

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

| | | |
|---|---|-------------------------------|
| Xcel Energy Services Inc. |) | Docket No. EL12-__-000 |
| |) | |
| and |) | |
| |) | |
| Northern States Power Company, a Wisconsin corporation |) | |
| |) | |
| Complainants |) | |
| |) | |
| v. |) | |
| |) | |
| American Transmission Company, LLC |) | |
| |) | |
| Respondent |) | |

**COMPLAINT AND REQUEST FOR FAST TRACK PROCESSING OF
XCEL ENERGY SERVICES INC. AND
NORTHERN STATES POWER COMPANY, A WISCONSIN CORPORATION**

Pursuant to Section 206 of the Federal Power Act (“FPA”)¹ and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),² Xcel Energy Services Inc. (“XES”), on behalf of its operating company affiliate Northern States Power Company, a Wisconsin corporation (“NSPW”, and together with XES, “Xcel Energy”), respectfully submits this Complaint and Request for Fast Track Processing against American Transmission Company, LLC (“ATC”) (“Complaint”). This dispute involves the rights and obligations of NSPW and ATC under rate schedules and tariffs accepted for filing by the Commission, regarding construction and ownership of a proposed 145 mile, 345 kV electric transmission line connecting NSPW’s facilities near La Crosse, Wisconsin, with ATC’s

¹ 16 U.S.C. § 824e (2011).

² 18 C.F.R. § 385.206 (2011).

facilities, near Madison, Wisconsin (the “La Crosse – Madison Line” or the “Project”). For the reasons set forth herein, XES, first, respectfully requests that the Commission find that ATC has not complied with the express terms and conditions of (a) the Midwest Independent Transmission Operator, Inc.’s (“MISO” or “Midwest ISO”) Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”), a tariff accepted for filing by the Commission; and (b) the Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (“Transmission Owners Agreement” or “TOA”), a rate schedule accepted for filing by the Commission which is incorporated in and made a part of the MISO Tariff.³ Second, XES respectfully requests that the Commission direct ATC to enter into negotiations with XES and NSPW to develop final terms and conditions for the shared ownership and construction of the La Crosse – Madison Line, in a manner compliant with the Tariff and TOA. Xcel Energy believes that the requested Commission determination will allow ATC and NSPW to negotiate terms for ownership in-line with MISO’s collaborative planning approach and consistent with the Tariff.

I. INTRODUCTION

NSPW and ATC are each transmission-owning members of the Midwest ISO, a regional transmission organization (“RTO”) approved by the Commission. As MISO members, NSPW and ATC are subject to and obligated to comply with the terms and conditions of both: (1) the MISO Tariff and (2) the Transmission Owners Agreement.

To ensure a robust and reliable transmission system is in place to meet the needs of all customers, the MISO Tariff and TOA have established a collaborative transmission planning process within the MISO region. Attachment FF of the MISO Tariff establishes an annual

³ Midwest ISO, FERC Electric Tariff, Fifth Revised Volume No. 1, Rate Schedule 1.

regional transmission planning process – culminating in the Midwest ISO Transmission Expansion Plan (“MTEP”) – by which MISO determines the transmission facilities to be constructed in the fifteen-state MISO region. The MTEP is subject to approval by the independent MISO Board of Directors. Attachment FF was filed in compliance with Order No. 890,⁴ and accepted for filing in 2008.⁵ The TOA includes provisions (Appendix B) that establish obligations and duties of member Transmission Owners to construct and own new facilities approved in the MTEP process. The Appendix B provisions have been part of the TOA since the TOA was initially accepted for filing by the Commission in 2001.⁶

Consistent with this collaborative planning approach, XES, NSPW and NSPW’s utility affiliate Northern States Power Company, a Minnesota corporation (“NSPM”, and together with NSPW, the “NSP Companies”) have a long history of coordinated and cooperative transmission planning with neighboring transmission-owning utilities in MISO and its predecessor regional planning entity, the Mid-Continent Area Power Pool (“MAPP”). As the Commission is aware, the NSP Companies are participants in the CapX2020 Transmission Capacity Expansion Initiative, where eleven investor-owned, cooperative and municipal entities⁷ have, since 2004, engaged in collaborative planning, permitting, engineering, development and construction of nearly 700 miles of new 345 kV and 230 kV transmission facilities being constructed (or

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *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 (2009), *order on reh’g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁵ See, *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,164 (2008); *Midwest Independent Transmission System Operator, Inc.*, 127 FERC ¶ 61,169 (2009); *Midwest Independent Transmission System Operator, Inc.*, 130 FERC ¶ 61,232 (2010).

⁶ *Midwest Independent Transmission System Operator, Inc.*, 97 FERC ¶ 61,326 (2001), *order on reh’g and compliance*, *Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,169 (2003).

⁷ The entities participating in the CapX2020 Initiative are: Central Minnesota Municipal Power Agency; Dairyland Power Cooperative; Great River Energy; Minnesota Power; Minnkota Power Cooperative; Missouri River Energy Services; Otter Tail Power Company; Rochester Public Utilities; Southern Minnesota Municipal Power Agency; WPPI Energy; and the NSP Companies.

proposed to be constructed) in Minnesota, Wisconsin, North Dakota and South Dakota at an expected cost of nearly \$2 billion. XES and the NSP Companies support coordinated, cooperative planning, permitting and construction of new transmission facilities by including interested stakeholders in the process and thereby minimizing regulatory litigation.⁸

One of the four initial CapX2020 projects is the Twin Cities – La Crosse Project,⁹ a new 145 mile 345 kV line from the proposed NSPM-owned Hampton Corner Substation south of the Twin Cities¹⁰ to the proposed NSPW-owned Briggs Road Substation to be located north of La Crosse, Wisconsin. The Twin Cities – La Crosse Project is presently in the State regulatory approval process before, *inter alia*, the Public Service Commission of Wisconsin (“PSCW”), after previously receiving a Certificate of Need from the Minnesota Public Utilities Commission (“MPUC”).¹¹ NSPW is working diligently to satisfy the PSCW’s requirements and obtain all required State regulatory approvals in 2012, to allow for construction to commence in 2014, and the project to be placed in service in 2015. The Twin Cities – La Crosse Project was approved by the MISO Board in the 2008 MTEP (“MTEP08”).¹²

⁸ As noted in the Commission’s Energy Infrastructure Update for December 2011 (issued January 13, 2012), the first CapX2020 facility – the 28 mile 345 kV facility from Monticello to St. Cloud, Minnesota, was placed in service in December 2011. The Monticello – St. Cloud line is the first phase of the larger Fargo – Monticello Project, a 250 mile long, 345 kV transmission line from Fargo, North Dakota to Monticello, Minnesota.

⁹ The initial set of projects under taken by the CapX2020 Initiative (the “Group 1 Projects”) are: (1) a 68 mile long, 230 kV transmission line from Bemidji to Grand Rapids in Minnesota (the “Bemidji – Grand Rapids Project”); (2) a 250 mile long, 345 kV transmission line from Fargo, North Dakota to Monticello, Minnesota (the “Fargo – Monticello Project”); (3) a 270 mile long, 345 kV transmission line from Brookings County, South Dakota to the Twin Cities (the “Brookings – Twin Cities Project”); and (4) a 145 mile long, 345 kV transmission line from the Twin Cities – to La Crosse, Wisconsin (the “Twin Cities – La Crosse Project”).

¹⁰ The Hampton Corners Substation is the eastern terminus of the Brookings – Twin Cities Project.

¹¹ As noted in the attached Affidavit of Daniel P. Kline, the portion of the Twin Cities – La Crosse Project in Minnesota received a Certificate of Need from the MPUC in 2009, and on February 8, 2012, an Administrative Law Judge issued findings of fact recommending a specific route in Minnesota. The recommended route is pending MPUC approval.

¹² Midwest Independent Transmission Operator, Inc., MISO Transmission Expansion Plan 2008 at p. 184, *available at*: <https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP08/MTEP08%20Report.pdf>.

The Twin Cities – La Crosse Project, however, was not developed or proposed in isolation. It was studied extensively along with other region-enhancing transmission line projects as one aspect of a long-range, phased, program to deploy transmission assets throughout the Upper Midwest region to enhance regional reliability and facilitate the transfer of energy to major regional load centers. Years of study work, in which the NSP Companies played an integral role, identified the Twin Cities – La Crosse Project and the La Crosse – Madison Line, areas needed transmission upgrades for the region. While the Twin Cities – La Crosse Project is needed even if the La Crosse – Madison Line were never constructed, the completion of both projects would provide significant regional benefits in terms of reliability and energy delivery. And construction of the La Crosse – Madison Line after the Twin Cities – La Crosse line is placed in service would enhance the reliability and energy delivery benefits created by the Twin Cities – La Crosse Line.

Northern States Power Company (Minnesota), a predecessor to Xcel Energy Inc., began studying the need to reinforce the transmission system from Southeastern Minnesota to connections in Southeastern Wisconsin more than 10 years ago. That study work culminated in the WIRES Phase II study, published in 1999, prior to formation of ATC in 2001. This important regional study surveyed the benefits of a number of potential transmission system improvements, including a line from Southeastern Minnesota to the Madison area.

Further, in 2005, in the CapX2020 Vision Study, the NSP Companies and the other CapX2020 participant utilities specifically identified the need for a 345 kV transmission line from the La Crosse area to the Madison area as an important future project (once the four foundational CapX2020 projects were constructed) to enhance reliability in the Upper Midwest region. ATC cooperated with the NSP Companies and other CapX2020 participants in the 2005

Vision Study. Both NSPM and ATC also studied a connection from the La Crosse area to Madison in the 2007 Renewable Energy Standard Update (“RES Update”) study submitted with the 2007 Minnesota Biennial Transmission Project Reports to the Minnesota Public Utilities Commission. NSPM led the RES Update study, and ATC was a participant in that effort and a contributor to those reports.

Finally, the La Crosse – Madison Line was specifically identified in the Western Wisconsin Transmission Reliability Study of 2010 (“WWTRS”), another joint planning effort that included participation by both Xcel Energy and ATC. This study confirmed the final scope of the Project as interconnecting at the endpoint of the Twin Cities – La Crosse Project, NSPW’s proposed Briggs Road Substation, and ATC’s North Madison Substation. ATC led this study.

Building on this extensive and collaborative regional study work, MISO has confirmed the need for and regional benefits of the La Crosse – Madison Line. On December 8, 2011, the independent MISO Board of Directors approved the La Crosse – Madison Line in the 2011 MTEP (“MTEP11”), and designated the La Crosse – Madison Line as a Multi-Value Project (“MVP”).¹³ The La Crosse – Madison Line, as planned by MISO and approved by the MISO Board in MTEP 11, would interconnect facilities owned by NSPW (the Briggs Road Substation) to facilities owned by ATC (the North Madison Substation). The La Crosse – Madison Line would enhance regional transmission reliability by providing, in conjunction with the Twin Cities – La Crosse Project, a second 345 kV line from eastern Minnesota to eastern Wisconsin – a historically transmission-constrained area – and provide enhanced deliverability of competitive energy supplies and renewable energy to MISO markets.

¹³ Midwest Independent Transmission Operator, Inc., MISO Transmission Expansion Plan 2011, Appendix A at line 142, available at: https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=113909. The La Crosse – Madison Line is part of a larger MVP from Briggs Road Substation to the North Madison Substation on to ATC’s Cardinal Substation, near Madison, Wisconsin, and then on to ATC’s Spring Green Substation and terminating at an ITC Midwest, LLC (“ITC”) Substation near Dubuque, Iowa.

As required by the Tariff,¹⁴ MISO designated both Xcel Energy and ATC as joint owners of the Project, with the concomitant responsibility to permit, finance, engineer, construct and own the Project.¹⁵ MISO's analysis supporting the MVP designation for the La Crosse – Madison Line also confirmed Xcel Energy and ATC as owners of the Project.¹⁶ ATC has not, to Xcel Energy's knowledge, challenged the MTEP11 designation.

Pursuant to the plain terms of the TOA, and MISO's corresponding ownership designation in MTEP11, as required by its Tariff, NSPW seeks to assume its responsibilities to participate in the Project. Given both Xcel Energy's long participation and consistent leadership in the planning for the Project and the express terms of the TOA, Xcel Energy believes that failure to participate would be contrary to the TOA and MISO's proper ownership designation under the Tariff's clear provisions. Specifically, Appendix B, Section VI of the TOA provides, in part:

Ownership and the responsibility to construct facilities which are connected to a single Owner's system belong to that Owner, and that Owner is responsible for maintaining such facilities. Ownership and the responsibility 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. Finally, ownership and the responsibility to construct facilities which are connected between an Owner(s)' system and a system or systems that are not part of the MISO belong to such Owner(s) unless the Owner(s) and the non-MISO party or parties otherwise

¹⁴ Tariff, Attachment FF, Section V.

¹⁵ See, MISO MVP Fact Sheet, available at <https://www.midwestiso.org/Library/Repository/Communication%20Material/Power%20Up/MVP%20Benefits%20-%20Total%20Footprint.pdf>. See also, MTEP 11, Appendix A at line 142, column C. Column C in Appendix A of MTEP11 is labeled as "Geographic Location by TO Member System" and is where MISO identifies its designated owner of a particular MTEP project. For example, the Monroe County – Council Creek 161 kV transmission project will connect to the systems of NSPW and ATC but MISO has listed only ATC, the sole owner of the project, in Column C. MTEP11, Appendix A, line 442, column C.

¹⁶ Midwest Independent Transmission System Operator, Inc., Multi Value Project Analysis Report at p. 28 (Jan. 10, 2012), provided as Attachment C ("MVP Analysis").

agree; however, the responsibility to maintain the facilities remains with the Owner(s) unless otherwise agreed. [Emphasis added.]

In addition, Section V of Attachment FF 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 other 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. [Emphasis added.]

Despite the plain text of the TOA requiring that the Project “facilities belong equally to each Owner,”¹⁷ ATC has taken a different view and claimed that it is not required to recognize NSPW’s obligations under the Tariff and TOA. ATC has declined to coordinate with NSPW to provide needed information to the MISO planning process – information that is required to facilitate these joint obligations. ATC has commenced active development work on the Project in its own name and to its own account, contrary to the TOA and the Tariff. (ATC refers to the Project as a portion of the “Badger-Coulee” project.)

The MISO Board’s actions in MTEP11 confirm NSPW’s obligations under the TOA and Tariff and make it critical that NSPW be allowed to work cooperatively under the Tariff to meet those obligations. ATC’s actions of proceeding with the Project to the exclusion of NSPW is contradicted by the plain terms of the TOA, a rate schedule that has been accepted for filing by the Commission; has and continues to contravene MISO’s ownership designation in MTEP11,. ATC’s position further violates the applicable provisions of the Tariff; and is acting in a manner that is otherwise unjust and unreasonable.¹⁸ As described in the Affidavit of Teresa Mogensen,

¹⁷ TOA, Appendix B, Section VI.

¹⁸ ATC’s contravention of the Tariff and TOA is further evidenced by (i) its unilateral commencement of pre-permitting activities and refusal to allow NSPW to participate in those activities; (ii) opening a docket before the PSCW solely in its own name seeking state permits for the Project; (iii) holding information sessions with possible

Xcel Energy repeatedly sought to engage ATC in a discussion of these issues in an attempt to resolve them amicably without litigation. Unfortunately, ATC has declined to meaningfully engage Xcel Energy to achieve a mutually agreeable arrangement, despite Xcel Energy numerous requests for dialogue.¹⁹ Xcel Energy has also discussed the issue with MISO, which has indicated it recognizes NSPW's obligations under the TOA and Tariff to construct and own a portion of the Project in light of the findings in MTEP11.²⁰

Consequently, XES, on behalf of NSPW, brings the instant Complaint to the Commission for adjudication of NSPW's obligations and rights to participate in the Project in accordance with the terms of the TOA, Tariff and MTEP11. By this Complaint, XES respectfully requests that the Commission: (1) find that ATC has not complied with the express terms and conditions of the Transmission Owners Agreement and the Midwest ISO Tariff; and (2) direct ATC to enter into negotiations with XES and NSPW to develop final terms and conditions for the shared ownership and construction of the La Crosse – Madison Line, consistent with ATC's obligations under the TOA, the Tariff and MTEP11. The requested Commission determination will allow ATC and Xcel Energy to negotiate terms for ownership in-line with MISO's collaborative planning approach and consistent with the Tariff.

MTEP11 anticipates the La Crosse – Madison Line will be placed in-service in 2018.²¹ To meet this in-service date, significant joint planning, preparation, permitting and pre-construction activities need to occur. The PSCW must, among other things, develop a record and

landowners along the Project right-of-way without NSPW's participation, including sessions in NSPW's retail service territory; (iv) intervention in the PSCW proceedings for permitting the Twin Cities – La Crosse Project to advocate for its preferred engineering of the La Crosse – Madison Line; and (v) repeated verbal and written repudiation of NSPW's obligation to participate in the Project as detailed throughout this Complaint.

¹⁹ See, Attachments A, H, and L.

²⁰ See, Attachment A.

²¹ MTEP11, Appendix A at line 142.

decide whether to grant a certificate of public convenience and necessity (“CPCN”) for the Project. Both NSPW and ATC need to begin significant work soon in order to facilitate the schedule contemplated by MTEP11.

Therefore, XES requests Fast Track Processing of this Complaint in order to ensure that the dispute over ownership can be resolved promptly and the La Crosse – Madison Line will meet the anticipated in-service date. XES respectfully suggests that a Commission determination by June 15, 2012 would allow Xcel Energy sufficient time to implement the Commission’s decision and work with ATC to begin the state permitting process in time to allow for a 2018 in-service date for the Project.

In support of this Complaint, XES states as follows:

II. COMMUNICATIONS, SERVICE, AND NOTICE

XES requests that the following persons be placed on the official service list in this proceeding:

James P. Johnson
Assistant General Counsel
Xcel Energy Services Inc.
414 Nicollet Mall
5th Floor
Minneapolis, MN 55401
james.p.johnson@xcelenergy.com

Priti R. Patel
Director, Regional Transmission
Development
Xcel Energy Services Inc.
Suite 800
250 Marquette Avenue
Minneapolis, MN 55401
priti.r.patel@xcelenergy.com

Terri K. Eaton
Director, Regulatory Administration
and Compliance
Xcel Energy Services Inc.
1800 Larimer, Suite 14
Denver, Colorado 80228
terri.k.eaton@xcelenergy.com

Michael C. Krikava
Zeviel Simpser
Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2157
mkrikava@briggs.com
zsimpser@briggs.com

Donald F. Reck
Director, Regulatory and Government
Affairs
Northern States Power Co. (Wisconsin)
PO Box 8
1414 West Hamilton Avenue
Eau Claire, WI 54702-0008
donald.reck@xcelenergy.com

XES has served a copy of this Complaint on ATC and on the persons listed in Attachment M, pursuant to 18 C.F.R. § 385.2010, including on the PSCW, which has jurisdiction over both NSPW and ATC, and on MISO. Additionally, included herein as Attachment N, XES has provided a form of notice suitable for publication in the Federal Register with the specifications of 18 C.F.R. § 385.203(d).

III. BACKGROUND

A. The Parties

NSPW is a Wisconsin corporation and a vertically integrated utility that, *inter alia*, provides electric generation, transmission, and distribution services. NSPW is a first-tier subsidiary of Xcel Energy Inc., a public utility holding company within the meaning of the Public Utility Holding Company Act of 2005.²² NSPW provides electric service to approximately 250,000 retail and wholesale electric customers in western Wisconsin, including the La Crosse area, as well as a portion of the Upper Peninsula of Michigan.²³

NSPW has 2,600 miles of transmission lines and operates 157 substations at transmission voltage in Wisconsin and Michigan. NSPW is a transmission owning member of MISO and a signatory to the TOA. NSPW provides transmission service over its facilities pursuant to the

²² 42 U.S.C. §§ 16451, *et. seq.* (2011).

²³ NSPW currently provides wholesale electric sales service to nine (9) customers in Wisconsin and Michigan. The nine wholesale customers have all issued notice of termination and will cease purchasing wholesale power supplies from NSPW effective December 31, 2012. These municipal utilities will continue to purchase transmission and ancillary services from NSPW pursuant to the MISO Tariff.

MISO Tariff. NSPW and NSPM operate an integrated electric system (the “NSP System”) pursuant to an Interchange Agreement on file with the Commission.²⁴ (The integrated NSP System includes approximately 7,200 miles of transmission lines and 477 substations.)

XES is the service company for the Xcel Energy Inc. holding company system and an affiliate of NSPW. Like NSPW, XES is a first-tier subsidiary of Xcel Energy Inc. As a service company, XES performs an array of services on behalf of NSPW and the other Xcel Energy utility operating companies.²⁵ Among other things, XES makes filings with and appears in proceedings before the Commission on behalf of NSPW, NSPM, and the other utility operating company subsidiaries of Xcel Energy Inc.

ATC is a Wisconsin corporation and a creature of Wisconsin statute.²⁶ It is a Commission jurisdictional, transmission only, public utility created by the transfer of transmission assets of a number of public utilities, municipal electric companies and electric cooperatives in Wisconsin.²⁷ ATC also owns certain limited transmission facilities in the surrounding states of Michigan, Minnesota and Illinois. According to public information, ATC owns 9,440 circuit miles of transmission lines and 515 substations (either wholly or jointly).

²⁴ The exact title of the Interchange Agreement is the “Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).” The most recent annual update to the Interchange Agreement formula rates was accepted for filing in Docket No. ER11-3234-000, delegated Letter Order (May 19, 2011).

²⁵ The other utility operating company subsidiaries of Xcel Energy are Public Service Company of Colorado and Southwestern Public Service Company.

²⁶ See, Wis. Stat. § 196.485(3m) (2011).

²⁷ The entities that have transferred their assets in exchange for an equity stake in ATC are: Adams-Columbia Electric Cooperative; Alger Delta Cooperative Electric Association; City of Algom; Badger Power Marketing Authority; Central Wisconsin Electric Cooperative; Cloverland Electric Cooperative; City of Columbus; City of Kaukauna; Madison Gas & Electric Co.; Manitowoc Public Utilities; Marshfield Electric and Water Department; City of Menasha; City of Oconto Falls; Ontonagon County Rural Electrification Association; City of Plymouth; Rainy River Energy Corp.; City of Reedsberg; Rock Energy Cooperative; City of Sheboygan Falls; Stoughton Utilities; City of Sturgeon Bay; City of Sun Prairie; Upper Peninsula Power Company; Upper Peninsula Public Power Agency; Wisconsin Electric Power Co.; Wisconsin Power & Light Co.; Wisconsin Public Service, Corp.; City of Wisconsin Rapids; and WPPI Energy. NSPW and Dairyland Power Cooperative have not transferred ownership of their transmission facilities in Wisconsin to ATC.

ATC is a transmission owning member of MISO and a signatory to the TOA. ATC provides service over its transmission facilities pursuant to the MISO Tariff.

B. The Project

The La Crosse – Madison Line, as designated in MTEP11, is an approximately 145 mile, 345 kV transmission line from NSPW’s proposed Briggs Road Substation²⁸ to ATC’s North Madison Substation. The Project will implement the second segment of what will in the long run constitute a second high-voltage transmission path from near the Twin Cities in eastern Minnesota to near Madison in eastern Wisconsin, and has been studied by the utilities in the upper Midwest, including the NSP Companies, for well over 10 years.²⁹ The first segment of the path, which is from the Twin Cities to La Crosse, is needed, *inter alia*, to serve the La Crosse area in a reliable and economic manner and to strengthen the regional transmission system in the area. The MPUC approved the need for the Minnesota portion of the Twin Cities – La Crosse Project³⁰ and the PSCW is currently reviewing the line from the Minnesota/Wisconsin border to the La Crosse area.³¹ The Twin Cities – La Crosse Project’s characteristics have caused that

²⁸ The Briggs Road Substation is currently being considered by the PSCW as the proposed eastern terminus of the CapX2020 Twin Cities – La Crosse Project. *See, 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*, Joint Application for Public Service Commission of Wisconsin Certificate of Public Convenience and Necessity and Wisconsin of Department of Natural Resources Utility Permit Hampton – Rochester – La Crosse 345 kV Transmission Project, at p. 1-3, Public Service Commission of Wisconsin Docket No. 5-CE-136 (June 29, 2011) (“Twin Cities – La Crosse CPCN Application”). While the Twin Cities – La Crosse Project is being developed by a consortium of utilities, for reliability and other reasons, the Briggs Road Substation will be discreetly owned by NSPW. Twin Cities – La Crosse CPCN Application at p. 1-19.

²⁹ *See*, Affidavit of Mr. Daniel P. Kline, provided as Attachment B (“Kline Affidavit”).

³⁰ *See, In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy) and Other for Certificates of Need for the CapX 345-kV Transmission Projects*, ORDER GRANTING CERTIFICATES OF NEED WITH CONDITIONS, MPUC Docket No. ET-2, E-002, *et. al*/CN-06-11 (May 22, 2009).

³¹ *See*, Twin Cities – La Crosse CPCN Application.

project to be designated as a Baseline Reliability Project under Attachment FF of the MISO Tariff in MTEP08.³²

The La Crosse – Madison Line has always been studied and designed to be the next necessary segment in the overall regional transmission configuration that allows for significant reliability and economic benefits. Because the La Crosse – Madison Line will provide multiple regional benefits, it has been designated as an MVP by MISO, and as such its costs will be shared across the entire MISO region. The La Crosse – Madison Line is part of a larger initial MVP portfolio project which continues on from the North Madison Substation to ATC’s Cardinal Substation near Madison, Wisconsin to ATC’s Spring Green Substation and then to an ITC Midwest, LLC (“ITC Midwest” or “ITC”) owned substation near Dubuque, Iowa³³ (the “Full MVP Project”).

The transmission system in the upper Midwest has historically been developed collaboratively by the utilities in the region. Members of MAPP, including the NSP Companies, engaged in cooperative regional planning pursuant to the MAPP Restated Agreement, a rate schedule historically on file with the Commission. As early as 1999, prior to formation of ATC, a group of utilities in the upper Midwest, including the NSP Companies,³⁴ identified an east-to-west connection between the Twin Cities and Madison as a desirable long-term addition to the regional transmission system.³⁵

In 2005, the CapX2020 Initiative, of which the NSP Companies are participants, completed its Vision Study work, which also identified an east-to-west line from the Twin Cities

³² MTEP08 at p. 184.

³³ The 345 kV line from Dubuque to Spring Green to Cardinal creates a tie between the 345 kV network in Iowa to the 345 kV network in south-central Wisconsin. MVP Analysis at p. 30.

³⁴ ATC was not formed until 2001. See, ATC, LLC, Key Facts, available at <http://www.atcllc.com/A9.shtml>.

³⁵ Wisconsin Interface Reliability Enhancement Study, WIRES Phase II, p. 16 (June 1999), provided as Attachment D (“WIRES Phase II Study”).

to Madison as a desirable project.³⁶ ATC participated in this 2005 Study effort. The outcome of this study culminated in the decision to move forward with the 345 kV Twin Cities – La Crosse Project. The study also identified the eventual need for a new high-voltage segment from the La Crosse area to the Madison area, with the details of the La Crosse to Madison area line to be finalized after additional study.³⁷ Due to more immediate reliability needs in the La Crosse area, the Twin Cities to La Crosse segment was approved by MISO in the MTEP and move forward by its proponents first.

The Twin Cities – La Crosse Project was approved in MTEP08. Work on refining the La Crosse-area to the Madison-area transmission facility began in earnest in 2007, when, in compliance with Minnesota’s renewable portfolio statute,³⁸ the transmission-owning utilities in Minnesota (called the Minnesota Transmission Owners or “MTO”) began work on what ultimately became the Minnesota RES Update Study (“RES Update”).³⁹ The NSP Companies were the lead utility working on the RES Update, with ATC a contributing participant. The RES Update provided a high-level overview of the transmission facilities necessary in the eastern portion of Minnesota and western portion of Wisconsin to allow the Minnesota utilities to comply with their state-mandated renewable portfolio standards. The RES Update identified the need for a 345 kV transmission line from the La Crosse area to the Madison area and called for a more detailed study to scope details associated with the eastern endpoint of this project.⁴⁰

³⁶ See, CapX2020 Technical Update: Identifying Minnesota’s Electric Transmission Infrastructure Needs (Oct. 2005), provided as Attachment E (“Vision Study”).

³⁷ See, generally, Vision Study; see also, Kline Affidavit at P 12.

³⁸ Minn. Stat. § 216B.1693 (2007).

³⁹ Minnesota RES Update Study Report-Volume 1 (Mar. 31, 2009), provided as Attachment F (“RES Update Study”).

⁴⁰ RES Update Study at p. 19.

Due to ATC's familiarity with the system in the Madison area, ATC was designated by the study group to be the lead utility to further study the transmission needs of eastern Wisconsin, with particular focus on the area to be served by the La Crosse – Madison Line. The NSP Companies were full participants in this study work, however. This more granular study work culminated in the 2010 Western Wisconsin Transmission Reliability Study ("WWTR Study" or "WWTRS").⁴¹ The WWTR Study identified the final configuration of the La Crosse – Madison Line, with its western terminus at the proposed endpoint of the Twin Cities – La Crosse Line (the NSPW Briggs Road Substation) and its eastern terminus at the ATC North Madison Substation. The La Crosse – Madison Line was initially included as a conceptual project in Appendix C of MTEP09.⁴² In September 2009, while work on the WWTR Study was still ongoing, ATC submitted the La Crosse – Madison Line to MISO for inclusion in Appendix B of the 2010 MTEP ("MTEP10").⁴³ XES thereafter notified ATC and MISO of its interest in fulfilling its Tariff responsibilities in the Project, in accordance with the requirements of Appendix B of the TOA, by working with ATC to develop transmission facilities that would interconnect with the NSPW Briggs Road Substation and affect loads and customers of NSPW.⁴⁴ It should have been no surprise to ATC that, in these circumstances and given the history of the Project, NSPW would view itself to be one of the developers of the Project.

⁴¹ The WWTR Study was performed in accordance with ATC's local Transmission-Transmission Planning Analysis requirements of its local planning process contained in Attachment FF-ATCLLC of the MISO Tariff. By its terms, the WWTR Study is a joint transmission reliability study. Western Wisconsin Transmission Reliability Study, Final Report at p. 10 (Sept. 20, 2010), provided as Attachment G.

⁴² Kline Affidavit at P 53.

⁴³ Midwest Independent Transmission System Operator, Inc., 2010 Transmission Expansion Plan, Appendix A at line 773, available at <https://www.midwestiso.org/Planning/TransmissionExpansionPlanning/Pages/TransmissionExpansionPlan2010.aspx> ("MTEP10"). Identification of a project in Appendix B of an MTEP means it is a project that can solve a potential transmission issue identified by MISO's planning process but is not yet fully developed or approved by MISO. Midwest Independent Transmission System Operator, Inc., Transmission Planning Business Practices Manual, BPM-020-r5 at § 2.3 (Effective date: November 15, 2011).

⁴⁴ Affidavit of Ms. Teresa Mogensen at PP 5-7, provided as Attachment A ("Mogensen Affidavit").

Shortly after the WWTR Study was complete, ATC announced that it was finalizing development of the Project – which ATC refers to as a segment of the “Badger-Coulee Project” – and would begin open house meetings with landowners as part of the pre-permitting stage of development.⁴⁵ ATC’s announcement was a surprise to all of the utilities involved in the WWTR Study and was the first indication that ATC intended to own and construct the La Crosse – Madison Line on its own, notwithstanding its commitments and obligations under the TOA and Tariff to “share equally” in the Project. Since this announcement, ATC has held a number of open houses in the La Crosse area⁴⁶ and has opened a docket at the PSCW as a preliminary step to file a CPCN for the Project.⁴⁷ ATC has declined to engage in meaningful discussions regarding NSPW’s ownership obligations regarding the Project, despite NSPW’s repeated requests to do so.⁴⁸

Upon completion of the WWTR Study, earnest consideration of inclusion of the Project in Appendix A to MTEP11 began.⁴⁹ On December 8, 2011, the MISO Board of Directors approved MTEP11 in which the Full MVP Project (including the La Crosse – Madison Line) was approved and designated as an MVP. The MVP designation means that the Project provides

⁴⁵ Press Release of ATC (July 26, 2010), available at <http://www.atc-projects.com/documents/ATCproposesBadgerCoulee-07.26.10.pdf>.

⁴⁶ Press Release of ATC (Sept. 8, 2010), available at <http://www.atc-projects.com/documents/2010September8ATCannouncesBadgerCouleeTransmissionLineopenhouses.pdf>.

⁴⁷ See, *Application of American Transmission Company, as an Electric Public Utility, for Authority to Construct and Operate a New 345 kV Transmission Line from the La Crosse area, in La Crosse County, to the Greater Madison Area in Dane County, Wisconsin*, Public Service Commission of Wisconsin Docket No. 137-CE-160.

⁴⁸ Mogensen Affidavit at P 5.

⁴⁹ See, Kline Affidavit at P 53.

broad based regional benefits, and the costs of the project will be allocated to all loads within MISO under the MVP cost allocation provisions of the Tariff.⁵⁰

C. Events Leading to the Complaint

The WWTRS work in 2009 and 2010 and XES's active participation in that process made clear that Xcel Energy had a strong interest in the Project. However, by late 2010, it became clear that ATC had a different view of the situation. As discussed in the Kline Affidavit and Mogensen Affidavit, Xcel Energy and ATC first engaged in discussions regarding the ownership issue in late 2010. These discussions continued with ATC through the summer of 2011 with Xcel Energy stating its position that the plain terms of the TOA require both NSPW and ATC to share equally in the ownership and construction of the La Crosse – Madison Line but offering to find some other, mutually agreeable, ownership arrangement.⁵¹ Xcel Energy also discussed the ownership issue with MISO several times throughout 2011.⁵²

MISO provided its position on the Tariff/TOA, by letter dated September 15, 2011, instructing the utilities to work out their disagreement on ownership (the “September 15 Letter”).⁵³ In the September 15 Letter, MISO first identified that the Tariff required MISO to designate the owner of a transmission project approved in the MTEP.⁵⁴ MISO stated: “If ATC seeks more than equal ownership in either of these two MVPs, ITC and/or Xcel must agree to it.”⁵⁵ MISO also urged that ATC “proactively address this issue with ITC and Xcel.”⁵⁶

⁵⁰ See, generally, *Midwest Independent Transmission System Operator, Inc.*, 133 FERC ¶ 61,221 (2010).

⁵¹ Mogensen Affidavit at PP 10, 14, Schedule 2; Letter from Mr. Ian Benson, XES, to Mr. Dale Burmeister, ATC (July 15, 2011), provided as Attachment H.

⁵² Mogensen Affidavit at P 7.

⁵³ Letter from Mr. Clair Moeller, MISO, to Mr. John Procaro, ATC (Sept. 15, 2011), provided as Attachment I. Xcel Energy understands MISO and ATC also engaged in discussions with ITC Midwest.

⁵⁴ *Id.* at p. 1.

⁵⁵ *Id.* at p. 2.

MISO correctly interpreted and implemented the relevant portions of its Tariff by: (1) exercising its authority to designate ownership of the Project through the MTEP process; (2) recognizing the TOA is applicable and that the right to own and obligation to construct the La Crosse – Madison Line belong equally to NSPW and ATC; and (3) calling upon ATC to cooperate with Xcel Energy to determine the terms and conditions for ownership and development of the Project.

On October 4, 2011, ATC responded to MISO’s September 15 Letter by letter from ATC’s interim general counsel to MISO’s general counsel.⁵⁷ This letter confirmed, in writing, ATC’s position contradicting the plain meaning of the TOA and the Tariff by asserting that ATC is not required to share responsibility for the Project. ATC concludes, with little analysis, that the TOA is inapplicable and that MISO does not have the authority, through the MTEP process, to designate the ownership of the Project. However, ATC did not seek to resolve resolution of this matter with Xcel Energy and has never formally challenged MISO’s position.

On October 28, 2011, MISO responded to ATC’s October 4 Letter.⁵⁸ In its response, MISO stated that the Full MVP Project would be presented to the MISO Board of Directors for approval and that MTEP11 would designate Xcel Energy a joint owner, with ATC, of the La Crosse – Madison Line. MISO reiterated that NSPW has the obligation to share in the Project.

From Autumn 2011 through January, 2012, XES representatives continued to attempt to work with ATC to find a mutually agreeable ownership arrangement for the La Crosse –

⁵⁶ *Id.*

⁵⁷ Letter from Mr. Dan Sanford, ATC, to Mr. Stephen Kozey, MISO (Oct. 4, 2011), provided as Attachment J (the “October 4 Letter”).

⁵⁸ Letter from Mr. Clair Moeller, MISO, to Mr. John Procario, ATC (Oct. 28, 2011), provided as Attachment K (the “October 28 Letter”).

Madison Line but ATC declined to meaningfully engage in such discussions.⁵⁹ Xcel Energy has thus made every effort to avoid litigation to resolve the dispute. ATC has declined every Xcel Energy entreaty to resolve the ownership issue on mutually agreeable terms. ATC has been unwilling to meaningfully respond to Xcel Energy's entreaties to resolve the ownership issue on mutually agreeable terms, however.

Notwithstanding the long prelude to the instant dispute, ATC continues to move forward with the permitting and routing phase of the Project on its own and in direct contravention of its obligations to NSPW and other transmission owning members of MISO. For example, ATC recently intervened and submitted testimony in the PSCW CPCN proceedings for the Twin Cities – La Crosse Project to advocate for a new preferred western substation terminus for the La Crosse – Madison Line, which would require construction by NSPW of substantial 161 kV facilities not contemplated in MTEP11. In that testimony, ATC appears to claim sole ownership of the La Crosse – Madison Line and also appears to be moving forward with additional study and routing work for the Project, without consultation with NSPW.⁶⁰

The Commission should consider the fact that as part of the MTEP11 regional planning process, ATC, along with the NSP Companies and other participating utilities, found the interconnection at the NSPW Briggs Road Substation to be the preferred configuration. ATC's suggestion that a different end point should now be considered in the CPCN proceeding before

⁵⁹ Mogensen Affidavit at PP 19, 22, Schedule 4; Letter from Teresa Mogensen, XES, to Mr. John Procario, ATC (Jan. 17, 2012), provided as Attachment L (the "January 17 Letter").

⁶⁰ See, *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*, Direct Testimony of Dale W. Burmeister on Behalf of the American Transmission Company LLC and ATC Management Inc., PSCW Docket No. 5-CE-136 (January 9, 2012); *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*, Direct Testimony of Peter H. Holtz on Behalf of the American Transmission Company LLC and ATC Management Inc., PSCW Docket No. 5-CE-136 (January 9, 2012).

the PSCW is inconsistent with the MISO regional planning process and is inconsistent with the MISO members' obligations to plan and implement regional transmission under the Tariff.

Indeed, ATC's testimony before the PSCW makes no mention of MISO's ownership designation for the La Crosse – Madison line in MTEP11, nor does it acknowledge NSPW's long history of work in developing the Project or MISO's study work for the Project. ATC's actions in that proceeding are indicative of its disregard for its TOA and Tariff commitments, MISO's decisions, and the Commission's authority over the instant issue. ATC could have brought this preferred system configuration through the MISO planning process and also could have brought to the Commission a challenge to MISO's MTEP11 ownership designation if it believed MISO was in error.

This dispute involves substantial policy issues regarding the TOA, Tariff and MTEP compliance. Xcel Energy recognizes that litigation in this context is unusual and, based on the long history of collaboration and consensual development, Xcel Energy never imagined being in this position. However, ATC's unwillingness to collaboratively engage in the MISO planning process and its disregard for MISO's interpretation and authority to coordinate integrated transmission plans in the region, have left XES no other option but to bring this Complaint and to move the dispute back within the parameters originally agreed to by the signatories to the TOA.⁶¹ Consequently, the instant dispute is now ripe for adjudication by the Commission.

IV. ARGUMENT

ATC's unwillingness to share the obligation to own and construct the La Crosse – Madison Line with NSPW; its unilateral commencement of pre-permitting activities; and failure to accept NSPW's obligations in the Project or coordinate Project planning activities, is a clear

⁶¹In the October 4 Letter, ATC states that the dispute resolution provisions of the TOA and Tariff are inapplicable to the ownership dispute regarding the Project. See Attachment J at p. 9.

violation of the Tariff and a breach of the TOA. ATC's decision not to comply with its obligations is unjust and unreasonable and will cause a material harm to NSPW and will preclude NSPW from complying with its TOA and Tariff obligations.

The TOA is applicable and dispositive. Per its express terms, both ATC and NSPW are jointly obligated to construct and own the La Crosse – Madison Line. MISO is required to, and appropriately did, designate both NSPW and ATC as owners of the La Crosse – Madison Line. MISO's ownership designation was compliant with its planning obligations under Attachment FF to the Tariff. And, ATC has no special rights to be the sole owner of the Project. Consequently, XES seeks a Commission order finding ATC violated the Tariff and is in breach of the TOA and requiring ATC to come to terms with NSPW for the ownership and construction of the La Crosse – Madison Line.

A. The TOA is Controlling

As transmission owning (“TO”) members of the Midwest ISO, both ATC and NSPW are signatories to the TOA. By joining MISO, both ATC and NSPW have agreed that “[t]he rights of Members in the MISO shall be subject to all of the terms and conditions of this Agreement [the TOA].”⁶² Consequently, both NSPW and ATC have committed to be bound by the terms of the TOA and their rights as Transmission Owners are subject to it.

As applicable to the instant dispute, Appendix B, Section VI of the TOA provides the terms and conditions for MISO's planning process, including the allocation of ownership rights for projects developed through this process. For projects presented in MISO's comprehensive Midwest ISO-wide transmission plan (“Midwest ISO Plan”) as represented by the MTEP:

Ownership and the responsibility to construct facilities which are connected to a single Owner's system belong to that Owner, and

⁶² TOA, Article Two, Section V.A.3 (emphasis added).

that Owners is responsible for maintaining such facilities. Ownership and the responsibility 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. Finally, ownership and the responsibility to construct facilities which are connected between an Owner(s)' system and a system or systems that are not part of the Midwest ISO belong to such Owner(s) unless the Owner(s) and the non-Midwest ISO party or parties otherwise agree; however, the responsibility to maintain the facilities remains with the Owner(s) unless otherwise agreed.⁶³

Based on this language, referred to here as the “Share Equally Provisions”, if a project approved through the MISO planning process connects the facilities of two TOs, each of the TOs would have an equal right to own and corresponding responsibility to construct that project. However, those TOs may agree to some other arrangement.

The Share Equally Provisions are not a backstop authority for MISO to ensure transmission projects approved in the Midwest ISO Plan are constructed. To the contrary, the Share Equally Provisions represent the agreement of the MISO TOs as to how to allocate ownership rights and construction responsibilities for all projects approved in the MTEP. MISO plans its Transmission System to accommodate the transmission needs of all members, generators and load serving entities in the MISO region in the most efficient way possible. Consequently, it is necessary for the TOs to have a clear and orderly process for designating ownership and the concomitant responsibility to permit, engineer and construct a particular project. The Commission has found these provisions to be just and reasonable.⁶⁴

⁶³ TOA, Appendix B, Section VI (emphasis added). The preceding provision of this quoted language makes clear that this language is applicable to all projects presented in the Midwest ISO Plan. The applicable paragraph including the above quoted language provides that “[t]he Planning Staff shall present the Midwest ISO Plan” and that the “proposed Midwest ISO Plan shall include specific projects.” *Id.*

⁶⁴ *Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,169 (2003).

The provisions of the TOA providing MISO’s backstop authority to ensure MTEP-approved transmission projects ultimately do get built [“Backstop Provisions”]⁶⁵ lend credence to this interpretation of the Share Equally Provisions. The Backstop Provisions begin: “If the designated Owner is financially incapable of carrying out its construction responsibilities or would suffer demonstrable financial harm from such construction, alternate construction arrangements shall be identified.”⁶⁶ This language contemplates that an owner of a particular project will be “designated.” It also contemplates that, pursuant to the Share Equally Provisions, such designated Owner is required to meet its construction obligations unless it is incapable or will suffer harm in doing so. This mechanism only works if obligations to construct are binding. The Backstop Provisions would be superfluous if the Share Equally Provisions did not represent the agreement of the TOs as to how to designate ownership and construction responsibilities for all MTEP projects.⁶⁷

XES notes that its interpretation of the Share Equally Provisions is fully consistent with Commission policy requiring that non-TO third parties be allowed an opportunity to own and construct transmission facilities within MISO.⁶⁸ The instant dispute does not involve any third party attempting to develop transmission within MISO. Rather, this dispute is between two MISO TOs who are signatories to the TOA, which has been accepted for filing and incorporated

⁶⁵ Such backstop authority is found in the paragraph following the Share Equally Provisions. *See*, TOA, Appendix B, Section VI (paragraph beginning: “If the designated Owner...”).

⁶⁶ TOA, Appendix B, Section VI (emphasis added).

⁶⁷ *See*, *Arkansas Electric Cooperative Corporation v. Entergy Arkansas, Inc.*, 119 FERC ¶ 61,139 at P 19 (2007); *see also*, *Masterbuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995) (“[it is a] cardinal principle of contract construction [] that a document should be read to give effect to all its provisions and to render them consistent with each other”).

⁶⁸ *Midwest Independent Transmission System Operator Inc.*, 97 FERC ¶ 61,326 at P 62,520 (2001).

into the Tariff, and are therefore bound by its terms and conditions, including the Share Equally Provisions, as a matter of both law and contract.⁶⁹

In contrast, a non-TO is not bound by the TOA, and the Share Equally Provisions would therefore not apply to such non-TO third party. As explained more fully below, it is the Tariff, not the TOA, which provides MISO the discretion to designate a non-TO third party to finance, own and construct a transmission facility within MISO in furtherance of the Commission's policy goals.⁷⁰ Therefore, XES' interpretation of the Share Equally Provisions does not impede non-TO third parties from owning transmission facilities. However, because the instant dispute is between two TO signatories to the TOA, a rate schedule accepted for filing and subject to the filed rate doctrine, the plain terms of the TOA apply.

As demonstrated, the Share Equally Provisions provide the agreed-upon structure for the allocation of responsibilities for projects approved through the MISO planning process. Therefore, the Share Equally Provisions must be applied to the determination of those responsibilities.

B. Shared Responsibility for the La Crosse – Madison Line

All elements necessary for NSPW to invoke the Share Equally Provisions are present in the instant dispute. The La Crosse – Madison Line has been approved through the MISO planning process in MTEP11. The La Crosse – Madison Line will connect the facilities of two MISO member Transmission Owners: namely NSPW and ATC facilities (the Briggs Road and North Madison substations, respectively). MISO has designated both Xcel Energy and ATC as

⁶⁹ This dispute is thus distinguishable from the complaint filed by Pioneer Transmission, LLC against Northern Indiana Public Service Company (“NIPSCO”) and MISO in Docket No. EL12-24-000 (February 8, 2012). Here, both NSPW and ATC are current signatories to the TOA, and both NSPW and ATC actively participated in planning the La Crosse – Madison Line over a period of several years.

⁷⁰ Tariff, Attachment FF, V (“For each project included in the recommended MTEP, the plan shall designate ... one or more Transmission Owners or other entities to construct, own and/or finance the recommended project”).

developers of the Project. And NSPW and ATC have not “agreed otherwise” as to how to allocate ownership rights and construction responsibilities. Therefore, the Tariff’s obligation to own and construct the La Crosse – Madison Line belongs equally to both NSPW and ATC.

In designating the La Crosse – Madison Line as an MVP (as part of the Full MVP Project and initial MVP Portfolio), MISO has determined that the La Crosse – Madison Line provides broad-based benefits to the entire MISO footprint such that its costs will be allocated on a load share basis to all load within MISO.⁷¹ MISO’s MVP studies identified the benefits of extending the Twin Cities – La Crosse Project into the Madison, Wisconsin area as a main driver for the MVP designation of the La Crosse – Madison Line.⁷² Therefore, the La Crosse – Madison Line, to maintain its status as an MVP, must have its western terminus at a point electrically identical to the eastern terminus of the Twin Cities – La Crosse Project. To avoid future duplication of facilities, this means the NSPW Briggs Road Substation, the planned eastern terminus of the Twin Cities – La Crosse Project.⁷³

The Twin Cities – La Crosse Project is being developed by the CapX2020 Initiative, including the NSP Companies. Consistent with past practice among the CapX2020 utilities, NSPW will own the eastern terminus for that line for reliability purposes.⁷⁴ Therefore, NSPW

⁷¹ MTEP11 at p. 1.

⁷² MVP Analysis at p. 27.

⁷³ The Briggs Road Substation is currently in the permitting stages and is being developed to accept the additional 345 kV circuit that will be the La Crosse – Madison Line. Twin Cities – La Crosse CPCN Application at p. 1-19.

⁷⁴ *Id.* XES acknowledges that the Briggs Road Substation is still in the permitting stages. This fact is not relevant to the Share Equally Provisions of the TOA. The MISO planning process, with its yearly cycles, necessarily plans for additional facilities much faster than TOs can obtain required State permits and construct them. MISO’s planning process accounts for this by assuming that projects approved in an earlier cycle will be constructed (since the TOs are contractually obligated to do so), and therefore subsequent planning cycles assume these previously approved projects as part of its base case. Kline Affidavit at P 52. Because of the significant lag between MTEP approved projects being placed in-service and the planning work that builds on the assumed foundation that the previously approved projects provide, the Share Equally Provisions would be nearly impossible to apply if they required that a facility actually be in existence for them to be applicable. MISO’s ownership designation of a particular facility is sufficient for an owner of such facility to be subject to its ownership obligations for additional facilities under the

will own the western terminus of the La Crosse – Madison Line. The North Madison Substation is currently owned by ATC. Therefore, ATC will own the eastern terminus of the La Crosse – Madison Line. Consequently, the La Crosse – Madison Line will connect the facilities of two MISO member Transmission Owners, and the right to own and obligation to construct the Project belong equally to them under the Share Equally Provisions.

NSPW has not otherwise agreed to a different ownership arrangement with ATC, either explicitly or through acquiescence. NSPW has repeatedly sought agreement with ATC on the terms and conditions for their equal ownership rights, only to be rebuffed. NSPW has also indicated its willingness to fund and construct a portion of the Project to MISO.⁷⁵ MISO has sought to convince ATC to comply with the Tariff requirements, only to be told in the October 4 Letter that ATC was choosing to repudiate its Tariff/TOA obligations. ATC has repeatedly disregarded its TOA commitments to NSPW and MISO and asserted ATC's sole right to construct and own the Project. Unfortunately, ATC's conduct has forced NSPW to bring the instant Complaint to fulfill its obligations and enforce its rights to own the La Crosse – Madison Line equally.

C. MISO Has Appropriately Designated Xcel Energy an Equal Owner

Consistent with its authority and as required by the Tariff, MISO has designated Xcel Energy an owner of the La Crosse – Madison Line. ATC's refusal to acknowledge MISO's ownership designation is yet another violation of a statutory standard underlying the instant Complaint.

Share Equally Provisions, notwithstanding possible changes to the details of any particular project that may occur as an outcome of the state permitting process.

⁷⁵ Mogensen Affidavit at PP 7, 14.

Section V of Attachment FF of the Tariff provides MISO with broad authority to designate the entity responsible for the funding, ownership, and construction of a project approved in the MTEP:

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 other input from participants, including, but not limited to, any indication of a willingness to bear cost responsibility for the project; and applicable provisions of the ISO Agreement [the TOA], one or more Transmission Owners or other entitles to construct, own and/or finance the recommended project.⁷⁶

This language gives MISO broad authority to designate who should own a particular MTEP project (subject to the authority of the Commission) after taking into account the totality of circumstances surrounding a project. In MTEP11, MISO appropriately exercised its authority relating to the La Crosse – Madison Line and designated both Xcel Energy and ATC as owners of it.

MISO's designation authority is significant and deserves deference from ATC. The TOA defers to the Tariff in terms of a conflict,⁷⁷ and therefore, MISO need only consider but need not hew to the terms of the TOA, including the Share Equally Provisions, to the extent that the totality of the circumstances require deviation from them. Second, by providing to MISO an affirmative ownership designation obligation and authority to do so, this Tariff provision allows MISO to implement the Commission requirement to provide an opportunity for a non-TO third party to own, fund, and construct MTEP approved projects, to the extent appropriate.⁷⁸

⁷⁶ Tariff, Attachment FF, V.

⁷⁷ TOA, Article Two, Section C (“[i]n the event of a conflict between this Agreement, including any appendices, and the Tariff, the tariff shall prevail as the intent of the signatories”).

⁷⁸ *Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,169 at P 61,627 (2003).

With respect to the La Crosse – Madison Line, MISO’s designation of both Xcel Energy and ATC as owners was proper and appropriate. Pursuant to the Tariff, when making its ownership designation, MISO must take into account at least: (1) input from participants, (2) an indication of a willingness to bear cost responsibility, and (3) the applicable provisions of the TOA. Here, NSPW and ATC provided input as participants in the planning process; NSPW has indicated its willingness to bear cost responsibility; and the Share Equally Provisions of the TOA are directly applicable to the Project. Based on the totality of circumstances, MISO appropriately designated both Xcel Energy and ATC as owners of the La Crosse – Madison Line and this determination deserves deference. ATC has repudiated its obligation to accept MISO’s designation under the MTEP11 and Tariff, and has not challenged such designation before the Commission.

D. NSPW’s Ownership of the Project is Consistent with MISO Practices

While the Tariff encourages a collaborative approach, it also provides the mechanism for making planning decisions when existing Transmission Owners are, unfortunately, unable to agree on a particular project. Due to ATC’s continued lack of collaboration with Xcel Energy on the development of the La Crosse – Madison Line,⁷⁹ as demonstrated, the Share Equally Provisions are controlling.

Appendix B of the TOA memorializes the fundamental agreement among the MISO TOs that they will implement the projects approved in the MTEP. The Share Equally Provisions provide a baseline understanding or default position, absent an agreement otherwise, that responsibility for transmission facilities will be shared by those Transmission Owners who are directly affected. (Appendix B of the TOA also provides that if an MTEP approved project

⁷⁹ See, Mogensen Affidavit at PP 5-25.

connects the facilities of just one Transmission Owner, that Transmission Owner must own and construct that project.)

However, as discussed, implementation of the Share Equally Provisions is not performed in isolation. The Tariff imposes upon MISO the obligation, subject to Commission oversight, to weigh the terms of Appendix B of the TOA as part of its holistic designation of responsibility for a particular project.⁸⁰ This, importantly, includes an indication of willingness to fund a particular project. With regard to the La Crosse – Madison Line, NSPW has repeatedly expressed its willingness to fund its appropriate share of this project and undertake its obligations under the Share Equally Provisions. In light of all of the relevant factors, MISO made its designation for the La Crosse – Madison Line and has identified both Xcel Energy and ATC as owners of the Project in accord with the Share Equally Provisions. By this Complaint, NSPW simply seeks to enforce the Share Equally Provisions and MISO’s designation. As noted, ATC has not challenged MISO’s designation.

MISO’s Commission-approved planning process, provided for in Attachment FF of the Tariff, is by design a collaborative process.⁸¹ Its “top down/bottom up” approach results in a methodology whereby all projects that are suggested by stakeholders, including those TOs with separate local planning process such as ATC, are incorporated into the collaborative planning process for review, including identification of ownership.⁸² Personnel representing TOs and other stakeholders communicate regularly through formal planning meetings and informal information exchanges encouraged by the planning process and Commission policy. It is through these information exchanges where participation in an MTEP project (i.e., construction

⁸⁰ Tariff, Attachment FF, V.

⁸¹ See, Kline Affidavit at PP 36-54.

⁸² Kline Affidavit at P 42.

and ownership) is generally identified and consequently reflected in the MTEP. This informal process has generally worked well to reflect the intent of the Transmission Owners and, to Xcel Energy's knowledge this dispute is the first such dispute between existing MISO TOs under the transmission ownership designation process in MTEP and Appendix B of the TOA.⁸³

The informal and collaborative implementation of the Share Equally obligation has worked well throughout the MISO region. The NSP Companies and other regional utilities have had numerous successes in joint development of transmission in the past few years. A recent example of this is MISO's designation of the initial MVP Portfolio in MTEP11. For example, the Big Stone – Ellendale MVP Project will connect Otter Tail Power Company's ("OTP") Big Stone Substation to Montana Dakota Utilities' ("MDU") Ellendale Substation. MISO has designated both OTP and MDU as owners of this project.⁸⁴ MISO has also designated NSPM and OTP as the owners of the Big Stone – Brookings MVP Project, which will connect OTP's Big Stone Substation to NSPM's Brookings County Substation.⁸⁵ And MISO has designated NSPW and ATC as owners of the La Crosse – Madison Line, which will connect NSPW's Briggs Road Substation to ATC's North Madison Substation.

As indicated, the TOA also allows TOs to "otherwise agree" and share responsibility in other ways. First, MISO's collaborative planning process allows affected member TOs to add additional owners for a particular MTEP project. For example, through the CapX2020 Initiative, the Bemidji – Grand Rapids Project was identified as providing significant benefits to the

⁸³ Xcel Energy is aware of the Complaint of Pioneer Transmission, LLC ("Pioneer") against Northern Indiana Public Service Company ("NIPSCO") and MISO in Docket No. EL12-24-000 (February 8, 2012). Xcel Energy notes that Pioneer is not a Transmission Owning Member of MISO and its dispute with NIPSCO and MISO is thus distinguishable from the instant dispute. That said, based on the facts proffered by Pioneer in its Complaint, it appears that Pioneer was designated as an owner of the MVP project at issue in that Docket through MISO's collaborative and informal planning process.

⁸⁴ MTEP11, Appendix A at line 193.

⁸⁵ MTEP11, Appendix A at line 194.

utilities in the upper-Midwest. The project will connect OTP's Wilton Substation to Minnesota Power's ("MP") Boswell Substation. While the Share Equally Provisions would designate responsibility for this project to OTP and MP, they agreed to share responsibility with other CapX2020 utilities, including NSPM, Great River Energy and non-MISO member Minnkota Power Cooperative (a joint owner of the Wilton Substation). The same is true for participants in the Fargo – Monticello Project (connecting facilities of NSPM and Missouri River Energy Services) and the Twin Cities – La Crosse Project (connecting facilities of NSPM and NSPW). The designations in the MTEPs approving these projects reflect this agreement otherwise.⁸⁶ The Agreements documenting the ownership and construction responsibilities of the various owners of the Bemidji – Grand Rapids Project and the first two phases of the Fargo – Twin Cities Project have been accepted for filing by the Commission.⁸⁷ As those documents establish, the "otherwise agree" sharing mechanism can require a highly complex set of agreements and requirements be put in place.

There are also instances where MISO's designation defaults to the Share Equally Provisions but after such designation is made, the particular designated Transmission Owners choose to change ownership. For example, MISO has designed NSPM and Great River Energy ("GRE") as owners of the Brookings – Twin Cities Project because that project will connect the

⁸⁶ The Fargo – Monticello Project was approved in MTEP08 and GRE, Xcel Energy, MP, OTP, and Missouri River Energy Services were designated as owners of the project. MTEP08 at p. 175. The Twin Cities – La Crosse Project was approved in MTEP08 and Xcel Energy, Dairyland Power Cooperative, Rochester Public Utilities, Southern Minnesota Municipal Power Agency and WPPI Energy were designated as owners of the project. MTEP08 at p. 184. The Bemidji – Grand Rapids Project was approved in the 2006 MTEP and Minnkota Power Cooperative, OTP, MP, and Xcel Energy were designated as owners of the project. Midwest Independent Transmission System Operator, Inc., Midwest ISO Transmission Expansion Plan 2006 at Table 6.3-10, *available at*: <https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP06/MTEP06%20Report.pdf>.

⁸⁷ *Xcel Energy Services Inc.*, Docket No. ER11-4560-000, delegated letter order (Nov. 16, 2011); *Xcel Energy Services Inc.*, Docket No. ER11-4561-000, delegated letter order (Nov. 16, 2011); *Xcel Energy Services Inc.*, Docket No. ER11-4724-000, delegated letter order (Nov. 16, 2011).

facilities of NSPM and GRE.⁸⁸ However, both GRE and NSPM have chosen to expand ownership of the Brookings – Twin Cities Project to include the other members of the CapX2020 Initiative (including both MISO Transmission Owners and new entrants that will become MISO Transmission Owners as a result of their ownership interest in the Brookings Project) who have participated in planning and development of that project. XES, on behalf of NSPM and the other project participants, will shortly file these documents with the Commission.

Finally, the collaborative planning process also allows other outcomes. For example, the Monroe County – Council Creek 161 kV transmission line project will connect NSPW’s existing Monroe County Substation to ATC’s Council Creek Substation. This is a local reliability project that was designed to provide load-serving support to an area of ATC’s system in need of additional transmission infrastructure. Because NSPW’s Monroe County Substation is near the far edge of the NSPW system and the project will provide little load serving benefit to NSPW’s customers, NSPW determined that it would be appropriate for ATC to construct and own this facility.⁸⁹ This facility has been approved by MISO through the MTEP process and MISO has designated ATC as the sole owner.⁹⁰

As demonstrated, the Share Equally Provisions provide the default designation provisions for MISO. Those TOs responsible under the TOA and Tariff may, and often do, decide to otherwise agree as to project responsibility. Such agreement may occur either before or after MISO makes its MTEP designation. However, as to signatories of the TOA, in every instance, and pursuant to the Share Equally Provisions, the right to agree otherwise belongs to the

⁸⁸ MTEP11, Appendix A at line 218.

⁸⁹ Xcel Energy currently estimates that the western most 60 miles of the entire 145-mile Project would be inside NSPW’s traditional Wisconsin retail service territory and consequently believes that the circumstances surrounding ownership of the Monroe County – Council Creek Project are not applicable to the La Crosse – Madison Line.

⁹⁰ MTEP11, Appendix A at line 442.

Transmission Owner(s) to whose facilities the MTEP project will connect and MISO has designated as an owner.

E. ATC Is Not Uniquely Situated

ATC cannot claim sole ownership of the La Crosse – Madison Line through its local planning process.⁹¹ The Tariff explicitly applies the terms of the TOA to projects proposed through ATC’s local planning process.⁹²

Unlike the NSP Companies, which have integrated their local planning process into MISO’s “top down/bottom up” Attachment FF planning process, ATC has filed tariff provisions for a separate local planning process, which is contained in Attachment FF-ATCLLC of the MISO Tariff.⁹³ ATC has claimed that the Project was evaluated “in ATC’s own FERC-approved local planning process”⁹⁴ even though, as indicated, the study work laying the foundation for the La Crosse – Madison Line predates ATC’s creation and was not performed as part of ATC’s local planning process.⁹⁵ Moreover, the La Crosse – Madison Line, as an MVP, is by definition not a local facility. In fact, the Commission-approved regional cost allocation methodology for this Project would be inappropriate if the Project were strictly local. Consequently the effect of ATC’s local planning process is immaterial.

However, even assuming, *arguendo*, that ATC can rely on its local planning process, it is to no avail. By its plain terms, ATC’s local planning process obligates ATC to conform to the Share Equally Provisions of the TOA.

⁹¹ See, generally, Tariff, Attachment FF-ATCLLC (providing the terms for ATC’s local planning process).

⁹² Tariff, Attachment FF-ATCLLC, VI.A.8; VI.B.7; VI.C.1; VI.D.10; VI.E.7.

⁹³ For an in-depth discussion of MISO’s planning process and the integration of local planning work into the MTEP, please see Kline Affidavit at PP 36-54.

⁹⁴ October 4 Letter at p. 3. ATC has also claimed that it is the sole proponent of the Project. *Id.* However, as indicated, NSPW was present at the creation of the La Crosse – Madison Line and was heavily involved in studies that laid the foundations for the La Crosse – Madison Line. See, e.g., WIRES Phase II Report.

⁹⁵ *Id.*

ATCLLC shall, consistent with Appendix B of the ISO Agreement and in accordance with Attachment FF of this Tariff, upon completion of the analysis of any proposed Transmission Facilities project, or upon completion of the evaluation of its network adequacy, identify to the Transmission Provider those provisional, proposed or planned projects that ATCLLC, in its judgment, has determined should be constructed to meet the needs of its Interconnection and Transmission Customers in order to fulfill ATCLLC's obligation to provide interconnection service and open access transmission service for the benefit of all users of its Transmission Facilities.⁹⁶

And, as specifically relates to ATC's Transmission-Transmission planning requirements pursuant to which the La Crosse – Madison Line was ultimately scoped:⁹⁷

Upon the development of ATCLLC of any local transmission plans set forth any provisional, proposed or planned transmission projects as provided for in this Attachment FF-ATCLLC, ATCLLC shall provide such provisional, proposed or planned projects to the Transmission Provider for consideration in accordance with the requirements of Appendix B of the ISO Agreement.⁹⁸

This language makes clear that ATC's local planning process is subject to the TOA (including Appendix B) and that those projects identified through ATC's local planning process are subject to MISO's Attachment FF planning authority. Therefore, the mere fact that a project may have been proposed by ATC through ATC's local planning process does not provide a path for ATC to shirk its obligation to comply with the TOA and Tariff. This is especially the case for the La Crosse – Madison Line, a regionally, not locally, beneficial Multi-Value Project.

⁹⁶ Tariff, Attachment FF-ATCLLC, VI.D.10 (emphasis added).

⁹⁷ WWTRS at p. 10.

⁹⁸ Tariff, Attachment FF-ATCLLC, VI.E.7 (emphasis added).

V. ADDITIONAL INFORMATION

In compliance with Rule 206(b) of the Commission's Rules of Practice and Procedure,⁹⁹ XES provides the following additional information:

A. Impacts of ATC's Conduct on NSPW

ATC's decision not to comply with the Share Equally Provisions and MISO's ownership designation for the La Crosse – Madison Line will cause material financial harm to NSPW. The La Crosse – Madison Line is estimated to cost approximately \$350 million. If NSPW is allowed to comply with its responsibility to share equally in construction and ownership of the Project, NSPW will be responsible to fund 50% of the cost of the Project and then earn a Commission authorized rate of return on that investment, with recovery through the MISO Tariff. Conversely, if NSPW is precluded from complying with its obligations under the Tariff and TOA, it would mean that NSPW would lose \$175 million of investment and the revenues associated with that investment. Such an investment would be in the best interests of our customers in Wisconsin and Minnesota as it would allow us to participate fully in this MVP project and would provide substantial value to our customers.

B. No Other Actions Pending

Neither XES nor NSPW (nor NSPM) are a party to an existing Commission proceeding or a proceeding in any other forum where the topics that are the subject of the instant Complaint are at issue.

C. Relief Requested

XES respectfully requests that the Commission: (1) find that ATC has not complied with the express terms and conditions of the Transmission Owners Agreement and the Midwest ISO Tariff; and (2) direct ATC to enter into negotiations with XES and NSPW to develop final terms

⁹⁹ 18 C.F.R. § 385.206(b)(2011).

and conditions for the shared ownership and construction of the La Crosse – Madison Line. Xcel Energy believes that the requested Commission determination will allow ATC and Xcel Energy to negotiate terms for ownership in-line with MISO’s collaborative planning approach and consistent with the Tariff.

D. Additional Documents

In support of the instant Complaint, XES provides the following documents:

- Attachment A: Affidavit of Ms. Teresa Mogensen;
- Attachment B: Affidavit of Mr. Daniel P. Kline;
- Attachment C: MVP Analysis;
- Attachment D: WIRES Phase II Study;
- Attachment E: CapX2020 Vision Study;
- Attachment F: RES Update Study;
- Attachment G: Western Wisconsin Reliability Study (Contains CEII, available in CEII Volume);
- Attachment H: Letter from XES to ATC dated July 15, 2011;
- Attachment I: Letter from MISO to ATC dated September 15, 2011;
- Attachment J: Letter from ATC to MISO dated October 4, 2011;
- Attachment K: Letter from MISO to ATC dated October 28, 2011;
- Attachment L: Letter from XES to ATC dated January 17, 2012;
- Attachment M: List of persons and entities served; and
- Attachment N: Form of notice.

E. Alternative Dispute Resolution

XES has not sought other forums for alternative dispute resolution. Given XES' repeated attempts to discuss the instant controversy with ATC and ATC's continued rejection of XES' efforts, XES believes that alternative dispute resolution would be futile. Attachment HH of the MISO Tariff provides alternative dispute resolution procedures that XES believes would be applicable to the instant dispute. However, ATC has expressly argued its belief that the MISO alternative dispute procedures are inapplicable.¹⁰⁰ Because Attachment HH allows a party to always remove a disputed matter to the Commission in lieu of using the alternative dispute resolution procedures,¹⁰¹ attempting to utilize the MISO procedures (which ATC has repudiated) would increase the time and expense of obtaining final resolution of the instant dispute. XES has not identified any other alternative dispute resolution process to which ATC would likely agree to resolve this dispute and believes that utilizing the Commission's alternative dispute resolution process would be fruitless without a Commission order finding ATC in breach of the TOA.

VI. REQUEST FOR FAST TRACK PROCESSING

XES believes that time is of the essence for resolving the instant dispute. As indicated, the La Crosse – Madison Line is expected to be placed in-service in 2018.¹⁰² To meet this in-service date, significant amounts of pre-construction activities still need to occur, including final engineering work and state-level permitting. NSPW believes that an application with the PSCW for a Certificate of Public Convenience and Necessity needs to be filed no later than the first quarter of 2013 to allow sufficient time to permit and construct the Project. To meet this filing date, both NSPW and ATC need to begin pre-filing work soon. Therefore, XES requests Fast

¹⁰⁰ October 4 Letter at p. 9.

¹⁰¹ MISO Tariff, Attachment HH, § I.A.

¹⁰² MTEP11, Appendix A at line 142.

Track Processing of this Complaint in order to ensure that the ownership issue is promptly resolved and the La Crosse – Madison Line can meet its planned in-service date. XES believes that a Commission determination by June 15, 2012 would allow Xcel Energy sufficient time to negotiate final terms on ownership and construction of the La Crosse – Madison Line with ATC and begin the state permitting process in time to allow for a 2018 in-service date for the Project.

Fast Track Processing is appropriate because even if the Commission grants XES' requested relief, XES and ATC will still need to negotiate terms and conditions for their equal rights to own and construct the La Crosse – Madison Line and these negotiations may take considerable amounts of time. Therefore, the sooner that the Commission is able to bring the instant dispute to resolution the higher the likelihood that the NSPW and ATC will be able to timely begin permitting the project and meet the expected in-service date for the Project. Consequently, Fast Track processing is appropriate for the instant dispute.

VII. REQUEST FOR CEII TREATMENT

Pursuant to 18 C.F.R. § 338.112, XES and NSPW respectfully request privileged treatment of the Western Wisconsin Transmission Reliability Study provided in Attachment G to this Complaint (the "CEII Data") because this attachment contains Critical Energy Infrastructure Information ("CEII"), which is exempt from the mandatory public disclosure requirements of the Freedom of Information Act.¹⁰³ The CEII Data is CEII as defined in 18 C.F.R. § 388.113(c)(1). Specifically, the CEII Data has been marked as CEII by its authors as it contains specific engineering and detailed design about critical infrastructure and detailed engineering and load flow information relating to the transmission of electrical energy which could be useful to a person or persons planning terrorist attacks, and does not simply give the general location of the

¹⁰³ 5 U.S.C. § 522 (2011).

critical infrastructure. XES and NSPW do not wish to contravene the CEII designation of the WWTRS given to it by its authors and are consequently filing the document as CEII. XES and NSPW are not requesting privileged treatment of studies provided with this Complaint which have previously been made public (Attachments C, D, E, and F). Pursuant to 18 C.F.R. § 388.112(b), the CEII Data has been efiled with the Commission pursuant to the procedures provided for on the Commission's website.

VIII. CONCLUSION

For the foregoing reasons, XES respectfully requests that the Commission: (1) find that ATC has not complied with express terms and conditions of the Transmission Owners Agreement and the Midwest ISO Tariff; and (2) direct ATC to enter into negotiations with XES and NSPW to develop final terms and conditions for the shared ownership and construction of the La Crosse – Madison Line.

Dated: February 14, 2012

Respectfully Submitted,

/s/ Michael C. Krikava

Michael C. Krikava

Zeviel Simpser

Briggs and Morgan, P.A.

2200 IDS Center

80 South 8th Street

Minneapolis, MN 55402

(612) 977-8400

mkrikava@briggs.com

zsimpser@briggs.com

James P. Johnson

Assistant General Counsel

Xcel Energy Services Inc.

414 Nicollet Mall – 5th Floor

Minneapolis, MN 55401

James.p.johnson@xcelenergy.com

ATTORNEYS FOR XCEL ENERGY
SERVICES INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2012, I have served the foregoing document on all affected parties in accordance with the requirements of the Commission's Rules of Practice and Procedure.

/s/ Zeviel T. Simpser
Zeviel T. Simpser