

142 FERC ¶ 61,090
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.

American Transmission Company LLC

Docket No. EL13-9-000

v.

Midwest Independent Transmission System Operator,
Inc. and Xcel Energy Services Inc., Northern States
Power Company, a Wisconsin corporation, and
Northern States Power Company, a Minnesota
corporation

ORDER DENYING COMPLAINT

(Issued February 4, 2013)

1. On October 1, 2012, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² American Transmission Company, LLC (American Transmission) filed a complaint (Complaint) against the Midwest Independent Transmission System Operator, Inc. (MISO) and Xcel Energy Services Inc. (Xcel), on behalf of its operating company affiliates Northern States Power Company Wisconsin (Northern States Wisconsin), a Wisconsin corporation, and Northern States Power Company Minnesota (Northern States Minnesota), a Minnesota corporation. This complaint concerns provisions found in MISO's Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (Transmission Owners Agreement), as well as MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), which are described more fully herein. As discussed below, the Commission denies the relief requested in the complaint.

¹ 16 U.S.C. § 824e (2006).

² 18 C.F.R. § 385.206 (2012).

I. Background

2. 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. American Transmission provides transmission service over its facilities pursuant to the Tariff.

3. Northern States Wisconsin is a Wisconsin corporation and a vertically-integrated utility that provides electric generation, transmission, and distribution services. Northern States Minnesota is a Minnesota corporation and a vertically-integrated utility that provides electric generation, transmission, and distribution services. Northern States Wisconsin and Northern States Minnesota are subsidiaries of Xcel, a public utility holding company within the meaning of the Public Utility Holding Company Act of 2005.³ Northern States Wisconsin and Northern States Minnesota are transmission owning members of MISO and signatories of the Transmission Owners Agreement and operate their respective transmission facilities as a single transmission system.

4. MISO is a Commission-approved Regional Transmission Organization that is responsible for administering the regional transmission planning provisions of the Transmission Owners Agreement and the Tariff. American Transmission, Northern States Wisconsin, and Northern States Minnesota have transferred operating control over their respective transmission systems to MISO pursuant to the Transmission Owners Agreement.

II. Complaint

5. American Transmission contends that MISO's Transmission Owners Agreement and Tariff permit American Transmission to own and construct 50 percent of a 345 kV transmission project consisting of two line segments being built in phases, with a first 345 kV line segment from the Hampton Substation in the Twin Cities area in Minnesota (owned by Northern States Minnesota) to the new Briggs Road Substation to be built near La Crosse, Wisconsin (presently to be owned by Northern States Wisconsin and other CAPX 2020 participants) (the Twin Cities – La Crosse Line),⁴ and a second 345 kV line

³ 15 U.S.C. § 79 *et seq.*

⁴ The Twin Cities – La Crosse Line is part of a portfolio of projects being developed by utilities in the upper Midwest and known as CapX2020. The utilities participating in this segment of CapX2020 are Dairyland Power Cooperative (Dairyland), Rochester Public Utilities (Rochester), WPPI Energy (WPPI), Southern Minnesota Municipal Power Agency (Southern Minnesota), Northern States Minnesota, and Northern States Wisconsin.

segment from that substation to the Cardinal Substation in the Madison area in Wisconsin (owned by American Transmission) (the La Crosse – Madison Line). American Transmission first requests that the Commission find that MISO has not correctly implemented the Transmission Owners Agreement and the Tariff. Second, American Transmission requests that the Commission direct Xcel to enter into negotiations with American Transmission to develop final terms and conditions for the shared ownership and construction of both the Twin Cities – La Crosse Line and the La Crosse – Madison Line.

6. Specifically, American Transmission argues that based on the language of section VI of Appendix B of the Transmission Owners Agreement, American Transmission has investment and ownership rights to participate on an equal basis in the 345 kV transmission projects, consisting of the Twin Cities – La Crosse Line and the La Crosse – Madison Line, that will interconnect Northern States Minnesota’s Hampton Substation near the Twin Cities, with American Transmission’s Cardinal Substation near Madison. 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.⁵

7. American Transmission asserts that the Complaint is directly related to the complaint that Xcel filed against American Transmission in Docket No. EL12-28-000.⁶ 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.⁷ Xcel requested that the Commission direct 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.⁸

⁵ Transmission Owners Agreement, at App. B, § VI. Throughout their pleadings, the parties refer to this language in Appendix B, section VI of the Transmission Owners Agreement as the “Share Equally Provision” or “Belongs Equally Provision.”

⁶ *Xcel Energy Servs. Inc. v. Am. Transmission Co. LLC*, 140 FERC ¶ 61,058 (2012) (*Xcel Order*).

⁷ *Id.* PP 4-10.

⁸ *Id.* P 1.

8. In the *Xcel Order*, the Commission found that the plain language of Appendix B, section VI of the Transmission Owners Agreement supported Xcel's position and that the language "is unambiguous as to ownership and the responsibility of owners to build facilities."⁹ The Commission therefore found that Appendix B, section VI of the Transmission Owners Agreement "acts to establish a right of first refusal for transmission owners."¹⁰ 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.¹¹

9. American Transmission contends that Appendix B, section VI of the Transmission Owners Agreement, as interpreted and applied by the Commission in the *Xcel Order*, enables it to own and construct 50 percent of the "facilities" interconnecting Northern States Minnesota's facilities in Twin Cities, with American Transmission's facilities near Madison.¹² These facilities include the Twin Cities – La Crosse Line, the La Crosse – Madison Line, and the Briggs Road Substation.¹³ American Transmission states that in the *Xcel Order*, the Commission did not rule on the applicability of Appendix B, section VI of the Transmission Owners Agreement to the entire 345 kV transmission line between Twin Cities and Madison because Xcel only presented arguments as to the La Crosse – Madison Line segment.¹⁴

10. American Transmission states that MISO approved the Twin Cities – La Crosse Line as a Baseline Reliability Project¹⁵ in the 2008 MISO Transmission Expansion Plan

⁹ *Id.* PP 59-60.

¹⁰ *Id.* P 64. The Commission acknowledged that it did require the elimination of a federal right of first refusal in Order No. 1000, but noted that it did so on a prospective basis upon Commission acceptance of the compliance filings that were due on October 11, 2012 and which are still pending as of the date of this order. *Id.* P 66.

¹¹ *Id.* P 67. American Transmission has filed a timely request for rehearing and motion for a stay of the *Xcel Order*, which are pending before the Commission. American Transmission has indicated that if the Commission grants American Transmission's request for rehearing, it may withdraw the Complaint.

¹² Complaint at 2.

¹³ *Id.* at 16.

¹⁴ *Id.* at 5-6.

¹⁵ Baseline Reliability Projects are defined as:

(MTEP)¹⁶ and designated Xcel, Dairyland, Rochester, WPPI, and Southern Minnesota as joint owners.¹⁷ American Transmission further states that on December 8, 2011, MISO approved the La Crosse – Madison line as a Multi Value Project (MVP)¹⁸ in the 2011 MTEP¹⁹ and designated both Northern States Wisconsin and American Transmission as joint owners. American Transmission argues that, though the Twin Cities – La Crosse Line and La Crosse – Madison Line were approved by MISO in different planning cycles

Network Upgrades identified in the base case as required to ensure that the Transmission System is in compliance with applicable national Electric Reliability Organization (ERO) reliability standards and reliability standards adopted by Regional Reliability Organizations and applicable within the Transmission Provider Region. Baseline Reliability Projects include projects that are needed to maintain reliability while accommodating the ongoing needs of existing Market Participants and Transmission Customers.

Tariff, at Attach. FF § II.A.1.

¹⁶ See Midwest Indep. Transmission Sys. Operator, Inc., Midwest ISO Transmission Plan 2008 (2008 MTEP), at 184, *available at*: <https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP08/MTEP08%20Report.pdf>.

¹⁷ American Transmission states that, except where otherwise specified in the Complaint, American Transmission adopts Xcel's description of the Twin Cities – La Crosse Line and the La Crosse – Madison Line and the development efforts leading up to those segments as set forth in Xcel's complaint in Docket No. EL 12-28-000. Complaint at 8.

¹⁸ 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).

¹⁹ 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 La Crosse – Madison Line is actually a subset of the North La Crosse – North Madison – Cardinal – Spring Green – Dubuque area 345 kV Project. *Id.*

and will be built separately, the two segments, once completed, will form a single 345 kV interconnection.

11. American Transmission asserts that the regional reliability and economic benefits projected to result from the Twin Cities – La Crosse Line are inextricably linked to and interdependent upon the La Crosse – Madison Line.²⁰ To support its argument, American Transmission cites a number of studies that state that the Twin Cities – La Crosse Line is intended to enhance regional reliability for the upper Midwest.²¹ American Transmission also argues that regulatory proceedings and approval processes on state and regional levels, as well as the physical electrical interconnection (if constructed according to existing plans), further support the interdependent nature of the project segments. According to American Transmission, while the line segments are being developed along different timetables, there can be little doubt that they constitute a unified plan to strengthen the regional grid between the Twin Cities area in southeastern Minnesota and the Madison area in southeastern Wisconsin, and thus constitute a single project.²²

12. American Transmission states that it rejects Xcel's position that Appendix B, section VI of the Transmission Owners Agreement does not apply to the Twin Cities – La Crosse Line because Northern States Wisconsin will own the eastern end of the Twin Cities – La Crosse Line segment, thus meaning that the project will not connect with any American Transmission facility.²³ American Transmission contends that Xcel's position ignores the fact that there is currently no Briggs Road Substation. American Transmission argues that ownership of the Briggs Road Substation should be shared by American Transmission and Northern States Wisconsin.

13. American Transmission requests that the Commission direct MISO to designate Xcel and American Transmission as the parties responsible for developing, constructing, and owning the two 345 kV line segments connecting Northern States Minnesota's Hampton Substation in the Twin Cities area to American Transmission's Cardinal Substation near Madison, consisting of both the Twin Cities – La Crosse and La Crosse – Madison Lines.²⁴ American Transmission asserts that, if the Commission believes that

²⁰ Complaint at 20.

²¹ *Id.* at 13-15. American Transmission specifically mentions the CapX2020 Vision Study, the 2007 Renewable Energy Standard Update, and the 2010 Western Wisconsin Transmission Reliability Study. *Id.*

²² *Id.* at 16.

²³ *Id.*

²⁴ *Id.* at 21.

the Complaint raises issues of material fact that cannot be resolved based on the pleadings, the Commission should establish an evidentiary hearing, preceded by expedited settlement judge procedures.²⁵

III. Notice and Responsive Pleadings

14. Notice of this Complaint was published in the Federal Register, 77 *Fed. Reg.* 61,592 (2012), with protests and interventions due on or before October 22, 2012.

15. Timely motions to intervene were filed by Exelon Corporation; Calpine Corporation; WPPI; and Town of Stark Committee on Energy Planning & Information. Motions to intervene and comments were filed by Rochester; ITC Midwest, LLC (ITC Midwest); MISO Transmission Owners;²⁶ Dairyland; and No CapX 2020, United Citizens Action Network, and Citizens Energy Task Force (collectively, Joint Public Intervenors). The Public Service Commission of Wisconsin (Wisconsin Commission) filed a notice of intervention and comments. On October 30, 2012, the Wisconsin Public Service Corporation and Upper Peninsula Power Company filed a joint motion to intervene out-of-time and comments.

16. On October 22, 2012, Xcel and MISO filed their respective answers to the Complaint.

17. On November 7, 2012, American Transmission filed an answer to MISO's and Xcel's answer. On November 20, 2012, Xcel filed an answer to American Transmission's answer.

²⁵ *Id.*

²⁶ 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 Company; 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.

A. MISO's Answer

18. MISO explains that its annual regional transmission expansion plan, the MTEP, consists of many individual projects or portfolios of projects that will eventually be recommended to the MISO Board of Directors (MISO Board). MISO states that it relies on “expected use patterns and analysis of the performance of the Transmission System in meeting both reliability needs and the needs of the competitive bulk power market, under a wide variety of contingency conditions,” to form the MTEP.²⁷ In addition, MISO asserts that the regional planning process is open and transparent, and that the process ensures that all participants are treated impartially.

19. MISO states that it performs its regional planning responsibilities in accordance with several guiding documents. Appendix B of the Transmission Owners Agreement contains the Planning Framework, which describes the planning responsibilities of MISO and its transmission-owning members.²⁸ Attachment FF of the Tariff contains the MTEP Protocol, which is based on the Transmission Owners Agreement Appendix B Planning Framework and which has been developed and continuously improved over many years by MISO stakeholders in a collaborative process in conformity with the Commission’s guiding mandates, such as Order No. 890 and Order No. 1000.²⁹ MISO states that it uses these documents to evaluate proposed expansions to the transmission system in order to develop the MTEP.

20. As part of its MTEP development responsibilities, MISO states that it designates ownership and construction rights. Where there are two or more owners, MISO says it requires, under Appendix B of the Transmission Owners Agreement, that the designated owners of the project submit their ownership agreement.³⁰ MISO states that its designation of owners for a particular MTEP project indicates that such owners have agreed to participate in the project and that MISO is not aware of any claim to the contrary. MISO states that once the MISO Board approves an MTEP, the approval acts as certification that the MTEP meets the transmission needs of all stakeholders, subject to any required approvals by federal or state regulatory authorities. MISO states that after a project is included in Appendix A of the MTEP, which sets forth a table of all approved

²⁷ MISO Answer at 4-5.

²⁸ *Id.* at 5. *See* Transmission Owners Agreement App. B.

²⁹ MISO Answer at 5. *See* Tariff Attach. B.

³⁰ *Id.* at 7.

projects and their ownership designations, MISO's planned development responsibilities for that project are terminated.³¹

21. MISO argues that it should be dismissed as a respondent in the instant filing because American Transmission failed to state a claim against MISO upon which relief can be granted.³² MISO contends that American Transmission's complaint alleges no specific wrong perpetrated by MISO. MISO asserts that, with respect to its approval of the Twin Cities – La Crosse Line in the 2008 MTEP as a Baseline Reliability Project and the approval of the La Crosse – Madison Line in the 2011 MTEP as an MVP, its actions were in accordance with the Transmission Owners Agreement and the Tariff.³³ MISO also states that it does not believe it has the authority to unilaterally reconfigure already approved projects, particularly if such projects belong to different categories, such as Baseline Reliability Projects and MVPs.³⁴

22. MISO further argues that, in the event that the Commission decides to consider the merits of American Transmission's complaint, American Transmission's construction of Appendix B, section VI of the Transmission Owners Agreement be rejected.³⁵ First, MISO asserts that American Transmission ignores the fact that under the MTEP, projects are approved on a planning cycle basis. Accordingly, MISO argues that when the term "facilities" is considered in the context of section VI of the Transmission Owners Agreement and its purposes, it is clear that the term refers to facilities included in a particular MTEP. Therefore, MISO argues that American Transmission cannot justify, in the absence of express authorization, any merger or reclassification of projects already approved in prior planning cycles. Second, MISO argues that if the Commission adopts the broad interpretation of the term "facilities" advocated by American Transmission, then virtually any approved transmission project, regardless of its category, could be reopened, reclassified, or reconfigured in a subsequent planning cycle.³⁶ Third, MISO argues that American Transmission's interpretation of Appendix B, section VI of the Transmission Owners Agreement would weaken the certainty in the MISO cost allocation process. Finally, MISO argues that, based on the language in the 2008 MTEP,

³¹ *Id.*

³² *Id.* at 10-14.

³³ *Id.*

³⁴ *Id.* at 13.

³⁵ *Id.* at 14-17.

³⁶ *Id.* at 15.

the two projects were never contemplated or justified as segments of a single project in any MISO transmission planning cycle.³⁷

B. Xcel's Answer

23. Xcel argues that the Complaint is flawed for four reasons. First, Xcel argues that the Complaint constitutes an impermissible collateral attack on the *Xcel Order*.³⁸ Specifically, Xcel contends that American Transmission seeks to re-litigate the outcome of the *Xcel Order*, which designated American Transmission and Xcel as the parties responsible for the La Crosse – Madison Line, and that American Transmission should therefore be collaterally estopped from arguing its substantive interpretation of Appendix B, section VI of the Transmission Owners Agreement. Second, Xcel argues that the Complaint constitutes an attack on the MTEP Process, a filed rate.³⁹ Third, Xcel argues that the Complaint impermissibly attacks the Wisconsin Certificate of Public Convenience and Necessity (CPCN) Proceeding and the Minnesota Route Permit Proceeding.⁴⁰ Xcel notes that, in both of those proceedings, American Transmission argued that just because the Twin Cities – La Crosse Line and the La Crosse – Madison Line will eventually interconnect does not make them the same facility.⁴¹ Fourth, Xcel argues that the Complaint should be summarily dismissed because it fails to include all of the CapX2020 participants.⁴²

24. Xcel argues that granting the Complaint would cause uncertainty and disorder in MISO's regional planning process.⁴³ Xcel asserts that MISO complied with the plain language of Appendix B, section VI of the Transmission Owners Agreement in designating ownership of the Twin Cities – La Crosse Line to Xcel and the other CapX2020 participants.⁴⁴ Xcel asserts that once a project is approved and its owners

³⁷ *Id.* at 16.

³⁸ Xcel Answer at 11-13.

³⁹ *Id.* at 13-14. Xcel asserts that the filed rate doctrine precludes American Transmission from attacking MISO's application of the Tariff in the 2008 MTEP. *Id.*

⁴⁰ *Id.* at 14-15.

⁴¹ *Id.*

⁴² *Id.* at 15-16.

⁴³ *Id.* at 16-24.

⁴⁴ *Id.* at 16.

designated in the MTEP, that project must be included in the next plan.⁴⁵ Xcel notes that there is no provision in the Transmission Owners Agreement to revisit the plan based on subsequent events.⁴⁶ Xcel argues that American Transmission's Complaint essentially requests that the Commission modify the ownership designations made for the two projects in the 2008 MTEP and 2011 MTEP.⁴⁷ Xcel contends that, if American Transmission disagreed with MISO ownership designations in either MTEP process, it should have brought a timely challenge through the MISO dispute resolution process at that time.

25. Additionally, Xcel argues that granting the Complaint would set a dangerous precedent.⁴⁸ In Xcel's view, granting the complaint would create the opportunity for any transmission owner to reopen all previous MTEPs based on the results of the most recent MTEP. Furthermore, Xcel states that the Tariff requires MISO to take into account its own planning analysis and that American Transmission's reliance on other high-level studies is therefore misplaced.⁴⁹ Xcel also rejects American Transmission's reliance on the fact that the Briggs Road Substation has yet to be constructed.⁵⁰ Xcel contends this fact is irrelevant and instead argues that MISO's planning cycles assume previously-approved projects have been constructed even if such projects have not yet been placed in-service.⁵¹

26. Finally, Xcel argues that the Twin Cities – La Crosse Line and La Crosse – Madison Line are two separate projects comprised of separate facilities.⁵² Xcel asserts that there is no language in the 2008 MTEP or the 2011 MTEP that designates either the La Crosse – Madison Line or the Twin Cities – La Crosse Line as an extension of the other.⁵³ Xcel argues that MISO also distinguished the two projects by classifying one as a Baseline Reliability Project and the other as an MVP. Xcel contends that if the projects

⁴⁵ *Id.* at 17.

⁴⁶ *Id.*

⁴⁷ *Id.* at 18.

⁴⁸ *Id.*

⁴⁹ *Id.* at 20.

⁵⁰ *Id.*

⁵¹ *Id.* at 20-21.

⁵² *Id.* at 21-24.

⁵³ *Id.* at 22.

were one set of facilities, they would have received the same project type designation under their respective MTEPs. Additionally, Xcel argues that the Wisconsin CPCN Proceeding itself is evidence that the two projects are distinct. Xcel notes that, in that proceeding, American Transmission argued that the Twin Cities – La Crosse Line should be approved on a stand-alone basis because it provides “significant reliability, usage, and service benefits to Wisconsin customers.”⁵⁴ Xcel concludes that, even though the Twin Cities – La Crosse Line is vital to the foundation for future transmission expansion in Wisconsin, this does not mean the Commission should consider the line to be an extension of the La Crosse – Madison Line.⁵⁵

C. Comments and Responses

27. Wisconsin Commission submitted comments opposing the Complaint. Wisconsin Commission argues that it granted a CPCN for the section of the Twin Cities – La Crosse Line located in Wisconsin on a stand-alone basis because of the local reliability and regional benefits that the project offers.⁵⁶ Wisconsin Commission notes that its decision discusses at length the local reliability needs of the La Crosse area that justified a 345 kV line as the best option for meeting the long-term needs of the La Crosse area, while also providing regional benefits.⁵⁷

28. ITC Midwest argues that the Commission should uphold MISO’s determination and reject the Complaint.⁵⁸ ITC Midwest further argues that the Commission should require American Transmission to enter into a joint development agreement with ITC Midwest for a proposed 136 mile, 345 kV electric transmission line connecting ITC Midwest’s Dubuque Substation in Iowa to American Transmission’s Cardinal Substation in southwestern Wisconsin (Dubuque – Cardinal Line) in accordance with Appendix B, section VI of the Transmission Owners Agreement.⁵⁹

⁵⁴ *Id.* at 22-23 (quoting Br. of American Transmission at 4, *Wisconsin CPCN Proceeding* (Mar. 30, 2012)).

⁵⁵ *Id.* at 24.

⁵⁶ Wisconsin Commission Comment at 4-5.

⁵⁷ *Id.* at 4.

⁵⁸ ITC Midwest Comment at 2. ITC Midwest states that it joins in and supports the comments of the MISO Transmission Owners but files separately to highlight specific issues that relate to ITC Midwest. *Id.* at n.1.

⁵⁹ ITC Midwest recently filed a complaint against American Transmission requesting that the Commission direct American Transmission to enter into negotiations with ITC Midwest to develop final terms and conditions for shared ownership and

29. Joint Public Intervenors, which are organizations comprised of landowners and residents near the proposed easements for several of the CapX2020 transmission lines, agree with American Transmission's theory that the CapX2020 projects should not be viewed in isolation.⁶⁰ However, Joint Public Intervenors contest American Transmission's claim that there is an existing substation at Hampton.⁶¹ According to Joint Public Intervenors, the Hampton Substation is planned as part of another segment of the CapX2020 project, and using American Transmission's logic, American Transmission would also be entitled to a share of another line (Brookings – Hampton line) that is planned in the CapX2020 initiative.⁶²

30. Rochester argues that the Twin Cities – La Crosse Line is needed by the city for reliability purposes on a stand-alone basis and is not dependent on the construction of the La Crosse – Madison Line.⁶³

31. The MISO Transmission Owners state that the Tariff establishes MISO's right to designate the entities responsible for constructing and owning projects approved in the MTEP, and that the Commission should not take steps to interfere with that designation.⁶⁴ The MISO Transmission Owners assert that, pursuant to the Commission's interpretation of Appendix B, section VI of the Transmission Owners Agreement in the *Xcel Order* and the *Pioneer Order*,⁶⁵ the transmission owners with the right and obligation to construct the Twin Cities – La Crosse Line are Xcel, Dairyland, Rochester, Southern Minnesota, and WPPI.⁶⁶ In addition, the MISO Transmission Owners argue that reopening MTEP determinations can introduce unneeded uncertainty,

construction of the Dubuque – Cardinal Line in a manner compliant with the Transmission Owners Agreement and Tariff. *See* ITC Midwest, Complaint, Docket No. EL13-13-000 (filed Oct. 24, 2012).

⁶⁰ Joint Public Intervenors Comments at 4-5.

⁶¹ *Id.* at 6.

⁶² *Id.* at 6-8.

⁶³ Rochester Comments at 4-5.

⁶⁴ MISO Transmission Owners Comments at 7-10.

⁶⁵ *Pioneer Transmission LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057 (2012) (*Pioneer Order*).

⁶⁶ MISO Transmission Owners Comments at 9.

increase project risk, and create delays in executing projects, which results in increased project costs and potential harm to reliability.⁶⁷

32. Dairyland contends that MISO correctly designated Xcel and the other CapX2020 participants as the entities responsible for developing the Twin Cities – La Crosse Line.⁶⁸ Dairyland notes that, prior to filing the Complaint, American Transmission acknowledged in state regulatory proceedings that the Twin Cities – La Crosse Line and the La Crosse – Madison Line constitute two separate projects.⁶⁹

33. Southern Minnesota supports the legal and policy arguments raised by Xcel in its answer.⁷⁰ In addition, Southern Minnesota argues that the Commission's failure to dismiss the Complaint would undermine years of coordinated effort by the Twin Cities – La Crosse Line participants that reasonably relied on the Commission-approved MTEP process.⁷¹

D. American Transmission's Answer to MISO's and Xcel's Answer

34. American Transmission argues that Xcel and MISO wrongly assume that the proposed Briggs Road Substation near La Crosse has already been found to be Xcel's facilities in the 2008 MTEP.⁷² American Transmission contends that ownership of the Briggs Road Substation is the subject matter of the Complaint and has not been previously established in any proceeding. American Transmission states that it did not challenge MISO's designation of ownership for the Twin Cities – La Crosse Line in the 2008 MTEP because it was American Transmission's understanding and expectation that sponsorship of a proposed transmission project in MISO and before state commissions was dispositive as to investment and ownership rights in a project.⁷³ Thus, American Transmission states that it believed that Xcel would own and construct the portion of the line that it had developed and sponsored, and American Transmission would own and

⁶⁷ *Id.* at 10-12.

⁶⁸ Dairyland Comments at 5-8.

⁶⁹ *Id.* at 8-10.

⁷⁰ Southern Minnesota Comments at 7.

⁷¹ *Id.* at 7-9.

⁷² American Transmission Answer at 8.

⁷³ *Id.* at 8-9.

construct the portion of the line that American Transmission had developed and sponsored.⁷⁴

35. American Transmission argues that, as a matter of strict contract interpretation, the Transmission Owners Agreement requires that Xcel and American Transmission share equally the facilities between Northern States Minnesota's Hampton Substation near the Twin Cities and American Transmission's Cardinal Substation near Madison.⁷⁵ American Transmission states that Appendix B, section VI of the Transmission Owners Agreement distinguishes between new facilities and existing facilities.⁷⁶ This distinction, American Transmission contends, is at the core of Appendix B, section VI of the Transmission Owners Agreement, because the provision states that ownership of new facilities depends on ownership of existing facilities to which the new facilities connect.⁷⁷ Therefore, American Transmission concludes that MISO's and Xcel's argument that the Briggs Road Substation should be considered an existing facility is inconsistent with the structure of Appendix B, section VI of the Transmission Owners Agreement because the facility has yet to be constructed.

36. American Transmission states that the Transmission Owners Agreement contemplates that transmission projects will be consolidated over time into comprehensive cost-effective projects.⁷⁸ The Transmission Owner Agreement dictates that "[i]n the course of the [MTEP] process, the Planning Staff shall seek out opportunities to coordinate or consolidate, where possible, individually defined transmission projects into more comprehensive cost-effective developments subject to the limitations imposed by prior commitments and lead time constraints."⁷⁹ American Transmission argues that, even though the Twin Cities – La Crosse Line and La Crosse – Madison Line were approved at different times, they should now be considered one transmission line because they were designed to provide improvements in reliability and efficiency to the regional transmission grid between the Twin Cities and Madison areas.⁸⁰

⁷⁴ *Id.*

⁷⁵ *Id.* at 9-12.

⁷⁶ *Id.* at 10.

⁷⁷ *Id.*

⁷⁸ *Id.* at 12-13.

⁷⁹ Transmission Owners Agreement § VI.

⁸⁰ American Transmission Answer at 12-13.

37. American Transmission states that the representations it made to the Wisconsin Commission and the Public Utilities Commission of Minnesota, particularly that the Twin Cities – La Crosse Line should be viewed separate and distinct from the La Crosse – Madison Line, are irrelevant. American Transmission does not deny having argued that position in past proceedings. However, American Transmission states that at the time it made those arguments in the state proceedings, those arguments were entirely consistent with the sponsorship model that American Transmission believed governed ownership rights for transmission projects.

38. American Transmission states that the Complaint is not a collateral attack on the *Xcel Order* or on prior rulings by the Wisconsin Commission or Minnesota Commission for five reasons. First, American Transmission states that it accepts the Commission’s determination in the *Xcel Order* for purposes of the Complaint.⁸¹ Second, American Transmission states that the Commission invited American Transmission to file the instant Complaint in the *Xcel Order*.⁸² Third, American Transmission rejects Xcel’s assertion that the Complaint is a direct attack on the *Xcel Order* in an attempt to take sole ownership of the La Crosse – Madison Line.⁸³ Fourth, American Transmission denies that it is attempting to re-litigate the *Xcel Order* and instead argues that it is simply attempting to have the Commission apply Appendix B, section VI of the Transmission Owners Agreement to all the facilities connecting the Hampton Substation near the Twin Cities area with the Cardinal Substation in the Madison area.⁸⁴ Lastly, American Transmission states that is not attacking the CPCN issued by the Wisconsin Commission or the Certificate of Public Need issued by the Minnesota Commission.⁸⁵ Conversely, American Transmission asserts that it relies on the findings of the Wisconsin Commission and Minnesota Commission to demonstrate the regional benefits that will stem from a 345 kV interconnection between the Twin Cities area and the Madison area.

⁸¹ *Id.* at 15.

⁸² *Id.* In the *Xcel Order*, American Transmission argued that, if the Commission ruled in favor of Xcel and accepted Xcel’s interpretation of Appendix B, section VI of the Transmission Owners Agreement, then American Transmission should be granted 50 percent ownership of all of the CAPX2020 projects. *Xcel Order*, 140 FERC ¶ 61,058 at P 68. In the *Xcel Order*, we stated: “We note that American Transmission’s request is beyond the scope of the Complaint, and instead is more appropriately characterized as a complaint related to the CAPX2020 projects. . . . Accordingly, we will reject American Transmission’s request pertaining to this issue, without prejudice.” *Id.*

⁸³ American Transmission Answer at 16.

⁸⁴ *Id.*

⁸⁵ *Id.*

39. American Transmission contends that regulatory certainty will not be undermined if the Commission grants the Complaint.⁸⁶ American Transmission states that it is not proposing to undo MISO's planning process or the state commission orders already issued. Instead, American Transmission states that it is only seeking an order that will narrowly apply Appendix B, section VI of the Transmission Owners Agreement to the facilities interconnecting Northern States Minnesota's facilities in the Twin Cities area with American Transmission's facilities in the Madison area. American Transmission notes that, in the future, ownership of regional transmission projects adopted through the MTEP will be resolved in accordance with the Order No. 1000 compliance procedures ultimately approved by the Commission for the MISO region.⁸⁷

40. American Transmission states that a ruling in its favor will not affect the MISO cost allocation or the MTEP classification for the Twin Cities – La Crosse Line or the La Crosse – Madison Line.⁸⁸ American Transmission asserts that there is no language in the Transmission Owners Agreement that suggests that Appendix B, section VI of the Transmission Owners Agreement cannot be applied to facilities that have secured different classifications for cost allocation purposes.⁸⁹ American Transmission also states that it does not seek to challenge the classifications or cost allocations adopted by MISO.⁹⁰

41. American Transmission states that, contrary to Xcel's argument, the MTEP is not a filed rate and thus the filed rate doctrine does not apply.⁹¹ American Transmission states that each individual MTEP is the result of the planning process that is part of the Tariff, which is itself a rate filed with the Commission.⁹² The MTEPs, however, are not part of any filed rate.⁹³

⁸⁶ *Id.* at 17-18.

⁸⁷ *Id.*

⁸⁸ *Id.* at 18-20.

⁸⁹ *Id.* at 19.

⁹⁰ *Id.*

⁹¹ *Id.* at 20-21.

⁹² *Id.* at 20.

⁹³ *Id.* (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,163-65 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2011)).

42. American Transmission asserts that its opportunity to claim an ownership interest in the Twin Cities – La Crosse Line has not lapsed because American Transmission was only put on notice of its rights in the *Xcel Order*.⁹⁴ Furthermore, American Transmission states that it did not need to include all of the current owners of the Twin Cities – La Crosse Line as respondents to the Complaint.⁹⁵ Lastly, American Transmission states that MISO should remain a respondent in this proceeding because MISO is the party that is able to effectuate the relief American Transmission seeks.⁹⁶

E. Xcel's Answer to American Transmission's Answer

43. Xcel argues that MISO correctly implemented Appendix B, section VI of the Transmission Owner Agreement.⁹⁷ Xcel contends that Appendix B, section VI of the Transmission Owners Agreement does not distinguish between new facilities and existing facilities. Xcel asserts that Appendix B, section VI of the Transmission Owners Agreement should be applied only to facilities approved in a particular MTEP on a per MTEP basis.

44. Xcel rejects American Transmission's argument that the Twin Cities – La Crosse Line and La Crosse – Madison Line must be consolidated for purposes of applying Appendix B, section VI of the Transmission Owners Agreement.⁹⁸ Instead, Xcel states that the Transmission Owners Agreement intends to encourage MISO to consolidate projects only when MISO is developing a particular MTEP.

IV. Discussion

A. Procedural Matters

45. 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.

46. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the joint motion to intervene and comments filed by Wisconsin Public Service Corporation and Upper Peninsula Power

⁹⁴ American Transmission Answer at 21.

⁹⁵ *Id.* at 21-22.

⁹⁶ *Id.* at 21-23.

⁹⁷ Xcel Answer to American Transmission Answer at 3.

⁹⁸ *Id.* at 5.

Company given their interest in the proceeding, the early state of the proceedings, and the absence of undue prejudice or delay.

47. 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 will accept the answers filed by American Transmission and Xcel because they provided information that assisted us in our decision-making process.

B. Substantive Matters

48. We find that MISO correctly implemented the Transmission Owners Agreement and Tariff in the 2008 MTEP and the 2011 MTEP and therefore deny the Complaint. As such, we reject American Transmission's position that American Transmission has investment and ownership rights to participate on an equal basis in the 345 kV transmission projects that will interconnect Northern States Minnesota's Hampton Substation near the Twin Cities area, with American Transmission's Cardinal Substation near Madison.

49. As we did in the *Xcel Order*, we base this decision on the relevant provisions of MISO's Transmission Owners Agreement and Tariff. 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.⁹⁹

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.¹⁰⁰

⁹⁹ Transmission Owners Agreement, App. B, § VI.

¹⁰⁰ Tariff, Attach. FF, Section V.

50. In the *Xcel 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.”¹⁰¹ Furthermore, we found that the language in Appendix B, section VI of the Transmission Owners Agreement establishes a right of first refusal.¹⁰² While we acknowledged that, in Order No. 1000, the Commission found that granting incumbent transmission providers a federal right of first refusal 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 cost-effective or efficient solutions to regional needs, we also noted that the Order No. 1000 compliance filing deadline was October 11, 2012.¹⁰³ We therefore found that Order No. 1000 eliminates the federal right of first refusal on a prospective basis only.¹⁰⁴ Accordingly, we concluded “that the Transmission Owners Agreement does require MISO transmission owners to share responsibility for interconnecting facilities” and, more specifically, 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.”¹⁰⁵

51. We are not persuaded by American Transmission’s argument that the Twin Cities – La Crosse Line and the La Crosse – Madison Line, together, form a single interconnection based on American Transmission’s interpretation of the language of Appendix B, section VI of the Transmission Owners Agreement. Rather, we find that MISO correctly implemented the Transmission Owners Agreement and Tariff in the 2008 MTEP and the 2011 MTEP, in which it designated ownership and construction responsibilities based on the Twin Cities – La Crosse Line and the La Crosse – Madison Line being separate projects. First, the Twin Cities – La Crosse Line was approved by the MISO Board as an Appendix A project in the 2008 MTEP. The project was designated as a Baseline Reliability Project consistent with the Tariff.¹⁰⁶ The 2008 MTEP Report states that the Twin Cities – La Crosse Line is intended to resolve

¹⁰¹ *Xcel Order*, 140 FERC ¶ 61,058 at P 60.

¹⁰² *Id.* P 64.

¹⁰³ *Id.* PP 64, 66 (citing *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, at P 284 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012)).

¹⁰⁴ *Id.* P 66 (citing Order No.1000, FERC Stats & Regs. 31,323 at P 65).

¹⁰⁵ *Id.* P 67.

¹⁰⁶ *Id.*

reliability issues by providing “345 kV transmission system support to [the] growing areas of Rochester, Minnesota and La Crosse, Wisconsin.”¹⁰⁷ The 2008 MTEP also indicates that the Twin Cities – La Crosse Line will resolve numerous North American Electric Reliability Corporation contingency violations that, in the absence of the project, would have resulted in severe overloads in some cases within the five year planning horizon.¹⁰⁸ In addition to Xcel, Dairyland, WPPI, Rochester, and Southern Minnesota were listed as entities that indicated agreement to participate in ownership of the project.¹⁰⁹ Before now, MISO’s designation of ownership for the Twin Cities – La Crosse Project has never been challenged.

52. Conversely, the La Crosse – Madison Line was approved by the MISO Board as an Appendix A project in the 2011 MTEP and designated part of a MVP for cost allocation purposes. The 2011 MTEP states that the La Crosse – Madison Line, in addition to the other projects in the portfolio, is intended to enhance reliability, reduce congestion, increase market efficiency, reduce real power losses, and defer all other capital investments in transmission. The MVP Portfolio approved in the 2011 MTEP does not include the Twin Cities – La Crosse Line. Though ownership and construction responsibilities for the facilities for this project have been in dispute between American Transmission and Xcel, the *Xcel Order* determined that American Transmission and Xcel are jointly responsible for the facilities compromising the La Crosse – Madison Line.¹¹⁰

53. In the Complaint, American Transmission does not challenge the validity of Appendix B of the Transmission Owners Agreement or Attachment FF of the Tariff, nor does American Transmission challenge how MISO applied these documents in the 2008 MTEP or the 2011 MTEP and the project designations in Appendix A of the respective reports. Instead, American Transmission now requests that MISO apply Appendix B, section VI of the Transmission Owners Agreement retroactively to enable American Transmission to own and construct 50 percent of the Twin Cities – La Crosse Line based on an assertion that the two segments consisting of the Twin Cities – La Crosse Line and the La Crosse – Madison Line, once completed, will form a single 345 kV interconnection, even though they were approved by MISO in different MTEP planning cycles. We believe that American Transmission should have advanced this argument during the planning process, when MISO actively engaged with stakeholders to develop its regional expansion plans. We therefore defer to MISO’s designation of ownership for the project to Xcel and the other CapX2020 participants.

¹⁰⁷ 2008 MTEP at 6.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Xcel Order*, 140 FERC ¶ 61,058 at P 67.

54. We find that the Twin Cities – La Crosse Line and the La Crosse – Madison Line are separate projects because they are described as such in their respective planning cycles. As MISO and Xcel argue in their answers, a review of the 2008 MTEP report and 2011 MTEP report supports Xcel’s and MISO’s argument that the two projects each offer individual benefits. Thus, Appendix B, section VI of the Transmission Owners Agreement does not support American Transmission’s argument that it should be permitted to own and construct 50 percent of the Twin Cities – La Crosse Line because it is a separate project and American Transmission does not have an ownership interest in any of the relevant facilities, as designated by MISO.

55. American Transmission argues that the Briggs Road Substation in La Crosse cannot be considered an existing facility for purposes of Appendix B, section VI of the Transmission Owners Agreement because the facility has yet to be constructed. We disagree with American Transmission’s analysis on this point. To foster successful project development, MISO plans transmission projects on an incremental basis. Transmission owners must be allowed to rely on the planning provisions in previous MTEPs. In order to plan future projects, MISO’s planning cycles necessarily assume that previously-approved projects in its models will be in operation even if they have not yet been placed in service. As Xcel notes in its answer, if the Commission were to adopt American Transmission’s argument, then MISO would be forced to delay subsequent planning cycles until all the facilities in the previous planning cycle were constructed and placed in service.¹¹¹

56. In regard to ITC Midwest’s request to require American Transmission to enter into a joint development agreement with ITC Midwest for the Dubuque – Cardinal Line in accordance with Appendix B, section VI of the Transmission Owners Agreement, we find that ITC Midwest’s request is outside the scope of this proceeding and will be addressed in the complaint filed in Docket No. EL13-13-000.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹¹ Xcel Answer at 21.