

Xcel's Filing in Docket No. ER09-1428-000

I. Background

3. Northern States is a wholly-owned utility operating company subsidiary of Xcel Energy Inc. Northern States is a transmission-owning member of Midwest ISO pursuant to the Midwest ISO Transmission Owners Agreement, and provides wholesale transmission service pursuant to the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Midwest ISO Tariff). Northern States' high voltage transmission system (100 kV and above) is subject to the functional control of Midwest ISO, and Northern States operates a Local Balancing Authority within Midwest ISO's regional Balancing Authority Area.

4. Western is a federal power marketing agency and markets power produced by plants located on the Missouri River and its tributaries. Western is also a transmission provider under Western's reciprocity open access transmission tariff (Western Tariff), which is on file with the Commission.¹ Western is the Balancing Authority for its integrated system. Western is a member of the Mid-Continent Area Power Pool (MAPP). Western is not a transmission-owning member of Midwest ISO, but presently takes seams coordination service from Midwest ISO.² Midwest ISO is the Reliability Coordinator over both Northern States' and Western's transmission facilities.

5. Xcel states that the electric transmission systems of Northern States and Western are highly interconnected, and that there are 13 points of interconnection at various voltages between their transmission facilities. Western presently serves preference power loads connected to the Northern States transmission system using the Midwest ISO Tariff, and Northern States presently serves load connected to the Western integrated system using transmission service under the Western Tariff. The Northern States-Western points of interconnection are located at the western boundary of the Midwest ISO transmission system.

II. Xcel's Proposed System Integration Agreement

6. The proposed System Integration Agreement is a reciprocal agreement that establishes a means to provide for and compensate Western for the use of Western's integrated system to accommodate flow impacts from the Buffalo Ridge area near the

¹ *United States Department of Energy, Western Area Power Administration Pick-Sloan Missouri Basin Program-Eastern Division*, 115 FERC ¶ 62,230 (2006).

² Xcel July 9 Filing at 3, *citing Midwest Independent Transmission System Operator, Inc.*, 126 FERC ¶ 61,287 (2009).

White Substation Points of Interconnection, between Northern States and Western at Western's White Substation near Brookings, South Dakota.

7. Under the System Integration Agreement, Western provides Northern States with system integration coordination service by reserving firm point-to-point transmission capacity on Western's integrated system as a result of transmission studies performed by the Parties as provided in section 8.2 of the System Integration Agreement. Should any future wind or fossil fuel generation interconnection service on Western's integrated system be shown or modeled by transmission studies to reduce flows into Western's integrated system or reverse the flows into Northern States' system via the White Substation Points of Interconnection (instead of into Western's system), the Parties will discuss and make appropriate adjustments to compensate the impacted Party under the System Integration Agreement.

8. Xcel states that the System Integration Agreement allows Northern States to use the Western integrated transmission system to provide transmission capacity for the delivery of renewable generation resources from the Buffalo Ridge area to loads in the Midwest ISO region until Northern States can construct the incremental transmission needed to provide that capacity on its own system. The Parties expect near-term impacts to Western's integrated system from flows through the White Substation Points of Interconnection will be reduced when flows are redirected onto the Midwest ISO network upon the completion of the Midwest ISO-approved regional transmission planned expansions, including primarily the CapX2020 Group 1 Network Upgrades. The CapX2020 Group 1 Network Upgrades are currently expected to be partially completed and in-service in 2013 and fully in-service by approximately 2015. According to Xcel, Western had indicated to Xcel that, absent the System Integration Agreement, Western would disconnect the Northern States and Western transmission systems at the White Substation, which would significantly reduce regional transmission capability for delivery of renewable energy resources. Xcel maintains that the System Integration Agreement thus serves the public interest by increasing the total transmission capacity available for deliveries within the Midwest ISO region by maintaining system intact conditions.

9. At any time during the term or any extension of the System Integration Agreement, should the transmission studies prepared under the System Integration Agreement indicate or project flows into the Northern States System (rather than onto the Western system), Northern States would then provide reciprocal system integration coordination service by reserving firm point-to-point capacity for Western under the Midwest ISO Tariff as determined by the transmission studies.

10. Xcel requests that the Commission accept the System Integration Agreement for filing and designate it as Xcel Energy Operating Companies FERC Electric Tariff, Original Volume No. 3, Service Agreement 288-NSP. Xcel requests any necessary

waivers to permit the System Integration Agreement to become effective on February 1, 2009, the effective date the Parties determined in the System Integration Agreement to correspond to the date of the firm point-to-point agreement under the Western Tariff. Xcel states that the proposed effective date for the parties' mutual obligations was an integral component of the overall agreement.³

11. Xcel originally requested that the Commission approve inclusion of the compensation paid by Northern States to Western under this System Integration Agreement specifically for system integration coordination service as a FERC Account No. 565, "Transmission of electricity by others," expense recoverable through Northern States' Attachment O rate formula under the Midwest ISO Tariff. However, in a subsequent answer, discussed below, Xcel withdraws its proposal to recover this charge in the instant filing.

III. Notice of Xcel's Filing and Responsive Pleadings

12. Notice of Xcel's July 9, 2009 filing was published in the *Federal Register*, 74 FR 35862 (2009), with interventions and protests due on or before July 30, 2009. Western and Basin Electric Power Cooperative (Basin Electric) filed timely motions to intervene and comments in support of Xcel's filing. Midwest ISO Transmission Owners (Midwest ISO TOs) filed a timely motion to intervene and protest, and Great River Energy (Great River) filed a timely motion to intervene and comments. Midwest Municipal Transmission Group, Missouri River Energy Services, and WPPI Energy (together, Midwest TDUs) filed a timely motion to intervene, protest, and motion to consolidate Docket Nos. ER09-1428-000 and ER09-1421-000.⁴ On August 4, 2009 and August 5, 2009, respectively, ITC Holdings Corp., et al. (ITC Holdings) and Dairyland Power Cooperative (Dairyland) filed motions to intervene out of time.

13. On August 14, 2009, answers were filed by Xcel, Western and Basin Electric. Xcel's answer includes a notice of partial withdrawal of its request for approval to recover the charges from Western recorded in FERC Account No. 565. On August 31, 2009, Midwest TDUs filed a response.

IV. Deficiency Letter and Responses, Notice and Pleadings

14. On September 3, 2009, the Commission staff sent a deficiency letter to Midwest ISO and Xcel (Deficiency Letter). On October 5, 2009, Midwest ISO filed its response to

³ Xcel July 9 Filing at 6.

⁴ Midwest TDUs' motion to consolidate is addressed more fully in the discussion of Docket No. ER09-1421-000 below.

the Deficiency Letter (Midwest ISO's October 5 Response), and Xcel filed its response (Xcel's October 5 Response).

A. Xcel's October 5 Response

15. The Deficiency Letter directed Xcel to provide additional information, including: (1) the purpose of the Brookings County - White 345 kV interconnection; (2) several different studies that are referenced in the July 9 Filing; (3) the impact of the proposed Brookings County – Twin cities 345 kV line on Western's system and the Brookings County – White Substation interconnection; and (4) the degree to which the planned Buffalo Ridge Incremental Generation Outlet project would reduce the impacts of flows on Western's White substation.

16. Xcel states that the purpose of the Brookings County - White 345 kV interconnection is to provide a sufficiently robust transmission network to provide outlet capability for existing and future generation, mostly wind generation, located in the Buffalo Ridge in eastern South Dakota and southwestern Minnesota. According to Xcel, the interconnection was not planned to accommodate specific generation interconnection or transmission service requests, but was part of a package of transmission projects designed to provide 825 MW of transmission outlet capability from the Buffalo Ridge area and to comply with Minnesota state renewable energy policies.⁵ The Brookings County - White 345 kV interconnection currently consists of one 345 kV line; the second line is scheduled to come into operation by the end of 2009, and is currently in the final construction phase.⁶ Xcel also explains that the package of transmission projects to provide approximately 825 MW of transmission outlet capability was developed prior to the Midwest ISO assuming responsibility for regional transmission planning for the Northern States transmission system under the Midwest ISO Tariff and the Midwest ISO Transmission Expansion Plan process.

17. As a result of the interconnection requests and the renewable energy policies of Minnesota, Xcel explains that Northern States proposed to add significant new transmission facilities to increase capacity of the transmission grid in the Buffalo Ridge area from approximately 260 MW to the 825 MW capacity level. As a result, Xcel explains, the 825 MW facilities did not fit into a neat category of a reliability upgrade, economic upgrade or facility associated with a generation interconnection or transmission service request under Order No. 888 or Order No. 2003. Instead, it asserts, the facilities

⁵ Xcel's October 5 Response at 6. *See also* Energy Information Administration, *Minnesota* (November 5, 2009), *available at* http://tonto.eia.doe.gov/state/state_energy_profiles.cfm?sid=MN.

⁶ Xcel's October 5 Response at 9.

were planned on a comprehensive basis to provide generation an outlet in anticipation of rapid growth in renewable generation development and to comply with Minnesota policies.

18. Xcel provides the transmission study in which 190 MW of power is projected to flow into Western's White 345 kV bus.⁷ Based on the study, Xcel claims that, if the interconnection were opened, the total outlet capability of the Buffalo Ridge area would be reduced by approximately 190 MW during 2009 and would presumably result in immediate and significant wind generator curtailment in the Buffalo Ridge area as determined by Midwest ISO operators.

19. Xcel provides the transmission study that shows the impact of the proposed CapX2020 Brookings County - Twins Cities 345 kV Transmission Project on flows across the Brookings County - White 345 kV interconnection with increased Buffalo Ridge wind generation.⁸ Xcel states that the EHV Study demonstrates reduced flows on the Brookings County - White 345 kV interconnection upon the Brookings County - Twin Cities 345 kV Transmission Project being placed into service.

20. Further, Xcel contends that, according to Exhibits J and K and an attached raw data file in Exhibit L, the Buffalo Ridge Incremental Generation Outlet project would increase flows on Western's White substation due to increased outlet capability, and the increased flows will not be mitigated until the completion of the CAPX2020 project, estimated to occur in 2015.

B. Midwest ISO's October 5 Response

21. The Deficiency Letter directed Midwest ISO to provide additional information, including: (1) why Midwest ISO cannot be a party to the System Integration Agreement; (2) how the proposed agreement is consistent with (a) the requirement that an RTO be the sole provider of transmission service over the facilities under its control, and (b) the rights and responsibilities of Midwest ISO and the transmission owners under the Midwest ISO Transmission Owners Agreement and the Midwest ISO Tariff; and (3) how the service provided by the System Integration Agreement is consistent with the rights and obligations of Western and other parties to the Midwest ISO Tariff.

⁷ The study is titled "Brookings County - White 345 kV Interconnection Transmission System Study," and was prepared by the consulting firm Excel Engineering, Inc., and dated December 15, 2006.

⁸ The study is titled "Southwest Minnesota - Twin Cities EHV Development Electric Transmission Study," and was prepared by Xcel Energy and dated November 9, 2005 (EHV Study).

22. Midwest ISO states that it is not a signatory to the System Integration Agreement between Northern States and Western because the System Integration Agreement addresses a service on Western facilities that are not under the functional control of Midwest ISO. In addition, Midwest ISO points out that Northern States and Western acknowledged that the System Integration Agreement would need to be renegotiated if Midwest ISO were to be added as a third party. Moreover, Midwest ISO explains that because the System Integration Agreement does not involve service under the Midwest ISO Tariff, it did not have to execute it.

23. Midwest ISO acknowledges, however, that a related service under the Midwest ISO Tariff is implicated in the Interconnection Agreement because Western takes Interconnected Operations and Congestion Management Service (Seams Service) from the Midwest ISO. The Seams Service includes protocols for the exchange of real-time data and projected information that allows: (1) Midwest ISO and Western to coordinate and exchange calculations of total transfer capability; (2) reciprocal coordination of flowgates through a binding congestion management process; and (3) generation redispatch to relieve congestion. Nevertheless, Midwest ISO states that the “Seams Service does not specifically address whether additional service on a non-Midwest ISO transmission system, such as the [system integration and coordination service] proposed by [Western] under the [System] Integration Agreement, may be needed to allow such interconnections.”⁹

C. Notice of Filings and Responsive Pleadings

24. Notice of Midwest ISO’s October 5 Response and Xcel’s October 5 Response was published in the Federal Register, 74 FR 53734 (2009), with interventions or protests due on or before October 26, 2009.

25. Midwest TDUs filed comments. On November 9, 2009, Western filed an answer. On November 13, 2009, Xcel filed an answer.

⁹ Midwest ISO’s October 5 Response at 5. We interpret Midwest ISO’s reference to “such interconnections” to refer to the two 345 kV Brookings County – White Substation interconnections between Xcel and Western to be accommodated under the System Integration Agreement.

V. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding in Docket No. ER09-1428-000.

27. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), we will grant the motions to intervene out of time by ITC Holdings and Dairyland given their interests in the proceeding, the early stage of the proceeding and the absence of undue prejudice or delay.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

29. Xcel's filing presents two distinct issues: an arrangement between Xcel and Western to interconnect their transmission systems, and compensation to Western for alleged potential impacts on Western's system under the proposed arrangement. In this order, we find that the System Integration Agreement, as amended by Xcel's withdrawal of the rate treatment proposal, is a just and reasonable arrangement between Northern States and Western to accommodate the new White interconnection between them. While we are accepting the System Integration Agreement, we are making no determination with respect to the cost allocations or cost recoveries related to the costs Northern States incurs under the System Integration Agreement. Northern States will have to demonstrate the justness and reasonableness of any cost allocation or cost recovery in a future section 205 filing with the Commission. With respect to Xcel's request for recovery of costs it incurs to compensate Western for potential impacts on Western's system, we note, as discussed further below, that Xcel has withdrawn such request. Accordingly, we will accept Xcel's proposed System Integration Agreement for filing, as modified by Xcel's withdrawal of its rate treatment proposal, effective September 8, 2009, which is after 60 days notice from the date of filing.¹⁰

¹⁰ Xcel failed to provide good cause to permit an effective date retroactive to February 1, 2009. We also deny Midwest TDUs' motion to consolidate this docket with Docket No. ER09-1421-000, as discussed further below.

1. Charges for Northern States' Payments to Western

a. Comments

30. Protesters oppose Xcel's proposed recovery of the charges paid by Xcel to Western. In their answers, Xcel and Western dispute protesters' arguments. However, Xcel withdraws its request for approval to recover the charges from Western recorded in FERC Account No. 565 in Northern States' rate formula in Attachment O to the Midwest ISO Tariff. Xcel asks that the Commission either take no action on that aspect of the July 9 Filing or reject the proposed rate recovery without prejudice. Xcel states that it will make a separate filing under section 205 of the FPA to support the appropriate cost recovery mechanism, after further consultation with Midwest ISO and other regional stakeholders, including Great River and Southern Minnesota Municipal Utilities, with direct joint pricing zone allocations. Xcel also states that its future section 205 filing can provide a more complete record to address the intervenors' concerns.¹¹

31. In their August 31 response, Midwest TDUs state that Xcel's withdrawal of the rate treatment presents a procedural opportunity. They urge the Commission not to reach a determination on the justness and reasonableness of Western's charges unless and until the Commission is faced with a live proposal to flow them through jurisdictional rates. Also, they argue that the Commission should use the interval between now and that future section 205 filing to "push" Western and Midwest ISO to reach (with stakeholder involvement) a seams agreement that resolves the Buffalo Ridge issue.¹²

b. Commission Determination

32. In view of Xcel's withdrawal of its proposal to recover the charges from Western recorded in FERC Account No. 565 in Northern States' rate formula in Attachment O to the Midwest ISO Tariff, we need not make a determination on this issue. While we are taking no action on this issue in this proceeding, we are doing so without prejudice to Xcel making a future filing with regard to these charges. Further, while Midwest TDUs may seek to have Midwest ISO negotiate a seams agreement with Western that will resolve the Buffalo Ridge issue, ordering such a resolution is beyond the scope of this filing.

¹¹ Xcel also reiterates its request that the Commission accept the System Integration Agreement for filing and requests approval (if necessary) to record the system integration transmission service charges paid to Western under the agreement in FERC Account No. 565.

¹² Midwest TDUs August 31, 2009 Response at 7.

33. Further, with respect to Xcel's request for approval, if necessary, to record system integration transmission service charges paid to Western to FERC Account No. 565, we conclude that no prior approval is needed, since those costs can be appropriately booked to FERC Account No. 565 based on the Commission's Uniform System of Accounts.¹³

2. Western's Threat to Open the Interconnection at White Substation

34. Xcel states in its transmittal letter that Western threatened to disconnect the Northern States and Western transmission systems at the White Substation in the absence of the System Integration Agreement.

a. Comments

35. Midwest TDUs state that, as of February 19, 2009, Western was stating an intention to take Seams Service under Midwest ISO's Tariff, and applied for such service on March 26, 2009.¹⁴ Midwest TDUs argue that, under that Midwest ISO service, if and when loop flow associated with the output of Buffalo Ridge generation actually requires Western to redispatch its own generation in order to keep loading of a coordinated flowgate down to a level consistent with reliability, Western would be eligible for redispatch compensation through a specified formula. Midwest TDUs contend that it has not been shown to be reasonable to end-run this mechanism by providing for year-round compensation under the System Integration Agreement.

36. Midwest TDUs dispute Xcel's claim that, because the System Integration Agreement commits Western to refrain from disconnecting, it "serves the public interest by increasing the total transmission capacity available for deliveries within the Midwest ISO region" by maintaining the interconnection.¹⁵ Midwest TDUs reason that paying Western may be better than disabling the White Substation interconnection or building costly duplicative facilities, but question whether that is sufficient to find such payments just, reasonable, and nondiscriminatory.

37. Midwest TDUs argue that, as an owner of transmission facilities operating in interstate commerce, Western is subject to the Commission's authority under FPA

¹³ 18 C.F.R. Part 101 (2009).

¹⁴ Midwest TDUs July 30, 2009 Protest at 4.

¹⁵ *Id.*, citing Xcel's July 9 Filing at 5.

sections 210 and 211.¹⁶ Midwest TDUs contend that the Commission has a statutory duty to exercise its authority so as to promote and encourage interconnection and coordination. Midwest TDUs assert that keeping intact the existing interconnection at the White Substation encourages overall conservation of energy or capital, meeting the standard of FPA section 210(c)(2)(A), by facilitating wind deliveries from Buffalo Ridge generation to load. Midwest TDUs also argue that it optimizes the efficiency of use of facilities and resources, meeting the standard of FPA section 210(c)(2)(B).

38. Midwest TDUs also argue that enabling Western to extract loop flow compensation by threatening to open an existing interconnection would reward a threat to do that which the Commission is empowered and statutorily directed to prevent. Midwest TDUs assert that such a reward would be unjust and unreasonable, and the Commission should not allow its consequences to flow through Commission jurisdictional rates charged by Midwest ISO or Xcel.¹⁷

39. Xcel, Western and Basin Electric dispute Midwest TDUs' claim that the System Integration Agreement is an inappropriate vehicle to address the flow impact to Western's system from generators interconnecting to the Midwest ISO system. For example, Xcel states that Western is not a Midwest ISO transmission owner and presently has no comprehensive region-to-region seams agreement in place with Midwest ISO addressing the matters under the System Integration Agreement. Also, it states that Midwest ISO has no currently effective seams agreement with MAPP, the power pool and regional transmission service provider in which Western participates. Xcel further argues that while Midwest ISO participated in the initial stages of negotiations, Midwest ISO declined to be a party to the System Integration Agreement or meaningfully participate in the process.

¹⁶ Midwest TDUs July 30, 2009 Protest at 5, citing *East Kentucky Power Coop., Inc.*, 111 FERC ¶ 61,031 (2005), *final order*, 114 FERC ¶ 61,035, *further proceeding*, 116 FERC ¶ 61,072 (2006) (*East Kentucky*) (holding that Tennessee Valley Authority, although not subject to the Commission's jurisdiction as a "public utility" under the FPA, is an "electric utility" subject to the Commission's authority to issue interconnection directives under section 210 of the FPA).

¹⁷ *Id.* at 6, citing *Pacific Gas & Electric v. FERC*, 306 F.3d 1112 (D.C. Cir. 2002) (where non-jurisdictional charges by the City of Vernon flowed through the California ISO's jurisdictional rate, the Commission was obliged to evaluate the City of Vernon's charges "to the extent necessary to ensure that the California ISO's rates are just and reasonable").

b. Commission Determination

40. Although Western has stated an intent to disconnect at the White Substation in the absence of the System Integration Agreement, the rates, terms and conditions of interconnection and transmission service on the Western system are not subject to the Commission's jurisdiction under sections 205 and 206 of the FPA. In addition, while sections 210 and 211 of the FPA provide the Commission authority to order interconnection and wheeling service under certain conditions upon application to the Commission, no section 210 or 211 applications for interconnection to, or wheeling over, the Western system have been made. However, because we are accepting the System Integration Agreement, Western's threat to disconnect at White Substation is no longer an issue at this time. Indeed, the Interconnection Agreement, which is discussed in greater detail below,¹⁸ provides that if Western does seek to disconnect, it would have to follow certain enumerated legal requirements.¹⁹ The Interconnection Agreement further acknowledges that Midwest ISO and Northern States "reserve, and may exercise, their rights in their sole discretion under the Federal Power Act, the Midwest ISO's Tariff and other applicable laws and regulations."²⁰ The Interconnection Agreement further provides that "Western acknowledges that Midwest ISO also may have rights to respond or to act in its capacity as a reliability coordinator for" Northern States and Western.²¹ In addition, although Western is not a Midwest ISO transmission owner, it does take Seams Service from Midwest ISO pursuant to Part II of Module F of the Tariff. However, in its October 5 Response, Midwest ISO explains that:

Seams Service for [Western] includes protocols for the exchange of real-time data and projected information to allow Midwest ISO and [Western] to coordinate and exchange calculations of total transfer capability, reciprocal coordination of flowgates through a binding congestion management process and for generation redispatch to relieve congestion. However, the service proposed under the Integration Agreement is not implicated because Seams Service does not prevent the provision of a separate "System Integration Coordination Service" under the [Western] tariff.^[22]

¹⁸ See discussion of Docket No. ER09-1421-000, *infra*.

¹⁹ See Interconnection Agreement, Exhibit A, § 5.13.2.4.

²⁰ *Id.*

²¹ *Id.*

²² Midwest ISO October 5 Response at 6-7.

3. Request for Technical Conference

a. Protests

41. Midwest TDUs argue that, if the Commission does not reject Xcel's filing, it should convene a technical conference or an evidentiary hearing at which the physical impacts on Western's system can be illuminated. Midwest TDUs explain that, through such further process, the Commission could also consider whether, in addition to existing seams management mechanisms, some further non-discriminatory, cost-based remedy is needed to address the actual costs of loop flows affecting transmission owners that border Midwest ISO but have elected not to participate in its regionalized loop flow management. Xcel responds that since it is proposing to withdraw its rate treatment proposal, a technical conference is unnecessary to accept the System Integration Agreement for filing. But, Xcel suggests that a technical conference may be appropriate when it makes its FPA section 205 filing amending its Attachment O. Midwest TDUs respond that they still believe that a technical conference would remain useful toward reaching a seams agreement that resolves the Buffalo Ridge issue.

b. Determination

42. In view of Xcel's withdrawal of its proposed rate treatment for the Western charges and Xcel's plans to consult with affected parties prior to making a future FPA section 205 filing for such rate treatment, there is no need for a technical conference in this proceeding.

Midwest ISO's Filing in Docket No. ER09-1421-000

I. Midwest ISO's July 8 Filing

43. Midwest ISO filed an Interconnection Agreement proposing to replace a 2004 agreement between Western and Xcel (2004 Agreement).²³ Midwest ISO requests waiver of the Commission's 60-day prior notice requirement to permit the Interconnection Agreement to become effective on June 11, 2009, to coincide with the date on which it was executed and to provide certainty to the parties as to the status of the agreement.

²³ See *Xcel Energy Operating Companies*, Docket Nos. ER04-1107-000 and ER04-1107-001 (October 29, 2004) (delegated letter order). Midwest ISO has designated the instant Interconnection Agreement as Original Service Agreement No. 2077 under the Midwest ISO Tariff, Fourth Revised Vol. No. 1.

44. The purpose of the Interconnection Agreement is to provide the terms and conditions for interconnection, load control boundary points, and maintenance between the Northern States transmission system and Western's transmission system.²⁴ Specifically, Midwest ISO proposes revisions to the body of the Interconnection Agreement and its exhibits in order to update the interconnection points and facilities, the terms and conditions and to incorporate the Interconnection Agreement under the Midwest ISO Tariff.²⁵ In addition, the Interconnection Agreement provides that Xcel will file a notice of termination of the 2004 Agreement upon acceptance of the Interconnection Agreement by the Commission.²⁶

II. Notice of July 8 Filing and Responsive Pleadings

45. Notice of Midwest ISO's July 8 Filing was published in the *Federal Register*, 74 FR 35863 (2009), with interventions or protests due on or before July 29, 2009.

46. Western, Basin Electric, and Midwest ISO TOs filed timely motions to intervene. On July 30, 2009, Midwest TDUs filed a motion to intervene, protest and a motion to consolidate this proceeding with Docket No. ER09-1428-000. On August 13, 2009, Xcel filed a motion to intervene out of time.

47. On August 14, 2009, answers were filed by Western and Basin Electric. On August 31, 2009, Midwest TDUs filed a response.

III. Comments

48. Midwest TDUs request consolidation of Docket Nos. ER09-1421-000 and ER09-1428-000. Midwest TDUs' protest principally concerns the System Integration Agreement filed in Docket No. ER09-1428-000, but, they argue that section 5.13.2.4 of the Interconnection Agreement contains a factual and legal nexus to the System Integration Agreement by providing for Western's threat to open the White Substation interconnection unless Western is paid for loop flows under the System Integration Agreement in Docket No. ER09-1428-000.

²⁴ The 2004 Agreement was designated as Xcel Energy Operating Companies FERC Electric Tariff, Original Volume No. 3, Rate Schedule No. 446-NSP.

²⁵ Midwest ISO July 8, 2009 Transmittal Letter at 2, *citing American Electric Power Service Corp.*, 110 FERC ¶ 61,276, at P 10 (2005).

²⁶ *Id.* at 2; Interconnection Agreement, Exh. A, § 2.1.

49. Xcel, Western and Basin Electric oppose consolidation of the dockets as unnecessary. Xcel argues that, given its withdrawal of the Northern States rate treatment request, there is no reason to consolidate review of the System Integration Agreement with the Interconnection Agreement. Alternatively, and only if the Commission does not accept the System Integration Agreement for filing and allow withdrawal of the Northern States rate treatment proposal, Xcel supports consolidation and requests that the Commission set both dockets for hearing or other expedited procedures as determined appropriate by the Commission. Western and Basin Electric argue that Midwest TDUs have presented no common issues of law or fact or the need for a hearing or technical conference concerning the Interconnection Agreement, even if the System Integration Agreement were set for hearing or technical conference.

IV. Deficiency Letter and Midwest ISO's October 5 Response

50. With respect to the Interconnection Agreement, the Deficiency Letter directed Midwest ISO to provide a redlined copy of the proposed Interconnection Agreement, showing additions and deletions from the previous interconnection agreement. In its October 5 Response, Midwest ISO submitted a redlined copy. Midwest TDUs filed comments. Western filed an answer to those comments. Xcel filed an answer supporting the substance of Western's comments.

V. Discussion

A. Procedural Matters

51. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

52. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will accept Xcel's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

53. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding, because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

54. We find that the Interconnection Agreement is just and reasonable because it merely updates the previously accepted 2004 Agreement and is essentially unopposed by

any party to this proceeding. However, we will address, to avoid any ambiguity regarding our acceptance of the Interconnection Agreement, one particular provision. Section 7.2 of the Interconnection Agreement provides, in part, that:

No party shall be responsible for sanctions it is not legally obligated to pay, or for any acts, omissions, or violations of another party. Western hereby provides notice that it has informed FERC and NERC that as a Federal governmental agency it is not subject to any monetary civil penalties that may arise from FERC, NERC, Midwest ISO, MRO or a successor Regional Entity's standard or rules.

55. Federal entities that are registered by an Electrical Reliability Organization (ERO) as users, owners, and operators of the Bulk-Power System must comply with mandatory Reliability Standards as to facilities that fall within the Bulk-Power System. Section 7.2 simply recites Western's view of the issue and its statement that it has informed the Commission and NERC of its position on monetary civil penalties. The language of section 7.2 does not bind any party to any particular outcome. Western's position is a matter for another proceeding and is not before the Commission in this proceeding.²⁷ Our acceptance of the Interconnection Agreement is not an endorsement of Western's position in section 7.2 regarding the civil penalty issue.

56. Accordingly, we will accept the Interconnection Agreement for filing, effective September 7, 2009, after 60 days notice from the date of filing.²⁸

57. With regard to Midwest TDUs' motion to consolidate, the Commission typically consolidates proceedings only for purposes of hearing and decision.²⁹ As we are not setting either of these proceedings for hearing, there is no need to consolidate these dockets. Accordingly, we will deny the motion to consolidate.

²⁷ *North American Electric Reliability Corp.*, 129 FERC ¶ 61,033 (2009) (order addressing applicability of section 215 of the FPA to federal entities).

²⁸ Midwest ISO failed to provide good cause to permit an effective date retroactive to June 11, 2009.

²⁹ *New York Independent Operator, Inc.*, 105 FERC ¶ 61,108 (2003); *Arizona Public Service Company*, 90 FERC ¶ 61,197 (2000).

The Commission orders:

(A) Xcel's proposed System Integration Agreement is hereby accepted for filing, as modified by Xcel's withdrawal of its proposed rate treatment for charges paid by Xcel to Western, to become effective on September 8, 2009, as discussed in the body of this order.

(B) Midwest ISO's proposed Interconnection Agreement is hereby accepted for filing, to become effective on September 7, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.