

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

Before Commissioners: Kevin J. McIntyre, Chairman;  
Cheryl A. LaFleur, Neil Chatterjee,  
Robert F. Powelson, and Richard Glick.

NorthWestern Corporation

Docket No. ER18-1563-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued July 9, 2018)

1. On May 10, 2018, NorthWestern Corporation (NorthWestern) filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> proposed revisions to Attachment L (Creditworthiness Procedures) of its Montana Open Access Transmission Tariff (OATT).<sup>2</sup> As discussed below, we accept NorthWestern's proposed tariff revisions, effective July 10, 2018.

**I. Background**

2. In Order No. 890,<sup>3</sup> the Commission explained that a transmission provider's creditworthiness procedures must specify both the qualitative and quantitative criteria that the transmission provider will use to determine the level of secured and unsecured credit required of customers. In addition, the Commission required transmission providers to address, at a minimum, six specific elements regarding the transmission

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> NorthWestern Corporation, FERC FPA Electric Tariff, NorthWestern Corporation, [Attachment L, Creditworthiness Procedures, 3.0.0](#).

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 1650 (Order No. 890), *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 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

provider's credit requirements.<sup>4</sup> Further, the Commission stated that a transmission provider may supplement the creditworthiness procedures with a credit guide or manual to be posted on its Open Access Same-Time Information System (OASIS).<sup>5</sup>

## II. NorthWestern's Filing

3. In its filing, NorthWestern notes that it previously submitted proposed revisions to Attachment L, which the Commission rejected without prejudice on two grounds: (1) including the phrase "but not limited to" in the listing of quantitative and qualitative factors allowed NorthWestern to consider factors to make credit determinations that were not transparent to the customer; and (2) making credit reevaluations if NorthWestern had "any concern regarding the financial condition of a Customer" afforded NorthWestern unlimited discretion in choosing when and how often to perform credit reevaluations.<sup>6</sup> NorthWestern states that it has addressed these concerns as well as several other concerns raised by intervenors in the previous filing.<sup>7</sup>

4. NorthWestern states that the proposed revisions are intended to provide more detail, greater clarity, and increased transparency to its credit review process, and to ensure consistency with Commission policy. NorthWestern indicates that its proposed substantive changes are few; however, it proposes numerous ministerial changes, which are the result of reordering, clarifying, or rephrasing language previously accepted by the Commission. NorthWestern states that it has inserted section headings and reorganized its Creditworthiness Procedures to coincide with the elements addressed in Order No. 890.

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<sup>4</sup> The elements are: (1) a summary of the procedure for determining the level of secured and unsecured credit; (2) a list of the acceptable types of collateral/security; (3) a procedure for providing customers with reasonable notice of changes in credit levels and collateral requirements; (4) a procedure for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements; (5) a reasonable opportunity to contest determination of credit levels or collateral requirements; and (6) a reasonable opportunity to post additional collateral, including curing any non-creditworthy determination. Order No. 890, FERC Stats. & Regs ¶ 61,241 at PP 1656-1661.

<sup>5</sup> *Id.* P 1656.

<sup>6</sup> Transmittal Letter at 2 (citing *NorthWestern Corp.*, 161 FERC ¶ 61,172 (2017) (November Order)).

<sup>7</sup> *Id.*

5. With regard to the preamble of its Creditworthiness Procedures, NorthWestern states that it added “Customer” as a defined term, which includes any Eligible Customer, Network Customer, or Transmission Customer, as defined in Part I, Section 1 of the OATT.

6. NorthWestern explains that section 1 (Summary of Credit Evaluation Procedures) provides a customer with information that is required for the credit review, qualitative and quantitative factors used in the credit analysis, and a list of acceptable types of collateral/security. NorthWestern adds that the proposed revisions to section 1 also provide added detail describing the quantitative and qualitative criteria used in the credit review. NorthWestern requires the customer to provide certain information in order for NorthWestern to conduct a credit review and if the requisite information is not made available, then the customer will be required to post collateral/security. Specifically, section 1.A. indicates that the customer must provide information such as financial statements, credit ratings, and any other reasonable commercial information requested by NorthWestern that would assist in determining the customer’s creditworthiness. If the customer’s financial statements are not available, the customer is required to provide the most recent two years of financial statements of an investment-grade company willing to guarantee all financial obligations of the customer.<sup>8</sup>

7. Using this data, NorthWestern conducts a credit evaluation to determine the amount of collateral/security, if any, that a customer will be required to provide. NorthWestern proposes to use a weighted scoring model which considers quantitative factors. NorthWestern states that the credit evaluation will be weighted as follows: (1) 50 percent of the evaluation will be calculated based on senior long-term unsecured credit ratings and expected default frequency rating; (2) 35 percent of the evaluation will be calculated based on financial measures;<sup>9</sup> and (3) 15 percent of the evaluation will be calculated based on qualitative measures including litigation, material weakness disclosed in financial statements, management expertise and years of industry experience, years in business, years as a NorthWestern customer, payment history with NorthWestern, bankruptcy, asset size, and overall qualitative assessment. Furthermore, NorthWestern states the measures are scored from 1 (positive) to 6 (negative) and, consistent with Order No. 890, the specific metrics for assigning these scores will be posted on NorthWestern’s

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<sup>8</sup> *Id.*; NorthWestern Proposed Creditworthiness Procedures, section 1.A.1.

<sup>9</sup> These measures include: “Percent Profit Before Tax/Tangible Net Worth (TNW); Percent Profit Before Tax/Total Assets; Current Ratio; Net Fixed Assets/TNW; Total Liabilities/TNW; Days Receivables Turnover; and Earnings Before Interest & Tax (EBIT)/Interest Expense.” NorthWestern Proposed Creditworthiness Procedures, section 1.B.2.

OASIS.<sup>10</sup> NorthWestern also explains that section 1 complies with the Commission's directive in the November Order by limiting NorthWestern's discretion.<sup>11</sup>

8. Section 2 (Acceptable Forms of Collateral/Security) addresses the acceptable forms of collateral/security, which include the following: (1) letter of credit; (2) cash deposit; (3) prepayment; and (4) guarantee. Regarding the letter of credit, NorthWestern proposes to replace the current requirement that the issuing bank have an investment grade rating with specific credit rating standards.<sup>12</sup> In addition, NorthWestern proposes to clarify that a cash deposit will accrue interest based on the rate earned from NorthWestern's general bank account in which the cash deposit is held. NorthWestern notes that it is also proposing to add prepayment as an additional option for the customer. Regarding the guarantee, NorthWestern proposes to remove the requirement for a guarantor to be affiliated with, or have an acknowledged beneficial interest in, the customer and instead proposes that the guarantee be in a form acceptable to NorthWestern and meet the requirements identified in section 1. NorthWestern states that it has revised this section to also clarify that all costs associated with meeting the security requirements, including any costs of obtaining and posting security, are the responsibility of the customer.

9. Section 3 (Notices of and Changes to Collateral/Security Requirements) details when and how often NorthWestern will conduct credit reevaluations and the conditions under which it will notify a customer of a change in creditworthiness. NorthWestern states that to increase transparency it has added language to clearly describe how it will calculate the amount of collateral/security required. Additionally, NorthWestern states it has also included a requirement that a customer post and maintain collateral/security in an amount equal to the highest two months of exposure, which NorthWestern asserts has been its policy but was not previously included in its Creditworthiness Procedures.

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<sup>10</sup> Transmittal Letter at 3-4.

<sup>11</sup> *Id.* at 4 (citing November Order, 161 FERC ¶ 61,172 at P 34).

<sup>12</sup> *Id.* at 5 (citing NorthWestern Proposed Creditworthiness Procedures, section 2.a). Proposed section 2.a provides as follows:

Letter of Credit. An unconditional and irrevocable standby letter of credit issued by a U.S. commercial bank or a U.S. branch office of a foreign commercial bank with such bank having a credit rating of at least A- from Standard & Poor's, A3 from Moody's, or another rating acceptable to NorthWestern Energy. The letter of credit must conform to NorthWestern Energy's requirements and be approved by NorthWestern Energy prior to issuance.

NorthWestern also states that the proposed revisions provide that NorthWestern may perform credit reevaluations more frequently than on an annual basis, as currently provided under the Creditworthiness Procedures, if NorthWestern has commercially reasonable grounds to believe that there has been a material adverse change in a customer's financial condition. NorthWestern explains that it has added a list of events that would trigger this reevaluation and increases transparency that is similar to a list that the Commission previously accepted and that is consistent with the Commission's directive in the November Order.<sup>13</sup> NorthWestern further explains that it has also added language stating that it will provide a written explanation of the reasoning behind the reevaluation and that it has also added a provision to clearly state that it will provide written notice of any change in a customer's collateral/security requirement.

10. NorthWestern states that section 4 (Explanation of Credit Determination) addresses the process by which customers may request a written explanation for any change in credit levels or collateral requirements with NorthWestern providing a written explanation within 30 calendar days of receiving the customer's request. NorthWestern states that section 5 (Contesting Credit Determinations) provides the customer a reasonable opportunity to contest creditworthiness determinations or collateral requirements.

11. In the event that a customer receives a notice of a change in creditworthiness, section 6 (Posting New or Additional Collateral/Security) provides the process by which a customer may post additional collateral and the consequence for failure to post sufficient collateral/security within the timeframe required. NorthWestern explains that its proposed revisions add a provision clarifying that an existing customer must post any new or additional security within five business days, even if the customer requests a written explanation or challenges the determination. NorthWestern states that this requirement balances a customer's ability to question or challenge a credit determination with the interests of the utility to protect its customers from potentially non-creditworthy customers. NorthWestern explains that this clarification is necessary because it has had negative experiences with two customers—both of whom ultimately filed for bankruptcy and dissolved—who attempted to avoid their obligations by continually contesting NorthWestern's credit determinations.

12. NorthWestern states that section 7 (Customer Default, Suspension, and Termination of Service) provides a customer with detailed information on what constitutes a default and the consequences for a default. NorthWestern explains that the proposed language provides clear notice of the conditions that constitute a default in addition to non-payment described in section 7.3 of the OATT. NorthWestern states that these conditions include if a customer fails to post new/additional security in the

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<sup>13</sup> Transmittal Letter at 7 (citing November Order, 161 FERC ¶ 61,172 at P 35).

timeframe described in section 6; if a letter of credit is provided as collateral/security and the renewal of the letter of credit or replacement of security is not provided at least 45 calendar days prior to the letter of credit expiry date; and if the issuer of a letter of credit fails to maintain a minimum credit rating and replacement collateral/security is not provided within 30 calendar days of the downgrade of the issuer. NorthWestern also proposes to add a provision that would allow NorthWestern to suspend a customer's transmission service if a default occurs and to file termination proceedings with the Commission if the customer does not cure the default within 60 days of suspension of service. NorthWestern states that, consistent with Commission precedent, the proposed suspension provision provides for notice to both the customer and the Commission, any suspension will continue only as long as the default exists, and the customer is not obligated to pay for transmission service that is not provided due to a suspension.<sup>14</sup> NorthWestern further states that while "suspension" and "termination" seem synonymous they are distinct because suspension is temporary and the transmission service agreement remains in place where termination is permanent and can lead to a filing to terminate the transmission service agreement.

13. NorthWestern requests an effective date of July 10, 2018 for its proposed tariff revisions.

### **III. Notice of Filing and Responsive Pleadings**

14. Notice of NorthWestern's filing was published in the *Federal Register*, 83 Fed. Reg. 22,667 (2018) with interventions and protests due on or before May 31, 2018. Powerex Corp. filed a timely motion to intervene. Ash Grove Cement West, Phillips 66, ExxonMobil Corporation, CRH US, Calumet Montana Refining, LLC, REC Advanced Silicon Materials LLC, and Stillwater Mining Company (collectively, Montana Customers) filed a timely motion to intervene and protest. On June 15, 2018, NorthWestern filed an answer to Montana Customers' protest.

#### **A. Montana Customers Protest**

15. Montana Customers assert that NorthWestern's proposed revisions to its Creditworthiness Procedures contain vague credit evaluation standards and procedures, which provide NorthWestern undue discretion to require security or collateral from customers without any meaningful or transparent standards. According to Montana Customers, although NorthWestern has provided additional detail regarding the criteria it will consider and how it will weigh the qualitative and quantitative criteria, NorthWestern's revised Creditworthiness Procedures are still missing clear standards that

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<sup>14</sup> *Id.* at 9 (citing *PacifiCorp*, 123 FERC ¶ 61,223, at P 50 (2007) (*PacifiCorp*); *Entergy Servs. Inc.*, 104 FERC ¶ 61,329, at P 55 (2003) (*Entergy*)).

distinguish between acceptable and unacceptable credit.<sup>15</sup> Montana Customers argue that although the revised Creditworthiness Procedures provide details as to the factors NorthWestern will consider, they provide no expectation as to what an acceptable or unacceptable final score would be. Therefore, Montana Customers assert that there is no way for customers to determine whether or not they meet the requirements and the test leaves the determination solely at NorthWestern's discretion.<sup>16</sup> Montana Customers assert that Commission precedent requires that customers be able to compare their qualitative and quantitative financial metrics to NorthWestern's standards.<sup>17</sup> Furthermore, Montana Customers assert that the Commission requires that customers are able to determine for themselves the general amount and type of security they may need to provide in order to receive transmission service.<sup>18</sup> Therefore, Montana Customers request that the Commission require that NorthWestern provide specific and clear threshold standards used for determining the amount of collateral or security a customer will be required to post if any.

16. Montana Customers also argue that it is unjust and unreasonable for NorthWestern to require customers to post additional collateral or security within five business days under section 6 of the Creditworthiness Procedures "particularly where letters of credit or guarantees must comply with vague standards under Section 2 of the Proposed Creditworthiness Procedures."<sup>19</sup> First, Montana Customers assert that five days is too short a time period because the standards under the Creditworthiness Procedures are too vague and do not provide any metrics for evaluation.<sup>20</sup> Second, Montana Customers assert that the terms allow for NorthWestern to require additional collateral without providing a written explanation for such a determination until after the customer would be determined to be in default, which fails to meet the Commission's transparency requirements. Therefore, Montana Customers state that the Commission should require NorthWestern to remove all language in section 6 of the Creditworthiness Procedures requiring a customer to post additional collateral or security despite a request for

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<sup>15</sup> Montana Customers Protest at 5.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* (citing *Xcel Operating Companies*, 123 FERC ¶ 61,053, at P 19 (2008)).

<sup>18</sup> *Id.* at 7 (citing *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186, at P 12 (2004)).

<sup>19</sup> *Id.* at 8.

<sup>20</sup> *Id.*

explanation under section 4, or a request to contest a credit determination under section 5.<sup>21</sup>

17. Montana Customers contend that it is also unjust and unreasonable for section 7.A.2 to find a customer in default if the customer fails to provide additional collateral or security within five business days when section 7.3 of NorthWestern's OATT provides that NorthWestern must wait 30 days before finding a customer is in default for non-payment. Montana Customers assert that this discrepancy is unexplained and unjustified, especially in light of the vague standards for letters of credit.<sup>22</sup> In addition, Montana Customers argue that the procedures adopted by PacifiCorp, under which a customer must be in default of both the creditworthiness provisions and PacifiCorp's OATT, are more just and reasonable than NorthWestern's revised Creditworthiness Procedures.<sup>23</sup> Montana Customers question NorthWestern's reliance on *Entergy*, arguing that NorthWestern fails to provide any justification for why the strict suspension terms in that case are necessary compared to the more just and reasonable suspension terms that the Commission more recently approved in *PacifiCorp*.<sup>24</sup> As such, Montana Customers conclude that it is unjust and unreasonable for NorthWestern's provisions to allow for suspended service even where a customer has consistently paid all bills on time.

18. Finally, Montana Customers contend that it is unjust and unreasonable for NorthWestern to be able to suspend service pursuant to sections 7.A.2 and 7.B notwithstanding that a customer may be paying its bills on time and notwithstanding that NorthWestern may hold collateral or security for an additional 25 days under proposed section 3.A. Montana Customers assert that because NorthWestern may hold security in an amount equal to the highest two months of estimated exposure for a 12-month period of service, the Commission should not allow NorthWestern to suspend service earlier than 60 days after a customer fails to provide additional collateral or security, especially when the customer may be seeking an explanation of credit determination or contesting the credit determination. Montana Customers assert that NorthWestern has provided no

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<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.* at 11 (quoting tariff language accepted by the Commission in *PacifiCorp*, 121 FERC ¶ 61,223).

<sup>24</sup> *Id.*

justification as to the suspension timeframe of 35 days when NorthWestern holds collateral in security for a 60 day time period.<sup>25</sup>

19. Therefore, Montana Customers request that the Commission set the terms of the revised Creditworthiness Procedures for hearing, or direct NorthWestern to update the provisions in a compliance filing.

**B. NorthWestern Answer**

20. NorthWestern states that the requirement to post collateral during the period of contest of a credit determination is intended to protect NorthWestern and its customers from a potentially non-creditworthy customer in a timely manner, as well as prevent abuse of the contest provisions and that the Commission has accepted similar provisions.<sup>26</sup> NorthWestern also states that if a contest of its creditworthiness determination resulted in a different amount of collateral/security, it would refund the excess as appropriate.<sup>27</sup>

21. NorthWestern contends that Montana Customers' protest requesting increased timeframes for posting of additional collateral/security, for finding default, and for suspension of service only serve to buy more time and introduce ambiguity into NorthWestern's Creditworthiness Procedures. NorthWestern states that its proposed revisions provide clear timing triggers, which it asserts should benefit NorthWestern and its customers alike.<sup>28</sup>

22. NorthWestern argues that its requirement to provide additional security within five business days is not vague and its standards for a letter of credit are posted on its OASIS. Furthermore, NorthWestern notes that the five business day requirement is

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<sup>25</sup> *Id.* at 12.

<sup>26</sup> NorthWestern Answer at 2 (citing Portland General Open Access Transmission Tariff, Attachment L, section 8.H (“A determination of credit limits or requirement to post additional security will remain in effect during the period of contest and will be a condition of service under the applicable Service Agreement.”); Xcel Energy Operating Companies Open Access Transmission Tariff, Attachment Q (“The Applicant/Transmission Customer must still provide any required Financial Security, within the indicated time periods, as stated in this summary and on OASIS, while the review and response is in process.”)).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 3-4.

included in its currently effective Tariff and is consistent with other entities' creditworthiness policies.<sup>29</sup>

23. NorthWestern also disputes Montana Customers' assertion that it is not just and reasonable to suspend service when a customer has consistently paid its bills. NorthWestern explains that payment of bills is not in and of itself an assurance of creditworthiness and asserts that without the suspension provisions NorthWestern would not be able to mitigate its financial exposure to potential nonpayment by a customer whose creditworthiness is declining.<sup>30</sup>

24. NorthWestern contends that Montana Customers' argument that NorthWestern should not be able to suspend service earlier than 60 days after a customer has failed to provide additional security/collateral is flawed. NorthWestern explains that a customer is in default under section 7.A.2 if it fails to post new or additional collateral/security. NorthWestern states that it cannot require this additional collateral/security if it already holds an amount equal to the highest two months of exposure. Rather, NorthWestern may only require additional security from a customer if NorthWestern is either holding no security or an insufficient security. Therefore, NorthWestern asserts that requiring it to wait 60 days before suspending service serves to increase NorthWestern's exposure to default and hinders its ability to mitigate its exposure to a customer whose financial condition is deteriorating.<sup>31</sup>

25. NorthWestern disputes Montana Customers' assertion that NorthWestern's credit review process lacks a clear standard that distinguishes between acceptable and unacceptable credit. NorthWestern states that it has a wide variety of customers on its system from different industries, and while NorthWestern's credit evaluation process is the same for all customers, financial scores are based on the comparison of peer ratio data, which is inherently industry specific.<sup>32</sup> NorthWestern states that section 1.B of the revised Creditworthiness Procedures outlines its overall scoring process including the three components of that process and their respective weights. NorthWestern adds that in order to increase transparency and address Montana Customers' concerns it has expanded the scoring metrics document on its OASIS to provide detail on credit ratings and

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<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.* at 6.

<sup>32</sup> *Id.* at 7.

financial measures.<sup>33</sup> NorthWestern states that its proposed evaluation combined with the detail posted on its OASIS balance the need for flexibility with its customers need for an open transparent process.<sup>34</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), 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.

##### **B. Substantive Matters**

28. As discussed below, we find that NorthWestern's proposed revisions to its Creditworthiness Procedures comply with the creditworthiness requirements of Order No. 890. Specifically, we find that NorthWestern's proposed revisions reflected in section 1 (Summary of Credit Evaluation Procedures), section 2 (Acceptable Forms of Collateral/Security), section 3 (Notices of and Changes to Collateral/Security Requirements), section 4 (Explanation of Credit Determination), section 5 (Contesting Credit Determinations), section 6 (Posting New or Additional Collateral/Security), and section 7 (Customer Default, Suspension, and Termination of Service) comply with the creditworthiness requirements of Order No. 890. Further, as discussed in more detail below, we reject Montana Customers' objections regarding certain aspects of NorthWestern's proposed revisions. In doing so, we deny Montana Customers' request to set the matter for hearing.

29. Montana Customers argue that NorthWestern's revised Creditworthiness Procedures contain vague credit evaluation standards and procedures, which provide NorthWestern undue discretion to require security or collateral from customers without any meaningful or transparent standards. We disagree. NorthWestern provides sufficient explanation of its credit evaluation process in proposed section 1 and provides additional detail posted on its OASIS. Specifically, section 1.A. indicates that the customer must

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<sup>33</sup> NorthWestern attached its OASIS scoring metrics document as Exhibit C to its answer.

<sup>34</sup> NorthWestern Answer at 7.

provide information such as financial statements, credit ratings, and any other reasonable commercial information requested by NorthWestern that would assist in determining the customer's creditworthiness. If the customer's financial statements are not available, the customer is required to provide the most recent two years of financial statements of an investment-grade company willing to guarantee all financial obligations of the customer. Section 1.B lists the specific quantitative and qualitative measures that NorthWestern uses in this analysis and how these factors are weighed.<sup>35</sup> NorthWestern also posts additional detail on its OASIS, including the weights it uses to conduct its qualitative analysis, its credit evaluation metrics, and the credit score a customer must achieve to post no collateral/security. Furthermore, as discussed above, section 4 (Explanation of Credit Determination) and section 5 (Contesting Credit Determinations) allow the customer to request a written explanation of NorthWestern's credit determination, and contest its determination for further examination. After availing itself of such procedures, the customer may file a complaint with the Commission under section 206 of the FPA.<sup>36</sup>

30. We also disagree that NorthWestern's standards for letters of credit under section 2 of NorthWestern's revised Creditworthiness Procedures are too vague, as Montana Customers assert. Section 2 currently describes the type of financial institution that must issue the letter of credit, and NorthWestern is proposing to add additional clarity by revising section 2 to provide the specific credit rating standards that the issuing bank is required to have, replacing the current requirement that the issuing bank have an investment grade rating.<sup>37</sup> Additionally, we note that NorthWestern's standards for letters of credit are posted on its OASIS website and provide information on NorthWestern's requirements.

31. We also decline Montana Customers' request that the Commission require NorthWestern to remove all language in section 6 of the Creditworthiness Procedures requiring a customer to post additional collateral or security despite a request for

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<sup>35</sup> For example, section 1.B.2 indicates that the following quantitative or financial measures contribute 35 percent to the overall credit evaluation: Percent Profit Before Tax/Tangible Net Worth (TNW); Percent Profit Before Tax/Total Assets; Current Ratio; Net Fixed Assets/TNW; Total Liabilities/TNW; Days Receivables Turnover; and Earnings Before Interest & Tax (EBIT)/Interest Expense. Section 1.B.3 lists the qualitative measures that contribute 15 percent to the overall credit evaluation and section 1.B.1 indicates that the credit ratings, if available, and Moody's Expected Default Frequency score will contribute 50 percent of the overall credit evaluation.

<sup>36</sup> 16 U.S.C. § 824e (2012).

<sup>37</sup> See *supra* note 12.

explanation under section 4, or a request to contest a credit determination under section 5. Similarly, we decline to require a delay in the posting of additional collateral or security when a customer seeks explanation or contests a credit determination to ensure that these processes are not used to delay such posting. We find that the requirement to post collateral during the contest period strikes an appropriate balance between allowing a customer to exercise its right to request an explanation of a credit determination under section 4 and to challenge a creditworthiness determination under section 5 of the Creditworthiness Procedures, with NorthWestern's efforts to protect its customers from a potentially non-creditworthy customer and to prevent such non-creditworthy customer from using the contest provision to delay or avoid its obligation to post security. We also find Montana Customers' assertion that it is unjust and unreasonable for NorthWestern to require customers to post additional collateral or security within five business days under section 6 of the Creditworthiness Procedures to be misplaced. A customer is already required to post additional collateral/security within five days of NorthWestern providing a notice of a change in creditworthiness under NorthWestern's currently effective Creditworthiness Procedures.<sup>38</sup> Accordingly, we reject Montana Customers' request to revise the five business days posting requirement.

32. Next, we disagree with Montana Customers' claim that it is unjust and unreasonable for section 7.A.2 to find a customer in default if the customer fails to provide additional collateral or security within five business days while section 7.3 of NorthWestern's OATT requires NorthWestern to wait 30 days before finding a customer is in default for non-payment of its transmission service bill. We find that the combination of five business days to post additional collateral followed by 30 days to cure the default provides customers with a reasonable amount of time before the potential suspension of service. Furthermore, we disagree with Montana Customers that NorthWestern should employ the same terms for default under its Creditworthiness Procedures as applicable under its OATT related to a customer's failure to pay bills in a timely manner as adopted by other transmission providers. We do not find that the existence of an alternative approach mandates that NorthWestern adopt the same terms.

33. Finally, we disagree with Montana Customers that because NorthWestern may hold security in an amount equal to the highest two months of estimated exposure for a 12-month period of service, the Commission should not allow NorthWestern to suspend service earlier than 60 days after a customer fails to provide additional collateral or security. As NorthWestern notes in its answer, a customer is only in default under section 7.A.2 if it fails to post new or additional collateral/security within five business

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<sup>38</sup> Order No. 890, FERC Stats & Regs. ¶ 31,241 at P 1657 ("Attachment L must also contain the following elements . . . (6) a reasonable opportunity to post additional collateral, including curing any non-creditworthy determination.").

days of a deterioration of its creditworthiness. For such customers, NorthWestern would be holding either no security or insufficient security.<sup>39</sup> Accordingly, we accept NorthWestern's revisions reflected in section 7 of the Creditworthiness Procedures, without revision.

The Commission orders:

NorthWestern's proposed filing is hereby accepted for filing, effective July 10, 2018, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>39</sup> NorthWestern Answer at 6.