

150 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

NorthWestern Corporation

Docket Nos. ER14-717-000
ER14-717-001

ORDER ACCEPTING COMPLIANCE FILING

(March 31, 2015)

1. On December 19, 2013, as amended on November 14, 2014, NorthWestern Corporation (NorthWestern) filed a revised Schedule 3 (Regulation and Frequency Response) to its Montana Open Access Transmission Tariff (Montana OATT) to comply with the requirements of Order No. 784.¹ In this order, we accept NorthWestern's revised Schedule 3, effective February 17, 2014.

I. Background

2. On July 18, 2013, the Commission issued Order No. 784 to foster competition and transparency in ancillary services markets. Order No. 784 required, *inter alia*, that each public utility transmission provider (1) add to its Open Access Transmission Tariff (OATT) Schedule 3 a statement indicating that it will take into account the speed and accuracy of regulation resources in its determination of reserve requirements for Regulation and Frequency Response Service, including accounting for speed and accuracy as it reviews whether a self-supplying customer has made "alternative

¹ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

comparable arrangements” as required by the Schedule;² and (2) post certain Area Control Error data on its open access same-time information system (OASIS).³

3. The Commission explained that transmission customers considering using their own or third-party resources to self-supply Regulation and Frequency Response Service are required to demonstrate to the public utility transmission provider that they have made “alternative comparable arrangements.”⁴ However, the *pro forma* OATT provided no information with regard to how the determination of “alternative comparable arrangements” should be made, and contained no express obligation on the part of the transmission provider to consider the relative speed and accuracy of resources a customer might desire to use in self-supplying Regulation and Frequency Response Service. The Commission further stated that, if the performance characteristics of a transmission provider’s regulation resources differed from those associated with a customer’s regulation resources, the transmission provider may under- or overstate the regulation reserve requirements for a customer seeking to self-supply Regulation and Frequency Response Service and, thus, impair a transmission customer’s ability to self-supply regulation requirements at the lowest possible cost.⁵ Thus, the Commission determined that certain reforms were necessary to address the potential for undue discrimination in the provision of Regulation and Frequency Response Service.⁶

4. Therefore, the Commission required each public utility transmission provider to revise its OATT Schedule 3 (Regulation and Frequency Response Service) to include the following *pro forma* statement:

The Transmission Provider will take into account the speed and accuracy of regulation resources in its determination of Regulation and Frequency Response reserve requirements, including as it reviews whether a self-supplying Transmission Customer has made alternative comparable arrangements. Upon request by the self-supplying Transmission Customer, the Transmission Provider will share with the Transmission

² Order No. 784, FERC Stats. & Regs. ¶ 31,349 at PP 1, 111.

³ *Id.* PP 1, 116.

⁴ *Id.* P 112.

⁵ *Id.*

⁶ *Id.* P 111.

Customer its reasoning and any related data used to make the determination of whether the Transmission Customer has made alternative comparable arrangements.⁷

5. In addition, to ensure a level of transparency adequate to support self-supply decision-making by transmission customers, and to aid the transmission customer's ability to make an "apples-to-apples" comparison of regulation resources, Order No. 784 amended Part 37 of the Commission's regulations⁸ to require each public utility transmission provider to post historical one-minute and ten-minute Area Control Error data on its OASIS website.⁹

II. Compliance Filing

6. On December 19, 2013, NorthWestern submitted a compliance filing in response to Order No. 784. In its filing, NorthWestern proposed to incorporate the *pro forma* language from Order No. 784 into its Schedule 3. Although NorthWestern proposed to adopt the *pro forma* language, it appeared that an existing provision in NorthWestern's Schedule 3 could conflict with the *pro forma* language. Specifically, NorthWestern's Schedule 3 described the amount of regulation and frequency response service that a self-supplying customer must secure.¹⁰

A Transmission Customer that makes alternative comparable arrangements will be expected to secure Regulation and Frequency Response in an amount equal to its 12 [coincident peak] load for the prior 12 months, divided by the total 12 [coincident peak] load of all customers taking the service for the same period, and multiplying the resulting percentage by the amount of regulation service required by NorthWestern for Schedule 3 customers, with the product rounded up to the next highest whole MW. The amount of regulation service

⁷ *Id.* Appendix B.

⁸ 18 C.F.R. § 37.6(k) (2014).

⁹ Order No. 784, FERC Stats. & Regs. ¶ 31,349 at PP 1, 116.

¹⁰ See *NorthWestern Corp.*, 137 FERC ¶ 61,248 (2011), 140 FERC ¶ 63,023 (2012) (Initial Decision), 147 FERC ¶ 61,049 (2014) (Order Affirming Initial Decision) (Opinion No. 530).

required by NorthWestern for Schedule 3 customers is presently 19 MW.¹¹

7. On November 14, 2014, in response to a request for additional information regarding how the *pro forma* Order No. 784 language would work in conjunction with this existing tariff provision,¹² NorthWestern further revised Schedule 3 to clarify how it will take into account the speed and accuracy of a self-supplying customer's regulation resources to recognize that faster, more accurate resources may be able to supply comparable levels of regulation service using less capacity than slower, less accurate resources. Specifically, NorthWestern proposes to add new language following the existing provision discussed above which states:

In determining whether a Transmission Customer has satisfied its pro rata share of the regulation reserve obligation, the Transmission Provider shall take into account the accuracy and speed of the Transmission Customer's regulation reserves, such that a self-supplying Transmission Customer with reserves of a higher quality in speed and accuracy than the average regulation reserves of the Transmission Provider will have its obligation adjusted downward. Conversely, a self-supplying Transmission Customer with reserves of a lower quality in speed and accuracy than the average regulation reserves of the Transmission Provider will have its obligation adjusted upward.

III. Notice of Filing and Responsive Pleadings

8. Notice of NorthWestern's December 19, 2013 compliance filing was published in the *Federal Register*, 79 Fed. Reg. 128 (2014), with interventions and protests due on or before January 9, 2014. None were filed. Notice of NorthWestern's November 14, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 70,513 (2014), with interventions and protests due on or before December 5, 2014. Central Montana Electric

¹¹ See *NorthWestern Corp.*, Docket No. ER12-316-004 (Oct. 3, 2014) (delegated letter order).

¹² On November 14, 2014, NorthWestern further revised Schedule 3 in response to a deficiency letter issued by Commission staff. See *NorthWestern Corp.*, Docket No. ER14-717-000 (Oct. 16, 2014) (delegated letter order).

Power Cooperative, Inc. and Basin Electric Power Cooperative (collectively, Cooperatives) filed a timely motion to intervene and protest.

9. Cooperatives argue that NorthWestern's additional revision to Schedule 3 is unduly vague and inconsistent with the filed rate doctrine, which requires a rate on file to provide adequate notice of the rates, terms and conditions of service.¹³ Cooperatives state that without clear and specific tariff language, neither the Commission nor the public can know what the actual rates, charges, classifications and practices are, let alone whether they are just and reasonable.¹⁴

10. Cooperatives contend that NorthWestern should provide details and the calculation or process it uses to make the self-supply process smoother and reduce future disagreements.¹⁵ Cooperatives note that, for example, NorthWestern's starting point for determining a transmission customer's self-supply obligation is to evaluate the speed and accuracy of the transmission customer's regulation resources as compared to NorthWestern's "average regulation reserves." Cooperatives contend that NorthWestern provides no information to address how it calculates its "average regulation reserves." They also argue that NorthWestern's proposed revision does not contain any explanation of how a customer's self-supply obligation will be adjusted upward or downward or what methodology will be employed to determine any adjustment. Cooperatives assert that the tariff language is therefore vague and runs afoul of applicable Commission precedent, and should be rejected.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motion to intervene serves to make the entities that filed it parties to this proceeding.

¹³ Cooperatives Protest at 7 and n.7 (citing 18 C.F.R. § 35.1(a) (2014) (tariffs and tariff revisions filed with the Commission must "...clearly and specifically set[] forth all rates and charges for any transmission or sale of electric energy subject to the jurisdiction of this Commission, [and] the classifications, practices, rules and regulations affecting such rates, charges, classifications, services, rules, regulations or practices. . .")).

¹⁴ *Id.* at 7-8 and n.9 (citing 16 U.S.C. § 824d(a) (2012)).

¹⁵ *Id.* at 8.

B. Commission Determination

12. We find NorthWestern's adoption of the *pro forma* language, together with its further revisions to Schedule 3, comply with the requirements of Order No. 784. Order No. 784 requires each public utility transmission provider to add to Schedule 3 a statement indicating that it will take into account the speed and accuracy of regulation resources for self-supplying customers, share with the transmission customer its reasoning and any related data used to make the determination, upon request, and post certain Area Control Error data on its OASIS.¹⁶ In adopting these requirements, the Commission declined to require the incorporation of a detailed description of how regulation reserve requirement determinations would take into account the speed and accuracy of resources and instead opted to afford the transmission provider flexibility while providing the customer with information. Specifically, the Commission stated that:

While the Commission initially proposed that each public utility transmission provider should amend its OATT to include a description of how regulation reserve requirement determinations would take into account speed and accuracy of resources, we believe the better course of action at this time is to place the obligation on the public utility transmission provider to take into account speed and accuracy without requiring it to develop detailed tariff language describing the specific process to be used.¹⁷

13. The Commission further stated that placing this obligation on transmission providers will give self-supplying customers and their public utility transmission providers "a basis to study and negotiate appropriate arrangements case-by-case."¹⁸ Given the case-by-case nature of such a process, the Commission also required *pro forma* language stating that "[u]pon request by the self-supplying Transmission Customer, the Transmission Provider will share with the Transmission Customer its reasoning and any related data used to make the determination of whether the Transmission Customer has made alternative comparable arrangements."¹⁹ In addition, to ensure a level of

¹⁶ See Order No. 784, FERC Stats. & Regs. ¶ 31,349 at P 111.

¹⁷ *Id.* P 113.

¹⁸ *Id.* P 115.

¹⁹ *Id.* at Appendix B.

transparency adequate to support self-supply decision-making by transmission customers, and to aid the transmission customer's ability to make an "apples-to-apples" comparison of regulation resources, the Commission required each transmission provider to post historical one-minute and ten-minute Area Control Error data on its OASIS website.²⁰

14. In its compliance filing, NorthWestern proposed to add the *pro forma* language that was directed by the Commission and in response to a request for additional information, and proposed new language to clarify that it will take into account the speed and accuracy of the self-supplying customer's regulation reserves compared to NorthWestern's average regulation reserves and will adjust the customer's reserve obligation upward or downward accordingly.

15. Cooperatives argue that NorthWestern's proposed new language should be rejected because it is vague and does not include details and calculations. We deny the Cooperatives' request for two reasons. First, the Commission did not require transmission providers to reflect such details and calculations in Schedule 3 of their OATTs. The Commission specifically declined to require transmission providers "to develop detailed tariff language describing the specific process to be used" to take into account the speed and accuracy of regulation resources.²¹ In fact, the Commission noted that this flexibility would allow self-supplying resources and their transmission providers to study and negotiate appropriate arrangements to satisfy their obligations. Second, as discussed above, Order No. 784 provides for transparency without additional tariff language by requiring a Transmission Provider to provide, in response to a request by a self-supplying Transmission Customer, "its reasoning and any related data used to make the determination of whether the Transmission Customer has made alternative comparable arrangements."²² As a result, we find that no additional revisions to Schedule 3 are necessary, and we accept NorthWestern's compliance filing effective February 17, 2014, as requested.

²⁰ *See id.* P 116.

²¹ *Id.* P 113.

²² *Id.* at Appendix B.

The Commission orders:

NorthWestern's revised Schedule 3 to its Montana OATT, as amended in Docket No. ER14-717-001, is hereby accepted, effective February 17, 2014, as discussed in the body of this order.²³

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²³ The revisions to Schedule 3 filed in Docket No. ER14-717-001 supersede the proposed revisions filed in Docket No. ER14-717-000, therefore the revisions to Schedule 3 in Docket No. ER14-717-000 are moot.