

144 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Citizens Energy Task Force and
Save Our Unique Lands

Docket No. EL13-49-000

v.

Midwest Reliability Organization,
Midwest Independent Transmission System Operator,
Inc., Xcel Energy Inc., Great River Energy, Dairyland
Power Cooperative, and Wisconsin Public Power Inc.

ORDER DISMISSING COMPLAINT

(Issued July 3, 2013)

1. On March 1, 2013, pursuant to section 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² Citizens Energy Task Force (Citizens Energy) and Save Our Unique Lands (SOUL) (collectively, Complainants) filed a complaint (Complaint) against the Midwest Reliability Organization (MRO), Midwest Independent Transmission System Operator, Inc. (MISO),³ Great River Energy (Great River), Dairyland Power Cooperative (Dairyland), Wisconsin Public Power Inc. (WPPI), 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

¹ 16 U.S.C. § 825e (2006).

² 18 C.F.R. § 385.206 (2012).

³ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

Minnesota (Northern States Minnesota), a Minnesota corporation.⁴ The Complaint alleges that the 345 kV transmission project that runs from the Hampton Substation in the Twin Cities area of Minnesota to the new Briggs Road Substation to be built near La Crosse, Wisconsin (Twin Cities – La Crosse Line), which was approved by MISO in the 2008 MISO Transmission Expansion Plan (MTEP) as a Baseline Reliability Project,⁵ violates multiple North American Electric Reliability Corporation (NERC) Reliability Standards.⁶ We dismiss the Complaint, as discussed below.

I. Background

2. Citizens Energy is a Minnesota and Wisconsin non-profit corporation. Citizens Energy states that it is a “grassroots advocacy group formed to advocate sustainable and renewable energy options and oppose the CapX 2020 transmission project.”⁷ SOUL is a Wisconsin non-profit corporation. SOUL states that it advocates for reforms in energy policy that consider the financial, environmental, and grid stability alternatives to transmission. Both Citizens Energy and SOUL have members who are landowners along the route of the Twin Cities – La Crosse Line.

⁴ Respondents Xcel, Great River, Dairyland, and WPPI will be referred to collectively as Respondent Utilities.

⁵ MISO’s tariff defines Baseline Reliability Projects as:

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.

Midwest Independent Transmission System Operator, Inc., Open Access Transmission, Energy and Operating Reserve Markets Tariff, at Att. FF § II.A.1 (Tariff).

⁶ The Twin Cities – La Crosse Line is part of a portfolio of projects being developed by utilities in the upper Midwest known as CapX2020.

⁷ Complaint at 3.

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 2005.⁸ Northern States Wisconsin and Northern States Minnesota are transmission-owning members of MISO that provide transmission service over their facilities pursuant to the MISO Tariff. Northern States Wisconsin and Northern States Minnesota are participants in the Twin Cities – La Crosse Line.

4. Great River is a Minnesota electric generation and transmission cooperative providing wholesale electric service to 28 distributive cooperatives in the states of Minnesota and Wisconsin. Great River is also a transmission-owning member of MISO that owns and operates electric transmission facilities subject to the functional control of MISO. Great River is not a participant in the Twin Cities – La Crosse Line.

5. Dairyland is a non-profit generation and transmission electric cooperative headquartered in La Crosse, Wisconsin. Dairyland is owned by and provides the wholesale power requirements to 25 separate distribution cooperatives in southern Minnesota, western Wisconsin, northern Iowa, and northern Illinois. In addition, Dairyland provides wholesale power requirements for 15 municipal utilities in Wisconsin, Minnesota, and Iowa. Dairyland is a transmission-owning member of MISO that owns and operates electric transmission facilities subject to the functional control of MISO. Dairyland is a participant in the Twin Cities – La Crosse Line.

6. WPPI is a non-profit regional municipal power company serving 51 customer-owned electric utilities in Wisconsin, Iowa, and the Upper Peninsula of Michigan. WPPI develops and owns generation, negotiates and holds power purchase agreements, and arranges transmission service and congestion protection on behalf of its member utilities. All of WPPI's members and their customers are located within the MISO footprint. WPPI is a participant in the Twin Cities – La Crosse Line.

7. MRO is a non-profit organization dedicated to ensuring the reliability and security of the bulk power system in the north central region of North America, including parts of both the United States and Canada. MRO is one of eight Regional Entities in North America operating under authority pursuant to a delegation agreement with NERC and in Canada through arrangements with provincial regulators. MRO's primary purpose is to ensure compliance with NERC Reliability Standards and perform regional assessments

⁸ 15 U.S.C. § 79 *et seq.*

of the grid's ability to meet the demands for electricity. Northern States Wisconsin, Northern States Minnesota, Great River, Dairyland, and WPPI are all registered entities within the MRO region and subject to MRO Reliability Standards compliance jurisdiction.

8. MISO is a Commission-approved Regional Transmission Organization that is responsible for administering the regional transmission planning provisions of the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (Transmission Owners Agreement) and the Tariff. MISO is responsible for operational oversight and control, market operations, and planning of the transmission systems of its member Transmission Owners.

II. Complaint

9. Complainants allege that MRO, MISO, and Respondent Utilities have failed to address instability and reliability concerns regarding the Twin Cities – La Crosse Line. In particular, Complainants contend that Respondents have violated five NERC Transmission Planning criteria: (1) FAC-002-1; (2) TPL-001-0.1; (3) TPL-001-2; (4) TPL-001-3; and (5) TPL-001-4. Complainants therefore request that the Commission: (1) find that the Twin Cities – La Crosse Line is prohibited because it contributes to and/or causes system instability; (2) find that MRO neglected its duty to preserve system reliability; and (3) revoke MISO's approval of the Twin Cities – La Crosse Line.⁹

10. Complainants argue that, in developing the Twin Cities – La Crosse Line, MISO focused on the economic benefits of the project, rather than the reliability problems caused by the radial 345 kV transmission line. Complainants quote language from a press release issued by the Xcel and Great River shortly after MTEP08 was approved. The press release states:

The studies also found that further upgrades in Minnesota and the Dakotas (beyond the 230-kilovolt line upgrade) will not provide significant benefit prior to installation of a high-voltage transmission line between the La Crosse, Wis., area and the Madison, Wis., area. Without a line to the east of Minnesota, the transmission system will reach a “tipping point” where reliability is compromised, according to the studies.¹⁰

⁹ Complaint at 8-9.

¹⁰ *Id.* at 12 (quoting Press Release, Great River and Xcel, Upper Midwest Utilities Identify Electric Transmission Upgrades To Meet Renewable Energy Standard

(continued...)

Complainants allege that the press release gave MRO and MISO active and constructive notice that the Twin Cities – La Crosse Line would cause system instability.

Complainants also rely upon the Final Report of the Southwest Twin Cities – Granite Falls Transmission Upgrade Study (Corridor Study) and the Minnesota Renewable Energy Standard Update Study (Minnesota RES Update Study), which Complainants contend are the first studies to consider the cumulative electrical impacts of the CapX 2020 transmission build-out and are the studies upon which the press release was based, to argue that the Twin Cities – La Crosse Line will cause congestion at the end of the line, in La Crosse, Wisconsin, unless an extension is constructed to the 345 kV system near Madison, Wisconsin.¹¹

11. Complainants cite three additional studies to support their argument. First, Complainants cite the Western Wisconsin Reliability Study to argue that the Twin Cities – La Crosse Line does not, on its own, provide significant increase in transfer capacity.¹² Second, Complainants quote the Capacity Validation Study, which Complainants assert was the first study to consider the cumulative impacts of the entire CapX 2020 Group 1 transmission projects, to reiterate their point that the Twin Cities – La Crosse Line will cause instability without the extension to Madison.¹³ Third, Complainants cite the Supplemental Need Study to argue that, without the eastward extension to Madison, the Twin Cities – La Crosse Line will only bring the Minnesota congestion, and its associated costs to ratepayers, to La Crosse and rural communities in the area.¹⁴

Milestones (Apr. 3, 2009), *available at*: <http://nocapx2020.info/wp-content/uploads/2011/05/addk-exhibitf-sandok4-3-09.pdf>).

¹¹ *Id.* at 13-15 (citing Minnesota Transmission Owners, Final Report, Southwest Twin Cities – Granite Falls Transmission Upgrade Study & Minnesota RES Update Study (Mar. 31, 2009), *available at*: <http://www.minnelectrans.com/documents/MTO-Study-Reports.pdf>).

¹² *Id.* at 15-16 (citing American Transmission Company, Western Wisconsin Reliability Study, Final Report 6, 14, 44 (Sept. 20, 2010), *available at*: <http://nocapx2020.info/wp-content/uploads/2011/11/atc-xmsnstudy-pdocs-3993093-v1-xcella-crosseattachment-52b-1-nocapx2.pdf>).

¹³ *Id.* at 16-18 (citing Minnesota Transmission Owners, Capacity Validation Study 8-10, 39-40, 50-53 (Mar. 31, 2009), *available at*: <http://www.minnelectrans.com/documents/capacity-study/cvsreport.pdf>).

¹⁴ *Id.* at 18-19 (citing CapX2020 Hampton – Rochester – La Crosse 345 kV Project Supplemental Need Study 13-14 (Aug. 2011), *available at*:

(continued...)

Complainants argue that the press release and the studies, together, demonstrate that Respondent Utilities, MRO, and MISO ignored inherent reliability problems associated with the Twin Cities – La Crosse Line when they evaluated the project as part of MTEP08.¹⁵

12. Complainants assert that Respondent Utilities, MRO, and MISO focused on capacity expansion and economic benefits, at the expense of system reliability, in developing the Twin Cities – La Crosse Line. Specifically, Complainants state that development of the Twin Cities – La Crosse Line, as set forth in the MTEP08, was premised upon a 2004 projection of a 2.49 percent annual increase in demand.¹⁶ Complainants aver that, due to the economic recession, such projections never materialized and that actual demand levels have been significantly lower. Furthermore, Complainants allege that MTEP08 “does not consider the impact of equal investments in non-transmission projects relative to their cost-effectiveness or ability to address NERC contingency violations.”¹⁷ Similarly, Complainants state that the economic benefits associated with the Twin Cities – La Crosse Line, which mostly stem from the potential displacement of gas-fired power plants in favor of cheaper coal-fired power plants, do not justify the system instability that will be caused by the project.¹⁸

13. Finally, Complainants argue that the Twin Cities – La Crosse Line and the La Crosse – Madison Line, which was approved in MTEP11, are separate projects, approved years apart.¹⁹ Complainants acknowledge that, together, the Twin Cities –

http://nocapx2020.info/wp-content/uploads/2012/02/xcel-supplemental_need_study-dated_august-2011.pdf).

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 20 (citing CapX 2020 Technical Update: Identifying Minnesota’s Electric Transmission Infrastructure Needs 1 (Oct. 2005), *available at*: http://www.psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=160027).

¹⁷ *Id.* at 21.

¹⁸ *Id.* at 22-23 (citing ICF International, Independent Assessment of Midwest ISO Operations Benefits 9 (Feb. 28, 2007), *available at*: <http://www.icfi.com/insights/reports/2007/independent-assessment-of-midwest-iso-operational-benefits>).

¹⁹ The La Crosse – Madison Line is a 345 kV transmission line that will run from the Briggs Road Substation near La Crosse, to the Cardinal Substation in the Madison area of Wisconsin.

La Crosse Line and the La Crosse – Madison Line may not cause reliability problems. Nonetheless, Complainants contend that, because the projects are distinct and were approved independently, they violate “NERC stability requirements.”²⁰ Furthermore, Complainants allege that the failure to present the phased and connected transmission lines together violates the National Environmental Policy Act (NEPA), which prohibits the segmentation of dependent projects.²¹

III. Notice and Responsive Pleadings

14. Notice of the Complaint was published in the Federal Register, 78 *Fed. Reg.* 14,783 (2013), with protests and interventions due on or before March 21, 2013.

15. Timely motions to intervene and comments were filed by: Rochester Public Utilities (Rochester); Southern Minnesota Municipal Power Agency (Southern Minnesota); and MISO Transmission Owners (MISO TOs).²² Public Service Commission of Wisconsin (Wisconsin Commission) filed a timely notice of intervention and comments. On March 29, 2013, the Minnesota Public Utilities Commission (Minnesota Commission) filed a late notice of intervention and comments. On March 21, 2013, MRO, MISO, and Respondent Utilities filed their respective answers to the Complaint. On April 5, 2013, Complainants filed an answer to MISO’s, MRO’s, and

²⁰ Complaint at 23-24.

²¹ *Id.* at 24. Complainants cite no specific provision of NEPA in support of this argument.

²² 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); Duke Energy Corporation for Duke Energy Indiana, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; 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; 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; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Respondent Utilities' answers. On April 19, 2013, Respondent Utilities filed an answer to Complainants' answer.

A. MISO's Answer

16. MISO explains that its role in approving the Twin Cities – La Crosse Line was limited to reviewing the project and including it in MTEP08. 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.²³ In addition, MISO asserts that the regional planning process is open and transparent, and that the process ensures that all participants are treated impartially.

17. MISO states that the Twin Cities – La Crosse Line was approved in MTEP08 as a Baseline Reliability Project. MISO states that MTEP08 describes the Twin Cities – La Crosse Line as follows:

This project has an estimated cost of \$360 million, which is eligible for cost sharing as a Baseline Reliability Project, and extends 345 kV transmission system support to growing load areas of Rochester Minnesota and La Crosse Wisconsin. Each of these areas has been experiencing load growth that will outstrip the ability of the existing lower voltage systems to reliably supply the loads. The proposed project resolves these reliability issues by providing additional transformation in the Rochester area and by introducing 345 kV supply into the La Crosse area, relieving heavily loaded 161 kV class lines in each area [T]his line is needed to resolve a lengthy list of NERC contingency based violations that, without this project will result in severe overloads in some cases within the five year planning horizon.²⁴

MISO states that these conclusions were based on studies and analyses that MISO

²³ MISO Answer at 5.

²⁴ *Id.* at 8 (quoting Midwest Indep. Transmission System Operator, Inc., MTEP08 at 6, *available at*: <https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP08/MTEP08%20Report.pdf>).

conducted as part of its MTEP08 process to ensure compliance with applicable NERC Reliability Standards and other requirements. Furthermore, MISO reports that Appendix D1 to the MTEP08 includes 37 pages of detailed project justification for the Twin Cities – La Crosse Line, describing the NERC reliability issues in the Rochester and La Crosse areas and demonstrating that the project would solve those violations.²⁵

18. MISO argues that the Complaint is procedurally improper and should be dismissed with prejudice. First, MISO claims that the Complaint violates section 306 of the FPA and Rule 206(b)(1) of the Commission’s Rules of Practice and Procedure because it fails to identify and explain any action or inaction by MISO that allegedly violates any applicable statutory or regulatory requirement. Also, MISO argues that the Complaint violates Rule 206(b)(8) because it does not contain documents—specifically, any affidavits by engineering personnel or experts—that support the Complaint. Second, MISO asserts that the Complaint is a collateral attack on the Certificate of Need proceeding before the Minnesota Commission and the Certificate of Public Convenience and Necessity proceeding before the Wisconsin Commission. Third, MISO alleges that the Complaint is an untimely challenge to the MTEP08 and undermines the certainty of the MTEP process.²⁶

19. With regard to the merits of the Complaint, MISO argues that there is no basis for reopening MISO’s approval of the Twin Cities – La Crosse Line. According to MISO, as part of MTEP08, MISO performed a reliability analysis of the area affected by the Twin Cities – La Crosse Line. MISO states that it found several NERC TPL standard criteria issues in the Rochester and La Crosse areas via contingency analysis and concluded that the Twin Cities – La Crosse Line would properly address these issues. MISO also states the MTEP08 accurately documents the serious reliability issues that would arise in the absence of the project.²⁷

20. Moreover, MISO states that, as it explained in its testimony before the Wisconsin Commission,²⁸ subsequent MISO analyses confirm the original determinations in MTEP08. For example, MISO notes that the Twin Cities – La Crosse Line has been included in all subsequent MTEP study models and that such models have demonstrated

²⁵ *Id.* at 9.

²⁶ *Id.* at 11-16.

²⁷ *Id.* at 16-17 (citing MTEP08 at App. D1.)

²⁸ *Id.*, Ex. B, Webb Testimony, at 12.

adequate system performance in the La Crosse area due to the inclusion of the project. In addition, MISO states that it recently reviewed the transmission reliability issues in the La Crosse area, which are addressed by the Twin Cities – La Crosse Line, on a current MTEP11 model for the 2016 summer peak system. MISO states that this analysis confirmed that the Twin Cities – La Crosse Line is needed to address identified reliability issues and provide for adequate system loading and voltage levels in the area. Furthermore, MISO explains that projected loading levels in the area will exceed applicable ratings if the Twin Cities – La Crosse Line is not installed. Finally, MISO states that the Minnesota Commission and Wisconsin Commission siting decisions found that the Twin Cities – La Crosse Line remains essential to the reliability needs of the area.²⁹

B. Respondent Utilities' Answer

21. Respondent Utilities also argue that the Complaint is procedurally and substantively deficient. First, Respondent Utilities state that Complainants fail to make an adequate proffer of evidence to support their claims because Complainants do not offer any evidence or supporting analysis. For example, Respondent Utilities note that Complainants offer no affidavits by qualified electrical engineers interpreting the studies cited by the Complaint. Second, Respondent Utilities argue that the Complaint is procedurally improper because it fails to state a “cognizable claim” and fails to “[e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements.”³⁰ Third, Respondent Utilities argue that the Complaint is untimely because it relies on a series of studies that are four years old to challenge MISO’s analysis in MTEP08. Relying on a recent Commission decision that also involved the Twin Cities – La Crosse Line, Respondent Utilities state that Complainants “should have advanced this argument during the planning process, which MISO actively engaged with stakeholders to develop regional expansion plans.”³¹ Fourth, Respondent Utilities contend that, as the La Crosse – Madison Line was approved in the MTEP11, Complainants’ argument that the Twin Cities – La Crosse Line will cause system instability without an extension to Madison is moot.³²

²⁹ *Id.* at 18-20.

³⁰ Respondent Utilities’ Answer at 13-14 (quoting 18 C.F.R. § 385.206(b)(2) (2012)).

³¹ *Id.* at 14-15 (quoting *Am. Transmission Co., LLC v. Midwest Indep. Transmission Sys. Operator and Xcel Servs. Inc.*, 142 FERC ¶ 61,090, at P 53 (2013)).

³² *Id.* at 15.

22. In addition, Respondent Utilities argue that the Complaint fails on the merits. Respondent Utilities assert that all planning work for the Twin Cities – La Crosse Line meets applicable NERC planning standards. Respondent Utilities further assert that the Twin Cities – La Crosse Line will not cause system instability and, instead, the project is driven by local load-serving needs in the Rochester, Minnesota and La Crosse, Wisconsin areas. In support of their argument, Respondent Utilities cite the Southeastern Minnesota – Southwestern Wisconsin Reliability Enhancement Study (TC – Lax Study), which Respondent Utilities contend identified load-serving needs in Rochester, due to load growth needs, and in the La Crosse area, due to a pre-existing condition within the local transmission system.³³ Respondent Utilities go on to report that the Rochester and La Crosse areas are the largest load centers in the Upper Midwest not currently served by a 345 kV system, and that due to the simultaneous needs in both areas, the TC – Lax Study determined it would be more economical to construct a 345 kV source as opposed to constructing two sets of 161 kV facilities.³⁴ Respondent Utilities further assert that MISO’s findings in MTEP08 confirmed the finding in the TC – Lax Study that the Twin Cities – La Crosse Line would support the growing load areas of Rochester and La Crosse.³⁵ With regard to the Supplemental Need Study, Respondent Utilities maintain that the study found that the Twin Cities – La Crosse Line was the most economic solution to meet the load-serving needs of Rochester and La Crosse, while also providing a foundation for future contemplated transmission expansion.³⁶

23. Finally, Respondent Utilities argue that Complainants’ reliance on the Corridor Study, Minnesota RES Update Study, Western Wisconsin Reliability Study, and Capacity Validation Study is misplaced because all four studies include the Twin Cities – La Crosse Line in their base case or recommend its construction. Alternatively, Respondent Utilities assert that the four studies were undertaken to identify the next increment of transmission build-out to be constructed *after* the Twin Cities – La Crosse Line is placed in service. Specifically, Respondent Utilities state that the Corridor Study, Minnesota RES Update Study, and Capacity Validation Study were undertaken to identify additional

³³ *Id.* at 18. *See also id.*, Att. H, TC – Lax Study 66 (Mar. 23, 2006)).

³⁴ *Id.* (citing TC – Lax Study at 1).

³⁵ *Id.* at 19 (citing MTEP08 at 6).

³⁶ *Id.* at 20-21 (quoting Supplemental Need Study at 55 (“The 345 kV Project is needed to meet the identified local and regional need *regardless of whether additional facilities are constructed to the east*. However, it is recognized that additional high voltage connections to La Crosse will provide *additional* electrical system benefits.”) (emphasis added)).

transmission that might be needed to accommodate the new generation necessary to meet Minnesota's renewable energy standards between 2016 and 2025. The Western Wisconsin Reliability Study, Respondent Utilities continue, was performed to identify transmission facilities that would support reliability in western Wisconsin in the 2018 time-frame, after the Twin Cities – La Crosse Line is expected to be placed in service.³⁷

C. MRO's Answer

24. MRO provides a brief description of the five NERC Reliability Standards that the Complaint alleges have been violated. MRO states that FAC-002-1 applies to all of the Respondent Utilities. According to MRO, currently effective planning standard TPL-001-0.1 does not apply to WPPI. MRO explains that revised standards TPL-001-2, TPL-001-3, and TPL-001-4 are not currently effective because, although approved by the NERC Board of Trustees, the Commission has not approved them.³⁸

25. MRO asserts that the Complaint is procedurally improper with regard to MRO because (1) MRO is not a public utility pursuant to section 306 of the FPA, (2) MRO has no statutory or contractual duty to Complainants, and (3) the Complaint does not conform to the requirements of Rules 203 and 206 of the Commission's Rules of Practice and Procedure. MRO states that the Complaint contains no basis in fact or law for Complainants' position. MRO argues that the Complaint fails to articulate clearly and with specificity any action or inaction by MRO that is alleged to violate applicable statutory standards or regulatory requirements. Instead, MRO explains, the Complaint contains only vague and unsupported allegations. Furthermore, MRO avers that Complainants have not followed Rule 2101(c) of the Commission's Rules of Practice and Procedure (requiring that person appearing before the Commission adhere to certain standards of ethical conduct and other requirements) because the Complaint does not make any good-faith argument that any action by MRO violated any duty or responsibility, or contravened any legal or regulatory obligation applicable to MRO.³⁹

26. MRO adds that it has no role or responsibility in decisions to expand transmission facilities. MRO states that, as an Electric Reliability Organization, it is statutorily barred from making the decision to enlarge bulk-power system facilities or to construct new transmission capacity.⁴⁰ Thus, MRO reports that it had no part of the decisions by the

³⁷ *Id.* at 21-25.

³⁸ MRO Answer at 5-6.

³⁹ *Id.* at 7-14.

⁴⁰ *Id.* at 14. *See* 16 U.S.C. §§ 824o(a)(2), (3).

various regulatory bodies to approve the construction of the Twin Cities – La Crosse Line. MRO also contends that its responsibility to conduct periodic assessments does not include the responsibility to propose or evaluate any particular new transmission projects under consideration by state authorities.⁴¹

D. Comments

27. MISO TOs argue that allowing a challenge to an MTEP determination four years after the fact would introduce substantial risk and uncertainty into the project development, siting, and construction processes, and the process of obtaining the necessary state and other regulatory approvals. MISO TOs also note that Complainants fail to explain why they did not challenge MISO's approval of the Twin Cities – La Crosse Line earlier, such as when the studies they claim identified potential reliability problems, were issued.⁴²

28. Rochester states that it supports the answer filed by Respondent Utilities. In addition, Rochester submitted comments that describe how the TC – Lax Study, MTEP08, and the Supplemental Need Study all concluded that the Twin Cities – La Crosse Line will address load serving needs in Rochester, Minnesota and La Crosse, Wisconsin and provide regional reliability benefits.⁴³

29. Southern Minnesota states that it too agrees with the answer submitted by Respondent Utilities, but writes separately to reiterate that granting the Complaint will serve to create regulatory uncertainty and discourage future transmission investment. First, Southern Minnesota argues that there is no tariff process in place for MISO to reopen an already approved MTEP based on information such as a press release or the studies cited in the Complaint. Second, Southern Minnesota contends that it and other project participants reasonably relied on the finality of the MTEP process and the relevant Minnesota Commission and Wisconsin Commission approvals.⁴⁴

30. The Wisconsin Commission states that after a contested case process—which involved a voluminous record, three days of technical hearings, and two days of public hearings in the project areas—it granted the Twin Cities – La Crosse Line a Certificate of Public Convenience and Necessity, authorizing construction of the project as a single

⁴¹ MRO Answer at 14-15.

⁴² MISO TO Comments at 5-7.

⁴³ Rochester Comments at 3-7.

⁴⁴ Southern Minnesota Comments at 6-9.

project. In doing so, the Wisconsin Commission states that it considered and balanced numerous concerns raised by Complainants regarding the public need of the project. The Wisconsin Commission notes that its final decision discusses at length the local reliability needs of the La Crosse area that justified a 345 kV line as “the best alternative to address the long-term needs of the La Crosse area, while also providing regional benefits.”⁴⁵

31. The Minnesota Commission states that it issued a Certificate of Need for the Twin Cities – La Crosse Line on May 22, 2009 and that it issued its Order Issuing Route Permit as Amended for the project on May 30, 2012. The Minnesota Commission states that, based on these proceedings, the Twin Cities – La Crosse Line is necessary to meet the future electrical demand of Minnesota customers.⁴⁶

E. Complainants’ Answer to Answers of MISO, MRO, and Respondent Utilities

32. Complainants counter Respondents’ argument that the Complaint is procedurally deficient. First, Complainants contend that they have not utilized engineers because the Complaint is based on Respondent Utilities’ studies, which were performed by Respondent Utilities’ electrical engineers. Second, according to Complainants, the Complaint is not untimely because development and construction of the Twin Cities – La Crosse Line is premised on outdated information. Third, Complainants contend the Complaint is not untimely because MISO has approved projects in subsequent MTEPs that rely on MTEP08. Complainants further explain that the Complaint is not moot because the La Crosse – Madison Line, which was approved in MTEP11 and will address instability issues, has not received all the necessary approvals from the Wisconsin Commission. Fourth, Complainants assert that the Complaint is not untimely because Complainants are not members of MISO and had no opportunity to participate in MTEP decision-making. Complainants note that they have been full participants at the state level and filed the Complaint with the Commission only after exhausting all administrative remedies in Minnesota and Wisconsin. Fifth, in response to Respondent Utilities’ argument that Complainants failed to quantify the cost of the harm, Complainants assert that the cost of the harm is \$507 million, which is the estimated cost

⁴⁵ Wisconsin Commission Comments at 3-4 (quoting Final Decision, *Joint Application of Dairyland Power Cooperative, Northern States Power Company-Wisconsin, and Wisconsin Public Power, Inc., for Authority to Construct and Place in Service 345 kV Electric Transmission Lines and Electric Substation Facilities for the CapX Twin Cities-Rochester-La Crosse Project, Located in Buffalo, Trempealeau, and La Crosse Counties, Wisconsin*, PSC docket 5-CE-136, at 15 (May 20, 2012)).

⁴⁶ Minnesota Commission Comments at 2-3.

of the Twin Cities – La Crosse Line. Complainants contend that the \$507 million will be borne by ratepayers through the Commission-approved MISO Tariff.⁴⁷

33. Complainants also counter Respondent Utilities' argument that the Complaint fails on the merits. Complainants begin by arguing that the burden is on Respondent Utilities to demonstrate that the Twin Cities – La Crosse Line will not cause reliability problems. To this end, Complainants state that none of the studies cited address the issue of what would occur if the project were to fail. Complainants assert that the studies used to justify the construction of the Twin Cities – La Crosse Line, and the other CapX 2020 projects, focused exclusively on what contingencies would be solved by adding the projects, and thus ignored the impact of the projects' construction and operation on the transmission system.⁴⁸ In addition, Complainants argue that the studies used to justify the construction of the Twin Cities – La Crosse Line are outdated. Specifically, Complainants contend that the building of the Twin Cities – La Crosse Line was premised on load projections that predicted extreme increases in demand. Complainants argue that these projections are outdated and should be revised downward. Complainants conclude that, because demand has decreased so significantly, MISO should be required to re-evaluate the need for the Twin Cities – La Crosse Line.⁴⁹ Furthermore, Complainants assert that, notwithstanding Respondent Utilities' argument to the contrary, the Twin Cities – La Crosse Line is not necessary in order for Respondent Utilities to comply with Minnesota's Renewable Energy Standard mandate.

34. Finally, Complainants argue that Respondent Utilities misinterpret the instability issue presented by the Twin Cities – La Crosse Line. Complainants cite the TC – Lax Study, which Respondent Utilities presented in their Answer, to support their argument that, if the Twin Cities – La Crosse Line is placed in service before the La Crosse – Madison Line, then significant additional lower voltage system upgrades will be necessary to combat reliability problems.⁵⁰ Complainants further state that the instability

⁴⁷ Complainants' Answer at 4-9.

⁴⁸ *Id.* at 9-11.

⁴⁹ *Id.* at 11-15.

⁵⁰ *Id.* at 17-19 (quoting TC – Lax Study at 5). The TC – Lax Study states:

The radial analysis showed that additional lower voltage system upgrades would be required for any of the options and extensive work would have to be done to modify existing operating guides and in some cases create new operating guides for operation of the system until the radial 345 kV line could be tied into the existing 345 kV system to the east (West Middleton

(continued...)

problems associated with the Twin Cities – La Crosse Line have been chronicled in the Corridor Study, Western Wisconsin Transmission Reliability Study, Capacity Validation Study, and Supplemental Need Study.⁵¹

F. Respondent Utilities' Answer to Answer of Complainants

35. Respondent Utilities contend that Complainants misunderstand the nature of transmission planning. Regarding Complainants' assertion that construction of the Twin Cities – La Crosse Line will necessitate additions to the lower voltage network, Respondent Utilities explain that whenever substantial high voltage additions are made to a transmission system, performance of the lower-voltage network must be analyzed to ensure the system remains reliable. Respondent Utilities also explain that once a transmission addition is approved, it is included in subsequent planning models and is therefore studied as a planning contingency. Similarly, with regard to Complainants' argument that operating guides will be needed once the Twin Cities – La Crosse Line is placed in service, Respondent Utilities report that major additions to a transmission system typically require operating guides to determine and set the parameters for the reliable operation of the transmission system with the new transmission addition. Lastly, Respondent Utilities assert that, as recognized by the Wisconsin Commission, demand levels in the Rochester and La Crosse areas have already reached a point that requires a solution to ensure continued reliability in those areas.⁵²

IV. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that file them parties to this proceeding.

or Columbia) or to the south at Salem. The radial option would, however, be much more economical than implementing the 161 kV local area solutions in the Rochester and La Crosse areas and then constructing a radial 345 kV line from Prairie Island to North La Crosse.

TC – Lax Study at 5.

⁵¹ Complainants' Answer at 19.

⁵² Respondent Utilities' Answer to Complainants' Answer at 3-5.

37. Rule 213(a)(2) of the Commission’s Rules 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 Complainants and Respondent Utilities because they have provided information that assisted us in our decision-making process.

B. Commission Determination

38. We dismiss the Complaint. Section 306 of the FPA, as well as Rule 206 of the Commission’s Rules of Practice and Procedure, set forth the required content of a complaint.⁵³ In particular, section 306 of the FPA dictates that a complaint must set forth the alleged actions or inactions of the respondent licensee, transmitting utility, or public utility that contravene the provisions of the FPA.⁵⁴ Rule 206 of the Commission’s Rules of Practice and Procedure provides that a complaint must “[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements”⁵⁵ and “[e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements.”⁵⁶ Moreover, the Commission has stated that, rather than make allegations, “[complainants] must make an adequate proffer of evidence including pertinent information and analysis to support [their] claims.”⁵⁷ First, we conclude that MRO is not a proper party to the Complaint. Section 306 of the FPA permits complaints that allege “anything done or omitted to be done by any licensee,

⁵³ 18 C.F.R. § 385.206(b)(1) (2012).

⁵⁴ Section 306 of the FPA provides:

Any person . . . complaining of anything done or omitted to be done by any licensee transmitting utility, or public utility in contravention of the provisions of this Act may apply to the Commission by petition which shall briefly state the facts

16 U.S.C. § 825e.

⁵⁵ 18 C.F.R. § 385.206(b)(1) (2012).

⁵⁶ *Id.* § 385.206(b)(2).

⁵⁷ *Californians for Renewable Energy, Inc. v. Pacific Gas & Electric Co.*, 142 FERC ¶ 61,143, at P 18 (2013) (quoting *Illinois Municipal Electric Company v. Central Illinois Public Serv. Comp.*, 76 FERC ¶ 61,084, at 61,482 (1996)).

transmitting utility, or public utility in contravention of the provisions of this Act. . . .”⁵⁸ MRO is a “regional entity” pursuant to sections 215(a)(7) and (e)(4) of the FPA.⁵⁹ MRO serves no other role under the FPA and is not a licensee, transmitting utility, or public utility. Thus, with respect to the allegations against MRO, the Complaint impermissibly exceeds the statutory authority of section 306 of the FPA. We therefore dismiss the Complaint against MRO.

39. In addition, we find that the Complaint, as relevant to MISO and Respondent Utilities, fails to meet the requirements of Rule 206 because the Complaint does not explain how the averred facts support the alleged violations. In essence, the Complaint alleges that inclusion of the Twin Cities – La Crosse Line in the MTEP08 will cause instability to MISO’s system, and therefore violates five NERC Reliability Standards. Three of the NERC Reliability Standards (TPL-001-2, TPL-001-3, and TPL-001-4) referenced by the Complaint are not effective as the Commission has yet to approve them.⁶⁰ With regard to the currently effective versions of the TPL series of Reliability Standards (TPL-001-0.1, TPL-002-0b, TPL-003-0a, and TPL-004-0) and FAC-002-1, the Complaint does not provide any analysis to support the claim that the project at issue would result in the violation of any currently effective (or future versions of) Reliability Standards. In fact, the Complaint fails to set forth any specific requirement of a Reliability Standard or offer any evidence or analysis to support the claim that the Twin Cities – La Crosse Line would violate said requirement. If a complaint regarding an alleged violation of a Reliability Standard is to meet the threshold requirements of Rule 206, then the complaint must, at a minimum, set forth the specific provision of the Reliability Standard that is at issue and provide some explanation as to how the Respondent’s alleged action or inaction caused the violation. That is not present here. Thus, for the reasons discussed above, we dismiss the Complaint against MISO and Respondent Utilities.

40. Further, we conclude that Complainants should have advanced their arguments during the MTEP process. Specifically, we are not persuaded by Complainants’ argument that “Complainants are not regarded as ‘stakeholders’ by MISO or the

⁵⁸ 16 U.S.C. § 825e.

⁵⁹ *Id.* §§ 824o(a)(7) and (e)(4). See also *North American Electric Reliability Corp.*, 119 FERC ¶ 61,062, *order on reh’g*, 120 FERC ¶ 61,260 (2007) (accepting a delegation agreement between the NERC and MRO in order to designate MRO as a regional entity pursuant to section 215(e)(4) of the FPA).

⁶⁰ The Commission remanded TPL-001-2. Reliability Standards TPL-001-3 and TPL-001-4 are pending in Docket No. RM13-9-000.

Respondent Utilities, and have no opportunity to participate in the MTEP process.”⁶¹ Contrary to Complainants’ assertion, as discussed below, MISO’s Order 890-compliant⁶² transmission planning process meetings are open to all affected parties and allow for affected parties to provide timely and meaningful input into the MTEP.⁶³

41. In Order No. 890,⁶⁴ the Commission reformed the *pro forma* Open Access Transmission Tariff and required transmission providers to address, among other things, nine planning principles, including, in part, as relevant here: (1) coordination;⁶⁵

⁶¹ Complainants’ Answer at 6-7. Complainants also allege that “[o]nly when a [transmission] project moves to [the] State planning and approval [process] is there a mechanism for the public to become informed and involved. *Id.* at 9.

⁶² On May 15, 2008, the Commission accepted MISO’s Order No. 890 compliance filing, effective December 7, 2007. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,164 (2008) (MISO Order No. 890 Compliance Order I), *further orders on compliance*, 127 FERC ¶ 61,169 (2009) (MISO Order No. 890 Compliance Order II) and 130 FERC ¶ 61,232 (2010) (MISO Order No. 890 Compliance Order III). On April 23, 2010, MISO submitted revisions to Attachment FF in compliance with the Commission’s directives in MISO Order No. 890 Compliance Order III. That filing is currently pending before the Commission.

⁶³ MTEP08 was conducted using MISO’s Order No. 890-compliant transmission planning process and was approved by the MISO Board on December 4, 2008. *See* <https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/BOD/BOD/2008/20081204/20081204%20BOD%20Agenda.pdf>.

⁶⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶⁵ The coordination principle required transmission providers to, among other things, provide customers and other stakeholders the opportunity to participate fully in the transmission planning process. The purpose of the coordination requirement, as stated in Order No. 890, was to eliminate the potential for undue discrimination in transmission planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. Order No. 890 required that transmission planning processes provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans, allowing customers

(continued...)

(2) openness;⁶⁶ and (3) transparency.⁶⁷ One of the Commission's primary reforms in Order No. 890 was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. First, the Commission found that MISO satisfied the coordination principle stating that MISO's Attachment FF (Transmission Expansion Planning Protocol)⁶⁸ "clearly identifies the details of how its [transmission] planning process will be coordinated with interested parties."⁶⁹ Second, the Commission found that MISO satisfied the openness principle finding that MISO's Attachment FF "provides an opportunity for all affected parties to participate."⁷⁰ Finally, the Commission found that MISO satisfied the transparency principle finding that Attachment FF reduces to writing and makes available the basic methodology, criteria, and processes used to develop transmission plans and collaborates with affected parties to develop appropriate planning models.⁷¹ In its recent order addressing MISO's Order No. 1000⁷² compliance filing, the Commission found that

and other stakeholders to participate in the development of a transmission plan. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 451-454.

⁶⁶ The openness principle required that, among other things, transmission planning meetings be open to all affected parties. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

⁶⁷ The transparency principle required transmission providers to, among other things, (1) reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans and (2) provide sufficient information to customers, other stakeholders, and independent third parties to enable them to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 471-479.

⁶⁸ MISO's Attachment FF to the Tariff contains MISO's transmission planning process.

⁶⁹ MISO Order No. 890 Compliance Order I, 123 FERC ¶ 61,164 at P 28.

⁷⁰ *Id.* P 35.

⁷¹ *Id.* P 42.

⁷² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 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).

MISO's transmission planning process, among other things, continued to satisfy the transmission planning principles of Order No. 890.⁷³

42. Furthermore, we find that Complainants have not provided evidence that MISO has failed to comply with Attachment FF of its Tariff and, as a result, Order No. 890, in its consideration of the Twin Cities – La Crosse Line in the MTEP08 process.⁷⁴ There is nothing in the record of this proceeding to suggest that *any* interested party—including the Complainants—were precluded from participating and providing feedback to MISO on the projects included in MTEP08 or the underlying studies. Participation in the MTEP08 process was not, as Complainants suggest, limited to just those stakeholders representing certain voting sectors of the Planning Advisory Committee.⁷⁵ For this reason, we reject Complainants' argument that they did not have an opportunity to participate in the MISO transmission planning process because they are not "stakeholders." We find that, under MISO's transmission planning process, "stakeholders" include "any interested party," consistent with Order Nos. 890 and 1000.⁷⁶ Although Complainants may not be "Members" of MISO, which include those entities with a voting role on the Planning Advisory Committee, we conclude that Complainants could have participated in MISO's transmission planning process as stakeholders, a role that is open to any interested entity, and provided input and feedback into that process.⁷⁷

⁷³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 47 (2013).

⁷⁴ See *supra* notes 62-63.

⁷⁵ MISO posts on its website, and notifies interested registered parties through an email exploder list, all stakeholder meetings. MISO's MTEP is developed with stakeholder involvement through various stakeholder forums, including the Planning Advisory Committee, the Planning Subcommittee and Sub-Regional Planning meetings held in various locations throughout MISO's regional footprint. Stakeholders have the ability to participate in person or through MISO's webcasts and teleconferencing of such meetings.

⁷⁶ See Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 151 n.143 (citing *Southern Co. Svcs., Inc.*, 127 FERC ¶ 61,282, at PP 14-16 (2009)).

⁷⁷ Attachment FF also provides Order No. 890 and Order No. 1000-compliant procedures for transmission planning disputes. See MISO Order No. 890 Compliance Order I, 123 FERC ¶ 61,164 at P 58. See also MISO Order No. 1000 Compliance Order, 142 FERC ¶ 61,215 at PP 42, 47.

43. We encourage Complainants to work with MISO and other stakeholders in developing transmission plans for the MISO region in the future as part of MISO's Order Nos. 890- and 1000-compliant transmission planning process.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.