

145 FERC ¶ 61,173
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NorthWestern Corporation

Docket No. ER14-14-000

ORDER CONDITIONALLY ACCEPTING IN PART AND
REJECTING IN PART PROPOSED TARIFF REVISIONS

(Issued November 26, 2013)

1. In this order, we conditionally accept, effective September 27, 2013, as requested, a proposal by NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern) to amend Schedule 3, Regulation and Frequency Response Service, of its Montana Open Access Transmission Tariff (OATT) to replace the reference to the now-discontinued Dow Jones Mid-C Forward Market Price with a reference to the Intercontinental Exchange Mid-Columbia Peak/Offpeak Futures Price (ICE Futures Price) and replace its reference to the Dow Jones Mid-C Daily Index Price with a reference to the Powerdex Weighted Average Peak/Offpeak Hourly Index (Powerdex Index).¹ We reject NorthWestern's proposal to add language to Schedule 3 stating that it will use "the most commonly used remaining index" to calculate the Energy Value credit in the event that the ICE Futures Price or the Powerdex Index is discontinued.

I. Background

2. NorthWestern owns and operates electric transmission and distribution facilities primarily located in Montana and South Dakota. As part of its electric operations, NorthWestern operates a balancing authority area within the state of Montana. NorthWestern maintains regulating reserves, within its balancing authority area, sufficient to provide continuously-balanced resources with load on a moment-to-moment basis, in order to meet operating criteria in accordance with North American Electric Reliability Corporation and Western Electric Coordinating Council reliability requirements.

3. On October 2, 2013, NorthWestern filed the proposed revisions to Schedule 3 of its Montana OATT, noting that the Schedule 3 rate is the subject of an Initial Decision

¹ Acceptance of the proposed OATT revisions is subject to the outcome of Docket Nos. ER10-1138-001 and ER12-316-000, as discussed below.

that is pending before the Commission.² NorthWestern states that the proposed revisions are a result of the recent decision of Dow Jones to terminate its Mid-C price index, which is used to calculate the Energy Value credit component of the Monthly Energy Rate transmission customers pay for Regulation and Frequency Response Service under Schedule 3.

4. Specifically, NorthWestern proposes to amend Schedule 3 by: (1) replacing the reference to the Dow Jones Mid-C Forward Market Price with a reference to the ICE Futures Price; and (2) replacing the reference to the Dow Jones Mid-C Daily Index Price with a reference to the Powerdex Index.³ NorthWestern explains that the ICE Futures Price and Powerdex Index are commonly accepted indices for the Mid-Columbia hub, and that the Commission has previously accepted NorthWestern's use of the Powerdex Index in a tariff amendment.⁴ In addition, "[t]o obviate the need for additional revisions of this type," NorthWestern proposes to add language to Schedule 3 stating that it will use "the most commonly used remaining index" to calculate the Energy Value credit in the event that the ICE Futures Price or the Powerdex Index is discontinued.⁵

5. NorthWestern requests an effective date of September 27, 2013, noting that the filing was originally submitted on September 26, 2013, but had to be resubmitted due to eTariff problems.⁶ NorthWestern asserts that granting the requested effective date will

² Transmittal Letter at 1. On October 15, 2010, in Docket No. ER10-1138-000, the Commission accepted, suspended, and set for hearing NorthWestern's revised Schedule 3 to be effective December 31, 2011, subject to refund. *NorthWestern Corp.*, 133 FERC ¶ 61,046 (2010). NorthWestern subsequently filed additional clarifications to its proposed Schedule 3 in Docket No. ER12-316-000, which the Commission accepted on December 30, 2011, subject to refund, and consolidated with the hearing procedures in Docket No. ER10-1138-000. *NorthWestern Corp.*, 137 FERC ¶ 61,248 (2011). The Initial Decision, issued on September 21, 2012, is currently pending before the Commission on exceptions. The Initial Decision finds, in relevant part, that the Monthly Energy Rate in Schedule 3 may not be just and reasonable. *NorthWestern Corp.*, 140 FERC ¶ 63,023, at PP 185, 188 (2012).

³ Transmittal Letter at 1.

⁴ *Id.* at 1-2 (citing *NorthWestern Corp.*, 138 FERC ¶ 61,061 (2012)).

⁵ *Id.* at 2.

⁶ *Id.* at 2-3.

ensure that customers receive the Energy Value credit to which they are entitled and will prevent any disruption to the value of the credit.⁷

II. Notice and Responsive Pleadings

6. Notice of NorthWestern's filing was published in the *Federal Register*, 78 Fed. Reg. 62,298 (2013), with interventions and protests due on or before October 23, 2013. Timely motions to intervene were filed by Powerex Corp. and Montana Consumer Counsel. Central Montana Electric Power Cooperative, Inc. (Central Montana) and Montana Large Customer Group (Large Customer Group) (collectively, Protestors) separately filed timely motions to intervene and protests.

III. Discussion

A. Procedural Matters

7. 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 the proceeding.

B. Protests

8. Protestors do not object to NorthWestern's proposal to replace the references to the now-discontinued Dow Jones Mid-C indices with references to the ICE Futures Price and Powerdex Index.⁸ However, Protestors do object to NorthWestern's proposal to add additional language that would allow NorthWestern to substitute "the most commonly used remaining index" to calculate the Energy Value credit in the event that either of these indices is discontinued.⁹

9. Large Customer Group argues that the additional language would provide NorthWestern with too much discretion to modify a key element in the Monthly Energy Rate and would allow NorthWestern blanket, unchecked authority to replace the discontinued indices with indices of its choice.¹⁰ Large Customer Group further asserts that permitting NorthWestern to implement this "unreasonably vague" OATT language would prevent transmission customers from being able to accurately calculate their rates for Schedule 3 service, and the public and Commission from determining if the resultant

⁷ *Id.* at 3.

⁸ Central Montana Protest at 4-5; Large Customer Group Protest at 2.

⁹ Central Montana Protest at 5-6; Large Customer Group Protest at 6-9.

¹⁰ Large Customer Group Protest at 3, 6.

rates are just and reasonable.¹¹ In addition, Large Customer Group contends that, contrary to NorthWestern's implications, revisions resulting from discontinuance of indices are not administratively burdensome.¹² Accordingly, Large Customer Group requests that the Commission reject NorthWestern's proposed additional language. In the alternative, Large Customer Group suggests that at a minimum the Commission direct NorthWestern to revise its language to require NorthWestern to provide customers with advance notice of, and support for, the price index selected when replacing indices pursuant to this provision.¹³

10. Central Montana contends that the proposed language is unduly vague and therefore inconsistent with the filed rate doctrine, which requires that rates on file with the Commission provide adequate notice of the rates, terms, and condition of service.¹⁴ Central Montana also asserts that the proposed language provides NorthWestern with too much discretion to pick and choose among various indices in the event the specified indices are discontinued.¹⁵ Central Montana argues that the proposed OATT language runs afoul of Commission precedent, requiring that terms incorporated into rate schedules be clearly spelled out and provide adequate notice of the meaning and effect of such terms.¹⁶ Finally, Central Montana submits that identifying replacement indices via brief filings with the Commission should not be burdensome for NorthWestern.¹⁷ Central Montana thus requests that the Commission reject NorthWestern's proposed additional language.¹⁸

C. Commission Determination

11. We will conditionally accept NorthWestern's proposal to replace the reference to the Dow Jones Mid-C Forward Market Price in the Energy Value calculation with a reference to the ICE Futures Price, and to replace the reference to the Dow Jones Mid-C

¹¹ *Id.* at 3, 7-8.

¹² *Id.* at 3.

¹³ *Id.* at 3-4, 8.

¹⁴ Central Montana Protest at 5.

¹⁵ *Id.*

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 6-7.

Daily Index Price with a reference to the Powerdex Index. The price index is a necessary component used to calculate the Monthly Energy Rate in the currently effective Schedule 3, and the ICE Futures Price and the Powerdex Index appear to be reasonable replacements for the Dow Jones Mid-C price indices.

12. However, we note that the currently effective Schedule 3 rate is pending before the Commission on exceptions to the Initial Decision issued on September 21, 2012, in Docket Nos. ER10-1138-001 and ER12-316-000. Should the Commission's order in that proceeding find that the Monthly Energy Rate and/or Energy Value credit is not just and reasonable, NorthWestern's filing and this order will be rendered moot. Therefore, we conditionally accept NorthWestern's proposed replacements for the Dow Jones Mid-C price indices subject to the outcome of Docket Nos. ER10-1138-001 and ER12-316-000.

13. We will reject NorthWestern's proposal to add language to Schedule 3 stating that it will use "the most commonly used remaining index" to calculate the Energy Value credit in the event that either index is discontinued. We agree with Protestors that the proposed additional language provides NorthWestern too much discretion to select the indices used to calculate the Monthly Energy Rate, without providing any justification for its choices. Permitting NorthWestern to replace a discontinued index with "the most commonly used remaining index" does not comply with the requirement in section 35.1(a) of the Commission's regulations¹⁹ that rate schedules be "clearly and specifically" set forth in writing. As such, we find that NorthWestern's proposed additional language is insufficiently specific, because customers will not be able to determine the Monthly Energy Rate for Schedule 3 service in the event the applicable indices terminate in the future. Accordingly, we will reject NorthWestern's proposed additional language and direct NorthWestern to submit a compliance filing removing this proposed revision, within 30 days of the date of this order.

14. We find that NorthWestern has shown good cause to grant waiver of the Commission's prior notice requirements pursuant to section 35.11 of the Commission's regulations.²⁰ We will thus conditionally accept the revised tariff records for filing, effective September 27, 2013, as requested.

The Commission orders:

(A) NorthWestern's proposed revisions to Schedule 3 are hereby conditionally accepted in part and rejected in part, to become effective September 27, 2013, subject to

¹⁹ 18 C.F.R. § 35.1 (2013).

²⁰ 18 C.F.R. § 35.11 (2013). *See Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1993).

the outcome of Docket Nos. ER10-1138-001 and ER12-316-000, 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.