

153 FERC ¶ 61,271
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 3, 2015

In Reply Refer To:
NorthWestern Corporation
Docket No. ER15-2756-000

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005-2111

Attention: John S. Moot, Esq.
Counsel for NorthWestern Corporation

Reference: Termination of Transmission Service Agreements

Dear Mr. Moot:

1. On September 30, 2015, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.15 of the Commission's regulations,² NorthWestern Corporation (NorthWestern) filed notices of termination of nine long-term, firm point-to-point transmission service agreements (TSAs) that were entered into under NorthWestern's South Dakota Open Access Transmission Tariff (South Dakota OATT).
2. NorthWestern is a public utility engaged in the generation, transmission, and distribution of electricity and supply and transportation of natural gas. NorthWestern owns and operates electric transmission facilities in Montana and South Dakota.³ Because NorthWestern does not operate a control area for its South Dakota operations, most of its 115 kV transmission facilities are administered under the

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.15 (2015).

³ NorthWestern's Montana and South Dakota electric transmission facilities are not physically interconnected and are not located within the same electric reliability region. This letter order addresses electric transmission service under NorthWestern's South Dakota OATT.

Western Area Power Administration (Western) Open Access Transmission Tariff.⁴ NorthWestern's 69 kV and 34.5 kV facilities are used primarily for local distribution and to provide wholesale distribution service to certain customers.⁵

3. NorthWestern states that it has decided to join the Southwest Power Pool, Inc. (SPP) Regional Transmission Organization and transfer functional control of most of its transmission facilities effective October 1, 2015. NorthWestern explains that once it joins SPP, transmission service over the facilities that have been transferred will be provided under the SPP Open Access Transmission Tariff (SPP OATT).⁶

4. NorthWestern states that it currently has eleven customers with TSAs under its South Dakota OATT who only take transmission service using NorthWestern's lower voltage transmission facilities. NorthWestern explains that four of the TSAs will no longer be necessary because the lower voltage facilities serving those customers will be transferred to SPP's functional control, and those customers will receive transmission service under the SPP OATT.⁷ NorthWestern requests an effective date of October 1, 2015 for the notices of termination.⁸

5. NorthWestern explains that five of the TSAs will no longer be necessary after NorthWestern joins SPP because those customers will take distribution service under a South Dakota state tariff for delivery of power from the SPP-controlled transmission

⁴ Western's Open Access Transmission Tariff is a reciprocity tariff that was originally accepted for filing by the Commission in Docket No. NJ98-1-000. *See U. S. Dep't of Energy – Western Area Power Admin.*, 99 FERC ¶ 61,062 (2002).

⁵ NorthWestern Transmittal Letter at 2.

⁶ On June 29, 2015, in Docket No. ER15-2069-000, NorthWestern proposed formula rate template and implementation protocols to be included in the SPP OATT, effective October 1, 2015. In an order issued on September 30, 2015, the Commission accepted NorthWestern's proposal, effective October 1, 2015, subject to refund, and set it for hearing and settlement judge procedures. *See NorthWestern Corp.*, 152 FERC ¶ 61,250 (2015).

⁷ These service agreements include: Service Agreement No. 11 with the City of Groton, S.D.; Service Agreement No. 18 with the City of Miller, S.D.; Service Agreement No. 19 with Rolling Thunder I Power Partners, LLC; and Service Agreement No. 31 with Oak Tree Energy, LLC.

⁸ NorthWestern Transmittal Letter at 4, 6.

system to their points of delivery.⁹ NorthWestern requests an effective date of November 1, 2015 for these notices of termination, which is the effective date of the South Dakota state tariff that will govern service to these customers.¹⁰

6. NorthWestern asserts that it has discussed the termination of these TSAs with all of the customers, and that all customers agree that these TSAs should be terminated and have consented to the terminations.¹¹ Finally, NorthWestern requests waiver of the Commission's 60-day prior notice requirement¹² to allow the notices of termination to become effective on October 1, 2015 and November 1, 2015, as described above. NorthWestern states that good cause exists because all customers consent to the terminations, and because the effective dates will allow timely integration of NorthWestern's transmission facilities into SPP.¹³

7. Notice of NorthWestern's September 30, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 60,667 (2015), with interventions and protests due on or before October 21, 2015. Rolling Thunder I Power Partners, LLC (Rolling Thunder) filed a timely motion to intervene and protest. On October 22, 2015, Heartland Consumers Power District (Heartland) filed a motion to intervene out of time. On November 5, 2015, NorthWestern filed an answer to Rolling Thunder's protest. On November 17, 2015, Western filed a motion to intervene out of time and comments.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motion to intervene serves to make Rolling Thunder a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we will grant Heartland's and Western's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

⁹ These service agreements include: Service Agreement No. 12 with the City of Aberdeen, S.D.; Service Agreement No. 13 with the State of South Dakota—South Dakota Human Services Center; Service Agreement No. 14 with the State of South Dakota—Mike Durfee State Prison; Service Agreement No. 15 with the State of South Dakota—Northern State University; and Service Agreement No. 16 with the State of South Dakota—South Dakota Development Center.

¹⁰ NorthWestern Transmittal Letter at 4, 6.

¹¹ *Id.* at 6.

¹² 18 C.F.R. § 35.15 (2015).

¹³ NorthWestern Transmittal Letter at 7.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NorthWestern's answer because it has provided information that assisted us in our decision-making process.

10. In its protest, Rolling Thunder states that NorthWestern's filing seeks to terminate its TSA with NorthWestern.¹⁴ Rolling Thunder explains that it owns and operates a 25 MW wind generating facility located in Hand County, South Dakota that is interconnected to 69 kV transmission facilities owned by NorthWestern.¹⁵ According to Rolling Thunder, it purchases its station power requirements from Dakota Energy Cooperative, which are delivered to the NorthWestern system by Western. Rolling Thunder states that under its TSA, NorthWestern transmits the station power over its 69 kV facilities to Rolling Thunder's facility.

11. Rolling Thunder contends that, despite NorthWestern's claims, no discussions occurred with Rolling Thunder regarding NorthWestern's plans to terminate the TSA. Rolling Thunder states that it has not consented to termination of its TSA. Rolling Thunder explains that it reached out to NorthWestern and SPP to determine what arrangements would be needed to ensure delivery of station power to its facility on a firm basis under the SPP OATT, and to confirm that charges assessed under the SPP OATT would not exceed those paid under the TSA.¹⁶

12. Rolling Thunder states it has been advised by Western that it is unclear whether all of NorthWestern's facilities meet the criteria for inclusion under the SPP OATT, and arrangements may be needed for use of facilities between the edge of the SPP boundary and Rolling Thunder's generator.¹⁷ Rolling Thunder argues that because it has not received any assurances that delivery of Rolling Thunder's station power will continue without interruption under the SPP OATT, or through other arrangements, NorthWestern has not demonstrated that the termination of Rolling Thunder's TSA is just and reasonable. In addition, Rolling Thunder asserts that it has no information to determine what steps it might need to take to address concerns about rates and charges under

¹⁴ Rolling Thunder Protest at 1. NorthWestern's TSA with Rolling Thunder was accepted effective November 1, 2009. *See NorthWestern Corp.*, Docket No. ER10-270-000 (January 8, 2010) (delegated letter order).

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

replacement arrangements if Rolling Thunder must enter into such arrangements to ensure delivery to its generating facility.¹⁸ Accordingly, Rolling Thunder requests that the Commission reject NorthWestern's notice of termination of Rolling Thunder's TSA, without prejudice to NorthWestern submitting a notice of termination at a later date when replacement transmission arrangements for the delivery of Rolling Thunder's station service deliveries are documented, and Rolling Thunder is in a position to evaluate applicable rates, terms and conditions.¹⁹

13. In its comments, Western states that seven of the nine entities for which NorthWestern has requested termination of the TSAs are firm electric service preference customers of Western, and that Western delivers power and energy to NorthWestern's transmission system for these customers.²⁰ Western states that the determination of which NorthWestern facilities qualify for inclusion under the SPP OATT will inform whether service will be needed by those seven customers over NorthWestern's facilities that do not qualify for inclusion under the SPP OATT.²¹

14. In its answer, NorthWestern acknowledges that Rolling Thunder does not consent to the termination of the TSA. NorthWestern indicates that it sent a letter to Rolling Thunder explaining the termination and service to be provided under the SPP OATT, but it received no response to the letter. NorthWestern concedes that it did not follow up with Rolling Thunder as it should have.²² According to NorthWestern, at the time it made its filing, it believed that termination of the TSA with Rolling Thunder was appropriate and necessary to prevent NorthWestern from double recovering from Rolling Thunder the costs of the 69 kV transmission facilities that also would be recovered through NorthWestern's transmission formula rate under the SPP OATT.²³ NorthWestern acknowledges there is uncertainty regarding whether the transmission facilities used to serve Rolling Thunder under the TSA qualify for inclusion under the SPP OATT, and therefore the TSA with Rolling Thunder should not be terminated at this time.²⁴

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 6.

²⁰ Western Comments at 5.

²¹ *Id.* at 6.

²² NorthWestern Answer at 2.

²³ *Id.*

²⁴ *Id.* at 3.

15. NorthWestern asks the Commission to allow the Rolling Thunder TSA to remain in place until the issues regarding NorthWestern's transmission facilities to be included under the SPP OATT are resolved in Docket No. ER15-2069-000.²⁵ In order to avoid the potential for double recovery, NorthWestern proposes to deposit Rolling Thunder's payments under the TSA into an escrow account pending resolution of the transmission facilities issues.

16. NorthWestern commits to submit a compliance filing with the Commission when the issues are resolved.²⁶ NorthWestern states that if all transmission facilities used to serve Rolling Thunder under the TSA are appropriately included under the SPP OATT, NorthWestern will refund all payments made by Rolling Thunder under the TSA for service after October 1, 2015, plus all interest accrued in the escrow account. According to NorthWestern, if a subset of the facilities cannot be placed under the SPP OATT, NorthWestern will submit in the compliance filing a request for approval under section 205 of the FPA of an agreement that authorizes service to Rolling Thunder across those facilities and establishes the rates, terms and conditions for that service.²⁷

17. We will grant waiver of the Commission's 60-day prior notice requirement²⁸ and accept the notices of termination of the TSAs, except for the TSA with Rolling Thunder, effective October 1, 2015, and November 1, 2015, as requested.

18. With respect to the TSA with Rolling Thunder, we agree that the TSA should not be terminated until the issue of whether NorthWestern's transmission facilities that serve Rolling Thunder are included under the SPP OATT is resolved. Therefore, we will reject the notice of termination for the Rolling Thunder TSA without prejudice to NorthWestern filing a new notice of termination and any necessary related proposals in a

²⁵ *Id.*

²⁶ *Id.* at 3-4.

²⁷ *Id.* at 4.

²⁸ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

new filing pursuant to section 205 of the FPA once the issue of whether the facilities that serve Rolling Thunder are included under the SPP OATT is resolved in Docket No. ER15-2069-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.