

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

<b>Citizens Energy Task Force</b>	)	
<b>Save Our Unique Lands</b>	)	
	)	
<b>Complainants</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. EL13-49-000</b>
	)	
<b>Midwest Reliability Organization</b>	)	
<b>Midwest Independent Transmission System</b>	)	
<b>Operator, Inc.</b>	)	
<b>Xcel Energy, Inc.</b>	)	
<b>Great River Energy</b>	)	
<b>Dairyland Power Cooperative</b>	)	
<b>Wisconsin Public Power Inc.</b>	)	
	)	
<b>Respondents</b>	)	

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

Pursuant to Rules 211, 212, and 214 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,<sup>1</sup> and the Commission’s March 1, 2013 Notice of Complaint, Southern Minnesota Municipal Power Agency (“SMMPA”) hereby files this Motion to Intervene and Comments in response to the March 1, 2013 complaint (“Complaint”) filed in the above-referenced docket by Citizens Energy Task Force and Save Our Unique Lands (“Complainants”) against Midwest Reliability Organization (“MRO”); Midwest Independent Transmission System Operator, Inc. (“MISO”); Xcel Energy, Inc. (“Xcel”); Great

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<sup>1</sup> 18 C.F.R. §§ 385.211, 385.212, 385.214 (2012).

River Energy (“GRE”); Dairyland Power Cooperative (“DPC”); and Wisconsin Public Power Inc. (“WPPI”) (collectively, “Respondents”).<sup>2</sup>

The Complaint concerns the CapX2020, 125-mile, 345 kV transmission line that will run from the Hampton Substation near the Twin Cities in Minnesota to the Briggs Road Substation near La Crosse, Wisconsin (“Twin Cities – La Crosse Project” or “Project”).<sup>3</sup> SMMPA has reviewed and supports the Answer being submitted by Xcel, GRE, DPC, and WPPI (collectively, “Respondent Utilities”) in response to the Complaint. SMMPA believes that the legal and policy arguments advanced by the Respondent Utilities require the Commission to dismiss the Complaint with prejudice. SMMPA, however, is submitting its own comments in this proceeding to ensure that the Commission is fully aware of the full scope of the regulatory and business implications of the Complaint on the Twin Cities – La Crosse Project’s participants and in the context of future transmission projects.

The Complaint fails as a matter of law and is inherently unreasonable as a matter of policy. Anything other than an outright dismissal of this Complaint discourages investment in and development of integral transmission projects. The Commission accordingly should dismiss the Complaint with prejudice.<sup>4</sup>

## **I. BACKGROUND**

### **A. SMMPA**

SMMPA is a nonprofit political subdivision of the State of Minnesota and a joint action agency comprised of 18 member municipalities in Minnesota that own and operate municipal

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<sup>2</sup> Complaint of Citizens Energy Task Force and Save Our Unique Lands, Docket No. EL13-49-000 (filed Mar. 1, 2013) (“Complaint”).

<sup>3</sup> The Project also consists of a new 161 kV line between the new North Rochester Substation (located between Pine Island and Zumbrota, Minnesota) and the existing Northern Hills Substation in Rochester, and an additional 161 kV line between the new North Rochester Substation and the existing Chester Substation (located east of Rochester).

electric systems.<sup>5</sup> SMMPA is a MISO Transmission Owner and a participant in the CapX2020 initiative, which is a joint regional transmission development effort comprised of 11 companies.<sup>6</sup> CapX2020 has proposed to build the Twin Cities – La Crosse Project to expand the electric transmission grid and ensure sustainable electric reliability in the Upper Midwest. SMMPA is one of five participants in the Twin Cities – La Crosse Project. The other four participants are Xcel, Dairyland Power Cooperative, Rochester Public Utilities, and WPPI Energy.

## **B. The Project**

Construction of the Twin Cities – La Crosse Project has commenced as of January 2013, and the Project is expected to be energized in 2015. SMMPA expects its total investment in the Project to be approximately \$64 million, which is 13 percent of the project’s total projected cost of \$500 million.

The ownership and cost allocation of the Twin Cities – La Crosse Project was approved in MISO Transmission and Expansion Plan 2008 (“MTEP08”).<sup>7</sup> In MTEP08, the Twin Cities – La Crosse Project was designated as a Baseline Reliability Project (“BRP”), which is a reliability network upgrade required to ensure that the MISO bulk transmission system complies with applicable national and regional reliability standards.<sup>8</sup> BRPs include projects needed to maintain

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<sup>4</sup> SMMPA notes that it is also a signatory to the Motion to Intervene and Comments being filed in this proceeding by the MISO Transmission owners.

<sup>5</sup> These members are: Austin Utilities, Blooming Prairie Public Utilities, Fairmont Public Utilities, Grand Marais Public Utilities, Lake City Utilities, Litchfield Public Utilities, Mora Municipal Utilities, New Prague Utilities Commission, North Branch Municipal Water & Light, Owatonna Public Utilities, Preston Public Utilities, Princeton Public Utilities, Redwood Falls Public Utilities, Rochester Public Utilities, Saint Peter Municipal Utilities, Spring Valley Public Utilities, Waseca Utilities, and Wells Public Utilities.

<sup>6</sup> The CapX2020 initiative consists of 11 transmission-owning utilities in Minnesota and the surrounding region. Besides SMMPA, these participants include Central Minnesota Municipal Power Agency, Dairyland Power Cooperative, Great River Energy, Minnesota Power, Minnkota Power Cooperative, Missouri River Energy Services, Otter Tail Power Company, Rochester Public Utilities, WPPI Energy, and Xcel.

<sup>7</sup> See MISO, MTEP08: THE MIDWEST ISO TRANSMISSION EXPANSION PLAN (Nov. 2008), available at <https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP08/MTEP08%20Report.pdf> (“MTEP08”). The MTEP process is outlined generally in Attachment FF of the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (“TEMT”).

<sup>8</sup> See *id.* at 6, 186–95; TEMT, Attachment FF, Section II.A.1.

reliability while accommodating needs of existing market participants and customers.<sup>9</sup> The Minnesota Public Utilities Commission (“MPUC”) approved the required Certificate of Necessity (“CON”) and routing permits for the Minnesota portion of the Project on May 22, 2009 and May 30, 2012, respectively.<sup>10</sup> The Public Service Commission of Wisconsin (“PSCW”) approved the required Certificate of Public Convenience and Necessity (“CPCN”) for the Wisconsin portion of the Project on May 30, 2012.<sup>11</sup>

The Twin Cities – La Crosse Project is one of seven pilot projects identified by the federal government’s interagency Rapid Response Team for Transmission (“RRTT”) program.<sup>12</sup> The RRTT program was created to ensure fast-track, streamlined processing of federal permitting and construction for certain transmission projects, while expediting interagency conflict and increasing interagency cooperation.<sup>13</sup> The Twin Cities – La Crosse Project was selected to be part of the RRTT program because it meets program criteria such as addressing reliability, providing capacity for new commercial scale renewable and clean energy sources, and exhibiting opportunities to expand or improve agency cooperation because of its unique permitting challenges and near-term critical milestones.<sup>14</sup>

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<sup>9</sup> TEMT, Attachment FF, Section II.A.1.

<sup>10</sup> *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Others for Certificates of Need for the CapX 345-kV Transmission Projects*, MINN. PUB. UTILS. COMM’N, Docket No. E-002/CN-06-1115, ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS (May 22, 2009); *In the Matter of Xcel Energy’s Application for a Route Permit for the CAPX 2020 Hampton-Rochester-La Crosse High Voltage Transmission Line*, MINN. PUB. UTILS. COMM’N, Docket No. E-002/TL-09-1448, ORDER ISSUING ROUTE PERMIT AS AMENDED (May 30, 2012).

<sup>11</sup> *Joint Application of Dairyland Power Cooperative, Northern States Power Company-Wisconsin, and Wisconsin Public Power, Inc., for Authority to Construct and Place in Service 345 kV Electric Transmission Lines and Electric Substation Facilities for the CapX Twin Cities-Rochester-La Crosse Project, Located in Buffalo, Trempealeau, and La Crosse Counties, Wisconsin*, PUB. SERV. COMM’N OF WIS., Docket No. 5-CE-136, FINAL DECISION (May 30, 2012).

<sup>12</sup> *Obama Administration Announces Job-Creating Grid Modernization Pilot Projects*, ENERGY.GOV, Oct. 5, 2011, <http://www.doe.gov/articles/obama-administration-announces-job-creating-grid-modernization-pilot-projects>.

<sup>13</sup> *See id.*

<sup>14</sup> *See* [Whitehouse.gov](http://www.whitehouse.gov/administration/eop/ceq/initiatives/interagency-rapid-response-team-for-transmission), Interagency Rapid Response Team for Transmission, <http://www.whitehouse.gov/administration/eop/ceq/initiatives/interagency-rapid-response-team-for-transmission> (last visited Mar. 12, 2013).

### **C. The Complaint**

Complainants request that the Commission: (1) order that the Twin Cities – La Crosse Project be “prohibited” because it allegedly contributes to and/or causes electrical system instability; (2) order that the MRO has neglected its duty to preserve system reliability related to the Project; and (3) issue an Order to Show Cause that MRO, MISO, and the Respondent Utilities demonstrate that the addition of the Twin Cities – La Crosse Project does not contribute to and/or cause system inability and demonstrate why MISO’s approval of the transmission project should not be revoked.<sup>15</sup> Complainants rely on a media press release and selective excerpts of certain transmission studies published after the Project’s approval by MISO in MTEP08, including an April 2009 press release issued by Xcel and GRE.<sup>16</sup> Among other things, Complainants argue that MISO has acted “negligently” because MISO did not take actions beyond those required by its tariff when reviewing the Project, including a purported duty “to investigate” an alleged risk that the Project posed reliability risks based on information not available to MISO during the MTEP process and/or on studies that were issued outside of the MTEP process.<sup>17</sup>

## **II. COMMUNICATIONS**

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

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<sup>15</sup> Complaint at 1–2.

<sup>16</sup> Complaint at 12–19.

<sup>17</sup> Complaint at 10.

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### **III. MOTION TO INTERVENE**

Under Rule 214, intervention is appropriate where “[t]he movant has . . . an interest which may be directly affected by the outcome of the proceeding.”<sup>18</sup> SMMPA is a MISO Transmission Owner and has invested substantial capital in the Twin Cities – La Crosse Project as a CapX2020 participant. As a participant in the Project, SMMPA may be directly affected by the outcome of this proceeding. Additionally, although the Complaint fails to name and serve SMMPA as a respondent, Complainants expressly intend to include as respondents all utilities and cooperatives “designated as applicants for the [Project].”<sup>19</sup> SMMPA is an “applicant” and has a direct interest in this case that cannot be adequately represented by any other party. For these reasons, the Commission should grant SMMPA’s Motion to Intervene in this proceeding.

### **IV. COMMENTS**

SMMPA supports the legal and policy arguments raised by the Respondent Utilities in response to the Complaint. SMMPA, however, is submitting its own comments in this

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<sup>18</sup> 18 C.F.R. § 385.214(b)(2)(ii) (2012).

proceeding to ensure that the Commission is aware of the full regulatory and business implications of Complainants' decision to inject an unreasonable level of uncertainty into this advanced stage of the Twin Cities – La Crosse Project. SMMPA and the Project participants have already completed the FERC-approved MISO MTEP process and have secured state approvals to build the Project. SMMPA and the other Project participants closed on their interests in the Project on December 21, 2012, and construction on the Project has commenced as of January 2013. Further delay in the Twin Cities – La Crosse Project at this time is entirely unreasonable from a business perspective and contrary to the Project's selection for the RRTT Program.<sup>20</sup> Granting the Complaint will only serve to create regulatory uncertainty and discourage future transmission investment.<sup>21</sup>

First, the Complaint requests that the Commission order MISO and the Project participants to demonstrate that the Project does not create instability and/or for the Commission to revoke MISO's approval of the Project in MTEP08.<sup>22</sup> The Complaint argues that MISO somehow acted negligently by not investigating potential evidence available outside of the MTEP process that purportedly may have resulted in MISO denying approval of the Twin Cities – La Crosse Project.<sup>23</sup> The Complaint, however, does not identify the tariff authority pursuant to which such an investigation should have taken place. Further, the Complaint does not establish

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<sup>19</sup> Complaint at 4.

<sup>20</sup> See *supra* notes 12–14.

<sup>21</sup> SMMPA notes that in addition to filing a Complaint that is without merit and inherently unreasonable, Complainants have failed to satisfy the Commission's rule requiring a copy of the Complaint to be served on all persons "the complainant reasonably knows may be expected to be affected by the complaint." 18 C.F.R. § 385.206(c) (2012). Complainant has failed to name or serve SMMPA with the Complaint. As a direct CapX2020 participant in the Twin Cities – La Crosse Project, SMMPA is clearly a party that could reasonably be impacted by an order prohibiting or stalling the Project. SMMPA's participation in the Project is public knowledge and well-known to Complainants. SMMPA has invested substantial time and capital into the Project and thus may reasonably be "expected to be affected" by the Complaint. Complainants' failure to serve SMMPA renders the complaint procedurally deficient and subject to dismissal on procedural grounds.

<sup>22</sup> Complaint at 1–2.

<sup>23</sup> Complaint at 10.

that MISO violated any tariff obligation or process when reviewing the Twin Cities – La Crosse Project in MTEP08.

The MTEP employs a “top down, bottom up,” forward-looking, iterative transmission planning approach and is specifically designed to ensure that the MISO network operates reliably and satisfies the needs of the competitive bulk power market. The annual MTEP analysis and planning process is conducted collaboratively with MISO Transmission Owners and approved by the MISO Board of Directors. Neither the MISO TOA nor the MISO Tariff includes an expressly stated process to re-evaluate a prior MTEP decision, let alone a decision that was made four years earlier.<sup>24</sup> Therefore, even assuming that MISO has a duty to investigate information available outside of MTEP (which it does not), no tariff process is in place for MISO to reopen an already approved MTEP based on information such as the press release or studies cited in the Complaint. FERC has approved the MTEP process, and any argument that MISO has a duty to investigate information outside of the MTEP process would require a tariff revision that only can be effectuated prospectively,<sup>25</sup> and, even then, not to the detriment of previously approved MTEP projects. The Commission should reject any requested relief based on an argument that MISO had a duty to investigation (or take any other action) outside of the MTEP process when approving the Twin Cities – La Crosse Project.

Second, SMMPA and the other Project participants reasonably relied on the finality of the MTEP process and the relevant MPUC and WPSC approvals. The Project participants’ reasonable expectations should not be undermined by the Complaint. The Commission should

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<sup>24</sup> See TEMT, Attachment FF, Section I.A.1.b.

<sup>25</sup> See, e.g., *NEPCO Mun. Rate Comm’n v. FERC*, 668 F.2d 1327, 1343 (D.C. Cir. 1981), *cert. denied*, 457 U.S. 1117 (1982) (quoting *Montana-Dakota Utils. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251 (1951)) (filed rate doctrine); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the Cal. Indep. Sys. Operator Corp. and the Cal. Power Exch. Corp.*, Docket No. EL00-95-202, 127 FERC ¶ 61,191, 61,867 n.20 (2009) (citing *Associated Gas Distribs. V. FERC*, 898 F.2d 809, 810 (D.C. Cir. 1990)) (rule against retroactive ratemaking).



promote a regulatory environment that allows sufficient regulatory certainty for large infrastructure projects to be developed. Any other action by the Commission besides dismissal of this Complaint may encourage a regulatory environment that allows third parties to sit on the sidelines for years and then, once a viable project has closed and construction has commenced, bring meritless claims. The participants should not be held hostage by the regulatory uncertainty created by the timing of this Complaint.

#### IV. CONCLUSION

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

Respectfully submitted,

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Attorneys for SMMPA

March 21, 2013

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this 21st day of March, 2013, served the foregoing Motion to Intervene and Comments of Southern Minnesota Municipal Power Agency upon each person designated on the official service list compiled by the Secretary of the Commission in this proceeding.

/s/ Joseph Hall  
Joseph Hall