

138 FERC ¶ 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Powerex Corp.

Docket No. ER12-1015-000

ORDER GRANTING LIMITED WAIVER OF MARKET-BASED RATE TARIFF
PROVISION

(Issued February 24, 2012)

1. In this order, the Commission grants a request filed by Powerex Corp. (Powerex) for limited waiver of a section of its market-based rate tariff so that it may provide NorthWestern Corporation (NorthWestern) with Regulating Reserve Service on an interim basis, effective March 1, 2012.

I. Background

2. On February 7, 2012, Powerex filed a request for limited waiver of its market-based rate tariff¹ in order to provide NorthWestern with up to 76 megawatts (MW) of Regulating Reserve Service on an interim basis under an agreement dated February 7, 2012 (February 7 Agreement). Specifically, Powerex requests waiver of section 1 of its market-based rate tariff, which limits its ability to make sales of ancillary services at market-based rates to transmission providers for use in fulfilling their open access transmission tariff (OATT) obligations.

3. Powerex states that it is a wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority (BC Hydro), a provincial Crown Corporation owned by the Government of British Columbia. Powerex is authorized by the Commission to make wholesale sales of energy, capacity, and ancillary services in the United States at market-based rates.²

¹ Powerex Corp., FERC Rate Schedule No. 1, 0.0.0 (effective Sept. 30, 2010).

² See *British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997); *British Columbia Power Exchange Corp.*, Docket No. ER97-4024-012 (Sept. 12, 2000)

(continued...)

4. Powerex states that NorthWestern owns and operates transmission and distribution facilities in Montana, which NorthWestern uses to serve customers in the western two-thirds of the state. Powerex states that NorthWestern provides regulated transmission service under its OATT. According to an affidavit from Mike Cashell, NorthWestern Vice President - Transmission that was attached to Powerex's February 7 Filing, on January 1, 2011, NorthWestern commenced commercial operation of the Mill Creek Generating Station, now known as the Dave Gates Generating Station (the Gates Station), a natural gas-fired generating station near Anaconda, Montana. NorthWestern uses the Gates Station to provide regulation and frequency response service to its transmission customers, as required under Schedule 3 of the NorthWestern OATT.

5. According to the Cashell affidavit, on January 31, 2012, NorthWestern unexpectedly needed to completely shut down the Gates Station due to significant equipment damage on each of its three generating units. Since NorthWestern did not have any other generation sources that could provide regulation services, NorthWestern did not have any means to regulate its system. NorthWestern immediately began soliciting potential third-party providers to procure regulation services.³ Powerex states that on February 1, 2012, NorthWestern contacted Powerex to request the immediate provision of Regulating Reserve Service under a structure similar to arrangements that Powerex and NorthWestern had negotiated for 2008 and 2009 and that were approved by the Commission.

6. On February 3, 2012, the Commission granted an emergency request filed by Powerex for limited waiver of section 1 of Powerex's market-based rate tariff in order to provide NorthWestern with up to 70 MW of Regulating Reserve Service on an interim basis from February 3, 2012 until February 29, 2012, under an agreement dated February 2, 2012 (February 2 Agreement).⁴ Powerex states that the February 7 Agreement is intended to provide NorthWestern with the ability to extend the service provided by Powerex under the February 2 Agreement. Powerex states that since NorthWestern does not yet know the extent of the forced outage or precisely when it will be able to begin to bring the generating station back into service, it requires the additional capacity contemplated by the February 7 Agreement to ensure reliable service to its customers.

(delegated letter order); *Powerex Corp.*, Docket No. ER01-48-002 (Oct. 30, 2003)
(delegated letter order); *Powerex Corp.*, Docket No. ER01-48-007 (July 26, 2007)
(delegated letter order).

³ See Powerex's February 7 Filing at n.11 (quoting Cashell affidavit).

⁴ *Powerex Corp.*, 138 FERC ¶ 61,099 (2012).

7. Under the February 7 Agreement, Powerex will provide NorthWestern up to 76 MW of Regulating Reserve Service at a Regulating Reserve Capacity Charge (Capacity Charge) ranging from \$8.00/kilowatt (kW)-month to \$12.00/kW-month depending on the amount of MW provided.⁵ Powerex will also charge NorthWestern for long-term firm point-to-point transmission service on the BC Hydro and Bonneville Power Administration (BPA) transmission systems; however, the sum of the Capacity Charge and the transmission charge shall not exceed \$15.00/kW-month unless mutually agreed to by the parties. NorthWestern will be responsible for all costs associated with transmission service on its transmission system. Powerex will provide Regulating Reserve Capacity and Energy to NorthWestern using eastbound firm transmission service across the BC Hydro and BPA transmission systems, and NorthWestern will return Balancing Energy to Powerex using westbound, non-firm transmission service. Powerex states that the parties generally intend that the amount of energy provided by each party will net out to near zero over the contract period.

8. Powerex states that good cause exists for the Commission to grant Powerex's requested waiver. It states that the Commission has previously granted Powerex waivers to provide market-based sales of Regulating Reserve Service to NorthWestern and that service under the February 7 Agreement is provided under rates, terms, and conditions that are either substantially similar to the prior agreements or are more favorable to NorthWestern. Powerex states that the February 7 Agreement will provide Regulating Reserve Capacity at a lower price than either of the two prior agreements.⁶ Powerex adds that the February 7 Agreement provides needed service to NorthWestern on an immediate basis, thus enabling NorthWestern to obtain the services it is required to procure for reliability purposes and to provide Regulation and Frequency Response Service to its customers under Schedule 3 of its OATT.

9. Powerex maintains that the February 7 Agreement presents no market power concerns. Powerex states that it owns no generation in the United States and controls through contract only a small amount of generation in the NorthWestern balancing authority area (107 MW of the Hardin plant), which, as coal-fired generation without Automatic Generation Control, is not a suitable resource for providing Regulating Reserve Service. Powerex maintains that it has not attempted to withhold this service from the market, is not the transmission provider in the NorthWestern balancing authority area, and cannot erect barriers to entry. Further, it states that NorthWestern has the right to unilaterally decrease the volume of regulating reserves supplied under this

⁵ The Capacity Charge will be \$8.00/kW-month for up to 30 MW, \$10.00/kW-month for 30-60 MW, and \$12.00/kW-month for over 60 MW.

⁶ See Powerex's February 7 Filing at 2 & n.3, 10, 11 (citing *NorthWestern Corp.*, 121 FERC ¶ 61,204 (2007); *Powerex Corp.*, 125 FERC ¶ 61,179 (2008)).

arrangement, from the present 76 MW to any even MW quantity down to 0 MW, should it procure other services or restore the generating station to service during the term of the contract.⁷ Powerex maintains that there will be no detrimental impact to NorthWestern or its transmission customers from Powerex providing the instant service under the February 7 Agreement.

II. Notice and Responsive Pleadings

10. Notice of Powerex's February 7, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 9223 (2012) with interventions and comments due on or before February 21, 2012. The Montana Large Customer Group filed a timely motion to intervene. NorthWestern filed a timely motion to intervene and comments in support of Powerex's filing.

11. NorthWestern states that almost immediately after it learned that the Gates Station must be shut down, it began contacting potential suppliers who had previously expressed an interest in providing Regulating Reserve Service in response to a Request for Proposals (RFP) that NorthWestern distributed widely in October 2011. NorthWestern states that the Montana Public Service Commission requires it to conduct periodic RFPs, such as the October 2011 RFP, to evaluate the cost-effectiveness of NorthWestern's use of the Gates Station.

12. NorthWestern notes that prior to the Gates Station becoming operational on January 1, 2011, NorthWestern exclusively relied on third-party contracts for regulation services and that it conducted RFPs in 2007 and 2009 in order to procure these services. NorthWestern maintains that the 2007, 2009, and 2011 RFPs were conducted in an open and transparent manner consistent with the Commission's precedent in *Allegheny* and *Edgar*.⁸ In each instance, NorthWestern conducted the RFP with the help of a third-party

⁷ The February 7 Agreement, at section 3.1(1), provides, in part, the following:

[NorthWestern] shall have the option to reduce the Contracted Capacity quantity for: (i) March and April 2012 with fifteen (15) days' notice, and (ii) any remaining months each with thirty (30) days' notice.

[NorthWestern] may reduce the quantity to any even MW quantity or to 0 MW. Once the Regulating Reserve Capacity quantity has been reduced, the remaining months will be the same quantity or may be further reduced in accordance with this Section 3.1(1).

⁸ NorthWestern's February 17, 2012 comments at 5-6 (citing *Allegheny Energy Supply Co.*, 108 FERC ¶ 61,082 (2004) (*Allegheny*); *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*)).

neutral independent monitor. Additionally, NorthWestern states that bids were solicited from a broad range of entities throughout the western United States.⁹

13. NorthWestern states that it was not afforded the time to conduct an RFP to procure the regulation services provided by the instant Powerex arrangements because of the emergency circumstances giving rise to NorthWestern's immediate need for replacement regulation services. Nevertheless, it contends that the contract prices are consistent with the results of NorthWestern's prior RFPs.¹⁰

14. NorthWestern notes the flexibility in the February 7 Agreement that allows NorthWestern to reduce the total capacity and adds that it has already exercised its right to reduce the amount of regulation needed for delivery. NorthWestern states that the Gates Station is expected to be partially operational during March 2012 and it has notified Powerex that the total capacity required under the contract should be reduced to 50 MW from the total contracted capacity, starting March 1, 2012.¹¹

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Analysis

16. We will grant Powerex's request for limited waiver of section 1 of its market-based rate tariff in order to allow Powerex to provide Regulating Reserve Service to NorthWestern pursuant to the terms of the February 7 Agreement, effective

⁹ NorthWestern states that it sent the RFPs to an email list of over 150 potential bidders from approximately 80 companies.

¹⁰ NorthWestern represents that the weighted average prices for its most recent RFPs range from \$9.21/kW-month to \$9.62/kW-month. It states that the weighted average cost for the February 7 Agreement's 76 MW is \$9.63/kW-month, which is on par with the prices that NorthWestern has found through its RFPs and is identical to the weighted average of Powerex's bid in the October 2011 RFP.

¹¹ NorthWestern states that the weighted average cost of these 50 MW is \$8.80 kW-month.

March 1, 2012.¹² Our decision to grant this limited waiver is with the understanding that Powerex is providing this service under the February 7 Agreement only to the extent that NorthWestern is unable to self-supply this service from the Gates Station.

17. Based on the representations contained in Powerex's Filing and under the particular circumstances presented here, we find that good cause exists to grant the limited waiver to allow the provision of Regulating Reserve Service. This service will ensure the continued reliable operation of the NorthWestern transmission system. We note that the February 7 Agreement provides that NorthWestern may reduce the contracted capacity quantity to any even MW quantity or to 0 MW after providing Powerex notice. NorthWestern states that it has already exercised the flexibility under the February 7 Agreement to reduce the amount of regulation needed. Additionally, NorthWestern represents that the weighted average price in the February 7 Agreement is consistent with the results of its prior RFPs. Further, we note that Powerex's only generation presence in the NorthWestern balancing authority area is its purchase of 107 MW of the Hardin plant, which the filing notes is not suitable to provide Regulating Reserve Service. In light of the representations and circumstances presented in this proceeding, we find that the February 7 Agreement is unlikely to result in the exercise of market power for this ancillary service in the NorthWestern balancing authority area.

18. We will direct Powerex to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions sections of its market-based rate tariff to list the limited waiver granted herein and include a citation to this order.¹³

The Commission orders:

(A) Powerex's request for limited waiver of section 1 of its market-based rate tariff is hereby granted, effective March 1, 2012, as discussed in the body of this order.

¹² Section 2.1 of the February 7 Agreement provides that it will be in effect through January 8, 2013. However, as noted above, NorthWestern has the right to reduce or completely discontinue service under the February 7 Agreement upon proper notice to Powerex.

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix C; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.

(B) Powerex is hereby directed to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions sections of its market-based rate tariff, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.