

128 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NorthWestern Corporation

Docket No. OA07-58-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued August 13, 2009)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ NorthWestern Corporation² (NorthWestern) submitted its compliance filing as required by Order No. 890.³ In this order, we will accept NorthWestern's filing, as modified, as in compliance with Order No. 890, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (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

¹ 16 U.S.C. § 824e (2006).

² NorthWestern owns and operates transmission facilities in Montana and South Dakota that are neither physically connected nor in the same North American Electric Reliability Corporation (NERC) region. NorthWestern maintains separate Open Access Transmission Tariffs (OATT) for its services in Montana and South Dakota. This proceeding addresses NorthWestern's Montana OATT services only.

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 Fed. Reg. 12,540 (March 25, 2009), 126 FERC ¶ 61,228 (2009).

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 (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.⁴

II. NorthWestern's Filing

4. NorthWestern's filing contains several revisions to its OATT, which NorthWestern states are in compliance with the requirements of Order No. 890. According to NorthWestern, its OATT has been revised to include the following requirements of Order No. 890: (1) a crediting mechanism for imbalance penalties; (2) language describing how the transmission provider will process a request to cluster study requests; and (3) qualitative and quantitative criteria used to determine the level of credit required.

5. NorthWestern also requests a temporary waiver of the Order No. 890 requirement that a transmission provider whose tariff contains a "no earlier than" time for transmission service request submittals establish a specified period of time within which all transmission service requests received will be treated as having been received simultaneously. NorthWestern states that section 17.8 of NorthWestern's OATT contains a "no earlier than" time for submitting transmission service requests. NorthWestern explains that it is participating with other transmission providers in the western United States to develop a region-wide automated process for dealing with simultaneous requests. NorthWestern requests temporary waiver of this requirement and commits to amending its OATT to incorporate the regional practice at such time as the region-wide process is developed.

6. NorthWestern's filing also contains variations that it filed on April 16, 2007, in Docket No. OA07-7-000. In that docket, NorthWestern requested that the Commission determine that one previously approved variation from the Order No. 888 *pro forma*

⁴ 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).

OATT in section 35.2 and certain other variations to Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generation Imbalance Service), continue to be consistent with or superior to the respective provisions in the Order No. 890 *pro forma* OATT. The Commission accepted the changes proposed in Docket No. OA07-7-000 and suspended them to become effective May 18, 2007, subject to the outcome of a proceeding in Docket No. ER07-46-000 that addressed related changes the NorthWestern OATT. The Commission explained that it would “consider the merits of whether Schedules 4 and 9 are consistent with or superior to the requirements of the *pro forma* OATT ... on review of the record in Docket No. ER07-46-000 at the conclusion of settlement or hearing procedures in that docket.”⁵

III. Notice of Filing and Responsive Pleadings

7. Notice of NorthWestern’s filing was published in the *Federal Register*, 72 Fed. Reg. 41,726 (2007), with interventions and protests due on or before August 3, 2007. PPL EnergyPlus, LLC and PPL Montana, LLC (PPL) and Central Montana Electric Power Cooperative, Inc. (Central Montana) filed timely motions to intervene and protests. Powerex Corporation (Powerex) filed a timely motion to intervene and comments. Great Northern Power Development, L.P. (Great Northern) filed a motion to intervene out of time and comments on December 12, 2007.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), the Commission will grant Great Northern’s late-filed motion to intervene and comments given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

9. As a preliminary matter, we note that on February 15, 2008, NorthWestern submitted an offer of settlement in Docket No. ER07-46-000, *et al.*, which addressed, among other things, concerns raised by the protesters in the instant proceeding. In its protest, PPL argues that NorthWestern’s proposal to incorporate the Western Electric Coordinating Council Unscheduled Flow Mitigation Plan (WECC UFM Plan) into Attachment J (Procedures for Addressing Parallel Flows) of its OATT is unnecessary and

⁵ *NorthWestern Corp.*, 120 FERC ¶ 61,047 (2007).

duplicative and that the WECC UFM Plan is currently mandatory and enforceable on the Western Interconnection as a regional reliability standard.

10. PPL also argues that Attachment A-1 (Service Agreement for the Resale, Reassignment or Transfer of Long-Term Firm Point-to-Point Transmission Service) of NorthWestern's OATT addresses only long-term assignments and should be modified to address both long-term and short-term assignments. Additionally, PPL states NorthWestern's proposed creditworthiness provisions, as set forth in NorthWestern's Attachment L (Creditworthiness Procedures), do not adequately satisfy the requirements set forth in Order No. 890. PPL asserts that customers are not provided a procedure to seek an explanation from NorthWestern for changes in credit levels or collateral requirements, nor are customers given a reasonable opportunity to contest NorthWestern's determinations of credit levels or collateral requirements. PPL requests that the Commission require NorthWestern to modify its OATT to conform to the requirements of Order No. 890 and ensure that all customers have clear information about the credit process and standards used by NorthWestern.

11. Additionally, PPL argues that NorthWestern's request for a waiver of the Commission's requirement to establish a window for treating simultaneous requests for transmission service has not been justified. PPL states that several other transmission providers who have a "no earlier than" time for receiving transmission service requests in the Northwest have adopted a window of time during which all requests will be treated as being received simultaneously. PPL suggests that NorthWestern should be required to adopt a window of time that would be applicable until NorthWestern, in conjunction with the other transmission service providers in the West, is able to develop a region-wide system.

12. NorthWestern states that the settlement in Docket No. ER07-46-000, *et al.*, addresses all of the concerns raised by PPL in the instant docket. The Commission's order conditionally approving the settlement ordered NorthWestern to amend its filing in Docket No. OA07-58-000 to reflect the revisions that pertained to its Order No. 890 compliance filing included in the offer of settlement.⁶ In Docket No. OA07-58-002, *et al.*, NorthWestern submitted these revisions to address each of the concerns raised by PPL.⁷ NorthWestern's revisions in Docket No. OA07-58-002, *et al.*, including the revisions to its Attachment J, Attachment A-1, Attachment L, and section 17.8

⁶ *NorthWestern Corp.*, 125 FERC ¶ 61,066 (2008).

⁷ In their protests, PPL, Powerex, and Great Northern expressed concerns about NorthWestern's clustering provision, which was not addressed in NorthWestern's filings in Docket Nos. ER07-46-000, *et al.* and OA07-58-002, *et al.* and is discussed in detail below.

simultaneous submission window provisions were uncontested and accepted for filing.⁸ Accordingly, we will accept NorthWestern's proposed Attachment J, Attachment A-1, Attachment L, and section 17.8 simultaneous submission window provisions, effective July 13, 2007, as modified in Docket No. OA07-58-002, *et al.*

1. Clustering

a. NorthWestern's Filing

13. NorthWestern proposes revisions to Attachment D (Methodology for Completing a System Impact Study) of its OATT to address the clustering of studies for transmission service requests. NorthWestern's revised Attachment D provides, in pertinent part,

requests for transmission service and/or network resource interconnection service received within a certain period of time – the “Queue Cluster Window” – will be analyzed together. A customer can request a Cluster Study. If Transmission Provider determines that it will perform a Cluster Study, the customers whose requests are being studied cannot opt out of the Cluster Study. As soon as practical after execution of Study Agreement, which will specify the estimated costs, allocate those costs on a pro rata basis, and time for completion, a Cluster Study will commence, be conducted to ensure the efficient implementation of any applicable regional transmission expansion plan, and then be completed within 60 days.

b. Protests

14. PPL, Powerex and Great Northern object to NorthWestern's proposal for addressing requests to study transmission service requests in a cluster, stating the proposal would benefit from further clarification and modification. These parties explain that the procedures for initiating a cluster study are vague and should include the standards NorthWestern will employ to determine whether to perform a cluster study, timing requirements associated with such requests, the standards for inclusion in the cluster, and a list of customer obligations upon joining a cluster study. PPL also states that the NorthWestern OATT should include fixed opening and closing dates applicable to the cluster studies in Attachment D. Powerex requests that NorthWestern be directed to include a cross-reference to Attachment D in section 19.3 of its OATT so that customers reading section 19.3 of the OATT will be fully aware of the availability of cluster study provisions.

⁸ *NorthWestern Corp.*, Docket Nos. OA07-58-002 and OA08-72-001 (July 8, 2009) (unpublished letter order).

15. PPL, Powerex, and Great Northern also object to the omission of language which would allow a customer to opt out of a cluster study. Powerex argues that the lack of opt-out language in NorthWestern's tariff is inconsistent with language in Order No. 890, which endorsed clustering as a customer-initiated or customer-supported endeavor subject to a reasonableness or feasibility determination by the transmission provider. PPL states that NorthWestern should be directed to modify their tariff to clarify that a customer can opt-out of a cluster study before NorthWestern determines it will perform a cluster study.

16. Finally, PPL disagrees with NorthWestern's proposed cost allocation for cluster studies. PPL states that the proposed tariff language allocates costs on a *pro rata* basis. PPL argues that allocating costs *pro rata* based upon the number of customers in a cluster study may allocate costs unfairly if the customers are requesting vastly different amounts of service. PPL recommends that NorthWestern clarify that its intent is to allocate the costs *pro rata* based on the megawatts of requested transmission service and on a similar basis for long-term firm point-to-point or network integration transmission service.

c. Commission Determination

17. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies for transmission requests when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster study and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.⁹

18. NorthWestern's proposal for addressing requests to study transmission service requests in a cluster requires further clarification and modification. In particular, NorthWestern must define what a "Queue Cluster Window" is, identify procedures for how a customer can request a cluster study, and clearly lay out the cluster study procedures. For example, it is unclear when, during the cluster study process, a study agreement will be executed and what basis NorthWestern will use to allocate costs *pro rata* (e.g., megawatts of requested transmission service, or number of customers in the cluster study). NorthWestern is directed to make these clarifications to its Attachment D.

⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

19. We disagree with protesters' assertions that NorthWestern should allow customers to opt out of a cluster study. In Order No. 890, the Commission gave transmission providers "discretion to determine whether a transmission customer can opt out of a cluster and request an individual study," because the transmission provider is in the best position to develop clustering procedures that prevent a customer from strategically participating in clusters to avoid costs for needed transmission system upgrades.¹⁰

20. Lastly, NorthWestern is directed to include a cross-reference to Attachment D in section 19.3 of its OATT so that customers reading section 19.3 of the tariff will be fully aware of the availability of cluster study provisions. Accordingly, we direct NorthWestern to file, within 30 days of the date of this order, a further compliance filing revising its proposed Attachment D to explain how it will process a request to cluster transmission requests for study and structure transmission customers' obligations when they have joined a cluster. NorthWestern is also directed to file, within 30 days of the date of this order, a revised section 19.3 which references the cluster study provisions provided in Attachment D.

2. Simultaneous Submission Window

21. In Order No. 890, the Commission decided to retain its first-come, first-served policy regarding transmission service requests. However, the Commission required those transmission providers who set a "no earlier than" time limit for transmission service requests to treat all such requests received within a specified period of time, or window, as having been received simultaneously. Although the Commission left it to the transmission providers to propose the amount of time the window would be open, the Commission stated that the window should be open for at least five minutes unless the transmission provider presents a compelling rationale for a shorter window. The Commission also required each transmission provider that is required to, or decides to, deem all requests submitted within a specified period as having been submitted simultaneously to propose a method for allocating transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period.¹¹

22. NorthWestern has adopted the use of a "no earlier than" time limit for the submission of transmission service requests in section 17.8 of its OATT as part of the settlement approved in Docket No. ER07-46-000, *et al.* Accordingly, NorthWestern's request for waiver is moot. However, in section 18.3 of its OATT, NorthWestern failed to specify the period of time in which it will consider all requests as having been received simultaneously and to propose a method for allocating transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period.

¹⁰ *Id.* P 1371.

¹¹ *Id.* P 1418-22.

Accordingly, we direct NorthWestern to file, within 30 days of the date of this order, a further compliance filing that fully satisfies these compliance requirements of Order No. 890 for adoption of a simultaneous submission window.¹²

3. Other Issues

a. Protests

23. PPL and Central Montana raise additional concerns with NorthWestern's filing. Both PPL and Central Montana explain that NorthWestern proposed several changes to its OATT as part of its transmission rate filing in Docket No. ER07-46-000.¹³ PPL and Central Montana were parties to the settlement discussions in Docket No. ER07-46-000 and state that NorthWestern has included, in the instant filing, changes to Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service) of its OATT that are the subject of the proceedings in Docket No. ER07-46-000. In addition, PPL states that NorthWestern has also included the following provisions in its OATT that are the subject of the proceedings in Docket No. ER07-46-000:

- (1) changes to section 34 and Attachments F and H describing how NorthWestern will implement its rate design using a stated rate for ancillary services and the appropriate level of the stated rate;
- (2) changes to Schedules 2, 3, 5, and 6 describing, among other things, the rates for ancillary services and the ability to pass through costs associated with such services to customers; and
- (3) changes to rates contained in Schedules 1, 7, and 8.

Both Central Montana and PPL renew their arguments raised in protest of the above-mentioned provisions in Docket No. ER07-46-000. PPL requests that the Commission delay any order on NorthWestern's proposed changes until the proceedings in Docket No. ER07-46-000 have concluded, as the outcome of those proceedings could have a significant effect on NorthWestern's OATT.

b. Commission Determination

24. These issues have been resolved in the uncontested settlement conditionally approved on October 16, 2008, in Docket No. ER07-46-001, *et al.* and are therefore moot.

¹² *Id.*

¹³ *NorthWestern Corp.*, 117 FERC ¶ 61,293 (2006).

The Commission orders:

(A) NorthWestern's compliance filing is hereby accepted, as modified, effective July 13, 2007, as discussed in the body of this order.

(B) NorthWestern is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.