

144 FERC ¶ 61,017
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NorthWestern Corporation

Docket Nos. ER13-62-001
ER13-62-002

ORDER DENYING PARTIAL WAIVER, GRANTING EXTENSION OF TIME IN
PART AND DENYING REHEARING

(Issued July 8, 2013)

1. On May 21, 2013, NorthWestern Corporation (NorthWestern)¹ filed a request for partial waiver from the requirement to file tariff amendments to implement the regional transmission planning and cost allocation requirements of Order No. 1000.² If the Commission grants NorthWestern's requested partial waiver, then NorthWestern requests an extension of time to comply with Order No. 1000's local transmission planning requirements under the Commission's April 18, 2013 order.³ If the Commission denies NorthWestern's requested partial waiver, then NorthWestern requests an extension of time to file tariff amendments to implement the regional transmission planning and cost allocation requirements of Order No. 1000 until the later of 120 days after (i) December 31, 2013, or (ii) the date when NorthWestern's balancing authority area services provider (Western Area Power Administration (Western)) provides further direction regarding its evaluation of regional/subregional alternatives, including

¹ 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 deals with NorthWestern's South Dakota OATT services only.

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

³ *NorthWestern Corp.*, 143 FERC ¶ 61,056 (2013) (April 18 Order).

potentially joining a regional transmission organization (RTO). In addition, to the extent the Commission denies NorthWestern's requested partial waiver, NorthWestern requests rehearing of the April 18 Order.

2. In this order, we deny NorthWestern's request for waiver, but grant in part NorthWestern's request for an extension of time to comply with Order No. 1000's local and regional transmission planning and cost allocation requirements, as discussed below. Additionally, we deny NorthWestern's request for rehearing, as discussed below.

I. Background

A. Order No. 1000

3. In Order No. 1000, the Commission amended the transmission planning and cost allocation requirements of Order No. 890⁴ to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require that each public utility transmission provider: (1) participate in a regional transmission planning process that produces a regional transmission plan; (2) amend its OATT to describe procedures for the consideration of transmission needs driven by public policy requirements established by local, state, or federal laws or regulations in the local and regional transmission planning processes; (3) remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements for certain new transmission facilities; and (4) improve coordination between neighboring transmission planning regions for new interregional transmission facilities.

4. Order No. 1000's cost allocation reforms require that each public utility transmission provider participate in a regional transmission planning process that has: (1) a regional cost allocation method or methods for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation; and (2) an interregional cost allocation method or methods for the cost of new transmission facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission coordination procedures required by Order No. 1000. Order No. 1000 also requires that each cost allocation method satisfy six cost allocation principles.

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

5. The Commission acknowledged in Order No. 1000 that each transmission planning region has unique characteristics, and, therefore, Order No. 1000 accords transmission planning regions significant flexibility to tailor regional transmission planning and cost allocation processes to accommodate regional differences.⁵ Order No. 1000 does not prescribe the exact manner in which public utility transmission providers must fulfill the regional transmission planning requirements.⁶ Similarly, because the Commission did not want to prescribe a uniform method of cost allocation for every transmission planning region, Order No. 1000 adopts the use of cost allocation principles.⁷ The Commission stated that it was acting to identify a minimum set of requirements that must be met to ensure that all transmission planning processes and cost allocation mechanisms subject to its jurisdiction result in Commission-jurisdictional services being provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential, and it acknowledged that public utility transmission providers in some regions may already meet or exceed some requirements of Order No. 1000.⁸

B. April 18 Order

6. On October 10, 2012, NorthWestern submitted revisions to Attachment K of its South Dakota OATT Volume No. 2 to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000. NorthWestern proposed to enroll in the Mid-Continent Area Power Pool (MAPP) transmission planning region, which is comprised of one public utility (NorthWestern) and ten non-public utility transmission providers.⁹ On April 18, 2013, the Commission accepted NorthWestern's

⁵ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 61.

⁶ *Id.* P 157.

⁷ *Id.* P 604.

⁸ *Id.* P 13.

⁹ April 18 Order, 143 FERC ¶ 61,056 at P 18. The following transmission providers are listed in NorthWestern's OATT as having enrolled in the MAPP transmission planning region: Ames Municipal Electric System; Basin Electric Power Cooperative; Corn Belt Power Cooperative; Heartland Consumers Power District; MN Municipal Power Agency; MN Municipal Utilities Association; Minnkota Power Cooperative; Missouri River Energy Services; Rochester Public Utilities; and Western Area Power Administration, Upper Great Plains Region. NorthWestern is the only public utility transmission provider member of MAPP and is the only entity enrolled in the MAPP transmission planning region that has submitted an Order No. 1000 compliance filing. *Id.* P 20 n.42.

compliance filing, subject to a further compliance filing. The Commission found that NorthWestern's compliance filing partially complied with the regional transmission planning and cost allocation requirements adopted in Order No. 1000 and directed NorthWestern to file a compliance filing within 120 days of the date of issuance of the April 18 Order.

II. Notice of Filing and Comments

7. Notice of NorthWestern's filing was published in the *Federal Register*, 78 Fed. Reg. 32,383 (2013), with interventions and protests due on or before June 10, 2013. Basin Electric Power Cooperative (Basin Electric), Corn Belt Power Cooperative, Minnkota Power Cooperative, Inc., and Western filed timely motions to intervene. On June 10, 2013, Basin Electric filed a comment in support of NorthWestern's request that the Commission grant an extension of time to comply with the April 18 Order until Western completes its analysis of regional and subregional based alternatives. Basin Electric argues that if Western ultimately decides to join an RTO, all of the work that would be required to bring NorthWestern into compliance with the regional transmission planning and cost allocation requirements of Order No. 1000 as a member of the MAPP region would likely become moot. On June 11, 2013, Southwest Power Pool, Inc. (SPP) filed a motion to intervene out-of-time.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant SPP's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

1. Request for Partial Waiver

a. NorthWestern's Filing

10. NorthWestern requests a partial waiver from the requirement to file tariff amendments to implement the regional transmission planning and cost allocation requirements of Order No. 1000, which it states is similar to the waiver the Commission

granted to Maine Public Service Company (Maine Public Service).¹⁰ NorthWestern states that the Commission granted the waiver petition in *Maine Public Service* because, like NorthWestern, Maine Public Service “must rely on neighboring non-public utility transmission providers to voluntarily comply with Order No. 1000’s requirements if it is to belong to a transmission planning region that is ‘governed by the integrated nature of the regional power grid.’”¹¹ NorthWestern states that the Commission further found that “because the non-public utility transmission provider to which [Maine Public Service] is interconnected does not propose to comply with the requirements of Order No. 1000 . . . [Maine Public Service] cannot participate in a transmission planning region that meets Order No. 1000’s regional scope requirement.”¹²

11. NorthWestern argues that similar to the situation in *Maine Public Service*, it meets the Commission’s requirements for a waiver from the regional transmission planning requirements of Order No. 1000 because its South Dakota division depends entirely on Western, a non-public utility, to provide balancing authority area services. NorthWestern states that transmission planning for its South Dakota operations is conducted entirely through MAPP, a region that, with the exception of NorthWestern, consists entirely of non-public utility transmission providers.

12. Thus, NorthWestern argues, it meets the Commission’s requirements for a waiver from the regional transmission planning requirements of Order No. 1000 because its small service area in South Dakota depends entirely on the voluntary cooperation of non-public utilities, just like the public utility in *Maine Public Service*. NorthWestern states that it is engaged in a lengthy Order No. 1000 compliance effort that included extended discussions with stakeholders, but is unable to modify the MAPP transmission planning and cost allocation rules without the agreement of MAPP’s non-public utility members. NorthWestern states that the parties are coordinating potential revisions to the MAPP template to address concerns raised by the Commission, but that process is not complete and is not within NorthWestern’s sole control.¹³

b. Commission Determination

13. We deny NorthWestern’s request for partial waiver. NorthWestern is not similarly situated to the public utility in *Maine Public Service*. For example, NorthWestern

¹⁰ NorthWestern Filing at 7 (citing *Maine Public Service Co.*, 142 FERC ¶ 61,129 (2013)).

¹¹ *Id.* at 9 (citing *Maine Public Service*, 142 FERC ¶ 61,129 at P 21).

¹² *Id.* (citing *Maine Public Service*, 142 FERC ¶ 61,129 at P 21.)

¹³ *Id.* at 10.

acknowledges that the non-public utility transmission providers in the MAPP regional transmission planning region are coordinating potential revisions to the MAPP regional transmission planning process to address concerns the Commission raised in the April 18 Order and that these discussions are continuing.¹⁴ NorthWestern should engage its neighbors in these on-going discussions. At this time, we deny NorthWestern's request for a waiver of the regional transmission planning and cost allocation requirements of Order No. 1000.

2. Request for Extension of Time

a. NorthWestern's Filing

14. NorthWestern states that if the Commission grants NorthWestern's requested partial waiver, it requests an extension of time until 90 days after the Commission rules on this motion to make its Order No. 1000 compliance filing to revise its OATT to address local transmission planning issues raised in the April 18 Order.

15. Alternatively, NorthWestern states that if the Commission denies NorthWestern's requested partial waiver, it requests an extension of time of at least 120 days from the later of (i) December 31, 2013, or (ii) the date when its balancing authority area completes its analysis of regional/subregional alternatives, including potentially joining an RTO. More specifically, NorthWestern states that Western, NorthWestern's balancing authority, is performing an analysis to consider regional and subregional-based operation alternatives, including whether or not to potentially join the Midcontinent Independent System Operator, Inc. or the SPP RTOs. NorthWestern states that Western is expected to make its decision by December 31, 2013 and a decision by Western to switch transmission planning regions will affect the way that NorthWestern approaches transmission system operations and planning. NorthWestern argues that granting an extension of time will give NorthWestern the opportunity to evaluate how the potential balancing authority area changes will impact it, and what effect, if any, the change will have on NorthWestern's Order No. 1000 compliance obligations. NorthWestern proposes to advise the Commission promptly if it learns that Western's analysis will be delayed past December 31, 2013.

b. Commission Determination

16. We deny NorthWestern's alternate request for an extension of time of at least 120 days from the *later* of (i) December 31, 2013, or (ii) the date when Western completes its

¹⁴ NorthWestern Filing at 10.

analysis of regional/subregional alternatives.¹⁵ NorthWestern's request for extension of time creates too much uncertainty, as it does not provide an end date. However, based on the facts presented here, we will grant NorthWestern an extension of time of 180 days from the *earlier* of (i) December 31, 2013, or (ii) the date when Western completes its analysis of regional alternatives. Doing so will afford NorthWestern additional time to evaluate the impact of Western's decision on NorthWestern's transmission planning process and to work with NorthWestern's stakeholders to develop a proposal to comply with the April 18 Order in light of those impacts.¹⁶ However, to inform the Commission and the public as to the compliance deadline that results from the extension of time granted herein, we direct NorthWestern to submit an informational filing regarding the status of Western's analysis of alternatives no later than (i) 14 days after Western announces the results of its analysis, or (ii) January 14, 2014.

3. Request for Rehearing

a. NorthWestern's Filing

17. To the extent the Commission denies NorthWestern's request for waiver from the requirements to file tariff amendments to implement the regional transmission planning and cost allocation requirements of Order No. 1000, NorthWestern requests rehearing. NorthWestern states that the Commission granted Maine Public Service a waiver from the regional and interregional transmission planning and cost allocation requirements of Order No. 1000 under similar facts. NorthWestern asserts that failure to grant NorthWestern a similar waiver for its South Dakota service area would be arbitrary and capricious. NorthWestern contends that like Maine Public Service, NorthWestern is in a unique situation in that it is the sole public utility participating in the MAPP regional transmission planning process, does not have access to any other regional transmission planning process, and must rely upon the voluntary regional transmission planning process developed in coordination with MAPP and the other non-public utility members

¹⁵ We need not address NorthWestern's request for a 90-day extension of time to submit its filing to comply with the local transmission planning requirements of Order No. 1000 because that request was predicated on us granting NorthWestern's request for waiver of the regional transmission planning and cost allocation requirements of Order No. 1000. (*See* NorthWestern Filing at 11). Since we deny that waiver request, we address NorthWestern's alternative request for extension of time that would apply to NorthWestern's filing to comply with both the local and regional requirements of Order No. 1000.

¹⁶ In a notice being issued concurrently with this order, NorthWestern, MISO, and SPP are also granted an extension of time to submit their interregional filings.

of MAPP. NorthWestern argues that, like Maine Public Service's relationship with Northern Maine Independent System Administrator, NorthWestern is not in a position to unilaterally modify the MAPP regional transmission planning process.

18. NorthWestern states that, likewise, the Commission previously granted NorthWestern a waiver from Order No. 889 because it is a small public utility.¹⁷ NorthWestern states that, although the Commission nevertheless required NorthWestern to make certain planning reforms to Attachment K of its OATT to comply with Order No. 890, the changes the Commission required amounted to obligating NorthWestern to pass stakeholder comments on to MAPP to be considered as part of the transmission planning process performed by the non-public utility transmission providers of MAPP. NorthWestern asserts that the Commission's failure to follow that approach here, or to explain its departure from it, would be arbitrary and capricious. NorthWestern argues that if NorthWestern lacks the capacity to conduct local transmission planning without the aid of MAPP, it is logically inconsistent for the Commission to conclude that NorthWestern conducts regional transmission planning through MAPP, and thus controls the MAPP transmission planning process, as the Commission has implicitly done in the April 18 Order. NorthWestern states that therefore, the Commission should grant rehearing and reverse its findings in the April 18 Order that would require NorthWestern to unilaterally modify the MAPP regional transmission planning process.

b. Commission Determination

19. The Commission's regulations provide that a request for rehearing must "[s]tate concisely the alleged error in [a] final decision or final order."¹⁸ NorthWestern's pleading does not concisely allege any error in the April 18 Order, but rather first requests that the Commission reconsider its decision on this very filing, then asserts, without providing justification, that the Commission should reverse its findings in the April 18 Order. Therefore, we deny the request for rehearing.

20. In any event, regarding NorthWestern's first argument that the Commission's "failure to grant NorthWestern a [] waiver for its South Dakota service area would be arbitrary and capricious,"¹⁹ we deny the waiver because, as discussed above, NorthWestern is not similarly situated to Maine Public Service. NorthWestern next argues that the Commission's failure to follow its previous approach in granting NorthWestern a waiver from Order No. 889 because it is a small public utility, or to

¹⁷ NorthWestern Filing at 15 (citing *NorthWestern Corp.*, 117 FERC ¶ 61,199 (2006)).

¹⁸ See 18 C.F.R. § 385.713(c)(1) (2012).

¹⁹ NorthWestern Filing at 14.

explain its departure from it, is arbitrary and capricious. We disagree. The Commission stated that Order No. 1000 applies to “public utilities that own, control or operate interstate transmission facilities other than those that have received waiver of the obligation to comply with Order Nos. 888, 889, and 890.”²⁰ While NorthWestern was granted waivers of the requirement to operate an Open Access Same-Time Information System and to comply with the Standards of Conduct, the Commission has previously denied NorthWestern’s request for waiver of the requirements of Order No. 890, stating that NorthWestern’s existing waivers do not automatically provide NorthWestern a waiver of the transmission planning requirements of Order No. 890.²¹

21. Finally, NorthWestern argues that, based on its determinations in the April 18 Order, the Commission has implicitly concluded that NorthWestern controls the MAPP transmission planning process. Again, we disagree. The April 18 Order focused on NorthWestern because the Commission was addressing the filing by its jurisdictional utility; the Commission understood that, in order to comply with the requirements of Order No. 1000, NorthWestern would have to negotiate with one or more other transmission providers in order to develop an adequate compliance proposal.

22. Accordingly, for the reasons discussed above, NorthWestern’s request for rehearing is denied.

The Commission orders:

(A) NorthWestern’s request for waiver is hereby denied, as discussed in the body of this order.

(B) NorthWestern’s request for extension of time is hereby granted in part, as discussed in the body of this order.

(C) NorthWestern is hereby directed to submit an informational filing regarding the status of Western's analysis of alternatives no later than (i) 14 days after Western announces the results of its analysis, or (ii) January 14, 2014, as discussed in the body of this order.

²⁰ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 832.

²¹ See *NorthWestern Corp.*, 134 FERC ¶ 61,031, at PP 23-28 (2011).

(D) NorthWestern's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.