 9, 2012)(“*CPCN Burmester Direct*”).

La Crosse – Madison Line.³⁷ On May 30, 2012, the PSCW issued the CPCN to NSPW, WPPI and DPC.³⁸ ATC did not seek rehearing or appeal the CPCN order.

Construction on the Twin Cities – La Crosse Project is scheduled to begin in 2013, with a planned in-service date of 2015, at a cost of approximately \$500 million.

C. The La Crosse – Madison Line

The La Crosse – Madison Line is a subset of the North La Crosse – North Madison – Cardinal – Spring Green – Dubuque area 345 kV Project (MISO Project 3127).³⁹ It was designated as an Appendix A project and a MVP in MTEP11. It is comprised of: (i) **Facility** ID 5626 – (Construct a North La Crosse – North Madison 345 kV line); and (ii) **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). Consistent with the Belong Equally Provisions and the Tariff, MISO designated Xcel Energy and ATC jointly responsible for the La Crosse – Madison Line (*i.e.* Facilities 5626 and 6573).⁴⁰ The planned in-service date stated in MTEP11 is 2018.

D. The July 19 Order

In 2011 and early 2012, ATC refused to accept MISO’s MTEP11 “belongs equally” designation for the La Crosse – Madison Line, leading XES and NSPW to file the La Crosse –

³⁷ See, e.g., CPCN Burmester Direct at 4:5-7 (Describing how ATC will separately justify its “Badger Coulee” project in a separate proceeding).

³⁸ *Wisconsin CPCN Proceeding*, FINAL DECISION (May 30, 2012) (“Wisconsin CPCN Order”).

³⁹ MTEP11, Appendix A, Facilities Tab at lines 267, 268. The remainder of MISO Project 3127 is comprised of facilities extending 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.

⁴⁰ MTEP11, Appendix A, Facilities Tab at lines 267, 268. Consistent with its authority under the Tariff, MISO provided designations for the remainder of the larger project based on the ownership of connecting facilities. MTEP11, Appendix A, Facilities Tab at lines 265, 266.

Madison Complaint in Docket No. EL12-28-000. The July 19 Order resolved that dispute.⁴¹ “[T]he 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.”⁴² Responsibility for the La Crosse – Madison Line thus “belongs equally” to both.

The July 19 Order also addressed ATC’s claim in that proceeding that “[i]f Xcel Energy’s interpretation of the Transmission Owners’ Agreement is correct, then ATCLLC should be afforded the same rights to the CapX2020 project (starting with those facilities originating at the Brookings Substation in South Dakota) that Xcel Energy asserts it is entitled to in ATCLLC’s Badger Coulee line.”⁴³ The July 19 Order held that “American Transmission’s request is beyond the scope of the ATC Complaint, an instead is more appropriately characterized as a complaint related to the CapX2020 projects” and rejected ATC’s claim, without prejudice.⁴⁴ The ATC Complaint followed on October 1, 2012.

IV. ANSWER

ATC frames the question for the Commission as: “What constitutes the ‘facilities’ between ATC and NSPM (both MISO transmission owners) that must be shared equally between two owners.”⁴⁵ The answer is clear: “Facility ID 5626” and “Facility ID 6573” are the MISO-

⁴¹ Xcel Energy acknowledges that the Commission has issued a tolling order granting rehearing of the July 19 Order to allow the Commission more time to review the ATC request for rehearing and issue an order on rehearing. *Xcel Energy Services Inc. and Northern States Power Company, a Wisconsin corporation, v. American Transmission Company LLC*, ORDER GRANTING REHEARING FOR FURTHER CONSIDERATION, Docket No. EL12-28-001, delegated letter order (September 17, 2012). Until a further order on rehearing is issued, however, the Commission’s July 19 Order is lawfully in effect and is not stayed. 18 C.F.R. § 385.713(e).

⁴² July 19 Order at P 67.

⁴³ Answer of American Transmission Company LLC at pp. 35-36, Docket No. EL12-28-000 (March 5, 2012).

⁴⁴ July 19 Order at P 68.

⁴⁵ ATC Complaint at p. 2.

designated facilities that constitute the La Crosse – Madison Line in MTEP11. The word “facilities” when read in the context of the TOA and Tariff, unambiguously means those facilities approved in the specific MTEP. Consequently, the La Crosse – Madison Line is one set of facilities, and the Twin Cities – La Crosse Project is another set of facilities, for which the Belong Equally Provisions are separately applied.⁴⁶

To sustain its inconsistent positions, the ATC Complaint is forced to attack the July 19 Order (recasting the Commission’s interpretation of “facilities” under that order), claiming the Twin Cities – La Crosse creates a path to ATC’s North Madison facility that is subsumed into a single ‘mega-facility.’⁴⁷ To achieve this conclusion, however, the ATC Complaint ignores the July 19 Order, the Pioneer Order, the State regulatory orders to which ATC is bound, and ATC’s own prior admissions. The Commission should reject this position and dismiss the Complaint.

A. Fatal Flaws in the ATC Complaint

The ATC Complaint tries to unwind the July 19 Order. ATC posits that a reasonable outcome would be that Xcel Energy (NSPM) could own the Minnesota portion and ATC would own the Wisconsin portion of its manufactured mega-facility. This argument fails.

1. The ATC Complaint Impermissibly Attacks the July 19 Order.

The ATC Complaint and attachment⁴⁸ make it clear that ATC is seeking to relitigate the outcome of the July 19 Order. ATC directly attacks the Commission’s findings in the July 19 Order in an effort to provide a basis for ATC to take sole ownership of the La Crosse – Madison Line. The July 19 Order unambiguously provided that “the Transmission Owners Agreement does require MISO transmission owners to share responsibility for interconnecting facilities and

⁴⁶ *Accord* ATC Route Permit Objection at p. 4 (argues two projects are separate).

⁴⁷ ATC Complaint at p. 21.

⁴⁸ Affidavit of Mr. John Flynn, Attachment A to the ATC Complaint.

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.”⁴⁹ Consequently, joint responsibility for the La Crosse – Madison Line is settled.

“Collateral attacks on final orders and relitigation of applicable precedent, especially by parties that were active in the earlier case, thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged.”⁵⁰ “An attack on a judgment in a proceeding other than a direct appeal is generally prohibited.”⁵¹ Finality with respect to the La Crosse – Madison Line is essential, and the appropriate procedural path is through the Commission’s order on ATC’s rehearing request in Docket No. EL12-28-000. Although ATC asserts that it is “working collaboratively” with Xcel Energy,⁵² the ATC Complaint is a flawed effort to undo the MTEP11 designation and the July 19 Order.

ATC’s substantive interpretation of the Belong Equally Provisions should have been pled in Docket No. EL12-28-000, and the July 19 Order may not be attacked here. Collateral estoppel prohibits subsequent action “as to matters that were necessarily litigated and determined although the claim or demand in the subsequent action is different.”⁵³ And “[c]ollateral estoppel prohibits a different claim on an issue that has already been decided.”⁵⁴

Nor does Paragraph 68 of the July 19 Order save the ATC Complaint. The Commission correctly noted that “American Transmission’s request is beyond the scope of the Complaint and

⁴⁹ July 19 Order at P 67.

⁵⁰ *NSTAR Electric Company v. ISO New England, Inc.*, 120 FERC ¶ 61, 261 at P 33 (2007).

⁵¹ *New England Conference of Public Utilities Commissioners, Inc. v. Bangor Hydro-Electric Company, et. al.*, 135 FERC ¶ 61,140 at P 27 (2011) (internal citations and quotations omitted).

⁵² ATC Complaint at p. 21.

⁵³ *Minnesota Power and Light Company*, 13 FERC ¶ 63,014 at 65,028 (1980).

⁵⁴ *Pacific Gas and Electric Company*, 121 FERC ¶ 61,065 at 61,344 (2007).

instead is more appropriately characterized as a complaint related to the CapX2020 projects.⁵⁵

But instead of focusing on the CapX2020 projects (as it did in Docket No. EL12-28-000), ATC's new theory can succeed only if the Commission allows ATC to relitigate the Belong Equally Provisions.⁵⁶ This is an impermissible collateral attack and should be dismissed.

2. *The ATC Complaint is an Attack on the MTEP Process, a Filed Rate.*

The ATC Complaint relies, at its core, on a question of contract interpretation and Tariff implementation, namely, what are the "facilities" to which the Belong Equally Provisions apply?⁵⁷ Upon performing a "*complete and full interpretation of the language of the TO Agreement*"⁵⁸ it is clear that the "facilities" are identified in the relevant MTEP. In implementing MTEP08, MISO used the approved Tariff mechanisms and specified the "facilities" constituting the Twin Cities – La Crosse Project. In so doing, MISO applied the lawful Tariff. The filed rate doctrine precludes disregarding the MISO Tariff and application of MTEP08.⁵⁹ MISO's implementation of MTEP08 has the force and effect of any filed rate⁶⁰ and was subject only to timely challenge under the Tariff or Section 206 of the Federal Power Act.⁶¹ ATC's Complaint,

⁵⁵ July 19 Order at P 68 (emphasis added).

⁵⁶ By claiming an equal financial split between the two projects ATC is really arguing for sole ownership of the La Crosse – Madison Line. *See*, ATC Complaint at p. 22 ("the parties' respective shares of the project will be similar to the costs of the individual line segments").

⁵⁷ ATC Complaint at p. 2.

⁵⁸ Answer of American Transmission Company LLC at p. 5, Docket No. EL12-28-000 (March 5, 2012).

⁵⁹ *Towns of Concord v. FERC*, 955 F.2d 67, 71 & n.2 (D.C. Cir. 1992) (describing how the Commission may not retroactively alter a filed rate to correct for past infirmities). The rule against retroactive ratemaking is derived from the filed rate doctrine. *City of Piqua v. FERC*, 610 F.2d 950, 954 (D.C. Cir. 1979).

⁶⁰ That MISO has significant discretion in implementing the Tariff does not make it any less binding than any other filed rate. *See Entergy Louisiana, Inc. v. Louisiana Public Service Commission*, 539 U.S. 39 (2003) (upholding the preemptive effect of a filed rate even though tariff left significant discretion as to implementation); *Louisiana Public Service Commission v. FERC*, 174 F.3d 218, 231 (D.C. Cir. 1999) (upholding tariff where "FERC understandably concluded that [it] set out the parameters of the operating committee's discretion, and that discriminatory implementation of the amendment could be remedied in a proceeding under FPA § 206").

⁶¹ 16 U.S.C. § 824e (2012).

however, depends on the Commission overriding that MTEP process. ATC ignores MISO's Tariff obligations and asks the Commission to ignore MISO's application of the filed rate.

ATC claims that, due to the changed circumstance of the subsequent development of MTEP11 and the MVP designation of the La Crosse – Madison Line, that the Commission should disregard MISO's Tariff process and vitiate MTEP08. This too would violate the filed rate doctrine.⁶² Further, to the extent ATC is claiming that MISO breached its TOA obligations in MTEP08, such a claim is barred by the applicable statute of limitations.⁶³

3. *The ATC Complaint Impermissibly Attacks Final State Regulatory Orders.*

ATC was a full party to the Wisconsin CPCN Proceeding and the Minnesota Route Permit Proceeding. ATC argued in both proceedings that the Twin Cities – La Crosse Project is a different project than the La Crosse – Madison Line.⁶⁴ ATC pointed out that just because the two projects will eventually interconnect does not make them the same facility.

Since ATC was a party to these state proceedings, and did not appeal, the applicable final State orders are binding on ATC. Those orders specify the route in Minnesota and Wisconsin, the end points (the new Briggs Road Substation in Wisconsin and the new Hampton Substation in Minnesota, with an interim Substation in Rochester), and the identity of the permittees. These orders are now binding on ATC (and the NSP Companies) as a matter of law.

⁶² See, *Midwest Independent Transmission System Operator, Inc.*, 138 FERC ¶ 61,140 at P 74 (2012) (refusing to apply withdrawal charges to entities submitting withdrawal notice prior to acceptance of new withdrawal charges).

⁶³ The TOA is governed by Delaware law. TOA, Art. Nine, Section B. Under Delaware law, the statute of limitations for bringing a claim for breach of contract is three years from the date of the breach. Del. Code Ann tit. 10, § 8106 (2010); *Snyder v. Baltimore Trust Co.*, 532 A.2d 624, 627 (Del. Super. Ct. 1986) (citing *Nardo v. Guido DeAscanis & Sons Inc.*, 254 A.2d 254, 255-256 (Del. Super. Ct. 1969)). MTEP08 was adopted in December 2008 and the instant Complaint was filed in September 2012, well beyond the three year limit.

⁶⁴ See, ATC Route Permit Objection; ATC Route Permit Intervention.

Xcel Energy acknowledges that the Commission does not generally recognize the doctrine of “judicial estoppel,” making the state process binding on the Commission.⁶⁵ However, the doctrine of collateral estoppel is binding on ATC. The Commission should not allow ATC to disregard the outcome of state regulatory processes in which it fully participated.

Ignoring the Minnesota and Wisconsin Commission orders also impermissibly attacks the MISO Tariff. The TOA makes it clear that the MISO designations and the implementation of the MTEP are at all times subject to appropriate State-jurisdictional decisions pertaining to the implementation of a project within the State.⁶⁶ Under both Minnesota and Wisconsin law, the State reserves authority to designate transmission responsibility in the State.⁶⁷ Those State designations have now occurred and ignoring these final, non-appealable State-law decisions would be contrary to the MISO Tariff, again violating the filed-rate doctrine.

4. *The ATC Complaint Does Not Include All Affected Parties as Respondents.*

Consistent with MISO’s designation of responsibility for the Twin Cities – La Crosse Project in MTEP08, all of the participating CapX2020 utilities have rights in the project. ATC incorrectly implies that NSPM will own the entire project, including the Briggs Road Substation in Wisconsin.⁶⁸ However, as ATC knows from its participation in the State proceedings, the NSP Companies are only a partial owner of the transmission line and NSPW will own the Briggs Road Substation. Other CapX2020 participants will participate in ownership as designated by

⁶⁵ *Kentucky Utilities Company*, 62 FERC ¶ 61,097 at 61,075 (1993).

⁶⁶ TOA, Article Four, Section I.C (emphasis added):

Each Owner shall use due diligence to construct transmission facilities as directed by the Midwest ISO ... subject to such siting, permitting, and environmental constraints as may be imposed by state, local, and federal laws and regulations, and subject to the receipt of any necessary federal or state regulatory approvals. Such construction shall be performed in accordance with ... any applicable requirements of federal or state laws or regulatory authorities.

⁶⁷ See Minn. Stat. § 216B. 243; Minn. R. 7849.0400, Supb. 2(H) (2012) and Minn. R. 7859.1900 (2012); Wis. Stat. § 196.491(3) (2012); Wisc. Admin. Code PSC 111.55(6) (2012).

⁶⁸ ATC Complaint at p. 2.

MISO and subject to final negotiation as allowed by the TOA. The ATC Complaint should have included all of the other CapX2020 participants in the Twin Cities – La Crosse Project as respondents, and failure to do so further justifies summary dismissal.

B. ATC’s Position Creates Lack of Certainty

The ATC Complaint, if granted, would turn MISO’s orderly and methodical regional transmission planning process on its head, leaving no decision settled and reopening all previously-approved MTEPs with each new planning cycle. This lack of certainty would surely stifle transmission development, contrary to the Commission’s policy objectives and the Tariff.⁶⁹

1. MISO Complied with the Tariff in MTEP08 and MTEP11.

MISO has interpreted and applied the MTEP process correctly in a manner fully consistent with the Commission interpretation of the TOA and Tariff in the July 19 Order, as further supported by the Pioneer Order. The TOA plainly states that the facilities designation process applies to the individual “Midwest ISO Plan” or MTEP. The TOA supports no other interpretation. The paragraph could not be clearer:

The Planning Staff shall present the Midwest ISO Plan, ... to the Board for approval The proposed Midwest ISO Plan shall include specific projects already approved 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 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. Finally, the ownership and the responsibility to construct facilities which are connected between an Owner(s) system and a system or systems that are not part of the Midwest ISO belong to such Owner(s) unless the Owner(s) and non-Midwest ISO party or parties otherwise agree....⁷⁰

⁶⁹ *Boston Edison Company*, 58 F.P.C. 5, 8 (1977) (refusing to interpret a contract in a manner that would lead to “an absurd result which would vitiate the Supreme Court’s intention to preserve the integrity of contracts”).

⁷⁰ TOA, Appendix B, Section VI (emphasis added).

The TOA plainly applies on an individual MTEP basis. Projects “already approved” must be included in the next plan. There is no provision to recast or revisit the plan based on subsequent events.⁷¹ This interpretation is further supported when read in concert with the implementing provisions of the MISO Tariff:

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 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 ISO Agreement, one or more Transmission Owners or other entities to construct, own and/or finance the recommended project.⁷²

At the project level,⁷³ MISO is required to designate entities responsible for each project based on MISO’s own planning analysis. Then the good faith Duty to Implement⁷⁴ ensures utilities facilitate implementation of designated facilities.⁷⁵ Taken together, MISO designates responsible entities for projects and facilities and the utilities are obligated to implement those designations.

MISO scrupulously followed the process. Specifically, MISO designated the Twin Cities – La Crosse Project (in 2008) and La Crosse – Madison Line (in 2011) as two separate projects (Project 1024 and a subset of Project 3127, respectively), each consisting of several facilities and each having different cost allocation methodologies. Consistent with the Tariff and the TOA,

⁷¹ When MISO presents the MTEP for Board of Directors approval, it only seeks approval of facilities new in the particular planning cycle. It does not seek approval (or re-approvals) of facilities that have been approved in previous planning cycles. *See* Affidavit of Mr. Daniel P. Kline at PP 23, 28 (“Kline Affidavit”). *See* Attachment C.

⁷² MISO Tariff, Attachment FF, Section V (emphasis added).

⁷³ A “project” is made up of one or more “facilities”. *See*, MISO Tariff, Attachment FF, Section II.A (1), (2) (providing that certain “projects” “may consist of a number of individual facilities that in the judgment of the Transmission Provider constitute a single project for cost allocation purposes.”); MISO Transmission Planning BPM-020-r5, Appendix A, 2.4.1.1; *see also*, MTEP 11, Appendix A, Facility Legend Tab at line 13 (“project may have multiple facilities.”).

⁷⁴ The “Duty to Implement” refers to the requirement that “[t]he affected Owner(s) shall make a good faith effort to design, certify, and build the designated facilities to fulfill the approved Midwest ISO Plan.” TOA, Appendix B, Section VI (emphasis added); *see also*, MISO Tariff, Attachment FF, Section VI.C. For a fuller discussion of the Duty to Implement *see* Motion for Leave to Answer and Answer of Xcel Energy Services Inc. and Northern States Power Company, a Wisconsin corporation at pp. 8-9, Docket No. EL12-28-000 (March 20, 2012).

⁷⁵ MISO Tariff, Attachment FF, Section VI.C (“the affected Transmission Owner(s)... shall make a good faith effort to design, certify, and build the designated facilities to fulfill the approved MTEP”) (emphasis added).

MISO designated the responsible utilities on a project-specific basis⁷⁶ and facilities-specific basis,⁷⁷ in separate MTEP cycles, three years apart.

At its core, the ATC Complaint asks the Commission to rewrite this history, change MISO's designation in MTEP11 and vitiate MTEP08 (nearly four years after the fact). If ATC believed in the legal theory set forth in the ATC Complaint, it could have timely challenged the MTEP08 decisions through the MISO dispute resolution process, or through a Complaint to the Commission.⁷⁸ But ATC never challenged MISO's identification of Facilities 2983, 1673, 1675, 1676, 2984, 1678, 1677, and 2647 as Project 1024; Project 1024's designation as a Baseline Reliability Project; or MISO's identification of Xcel Energy, WPPI, DPC, SMMPA and RPU as jointly responsible for Project 1024. Instead, this challenge was raised nearly four years after expectations of project responsibility have been settled.⁷⁹ The doctrine of laches precludes recognizing ATC's claim for an interest in the Twin Cities – La Crosse Project now.⁸⁰

2. *Granting the ATC Complaint Would Set Dangerous Precedent.*

Granting ATC's Complaint would create the opportunity for any Transmission Owner to reopen all previous MTEPs based on the results of the most recent planning cycle. Without respecting settled planning decisions, there will never be sufficient certainty for designated

⁷⁶ See, e.g., MTEP11, Appendix A, Project Tab at line 142 (designating responsibility for Project 3127).

⁷⁷ See, e.g., MTEP11, Appendix A, Facilities Tab at lines 267, 268 (designating Xcel Energy and ATC as jointly responsible for the facilities making up the La Crosse – Madison Line), lines 187-196, 265, 266 (designating others responsible for other segments of Project 3127).

⁷⁸ The TOA and Tariff both acknowledge that an MTEP may be disputed and provide for such disputes. TOA, Appendix B, Section VI; MISO Tariff, Attachment FF, Section I.A.14.

⁷⁹ The Commission is empowered to uphold a party's settled expectations. *Connecticut Valley Electric Company v. FERC*, 208 F.3d 1037, 1042 (D.C. Cir. 2000) (upholding Commission's denial of request to revoke erroneous designation as a Qualifying Facility as generator had entered into contracts in good faith reliance on such status).

⁸⁰ The Commission recognizes the equitable doctrine of laches. *Jack J. Grynberg v. Rocky Mountain Natural Gas Company*, 90 FERC ¶ 61,247 at 61,826 (2000) ("[u]nder the doctrine of laches, a claim in equity can be barred if the person bringing the claim has delayed for such a time that permitting it to prosecute the claim would be inequitable"); *Texaco Refining and Marketing Inc. et. al. v. SFPP, L.P. et. al.*, 99 FERC ¶ 63,009 at P 19 (2002) (finding laches would bar claims for which "SFPP has been on notice for years"); see, also *Cincinnati Gas and Electric Company*, 59 F.P.C. 1091, 1092 (1977).

Transmission Owner(s) to undertake the Duty to Implement and ensure planned projects get built. This would result in a return to the inefficiencies that impeded transmission development and severely impacted reliability prior to the implementation of joint regional planning.⁸¹ The MTEP process must be respected, particularly after so much time has passed from the finalization of MTEP08.

ATC's reliance on the claim that "regional studies recognized the interdependency of the line segments"⁸² and "there is no existing NSPW substation"⁸³ changes nothing. When viewed through the lens of the MISO Tariff, sequential planning and new substations are clearly part of the process.⁸⁴ ATC itself has recognized this important feature: "The fact that [the two lines are] part of the same regional transmission planning ... does not mean one line is an extension of the other. ... [They] are separate and distinct transmission lines, no different than any other separate and distinct lines that at some point interconnect as part of the transmission network."⁸⁵

⁸¹ As the Commission made clear in Order No. 2000, one need for RTOs like MISO was "the noticeable decline in planned transmission investments." Order No. 2000 at 31,004. Prior transmission planning, generally did not "address larger issues that affect an entire region..." Order No. 2000 at 31,015. MISO was established, in part, to "play a leading role with regard to transmission system planning and transmission system expansion." Order No. 2000 Compliance Filing at p. 76, Docket No. RT01-87-000 (January 16, 2000).

⁸² ATC Complaint at p. 20.

⁸³ ATC Complaint at p. 16. Furthermore, the ATC Complaint argues that ownership of the yet-to-be-constructed Briggs Road Substation should be shared by ATC and NSPW. *Id.* ATC neglects to recognize that an expansion of the Briggs Road Substation that must be constructed to accommodate the La Crosse – Madison Line, namely MISO Facility 6573, has indeed been designated by MISO as jointly owned by NSPW and ATC in MTEP11. However, the initial Briggs Road substation required for the Twin Cities – La Crosse Project will be owned solely by NSPW as determined in MTEP08. This is consistent with the Commission determination in Docket No. EL12-24-000 that the need to upgrade a substation does not negate an ownership designation. Pioneer Order at P 99.

⁸⁴ The ATC Complaint does not mention that the Twin Cities – La Crosse Project and the La Crosse – Madison Line were independently studied and justified as separate projects by both Xcel Energy and ATC. *See*, Southeastern Minnesota-Southwestern Wisconsin Reliability Enhancement Study, provided as Appendix A-2 in *Minnesota CON Proceeding*, APPLICATION TO THE MINNESOTA PUBLIC UTILITIES COMMISSION FOR CERTIFICATES OF NEED FOR THREE 345 kV TRANSMISSION LINE PROJECTS WITH ASSOCIATED SYSTEM CONNECTIONS, MPUC Docket No. ET02, E-002/CN-06-1115 (August 16, 2007); Western Wisconsin Transmission Reliability Study ("WWTRS"), provided as Attachment G to the La Crosse – Madison Complaint., Docket No. EL12-28-000.

⁸⁵ ATC Route Permit Objection at pp. 3-4.

The Tariff requires MISO to take into account its own planning analysis.⁸⁶ However, the ATC Complaint instead relies solely⁸⁷ on high-level studies such as the WIRES Phase II Study,⁸⁸ and the CapX2020 Vision Study.⁸⁹ These high-level “vision” studies were predecessors to, but separate from, the MISO MTEP analysis and looked well above the project level to assist in long-range transmission planning for the region.⁹⁰ They are not granular studies but often identify long-term incremental expansion opportunities.⁹¹

ATC essentially argues that it be allowed to reach back in time and claim rights to the Twin Cities – La Crosse Project based on vision-level studies in which Xcel Energy and ATC participated, available in 2008 or earlier. While vision studies are important to provide high level planning, they do not provide sufficient detail for MTEP decisions. Vision studies ripen into specific MISO studies in MTEP08 and MTEP11 and then into design, routes and ownership decisions by both MISO and the Minnesota and Wisconsin state regulatory authorities.

And the fact that the Briggs Road Substation is new is irrelevant to the application of the Belong Equally Provisions.⁹² MISO plans the system on an incremental basis. Needs are identified and facilities proposed to meet those needs.⁹³ MISO’s planning cycles assume

⁸⁶ MISO Tariff, Attachment FF, Section V (“based [in part] on the planning analysis performed by the Transmission Provider” MISO shall designate the entity or entities responsible for a particular project).

⁸⁷ ATC Complaint at pp. 9-10.

⁸⁸ Wisconsin Interface reliability Enhancement Study, Phase II Report (June 1999) (provided as Attachment D to the La Crosse – Madison Complaint in Docket EL12-28-000).

⁸⁹ CapX2020 Technical Update: Identifying Minnesota Electric Transmission Infrastructure Needs (October 2005) (provided as Attachment E to the La Crosse – Madison Complaint in Docket EL12-28-000).

⁹⁰ Kline Affidavit at P 11.

⁹¹ Kline Affidavit at PP 10-12.

⁹² *See*, ATC Complaint at p. 16. ATC is apparently under the erroneous assumption that the NSPM Hampton Substation is in-service. *Id.* To the contrary, the Hampton Substation is still in development as part of the CapX2020 Brookings – Twin Cities Project and has not yet been constructed and placed in-service. ATC’s assumption, while wrong, is immaterial to the Commission’s determination.

⁹³ Kline Affidavit at PP 20-28.

previously-approved projects in its models even if not yet have been placed in-service;⁹⁴ likewise the Belong Equally Provisions assume previously-approved projects when determining which facilities will connect. As MISO made clear in testimony in the Wisconsin CPCN Proceeding:

The [Twin Cities – La Crosse] Project was recommended and approved by MISO in 2008 based on fundamental near-term local reliability needs as the primary drivers for the Project. As such the continuing development of the regional MISO plan have included this project as a part of the base plan upon which other near and longer term plans have been analyzed and developed. (Emphasis added.)⁹⁵

It takes a great deal of time and effort to deploy major transmission improvements. A project must be studied, developed, approved by MISO in the MTEP, and permitted by the affected state(s). Reasonable reliance on the planning provisions of the MISO Tariff allows for step-by-step project development. If this was not the case, MISO would need to delay the next planning cycle until all of the facilities in the previous planning cycle were placed in-service; if not, the uncertainty would create a substantial chilling effect for transmission development.

C. Separate Projects, Separate Facilities

ATC itself is a most articulate advocate for the proposition that the La Crosse – Madison Line and the Twin Cities – La Crosse Project are separate and distinct projects. As ATC represented to the MPUC: “The fact [that they are] part of the same regional planning ... does not mean one line is an extension of the other.”⁹⁶ ATC’s prior position is fully consistent with the MISO analysis, state approval proceedings and required environmental review.⁹⁷

⁹⁴ Kline Affidavit at P 29.

⁹⁵ *Wisconsin CPCN Proceeding*, DIRECT TESTIMONY OF MR. JEFFERY R. WEBB ON BEHALF OF THE MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC. at p. 17:17-27 (January 9, 2012) (“CPCN Webb Direct”).

⁹⁶ ATC Route Permit Objection at pp. 3-4.

⁹⁷ Rural Utilities Service, Financing Assistance for Proposed Hampton – Rochester – La Crosse 345 kV Transmission System Improvement Project, Final Environmental Impact Statement at p. 100 (July 2012), *available at*: <http://www.rurdev.usda.gov/UWP-CapX2020-Hampton-Rochester-LaCrosse.html> (“[t]he Proposal is not an interdependent part of any larger action, and does not depend on any larger action for its justification”).

1. *MISO's MTEP Analyses Rebut the ATC Complaint.*

MISO's planning analysis has justified the timing and need of the two projects individually and separately. MISO justified the Twin Cities – La Crosse Project thusly:

This project ... 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 The proposed project resolves these reliability issues ... by introducing 345 kV supply into the La Crosse area [T]his line is needed to resolve a lengthy list of NERC contingency based violations⁹⁸

And, MISO justified the La Crosse – Madison Line in the following manner:

The 345 kV line from North La Crosse to North Madison creates a tie between the 345 kV network in western Wisconsin to the 345 kV network in southeastern Wisconsin. This creates an additional wind outlet path across the state; pushing power into southern Wisconsin, where it can go east into Milwaukee, or south to Illinois, providing access to less expensive wind power in two major load centers. ... This project will mitigate twelve bulk electric system (BES) NERC Category B thermal constraints and eight NERC Category C constraints. It will also relieve 30 non-BES NERC Category B and 36 NERC Category C constraints.⁹⁹

Clearly, MISO's planning analysis does not justify either project as an extension of the other. The distinction is further evidenced by MISO designating one project a Baseline Reliability Project and the other a MVP. If they were the same, they would receive the same designation.

Further, more than three years later, MISO supported the need for the Twin Cities – La Crosse Project in the Wisconsin CPCN Proceeding based on load serving requirements:

The [Twin Cities – La Crosse] Project was recommended and approved by MISO in 2008 based on fundamental near-term local reliability needs as the primary drivers for the Project. ... While the Project is driven by load serving needs in the La Crosse area, it extends across the Minnesota-Wisconsin interface that has historically been limited.¹⁰⁰

⁹⁸ MTEP08 at p. 6.

⁹⁹ Midwest Independent Transmission System Operator, Inc., Multi Value Project Analysis Report at p. 29 (January 10, 2012), provided as Attachment C to the La Crosse – Madison Complaint in Docket EL12-28-000.

¹⁰⁰ CPCN Webb Direct at p. 17:17-27.

Contrary to ATC's claim,¹⁰¹ MISO believed that "demand in the area is likely to be very close if not exceeding critical levels by the time the [Twin Cities – La Crosse] project can be placed into service."¹⁰² MISO's analysis refutes any claim the two projects "are inextricably linked."¹⁰³

2. *The State Regulatory Analysis Rebuts the ATC Complaint.*

The MPUC and PSCW proceedings are equally clear that the two projects are not linked. The Twin Cities – La Crosse Project was justified in Minnesota as necessary to improve load serving and regional reliability and for connecting NSPW's La Crosse load center more closely to the Twin Cities system.¹⁰⁴ The MPUC Orders granted a Certificate of Need and ultimately a Route Permit based on a stand-alone need and without relying on the La Crosse – Madison Line.

The PSCW also did not rely on the next project to justify its CPCN decision.¹⁰⁵ Its recognition of the La Crosse – Madison Line as a possible future project is irrelevant.¹⁰⁶ "ATC supports the [Twin Cities – La Crosse Project] crossing into western Wisconsin and running toward the La Crosse area. [It] will provide significant reliability and service benefits to Wisconsin customers and a continuous 345 kV interconnection for **potential** future projects such as the **possible** [La Crosse – Madison Line]."¹⁰⁷

¹⁰¹ ATC Complaint at p. 10.

¹⁰² *Wisconsin CPCN Proceeding*, REBUTTAL TESTIMONY OF MR. JEFFERY R. WEBB ON BEHALF OF THE MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC. at p. 6:11-15 (February 22, 2012).

¹⁰³ ATC Complaint at p. 15.

¹⁰⁴ *Minnesota CON* at pp. 16-19 (describes Twin Cities – La Crosse Project without regard for any future projects).

¹⁰⁵ "Xcel Energy and ATC have recently studied a 345 kV line connecting the La Crosse area to potential endpoints to the south and east (La Crosse – Madison 345 kV Project). The Xcel Energy/ATC anticipated La Crosse – SE Wisconsin line is an independent project. . . . The 345 kV Project [Hampton-Rochester-La Crosse Project] is needed to meet the identified local and regional needs regardless of whether additional facilities are constructed to the east." *Wisconsin CPCN Proceeding*, SUPPLEMENTAL NEED STUDY (Exhibit 2 – King) at p. 55 (August 2011)(emphasis added.)

¹⁰⁶ "The [Twin Cities – La Crosse Project] by itself will increase transfer capability by 800 MW, and, **if** the 345 kV transmission network is extended to the east, the transfer capability will rise to 1,200 MW." Wisconsin CPCN Order p. 15 (emphasis added).

¹⁰⁷ Wisconsin CPCN Order at p. 16 (emphasis added).

ATC itself acknowledged in the Wisconsin CPCN Proceeding that the Twin Cities – La Crosse Project is a separate and distinct transmission project that is to be considered separately from the La Crosse – Madison Line. ATC acknowledged that there was “considerable misunderstanding in this record on the issue of the interconnection between the [Twin Cities – La Crosse Project] and ATC’s Badger – Coulee Project.”¹⁰⁸ And ATC “generally supports the ... position that a 345 kV line from the west that terminates in the La Crosse area would provide significant reliability, usage, and service benefits to Wisconsin customers.”¹⁰⁹

Xcel Energy recognizes that the Twin Cities – La Crosse Project provides an important foundation for future transmission expansion in Wisconsin (e.g. the La Crosse- Madison Line). But this does not mean that the projects should be conflated into the same “facility.” The timing and need for each project was separately justified. As cogently argued by ATC to the MPUC:

The fact that the Badger Coulee Transmission Line is part of the same regional transmission planning as the Hampton-Rochester-La Crosse HVTL does not mean one line is an extension of the other. ... While interconnecting, the Badger Coulee Transmission Line and the Hampton-Rochester-La Crosse HVTL are separate and distinct transmission lines, no different than any other separate and distinct lines that at some point interconnect as part of the transmission network.¹¹⁰

The Commission should agree and promptly dismiss the ATC Complaint.

V. ADDITIONAL INFORMATION

A. Admissions and Denials

Pursuant to Rule 213(c)(2) of the Commission’s Rules of Practice and Procedure,¹¹¹ to the extent practicable and to the best of Xcel Energy’s present knowledge and belief:

¹⁰⁸ *Wisconsin CPCN Proceeding*, BRIEF OF AMERICAN TRANSMISSION COMPANY LLC AND ATC MANAGEMENT INC. at p. 4 (March 30, 2012).

¹⁰⁹ *Id.* at p. 3.

¹¹⁰ ATC Route Permit Objections at pp. 3-4 (internal citations omitted).

¹¹¹ 18 C.F.R. § 385.213(c)(2) (2012).

1. Xcel Energy denies:

(a) the “MISO 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;”

(b) the Twin Cities – La Crosse Project and the La Crosse – Madison Line are not independently justified projects;

(c) the applicable “facilities” consist of the Twin Cities – La Crosse Project and the La Crosse – Madison Line, together;

(d) ATC has any entitlement to the Twin Cities – La Crosse Project;

(e) the La Crosse – Madison Line and the Twin Cities – La Crosse Project are part of the same overall planning initiative;

(f) the ATC Complaint is authorized by Paragraph 68 of the July 19 Order;

(g) that, as of the date of the ATC Complaint, the Hampton Substation is “existing;”

(h) the Twin Cities – La Crosse Project was not separately studied and justified;

(i) the Twin Cities – La Crosse Project depends on the La Crosse – Madison Line;

(j) the regional reliability benefits of the Twin Cities – La Crosse Project are reliant on the La Crosse – Madison Line or other system addition;

(k) the benefits identified in the Final Environmental Impact Statements for the PSCW requires the implementation of the La Crosse – Madison Line;

(l) the PSCW assumed inclusion of the La Crosse – Madison Line in its analysis;

(m) the “2008 MTEP Report and the PSCW ruling confirm that the Twin Cities – La Crosse [Project] would not have been approved at 345 kV in its entirety absent the benefits that would accrue to the region once that [project] and the companion 345 kV La Crosse-Madison [line] completed the interconnection...”;

(n) the CapX2020 Vision Study identified the Twin Cities – La Crosse Project and the La Crosse – Madison Line as the same project to be built in phases;

(o) that a common connection makes the Twin Cities – La Crosse Project and the La Crosse – Madison Line one “facility;”

(p) the La Crosse – Madison Line is the same “facility” as the Twin Cities – La Crosse Project;

(q) the simple physical electrical connection of the Twin Cities – La Crosse Project and the La Crosse – Madison Line make them one “facility;”

(r) it would not have been able to develop a 345 kV line to La Crosse if that project were not planned with a transmission line into the Madison area;

(s) the PSCW would not have approved the Twin Cities – La Crosse Project but for the La Crosse – Madison Line;

(t) that the term “facilities” excludes the new Briggs Road Substation or components within that substation;

(u) that the Belong Equally Provisions were designed to assign responsibility for new MTEP-approved facilities based only on the ownership of existing facilities of MISO transmission owners to which a new facility would connect;

(v) the July 19 Order allowed for the relitigation of responsibility to construct and right to own the La Crosse – Madison Line;

(w) that Xcel Energy and ATC alone would be able to reach agreement as to the ownership of the Twin Cities – La Crosse Project;

(x) that prior to the ATC Complaint, ATC worked collaboratively with Xcel Energy on the development of the La Crosse – Madison Line;

(y) that granting the ATC Complaint would not impact the business arrangements amongst the CapX2020 participants;

(z) the facts proffered by ATC demonstrate that the Twin Cities – La Crosse Project and the La Crosse – Madison Line make up a single 345 kV project.

2. Xcel Energy admits:

(a) that the Twin Cities – La Crosse Project was approved by MISO in MTEP08;

(b) the WIRES study work identified the benefits of a generic transmission facility between the Twin Cities and Madison areas;

(c) the Twin Cities – La Crosse Project was separately studied by MISO and was separately justified as a critical reliability need in MTEP08;

(d) the MPUC found the Twin Cities – La Crosse Project would, by itself, support local reliability, regional reliability and generator outlet needs;

(e) the PSCW found that the Twin Cities – La Crosse Project will, by itself, provide local and regional benefits and generation support;

(f) the CapX2020 Vision Study identified a generic facility between the La Crosse area and Madison area;

(g) that ATC participated in the Renewable Energy Standard (“RES”) Update completed in compliance with the 2007 Minnesota Next Generation Energy Act;

(h) the RES Update discussed the installation of a project similar to the La Crosse – Madison Line;

(i) the WWTRS and MTEP11 identified the La Crosse – Madison Line as interconnecting to the Twin Cities – La Crosse Project;

(j) MISO Facility 6573 belongs equally to ATC per the July 19 Order.

(k) MISO confirmed the need for the La Crosse – Madison Line and designated the La Crosse – Madison Line as a MVP in MTEP11;

3. To the extent that any fact or allegation in the ATC Complaint is not specifically admitted in this Answer, it is denied.

B. Affirmative Defenses

Xcel Energy pleads the following affirmative defenses to the ATC Complaint:

1. It is an impermissible collateral attack on the July 19 Order.
2. Claims against MTEP08 are barred by the applicable statute of limitations.
3. Collateral estoppel applicable to the July 19 Order, the Minnesota Route Permit Proceeding and the Wisconsin CPCN Proceeding precludes ATC from bringing the ATC Complaint.
4. The doctrine of laches precludes the ATC Complaint.
5. ATC is not entitled to any share of the Twin Cities – La Crosse Project.
6. The ATC Complaint does include all indispensable respondents.
7. ATC’s interpretation of the TOA and Tariff will lead to an absurd result.

C. Resolution

Pursuant to Rule 213(c)(4) of the Commission’s Rules of Practice and Procedure,¹¹² the Commission should apply fast track processing and promptly dismiss the ATC Complaint.

¹¹² 18 C.F.R. § 385.213(c)(4) (2012).

D. Additional Documents

In support of this Answer, Xcel Energy provides the following additional documents which are attached to this Answer:

- ATC Route Permit Objection, provided as Attachment A.
- ATC Route Permit Intervention, provided as Attachment B.
- Affidavit of Mr. Daniel P. Kline, provided as Attachment C.

VI. CONCLUSION

For the foregoing reasons, Xcel Energy respectfully requests that the Commission promptly deny and dismiss ATC's complaint based on the current record.

Respectfully Submitted,

Dated: October 22, 2012

/s/ Michael C. Krikava

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ATTORNEYS FOR XCEL ENERGY
SERVICES INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October, 2012, I have served the foregoing document on all affected parties in accordance with the requirements of the Commission's Rules of Practice and Procedure.

/s/ Aakash H. Chandarana
Aakash H. Chandarana

4988181v14

ATTACHMENT A

ATC ROUTE PERMIT OBJECTION

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May 13, 2011

Via Electronic Filing and U.S. Mail

The Honorable Kathleen D. Sheehy
Office of Administrative Hearings
600 North Robert Street, Suite 1700
P.O. Box 64620
St. Paul, MN 55164-0620

Re: *In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-La Crosse High Voltage Transmission Line*
MPUC Docket No. E-002/TL-09-1448, OAH Docket No. 3-2500-21181-2

Dear Judge Sheehy:

American Transmission Company LLC and its corporate manager, ATC Management Inc. (collectively, "ATC") herewith submits their Response to "No CapX 2020 and United Citizen's Action Network's Objection to American Transmission Company's Petition for Intervention" in the above referenced proceeding. As discussed in its Petition and in this Response, ATC should be allowed to intervene in this proceeding with full rights as parties.

Thank you for your attention to this matter.

Sincerely,

/s/ *Brian M. Meloy*

Brian M. Meloy

*Attorney for American Transmission
Company LLC and its corporate manager,
ATC Management Inc.*

cc: Attached Service List

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

<i>In the Matter of the Application for a)</i>	
<i>Route Permit for the CapX2020)</i>	MPUC Docket No.: E-002/TL-09-1448
<i>Hampton-Rochester-La Crosse)</i>	
<i>High Voltage)</i>	OAH Docket No.: 3-2500-21181-2
<i>Transmission Lines)</i>	

**RESPONSE TO OBJECTION OF AMERICAN
TRANSMISSION COMPANY LLC AND ITS
CORPORATE MANAGER, ATC MANAGEMENT INC.**

The Honorable Kathleen D. Sheehy:

American Transmission Company LLC and its corporate manager, ATC Management Inc. (collectively, “ATC”) hereby respectfully submit their Response to No CapX 2020 and United Citizen’s Action Network’s (“UCAN”) Objection to American Transmission Company’s Petition to Intervene in the above referenced proceeding. As discussed below, No CapX 2020 and UCAN’s objection to ATC’s intervention is without merit. ATC has demonstrated that it has a direct and independent interest in the outcome of this proceeding that cannot be adequately represented by any other party as required by Minn. Rule 1400.6200 subpart 1 and should be allowed to intervene in this proceeding.

**I.
RESPONSE**

In their Objection, No CapX 2020 and UCAN make three arguments in support of their position that ATC’s intervention should be denied: (1) that ATC failed to distinguish its interests from that of the Applicants;¹ (2) that ATC must disclose its interest “as a prospective owner of

¹ Objection at pp. 1-2.

CapX 2020 transmission assets . . .”;² and (3) that ATC must correct a false statement.³ These arguments should be rejected.

First, ATC’s interest is distinct from that of the Applicants. As ATC noted in its Petition to Intervene, “ATC has a unique interest in the regional development of transmission facilities terminating in the State of Wisconsin.”⁴ This because the proposed High Voltage Transmission Line (“HVTL”) at issue in this proceeding will interconnect to ATC’s proposed facilities and is part of a larger regional transmission planning process of the Midwest Independent Transmission System Operator, Inc. of which both the CAPX2020 proposed lines and ATC’s proposed Badger Coulee line are a part. The current route proceeding will ultimately determine whether and where the proposed transmission line will cross into Wisconsin. A central issue in this proceeding is identifying an appropriate crossing of the Mississippi River which will need to be taken into account in the overall planning process and which may affect the location of ATC’s facilities, as well.

Any related impacts associated with the designated route for the HVTL are unique to ATC, which is the largest transmission provider in the State of Wisconsin and responsible for maintaining the integrity and reliability of its system. This interest is distinct from the interests of the Applicants. The fact that ATC also has interests in common with the Applicants (e.g., regional transmission planning and grid development) does not somehow negate the unique interest of ATC from a system topology and geographic standpoint.

Second, No CapX 2020 and UCAN devote nearly half their Objection on speculation that it is possible that at some point in the future the Applicants may want to transfer CapX 2020

² *Id.* at pp. 2-5.

³ *Id.* at 5-8.

⁴ ATC Petition to Intervene at p. 3.

transmission lines to an independent transmission company and that ATC should “specify” whether it might be that future hypothetical owner. In support of their conjecture, No CapX 2020 and UCAN state that “Xcel Energy/Northern States Power has transferred some transmission assets to a transmission only company, and there is no reason not to expect future transfers.”⁵ Unsupported speculation regarding whether Xcel or any of the Applicants may seek to transfer any CapX 2020 transmission lines in the future has no bearing on whether ATC should be allowed to intervene in this proceeding. In this respect, No CapX 2020 and UCAN’s objection is wholly irrelevant to the sole issue before Your Honor. Furthermore, any such transfer would likely be subject to further proceedings before this Commission as well as the Federal Energy Regulatory Commission.

Finally, No CapX 2020 and UCAN’s claim that ATC made a false statement in its Petition to Intervene is simply wrong.⁶ ATC correctly stated that its planned “Badger Coulee Transmission Line” is “not an extension of the Proposed Project.”⁷ This is accurate. Nothing in the No CapX 2020 and UCAN Objection shows otherwise. The fact that the Badger Coulee Transmission Line is part of the same regional transmission planning as the Hampton-Rochester-La Crosse HVTL does not mean one line is an extension of the other. The Applicants Hampton-Rochester-La Crosse HVTL terminates at a new planned 345/161 kV substation to be located in the vicinity of La Crosse, Wisconsin. The Badger Coulee Transmission Line, as currently planned, will begin at its own switching/substation, and will interconnect with the new 345/161 substation proposed here in this proceeding, and terminate at an existing ATC substation in the Madison, Wisconsin area. While interconnecting, the Badger Coulee Transmission Line and the

⁵ Objection at p. 5.

⁶ *Id.*

⁷ ATC Petition to Intervene at p. 3.

Hampton-Rochester-La Crosse HVTL are separate and distinct transmission lines, no different than any other separate and distinct transmission lines that at some point interconnect as part of the transmission network.

WHEREFORE, ATC reiterates its request that their petition to intervene in this proceeding as parties be granted with all rights and privileges attendant to that status.

Dated: May 13, 2011

Respectfully submitted,

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***Attorneys for American Transmission
Company LLC and ATC Management Inc.***

In the Matter of the Application for a
Route Permit for the CapX2020
Hampton-Rochester-La Crosse High
Voltage Transmission Line, Docket No.
E-002/TL-09-1448

MPUC Docket No. E-002/TL-09-1448
OAH Docket No. 3-2500-21181-2

CERTIFICATE OF SERVICE

Susan A. Hartinger certifies that on May 13, 2011 she served true and correct copies of the
**RESPONSE TO OBJECTION OF AMERICAN TRANSMISSION COMPANY LLC AND ITS CORPORATE
MANAGER, ATC MANAGEMENT INC.** upon the following parties:

<u>PARTY</u>	<u>E-Mail</u>	<u>Company</u>	<u>Address</u>	<u>Method of Delivery</u>
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/s/Susan A. Hartinger

Susan A. Hartinger

ATTACHMENT B

ATC ROUTE PERMIT INTERVENTION

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The Honorable Kathleen D. Sheehy
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St. Paul, MN 55164-0620

RE: *In the Matter of the Application for a Route Permit for the CapX2020 Hampton-Rochester-La Crosse High Voltage Transmission Line*
MPUC Docket No. E-002/TL-09-1448, OAH Docket No. 3-2500-21181-2

Dear Judge Sheehy:

Pursuant to Minnesota Rules part 1405.0900 and 1400.6200, American Transmission Company LLC and its corporate manager, ATC Management Inc. (collectively, "ATC") herewith submits their Petition to Intervene in the above referenced proceeding. As discussed in their Petition, ATC should be allowed to intervene in this proceeding with full rights as parties. Consistent with the Minnesota Public Utilities Commission's March 9, 2010 Notice and Order for Hearing, also enclosed is ATC's Notice of Appearance.

Thank you for your attention to this matter.

Sincerely,

/s/ *Brian M. Meloy*

Brian M. Meloy

*Attorney for American Transmission
Company LLC and its corporate manager,
ATC Management Inc.*

Enclosures

cc: Attached Service List

**STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

<i>In the Matter of the Application for a</i>)	
<i>Route Permit for the CapX2020</i>)	MPUC Docket No.: E-002/TL-09-1448
<i>Hampton-Rochester-La Crosse</i>)	
<i>High Voltage</i>)	OAH Docket No.: 3-2500-21181-2
<i>Transmission Lines</i>)	

**PETITION TO INTERVENE OF AMERICAN
TRANSMISSION COMPANY LLC AND ITS
CORPORATE MANAGER, ATC MANAGEMENT INC.**

The Honorable Kathleen D. Sheehy:

Pursuant to Minnesota Rules 1405.0900 and 1400.6200 and the Minnesota Public Utilities Commission’s (“Commission”) March 9, 2010 Notice and Order for Hearing, American Transmission Company LLC and its corporate manager, ATC Management Inc. (collectively, “ATC”) hereby respectfully submit their Petition to Intervene in the above referenced proceeding. In support of their Petition, ATC states:

**I.
DESCRIPTION OF ATC**

ATC is a Wisconsin limited liability company created in accordance with Wisconsin state law as a single-purpose, for-profit transmission-only company. ATC owns, controls and operates more than 9,400 miles of transmission lines in the states of Wisconsin, Illinois, Minnesota and Michigan. ATC is a transmission owning member of the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) and transmission service is provided over the facilities owned and operated by ATC under the terms of the Midwest ISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Midwest ISO Tariff”). ATC is a “transmission company” as defined by Minn. Stat. § 216B.02, subd. 10.

II. BACKGROUND

On January 19, 2010, Northern States Power Company, d/b/a Xcel Energy, filed an application for a route permit for the Minnesota portion of the Hampton-Rochester-La Crosse High Voltage Transmission Lines (the “Proposed Project”) pursuant to Minnesota Statutes Chapter 216E. The Minnesota portion of the Proposed Project involves up to 91 miles of 345 kV High Voltage Transmission Line (HVTL) and 15 miles of 161 kV HVTL located in Dakota, Goodhue, Olmsted, and Wabasha counties, Minnesota. The Proposed Project would cross the Mississippi River into the State of Wisconsin at a location near Kellogg, Minnesota, and Alma, Wisconsin and terminate at a planned substation to be located near La Crosse, Wisconsin. On March 9, 2010, the Commission issued a Notice and Order for Hearing, referring the matter to the Office of Administrative Hearings for a contested case proceeding.

III. ATC’S INTERESTS

Minnesota Rule 1400.6200, subpart 1 sets forth the following grounds for intervention in a contested case proceeding:

The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case; shall show how the petitioner may be directly affected by the outcome or that petitioner's participation is authorized by statute, rule, or court decision; shall set forth the grounds and purposes for which intervention is sought; and shall indicate petitioner's statutory right to intervene if one should exist.

In the present case, ATC has a direct and independent interest in the outcome of this proceeding that cannot be adequately represented by any other party.

As a transmission-owning member of Midwest ISO and an owner and operator of transmission facilities located in both Wisconsin and Minnesota, ATC has an interest in the planning and development of the transmission grid and thus has an interest in the Proposed

Project and the outcome of this proceeding. In particular, as a transmission company serving a large portion of the state of Wisconsin, ATC has a unique interest in the regional development of transmission facilities terminating in the State of Wisconsin. Further, ATC recently announced plans to develop an approximately 150 mile 345 kV transmission line from the La Crosse area to the greater Madison area. While not an extension of the Proposed Project, ATC's planned "Badger Coulee Transmission Line" is also a part of the regional grid development and would similarly provide multiple benefits to the region including improved electric system reliability, economic savings for utilities and energy consumers, and access to additional renewable energy.

Accordingly, ATC's interests are different from any other party to this proceeding, and are distinct from the interests of the public at large. As such, no party can adequately represent ATC's interests. Furthermore, ATC's intervention will not prejudice any other party and will ensure that all interests are appropriately represented. Therefore, ATC's intervention is in the public interest and ATC should be allowed to intervene in this proceeding with full rights as parties.

WHEREFORE, ATC respectfully requests that their petition to intervene in this proceeding as parties be granted with all rights and privileges attendant to that status.

Dated: May 2, 2011

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Respectfully submitted,

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***Attorneys for American Transmission
Company LLC and ATC Management Inc.***

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert St.
P.O. Box 64620
St. Paul, MN 55164-0620

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350
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In the Matter of the Application for a
Route Permit for the CapX2020
Hampton-Rochester-La Crosse High Voltage
Transmission Lines

PUC Docket No. E-002/TL-09-1448
OAH Docket No.: 3-2500-21181-2

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

**Kathleen D. Sheehy, Office of Administrative Hearings, Suite 1700, 600 North Robert St.,
P.O. Box 64620, St. Paul, MN 55164-0620; (651) 361-7848.**

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

**American Transmission Company LLC, and its corporate manager, ATC Management
Inc.**

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PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

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OFFICE ADDRESS:

See above.

TELEPHONE NUMBER AND E-MAIL ADDRESS:

See above.

SIGNATURE OF PARTY OR

ATTORNEY: /s/ *Brian M. Meloy*

DATE: **May 2, 2011**

In the Matter of the Application for a
Route Permit for the CapX2020
Hampton-Rochester-La Crosse High
Voltage Transmission Line, Docket No.
E-002/TL-09-1448

MPUC Docket No. E-002/TL-09-1448
OAH Docket No. 3-2500-21181-2

CERTIFICATE OF SERVICE

Susan A. Hartinger certifies that on May 2, 2011 she served true and correct copies of the
PETITION TO INTERVENE OF AMERICAN TRANSMISSION COMPANY LLC upon the following
parties:

<u>PARTY</u>	<u>E-Mail</u>	<u>Company</u>	<u>Address</u>	<u>Method of Delivery</u>
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/s/Susan A. Hartinger

Susan A. Hartinger

ATTACHMENT C

AFFIDAVIT OF DANIEL P. KLINE

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

American Transmission Company LLC

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

Docket No. EL 13-9-000

AFFIDAVIT OF DANIEL P. KLINE, P.E.

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

I, Daniel P. Kline, state under oath:

Introductory Information

1. My name is Daniel P. Kline and I am a Manager, Regulatory Administration (Transmission) for Xcel Energy Services Inc. ("XES") the service company subsidiary of Xcel Energy Inc. My curriculum vitae is attached as Schedule 1. I have more than 12 years experience in the electric utility industry.
2. My business address is 414 Nicollet Mall, Minneapolis, Minnesota 55401.
3. I hold a Bachelor of Science in electrical engineering from Iowa State University and a Master's of Engineering from the University of Idaho. I am a licensed professional engineer in the State of Minnesota.
4. I am providing this affidavit in support of the Answer filed by XES, Northern States Power Company, a Minnesota corporation ("NSPM"), and Northern States Power Company, a Wisconsin corporation ("NSPW") (collectively "Xcel Energy"), in response to the October 1, 2012, Complaint and Request for Fast Track Processing ("Complaint") filed by American Transmission Company LLC ("ATC") in the above captioned

proceeding. The purpose of my affidavit is to provide background as to (1) transmission planning generally and (2) the MISO transmission planning process.

5. As Manager, Regulatory Administration, I am responsible for activities that relate to Xcel Energy's transmission function. This includes managing transmission regulatory activities at the Federal Energy Regulatory Commission ("FERC" or the "Commission"); developing positions in a variety of FERC dockets involving transmission issues; and coordinating the Xcel Energy Operating Companies participation in their respective regional organizations, chiefly the Midwest Independent Transmission System Operator, Inc. ("MISO"), Southwest Power Pool, Inc. ("SPP"), and WestConnect. In addition to my duties at XES, I am also the Chair of MISO's Regional Expansion Criteria and Benefits ("RECB") Task Force, the stakeholder committee responsible for developing the organization's cost allocation policy. As part of this work, I have also been involved in the development and analysis of the rate treatment for new transmission facilities, including for those transmission facilities that will receive cost allocation treatment as Multi Value Projects ("MVP") under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Tariff").
6. Prior to my current position, I was Senior Engineer, Regional Transmission Planning, for XES. As a Senior Engineer, my duties included coordinating the participation of all MISO Transmission Owners ("TO") in the MISO Planning Advisory Committee ("PAC"), which is the MISO Committee responsible for developing MISO's regional planning document, the MISO Transmission Expansion Plan ("MTEP"). The MTEP is the culmination of the regional planning process adopted pursuant to the Commission's Order No. 890, documented in Attachment FF of the MISO Tariff. In my role as Senior Engineer, my responsibilities included guiding contemplated transmission projects through the MISO transmission planning process and working for their inclusion in the MTEP. In addition, I assisted in preparation of the biennial transmission planning reports submitted by the Minnesota Transmission Owners ("MTO"), including NSPM and ATC, to the Minnesota Public Utilities Commission ("MPUC").
7. Through my employment with Xcel Energy, I have become familiar with the workings of transmission planning, generally, the MISO planning process, and the history of development of transmission in the upper-Midwest.

Transmission Planning

8. The overall goal of transmission planning is to ensure the reliable operation of the transmission system to meet the demand for power by end-use customers at the lowest reasonable cost. Planning involves a number of objectives, including planning for increased customer service requirements (often referred to as local load growth), taking into account generator interconnection and transmission service requests, assessing the need for system maintenance and upgrades, assessing ways to eliminate constraints on the system, and taking into consideration a utility's compliance with applicable policy and regulatory goals. Generally transmission planning is an ongoing, continuous process of ensuring that the electrical system under review can be operated in a reliable and economic fashion.

9. To achieve these goals, transmission planners for utilities use sophisticated computer models that simulate the operational performance of the transmission grid under various scenarios. Typically, the planners attempt to determine how the system will perform under peak load and high transfer situations, although normal operating conditions and off-peak conditions are also examined. The planners also look at how the system will operate under contingency situations, such as when a transmission line or generation facility is taken out of service by a storm or other unexpected occurrence or during planned maintenance outages. In addition to the modeling results, utilities also have to take into account such factors as costs, environmental impacts, social impacts, and national standards, such as compliance with North American Electric Reliability Corporation (“NERC”) mandatory reliability standards.
10. Transmission planning work is often documented in transmission planning studies. There are generally three categories of studies that transmission planners can create during the transmission planning process: Vision Studies, Mid-Term Studies; and Specific Studies. Prior to approval, it is possible for a transmission project to be identified or studied in all three types of studies, only two of them, or only in a Specific Study.
11. Vision Studies look at the long-range requirements and goals and include the following characteristics: a high level 50,000-foot review of the electrical system; a broad blue print for the future; a 10- to 25-year time horizon and very broad assumptions. Examples of Vision Studies include the Wisconsin Interface Reliability Enhancement Phase II Study (June 1999) (“WIRES Phase II Report”) and the CapX2020 Technical Update: Identifying Minnesota Electric Transmission infrastructure Needs (October 2005) (“CapX2020 Vision Study”). Vision Studies identify long-term transmission projects that, if the broad assumptions relied on in such studies prove true, could be needed sometime in the future. Vision Studies help to provide a blue-print for nearer term transmission development. Because Vision Studies look at the transmission system at such a high-level, they do not provide any need justification for any particular future transmission project, or even final configurations of any final projects. This task is left to more granular studies, even though Vision Studies may still also be relied upon to provide conceptual support.
12. Mid-Term Studies look at mid-term likely needs and have the following characteristics: 25,000-foot review of the electrical system; identification of possible future needs; a time horizon that generally exceeds the project development duration; and more certainty in assumptions. An example of a Mid-Term Study is the Minnesota RES Update (2009) (“RES Update”), which was completed by the MTO in fulfillment of the 2007 Minnesota Next Generation Energy Act¹. Mid-Term studies, by drilling down further on possible future transmission expansions, can help to identify mid-term needs that may need to be addressed by future transmission projects. Mid-Term studies tend to identify more generic, conceptual solutions to such identified needs.
13. Specific Studies, which may include load-serving studies and interconnection studies, have the following characteristics: a short-term, 5,000-foot view of the electrical system;

¹ 2007 Minn. Sess. Law Ch. 136.

needs for a specific circumstance; a zero- to 10-year time horizon; and more certainty in assumptions. Examples of specific studies include the Southeastern Minnesota-Southwestern Wisconsin Reliability Enhancement Study and the Western Wisconsin Transmission Reliability Study (“WWTRS”). Specific studies are used to justify specific projects to meet identified specific needs. In many cases, specific studies will include a detailed analysis of precise options for terminations of lines. These are details that Vision Studies, and even Mid-Term Studies, will not identify because they go well beyond the conceptual nature of longer-term studies.

14. Transmission planners for various utilities work together with the various Regional Transmission Organizations (“RTOs”) like MISO to support the RTO planning process. For example, the types of studies identified above are used to support the “bottom up” portion of MISO’s Attachment FF transmission planning process to identify transmission needs for a utility’s system. These studies are also used to justify the need for a particular project as part of state jurisdictional need and routing proceedings.

MISO Transmission Planning

15. MISO employs a “top down, bottom up” planning approach. This means that the MISO planning process is designed to integrate planning at the regional level with the local planning processes of the TOs to ensure that all necessary facilities are built to ensure a reliable and efficient transmission system.
16. This planning approach is the basis of the MISO Tariff’s planning provisions provided for in Attachment FF of the Tariff as required by Order No. 890.
17. As part of the “bottom up” planning approach, and in accordance with the Transmission Owner’s Agreement between the MISO TOs, each TO engages in local system planning in order to carry out its responsibilities for meeting its transmission needs in collaboration with MISO and subject to the requirements of applicable state laws or regulatory authorities. The transmission planning process I describe above, including the development of Vision, Mid-Term and Specific Studies, is part of the TO’s work to meet this responsibility.
18. To coordinate all of the local planning requirements and receive stakeholder feedback, TOs participate in Subregional Planning Meetings (“SPM”) in their respective planning subregions pursuant to a schedule provided by MISO. At these SPMs, TOs may be requested to present their proposed projects to stakeholders and discuss the justification, alternatives, estimated costs, expected in-service dates, and other aspects of proposed projects.
19. MISO also manages the planning process from a “top down” approach. Through this “top down” approach MISO, through its Order No. 890-compliant regional planning process, integrates the local planning processes of its TOs and the advice and guidance of stakeholders into a coordinated regional transmission plan and identifies additional expansions as needed to provide for an efficient and reliable transmission system. In other words, MISO, in collaboration with its Transmission Owning Members, is

ultimately responsible for integrating all local planning to ensure that broad based regional solutions are identified.

20. MISO coordinates its “top down” planning responsibilities through the Planning Advisory Committee (“PAC”) in which all MISO stakeholders may participate and which provides stakeholder guidance to MISO related to transmission planning policies and initiatives and reviews the list of transmission projects being recommended for inclusion in the MTEP, which must be approved by the independent MISO Board of Directors.
21. The day-to-day planning work is coordinated by MISO through its planning staff. The planning staff work with the TOs and other stakeholders to solicit information and create the models used in planning. Oftentimes, the work of the MISO planning staff is in collaboration with the representatives of the TOs.
22. The collaboration is often done informally. For example, MISO will often solicit information from the TOs via email to particular engineers working on a particular project. This includes cost estimates and other system information for which a particular engineer may be knowledgeable. This informal, collaborative process allows MISO to efficiently perform its planning work subject to the more formal oversight of the SPMs and the PAC.
23. The ultimate outcome of these planning efforts is the MISO Transmission Expansion Plan (“MTEP”), which provides MISO’s own planning analysis for the MISO Transmission System. The MTEP process incorporates information from a variety of study efforts performed by a variety of transmission planners, both by MISO staff as well as MISO stakeholders and Transmission Owners. Such study efforts can include, but are not limited to, the Vision, Mid-Term and Specific Studies I described above. The MTEP uses a FERC-approved process to identify which transmission projects will ensure an efficient and reliable transmission system by using the different appendices of the MTEP to identify and winnow projects. Each MTEP approves new facilities proposed in that planning cycle.
24. There are three appendices to the MTEP: Appendix A; Appendix B; and Appendix C. As projects are further developed and refined they move from Appendix C (conceptual projects) to Appendix B (potential projects) and ultimately into Appendix A (approved projects).
25. Appendix C projects are projects which are proposed by a TO, stakeholders, or MISO staff for which specific needs have not been established but that are thought to be a potentially beneficial expansion. All newly proposed projects start as Appendix C projects in the MTEP process. Appendix C projects are oftentimes the types of projects identified in the Vision Studies described above.
26. Appendix B projects are those that are demonstrated to be a potential solution to an identified reliability, policy or other need or benefit. Oftentimes, when a need is identified, Appendix C projects are then tested to determine if they help to meet that need. Several solutions to the same need may be included in Appendix B until the

preferred solution among alternatives is selected. Appendix B projects are oftentimes identified in the Mid-Level studies described above.

27. Appendix A projects are projects that have been justified to be the preferred solution to a specific identified need and approved by the MISO Board of Directors. Appendix A projects are justified by MISO's own planning analyses as required by the MISO Tariff. Appendix A projects are also usually justified in Specific studies as described above.
28. Once a project is approved by the Board of Directors as an Appendix A project, the project must be implemented by one or more assigned TOs. The MISO Board of Directors does not approve (or re-approve) facilities that have been approved in a previous MTEP.
29. Implementation of an Appendix A project is assumed in modeling for subsequent planning cycles. In other words, facilities approved in one MTEP cycle become part of the system modeling foundation upon which future MTEP cycles are based.
30. In the 2008 MTEP ("MTEP08"), the Twin Cities – La Crosse Project was approved as an Appendix A project and designated as a Baseline Reliability Project. MTEP08 also designated various utilities participating in the CapX2020 Transmission Expansion Initiative ("CapX2020"), including Xcel Energy, as responsible for that project. By contrast, the separate La Crosse – Madison Line project was classified as an Appendix B project in the 2010 MTEP and was approved as a subset of an Appendix A project (the La Crosse – North Madison – Cardinal – Spring Green – Dubuque area 345 V project) and designated a Multi-Value Project ("MVP") in the 2011 MTEP.

[SIGNATURE PAGE FOLLOWS]

Further, Affiant sayeth not.


Daniel P. Kline, P.E.

Subscribed and sworn to before me

this 19th day of October, 2012


Notary Public



SCHEDULE 1 TO AFFIDAVIT OF DANIEL P. KLINE
CURRICULUM VITAE

Daniel Kline, P.E.

Summary	Licensed professional engineer with ten years' experience in transmission planning, regulatory process, and project leadership ranging geographically from single cities to large multi-state regions with utilities across the country and around the world		
Education	Master of Engineering in Engineering Management University of Idaho Moscow, ID Bachelor of Science in Electrical Engineering Iowa State University Ames, IA		
Experience	<i>02/11 to Present</i>	<i>Xcel Energy Services Inc.</i>	<i>Minneapolis, MN</i>
	Manager, Regulatory Administration (Transmission)		
	<ul style="list-style-type: none">▪ Manage department responsible for oversight of federal transmission tariff policy▪ Oversee company's compliance with federal transmission regulations; identify weaknesses and develop plans to correct those weaknesses▪ Represent MISO utilities in regional cost allocation discussions as vice-chair of cost allocation task force▪ Develop relationships with neighboring utilities to help company meet its transmission needs▪ Negotiate transmission interconnection terms with neighboring utilities to further company transmission policy goals▪ Coordinate Xcel Energy involvement in regional organizations▪ Facilitate development of company policy on FERC Orders and develop interventions in FERC dockets▪ Participate in due diligence review of new transmission projects▪ Vice-Chair, MISO RECB Task Force, 2011▪ Chair, MISO RECB Task Force, 2012		
	<i>04/09 to 02/11</i>	<i>Xcel Energy Services Inc.</i>	<i>Minneapolis, MN</i>
	Senior Engineer, Regional Transmission Planning		
	<ul style="list-style-type: none">▪ Coordinate involvement of Xcel Energy planning department in regional cost allocation discussions; develop guiding principles, determine how those principles apply in the framework of regional discussions, and negotiate with other stakeholders to find common ground▪ Coordinate participation of all Midwest ISO transmission owners in Planning Advisory Committee▪ Represent Xcel Energy in discussions for Upper Midwest Transmission Development Initiative (UMTDI)▪ Oversee Xcel Energy participation in Strategic Midwest Area Renewable Transmission (SMART) Study; review study models, shape study assumptions, develop study alternatives▪ Manage Xcel Energy participation in regional transmission "seams" issues, including interface with utilities in Canada, North Dakota, South Dakota, and Wisconsin▪ Assess FERC rulings and provide input from planning into Company and transmission owner interventions▪ Participate in development of regulatory strategy, draft testimony, and testify before Minnesota Public Utilities Commission in line route proceeding for multi-state 345 kV line▪ Draft and review filings and responses to Federal Energy Regulatory Commission matters related to transmission planning, system reliability, and energy markets		
	<i>02/06 to 04/09</i>	<i>Northern States Power Co. (Minnesota)</i>	<i>Minneapolis, MN</i>
	Transmission Planning Engineer		
	<ul style="list-style-type: none">▪ Oversee completion of 10-year plan for Xcel Energy's entire Wisconsin service territory. Coordinate and focus efforts of other engineers to complete this work		

- Manage study of upper Midwest region focused on identifying necessary electric transmission infrastructure to meet 2016 renewable energy standard milestone. Assist in developing necessary regulatory filings
- Lead the technical analysis and development of a 250-mile, 345 kV transmission line from Fargo, North Dakota to Monticello Generating Plant with capital expenditures of approximately \$500 million dollars and assist with necessary regulatory filings
- Guide projects to inclusion in Midwest ISO Transmission Expansion Plan (MTEP)
- Complete focused study to develop long-term planning solutions for two areas in Wisconsin; resulting projects represent approximately ten years and \$35 million worth of capital improvements
- Develop technical regulatory requirements for permit applications in Wisconsin
- Represent Xcel Energy at public meetings to increase awareness of and public involvement in the transmission planning process
- Review and respond to MRO Standards changes with respect to their effect on Xcel Energy
- Represent Xcel Energy to third-parties and the Midwest ISO during generation interconnection proceedings
- Analyze transmission projects being completed by outside utilities and their effect on Xcel Energy's transmission grid
- Perform analysis of requested transmission interconnections and report on their effect on the transmission network
- Coordinate implementation of projects with internal and external customers, including consultants, project managers, community members, and contractors
- Participate in review and markup of new regulations and interpretations of NERC and MRO system performance standards

07/04 to 02/06

Open Systems International, Inc.

Plymouth, MN

Power Systems Engineer

- Analyze customer requirements, created a product implementation plan for Power Systems applications on customer projects, took responsibility for implementing that plan
- Ensure the customer was thoroughly trained in the effective use of the applications they purchased
- Perform Factory Acceptance Testing with the customer
- Plan and implemented the proper commissioning strategy for the applications at a customer site after system installation, ensuring the complete implementation of the application products
- Act as a customer advocate by proposing software enhancements, monitoring software development, and advising OSI management of customer-desired features
- Manage development of Java-based power system applications by tracking and scheduling necessary software upgrades
- Create and verify power flow model for large, interconnected electrical utility
- Configure and tested a variety of applications, ranging from AGC to power flow (transmission and distribution) to geographical information systems
- Present training sessions and workshops to users both familiar with and new to OSI products
- Oversee implementation of software to integrate customer computer systems with Midwest ISO market dispatch program
- Review and comment on FERC filings related to Midwest ISO wholesale electricity market implementation

07/03 to 07/04

Pacific Gas & Electric Company

San Francisco, CA

Associate Transmission Planning Engineer

- Assess transmission grid weaknesses on ten-year horizon for four PG&E territories and

more than 5500 MW of customer load

- Assist with development of state permit filings for 20-mile urban 230 kV transmission line
- Review Nuclear Regulatory Commission voltage stability requirements and study long-term voltage stability in area around Diablo Canyon Nuclear Power Plant; recommend projects to address long-term deficiencies
- Correspond with California Independent System Operator (ISO) as point of contact for issues related to reliable system operation
- Propose and obtained funding for \$12 million 230/115 kV, 420 MVA transformer installation
- Present Transmission Grid Expansion Plan Proposal to a group consisting of ISO members, independent power producers, municipal utility representatives, engineering consultants, environmental groups, and consumer watch groups
- Conduct long-term voltage reliability study of Bay Area for various critical contingencies. Results of study were used to determine Bay Area transmission projects over ten year horizon.

03/01 to 08/07

P & E Engineering Co.

Carlisle, IA

Electrical Engineer

- Analyze FERC requirements on wind generation facilities and perform voltage and power flow analysis on 34.5kV and 24.9kV collector systems for wind farms in Iowa, North Dakota, Oklahoma, and New Mexico
- Model large fossil fuel power plant from 345kV level to 480V motor control centers to initiate coordination study for entire substation
- Conduct transmission planning study for municipal electrical utility resulting in suggested system enhancements and presentation to board of directors; analyze NERC standards, determine their applicability to customer system, and make project recommendations that ensure continued compliance with NERC standards

05/00 to 01/03

MidAmerican Energy Company

Urbandale, IA

Energy Management System Associate

- Prepare energy management system database for conversion to upgrades system
- Maintain energy management system at a high level of availability
- Develop and implement plan to update system mapboard showing real-time status of transmission lines and generators
- Review planned transmission system outages and participate in analysis of their applicability to MAPP and MRO standards
- Review recommended changes to NERC operational standards and requirements and analyze system's ability to meet those requirements

Honors & Associations

Eagle Scout Award Recipient

American Legion Boy's State Attendee

Member, Institute of Electrical and Electronics Engineers, 2003 to 2011

Senior Member, Institute of Electrical and Electronics Engineers, 2011 to Present

Author, "Conducting a Multi-Region Transmission Analysis", *IEEE Panel Presentation, 2011 General Meeting*