

125 FERC ¶ 61,178
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

NorthWestern Corporation

Docket No. ER08-1529-000

ORDER ACCEPTING AGREEMENT FOR REGULATING RESERVE SERVICES

(Issued November 14, 2008)

1. On September 12, 2008, NorthWestern Corporation (NorthWestern) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ an executed agreement for Regulating Reserve Services (Agreement) between NorthWestern and Public Utility District No. 2 of Grant County, Washington (Grant County). Under the Agreement, Grant County will sell Regulating Reserve Services to NorthWestern at negotiated rates commencing January 1, 2009, and NorthWestern will sell Balancing Energy back to Grant County. Because NorthWestern will be returning Balancing Energy to Grant County under the Agreement and financially settling the net energy that results from the purchases of Regulating Reserve Services and sales of Balancing Energy, NorthWestern requests that the Commission accept the Agreement for filing and designate it as NorthWestern FERC Rate Schedule No. 262 (MT).

2. For the reasons discussed below, we will accept the Agreement for filing, to become effective January 1, 2009, as requested.

I. Background

3. NorthWestern owns and operates electric and natural gas transmission and distribution facilities located primarily in Montana and South Dakota. The instant filing concerns NorthWestern's Montana electric transmission system, consisting of over 7,000 miles of transmission lines and associated terminal facilities. In Montana, NorthWestern provides open access transmission service, but owns no rate-based generation. Accordingly, NorthWestern relies on contracts with third parties for the

¹ 16 U.S.C. § 824d (2006).

capacity and energy needed to provide the ancillary services required under its Montana open access transmission tariff (Tariff).²

4. Currently, NorthWestern is authorized to purchase Regulating Reserve Services from third parties under one-year contracts that are set to expire on December 31, 2008. In anticipation of the expiration of such existing contracts, on November 8, 2007, NorthWestern issued a request for proposals (RFP) requesting offers for Regulating Reserve Services beginning no later than January 1, 2009, for any term, but stating a preference for minimum terms of one to two years. NorthWestern solicited proposals from over 75 potential suppliers.³ NorthWestern represents that three responding offers satisfied its requirements and the timelines sought in the RFP. This order addresses one of those three offers, from Grant County.⁴

5. Grant County is a municipal corporation organized under the laws of the State of Washington and is exempt from the Commission's jurisdiction under Part II of the FPA. Grant County owns and operates generation.

6. Regulating Reserve Services are the capacity and energy necessary to respond instantaneously to moment-to-moment changes in load on the NorthWestern system, together with the firm transmission needed to connect load with the Regulating Reserve resource. The Commission's regulations require transmission providers such as NorthWestern to offer to provide ancillary services such as Regulation and Frequency Response Service (Schedule 3 Service) under the Tariff to eligible transmission customers that serve load within the transmission providers' balancing authority areas. NorthWestern's regulating requirement in its balancing authority area is 85 MW. NorthWestern uses the Regulating Reserve Services procured under the Agreement to provide uninterrupted service under Schedule 3 of its Tariff, and to maintain reliability

² NorthWestern maintains a separate open access transmission tariff for South Dakota.

³ These potential suppliers included: (1) generators within NorthWestern's balancing authority; (2) all transmission providers, balancing authorities and their associated generators connected to NorthWestern's Montana transmission system; (3) the Bonneville Power Administration (BPA); (4) the Western Area Power Administration, (5) generators on the Mid-Columbia system; (6) various power marketers; (7) the remaining members of the Northwest Power Pool; and (8) other members of the Western Electricity Coordinating Council (WECC).

⁴ Similar authorizations to those requested here are also sought in Docket Nos. ER08-1528-000 and ER08-1525-000 (NorthWestern and Powerex Corp.) and ER08-1532-000 and ER08-1537-000 (Avista and NorthWestern).

within its balancing authority area, consistent with North American Electric Reliability Council (NERC) and WECC requirements. NorthWestern is authorized to pass through the cost of Regulating Reserve Services to eligible transmission customers under the Tariff.⁵

The NorthWestern/Grant County Agreement

7. Under the Agreement, Grant County, will sell Regulating Reserve Services to NorthWestern at negotiated rates. In addition, NorthWestern will sell Balancing Energy back to Grant at wholesale prices determined by the Dow Jones Mid-Columbia Index (Mid-C Index) for firm, on-peak, off-peak, or Sundays and NERC holidays, as applicable. The Agreement contemplates that Grant County will supply 10 MW of Regulating Reserve Services from January 1, 2009, through December 31, 2010. Although Grant County has no obligation to provide service beyond December 31, 2010, these parties have the option of mutually agreeing to extend the term of the Agreement.

8. Under the Agreement, Grant County will provide Regulating Reserve Services to NorthWestern at a price of \$12.50/kW-month, plus the actual cost of transmission, required ancillary services, and any other transmission-related costs. In addition, NorthWestern will pay Grant County for energy deliveries associated with Regulating Reserve Services with the price of the energy determined by the Mid-C Index for firm, on-peak, off-peak, or Sundays and NERC holidays, as applicable.

9. Regulating Reserve Services must be provided using firm transmission service between the respective balancing authority areas. Under the Agreement, Regulating Reserve Services will be provided in the west-to-east direction over either the Bonneville Power Administration (BPA) or Avista Corp. transmission systems to NorthWestern's system, depending on available transmission capacity.⁶ These transmission systems are interconnected with NorthWestern at multiple points in western Montana. To be able to regulate this service both up and down, NorthWestern will typically operate the system and the Regulating Reserve Services around a set point of approximately half of the total Regulating Reserve Capacity. As a result, the Agreement requires that, each hour, NorthWestern return a quantity of energy equal to one-half the hourly contract capacity provided by Grant County to NorthWestern (Balancing Energy).

⁵ NorthWestern September 12 Filing at 7, n. 19, citing *NorthWestern Corp.*, 122 FERC ¶ 61,120 (2008); *NorthWestern Corp.*, 125 FERC ¶ 61,066 (2008).

⁶ If the transmission provider (either BPA or Avista Corp.) restricts the transmission capacity available to Grant County to provide Regulating Reserve Services, under the Agreement Grant County may reduce the amount of Regulating Reserve Services to be provided to NorthWestern by a proportional amount.

10. Every hour Grant County will use its eastbound firm transmission service to deliver Regulating Reserve capacity and energy to NorthWestern, while NorthWestern will use westbound, non-firm transmission service to deliver Balancing Energy back to Grant County. The parties to the Agreement anticipate that the Regulating Reserve Service energy and the Balancing Energy, over time, will tend to net to zero. Any remaining amount of energy after the netting will be settled at the applicable Mid-C Index price, a widely utilized index in the industry. The use of (1) a unidirectional Regulating Reserve Service, (2) the concept of energy netting to zero, and (3) the Mid-C Index to settle energy transactions contemplated in the Agreement is the same approach the Commission has accepted under similar agreements between NorthWestern and third parties to purchase Regulating Reserve Services.⁷

11. NorthWestern states that it hired an independent evaluator to review the RFP. The independent evaluator conducted the review in light of guidance provided by the Commission in the *Edgar*⁸ and *Allegheny*⁹ decisions. NorthWestern states that although the Commission has applied these guidelines to evaluate the reasonableness of utility purchases of energy products from their affiliates to guard against cross-subsidy concerns, the independent evaluator believes that these orders generally provide useful guidance for evaluating NorthWestern's RFP here and concludes that NorthWestern's RFP satisfies the *Edgar* and *Allegheny* requirements.¹⁰ All relevant information was released to all potential bidders, NorthWestern cast a broad net in soliciting bids across the West, did not limit participation, none of the bidders were NorthWestern affiliates,

⁷ NorthWestern September 2 Filing, at 6 n.18, citing *NorthWestern Corp.*, 121 FERC ¶ 61,204 (2007); *Avista Corp.*, 121 FERC ¶ 61,277 (2007); *Idaho Power*, Docket No. ER05-70-000 (Dec. 14, 2004) (unpublished letter order).

⁸ See *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382, at 62,167-69 (1991) (*Edgar*).

⁹ *Allegheny Energy Supply Co.*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

¹⁰ In *Allegheny*, the Commission stated that the following four guidelines help determine if a competitive solicitation process satisfies the principle that no affiliate should receive undue preference during any stage of an RFP: (1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; and (4) Oversight: an independent third-party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection.

and all aspects of the RFP were widely publicized.¹¹ The independent evaluator concludes that the product definitions were clear and non-discriminatory. The independent evaluator further represents that bids were calculated under clearly specified price and non-price criteria which identified the relative importance and discount factor to be applied to each; standardized bid evaluation criteria were applied equally to all bids and bidders; and the bids were evaluated by the independent evaluator.

12. Separately, Grant County retained an economic consultant to evaluate whether it has market power in the sale of Regulating Reserve Services into the NorthWestern balancing authority area. That consultant concluded that Grant County lacks such market power due to: the small quantity of regulating capacity being sold (10 MW); Grant County's lack of ownership of generation in NorthWestern's balancing authority area; and Grant County's small amount of installed capacity relative to much larger generation owners in the region. Grant County's sale of 10 MW of Regulating Reserve Services capacity is 17 percent of the 60 MW that NorthWestern has purchased under the RFP, and just 12 percent of NorthWestern's total regulating requirement in its balancing authority area.¹²

13. The Grant County consultant states that under the Commission's indicative screens, NorthWestern would not appear in the analysis because the Grant County balancing authority area is not directly interconnected, and therefore is not a first-tier market, to the NorthWestern balancing authority area. On this basis alone, the consultant submits that there is a presumption that Grant County lacks market power in the NorthWestern balancing authority area. The Grant County consultant adds that Grant County would pass both indicative screens in each of its first-tier markets. Further, for the Winter 2008/2009 period in the Northwest Power Pool, the Grant County consultant concludes that Grant County will have less than one percent of total reserve capability.

14. NorthWestern asserts that the Grant County consultant's analysis confirms the Commission's own conclusions last year when NorthWestern purchased regulating reserve capacity from Powerex and Avista that: there are numerous suppliers potentially capable of serving NorthWestern's regulating reserve requirement; these suppliers have relatively unconstrained transmission access from west to east into the NorthWestern balancing authority area; and therefore supply for this service is competitive.

15. NorthWestern requests that the Commission accept the Agreement for filing as NorthWestern FERC Rate Schedule No. 262 (MT), effective on January 1, 2009 and that the Commission grant NorthWestern such waivers as may be required to permit

¹¹ NorthWestern September 12 Filing at 9, Ogur Aff. at 6-7.

¹² NorthWestern September 12 Filing at 10, Solomon Aff. at 2-4, 9.

NorthWestern to use the Regulating Reserve Services to meet its obligation to offer such service pursuant to Schedule 3 (Regulation and Frequency Response Service) of its Tariff.

II. Notice of Filing and Responsive Pleadings

16. Notice of NorthWestern's filing was published in the *Federal Register*¹³ with interventions and protests due on or before October 3, 2008. Grant County filed a motion to intervene and comments in support of the filing.

III. Discussion

A. Procedural matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), Grant County's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Analysis

18. The Agreement appears to be just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept the Agreement for filing to become effective January 1, 2009, as requested.¹⁴

19. We also note that, based on NorthWestern's representations, the Agreement is unlikely to result in the exercise of market power in the Regulating Reserve Services market of the NorthWestern balancing authority area. As NorthWestern explains, Grant County is selling only 10 MW of Regulating Reserve Services under the Agreement; does not own generation in NorthWestern's balancing authority area; is not directly interconnected to NorthWestern's balancing authority area; will have less than one percent of total reserve capability expected to be available in the Winter 2008/2009 period in the entire Northwest Power Pool; and the energy price will be based on a highly liquid price index, which the Commission has relied on for setting prices in a number of contexts. In addition, based on the representations of NorthWestern and the independent evaluator, we agree that potential suppliers were not excluded from the process.

¹³ 73 Fed. Reg. 55,067 (2008).

¹⁴ NorthWestern Corporation, Rate Schedule FERC No. 262 (MT), Original Sheet Nos. 1-14.

The Commission orders:

The Agreement is hereby accepted for filing, to become effective January 1, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.