

142FERC ¶ 61,096  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

ITC Midwest, LLC

Docket No. EL13-13-000

v.

American Transmission Company, LLC

ORDER GRANTING COMPLAINT

(Issued February 7, 2013)

1. On October 24, 2012, pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> and Rule 206 of the Commission's Rules of Practice and Procedure,<sup>2</sup> ITC Midwest, LLC (ITC Midwest) filed a complaint (Complaint) against American Transmission Company, LLC (American Transmission). This Complaint concerns the interpretation and implementation of the Midwest Independent Transmission System Operator, Inc.'s (MISO) Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (Transmission Owners Agreement) and MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). As discussed below, the Commission grants the relief requested in the Complaint.

**I. Background**

2. ITC Midwest, a wholly-owned subsidiary of ITC Holdings Corp., owns more than 6,800 miles of transmission lines and 208 electric transmission substations in Iowa, Minnesota, Illinois, and Missouri, and maintains operating locations at Dubuque, Iowa City and Perry, Iowa, and at Albert Lea and Lakefield, Minnesota. ITC Midwest is a

---

<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> 18 C.F.R. § 385.206 (2012).

transmission owning member of MISO and a signatory of the Transmission Owners Agreement.

3. American Transmission is a Wisconsin limited liability company that owns, controls, and operates more than 9,400 miles of transmission lines in the states of Wisconsin, Illinois, Minnesota, and Michigan. American Transmission is also a transmission-owning member of MISO and a signatory to the Transmission Owners Agreement.

## II. Complaint

4. ITC Midwest opposes American Transmission's claim that, due to proposed changes made to MISO's Transmission Expansion Plan (MTEP) for 2012 to a proposed 136 mile, 345 kV electric transmission line connecting American Transmission's Cardinal substation in southwestern Wisconsin with ITC Midwest's Dubuque substation in Iowa (Dubuque – Cardinal Line), American Transmission is now entitled to ownership and construction of the entirety of the facilities interconnecting American Transmission's Cardinal substation with the Montfort Substation. As part of MISO's quarterly update process, American Transmission proposed that the Dubuque – Cardinal Line be modified such that the Spring Green Substation be reclassified as the Montfort Substation, which is part of American Transmission's existing system, thereby changing the point of interconnection between American Transmission's and ITC Midwest's facilities for purposes of the Transmission Owners Agreement. First, ITC Midwest requests that the Commission find that American Transmission has not complied with (a) the Tariff; (b) the Transmission Owners Agreement; and (c) the MISO designations for Multi-Value Project (MVP)<sup>3</sup> Project 5 (with the identification number 3127), also known as the Dubuque – Cardinal Line as specified in Appendix A of the 2011 MTEP. Second, ITC Midwest requests that the Commission direct American Transmission to enter into negotiations with ITC Midwest to develop final terms and conditions for the shared ownership and construction of the Dubuque – Cardinal Line in a manner that is compliant with the Tariff and Transmission Owners Agreement.

---

<sup>3</sup> MVPs are a category of transmission projects that enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws and/or address multiple economic issues affecting multiple transmission zones, and/or address at least one economic issue affecting multiple transmission zones and one reliability issue. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010), *order on reh'g*, 137 FERC ¶ 61,074 (2011).

5. ITC Midwest contends that the Transmission Owners Agreement and Tariff permit ITC Midwest to construct and own 50 percent of the Dubuque – Cardinal Line.<sup>4</sup> ITC Midwest states that the MISO Board of Directors (MISO Board) approved the Dubuque – Cardinal Line as an MVP on December 8, 2011 as part of the 2011 MTEP and designated both ITC Midwest and American Transmission as joint owners. ITC Midwest states that American Transmission disputes MISO’s designation and has refused to negotiate a joint development agreement with ITC Midwest, despite ITC Midwest’s attempts to coordinate activities with American Transmission. ITC Midwest asserts that American Transmission’s activities are contrary to both the Transmission Owners Agreement and MISO’s designation authority under its Tariff.

6. ITC Midwest argues that, based on the language of section VI of Appendix B of the Transmission Owners Agreement, both American Transmission and ITC Midwest have investment and ownership rights to participate on an equal basis in the 345 kV transmission projects that will interconnect American Transmission’s Cardinal substation with ITC Midwest’s substation in Dubuque. Appendix B, section VI of the Transmission Owners Agreement states:

Ownership and the responsibilities to construct facilities which are connected between two (2) or more Owners’ facilities belong equally to each Owner, unless such Owners otherwise agree, and the responsibility for maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners.<sup>5</sup>

7. ITC Midwest asserts that this Complaint is directly related to two previous Commission orders. The first is a complaint filed by Xcel Energy Services, Inc. (Xcel) against American Transmission in Docket No. EL12-28-000.<sup>6</sup> ITC Midwest states that in that complaint, Xcel argued that American Transmission had failed to comply with the Tariff and Transmission Owners Agreement by not allowing Xcel to own and construct 50 percent of the La Crosse – Madison Line, which is a proposed 345 kV electric transmission line connecting Xcel’s facilities near La Crosse, Wisconsin, with American

---

<sup>4</sup> Complaint at 18-20.

<sup>5</sup> Transmission Owners Agreement, at App. B, § VI. Both ITC Midwest and American Transmission frequently refer to Appendix B, section VI of the Transmission Owners Agreement as the “Share Equally Provision” throughout their pleadings.

<sup>6</sup> *Xcel Energy Servs. Inc. v. Am. Transmission Co., LLC*, 140 FERC ¶ 61,058 (2012), *reh’g pending* (*Xcel Order*).

Transmission's facilities near Madison, Wisconsin.<sup>7</sup> ITC Midwest states that the Commission granted the complaint and directed American Transmission to enter into negotiations with Xcel to develop final terms and conditions for the shared ownership and construction of the La Crosse – Madison Line.<sup>8</sup>

8. The second order, ITC Midwest states, stems from a complaint filed by Pioneer Transmission, LLC (Pioneer) against Northern Indiana Public Service Company (Northern Indiana) and MISO in Docket No. EL12-24-000.<sup>9</sup> ITC Midwest states that in that complaint, Pioneer argued that, contrary to Northern Indiana's position, the Tariff and Transmission Owners Agreement did not allow Northern Indiana to own and construct 50 percent of the Reynolds – Greentown Line, which is a proposed 765 kV electric transmission line connecting Duke's Greentown Substation, with Northern Indiana's Reynolds Substation.<sup>10</sup> ITC Midwest states that Pioneer requested that the Commission find that Northern Indiana had no "right of first refusal" (ROFR) with respect to ownership or construction of the Reynolds – Greentown Line.<sup>11</sup> ITC Midwest states that the Commission denied the complaint and found that MISO had exercised its designation authority in accordance with Appendix B, section VI of the Transmission Owners Agreement and the Tariff in designating Northern Indiana and Duke as the parties responsible for the Reynolds – Greentown Line.<sup>12</sup>

9. ITC Midwest contends that, in both orders, the Commission found that the plain language of Appendix B, section VI of the Transmission Owners Agreement was unambiguous as to ownership and the responsibility of owners to build facilities and acts to establish a ROFR for transmission owners.<sup>13</sup> ITC Midwest also contends that the Commission acknowledged in these orders that though the elimination of a federal ROFR

---

<sup>7</sup> *Id.* PP 4-10.

<sup>8</sup> *Id.* P 1.

<sup>9</sup> *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057 (2012), *reh'g pending (Pioneer Order)*.

<sup>10</sup> *Id.* PP 6-16.

<sup>11</sup> *Id.* P 1.

<sup>12</sup> *Id.* P 99.

<sup>13</sup> *Xcel Order*, 140 FERC ¶ 61,058 at PP 59, 64; *Pioneer Order*, 140 FERC ¶ 61,057 at P 97.

was required pursuant to Order No. 1000,<sup>14</sup> this would only be accomplished on a prospective basis upon Commission acceptance of the compliance filings due on October 11, 2012.<sup>15</sup> Thus, ITC Midwest states that in the *Xcel Order*, the Commission determined that Appendix B, section VI of the Transmission Owners Agreement requires American Transmission and Xcel to “share responsibility for the La Crosse – Madison Line,” and that it was therefore appropriate for MISO to designate both American Transmission and Xcel “as the parties responsible” for developing that line.<sup>16</sup> ITC Midwest states that in the *Pioneer Order*, the Commission determined that under Appendix B, section VI of the Transmission Owners Agreement, Northern Indiana and Duke were required to share ownership and the responsibilities to construct the facilities comprising the Reynolds – Greentown Line because the line connected Duke’s Greentown Substation with Northern Indiana’s Reynolds Substation.<sup>17</sup>

10. ITC Midwest contends that under Appendix B, section VI of the Transmission Owners Agreement, as interpreted and applied by the Commission in the *Xcel Order* and the *Pioneer Order*, ITC Midwest and American Transmission are each entitled to own and construct 50 percent of the facilities comprising the Dubuque – Cardinal Line.<sup>18</sup> ITC Midwest asserts that the *Xcel Order* and *Pioneer Order* established a three-part test to determine the applicability of Appendix B, section VI of the Transmission Owners Agreement.<sup>19</sup> First, both parties must be “owners” under the Transmission Owners Agreement.<sup>20</sup> Here, both American Transmission and ITC Midwest are signatories to the Transmission Owners Agreement. Second, the project must connect two or more

---

<sup>14</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

<sup>15</sup> *Xcel Order*, 140 FERC ¶ 61,058 at P 66; *Pioneer Order*, 140 FERC ¶ 61,057 at P 103.

<sup>16</sup> *Xcel Order*, 140 FERC ¶ 61,058 at P 67. American Transmission has filed a timely request for rehearing and motion for a stay of the *Xcel Order*, currently pending before the Commission.

<sup>17</sup> *Pioneer Order*, 140 FERC ¶ 61,057 at P 96.

<sup>18</sup> Complaint at 20-23.

<sup>19</sup> *Id.* at 22.

<sup>20</sup> *Id.*

owners' facilities.<sup>21</sup> ITC Midwest states that there is no dispute that the Dubuque – Cardinal Line connects ITC Midwest's facilities in Iowa with American Transmission's facilities in Wisconsin. Third, MISO must have exercised its designation authority in accordance with the Tariff and Appendix B, section VI of the Transmission Owners Agreement.<sup>22</sup> ITC Midwest argues that "MISO has unambiguously made such a designation."<sup>23</sup> In the 2011 MTEP, MISO approved the Dubuque – Cardinal Line as an MVP and listed ITC Midwest and American Transmission as responsible transmission owners on Appendix A of the 2011 MTEP report.<sup>24</sup> ITC Midwest concludes that all three prongs of the test are met and that Appendix B, section VI of the Transmission Owners Agreement must therefore be applied to the Dubuque – Cardinal Line.

11. ITC Midwest states that, despite American Transmission's argument to the contrary, the Commission should not wait to process the Complaint until the Commission has acted on American Transmission's rehearing request of the *Xcel Order*.<sup>25</sup> ITC Midwest asserts that delay in processing the Complaint by the Commission will prejudice ITC Midwest's development of the Dubuque – Cardinal Line. First, ITC Midwest contends that under section 313(c) of the FPA, Commission orders, such as the *Xcel Order*, are not stayed during rehearing unless the Commission has made such a determination.<sup>26</sup> ITC Midwest states that the Commission has not determined to stay the *Xcel Order*. Second, ITC Midwest states that the Commission has recently found that, under section 313(c) of the FPA, in order for the effectiveness of a Commission order to be held in abeyance pending rehearing, a party must specifically request and be granted a

---

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See Midwest Indep. Transmission Sys. Operator, Inc., Midwest ISO Transmission Plan 2011 (2011 MTEP), Appendix A, Project Tab at line 142, *available at*: <https://www.midwestiso.org/Planning/TransmissionExpansionPlanning/Pages/MTEP11.aspx>. The 2011 MTEP specifies that the Dubuque – Cardinal Line is actually a subset of the North La Crosse – North Madison – Cardinal – Spring Green – Dubuque area 345 kV Project. *Id.*

<sup>25</sup> Complaint at 23-26.

<sup>26</sup> *Id.* at 23. See 16 U.S.C. § 8251.

stay.<sup>27</sup> ITC Midwest argues that such a stay is not warranted in this case, and that stays can only be granted if third parties are unharmed.<sup>28</sup> ITC Midwest states that if the Commission delays action in this proceeding, then ITC Midwest and regional customers will be harmed because development of a needed regional grid facility will be delayed.

12. ITC Midwest asserts that American Transmission's rehearing request regarding the *Xcel Order* is without merit.<sup>29</sup> ITC Midwest argues that American Transmission's rehearing request represents a collateral attack on Order No. 1000.<sup>30</sup> Specifically, ITC Midwest contends that the *Xcel Order* is consistent with Order No. 1000 because, though Order No. 1000 eliminated a federal ROFR, it did so only on a prospective basis. In addition, ITC Midwest states that the sponsor-right approach,<sup>31</sup> which American Transmission advocates in its rehearing request of the *Xcel Order*, is not supported by MISO and has been expressly rejected by the Commission in Order No. 1000.<sup>32</sup> ITC Midwest also contends that American Transmission offers no reasoned basis for the

---

<sup>27</sup> *Id.* (citing *Black Oak Energy, L.L.C., et al.*, 140 FERC ¶ 61,003 (2012)).

<sup>28</sup> *Id.* at 24 (citing *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n.*, 259 F.2d 921 (D.C. Cir. 1958)).

<sup>29</sup> *Id.* at 26-37.

<sup>30</sup> *Id.* at 26-29.

<sup>31</sup> The sponsor-rights approach dictates that a project's developer and sponsor is given the exclusive right to construct and own a particular project.

<sup>32</sup> *Id.* at 29-31. Specifically, Order No. 1000 states:

With regard to ongoing sponsorship rights, the Commission concludes on balance that granting transmission developers an ongoing right to build sponsored transmission projects could adversely impact the transmission planning process, potentially leading to transmission developers submitting a multitude of possible transmission projects simply to acquire future development rights. The Commission appreciates that not granting such a right causes some risk for transmission developers in disclosing their transmission projects for consideration in the regional transmission planning process. That risk is outweighed, however, by the potentially negative impacts such a rule could have on regional transmission planning.

Commission to overturn its determination in the *Xcel Order* that Appendix B, section VI of the Transmission Owners Agreement is unambiguous as to ownership and the responsibility of owners to build facilities.<sup>33</sup> Lastly, ITC Midwest contends that American Transmission's recent complaint in Docket No. EL13-9-000, in which American Transmission seeks to own and construct 50 percent of a 345 kV transmission project connecting the Hampton Substation near the Twin Cities area in Minnesota with the proposed Briggs Substation near La Crosse, Wisconsin (Twin Cities – La Crosse Line), and in which MISO designated Xcel, Dairyland Power Cooperative (Dairyland), WPPI Energy, Rochester Public Utilities, and Southern Minnesota Municipal Power Agency (Southern Minnesota) as joint owners in the 2008 MTEP, actually supports ITC Midwest's position in the present case. ITC Midwest asserts that in Docket No. EL13-9-000, American Transmission seeks development rights to a project approved in the 2008 MTEP, while at the same time in the present case, American Transmission ignores MISO's ownership designation for the Dubuque – Cardinal Line as set forth in the 2011 MTEP. ITC Midwest contends that American Transmission's position constitutes an abuse of the provisions of the Transmission Owners Agreement.

13. ITC Midwest states that, shortly after the *Xcel Order* and *Pioneer Order* were issued, ITC Midwest believed that it had reached an agreement with American Transmission regarding ownership of the Dubuque – Cardinal Line.<sup>34</sup> However, ITC Midwest asserts that American Transmission later indicated that it would be premature to sign any agreement with ITC Midwest while American Transmission's rehearing request of the *Xcel Order* was pending. Furthermore, according to ITC Midwest, American Transmission later rejected ITC Midwest's offer, as set forth in a proposed Memorandum of Understanding (MOU), that the two parties each own a portion of the Dubuque – Cardinal Line equal to 50 percent of the overall project investment. ITC Midwest states that American Transmission provided ITC Midwest with a counter proposal that was well below the 50-50 allocation called for by Appendix B, section VI of the Transmission Owners Agreement. ITC Midwest suggests that, based on its own experience and given American Transmission's positions and requests for delay in Docket No. EL12-28-000, ITC Midwest does not believe that American Transmission will enter into a project agreement in accordance with the express terms of the Transmission Owners Agreement without Commission action on this Complaint.<sup>35</sup>

---

<sup>33</sup> *Id.* at 31-34.

<sup>34</sup> Complaint at 17.

<sup>35</sup> *Id.* at 18.

14. ITC Midwest requests that the Commission grant its requested relief on an expedited basis such that Commission action is taken no later than December 24, 2012.<sup>36</sup> ITC Midwest further asserts that although American Transmission asks the Commission to refrain from processing the instant complaint until the Commission has acted upon American Transmission's rehearing request of the *Xcel Order*, the Commission should not delay processing this Complaint as this delay would impede ITC Midwest's development of the needed project.

### **III. Notice and Responsive Pleadings**

15. Notice of this Complaint was published in the Federal Register, 77 *Fed. Reg.* 66,461 (2012), with protests and interventions due on or before November 14, 2012.

16. Timely motions to intervene were filed by: Wisconsin Public Service Corp. and Upper Peninsula Power Corp.; MISO; Iowa Office of Consumer Advocate; Dairyland; Southern Minnesota, Alliant Energy Corporate Services, Inc.; and Wisconsin Electric Power Company. The MISO Transmission Owners<sup>37</sup> filed a timely motion to intervene and comments. The Iowa Utilities Board and Public Service Commission of Wisconsin (Wisconsin Commission) filed notices of intervention.

17. On November 14, 2012, American Transmission filed an answer to the Complaint. On November 15, 2012, American Transmission filed a letter and revised answer to the Complaint. On November 19, 2012, the Wisconsin Commission filed a request for leave to file comments and comments. On November 29, 2012, ITC Midwest filed an answer

---

<sup>36</sup> *Id.* at 40.

<sup>37</sup> The MISO Transmission Owners for this filing consist of Ameren Services Company, as agent for Union Electricity Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Great River Energy, Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy, Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

to American Transmission's answer. On December 14, 2012, American Transmission filed an answer to ITC Midwest's answer. On December 19, 2012, ITC Midwest filed a motion to lodge MISO's 2012 MTEP, which was approved by the MISO Board on December 13, 2012. On January 4, 2013, American Transmission filed an answer to ITC Midwest's motion to lodge MISO's 2012 MTEP.

**A. American Transmission's Answer**

18. American Transmission argues that ITC Midwest has misidentified the facilities at issue here, and therefore if the Commission decides to apply Appendix B, section VI of the Transmission Owners Agreement in the same manner as it did in the *Xcel Order* and the *Pioneer Order*, the provision should be applied to all of the 345 kV transmission facilities that will connect American Transmission's existing transmission facilities in southwestern Wisconsin with ITC Midwest's existing transmission facilities in northeastern Iowa, not just a subset of such facilities identified in the Complaint. American Transmission argues that if the Commission decides to grant the Complaint, then the Commission should not apply Appendix B, section VI of the Transmission Owners Agreement to the facilities nominally identified by ITC Midwest, but instead to the new MISO-approved facilities submitted in the 2012 MTEP that will actually interconnect the existing facilities of ITC Midwest and the existing facilities of American Transmission.<sup>38</sup>

19. According to American Transmission, the Complaint ignores changes made to the 2011 MTEP to the facilities comprising the Dubuque – Cardinal Line. American Transmission states that these changes will reroute the project and, most importantly, change the eastern point of interconnection of the new facilities with American Transmission's existing facilities for purposes of Appendix B, section VI of the Transmission Owners Agreement. Specifically, American Transmission argues that the Spring Green Substation, which, according to the 2011 MTEP, is part of the Dubuque – Cardinal Line and is to undergo modifications, has been reclassified as the Montfort substation, thus resulting in the Dubuque – Cardinal Line being split into two lines: the Montfort – Dubuque Line and the Montfort – Cardinal Line. According to American Transmission, the new Montfort 345-to-138 kV Substation will connect to American Transmission's existing Eden Substation, allowing for a step-down conversion of 138 kV to enable power to be delivered to American Transmission's existing 138 kV system. American Transmission argues that this material change means that Appendix B, section VI of the Transmission Owners Agreement should only apply to new transmission

---

<sup>38</sup> American Transmission Answer at 3-4.

facilities that run west from American Transmission's Montfort Substation (i.e., the Montfort – Dubuque Line segment).<sup>39</sup>

20. American Transmission argues that applying Appendix B, section VI of the Transmission Owners Agreement to the Montfort – Dubuque Line segment only is consistent with the Commission's determination in the *Pioneer Order*, which American Transmission contends holds that a new substation to be located adjacent to an existing substation should be treated as part of that owner's existing system.<sup>40</sup> In the *Pioneer Order*, American Transmission contends, Northern Indiana sought equal ownership of a transmission line being developed by Pioneer based on MISO's determination in the 2011 MTEP that the project should run to Northern Indiana's New Reynolds Substation, which was adjacent to the existing Reynolds Substation. American Transmission contends that the relationship between the New Reynolds Substation and the existing Reynolds Substation is similar to that of the Eden Substation and the Montfort Substation in the present case. Thus, applying the Commission's rationale in the *Pioneer Order* to the facts here, American Transmission urges the Commission to determine that the facilities to which Appendix B, section VI of the Transmission Owners Agreement applies begin at the Montfort Substation, not at the Cardinal Substation. American Transmission states that it should be the sole owner of the facilities from the Cardinal Substation to the Montfort Substation.<sup>41</sup>

21. American Transmission argues that ITC Midwest mischaracterizes the southwest elements of the Dubuque – Cardinal Line as well. According to American Transmission, ITC Midwest argues that the portion of the Dubuque – Cardinal Line subject to Appendix B, section VI of the Transmission Owners Agreement should be considered to end at the proposed Dubuque Substation. American Transmission states that the Dubuque Substation is a new substation to be constructed as part of Project 3127, and further, that ITC Midwest does not currently own or operate any transmission facilities in the vicinity of the planned Dubuque Substation. American Transmission explains that the to-be-constructed Dubuque Substation will be in the middle of a transmission line that ITC Midwest will construct to connect ITC Midwest's Hazleton Substation with its Salem Substation (Salem – Hazleton Line). American Transmission argues that Appendix B, section VI of the Transmission Owners Agreement should therefore include the new

---

<sup>39</sup> *Id.* at 6-10.

<sup>40</sup> *Id.* at 10-12.

<sup>41</sup> *Id.* at 10-12.

facilities from Hazleton to Dubuque, in addition to the facilities making up the Montfort – Dubuque Line.<sup>42</sup>

22. American Transmission argues that, alternatively, ITC Midwest's complaint should be denied because it relies on an unjust and unreasonable interpretation of Appendix B, section VI of the Transmission Owners Agreement. American Transmission states that, as the Commission noted in the *Xcel Order* and the *Pioneer Order*, Appendix B, section VI of the Transmission Owners Agreement constitutes a ROFR, and ROFRs were found to be unjust and unreasonable in Order No. 1000.<sup>43</sup> American Transmission states that the Commission ruled, nonetheless, that the ROFR should be enforced in the *Xcel Order*.<sup>44</sup> American Transmission states that it is currently seeking rehearing of the *Xcel Order*, and states that it maintains that Appendix B, section VI of the Transmission Owners Agreement should not be enforced as a ROFR. American Transmission argues that the courts have consistently ruled that the FPA requires the Commission to fashion a remedy once it determines that a rate or practice has become unjust and unreasonable, and that therefore, the Commission is without authority to enforce and apply Appendix B, section VI of the Transmission Owners Agreement once it has found it to be unjust and unreasonable.<sup>45</sup>

23. American Transmission also argues that, contrary to ITC Midwest's contention, American Transmission did attempt to negotiate a MOU with ITC Midwest. American Transmission states that it has not reached an agreement with ITC Midwest on which facilities will be covered by the MOU. American Transmission also states that it has indicated that the final resolution of the parties' respective ownership rights should await Commission action on rehearing of the *Xcel Order*. According to American Transmission, the parties' disagreement over ownership of the facilities will not delay their development because American Transmission has been working diligently with stakeholders to obtain the necessary permits and approvals required to construct and operate the transmission facilities. Finally, American Transmission states that it agrees with ITC Midwest's request that the Commission act expeditiously to resolve the ownership issues raised in ITC Midwest's complaint.<sup>46</sup>

---

<sup>42</sup> *Id.* at 12-13.

<sup>43</sup> *Id.* (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 284).

<sup>44</sup> *Id.* (citing *Xcel Order*, 140 FERC ¶ 61,058 at P 64).

<sup>45</sup> *Id.* at 14-15.

<sup>46</sup> *Id.* at 16-18.

**B. Comments and Responses**

24. The Wisconsin Commission states that the Complaint is identical in all respects to the complaint filed in Docket No. EL12-28-000, which resulted in the *Xcel Order*. Wisconsin Commission therefore incorporates its comments from that case. Particularly, the Wisconsin Commission focused its comments on a state-federal jurisdiction question that it asserts is an important part of this dispute. The Wisconsin Commission posits that neither ITC Midwest nor American Transmission answer the question of what exactly the term “ownership” in Appendix B of the Transmission Owners Agreement refers to. The Wisconsin Commission submits that at least one interpretation of “ownership” would be incorrect—namely that “ownership” would mean title ownership of the physical transmission line. The Wisconsin Commission explains that this is because title ownership of the physical asset in Wisconsin initially derives from its grant of a certificate of public convenience and necessity (CPCN) under the Wisconsin statute, followed by consummation of construction according to the CPCN by the authorized applicant(s);<sup>47</sup> and therefore that certificated applicant(s) is the owner of the physical transmission line. Thus, according to the Wisconsin Commission, it follows that during the planning stage at issue in this Complaint, the project is still intangible and simply a plan or opportunity. Accordingly, the Wisconsin Commission urges the Commission to strictly adhere to the text of the Transmission Owners Agreement in order to resolve this dispute while acknowledging that Wisconsin state law controls the ownership of the Dubuque – Cardinal Line as a physical asset under the applicable state CPCN process.<sup>48</sup>

25. The MISO Transmission Owners state that, as a group, they take no position with respect to ITC Midwest’s or American Transmission’s claims of responsibility for the Dubuque – Cardinal or any other claims made in the Complaint.<sup>49</sup> The MISO Transmission Owners do, however, submit comments to clarify two points. First, the MISO Transmission Owners state that the Transmission Owners Agreement provides that facilities that are connected between two or more transmission owners will belong equally to each transmission owner.<sup>50</sup> Second, the MISO Transmission Owners assert

---

<sup>47</sup> Wisconsin Commission Comments at 3.

<sup>48</sup> *Id.* at 3-4.

<sup>49</sup> MISO Transmission Owners Comments at 3.

<sup>50</sup> *Id.* at 6-8.

that the Tariff gives MISO the authority to designate the entity responsible for ownership and construction of a project.<sup>51</sup>

**C. ITC Midwest's Answer to American Transmission's Answer**

26. ITC Midwest argues that American Transmission's claim that the Dubuque – Cardinal Line has been altered is materially incorrect. ITC Midwest states that the “important changes that were made to the facilities that comprise Project 3127 in [the 2011 MTEP],” including the interconnection at the proposed Montfort Substation, were actually rejected by the MISO planning board in the 2012 MTEP.<sup>52</sup> Therefore, the Commission must rely on the original approved regional plan for the project in the 2011 MTEP and reaffirmed in the 2012 MTEP. Furthermore, Appendix A in the 2012 MTEP lists both ITC Midwest and American Transmission as owners of Project 3127 and contains no reference to the proposed Montfort substation.<sup>53</sup>

27. ITC Midwest asserts that, even if Project 3127 had been modified as proposed by American Transmission, it would not alter the development rights established in the prior MTEP planning cycle.<sup>54</sup> ITC Midwest contends that if the MISO Board approves a particular project, the project is listed in MTEP Appendix A and the responsible transmission owner or owners have an immediate obligation to begin planning and construction. ITC Midwest states that American Transmission does not challenge in its answer the designations made in the 2011 MTEP. Furthermore, ITC Midwest argues that American Transmission's remedy to the project designation would have been by means of a FPA section 206 complaint to challenge the outcome of the 2011 planning cycle.<sup>55</sup> ITC Midwest states that the Commission should make clear that MISO is the planning authority and decisions by MISO cannot be undone by unilateral action of an interested developer. ITC Midwest states that to acknowledge American Transmission's claim would allow development rights for any project to be unilaterally re-assigned by

---

<sup>51</sup> *Id.* at 8-9.

<sup>52</sup> ITC Midwest Answer at 3.

<sup>53</sup> Midwest Indep. Transmission Sys. Operator, Inc., Midwest ISO Transmission Plan 2012 (2012 MTEP), Appendix A, Facility Tab at lines 524-32, *available at*: <https://www.midwestiso.org/Planning/TransmissionExpansionPlanning/Pages/MTEP12.a.spx>.

<sup>54</sup> ITC Midwest Answer at 9-13.

<sup>55</sup> *Id.* at 11.

proposing alterations to projects that interconnect with other projects already under construction.

28. ITC Midwest states that, pursuant to the terms of the Transmission Owners Agreement and Tariff, development responsibilities are fixed within a specific MTEP cycle and are not subject to reopening in later MTEP cycles.<sup>56</sup> Specifically, ITC Midwest cites section V of Attachment FF to the Tariff, which requires that in each MTEP, MISO shall designate one or more transmission owners to construct, own and/or finance each recommended project.<sup>57</sup> ITC Midwest states that the provision does not provide MISO with authority to revisit a project designation in a subsequent MTEP. Accordingly, ITC Midwest argues that even if MISO had approved the proposed changes, it would not have changed the previously awarded development rights.

29. ITC Midwest further argues that American Transmission is attempting to graft onto the Dubuque – Cardinal Line a separate project, which was approved in the 2008 MTEP cycle, in order to obtain development rights to it as well.<sup>58</sup> ITC Midwest asserts that the Salem – Hazleton Line, which includes the new ITC Midwest facilities from Hazleton to Dubuque that American Transmission argues in its answer should also be subject to Appendix B, section VI of the Transmission Owners Agreement, was approved by the MISO Board in 2008 and included in the Appendix A of the 2008 MTEP report. ITC Midwest argues that American Transmission did not protest the project designation of this report either. ITC Midwest states that the Salem – Hazleton Line is approximately 75 percent constructed and that American Transmission’s position that development rights to a project can be subject to modification based on the integration of new facilities approved in a later planning cycle is without merit.

30. In addition, ITC Midwest states that the Commission should reject American Transmission’s attempt to reargue its rehearing request of the *Xcel Order*.<sup>59</sup> ITC Midwest states that American Transmission, in its answer, contends that the ROFR in the Transmission Owners Agreement should not have been enforced in the *Xcel Order*.<sup>60</sup> ITC Midwest asserts that American Transmission’s position is without merit and should

---

<sup>56</sup> *Id.* at 12.

<sup>57</sup> *Id.* at 11.

<sup>58</sup> *Id.* at 13.

<sup>59</sup> *Id.* at 14-17.

<sup>60</sup> *Id.* at 14-15.

be rejected by the Commission. Further, ITC Midwest claims that American Transmission's challenge to the ROFR determination here represents an impermissible collateral attack on Order No. 1000.

31. Lastly, ITC Midwest argues that American Transmission's refusal to engage in joint development as designated in the MTEP will negatively impact planning and project development.<sup>61</sup> ITC Midwest states that it is disruptive and duplicative for American Transmission to make regulatory filings concerning the portion of the project that ITC Midwest will develop.

**D. American Transmission's Answer to ITC Midwest's Answer**

32. American Transmission states that MISO has not indicated to American Transmission that its modifications to the Dubuque – Cardinal Line have been rejected.<sup>62</sup> American Transmission contends its modifications to the project were made through the March 26, 2012 MTEP Quarterly Status Report and were made in response to a request for updates to all MTEP projects from MISO staff, as contemplated by the Tariff. Furthermore, American Transmission asserts that, on November 13, 2012, the day before American Transmission was required to respond to the Complaint, members of MISO's Planning Staff contacted American Transmission to inform it that MISO was planning to change the quarterly update procedures and that the MISO Planning Staff intended to remove the modifications made to the Dubuque – Cardinal Line in the MTEP database until the new process was instituted. American Transmission maintains that since that conversation, American Transmission has heard nothing from MISO regarding the new quarterly update procedures or the modifications to the Dubuque – Cardinal Line. American Transmission notes that the proposed modifications were incorporated by MISO into the MTEP 2011 Appendix A Status Report posted on the MISO website.<sup>63</sup>

33. Lastly, American Transmission asserts that the mere fact that the Dubuque – Cardinal Line and the Hazleton – Salem Line were approved in different MTEP cycles does not dictate the ownership rights of those projects.<sup>64</sup> Specifically, American

---

<sup>61</sup> *Id.* at 18.

<sup>62</sup> American Transmission Answer to ITC Midwest's Answer at 5-8.

<sup>63</sup> *Id.* at 7. See Midwest Indep. Transmission Sys. Operator, Inc., MTEP11 Appendix A Status Report, Facility Tab at lines 726-28, 739, available at: [https://www.midwestiso.org/\\_layouts/miso/ecm/redirect.aspx?id=92011](https://www.midwestiso.org/_layouts/miso/ecm/redirect.aspx?id=92011).

<sup>64</sup> *Id.* at 8-10.

Transmission reiterates its argument that, pursuant to Appendix B, section VI of the Transmission Owners Agreement, American Transmission is entitled to share ownership of the new facilities connecting the Hazleton Substation to the Dubuque Substation. American Transmission argues that its position is based on a straightforward reading of Appendix B, section VI of the Transmission Owners Agreement. Furthermore, American Transmission contends that there is no language in Appendix B, section VI of the Transmission Owners Agreement that suggests that resolution of ownership issues is dictated by planning cycles.

#### **IV. Discussion**

##### **A. Procedural Matters**

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that file them parties to this proceeding. In addition, we will allow the Wisconsin Commission's late-filed comments given its interest in the proceeding, the early state of the proceedings, and the absence of undue prejudice or delay.

35. Rule 213(a)(2) of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We shall accept the answers filed by ITC Midwest and American Transmission because they provided information that assisted us in our decision-making process.

36. ITC Midwest filed a motion to lodge that provided information regarding MISO's 2012 MTEP, which was approved by the MISO Board on December 13, 2012. We grant ITC Midwest's motion to lodge because it has provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

37. We find that MISO correctly implemented the Transmission Owners Agreement and Tariff in the 2011 MTEP and therefore grant the Complaint. As such, we confirm ITC Midwest's position that ITC Midwest has investment and ownership rights to participate on an equal basis in the 345 kV transmission projects that will interconnect ITC Midwest's Dubuque Substation in Iowa, with American Transmission's Cardinal Substation in Wisconsin. Accordingly, we direct American Transmission to enter into negotiations with ITC Midwest to develop final terms and conditions for the shared ownership and construction of the Dubuque – Cardinal Line in a manner that is compliant with the Tariff and Transmission Owners Agreement.

38. We base this decision, just as we did in the *Xcel Order* and *Pioneer Order* that preceded it, on the relevant provisions of the Tariff and Transmission Owners Agreement. Specifically, Appendix B, section VI of the Transmission Owners Agreement, provides, in relevant part:

Ownership and the responsibilities to construct facilities which are connected between two (2) or more Owners' facilities belong equally to each Owner, unless such Owners otherwise agree, and the responsibility for maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners.<sup>65</sup>

In addition, Attachment FF, section V of the Tariff provides:

For each project included in the recommended MTEP, the plan shall designate, based on the planning analysis performed by the Transmission Provider and based on 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.<sup>66</sup>

39. We are persuaded by ITC Midwest's argument that MISO correctly interpreted the Transmission Owners Agreement and Tariff in designating ITC Midwest and American Transmission as joint owners of the Dubuque – Cardinal Line. The MISO Board approved the Dubuque – Cardinal Line as an Appendix A project in the 2011 MTEP and designated it as part of an MVP for cost allocation purposes.<sup>67</sup> ITC Midwest and American Transmission were listed as the entities responsible for construction and ownership of the project. We note that, in its answer, American Transmission does not challenge how MISO applied in the MTEP Appendix B of the Transmission Owners Agreement or Attachment FF of the Tariff, which contains the MTEP process. We therefore defer to MISO's application of the Tariff and Transmission Owners Agreement and its resulting designation of ownership for the project to ITC Midwest and American Transmission.

---

<sup>65</sup> Transmission Owners Agreement, App. B, § VI.

<sup>66</sup> Tariff, Attach. FF, section V.

<sup>67</sup> See 2011 MTEP, Appendix A, Project Tab at line 142.

40. In regard to American Transmission's argument that it proposed changes to the Dubuque – Cardinal Line, which would reroute the project through the Montfort Substation as opposed to the Spring Green Substation as set forth in the original 2011 MTEP, we find that such proposed changes have been rejected by MISO in the 2012 MTEP, which was approved by the MISO Board on December 13, 2012. Appendix A to the 2012 MTEP illustrates that the Dubuque – Cardinal Line is to pass through the Spring Green Substation as originally planned.<sup>68</sup> Contrary to American Transmission's assertion in its answer, the project will not be rerouted to pass through the Montfort Substation. Because there have been no changes to the Dubuque – Cardinal Line from the 2011 MTEP to the 2012 MTEP, we need not address ITC Midwest's argument that development rights are fixed in a particular MTEP and are not subject to reopening in later MTEP cycles.

41. We also find that granting the Complaint is consistent with the *Xcel Order* and the *Pioneer Order*. In the *Xcel Order* and the *Pioneer Order*, we found that Appendix B, section VI "of the Transmission Owners Agreement is unambiguous as to ownership and the responsibility of owners to build facilities."<sup>69</sup> Furthermore, we found that Appendix B, section VI of the Transmission Owners Agreement establishes a ROFR.<sup>70</sup> While we acknowledged that, in Order No. 1000, the Commission found that granting incumbent transmission providers a federal ROFR with respect to transmission facilities in a regional transmission plan is unjust and unreasonable because doing so may result in the failure to consider more efficient or cost-effective solutions to regional needs, we also noted that the Order No. 1000 compliance filing deadline was October 11, 2012.<sup>71</sup> We further stated that Order No. 1000 eliminates the federal ROFR on a prospective basis only.<sup>72</sup> In both orders, we concluded that the Transmission Owners Agreement obligates

---

<sup>68</sup> See 2012 MTEP, Appendix A, Facility Tab at lines 524-32.

<sup>69</sup> *Xcel Order*, 140 FERC ¶ 61,058 at P 60; *Pioneer Order*, 140 FERC ¶ 61,057 at P 97.

<sup>70</sup> *Xcel Order*, 140 FERC ¶ 61,058 at P 64; *Pioneer Order*, 140 FERC ¶ 61,057 at P 101.

<sup>71</sup> *Xcel Order*, 140 FERC ¶ 61,058 at PP 64, 66 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 284 ); *Pioneer Order*, 140 FERC ¶ 61,057 at PP 101, 103 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at 284).

<sup>72</sup> *Xcel Order*, 140 FERC ¶ 61,058 at P 66 (citing Order No.1000, FERC Stats & Regs. 31,323 at P 65); *Pioneer Order*, 140 FERC ¶ 61,057 at P 103 (citing Order No.1000, FERC Stats & Regs. 31,323 at P 65).

MISO transmission owners to share responsibility for interconnecting facilities.<sup>73</sup> Thus, in the *Xcel Order*, we stated that MISO “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.”<sup>74</sup> Similarly, in the *Pioneer Order*, we found that MISO “exercised its designation authority in accordance with section VI of the Transmission Owners Agreement and the Tariff in designating both Northern Indiana and Duke as the parties responsible for the Reynolds – Greentown Line.”<sup>75</sup> Consistent with the *Xcel Order* and *Pioneer Order*, we find that MISO has correctly exercised its designation authority here, in accordance with Appendix B, section VI of the Transmission Owners Agreement and the Tariff, by designating American Transmission and ITC Midwest as the parties responsible for the Dubuque – Cardinal Line.

42. In its answer, American Transmission states that this Complaint will become moot if the Commission reverses its rulings in the *Xcel Order* and the *Pioneer Order*. However, absent an order to the contrary, the *Xcel Order* and *Pioneer Order* remain in effect.<sup>76</sup> Furthermore, we find that American Transmission’s attempt in its answer to assert a claim to the Hazleton to Dubuque segment of ITC Midwest’s Salem – Hazleton line is beyond the scope of this proceeding.

43. Lastly, the Wisconsin Commission avers that in Wisconsin, its state CPCN law controls the ownership of the Dubuque – Cardinal Line. Although we do not dispute the Wisconsin’s Commission’s statement that a prospective builder of transmission must receive a CPCN in Wisconsin, the issue before the Commission is whether the Transmission Owners Agreement and Tariff requires American Transmission and ITC Midwest to share responsibility for the Dubuque – Cardinal Line and whether MISO has appropriately exercised its designation authority in a manner consistent with the Transmission Owners Agreement and the Tariff—not the applicability and import of Wisconsin’s CPCN laws.

---

<sup>73</sup> *Xcel Order*, 140 FERC ¶ 61,058 at P 67; *Pioneer Order*, 140 FERC ¶ 61,057 at P 96.

<sup>74</sup> *Xcel Order*, 140 FERC ¶ 61,058 at P 67.

<sup>75</sup> *Pioneer Order*, 140 FERC ¶ 61,057 at P 99.

<sup>76</sup> See 18 C.F.R. § 385.713(e) (stating that “[u]nless otherwise ordered by the Commission, the filing of a request for rehearing does not stay the Commission decision or order”). See also, e.g., *Sw. Pub. Serv. Comm’n*, 124 FERC ¶ 63,015 (2008).

The Commission orders:

The Complaint is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.