

144 FERC ¶ 61,184
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 No. ER13-611-000

ORDER CONDITIONALLY ACCEPTING SERVICE AGREEMENTS SUBJECT TO
FURTHER COMPLIANCE FILING

(Issued September 4, 2013)

1. On December 21, 2012, NorthWestern Corporation (NorthWestern) filed three unexecuted transmission service agreements (TSA) with PPL Montana, LLC (PPL Montana) addressing the requested rollover of long-term firm point-to-point transmission service. As discussed below, we will conditionally accept the agreements for filing, effective January 1, 2014, subject to a further compliance filing.

I. Background

2. Northwestern owns and operates electric and gas transmission and distribution facilities primarily located in Montana and South Dakota. NorthWestern's electric transmission system in Montana consists of the electric transmission facilities formerly owned by Montana Power Company (Montana Power), which NorthWestern acquired in 2002.¹

3. PPL Montana owns electric generating facilities in Montana located within NorthWestern's balancing authority area. In December 1999, PPL Montana acquired the electric generating fleet previously owned by Montana Power. PPL Montana and its affiliates (including PPL EnergyPlus)² sell power to wholesale and retail choice customers in the region.

¹ NorthWestern's Montana and South Dakota transmission facilities are not physically interconnected and are not located within the same electric reliability region. This order addresses transmission service under NorthWestern's Montana Open Access Transmission Tariff. (OATT)

² PPL Montana and PPL Energy Plus will be referred to as PPL Montana in this order.

4. NorthWestern currently provides long-term firm point-to-point transmission service to PPL Montana under three existing TSAs: (1) 100 MW from a point of receipt designated as Colstrip to a point of delivery designated as Bonneville Power Administration (100 MW TSA); (2) 66 MW from a point of receipt generally designated as the entire NorthWestern system to a point of delivery designated as JEFF (66 MW TSA); and (3) 7 MW from a point of receipt designated as the entire NorthWestern system to a point of receipt designated as JEFF (7 MW TSA) (collectively, Existing TSAs).³ Each TSA has a five-year term that commenced on January 1, 2009 and expires on January 1, 2014.

II. NorthWestern Filing

5. Northwestern submitted for filing three unexecuted conforming TSAs.⁴ According to NorthWestern, PPL Montana proposed to modify the existing points of receipt as follows. With respect to the 100 MW TSA, PPL Montana sought to designate the point of receipt at Colstrip with an additional description stating: “... Colstrip shall be defined as it existed at the original date of transmission service, 01/1/06. ... with no restrictions.”⁵ With regard to the respective rollovers of the 66 MW TSA and the 7 MW TSA, PPL Montana proposed to designate the point of receipt under each agreement as the NorthWestern transmission system, and proposed to include a description stating: “... [The NorthWestern system] shall be defined to include all resources and interties within the [NorthWestern] balancing authority area as they existed at the original date of transmission service, 10/1/04 ... and as they may change over time with no restrictions.”⁶

6. According to NorthWestern, it asked PPL Montana to designate specific generating units as points of receipt under the respective agreements, but PPL Montana declined to do so. NorthWestern states that it was unable to accept the points of receipt proposed by PPL Montana, and as a result of the parties’ inability to come to an agreement on points of receipt in the respective TSAs, NorthWestern filed the unexecuted TSAs at PPL Montana’s request.

³ NorthWestern and PPL Montana executed the existing agreements and transmission service specifications after a ruling from the Commission indicated that long-term, point-to-point transmission service requests required individual transmission-specific agreements. NorthWestern Filing at 3 (citing *Southern Montana Electric Generation & Transmission Cooperative, Inc.*, 133 FERC ¶ 61,163, at PP 61-63 (2010)).

⁴ The existing 100 MW TSA, 66 MW TSA, and 7 MW TSA are designated as Service Agreement Nos. 663, 664 and 665 respectively.

⁵ NorthWestern Filing at 4.

⁶ *Id.*

7. NorthWestern asserts that with respect to the 100 MW TSA, it is sufficient to designate the point of receipt as Colstrip without the additional definition proposed by PPL Montana, because Colstrip is the point of receipt registered with the Electric Industry Registry. For this reason, NorthWestern contends that it is unnecessary to include the additional description proposed by PPL Montana.

8. With respect to the 66 MW and the 7 MW TSAs, NorthWestern states that designation and proposed description of NorthWestern's entire system as the point of receipt is not consistent with section 13.7(b) of the OATT, which requires multiple generating units to be designated as multiple points of receipt unless the multiple generating units are at the same generating plant. In addition, NorthWestern explains that section 13.7(c) of the OATT requires each point of receipt under a service agreement for long-term point-to-point transmission service to have a corresponding capacity reservation. NorthWestern further asserts that the Commission has required transmission providers to comply with section 13.7 and has rejected proposals that would allow customers to specify a single point of receipt for multiple generating units.⁷ Thus, NorthWestern contends that the OATT does not allow customers to designate all resources and interties within a balancing area as a single point of receipt under point-to-point transmission service.

9. NorthWestern further explains that designating a single point of receipt to include all existing and future resources and interties in its balancing area could create operational and reliability problems that would make it difficult for NorthWestern to plan its system.⁸ NorthWestern contends that the proposed point of receipt could require it to reserve for PPL Montana the full amount of capacity for each TSA on the entire transmission system and over all interties. NorthWestern states that while beneficial to PPL Montana, reserving full capacity of the TSAs would be detrimental to other transmission customers who would not have the same rights.

10. NorthWestern also points out that PPL Montana's proposal to define the point of receipt to include the entire NorthWestern transmission system poses a particular

⁷ NorthWestern Filing at 10 (citing *Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)*, 84 FERC ¶ 61,322, at 62,450-51 (1998); *U.S. Department of Energy – Bonneville Power Admin.*, 84 FERC ¶ 61,250 (1998); *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana, Inc.*, 78 FERC ¶ 61,090, at 61,327-28 (1997), *reh'g denied*, 83 FERC ¶ 61,274 (1998)).

⁸ *Id.* at 5. NorthWestern explains that, previously, the TSAs described the point of receipt as the entire NorthWestern transmission system; however, at the time the agreements were executed, there were no transmission system constraints on NorthWestern's transmission system. Thus, there was no need to require PPL Montana to designate particular generating units as separate points of receipt.

problem in light of a new Total Transfer Capability (TTC) path that developed on NorthWestern's system after the effective date of the Existing TSAs. According to NorthWestern, prior to 2009, NorthWestern's system was unconstrained; however, in 2009, an internal TTC path developed between the Great Falls region and the transmission system south of Great Falls. NorthWestern asserts that defining the point of receipt to include all resources and interties in the NorthWestern balancing area, including resources on both sides of the Great Falls Path would make it difficult for NorthWestern to manage the Great Falls Path. This is because NorthWestern would not know how much capacity to reserve for use under the TSAs or how much power from PPL Montana resources would be flowing over that path. NorthWestern explains that this may result in reserving too much available transfer capability over the Great Falls Path and consequently deprive other transmission customers of the ability to use the path.⁹

11. NorthWestern states that it also disagrees with certain scheduling practices of PPL Montana that result from PPL Montana's interpretation that the point of receipt for the Existing TSAs includes all generation and resources located within NorthWestern's balancing authority. NorthWestern contends that these scheduling practices preclude it from monitoring flows and schedules on its transmission system. NorthWestern further contends that some scheduling practices allow PPL Montana to circumvent certain OATT requirements. Nevertheless, NorthWestern has conditionally accepted PPL Montana's rollover request, subject to the Commission's ruling on the unexecuted TSAs.¹⁰

III. Notice of Filing and Responsive Pleadings

12. Notice of NorthWestern's filing was published in the *Federal Register*, 78 Fed. Reg. 91 (2013) with interventions and protests due on or before January 25, 2013. Powerex filed a timely motion to intervene and PPL Montana filed a timely motion to intervene and protest. On February 11, 2013, NorthWestern filed an answer to PPL Montana's protest. On February 13, 2013, PPL Montana filed a motion for leave to answer NorthWestern's answer. NorthWestern, on February 21, 2013, and PPL Montana, on March 4, 2013, also filed answers to each other's answers.

13. PPL Montana states that it is entitled to maintain the same level of transmission service under the Existing TSAs that it had since 1999. PPL Montana explains that the points of receipt in the Existing TSAs reflect these transmission rights and the manner in which the PPL Montana has used NorthWestern's transmission system since it acquired the current generation assets from NorthWestern's predecessor, Montana Power. PPL Montana continues that its usage is consistent with the way that Montana Power used the

⁹ NorthWestern Filing at 5, 6.

¹⁰ *Id.* at 7.

system when it owned the generation assets. More importantly, PPL Montana contends that its designation of NorthWestern's entire transmission system as a point of receipt reflects the type of transmission service enjoyed by PPL Montana's competitors, including NorthWestern's default supply business.¹¹

14. PPL Montana argues that Commission precedent requires NorthWestern to plan its transmission system to maintain the rights of its long-term firm transmission service customers. According to PPL Montana, in 2009 when PPL Montana submitted its transmission service requests, no constraints existed on NorthWestern's transmission system, and at the time the TSAs were executed in 2011, NorthWestern made no mention of constraints affecting the TSAs.¹² PPL Montana states that since 2009, a significant amount of new generation has interconnected to NorthWestern's transmission system in the Great Falls area, including generation owned by NorthWestern. Because there have been no significant transmission upgrades, a constrained Great Falls Path has developed and, as a result, NorthWestern can no longer accommodate PPL Montana's service.¹³

15. PPL Montana argues that NorthWestern cannot allow new generation and transmission service customers to erode the rights of existing long-term firm transmission customers. PPL Montana asserts that NorthWestern has allowed other customers to identify the entire NorthWestern system as the point of receipt in long-term firm point-to-point TSAs, and NorthWestern routinely approves short-term firm reservations that designate the NorthWestern transmission system as the point-of-receipt. PPL Montana argues that it should be treated similarly, and that it seeks to maintain the existing transmission service in each agreement.¹⁴

16. PPL Montana argues that NorthWestern is attempting to add limitations to PPL Montana's existing rights by unilaterally revising the definition of the system-wide point of receipt on its transmission system through a modification to its Business Practices. PPL Montana argues that: (1) this should not be allowed without Commission review and approval; and (2) any change in definition of a system area on NorthWestern's transmission system should be made through a revision to NorthWestern's OATT and not through a revision to the Business Practice Manual.¹⁵

¹¹ PPL Montana Protest at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 13.

17. PPL Montana points to the Commission's past finding that, subject to certain limitations, "if not enough capacity is available to meet all requests for service, the right of first refusal gives the capacity to the existing customer who had contractually been using the capacity on a long-term, firm basis."¹⁶ PPL Montana asserts that the Commission has repeatedly rejected transmission providers' attempts to limit existing transmission customers' right to roll over and continue transmission service where the transmission provider had not adequately studied, planned, and/or maintained the transmission system to preserve the transmission customers' historical transmission use.

18. PPL Montana argues that, if NorthWestern were properly studying, modeling, planning, and maintaining its transmission system, there should be sufficient available transfer capability to enable PPL Montana to roll over the Existing TSAs and maintain their current transmission service without causing the difficulties NorthWestern has alleged.¹⁷ PPL Montana concludes that it is contrary to the Commission's rules, policies, and precedent and a violation of PPL Montana's rollover rights to allow NorthWestern to restrict PPL Montana's rollover transmission service on the basis of alleged congestion or constraints on the NorthWestern system. Additionally, PPL Montana argues that NorthWestern has failed to demonstrate that allowing PPL Montana to maintain the existing points of receipt designated in the existing service agreements would harm any other customer(s).¹⁸

19. While PPL Montana concedes that section 13.7 of NorthWestern's OATT requires PPL Montana to identify a specific generator as a point of receipt, it argues that NorthWestern has not always enforced this provision. According to PPL Montana, NorthWestern allows its transmission customers to use a practice referred to as "hubbing," by which NorthWestern and other transmission customers' aggregate generation sources from NorthWestern-approved system-wide transmission hubs.¹⁹ PPL

¹⁶ *Id.* at 15 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,665 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

¹⁷ *Id.* at 18.

¹⁸ *Id.* at 23.

¹⁹ *Id.* at 27-29.

Montana argues that, to deny this practice to PPL Montana would be unduly discriminatory.

20. PPL Montana also disputes NorthWestern's claim that PPL Montana seeks discounted transmission rates, explaining that they only seek the applicable tariff rate and have not requested any discount.²⁰ Finally, with regard to scheduling practices, PPL Montana asserts that its scheduling practices are consistent with practices of NorthWestern and other companies.²¹

21. NorthWestern responds to the claim that it is singling out PPL Montana, while allowing others to retain the ability to designate the point of receipt as the entire system, by stating that it is phasing out its practice of allowing a customer to designate the entire NorthWestern system as the point of receipt.²²

IV. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NorthWestern's February 11, 2013 answer, because it has provided information that assisted us in our decision-making process; however, we are not persuaded to accept any other answers filed and, therefore, will reject them.

B. Commission Determination

24. Based upon a review of the filing, the Commission finds that, subject to the compliance filing described below, NorthWestern's proposed TSAs are consistent with the *pro forma* OATT, which requires points of receipt to be designated at specific locations.²³ While PPL Montana is entitled to a rollover of its expiring agreements for

²⁰ *Id.* at 29.

²¹ *Id.* at 31.

²² NorthWestern February 11, 2013 Answer at 9.

²³ The Commission recognizes, however, that various transmission providers define points of receipt and points of delivery on their respective systems in various ways.

long-term firm point-to-point transmission service, it has contracted with NorthWestern for point-to-point transmission service and not network service. NorthWestern is not obligated under the *pro forma* OATT to roll over PPL Montana's existing contracts in such a way as to provide what amounts to network service under contracts for point-to-point service.

25. The ultimate issue here is whether the proposed unexecuted TSAs conform to the *pro forma* OATT. Any historical accommodation afforded to PPL Montana at NorthWestern's discretion is not relevant to the rollover rights NorthWestern is required to offer to PPL Montana. Section 13.7(b) of NorthWestern's OATT specifies that multiple generating units must be designated as separate points of receipt, unless the generating units are located at the same generating plant, in which case the units would be treated as a single point of receipt.²⁴ In addition, section 13.7(c) specifies that each point of receipt at which firm transmission capacity is reserved shall be set forth in the firm point-to-point service agreement for firm long-term transmission service, along with a corresponding capacity reservation associated with each point of receipt.²⁵ PPL Montana concedes this point, as noted above.

26. While PPL Montana asserts that NorthWestern allows other customers to identify the entire NorthWestern system as the point of receipt in long-term firm point-to-point TSAs, and argues that it should be treated similarly, NorthWestern explains that although three prior long-term, firm point-to-point service agreements with customers other than PPL Montana reflected the entire NorthWestern system as the point of receipt, all three such agreements have been revised to comply with section 13.7 (b) of its OATT or have been terminated. Therefore, PPL Montana currently is the only party that has a long-term firm point-to-point TSA that designates the entire NorthWestern system as a point of receipt.²⁶

27. Thus, we find that PPL Montana must identify and designate the points of receipt in each of the proposed TSAs consistent with the requirements of sections 13.7(b) and 13.7(c) of the *pro forma* OATT. Accordingly, the Commission will conditionally accept the proposed unexecuted TSAs for filing, effective January 1, 2014, as requested, subject to NorthWestern submitting a compliance filing that amends Service Agreement Nos. 664 and 665 to reflect specific points of receipt designated by PPL Montana.

28. Regarding the 100 MW TSA, we agree with NorthWestern; the designation of Colstrip as the point of receipt is sufficient. Colstrip is the point of receipt designated in

²⁴ See NorthWestern OATT at § 13.7(b).

²⁵ *Id.* § 13.7(c).

²⁶ NorthWestern February 11, 2013 Answer at 9.

the existing 100 MW TSA and is also, as NorthWestern points out, the point of receipt registered with the Electric Industry Registry. Therefore, we will accept unexecuted Service Agreement No. 663 as proposed by NorthWestern.

29. With respect to issues raised by NorthWestern regarding alleged scheduling practices of PPL Montana, we find that these issues are not relevant to our decision on NorthWestern's proposed TSAs. For this reason, we will not address those issues in this proceeding.

The Commission orders:

NorthWestern's proposed TSAs are conditionally accepted for filing, to become effective January 1, 2014, subject to a further compliance filing as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.