

128 FERC ¶ 61,202  
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 Nos. OA07-59-000  
OA07-13-001

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued August 27, 2009)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> NorthWestern Corporation (NorthWestern)<sup>2</sup> submitted its compliance filing as required by Order No. 890.<sup>3</sup> 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* 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

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</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 Corporation region. NorthWestern maintains separate Open Access Transmission Tariffs (OATT) for its services in Montana and South Dakota. This proceeding addresses only services under NorthWestern's South Dakota OATT.

<sup>3</sup> *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, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

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.<sup>4</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 *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<sup>5</sup> filing seeking 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 FPA section 206 compliance filing, described above, except for imbalance-related provisions, which may become effective on the first day of 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.

## **II. NorthWestern's Filing**

5. In compliance with the requirements of Order No. 890, NorthWestern has revised its OATT to include the following: (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. Additionally, NorthWestern states that it has completely revised its tariff,

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<sup>4</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>5</sup> 16 U.S.C. § 824d (2006).

consistent with Order No. 614,<sup>6</sup> in compliance with a letter order issued June 26, 2007, under delegated authority (June 26 Letter Order).<sup>7</sup>

### **III. Notice of Filing and Responsive Pleadings**

6. 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. None were filed.

### **IV. Discussion**

7. As discussed below, we will accept NorthWestern's compliance filing, as modified, to be effective July 13, 2007.<sup>8</sup> We also direct NorthWestern to file, within 30 days of the date of this order, a further compliance filing as discussed below.

#### **A. Creditworthiness**

8. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.<sup>9</sup>

9. NorthWestern's proposed creditworthiness procedures do not comply with Order No. 890's requirements. Specifically, Attachment L (Creditworthiness Procedures) of

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<sup>6</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

<sup>7</sup> On April 16, 2007, in Docket No. OA07-13-000, NorthWestern submitted, under section 205 of the FPA,<sup>7</sup> an optional filing to retain certain provisions of its OATT that vary from the non-rate terms and conditions of the *pro forma* OATT as modified in Order No. 890. NorthWestern's submittal was accepted under delegated authority on June 26, 2007, conditioned upon NorthWestern filing revised tariff sheets that comply with Order No. 614, when it made its section 206 filing pursuant to Order No. 890.

<sup>8</sup> We note that NorthWestern filed its entire OATT (including the revised tariff sheets as directed by the June 26 Letter Order) in order to simplify pagination and other tariff designation issues. Consequently, acceptance of the tariff sheets submitted herein constitutes compliance with the directives in the June 26 Letter Order.

<sup>9</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61.

NorthWestern's OATT does not contain procedures by which customers may seek an explanation for changes in credit levels, nor does it give customers an opportunity to contest NorthWestern's determinations of credit levels and collateral requirements. Additionally, Attachment L does not explain the financial obligations of governmental entities that are not backed by the full faith and credit of the United States. Accordingly, we direct NorthWestern to file, within 30 days of the date of this order, a further compliance filing revising its creditworthiness provisions to comply with these directives.

**B. Unreserved Use Penalties**

10. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.<sup>10</sup>

11. We note that NorthWestern's OATT does not contain an unreserved use penalty rate and, as a result, NorthWestern may not charge transmission customers for unreserved use penalties. To the extent NorthWestern wishes to assess a rate for unreserved use in the future, it must submit a filing, under section 205 of the FPA, proposing such rate.

**C. Clustering**

12. 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.<sup>11</sup>

13. NorthWestern's proposal for addressing requests to study transmission service requests in a cluster requires further clarification and modification. NorthWestern must define the term "Queue Cluster Window." NorthWestern must also explain in its OATT, how a customer can request a cluster study and how it will allocate costs *pro rata* (e.g., megawatts of requested transmission service or number of customers in the cluster study). NorthWestern is directed to modify Attachment D (Methodology for Completing

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<sup>10</sup> *Id.* P 834, 848.

<sup>11</sup> *Id.* P 1370-71.

a System Impact Study) of its OATT, accordingly. Additionally, NorthWestern is directed to include, in section 19.3 of its OATT, a cross-reference to Attachment D, so that customers will be aware of the cluster study provisions. Accordingly, we direct NorthWestern to file, within 30 days of the date of this order, revised tariff sheets that comply with these directives.

**D. Simultaneous Submission Window**

14. 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.<sup>12</sup>

15. Although NorthWestern has adopted the use of a “no earlier than” time limit for the submission of transmission service requests, it has not addressed whether it has adopted the use of a simultaneous submission window as required by Order No. 890. We direct NorthWestern to file, within 30 days of the date of this order, a further compliance filing that clearly indicates that NorthWestern has satisfied the remaining compliance requirements of Order No. 890 for adoption of a simultaneous submission window.<sup>13</sup>

**E. Rollover Rights Effective Date**

16. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider’s coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related because transmission service eligible for a

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<sup>12</sup> *Id.* P 1418-22.

<sup>13</sup> *Id.*

rollover right must be set aside for rollover customers and included in transmission planning.<sup>14</sup>

17. NorthWestern has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007. However, in Order No. 890 the Commission concluded that rollover reforms would not become effective for a transmission provider until its Attachment K transmission planning process is accepted.<sup>15</sup> NorthWestern's Attachment K setting forth its transmission planning process was accepted by the Commission on July 16, 2009.<sup>16</sup> Therefore, we direct NorthWestern to file, within 30 days of the date of this order, a revised tariff sheet that reflects a July 16, 2009 effective date for its revisions to section 2.2 (i.e., an effective date commensurate with the acceptance of its Attachment K filing).<sup>17</sup>

#### **F. Waiver**

18. NorthWestern requests a partial waiver of section 35.10(c) of the Commission's regulations,<sup>18</sup> so that the tariff sheets beyond Original Sheet No. 114 of NorthWestern's OATT can be accepted without NorthWestern providing a redline version of those tariff sheets. NorthWestern states that the only changes to the OATT beyond Original Sheet No. 114 are to the headers and footers of each sheet and to the pagination in the table of content for the Large Generator Interconnection Procedures and the Large Generator Interconnection Agreement, respectively. We will grant the requested waiver.

#### **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.

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<sup>14</sup> *Id.* P 1231, 1265.

<sup>15</sup> *Id.* P 1265.

<sup>16</sup> *NorthWestern Corp.*, 128 FERC ¶ 61,040 (2009).

<sup>17</sup> We recognize that in other proceedings the Commission has required the re-filing of tariff sheets incorporating the revisions to section 2.2 rollover language submitted prior to the acceptance of the transmission provider's Attachment K planning process. Given the passage of time in this proceeding, we find it appropriate under the circumstances to accept NorthWestern's compliance filing subject to a further compliance filing in which it must revise any tariff sheets containing the section 2.2 rollover language to provide for an effective date of July 16, 2009.

<sup>18</sup> 18 C.F.R. § 35.10(c) (2009).

(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.

(C) NorthWestern's request for partial waiver of the requirements of section 35.10(c) of the Commission's regulations is hereby granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.