

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Shetek Wind Inc., Jeffers South, LLC,	)	
and Allco Renewable Energy Limited	)	
v.	)	Docket Nos. EL11-53-000
Midwest Independent Transmission	)	EL11-53-001
System Operator, Inc.	)	EL11-53-002
	)	
	)	
Midwest Independent Transmission	)	Docket Nos. ER12-188-000
System Operator, Inc.	)	ER12-188-001
	)	ER12-188-002
	)	ER12-188-003

[not consolidated]

*OFFER OF SETTLEMENT*

To: The Honorable David H. Coffman  
Presiding Administrative Law Judge

Pursuant to Rules 212 and 602 of the Commission’s Rules of Practice and Procedure, Shetek Wind Inc., Jeffers South, LLC, Allco Renewable Energy Limited, EcoEnergy, LLC, Prairie Rose Wind, LLC, Midwest Independent Transmission System Operator, Inc., Renewable Energy Systems Americas, Inc., High Country Energy, LLC, Great River Energy, and Xcel Energy Services Inc. on behalf of Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation, (collectively the “Settling Parties”) hereby submit their Offer of Settlement. These parties are authorized to state that this Offer of Settlement is not opposed by any parties to this proceeding.

This Offer of Settlement includes the following documents:

1. A Settlement Agreement executed by the Settling Parties (Exhibit A).
2. An Explanatory Statement describing the terms of the Settlement Agreement, as required by Rule 602(c)(ii) (Exhibit B).
3. A draft letter order approving the Offer of Settlement (Exhibit C).

Under Rule 602(f) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(f), comments are due on an Offer of Settlement after 20 days and reply comments are due after 30 days. Therefore, comments on this Offer of Settlement are due on September 13, 2012, and reply comments are due on September 24, 2012.

*CONCLUSION*

The Settling Parties request that this Offer of Settlement be certified by the Presiding Administrative Law Judge and approved by the Commission.

Respectfully submitted,

/s/ Matthew R. Dorsett

Matthew R. Dorsett  
Midwest Independent Transmission  
System Operator, Inc.  
720 City Center Drive  
Carmel, IN 46032

*Attorney for Midwest Independent  
Transmission System Operator, Inc.*

/s/ Mike Naeve

Mike Naeve  
Paul F. Wight  
Tim T. Mastrogiacomo  
Skadden, Arps, Slate, Meagher  
& Flom, LLP  
1440 New York Avenue, N.W.  
Washington, DC 20005

*Counsel for Prairie Rose Wind, LLC*

/s/ Bonnie Blair

Bonnie Blair  
Rebecca L. Sterzinar  
Thompson Coburn, LLP  
1909 K Street, N.W., Suite 600  
Washington, DC 20006

*Counsel for EcoEnergy, LLC*

/s/ Thomas Melone

Thomas Melone  
Shetek Wind, Inc.  
Allco Renewable Energy Limited  
Jeffers South, LLC  
14 Wall Street, 20th Floor  
New York, NY 10005

*President of Shetek Wind, Inc.  
President of Allco Renewable Energy  
Limited*

*CEO of Jeffers South, LLC*

/s/ Brian M. Meloy

Brian M. Meloy  
Leonard, Street and Deinard, P.A.  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402

*Counsel for Great River Energy*

/s/ Michael C. Krikava

Michael C. Krikava  
Briggs & Morgan, P.A.  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

Stephen M. Spina  
Morgan, Lewis & Bockius  
1111 Pennsylvania Avenue, N.W.  
Washington, DC 20004

*Counsel For Xcel Energy Services Inc.,  
on behalf of Northern States Power  
Company, a Minnesota corporation, and  
Northern States Power Company, a  
Wisconsin corporation*

/s/ Lindsey Willison

Lindsey Willison  
Renewable Energy Systems Americas  
Inc.  
11101 W. 120th Avenue, Suite 400  
Broomfield, CO 80021

*Counsel for Renewable Energy Systems  
Americas Inc.*

/s/ David P. Yaffe

David P. Yaffe  
D. John Frenkil  
Van Ness Feldman, P.C.  
1050 Thomas Jefferson Street, NW  
Suite 700  
Washington, DC 20007

*Counsel for High Country Energy, LLC*

August 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Offer of Settlement was served this twenty-seventh day of August, 2012, upon the official service list maintained by the Secretary in this proceeding.

/s/ Rhiannon R. Shelley  
Rhiannon R. Shelley  
Paralegal  
Midwest Independent Transmission System  
Operator, Inc.  
720 City Center Drive  
Carmel, IN 46032

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Shetek Wind Inc., Jeffers South, LLC,	)	
and Allco Renewable Energy Limited	)	
v.	)	Docket Nos. EL11-53-000
Midwest Independent Transmission	)	EL11-53-001
System Operator, Inc.	)	EL11-53-002
	)	
	)	
Midwest Independent Transmission	)	Docket Nos. ER12-188-000
System Operator, Inc.	)	ER12-188-001
	)	ER12-188-002
	)	ER12-188-003

[not consolidated]

*SETTLEMENT AGREEMENT*

This Settlement Agreement is made pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602 (2012), by and among Shetek Wind Inc., Jeffers South, LLC, Allco Renewable Energy Limited (collectively the “Complainants”), EcoEnergy, LLC, Prairie Rose Wind, LLC (“Prairie Rose”), Midwest Independent Transmission System Operator, Inc. (“MISO”), Renewable Energy Systems Americas, Inc. (“RES Americas”), High Country Energy, LLC (“HCE”), Great River Energy (“GRE”), and Xcel Energy Services Inc. on behalf of Northern States Power Company, a Minnesota corporation (“NSPM”) and Northern States Power Company, a Wisconsin corporation (“NSPW”) (jointly “Xcel Energy”), (each a “Settling Party” and all collectively, the “Settling Parties”). The Settling Parties enter into this Settlement Agreement to resolve all issues between and among the Settling Parties in Docket Nos. EL11-53-000, ER12-188-000, and all Sub Dockets thereof. The Settling Parties request consolidation of these

proceedings, solely for the purpose of considering this settlement agreement, under Rule 602(b)(3) of the Commission Rules of Practice and Procedure. 18 C.F.R. § 385.602(b)(3).<sup>1</sup>

## ARTICLE I

### *Background*

1.1. On October 25, 2011, in Docket No. ER12-188-000, MISO filed a Provisional Generator Interconnection Agreement (“GIA”) under section 205 of the Federal Power Act (“FPA”) between MISO, NSPM, and Prairie Rose (Project J183).

1.2. On July 15, 2011, Complainants filed a complaint in Docket No. EL11-53-000 against MISO, asking the Commission to find that MISO’s processing of certain GIAs, including the Prairie Rose and NSP GIA, was unjust and unreasonable and unduly discriminatory and/or preferential in violation of section 206 of the FPA.

1.3. The following parties intervened in the Docket No. ER12-188-000 proceeding, some of whom also filed comments, answers, or other substantive pleadings: Allco Renewable Energy, the Midwest ISO Transmission Owners,<sup>2</sup> Jeffers South, LLC, Prairie Rose, and Xcel Energy Services Inc. on behalf of its utility operating company affiliates, NSPM and NSPW.

---

<sup>1</sup> Rule 602(b)(3) provides that if an offer of settlement involves multiple proceedings before the Commission, which are in part pending before the Commission and in part set for hearing, any participant in the settlement may request that the Commission “consolidate the multiple proceedings and . . . provide any other appropriate procedural relief for purposes of disposition of the settlement.”

<sup>2</sup> For purposes of this intervention, the Midwest ISO Transmission Owners consisted of Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; 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);

*(cont'd)*

1.4. The following parties intervened in the Docket No. EL11-53-000 proceeding: the Detroit Edison Company, Duke Energy Corporation, NextEra Energy Resources, LLC, Missouri River Energy Services, Iberdrola Renewables, Inc., Edison Mission Energy, Integrys Energy Group, Inc., EcoEnergy, Michigan Electric Transmission Company, LLC, National Wind, LLC, Wind on the Wires, Midwest ISO Transmission Owners,<sup>3</sup> PNE Wind USA, Inc., American Municipal Power, Inc., RES Americas, International Transmission Company, ITC Midwest, LLC, HCE, GRE, Prairie Rose, Exelon Corporation, and Xcel Energy Services Inc. on behalf of NSPM and NSPW.

1.5. On July 29, 2011, MISO filed an Answer and Motion to Dismiss the Complaint in the Docket No. EL11-53-000 proceeding. On August 15, 2011, Complainants filed an Answer to MISO's Answer and Motion to Dismiss. On August 30, 2011, MISO filed an Answer responding to the Complainants. Several other parties also filed Answers.

1.6. On November 15, 2011, Complainants made a joint filing in the proceedings in Docket Nos. EL11-53 and ER12-188, seeking to intervene in Docket No. ER12-188, consolidate the two proceedings, and protest MISO's GIA filing in Docket No. ER12-188-000. On November 23,

*(cont'd from previous page)*

Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

<sup>3</sup> For purposes of this intervention, the Midwest ISO Transmission Owners consisted of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); 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 Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

2011, MISO filed an Answer opposing Complainants' request to intervene and consolidate the proceedings. On November 30, MISO submitted a second Answer, this time responding to Complainants' protest.

1.7. On December 23, 2011, in Docket No. ER12-188-000, the Commission issued an Order Conditionally Accepting and Suspending Generator Interconnection Agreement Subject to Refund and Further Commission Order. *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,234 (2011). The Order conditionally accepted the Provisional GIA at Angus Anson Station effective October 26, 2011, subject to further order, and denied the pending motion to consolidate the proceedings in Docket Nos. EL11-53-000 and ER12-188-000. *Id.* at 10 (Ordering Para. (B)).

1.8. On March 30, 2012, in both the Docket Nos. EL11-53-000 and ER12-188-000 proceedings, the Commission issued an Order on Complaint and Establishing Hearing and Settlement Judge Procedures, Further Order on Interconnection Agreement, and Dismissing Rehearing. *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,250 (2012). The Order conditionally accepted the Provisional GIA filed in Docket No. ER12-188-000, subject to the Net Zero interconnection filing requirements to be established in the MISO Queue Reform Proceeding in Docket No. ER12-309-000. *Id.* at P 141. With regard to the proceeding in Docket No. EL11-53-000, the Order set for hearing and settlement judge procedures the issue of whether undue discrimination existed in "the process that led to the selection of Prairie Rose as a Net Zero generator." *Id.* The Commission directed the hearing judge to "determine whether any parties were similarly situated to the Net Zero developers that were chosen . . . and, if so, whether the existing generators gave undue preference to an affiliate or another developer when choosing a Net Zero project with which to partner." *Id.* at P 128.



1.9. On April 5, 2012, the Chief Administrative Law Judge appointed Judge Karen V. Johnson as Settlement Judge in the Docket No. EL11-53-000 proceeding. *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-000 (April 5, 2012) (unpublished order).

1.10. Judge Johnson held settlement conferences among all interested parties on April 17, 2012, April 23, 2012, and May 7, 2012. Judge Johnson issued a Final Status Report in Docket No. EL11-53-000 on May 8, 2012, in which she declared that the parties had reached an impasse in settlement negotiations and recommended that settlement procedures be terminated.

1.11. On April 30, 2012, the Docket No. EL11-53-000 Complainants filed a Request for Rehearing of the Commission's March 30, 2012 Order in Docket Nos. EL11-53-001 and ER12-188-001. Also on April 30, 2012, EcoEnergy, LLC filed a Request for Rehearing of the same Commission Order, but only challenged the Order's holdings with regard to Docket No. EL11-53-001 (EcoEnergy did not intervene in Docket No. ER12-188-000).

1.12. On May 9, 2012, the Chief Administrative Law Judge issued an Order Terminating Settlement Judge Procedures. *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-000 (May 9, 2012) (unpublished order).

1.13. On May 11, 2012, the Chief Administrative Law Judge issued an Order selecting Judge David H. Coffman as the Presiding Judge for the Docket No. EL11-53-002 hearing and directing Judge Coffman to adopt a procedural schedule that would result in the issuance of an Initial Decision by May 11, 2013. *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-002 (May 11, 2012) (unpublished order).

1.14. On May 15, 2012, MISO, Prairie Rose, and Xcel Energy filed Answers to the Complainants' Rehearing Request in Docket Nos. EL11-53-001 and ER12-188-001 and EcoEnergy's Rehearing Request in Docket No. EL11-53-001.

1.15. On May 25, Judge Coffman issued an Order Establishing Procedural Schedule in Docket No. EL11-53-002. *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-002 (May 25, 2012) (unpublished order). The procedural schedule provided for an Initial Decision by May 13, 2013.

1.16. On May 29, 2012, parties issued initial discovery requests in Docket No. EL11-53-002.

1.17. On June 7, 2012, Judge Coffman issued an Order Adopting Protective Order in Docket No. EL11-53-002. *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-002 (June 7, 2012) (unpublished order).

1.18. Since June 7, 2012, the parties in Docket No. EL11-53-002 have conducted discovery. During this time, some of the parties have also continued settlement negotiations.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties, intending to be legally bound, agree as follows:

## ARTICLE II

### *Scope of the Settlement Agreement*

2.1. On the terms set forth in the following Article III, the Settling Parties hereby settle and resolve all issues between them involving the matters raised in Docket Nos. EL11-53-000 and

ER12-188-000 (and all Sub Dockets thereof). Approval of this Settlement Agreement would terminate the proceeding in Docket No. EL11-53-000 and all Sub Dockets thereof.

### ARTICLE III

#### *Terms of Settlement Agreement*

- 3.1. "Geronimo Parties" is defined as Geronimo Wind Energy, LLC and its present or future affiliates, including Prairie Rose Wind, LLC.
- 3.2. "Melone Parties" is defined as Thomas Melone, Shetek Wind, Inc., Jeffers South, LLC, Allco Renewable Energy Limited, and any present or future affiliates of any of the Melone Parties.
- 3.3. "EcoEnergy Parties" is defined as EcoEnergy, LLC and its present or future affiliates.
- 3.4. The Settling Parties agree and acknowledge that there were no similarly-situated parties capable of interconnecting at Angus Anson Station in a timeframe contemporaneous with that proposed by Prairie Rose that were unduly discriminated against in connection with the development and execution of the Prairie Rose Net Zero GIA for interconnection Project J183 at the point of interconnection for the NSPM Angus Anson Station.
- 3.5. With respect to the Prairie Rose Net Zero interconnection, the Geronimo Parties, MISO, and/or Xcel Energy will comply with the filing requirements of the MISO tariff to be developed in the ER12-309 proceeding, meaning that Prairie Rose, MISO, or Xcel Energy (as applicable) will file agreements that conform to the *pro forma* agreements for Net Zero GIAs: Energy Displacement and Monitoring and Consent. Given that there were no similarly situated parties (as specified in Article III, Section 3.4) that were unduly discriminated against in the awarding of the Net Zero interconnection at Angus Anson Station for the Prairie Rose Net Zero GIA, Prairie Rose, MISO, and Xcel Energy will be deemed to be in compliance with all other provisions of the MISO Tariff designed to protect against undue discrimination in the awarding of Net Zero

interconnections including, without limitation, any requirements with respect to formal notices, posting or public notice of available services, posting or public notice of agreement details, anti-tying arrangements, auctions, requests for proposals, and/or any similar requirements intended to ensure that a transparent and nondiscriminatory process is or was utilized in connection with the awarding of a Net Zero interconnection for Project J183.

3.6. The Melone Parties and EcoEnergy Parties have agreed to cease any participation in the proceedings in Docket Nos. EL11-53-000 and ER12-188-000 (and all Sub Dockets thereof). Upon written request from the Geronimo Parties, the Melone Parties will file notices of withdrawal (pursuant to 18 C.F.R. § 385.216 (2012)) in those proceedings within two business days, and the EcoEnergy Parties will file a notice of withdrawal from Docket No. EL11-53-000 (and all Sub Dockets thereof) within five business days.

3.7. This settlement does not limit the rights of any parties, except the Melone Parties and EcoEnergy Parties as specified in the settlement, to participate in any other judicial or administrative proceedings, nor does it limit the positions such parties may take in those proceedings.

#### ARTICLE IV

##### *Miscellaneous Provisions*

4.1. *Non-Severability.* The Settling Parties agree and understand that the various provisions of this Settlement Agreement are not severable and shall not become operative unless and until the Commission issues a Final Order (as defined in Article IV, Section 4.2) accepting or approving this Settlement Agreement as to all its terms and conditions without modification.

4.2. *Effectiveness of Settlement Agreement.* This Settlement Agreement and the provisions hereof shall become effective when accepted or approved by the Commission without modification or condition through a Final Order. For purposes of this Settlement Agreement, an

order shall be deemed to be a "Final Order" as of the date it is no longer subject to rehearing or judicial review.

4.3 *Reservations.* Except as provided under Article IV, Section 4.5 (confidentiality of settlement discussions) and Section 4.6 (assurances of cooperation), no Settling Party shall be bound by any part of this Settlement Agreement unless and until it becomes effective in the manner provided by Article IV, Section 4.2 hereof. If this Settlement Agreement is not accepted or approved in its entirety without modification or condition, it shall be deemed withdrawn, shall not be considered to be part of the record in this proceeding, and shall be null and void and of no force and effect, unless all of the Settling Parties otherwise agree in writing to such modification or condition.

4.4. *Effect on Other Agreements.* This Settlement Agreement in no way limits any obligations under other settlement agreements or private contracts entered into by signatories to this Settlement Agreement, including other settlement agreements and contracts involving matters in Docket Nos. ER11-53-000 and ER12-188-000 (and all Sub Dockets thereof). The term "Settlement Agreement" as used in this Settlement Agreement does not refer to or include any other settlement agreements or contracts.

4.5. *Settlement Discussions.* The discussions between and among the Settling Parties that have produced this Settlement Agreement have been conducted with the explicit understanding, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2012), that all offers of settlement and discussions relating thereto shall be privileged and confidential, shall be without prejudice to the position of any Settling Party or participant presenting any such offer or participating in any such discussion, and are not to be used in any

manner in connection with this proceeding, any other proceeding, or otherwise, except to the extent necessary to enforce its terms.

4.6. *Further Assurances.* Each Settling Party shall cooperate with and support, and shall not take any action inconsistent with: (i) the filing of this Settlement Agreement with the Commission, and (ii) efforts to obtain Commission acceptance or approval of the Settlement Agreement.

4.7. *Waiver.* No provision of this Settlement Agreement may be waived except through a writing signed by an authorized representative of the waiving Settling Party. Waiver of any provisions of this Settlement Agreement shall not be deemed to waive any other provision.

4.8. *Successors and Assigns.* This Settlement Agreement is binding upon and for the benefit of the Settling Parties and their successors and assigns.

4.9. *Captions.* The captions in this Settlement Agreement are for convenience only and are not a part of this Settlement Agreement and do not in any way limit or amplify the terms and provisions of this Settlement Agreement and shall have no effect on its interpretation.

4.10. *Ambiguities Neutrally Construed.* This Settlement Agreement is the result of negotiations among, and has been reviewed by, each Settling Party and its respective counsel. Accordingly, this Settlement Agreement shall be deemed to be the product of each Settling Party, and no ambiguity shall be construed in favor of or against any Settling Party.

4.11. *Authorization.* Each person executing this Settlement Agreement on behalf of a Settling Party represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to authorize this Settlement Agreement to be executed on behalf of, the Settling Party that he or she represents.

4.12. *Notices.* All notices, demands, and other communications hereunder shall be in writing and shall be delivered to the representatives of each Settling Party on the official service lists in Docket Nos. ER12-188-000 and EL11-53-000 (and all Sub Dockets thereof).

4.13. *Counterparts.* This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Settling Parties have caused this Settlement to be duly executed.

/s/ Matthew R. Dorsett

Matthew R. Dorsett  
Midwest Independent Transmission  
System Operator, Inc.  
720 City Center Drive  
Carmel, IN 46032

*Attorney for Midwest Independent  
Transmission System Operator, Inc.*

/s/ Thomas Melone

Thomas Melone  
Shetek Wind, Inc.  
Allco Renewable Energy Limited  
Jeffers South, LLC  
14 Wall Street, 20th Floor  
New York, NY 10005

*President of Shetek Wind, Inc.  
President of Allco Renewable Energy  
Limited  
CEO of Jeffers South, LLC*

/s/ Mike Naeve

Mike Naeve  
Paul F. Wight  
Tim T. Mastrogiacomo  
Skadden, Arps, Slate, Meagher  
& Flom, LLP  
1440 New York Avenue, N.W.  
Washington, DC 20005

*Counsel for Prairie Rose Wind, LLC*

/s/ Michael C. Krikava

Michael C. Krikava  
Briggs & Morgan, P.A.  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

Stephen M. Spina  
Morgan, Lewis & Bockius  
1111 Pennsylvania Avenue, N.W.  
Washington, DC 20004

*Counsel For Xcel Energy Services Inc.,  
on behalf of Northern States Power  
Company, a Minnesota corporation, and  
Northern States Power Company, a  
Wisconsin corporation*

/s/ Bonnie Blair

Bonnie Blair  
Rebecca L. Sterzinar  
Thompson Coburn, LLP  
1909 K Street, N.W., Suite 600  
Washington, DC 20006

*Counsel for EcoEnergy, LLC*

/s/ Lindsey Willison

Lindsey Willison  
Renewable Energy Systems Americas  
Inc.  
11101 W. 120th Avenue, Suite 400  
Broomfield, CO 80021

*Counsel for Renewable Energy Systems  
Americas Inc.*

/s/ Brian M. Meloy

Brian M. Meloy  
Leonard, Street and Deinard, P.A.  
150 South Fifth Street, Suite 2300  
Minneapolis, MN 55402

*Counsel for Great River Energy*

/s/ David P. Yaffe

David P. Yaffe  
D. John Frenkil  
Van Ness Feldman, P.C.  
1050 Thomas Jefferson Street, NW  
Suite 700  
Washington, DC 20007

*Counsel for High Country Energy, LLC*

August 27, 2012



UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Shetek Wind Inc., Jeffers South, LLC,	)	
and Allco Renewable Energy Limited	)	
v.	)	Docket Nos. EL11-53-000
Midwest Independent Transmission	)	EL11-53-001
System Operator, Inc.	)	EL11-53-002
	)	
	)	
Midwest Independent Transmission	)	Docket Nos. ER12-188-000
System Operator, Inc.	)	ER12-188-001
	)	ER12-188-002
	)	ER12-188-003

[not consolidated]

*EXPLANATORY STATEMENT*

In accordance with Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 C.F.R. § 385.602, Midwest Independent Transmission System Operator, Inc. submits this Explanatory Statement for the Settlement Agreement (“Settlement”) filed herewith. This Settlement agreement resolves all issues in the above captioned proceedings between the parties executing the Settlement. The Settlement is executed by Shetek Wind Inc., Jeffers South, LLC, Allco Renewable Energy Limited (collectively the “Complainants”), EcoEnergy, LLC (“EcoEnergy”), Prairie Rose Wind, LLC (“Prairie Rose”), Midwest Independent Transmission System Operator, Inc. (“MISO”), Renewable Energy Systems Americas, Inc. (“RES Americas”), High Country Energy, LLC (“HCE”), Great River Energy (“GRE”), and Xcel Energy Services Inc. on behalf of Northern States Power Company, a Minnesota corporation (“NSPM”) and Northern States Power Company, a Wisconsin corporation (jointly “Xcel Energy”).

## I. BACKGROUND

In 2008, MISO posted on its website its Policy on Net Zero Generator Interconnection Requests. Net Zero Interconnection Service (“NZIS”) allows a generator receiving NZIS to share the interconnection of an existing generator, provided that the two generators do not exceed the preexisting interconnection output limit. Following its posting of this Net Zero Policy, existing generators began negotiating NZIS agreements with the owners of new generation projects and MISO began processing NZIS applications.

On July 15, 2011 Complainants filed a Complaint against MISO in Docket No. EL11-53-000. Complainants argued, *inter alia*, that NZIS was not a part of MISO’s tariff, that using it amounted to “queue jumping,” and that several projects that were awarded NZIS were not properly studied for purposes of connecting to the transmission system.

Prairie Rose, the developer of the Prairie Rose Wind Farm in Rock and Pipestone Counties, Minnesota, sought to obtain NZIS paired with NSPM’s Angus Anson Station. Angus Anson Station had an output limit of 392 MW and Prairie Rose sought 200 MW of NZIS. MISO, Prairie Rose, and NSPM (as Transmission Owner) entered into a Provisional Generation Interconnection Agreement (“GIA”) which was filed by MISO in Docket No. ER12-188-000 on October 25, 2011 under Section 205 of the Federal Power Act.<sup>1</sup> On November 1, 2011, as part of a larger tariff reform process in Docket No. ER12-309-000, MISO also filed revisions to the MISO Tariff that provided for NZIS generally.

On December 23, 2011, the Commission issued an Order in Docket No. ER12-188-000 that conditionally accepted the Prairie Rose GIA, suspended it for a nominal period, and made it

---

<sup>1</sup> The following parties intervened in the proceeding in Docket No. ER12-188-000: Allco Renewable Energy, the Midwest ISO Transmission Owners, Jeffers South, LLC, Prairie Rose Wind, LLC, and Xcel Energy Services Inc. on behalf of its utility operating company affiliates, NSPM and NSPW.

subject to refund and subject to further order. *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,234 at P 23 (2011). The Commission issued a second Order in Docket No. ER12-188-000 on March 30, 2012. This Order conditionally accepted the Prairie Rose Net Zero GIA, subject to the Net Zero interconnection filing requirements to be established in the Queue Reform Proceeding in Docket No. ER12-309-000. *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,250 at P 141 (2012).

With regard to Docket No. EL11-53-000, the Commission's March 30, 2012 Order partially granted the Complaint and set for hearing and settlement judge procedures the issue of whether undue discrimination existed in "the process that led to the selection of Prairie Rose as a Net Zero generator." *Id.* at P 141. The Commission directed the hearing judge to "determine whether any parties were similarly situated to the Net Zero developers that were chosen . . . and, if so, whether the existing generators gave undue preference to an affiliate or another developer when choosing a Net Zero project with which to partner." *Id.* at P 128. The Order denied relief for other harms alleged in the Complaint, including claims that certain projects which connected at Great River Energy's Lakefield Generating Station were improperly studied. *See id.* at PP 81, 126.

On April 30, 2012, the Docket No. EL11-53-000 Complainants filed a Request for Rehearing of the Commission's March 30, 2012 Order in Docket Nos. EL11-53-001 and ER12-188-001. Also on April 30, 2012, EcoEnergy, LLC filed a Request for Rehearing of the same Commission Order, but only with regard to Docket No. EL11-53-001 (EcoEnergy did not intervene in Docket No. ER12-188-000).

The matter set for hearing in Docket No. EL11-53-002 proceeded through settlement judge procedures without resolution. On May 8, 2012, Settlement Judge Karen V. Johnson

issued a Final Status Report in which she declared that the parties had reached an impasse in settlement negotiations. On May 9, 2012, the Chief Administrative Law Judge issued an Order Terminating Settlement Judge Procedures. *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-000 (May 9, 2012) (unpublished order). On May 11, 2012, the Chief Administrative Law Judge issued an Order selecting Judge David H. Coffman as the Presiding Judge for the Docket No. EL11-53-002 hearing. *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. EL11-53-002 (May 11, 2012) (unpublished order).

Since June 7, 2012, the parties in Docket No. EL11-53-002 have conducted discovery. During this time, some of the parties have also continued settlement negotiations. This Settlement is a result of those negotiations.

## II. SUMMARY OF THE SETTLEMENT AGREEMENT

The following description of the provisions of the Settlement is not intended to amend, modify or limit any provisions of the Settlement in any respect. In the event of a conflict between this Explanatory Statement and the Settlement, the Settlement will prevail. Capitalized terms used herein shall have the meaning set forth in the Settlement.

Introduction. The Introduction defines the Settling Parties as including the Complainants, EcoEnergy, Prairie Rose, MISO, RES Americas, GRE, HCE and Xcel Energy. The introduction also explains that the Settlement is intended to resolve all issues between and among the Settling Parties in Docket Nos. EL11-53-000, ER12-188-000, and all Sub Dockets thereof, and requests that the Commission grant consolidation of those proceedings under Rule 602(b)(3), 18 C.F.R. § 385.602(b)(3) solely for the purpose of considering this Settlement.

Sections 1.1 to 1.18 – Background. Sections 1.1 to 1.18 briefly summarize the procedural background of Docket Nos. ER12-188-000 and EL11-53-000.

Section 2.1 describes the scope of the Settlement and lists the Dockets of the proceedings which will be resolved.

Section 3.1 defines the Geronimo Parties, which include Geronimo Wind Energy, LLC and Prairie Rose Wind, LLC.

Section 3.2 defines the Melone Parties, which include Thomas Melone, Shetek Wind, Inc., Jeffers South, LLC, Allco Renewable Energy Limited.

Section 3.3 defines the EcoEnergy Parties, which include EcoEnergy, LLC and its present and future affiliates.

Section 3.4 provides that all of the Settling Parties agree and acknowledge that there were no similarly-situated parties to Prairie Rose that were capable of interconnecting at Angus Anson Station in a timeframe contemporaneous with that proposed by Prairie Rose that were unduly discriminated against in the awarding of the Net Zero interconnection at Angus Anson Station for the Prairie Rose Net Zero GIA (Project J183).

Section 3.5 provides that the Geronimo Parties, MISO, or Xcel Energy will comply with the Net Zero interconnection filing requirements of the MISO Tariff that will be developed in the proceeding in Docket No. ER12-309-000 and that, because there were no parties similarly situated to Prairie Rose that were unduly discriminated against as specified in Section 3.4, Prairie Rose, MISO, and Xcel Energy will be deemed to be in compliance with other provisions of the MISO Tariff designed to protect against undue discrimination.

Section 3.6 provides that the Melone Parties and EcoEnergy Parties will cease any participation in the proceedings in Docket Nos. EL11-53-000 and ER12-188-000 (and all Sub Dockets thereof) and, upon request of the Geronimo Parties, will file notices of withdrawal in those proceedings.

Section 3.7 explains that the Settlement does not limit the rights of any party, except the Melone and EcoEnergy Parties as specified explicitly in the Settlement, to participate in any other judicial or administrative proceedings.

Section 4.1 provides that the Settlement provisions are not severable and shall not become operative until it is approved without modification by the Commission through a Final Order.

Section 4.2 provides that the Settlement shall not become effective until it is approved by the Commission by Final Order, meaning the date on which the Order approving the Settlement is no longer subject to rehearing or judicial review.

Section 4.3 provides that no party shall be bound by the Settlement unless it is approved by a Final Order without modification and that the Settlement shall be deemed withdrawn if it is not accepted or if it is accepted with modification.

Section 4.4 provides that the Settlement does not limit obligations under any other settlement agreement or private contracts entered into by the Settling Parties, including any other agreements involving matters in Dockets Nos. ER11-53-000 and ER12-188-000 (and all Sub Dockets thereof).

Section 4.5 provides that the discussions which led to the Settlement are confidential pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2012).

Section 4.6 provides that all Settling Parties provide further assurances that they will cooperate in securing approval of the Settlement.

Section 4.7 states that provisions of the Settlement Agreement may only be waived in writing by an authorized representative of a Settling Party and that waiver of one provision does not equal waiver of multiple provisions.

Section 4.8 provides that the Settlement binds and benefits the successors and assigns of the Settling Parties.

Section 4.9 provides that captions in the Settlement do not have substantive meaning.

Section 4.10 provides that any ambiguity in the Settlement will be construed neutrally.

Section 4.11 provides that each person signing the Settlement is duly authorized to act on behalf of the party he or she represents.

Section 4.12 provides that any notices, demands, or communications under the Settlement shall be delivered to each Settling Party on the Commission's service lists.

Section 4.13 provides that the Settlement may be executed in one or more counterparts.

### *III. RESPONSE TO REQUIRED QUESTIONS*

By Order dated October 23, 2003, the Chief Administrative Law Judge required that five questions be answered as part of every Explanatory Statement submitted with a settlement. The questions, and the required responses, are below:

1. What are the issues underlying the settlement and what are the major implications?

The issue underlying the settlement is whether any parties were similarly situated to the Net Zero developers that were chosen for MISO Projects J182, J183, J184, or J189 and, if so, whether they were unduly discriminated against in the awarding of Net Zero interconnections. The Settling Parties now agree and acknowledge that there were no similarly-situated parties to Prairie Rose Wind, LLC, the Net Zero developer for Project J183 that were capable of interconnecting at Angus Anson Station in a timeframe contemporaneous with that proposed by Prairie Rose. The resolution of this case will have limited implications, because Project J183 is the only Net Zero interconnection executed by MISO to date and filed with the Commission, and the Commission has ordered MISO to establish in the Docket No. ER12-309-000 proceeding a uniform process for the future provision of Net Zero Interconnection Service.

2. Whether any of the issues raise policy implications?

The Settlement does not raise any policy implications. The Settling Parties merely have resolved the factual issue of whether there were similarly-situated parties capable of interconnecting at Angus Anson Station in a time frame contemporaneous with that proposed by Prairie Rose, the Net Zero developer of Project J183. Furthermore, future Net Zero Interconnection Service requests in MISO will be governed by the procedures to be established in the proceeding in Docket No. ER12-309-000. Thus, the Settlement does not attempt to resolve any policy issues.

3. Whether other pending cases may be affected?

There are no other pending cases that may be affected by this Settlement.



4. Whether the settlement involves issues of first impression, or if there are any previous reversals on the issues involved?

The Settling Parties have determined that there were no similarly-situated parties capable of interconnecting at Angus Anson Station in a timeframe contemporaneous with that proposed by Prairie Rose. There are no prior decisions or reversals on this issue.

5. Whether the proceeding is subject to the just and reasonable standard or whether there is *Mobile-Sierra* language making it the standard, i.e., the applicable standards of review?

The proceeding is subject to the just and reasonable standard. The Settlement does not contain language applying the *Mobile-Sierra* public interest standard of review.

FEDERAL ENERGY REGULATORY COMMISSION \_\_\_ FERC ¶ \_\_\_\_\_  
WASHINGTON, D.C. 20426

\_\_\_\_\_, 2012

In Reply Refer to:

*Shetek Wind Inc., Jeffers South, LLC, and Allco Renewable Energy Limited v. Midwest Independent Transmission System Operator, Inc.,*

Docket Nos. EL11-53-000, EL11-53-001, EL11-53-002

*Midwest Independent Transmission System Operator, Inc.,*

Docket Nos. ER12-188-000, ER12-188-001, ER12-188-002, ER12-188-003

Matthew R. Dorsett  
Midwest Independent Transmission System Operator, Inc.  
720 City Center Drive  
Carmel, IN 46032  
*Attorney for Midwest Independent Transmission System Operator, Inc.*

Thomas Melone  
14 Wall Street, 20th Floor  
New York, NY 10005  
*Counsel for Shetek Wind, Inc., Jeffers South, LLC, and Allco Renewable Energy Limited*

Mike Naeve  
Skadden, Arps, Slate, Meagher & Flom, LLP  
1440 New York Avenue, N.W.  
Washington, DC 20005  
*Counsel for Prairie Rose Wind, LLC*

Michael C. Krikava  
Briggs & Morgan, P.A.  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
*Counsel For Xcel Energy Services Inc., on behalf of Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation*

Bonnie Blair  
Thompson Coburn, LLP  
1909 K Street, N.W., Suite 600  
Washington, DC 20006  
*Counsel for EcoEnergy, LLC*

Lindsey Willison  
Renewable Energy Systems Americas Inc.  
11101 W. 120th Avenue, Suite 400  
Broomfield, CO 80021  
*Counsel for Renewable Energy Systems Americas Inc.*

Brian M. Meloy  
Leonard, Street and Deinard, P.A.  
150 South Fifth Street, Suite 2300  
Minneapolis, Minnesota 55402  
*Counsel for Great River Energy*

David P. Yaffe  
D. John Frenkil  
Van Ness Feldman, P.C.  
1050 Thomas Jefferson Street, NW, Suite 700  
Washington, DC 20007  
*Counsel for High Country Energy, LLC*

Dear Counsel:

1. On August 27, 2012, Midwest Independent Transmission System Operator, Inc. filed in the above-captioned proceedings an Offer of Settlement (“Settlement”) between and among it and Shetek Wind, Inc., Jeffers South, LLC, Allco Renewable Energy Limited, EcoEnergy, LLC, Prairie Rose Wind, LLC, Renewable Energy Systems Americas, Inc., High Country Energy, LLC, Great River Energy, and Xcel Energy Services Inc. on behalf of Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation (collectively the “Settling Parties”) pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.602. The Settlement resolves all issues between the Settling Parties in the above-captioned proceedings.

2. On {date}, 2012, the Commission Trial Staff submitted comments in support of the settlement. {Insert references to other comments, their substance and any reply comments.} No other comments were received. On {date}, 2012, the presiding administrative law judge certified the uncontested settlement to the Commission.

3. The subject settlement is in the public interest and is hereby approved. The above-captioned proceedings are hereby consolidated under 18 C.F.R. § 602(b)(3) for purposes of approving the settlement. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e.

4. This letter terminates Docket Nos. EL11-53-000 and all Sub Dockets thereof. This letter also terminates ER12-188-000 and all Sub-Dockets thereof, subject only to the compliance filing required in that proceeding.

By direction of the Commission.

Kimberly D. Bose  
Secretary.

cc: All Parties

Document Content(s)

Intervention Answer

ATTACHMENT A

Page 29 of 30

2012-08-27 Docket No. EL11-53 ER12-188 (Settle).PDF.....1-28

