

120 FERC ¶ 61,047  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

July 13, 2007

In Reply Refer To:  
NorthWestern Corporation (Montana)  
Docket No. OA07-7-000

Leonard, Street and Deinard PA  
The Army Navy Club Building  
1627 Eye St, NW  
Suite 610  
Washington, DC 20006

Attention: Steven A. Weiler  
Attorney for NorthWestern Corporation

Reference: Order No. 890 Optional Section 205 Filing

Dear Mr. Weiler:

1. On April 16, 2007, NorthWestern Corporation<sup>1</sup> (NorthWestern) submitted, pursuant to Order No. 890,<sup>2</sup> an optional Federal Power Act (FPA) section 205 filing requesting that the Commission determine that its currently effective and suspended variations from its *pro forma* Open Access Transmission Tariff (OATT) for its Montana operations are consistent with or superior to the *pro forma* OATT as modified in Order No. 890. The Commission accepts for filing the proposed revisions to Schedules 4 and 9 of its OATT, subject to the outcome of the ongoing settlement or hearing procedures in Docket No. ER07-46-000. The Commission also accepts NorthWestern's request to retain the previously-accepted variation in section 35.2 of its OATT.

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<sup>1</sup> NorthWestern owns and operates transmission facilities in Montana and South Dakota that are neither physically connected, nor in the same North American Electric Reliability Council (NERC) region. This proceeding concerns NorthWestern's Montana facilities, acquired from Montana Power Company in 2002. NorthWestern maintains a separate OATT for its services in Montana.

<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISOs) or regional transmission organizations (RTOs), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit FPA section 206 filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890, within 120 days from publication of Order No. 890 in the Federal Register, *i.e.*, July 13, 2007.<sup>3</sup>

4. The Commission recognized, however, that some of these non-ISO/RTO transmission providers may have provisions in their existing OATTs that the Commission previously deemed to be consistent with or superior to the terms and conditions of the Order No. 888<sup>4</sup> *pro forma* OATT, but which *pro forma* terms and conditions were modified by Order No. 890. The Commission provided an opportunity for such transmission providers to submit an FPA section 205 filing seeking a determination that a previously-approved variation from the Order No. 888 *pro forma* OATT, substantively affected by the reforms adopted in Order No. 890, continues to be consistent with or superior to the revised *pro forma* OATT. The Commission directed applicants to make those filings within 30 days from publication of Order No. 890 in the Federal Register, *i.e.*, April 16, 2007, and to request that the proposed tariff provisions be made effective as of the date of the transmission provider's section 206 compliance filing, described above, except for imbalance-related provisions, which may become effective on the first day of

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<sup>3</sup> The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

<sup>4</sup> *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

the billing cycle following that date. The Commission also requested that applicants state that the Commission has 90 days following the date of submission to act under section 205.

5. NorthWestern requests the Commission determine that its currently effective and suspended variations from its *pro forma* OATT for its Montana operations are consistent with or superior to the *pro forma* OATT as modified in Order No. 890. In particular, NorthWestern requests the Commission determine that its previously accepted variation in section 35.2 of its OATT<sup>5</sup> is consistent with or superior to the *pro forma* OATT as modified in Order No. 890. Section 35.2 requires network customers to comply with the Western Electricity Coordinating Council (WECC) guidelines in addition to the guidelines of the Electric Reliability Organization (ERO).

6. NorthWestern also requests approval of certain variations from the *pro forma* OATT relating to Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generation Imbalance Service), which NorthWestern states were accepted by the Commission on December 15, 2006 in Docket No. ER07-46-000, and suspended for five months to become effective May 18, 2007.<sup>6</sup> Specifically, NorthWestern proposes to use the definition of incremental and decremental costs for purposes of Schedules 4 and 9 included in its Docket No. ER07-46-000 filing, *i.e.*, “the Transmission Provider’s actual cost, which is the hourly weighted average cost of its contracted system balancing and load following energy costs.”<sup>7</sup> NorthWestern states that this definition is consistent with or superior to the *pro forma* OATT as modified in Order No. 890 because NorthWestern does not dispatch generation to supply native load customers and contracts for system balancing and load following services in the marketplace.

7. NorthWestern’s Schedules 4 and 9 do not include a provision allowing netting within deviation band 1 consistent with Order No. 890. NorthWestern proposes to settle imbalance charges financially, at the end of each month. NorthWestern argues that netting on a megawatt hour basis would result in incorrect market pricing signals and could also result in customers offsetting energy shortfalls in on-peak, high-cost periods against excess energy in off-peak, lower cost hours. NorthWestern contends that this would be inequitable because it incurs system balancing and load following costs that vary from hour to hour based on market clearing costs. NorthWestern claims that its method of settling these costs financially is superior to the *pro forma* OATT as modified in Order No. 890 because it allows NorthWestern to correlate monthly net imbalances with hourly incremental and decremental costs.

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<sup>5</sup> See *NorthWestern Corp.*, 113 FERC ¶ 61,215 (2005).

<sup>6</sup> *NorthWestern Corp.*, 117 FERC ¶ 61, 293 (2006).

<sup>7</sup> NorthWestern Corporation’s FERC Electric Tariff, Sixth Revised Volume No. 5, First Revised Sheet No. 70 and Original Sheet No. 76B.

8. Notice of NorthWestern's filing was published in the *Federal Register*, 72 Fed. Reg. 20,524 (April 18, 2007), with comments, protests or interventions due on or before May 7, 2007. In addition, the Commission issued an errata notice on May 11, 2007, to correct the state names identified with the docket numbers; *i.e.*, NorthWestern Corporation (Montana) corresponds to Docket No. OA07-7-000 and NorthWestern Corporation (South Dakota) corresponds to Docket No. OA07-13-000.

9. PPL EnergyPlus, LLC (PPL EnergyPlus) and PPL Montana, LLC (PPL Montana) (collectively, PPL Companies) filed a motion to intervene and protest. Powerex Corporation (Powerex) filed a motion to intervene and comments. Central Montana Electric Power Cooperative, Inc. (Central Montana) filed a motion to intervene and protest, and a request for partial consolidation of the Schedule 4 and 9 issues with the proceedings in Docket No. ER07-46-000. Central Montana and PPL Companies object to NorthWestern's request to have the Commission retain the non-rate terms and conditions of Schedules 4 and 9 that differ from the *pro forma* OATT. Both parties state that NorthWestern's Schedules 4 and 9 have not previously been determined to be just and reasonable and therefore they cannot be deemed consistent with or superior to the *pro forma* OATT, as modified by Order No. 890.<sup>8</sup>

10. Central Montana and PPL Companies note that the Commission recently suspended and set these matters for hearing in Docket No. ER07-46-000, and that the case is pending before an Administrative Law Judge. PPL Companies warn that making a determination regarding these issues could have an adverse impact on the pending hearing and suggest that the Commission allow NorthWestern to make a future filing to address all of the proposed changes to Schedules 4 and 9 of the *pro forma* OATT if a settlement is reached in the pending ER07-46-000 docket. Central Montana, on the other hand, recommends consolidating NorthWestern's current proposal in Docket No. OA07-7-000 with the ongoing settlement discussions, and, if necessary, hearing, in Docket No. ER07-46-000.

11. Central Montana further adds that NorthWestern's argument against netting megawatt hours does not demonstrate that its tariff language is consistent with or superior to the terms and conditions of the new *pro forma* OATT. Central Montana argues that NorthWestern's arguments would be more appropriate for a request for rehearing or clarification of Order No. 890. Central Montana states that, if the Commission does not reject this provision outright, it should consolidate it with the ongoing settlement negotiations, and if necessary hearing, in Docket No. ER07-46-000.

12. Powerex also objects to NorthWestern's filing and argues that NorthWestern includes modifications to Schedules 4 and 9 of its OATT that go beyond the

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<sup>8</sup> Order No. 890, *supra* n. 2.

Commission-approved variations from the Order No. 888 *pro forma* OATT. Powerex states that Order No. 890 directs an implementation schedule that indicates that variations from the Order No. 890 *pro forma* OATT are to be filed after the section 206 *pro forma* OATT compliance filings, *i.e.*, July 13, 2007. Powerex requests that the Commission defer action on Northwestern's variations until such timely filings have been made and comments have been received. In addition, Powerex asks the Commission to direct NorthWestern to refile its Order No. 890 compliance changes and variations from the Order No. 890 *pro forma* OATT at the appropriate time.

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. We will accept NorthWestern's request to retain section 35.2 of its OATT, which requires network customers to comply with WECC and ERO guidelines. No party objected to the provision. Previously, the Commission accepted this variation to incorporate regional practices into the NorthWestern OATT based on a public utility's good faith representation that the identified regional practice is legitimate, unless a supportable claim is made that the practice, in fact, does not prevail in the region.<sup>9</sup> We find this requirement continues to be consistent with the *pro forma* OATT as modified in Order No. 890.

15. With respect to Schedules 4 and 9, we agree with Powerex that Order No. 890 provided that only revisions to the *pro forma* OATT that have been previously accepted under Order No. 888 were to be filed prior to July 13, 2007, the date of the section 206 compliance filing. We nonetheless have considered those proposed variations here for administrative convenience and accept those provisions subject to the outcome of the ongoing settlement or hearing procedures in Docket No. ER07-46-000. We will therefore consider the merits of whether Schedules 4 and 9 are consistent with or superior to the requirements of the *pro forma* OATT, as established in Order No. 888 and modified in Order No. 890, on review of the record in Docket No. ER07-46-000 at the conclusion of settlement or hearing procedures in that docket.

16. The Commission has considered only those previously-accepted variations from the *pro forma* OATT that NorthWestern contends in its transmittal letter are consistent with or superior to the reforms adopted in Order No. 890. Acceptance of these proposed variations to the *pro forma* OATT tariff sheets does not relieve NorthWestern of the

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<sup>9</sup> *Allegheny Power System, Inc., et al.*, 77 FERC ¶ 61,266 at 62,100 (1996).

obligation to make a section 206 compliance filing for requirements of Order No. 890 not addressed in the instant filing as required by Order No. 890 on or before July 13, 2007.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.