

131 FERC ¶ 61,202
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

NorthWestern Corporation

Docket No. ER09-1314-001

ORDER ON REHEARING

(Issued May 28, 2010)

1. On December 10, 2009, NorthWestern Corporation (NorthWestern) filed a request for rehearing of the Commission's November 10, 2009 order in this proceeding.¹ That order rejected, without prejudice, NorthWestern's proposed amendment to its Open Access Transmission Tariff (Tariff) to add Schedule 10, Regulation and Frequency Response Service for Intermittent Renewable Generator Exports. In this order we deny NorthWestern's request for rehearing of the November 10 Order.

I. Background

A. NorthWestern's Proposal

2. In its June 16, 2009 filing, NorthWestern proposed to amend its Tariff to require intermittent renewable generators to make arrangements to provide for their own regulation and frequency response service (hereinafter, regulation service) when using transmission service to export energy outside NorthWestern's balancing authority area. To accomplish this, NorthWestern proposed to add Schedule 10, which would require intermittent renewable generators exporting energy from NorthWestern's balancing authority area to demonstrate that they have successfully implemented one of the following three options, consistent with reliability guidelines: (1) establish a North American Electric Reliability Corporation (NERC) balancing authority area and operate independently of NorthWestern's balancing authority; (2) dynamically schedule their generation out of NorthWestern's balancing authority area, which would include installing the necessary metering and telecommunications facilities and obtaining the

¹ *NorthWestern Corp.*, 129 FERC ¶ 61,116 (2009) (November 10 Order).

appropriate firm transmission service to telemeter such generation into another balancing authority area; or (3) provide the regulating reserves in an amount acceptable to NorthWestern, including firm transmission from and to the source of regulation.²

3. NorthWestern argued that its proposal was necessary to fill a “gap” between its reliability obligations as a balancing authority and its ability to properly allocate and recover the costs of abiding by those obligations pursuant to its Tariff. NorthWestern explained that as a balancing authority it must follow mandatory NERC and Western Electric Coordinating Council (WECC) reliability standards, which require NorthWestern to maintain minimum regulating reserves sufficient to provide an adequate margin to allow NorthWestern to match electrical loads with generation on a moment-to-moment basis.³ NorthWestern cited the Control Performance Standard 2 (CPS 2) criteria, under which NorthWestern is required to balance generation output with load within its balancing authority during at least 90 percent of the 10-minute intervals in each month.⁴ NorthWestern further explained that Schedule 3 (Regulation and Frequency Response Service) of its Tariff only requires NorthWestern to provide regulation service for transmission used to serve load within NorthWestern’s balancing authority area—not when transmission is used to serve load outside its balancing authority area.⁵ NorthWestern therefore argued that its proposal was necessary to ensure that there would be no improper burden placed on NorthWestern’s native load customers, who should not

² NorthWestern’s proposal required that the resource provided under this “self-supply” option must be capable of changing its output either up or down in response to a signal from NorthWestern’s automatic generation control system.

³ NorthWestern Corp., June 16, 2009 Transmittal Letter at 4-5 (citing NERC Standards BAL-005-1, Automatic Generation Control, and WECC Standards BAL-STD-002-0, Operating Reserves).

⁴ See NERC Standards BAL-001-0a, Real Power Balance Control Performance.

⁵ See *NorthWestern Corp.*, 125 FERC ¶ 61,066 (2008) (accepting, among other things, revisions to Schedule 3 of NorthWestern’s Tariff as part of an uncontested settlement). Schedule 3 of NorthWestern’s Tariff currently states: “The Transmission Provider must offer [Regulation and Frequency Response] service when the transmission service is used to serve load within its Control Area. *The Transmission Provider is not obligated to provide this service when the transmission service is used to serve load located outside its control area.* The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response obligation” (emphasis added).

bear the costs of providing regulation service to manage changes in output from intermittent generators that export energy from NorthWestern's system.

4. NorthWestern argued that the problem of providing regulation service to intermittent generators that export energy is exacerbated by two factors. First, NorthWestern stated that it does not own or operate generation facilities to supply this service, and instead relies on contracts with third parties for the capacity and energy needed to meet its balancing authority obligations.⁶ NorthWestern acknowledged that the Montana Public Service Commission had recently authorized it to build and operate a new natural-gas fired generator; however, it emphasized that the facility has been sized and designed to meet the regulation service needs of customers using transmission to serve load located within NorthWestern's balancing authority area. NorthWestern therefore explained that the new generator would not address the problem identified above regarding export transactions. Second, NorthWestern argued that the number of intermittent renewable generators that export energy off-system is likely to grow significantly in the future. In support of that contention, NorthWestern pointed to the large number of intermittent wind generators currently seeking to interconnect to the NorthWestern system. NorthWestern asserted that the burden of providing regulation service for these facilities will be substantially greater than the burden associated with controllable fossil-fueled or hydroelectric generation.

B. The Commission's November 10 Order

5. In the November 10 Order, the Commission found that NorthWestern had not shown Schedule 10 to be consistent with or superior to the *pro forma* Tariff, and it therefore rejected the proposal.⁷ In evaluating whether NorthWestern's proposal was consistent with or superior to the *pro forma* Tariff, the Commission examined Tariff sections addressing the transmission provider's obligation to provide ancillary services. First, the Commission determined that Schedule 3 of the *pro forma* Tariff does not support NorthWestern's contention that it may require intermittent renewable generators to provide or otherwise account for their own generator regulation service because that schedule applies only to the regulation service needed to account for fluctuations in *load*. Because Schedule 3 does not address regulation service necessitated by fluctuations in *generator* output—the issue raised by NorthWestern's proposal in this proceeding—the

⁶ NorthWestern explained that it has historically purchased generating capacity from utilities in its region that are able to dynamically schedule generation into the NorthWestern balancing authority area. NorthWestern Corp., Attachment B at 5 (Michael R. Cashell Affidavit) (Cashell Aff.).

⁷ November 10 Order, 129 FERC ¶ 61,116 at P 24.

Commission found that NorthWestern's reliance on Schedule 3 to show that its proposal is consistent with or superior to the *pro forma* Tariff was misplaced.⁸

6. Second, because NorthWestern's proposal addressed the variability in generator output, the Commission found that it was necessary to evaluate whether the proposal was consistent with or superior to Schedule 9 (Generator Imbalance Service)⁹ because both schedules apply to the fluctuations of generation output rather than the variability of load.¹⁰ The Commission explained that whereas Schedule 9 provides for the actual energy required to resolve hourly imbalances caused by a generator, NorthWestern's proposed Schedule 10 is closely related to Schedule 9 because it would provide the necessary capacity underlying the Schedule 9 energy service.¹¹

7. The Commission noted that under *pro forma* Schedule 9, transmission providers are required to offer generator imbalance service, if feasible, when transmission is used to deliver energy from a generator located within the transmission provider's balancing authority area.¹² The Commission observed that by requiring intermittent renewable

⁸ *Id.* P 21.

⁹ Schedule 9 of the *pro forma* Tariff states that generator imbalance service is provided when a difference occurs between the output of a generator located in the Transmission Providers' Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour. The Transmission Provider *must offer* this service, to the extent it is physically feasible to do so from its resources or from resources available to it, when Transmission is used to deliver energy from a generator located within its Control area. *Pro forma* Tariff, Schedule 9 (emphasis added). NorthWestern has incorporated identical language into Schedule 9 of its Tariff. NorthWestern, FERC Electric Tariff, Seventh Revised Volume No. 5 (MT), Second Revised Sheet No. 83.

¹⁰ November 10 Order, 129 FERC ¶ 61,116 at P 22.

¹¹ *Id.*

¹² *Id.* P 23. In Order No. 890-A, the Commission explained that even where it is not physically feasible for a transmission provider to offer generator imbalance service from its own resources, "the transmission provider must attempt to procure alternatives to provide the service, taking appropriate steps to offer an option that customers can use to satisfy their obligation to acquire generator imbalance service as a condition of taking transmission service." *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, App. C, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 289-90 (2007), *order on reh'g*, Order

(continued...)

generators to select one of the three options set forth in its proposal (all of which place the obligation on the generator to obtain generator regulation service), NorthWestern would eliminate any scenario in which it would provide generator imbalance (i.e., energy) service to that facility. In this way, the Commission found that by expressly denying generator regulation (i.e., capacity) service to intermittent renewable generator export transactions, NorthWestern's proposal effectively denied those entities the generator imbalance (i.e., energy) service NorthWestern is required to offer under Schedule 9 of the *pro forma* Tariff.¹³ Accordingly, the Commission found that NorthWestern failed to demonstrate that its proposed Schedule 10 was consistent with or superior to the transmission provider's obligation to offer generator imbalance service to generators within its balancing authority under Schedule 9 of the *pro forma* Tariff.

8. The Commission's rejection of proposed Schedule 10, however, was without prejudice to NorthWestern making a revised filing in accordance with Order No. 890, which set forth a method for transmission providers to recover the generator regulation costs associated with meeting generator imbalances.¹⁴ Furthermore, the Commission found that NorthWestern had not demonstrated that an obligation to account for generator regulation service should only apply to intermittent renewable generators exporting energy, and not to all generators exporting energy from NorthWestern's balancing authority area. Therefore, the Commission required any subsequently filed proposal to offer generator regulation service to all generators exporting energy, or to demonstrate why it is not unduly discriminatory to apply such a requirement only to intermittent renewable generators.¹⁵

C. NorthWestern's Request for Rehearing

9. In its rehearing request, NorthWestern contends that the November 10 Order departed from Commission precedent by holding (1) that generator imbalance service

No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

¹³ *Id.*

¹⁴ *Id.* P 26 (referencing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 689-90; *Entergy Services Inc.*, 120 FERC ¶ 61,042, at P 62-66 (2007) (*Entergy*) (accepting a transmission provider's proposal to incorporate in its generator imbalance agreement separate generator regulation charges for generation resources selling out of the control area)).

¹⁵ *Id.* P 28.

under Schedule 9 of the *pro forma* Tariff includes regulation service; (2) that transmission providers must offer both services under Schedule 9 of the *pro forma* Tariff; and (3) that transmission providers have an obligation to procure the resources they need to offer regulation service to exporting generators if they do not already have them.

10. NorthWestern contends that Schedule 9 is purely an energy service; it does not include the separate and distinct regulation service. NorthWestern argues that by holding that Schedule 9 includes regulation service in addition to generator imbalance service, the November 10 Order marks an unsupported shift in policy.¹⁶ NorthWestern contends that the November 10 Order does not adequately explain how regulation service can be subsumed within generator imbalance service in light of the differing characteristics of these services and Commission precedent recognizing these differences.¹⁷ NorthWestern further argues that the Commission limited the transmission provider's obligation to offer Schedule 9 service in Order No. 890-B, when it clarified that in the event that there are no additional resources available to enable the transmission provider to provide generator imbalance service, the transmission provider must accept the use of dynamic scheduling by a transmission customer.¹⁸ NorthWestern also notes that Order No. 890-B holds that a transmission provider cannot require dynamic scheduling because the customer may choose to make other arrangements, e.g., self-supply of generator imbalance energy.¹⁹ NorthWestern states that it was following this direction by including a dynamic scheduling option in addition to options for generators to become their own balancing authority area or to self-supply generator regulating capacity in its proposed Schedule 10.

11. NorthWestern also argues that requiring it to provide regulation service to intermittent renewable generator exports raises a number of issues in light of NorthWestern's recent rate case settlement.²⁰ NorthWestern states that the rate case settlement established (1) that NorthWestern has no responsibility to supply regulation

¹⁶ NorthWestern, December 10, 2009 Rehearing Request at 5.

¹⁷ *Id.* at 6 (citing *Sierra Pac. Res. Operating Cos.*, 125 FERC ¶ 61,026 (2008)).

¹⁸ *Id.* at 7 (citing Order No. 890-B, 123 FERC ¶ 61,299 at P 42).

¹⁹ *Id.*

²⁰ *NorthWestern Corp.*, 125 FERC ¶ 61,066 (2008) (accepting, among other things, revisions to Schedule 3 of NorthWestern's Tariff as part of an uncontested settlement, and expressly providing that NorthWestern is not obligated to supply regulation and frequency response service under Schedule 3 to serve load located outside of its balancing authority area).

service to support export transactions and (2) that if it is required to procure additional resources to meet the ancillary services requirements of a customer or class of customers, the costs are to be borne solely by that customer or class of customers.²¹ NorthWestern states that for it to provide regulation service for generation exports, it would need to procure additional resources that are capable of providing regulation service and that are equipped with the telemetering equipment necessary for the resources to be dynamically scheduled into NorthWestern's balancing authority area. NorthWestern states that acquiring such resources would give rise to yet other issues: the recovery of costs incurred in building or procuring the resources; the duration of the commitment by wind generators to procure regulation service to assure that there are no stranded costs; and how the cost responsibility for regulation service will be allocated among customers. Noting its large interconnection queue, NorthWestern argues that it may have to procure a significant quantity of regulation reserves. NorthWestern states that once such resources are procured, additional questions will be raised as to the length of service commitments as well as the appropriate method to measure the amount of regulating capacity that intermittent resources must buy. NorthWestern also raises the question of how native load customers will be protected from additional costs for excess regulating resources if interconnection generators ultimately do not go into service as planned.

II. Discussion

A. Procedural Matters

12. On April 7, 2010, the Montana Public Service Commission (Montana Commission) filed a motion to intervene out-of-time. The Montana Commission states that it did not anticipate the determinations made by the Commission in the November 10 Order, and that these holdings may impact NorthWestern's native load customers. The Montana Commission therefore seeks to intervene out of time and states that it accepts the record as it has been developed to this point and simply wants to participate in the rehearing should the Commission afford parties the opportunity to submit additional comments.

13. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, a moving party bears a high burden to demonstrate good cause for allowing late intervention after the Commission has issued a

²¹ NorthWestern, December 10, 2009 Rehearing Request at 8 (citing NorthWestern, February 15, 2008 Stipulation and Agreement, Docket No. ER07-46-000, at § 3.5).

dispositive order in a proceeding.²² Under the circumstances, we find that granting late intervention at this time will not cause any unjustified delay or disruption of the proceeding, nor will it create an undue burden on other parties or the Commission.²³ Accordingly, for good cause shown, we grant the Montana Commission's unopposed motion to intervene in this proceeding, subject to its acceptance of the record as it has been developed to this point.

B. Substantive Matters

14. For the reasons discussed below, we deny NorthWestern's request for rehearing. NorthWestern characterizes the November 10 Order as requiring transmission providers to offer generator regulation service to support generator export transactions under Schedule 9 of the *pro forma* Tariff. However, NorthWestern mischaracterizes the holding in the November 10 Order. The issue in the November 10 Order was whether NorthWestern had shown its proposal to be consistent with or superior to the *pro forma* Tariff.²⁴ The Commission determined that NorthWestern had not met this standard. On rehearing, NorthWestern does not challenge this core determination, i.e., that its proposal is not consistent with or superior to the obligations set forth in Schedule 9 of the

²² See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003); *H.Q. Energy Services (U.S.), Inc. v. New York Independent System Operator, Inc.*, 100 FERC ¶ 61,028, at 61,072 (2002); *North Baja Pipeline LLC*, 99 FERC ¶ 61,028, at 61,109-10 (2002); *Florida Power & Light Co.*, 99 FERC ¶ 61,318, at 62,358 (2002) (“[Any potential party] must take appropriate steps to protect its interests. Adopting a ‘wait and see’ attitude and moving to intervene once the result of Commission deliberation is known falls far short of the demonstration of good cause that would support a late intervention request.”).

²³ See *North Baja Pipeline LLC*, 99 FERC ¶ 61,028, at 61,109-10 (2002).

²⁴ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135 (allowing transmission providers to submit filings under section 205 of the Federal Power Act to propose rates for the services provided in the Tariff, as well as non-rate terms and conditions that differ from those in the *pro forma* Tariff, if those provisions are “consistent with or superior to” the *pro forma* Tariff set forth in Order No. 890). The Commission utilized the same “consistent with or superior to” standard even before Order No. 890. See *Enron Power Marketing Inc. v. FERC*, 296 F.3d 1148, at 1151 (D.C. Cir. 2002) (explaining that the standard against which the Commission reviews tariff filings is whether they are consistent with or superior to the Order No. 888 *pro forma* Tariff).

pro forma Tariff. Accordingly, we affirm the determination in the November 10 Order and deny NorthWestern's request for rehearing.

15. As articulated in the November 10 Order, NorthWestern's proposal to require intermittent renewable generators to provide for their own generator regulation service under proposed Schedule 10 would impact its existing obligation to offer generator imbalance service under Schedule 9 of the *pro forma* Tariff.²⁵ Whereas generator imbalance service is an *energy* service that accounts for the difference between the energy scheduled for delivery and the energy actually delivered in each hour, the generator regulation service contemplated by NorthWestern's proposed Schedule 10 represents the *capacity* service necessary to accommodate the moment-to-moment deviations in generation output that ultimately result in imbalances (when netted across the hour). While these services are different in function, they are closely related insofar as both services apply to deviations from the scheduled *generator* output. It is therefore likely that NorthWestern's disclaiming any obligation to provide one of these services to a particular class of customers (i.e., intermittent renewable generators exporting from NorthWestern's balancing authority area) would impact the other service. Accordingly, in the November 10 Order, the Commission found that "NorthWestern's obligation to offer generator imbalance (i.e., energy) service under Schedule 9 of the *pro forma* Tariff would be undermined by a requirement that intermittent renewable generators in NorthWestern's balancing authority supply or otherwise account for their own generator regulation (i.e., capacity) service."²⁶

16. The relationship between generator imbalance and generator regulation service is well-established in Commission precedent,²⁷ and the Commission has on multiple occasions recognized that a transmission provider's obligation to offer generator imbalance service under Schedule 9 can result in associated generator regulation costs. Specifically, Order No. 890 explained that Schedule 9 implicates a capacity, or demand, component in addition to the energy component needed to meet actual hourly

²⁵ November 10 Order, 129 FERC ¶ 61,116 at P 22.

²⁶ *Id.* P 24.

²⁷ *See Florida Power Corp.*, 89 FERC ¶ 61,263, at 61,765 (1999) (*Florida Power*) ("The Commission concludes that a generator imbalance capacity obligation is imposed on the transmission provider for export transactions, and therefore the Commission accepts Florida Power Corp's Generator Regulation Service as a reasonable proposal in those circumstances where the service is not already covered in an interconnection agreement or a separate generator tariff.").

imbalances.²⁸ Order No. 890 therefore sets forth a method for transmission providers to recover the costs associated with providing generator regulation service: “To address [the] concern that the real-time regulation burden imposed by [independent power producers] is similar to the real-time regulation burden imposed by loads, we will allow transmission providers to propose separate regulation charges for generation resources selling out of the control area and consider such proposals on a case-by-case basis.”²⁹ Since the issuance of Order No. 890, the Commission has accepted proposals that seek to recover such generator regulation charges.³⁰ Recently, the Commission accepted a proposal to implement a generator regulation charge for generators that are exporting outside the balancing authority area and accepted different rates for intermittent generation resources where it was shown that such resources imposed a greater burden on the transmission provider’s system than traditional dispatchable generation resources.³¹

17. Because of the relationship between generator regulation and generator imbalance service, the November 10 Order reasonably evaluated NorthWestern’s proposal in light of the requirements of Schedule 9 to determine whether it is consistent with or superior to the *pro forma* Tariff. Regardless of whether Schedule 9, per se, requires transmission providers to offer only generator imbalance service (i.e., the energy service), as indicated above, the issue in this proceeding is whether NorthWestern’s proposal is consistent with or superior to the *pro forma* Tariff. In light of the relationship between generator imbalance service and generator regulation service, as well as the Commission’s conclusion that NorthWestern’s proposal to expressly deny one service would have a deleterious effect on its obligation to offer the other, the November 10 Order appropriately found that NorthWestern had not met its burden of showing that its proposal is consistent with or superior to the *pro forma* Tariff.

18. Accordingly, the November 10 Order did not find, as NorthWestern asserts, that generator regulation service is subsumed in Schedule 9. Rather, the determination was

²⁸ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 690 (“If the transmission provider elects to have separate demand charges assigned to customers for the purpose of recovering the cost of holding additional reserves for meeting imbalances, the transmission provider should file a rate schedule and demonstrate that these charges do not allow for double recovery of such costs.”).

²⁹ *Id.* P 690.

³⁰ See, e.g., *Entergy*, 120 FERC ¶ 61,042 at P 62-66; *Sierra Pac. Res. Operating Cos.*, 125 FERC ¶ 61,026 (2008).

³¹ *Westar Energy Inc.*, 130 FERC ¶ 61,215 (2010) (*Westar*).

limited to NorthWestern's failure to address the manner in which its proposal would be consistent with its obligation to offer generator imbalance service pursuant to Schedule 9 of its Tariff. Although NorthWestern contends that Schedule 9 does not implicate a generator regulation component, it does not address the Commission's determination that the practical effect of its proposal will be to undermine its obligation to offer Schedule 9 service. We therefore affirm the determination set forth in the November 10 Order that NorthWestern's proposed Schedule 10 is not consistent with or superior to the *pro forma* Tariff.

19. NorthWestern appears to argue that in Order No. 890-B, the Commission limited transmission providers' obligation to offer Schedule 9 service in the event that the transmission provider lacks the resources to do so, and that such a limitation supports its proposal here.³² However, this characterization of Order No. 890-B does not accurately represent the extent of a transmission provider's obligation to offer Schedule 9 service. Order No. 890-A explains that "[i]f it is not physically feasible for the transmission provider to offer generator imbalance service using its own resources, either because they do not exist or they are fully subscribed, the transmission provider must attempt to procure alternatives to provide the service...."³³ Order No. 890-B did not limit this obligation. It simply explained that where a transmission provider cannot provide or procure resources and the customer requests the use of dynamic scheduling, the transmission provider must accept a customer's request to use a dynamic schedule.³⁴ Nothing in Order 890-B relieves NorthWestern of the obligation to attempt to procure resources to provide generation imbalance service when it is not physically feasible to provide the service from its own resources.³⁵ Accordingly, NorthWestern has not shown that its current lack of generating resources renders its proposal consistent with or superior to the *pro forma* Tariff.

³² NorthWestern, December 10, 2009 Rehearing Request at 7 (citing Order No. 890-B, 123 FERC ¶ 61,299 at P 42).

³³ See November 10 Order, 129 FERC ¶ 61,116 at P 23 n.19 (referencing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 290).

³⁴ Order No. 890-B, 123 FERC ¶ 61,299 at P 42.

³⁵ Moreover, as the Commission explained in the November 10 Order, NorthWestern has been able to procure alternative resources from generation facilities in the region and it does not argue or provide evidence that it is infeasible for it to offer generator imbalance service or the additional regulating reserves necessary to support the service. November 10 Order, 129 FERC ¶ 61,116 at P 23 n.19.

20. NorthWestern also argues that requiring it to provide regulation service to intermittent renewable generator exports raises a number of issues in light of NorthWestern's recent rate case settlement,³⁶ and that other issues may arise in the event that NorthWestern implements a tariff provision that explicitly offers to provide this service. First, as articulated in the November 10 Order, provisions contained in Schedule 3 pertaining to the provision of regulation service necessary to support fluctuations in load³⁷ do not support NorthWestern's proposal to require intermittent renewable generators to provide or otherwise account for regulation service necessary to support fluctuations in their own generator's output. It is therefore not relevant to the present inquiry that NorthWestern's previous settlement modified Schedule 3 of its Tariff to state that NorthWestern is not obligated to supply Schedule 3 regulation service to load located outside of its balancing authority area. NorthWestern is proposing a new rate schedule here, which goes beyond the matters contemplated in its most recent settlement and seeks to impose new requirements on existing and future intermittent renewable generators. Nothing in NorthWestern's Schedule 3 expressly supports such a proposal.³⁸

21. Second, as NorthWestern's initial proposal acknowledged, certain NERC reliability standards obligate NorthWestern to provide regulation service to account for the deviations from scheduled transactions of generators exporting energy from its

³⁶ See *NorthWestern Corp.*, 125 FERC ¶ 61,066 (2008) (accepting, among other things, revisions to Schedule 3 of NorthWestern's Tariff as part of an uncontested settlement, and expressly providing that NorthWestern is not obligated to supply regulation and frequency response service under Schedule 3 to serve load located outside of its balancing authority area).

³⁷ November 10 Order, 129 FERC ¶ 61,116 at P 21 (citing *See 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 31,707-17 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,230 (1997), *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)).

³⁸ NorthWestern appears to concede this point by not expressly challenging the Commission's determination that Schedule 3 does not support its proposal in this proceeding and instead focusing on implementation issues that may arise from the Commission's November 10 Order. NorthWestern, December 10, 2009 Rehearing Request at 7-8.

balancing authority area.³⁹ The November 10 Order does not change NorthWestern's obligations with respect to these reliability standards. It finds that NorthWestern's proposal to disclaim any responsibility to offer generator regulation service for intermittent renewable generator export transactions, which it is otherwise required to provide pursuant to applicable reliability standards, is not consistent with or superior to NorthWestern's obligation to offer generator imbalance service under Schedule 9. Thus, we disagree that the November 10 Order presents implementation issues that need to be addressed herein. Any issues that may arise if and when NorthWestern makes a future section 205 filing to offer, allocate, and recover the cost of providing generator regulation service should be addressed in the context of that filing.

22. NorthWestern further contends that the Commission should have accepted its proposal because at the time of filing it had no rate base generation assets from which to provide regulation service. NorthWestern argues that it would therefore need to procure additional resources to provide the service, which would give rise to issues such as recovery of costs incurred in building or procuring new resources, the duration of the commitment by wind generators to assure that there are no stranded costs, and cost allocation among customers (i.e., measuring the amount of regulating capacity that intermittent resources must buy). These arguments, however, do not address whether NorthWestern's proposal is consistent with or superior to the *pro forma* Tariff. While these issues would be relevant to a subsequent filing under section 205 filing in which NorthWestern proposes a mechanism to offer, allocate, and recover the cost of providing generator regulation service for export transactions, they are not relevant to the instant request for rehearing, in which the consistency of NorthWestern's proposal with the *pro forma* Tariff is at issue. Accordingly, because these concerns do not address the merits of the November 10 Order, they do not support NorthWestern's request for rehearing, and we will refrain from addressing them.

23. As explained in the November 10 Order, our decision is without prejudice to NorthWestern making a filing in which it includes an offer to provide generator regulation service and setting forth the rates, terms and conditions for doing so. Such a tariff filing should allow NorthWestern to recover and properly allocate the costs of providing the service, and upon a sufficient showing, to allocate separate regulation charges for intermittent generators.⁴⁰ As explained above, the Commission recognized

³⁹ NorthWestern Corp., June 16, 2009 Transmittal Letter at 4-5 (citing NERC Standards BAL-005-1, Automatic Generation Control, and WECC Standards BAL-STD-002-0, Operating Reserves).

⁴⁰ See *Westar*, 130 FERC ¶ 61,215 at P 35 (accepting a proposal to charge different generator regulation charges for dispatchable and intermittent generation).

that the generator imbalance service provided under Schedule 9 implicates a capacity, or demand component in addition to the energy component needed to meet actual hourly imbalances.⁴¹ The Commission also set forth a method for transmission providers to recover the generator regulation costs associated with meeting generator imbalances.⁴² NorthWestern's failure to address this method of dealing with a generator regulation burden associated with the provision of generator imbalance service further supports our determination that its proposed Schedule 10 is not consistent with or superior to the *pro forma* Tariff.

24. Therefore, we deny rehearing of the November 10 Order, noting, however, that the method set forth in Order 890 (and reiterated here) provides an appropriate template for NorthWestern to address the problem it sought to resolve by its proposed Schedule 10.⁴³

The Commission orders:

NorthWestern's request for rehearing of the November 10 Order is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 690 (“If the transmission provider elects to have separate demand charges assigned to customers for the purpose of recovering the cost of holding additional reserves for meeting imbalances, the transmission provider should file a rate schedule and demonstrate that these charges do not allow for double recovery of such costs.”).

⁴² *Id.* P 689-90; *Entergy*, 120 FERC ¶ 61,042 at P 62-66. *See also Westar*, 130 FERC ¶ 61,215.

⁴³ To the extent Northwest wishes to take an approach different from the Order No. 890 template, NorthWestern must, at the very least, address why the method set forth in Order No. 890 is not appropriate.