

167 FERC ¶ 61,278
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

NorthWestern Corporation

Docket Nos. ER19-1756-000
EL18-104-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS,
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES, AND
TERMINATING SECTION 206 PROCEEDING

(Issued June 28, 2019)

1. On May 1, 2019, NorthWestern Corporation (NorthWestern) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² proposed revisions to its Montana Open Access Transmission Tariff (OATT) to change from stated rates to formula rates for transmission and certain ancillary services, and proposed revisions to certain ancillary service schedules. In this order, we accept NorthWestern's proposed revisions to its OATT, suspend them for a nominal period, to become effective July 1, 2019, subject to refund, and establish hearing and settlement judge procedures. We also find that NorthWestern has shown cause as to why its current stated transmission rates should not be revised to reflect the reduced federal corporate income tax rate set forth in the Tax Cuts and Jobs Act of 2017,³

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2018).

³ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act). Section 13001 of the Tax Cuts and Jobs Act reduces the federal corporate income tax rate from a maximum of 35 percent to a flat 21 percent rate.

and therefore terminate the proceeding instituted under section 206 of the FPA⁴ in Docket No. EL18-104-000.

I. Background

2. On March 15, 2018, the Commission issued several orders to address the effects of the Tax Cuts and Jobs Act, which, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent.⁵ Of relevance here, pursuant to FPA section 206, the Commission issued the Stated Rate Order to Show Cause to public utilities that use stated transmission rates under an open access transmission tariff or transmission owner tariff.

3. In the Stated Rate Order to Show Cause, the Commission found that the reduced federal corporate income tax rate results in lower income tax expenses for public utilities going forward and because public utilities recover federal corporate income tax expenses in their transmission rates, when tax expenses decrease, so does the cost of service.⁶

4. The Commission identified NorthWestern as having stated transmission rates in effect and explained that, absent a change, NorthWestern's stated transmission rates may not accurately reflect its cost of service. Accordingly, the Commission found that NorthWestern's stated transmission rates appear to be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful, and directed NorthWestern to either (1) propose revisions to its stated transmission rates, or (2) show cause why it should not be required to do so.⁷

5. On May 14, 2018, NorthWestern filed a response to the Stated Rate Order to Show Cause arguing that no revisions to its stated transmission rates are necessary because NorthWestern has offsetting increases in other expenses that the Commission should consider. In addition, NorthWestern committed to filing a transmission rate case with the Commission in the near future. On November 15, 2018, the Commission issued an order acknowledging NorthWestern's response and held the FPA section 206 proceeding

⁴ 16 U.S.C. § 824e.

⁵ *Alcoa Power Generating Inc.—Long Sault Division*, 162 FERC ¶ 61,224 (2018) (Stated Rate Order to Show Cause).

⁶ *Id.* PP 2-4.

⁷ *Id.* P 4.

in abeyance, given NorthWestern's commitment to file a transmission rate case with the Commission.⁸

II. NorthWestern's Filing

6. NorthWestern states that, since its last rate case in 2006 that established its current stated transmission rates, NorthWestern's cost of service of providing transmission service has increased significantly and that NorthWestern is under-recovering its costs of doing business.⁹ NorthWestern explains that a primary driver for its filing is due to NorthWestern's significant investments in transmission infrastructure since 2006. NorthWestern also states that another important driver for its filing is the change in its capability to provide ancillary services under the OATT. NorthWestern states that, given these drivers, it proposes OATT revisions to its transmission and ancillary services rates. In addition, NorthWestern states that its filing is consistent with its commitment to file a transmission rate case with the Commission in response to the Stated Rate Order to Show Cause.¹⁰ NorthWestern requests that the Commission accept its proposed OATT revisions to be effective July 1, 2019.¹¹

III. Notice of Filing and Responsive Pleadings

7. Notice of NorthWestern's filing was published in the *Federal Register*, 84 Fed. Reg. 20,351 (2019), with interventions and protests due on or before May 22, 2019. Timely motions to intervene were filed by Members 1st Power Cooperative; Powerex Corp.; Avangrid Renewables, LLC; and Montana Consumer Counsel. Timely motions to intervene and protests were filed by Basin Electric Power Cooperative (Basin Electric); Consolidated Edison Development, Inc. (Consolidated Edison); American Wind Energy Association and Renewable Northwest (Wind Association); Central Montana Electric Power Cooperative, Inc. (Central Montana); NaturEner USA, LLC (NaturEner); Talen Energy Marketing, LLC and Talen Montana, LLC (Talen); Morgan Stanley Capital Group, Inc. (Morgan Stanley); Bonneville Power Administration (Bonneville); Montana Large Customer Group (Montana Customers); and Energy Keepers, Incorporated (Energy Keepers) (together, Protestors). A motion to intervene, request for clarification, and

⁸ *NorthWestern Corp.*, 165 FERC ¶ 61,102 (2018), *reh'g dismissed*, 166 FERC ¶ 61,193 (2019).

⁹ *See NorthWestern Corp.*, 117 FERC ¶ 61,293 (2006); *see also NorthWestern Corp.*, 125 FERC ¶ 61,066 (2008).

¹⁰ Filing at 3-6.

¹¹ *Id.* at 36.

protest was filed by Western Area Power Administration (WAPA). A motion to intervene and comments were filed by Beartooth Electric Cooperative, Inc. (Beartooth). On May 31, 2019, PacifiCorp filed a motion to intervene. On June 6, 2019, NorthWestern filed an answer to the protests. On June 20, 2019, Montana Customers filed an answer to NorthWestern's answer.

8. As further discussed below, Protestors argue that NorthWestern's proposed OATT revisions are unjust, unreasonable, and substantially excessive, and raise issues of material fact. Accordingly, Protestors contend that the Commission should suspend NorthWestern's proposed rates for the maximum five-month period, subject to refund, and establish hearing and settlement judge procedures.¹² In response, NorthWestern contends that the Commission should not suspend its proposed OATT revisions for the maximum suspension period, but states that it is amenable to setting its proposed OATT revisions for settlement discussion.¹³ In their answer, Montana Customers state that they have chosen not to respond to NorthWestern's answer in detail due to NorthWestern being amenable to setting the proposed OATT revisions for settlement discussion. However, Montana Customers disagree with NorthWestern that the Protestors have not met the Commission's standard for instituting a five-month suspension.¹⁴

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), we grant PacifiCorp's late-filed motion to intervene given

¹² Basin Electric Protest at 2-3 and 43-46; Bonneville Protest at 3, 6, and 16; Central Montana at 32-34; Consolidated Edison Protest at 6-10; Energy Keepers Protest at 5; Montana Customers Protest at 11; Morgan Stanley Protest at 4; NaturEner Protest at 2-5; Talen Protest at 16-19; Wind Association Protest at 1-3. While Beartooth does not protest NorthWestern's filing, Beartooth comments that the magnitude and timing of NorthWestern's filing does not adequately take into account Beartooth's financial constraints. Beartooth Comments at 2.

¹³ NorthWestern Answer at 1, 5, 21-24.

¹⁴ Montana Customers Answer at 1-2.

its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NorthWestern's and Montana Customers' answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. OATT Revisions

a. Transmission Formula Rate

i. Template

(a) NorthWestern's Filing

12. NorthWestern proposes to convert its transmission rates from stated rates to a forward-looking formula rate with a true-up mechanism that uses a rate year of June 1 to May 31 (Transmission Formula Rate). NorthWestern states that the Transmission Formula Rate template will calculate an annual transmission revenue requirement (ATRR) that includes a weighted average cost of capital return on a depreciation net-plant (non-levelized) rate base plus operating expenses and taxes. NorthWestern states that the template calculates both a projected ATRR based on project cost inputs for the current calendar year, and, for purposes of the true-up calculation, an actual ATRR based on actual cost inputs from the prior calendar year.¹⁵

13. According to NorthWestern, the template includes separate worksheets for the calculation of the projected and actual ATRRs, projected and actual transmission rates, and the true-up calculation. Further, NorthWestern states that the template includes separate projected and actual calculations for inputs to the ATRRs, including operation and maintenance (O&M) expenses, administrative and general (A&G) expenses, and revenue credits, as well as for the capital structure and cost of debt.¹⁶

14. NorthWestern explains that each year on or before May 1, the components of the projected ATRR in the template will be populated based upon NorthWestern's annual corporate budget process. In addition, NorthWestern explains that each year on or before May 1, the components of the actual ATRR will be populated with NorthWestern's

¹⁵ Filing at 7.

¹⁶ *Id.* at 6.

FERC Form No. 1 data for the prior calendar year. NorthWestern asserts that it will compare the projected and actual ATRRs and that any over- or under-recoveries of the actual ATRR will be added to the next year's projected rates, with interest calculated in accordance with 18 C.F.R. § 35.19a of the Commission's regulations.¹⁷

15. NorthWestern states that the projected ATRR for the rate year beginning June 1, 2019 is \$111,834,743, resulting in network integration transmission service and point-to-point transmission service rates of \$4.831/kilowatts (kW)-month.¹⁸

(b) Protests

16. Basin Electric, Talen, and WAPA argue that NorthWestern failed to demonstrate that the facilities included in rate base are transmission facilities, and because NorthWestern did not include a list of all its transmission facilities, any one-line diagrams, or references to the specific qualifications of each facility under the Commission's seven-factor test, it is impossible to determine whether NorthWestern's proposed rates are just and reasonable.¹⁹ WAPA also requests that NorthWestern include a requirement in its Transmission Formula Rate protocols that lists newly proposed facilities with each annual update and the criteria under the Commission's seven-factor test for inclusion on the list.²⁰

17. Montana Customers argue that NorthWestern's filing does not provide enough information about its claimed transmission plant additions, asserting that NorthWestern's filing does not address \$127 million of the approximately \$416 million of transmission plant that NorthWestern claims has increased since 2006.²¹

18. According to Talen, NorthWestern specifies \$48.4 million in investment for network upgrades necessary to interconnect new generation on its system. However, Talen argues that customers are unable to verify that these facilities are properly included in the rate base, or whether the facilities are more appropriately

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 6.

¹⁹ Basin Electric Protest at 32-24; Talen Protest at 10-12; WAPA Protest at 5-7.

²⁰ WAPA Protest at 6.

²¹ Montana Customers Protest at 4-5.

direct-assigned interconnection facilities or should otherwise be fully allocated to the interconnection customer.²²

19. Montana Customers contend that NorthWestern's proposal to use its annual corporate budget as a means of forecasting its ATRR that will subsequently be trued up should not be allowed and instead its ATRR should be tied to financial information reported in NorthWestern's FERC Form No. 1.²³

20. Bonneville and Montana Customers protest NorthWestern's proposed inclusion of Account 565 (Transmission of Electricity by Others) costs in its ATRR, which they contend only should be allowed if the third-party facilities effectively constitute part of the utility's integrated transmission system or if the utility uses the facilities on a day-to-day basis to transmit power and energy for OATT customers.²⁴

21. According to Bonneville, NorthWestern's proposed Transmission Formula Rate includes lines in Transmission O&M for costs from Accounts 561.4 (Scheduling, System Control, and Dispatching Service), 561.6 (Transmission Service Studies), 561.7 (Generation Interconnection Studies), and 561.8 (Reliability Planning and Standards Development Services). However, Bonneville argues that NorthWestern provides no basis for including these costs, and that because NorthWestern does not project such costs in 2019, these accounts should not be included as line items in the Transmission Formula Rate.²⁵

22. Bonneville also raises issues with NorthWestern's proposed Transmission Formula Rate template, arguing that (1) it lacks a line item for unfunded reserve credits, (2) does not sufficiently identify how load is calculated or projected for the 12 month average transmission peak, and (3) does not identify membership dues.²⁶ Basin Electric also alleges that the template includes numerous errors, specifically in Tables 4, 5, 6, 7, and 8.²⁷ Further, Basin Electric alleges that NorthWestern failed to properly reflect how

²² Talen Protest at 10-11.

²³ Montana Customers Protest at 4.

²⁴ Bonneville Protest at 10-11; Montana Customers Protest at 6.

²⁵ Bonneville Protest at 11-12.

²⁶ Montana Customers Protest at 12-13.

²⁷ Basin Electric Protest at 8-11.

materials and supplies inventory should be assigned to construction on FERC Form No. 1 and inappropriately included A&G expenses not related to transmission.²⁸

23. Basin Electric argues that NorthWestern failed to justify the inclusion of certain costs in its Transmission Formula Rate. Basin Electric contends, for example, that there are 12 schedules in the Transmission Formula Rate where the source data for inputs references “Company Records,” but NorthWestern did not include these “Company Records” in its filing. Basin Electric also contends that NorthWestern’s projected and actual rate base calculations do not deduct all of NorthWestern’s unfunded reserves, which it should, but only those relating to injuries and damages.²⁹

24. Basin Electric also alleges that NorthWestern’s inclusion of an acquisition adjustment violates Commission policy because rate recovery of the cost of acquired facilities is generally limited to the original cost of the facilities and is not guaranteed.³⁰

25. In addition, Basin Electric argues that the Transmission Formula Rate does not include a credit against NorthWestern’s ATRR for the cost of distribution facilities that are attached to its transmission poles and structures. Further, Basin Electric contends that NorthWestern’s allocation of shared A&G expenses and common plant to its Montana operations from its South Dakota and Nebraska operations lacks transparency and may be incorrect.³¹

(c) Answer

26. NorthWestern asserts that, while its filing does not include a comprehensive list of plant allocated to transmission, NorthWestern’s OATT sets forth its local transmission planning process and a copy of its 2016-2017 local area plan was included in its filing. NorthWestern contends that there is no generally applicable requirement that a formula rate must include a comprehensive list of each transmission facility, one-line diagrams, or a seven-factor test analysis.³²

²⁸ *Id.* at 11-14.

²⁹ *Id.* at 5, 14-16.

³⁰ *Id.* at 20-22.

³¹ *Id.* at 22-24.

³² NorthWestern Answer at 6-8.

27. According to NorthWestern, no acquisition adjustment is included in the Transmission Formula Rate. NorthWestern asserts that the Transmission Formula Rate includes placeholder calculations in the event that an acquisition adjustment is approved for inclusion in rates and a statement that any such adjustment must be approved by the Commission.³³

28. NorthWestern argues that its A&G expenses used in the true-up will come from the FERC Form No. 1 for the applicable year, whereas “Company Records” will be used to populate forecasted costs for the upcoming rate year.³⁴

ii. Protocols

(a) NorthWestern’s Filing

29. NorthWestern states that the Transmission Formula Rate includes a set of protocols detailing how the template will be updated and the process by which customers will be able to participate in a review of the annual update. According to NorthWestern, the protocols are modeled on those accepted by the Commission for NorthWestern’s South Dakota operations under the Southwest Power Pool, Inc. Open Access Transmission Tariff. NorthWestern states that the protocols are also consistent with the Commission’s requirements relating to scope of participation, transparency of the information exchange, and the ability of customers to present challenges.³⁵

30. NorthWestern explains that its protocols clarify that it may make single-issue filings under FPA section 205 to address certain fixed components of the Transmission Formula Rate template, including depreciation rates, post-employment benefits other than pensions (PBOP), construction work in progress, abandoned plant and extraordinary property losses, and the fixed contribution ratios and capacity obligations used in the rates for certain ancillary service schedules.³⁶

(b) Protests

31. Basin Electric and Montana Customers protest NorthWestern’s proposal to allow its Transmission Formula Rate template to be modified in the future through single-issue filings. Basin Electric and Montana Customers claim that NorthWestern has not

³³ *Id.* at 13.

³⁴ *Id.* at 13-14.

³⁵ Filing at 8.

³⁶ *Id.*

demonstrated that such a provision in its protocols is just and reasonable and therefore should be rejected.³⁷

32. Basin Electric and Montana Customers protest the timelines included in NorthWestern's Transmission Formula Rate protocols. Specifically, Montana Customers contend that NorthWestern's proposed May 1 date associated with posting its annual update to its OATT rates, including both the projected rate and true-up for the prior year, provides no opportunity for transmission customers to identify and attempt to resolve issues with NorthWestern prior to those rates becoming effective on June 1.³⁸ Basin Electric also raises concerns with the May 1 date, along with the proposed definition of "interested parties," date of the annual meeting, information exchange procedures, timeline for responding to document requests, and time limit for submitting formal challenges.³⁹

33. According to Basin Electric, the protocols do not include a requirement to submit with the annual update any accompanying workpapers. Further, Basin Electric argues that the protocols inappropriately limit the scope of information requests to those that are "reasonable" or have "significant effect" on the calculation of a charge, which could be used by NorthWestern to restrict information requests.⁴⁰

(c) Answer

34. NorthWestern alleges that its provision to allow for future single-issue filings is not prohibited by Commission precedent, as the Commission has accepted protocols allowing single-issue filings for ADIT, amortization periods, depreciation rates, PBOP costs, and flex reserve requirements. NorthWestern also alleges that its protocols provide adequate information and afford sufficient time for parties to review annual updates. According to NorthWestern, while its rates go into effect on June 1 while the customer review process is ongoing, customers are not harmed due to the protections offered by the annual review process.⁴¹

³⁷ Basin Electric Protest at 7-8; 38-39; Montana Customers Protest at 7-8.

³⁸ Montana Customers Protest at 8.

³⁹ Basin Electric Protest at 39-41.

⁴⁰ *Id.* at 42-43.

⁴¹ NorthWestern Answer at 17-20.

iii. Return on Equity (ROE)**(a) NorthWestern's Filing**

35. NorthWestern states that the Transmission Formula Rate includes a fixed base ROE component of 10.5 percent that cannot be changed by NorthWestern absent an FPA section 205 filing. NorthWestern explains that the ROE is based on the recommendations of Mr. McKenzie, who developed his recommendations based upon the analysis of several models of the cost of equity used by investors and adopted by the Commission in Opinion Nos. 531.⁴² and 551.⁴³ NorthWestern asserts that, due to the shortcomings in relying upon the two-step discounted cash flow (DCF) model and Capital Asset Pricing Model (CAPM), Mr. McKenzie considered the following four models of the cost of equity: constant-growth DCF model, empirical CAPM, Expected Earnings Analysis, and Risk Premium methodology. According to NorthWestern, the ROE of 10.5 percent is consistent with the 10.5 percent average median value and falls below the 10.8 percent average midpoint produced by these four models.⁴⁴

(b) Protests

36. Basin Electric, Bonneville, Central Montana, Montana Customers, and Talen protest NorthWestern's proposed ROE. Generally, these protestors contend that NorthWestern modifications to the Commission's composite ROE methodology by replacing the two-step DCF with a constant growth DCF model and replacing the CAPM with an empirical CAPM are improper.⁴⁵

37. Specifically, Central Montana alleges that: (1) NorthWestern fails to follow the Commission's guidelines for establishing a proxy group; (2) NorthWestern's DCF analysis is flawed; (3) NorthWestern's CAPM analysis is based on a flawed estimate of the expected return in the market and violates the Efficient Markets Hypothesis by estimating a CAPM result based on projected interested rates; (4) NorthWestern's

⁴² *Coakley v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014), *order on paper hearing*, 149 FERC ¶ 61,032 (2014), *order on reh'g*, 150 FERC ¶ 61,165 (2015).

⁴³ *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 551, 156 FERC ¶ 61,234 (2016).

⁴⁴ Filing at 9-10.

⁴⁵ Basin Electric Protest at 31-32; Bonneville Protest at 5-9; Central Montana Protest at 4-32; Montana Customers Protest at 3-4; Talen Protest at 5-9.

analysis produces ROE results based on a flawed Risk Premium analysis; (5) NorthWestern's Expected Earnings analysis does not measure the market cost of equity and should be rejected; (6) NorthWestern's alternative ROE analysis, which uses a constant growth DCF and empirical CAPM, should be rejected; and (7) NorthWestern fails to demonstrate that it is more risky than the average company selected in its proxy group and therefore fails to justify departing from the use of the median as the cost of equity estimate.⁴⁶

(c) Answer

38. NorthWestern alleges that Protestors' attacks on NorthWestern's ROE analysis is based on their misinterpretation of Commission precedent and unsupported by expert testimony. NorthWestern also contends that its proxy group correctly includes companies that are not listed as electric utilities by Value Line.⁴⁷

iv. Depreciation Rates

(a) NorthWestern's Filing

39. NorthWestern explains that its Transmission Formula Rate separately identifies the transmission-related depreciation and amortization rates and that these depreciation rates cannot be changed by NorthWestern absent an FPA section 205 filing. NorthWestern proposes a weighted average transmission depreciation rate of 2.57 percent, which is a decrease from the 2.96 percent rate included in its 2006 transmission rate case. NorthWestern states that it proposed to use the same depreciation rate (i.e., 2.57 percent) in its retail rate case, which was pending as of the date of this filing, before the Montana Public Service Commission (Montana Commission). NorthWestern states that, if the outcome of its pending retail rate case results in a change to the proposed depreciation rates here, NorthWestern will report the change in its annual update, along with a copy of any applicable Montana Commission order, and perform the true-up using the Montana-approved depreciation rate.⁴⁸

(b) Protests

40. Montana Customers contends that, while NorthWestern proposes to update its depreciation rates in the annual true-up calculation if the Montana Commission's

⁴⁶ Central Montana Protest at 7-30.

⁴⁷ NorthWestern Answer at 9.

⁴⁸ Filing at 10.

approved depreciation rates differ from those proposed here, the depreciation rates approved by the Montana Commission should be used as inputs to the Transmission Formula Rate at this time rather than waiting for an annual true-up.⁴⁹

41. Basin Electric argues that the Commission should reject NorthWestern's request to adopt depreciation rates from its pending Montana Commission. Basin Electric alleges that the Commission has a statutory responsibility to make its own independent determination and that NorthWestern's proposal to substitute a hypothetical depreciation rate for a fixed value in the Transmission Formula Rate template through the true-up process, which is contrary to Commission precedent and NorthWestern's Transmission Formula Rate.⁵⁰

v. **PBOP**

(a) **NorthWestern's Filing**

42. NorthWestern states that its Transmission Formula Rate includes PBOP costs as a component of A&G expense. According to NorthWestern, on or before February 1 of each year, NorthWestern will file an actuarial study supporting its actual PBOP costs for the prior rate year under FPA section 205. NorthWestern explains that the actual PBOP costs for the prior rate year will be used for the annual true-up. Further, with respect to the projected ATRR for the upcoming rate year, NorthWestern states that it will use the budgeted PBOP costs for the upcoming rate year in the annual update, subject to true up. NorthWestern asserts that, through this mechanism, NorthWestern will ensure that only its actual PBOP costs are recovered while providing transparency and Commission review through the annual filing.⁵¹

(b) **Protests**

43. Regarding NorthWestern's proposal to update its PBOP expense annually based on an actuarial study, Basin Electric contends that the Commission should direct NorthWestern to clarify that it will hire an independent third party to conduct its actuarial study or audit the results of the study. Basin Electric also alleges that because NorthWestern's Transmission Formula Rate does not include a mechanism requiring the reflection of the Commission-approved PBOP expenses in the ATRR if it differs from costs included in the annual update filing, there is no mechanism to

⁴⁹ Montana Customers Protest at 5.

⁵⁰ Basin Electric Protest at 16-18.

⁵¹ Filing at 11.

provide for a refund if the Commission directs NorthWestern to include an amount lower than that included in the annual update.⁵²

vi. Federal Income Taxes

(a) NorthWestern's Filing

44. NorthWestern states that its Transmission Formula Rate requires the use of currently-effective tax rates, which reflects the reduced corporate federal income tax rate of 21 percent. NorthWestern also states that its Transmission Formula Rate includes workpapers addressing accumulated deferred income taxes (ADIT).⁵³

45. According to NorthWestern, as result of the Tax Cuts and Jobs Act's reduction in the federal corporate income tax rate, a portion of the ADIT liability that was collected from customers will no longer be due to the Internal Revenue Service and is considered excess ADIT. NorthWestern asserts that its Transmission Formula Rate addresses ADIT issues in a transparent manner, including with respect to excess ADIT. For example, NorthWestern explains that multiple workpapers address the effects of ADIT and excess ADIT on rate base in the projected ATRR and actual ATRR to compute the true-up adjustment.⁵⁴

46. With regard to excess ADIT, NorthWestern states that, as of December 31, 2017, Commission-jurisdictional-related ADIT was remeasured to reflect the 21 percent federal corporate income tax rate and the 14 percent differential was reclassified out of ADIT accounts and into Accounts 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities). NorthWestern states that it proposes to use the Average Rate Assumption Method to amortize excess or deficient ADIT for the majority of its protected excess ADIT,⁵⁵ and the Reverse South Georgia Method to amortize excess or deficient ADIT related to assets with tax basis, but no book basis, and for excess or deficient ADIT for

⁵² Basin Electric Protest at 18-20.

⁵³ Filing at 12.

⁵⁴ *Id.* at 12-13.

⁵⁵ According to NorthWestern, protected excess ADIT refers to the reduction in depreciation-related ADIT that is subject to the normalization requirements of the Internal Revenue Code and the Tax Cuts and Jobs Act.

NorthWestern's net operating loss carryforward. For unprotected excess ADIT,⁵⁶ NorthWestern proposes to use a five-year, straight-line amortization period, which is the same period NorthWestern proposed to use in its retail rate case before the Montana Commission. NorthWestern states that the Transmission Formula Rate also includes calculations to deduct any excess ADIT from or add any deficient ADIT to rates.⁵⁷

47. Finally, NorthWestern explains that because it proposes to use a forward-looking Transmission Formula Rate that includes projected amounts of depreciation, NorthWestern must reflect a proration calculation in its Transmission Formula Rate. NorthWestern explains that its proration calculation does not include the two-step averaging that the Commission has found to be unjust and unreasonable in other proceedings and reflects a methodology that was accepted by the Commission for a different public utility.⁵⁸

(b) Protests

48. Basin Electric contends that NorthWestern provided no basis for allocating specific ADIT balances to transmission and improperly classified certain ADIT items as protected and unprotected, the classification of which applies only to excess ADIT.⁵⁹

49. Basin Electric and Montana Customers contend that additional examination is necessary regarding NorthWestern's proposal for its treatment of excess ADIT resulting from the Tax Cuts and Jobs Act.⁶⁰

50. Basin Electric alleges that, while it does not contest NorthWestern's determination that proration must be applied, Basin Electric identified several errors in NorthWestern's application of its proration requirement, including that NorthWestern inappropriately applied a proration method to the balances in Accounts 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities).⁶¹

⁵⁶ By contrast, NorthWestern explains that unprotected excess ADIT refers to the reduction in ADIT that is not subject to normalization requirements.

⁵⁷ Filing at 12-14.

⁵⁸ *Id.* at 14-15 (citing *Pub. Serv. Co. of Col.*, 165 FERC ¶ 61,234 (2018)).

⁵⁹ Basin Electric Protest at 24-25.

⁶⁰ *Id.* at 26-27; Montana Customers Protest at 5-6.

⁶¹ Basin Electric Protest at 27-29.

51. Basin Electric argues that, by including meals and entertainment expenses as a component of its income tax calculation, NorthWestern inappropriately increased its proposed tax expense. In addition, while Basin Electric does not dispute NorthWestern's recovery of a portion of its personal property tax, Basin Electric argues that it is unclear how NorthWestern allocated this tax between the transmission, distribution, and production functions.⁶²

b. Ancillary Services Formula Rates

i. NorthWestern's Filing

52. NorthWestern proposes to convert its current stated rates for Schedule 1 (Scheduling System Control and Dispatch Service), Schedule 3 (Regulation and Frequency Response Service), Schedule 5 (Operating Reserve Service—Spinning), and Schedule 6 (Operating Reserve Service—Supplemental) to cost of service formula rates. NorthWestern also proposed to establish new ancillary services Schedule 3A (Regulation and Frequency Response Service for Exports) and Schedule 11 (Flex Reserve Service), which will also be calculated through formula rates (collectively, Ancillary Services Formula Rates).⁶³

53. NorthWestern asserts that the proposed formula rates for Schedules 3, 3A, 5, 6, and 11 are based on NorthWestern's costs as reported in the prior year's FERC Form No. 1, and thus are historical formula rates. NorthWestern explains that the operation of these formula rates is founded on a levelized, fixed-charge rate methodology applied to NorthWestern's resources used to provide these services. According to NorthWestern, it applies the "units most likely" methodology that determines which costs are used for each ancillary service resource. Further, NorthWestern explains that the reserve requirements for these services are fixed values that cannot be changed by NorthWestern absent an FPA section 205 filing.⁶⁴

⁶² *Id.* at 29-31.

⁶³ Filing at 18. NorthWestern also asserts that its proposed OATT revisions for ancillary services closely follows the ancillary services rates of Public Service Company of Colorado, which the Commission conditionally accepted, suspended them for a nominal period, and established hearing and settlement judge procedures. *Pub. Serv. Co. of Col.*, 149 FERC ¶ 61,208 (2014).

⁶⁴ Filing at 18.

54. NorthWestern states that the proposed formula rate for Schedule 1 costs are based primarily on NorthWestern's costs as reported in the FERC Form No. 1 for Account 561 less certain of the Account 561 subaccounts. NorthWestern explains that the charges for Schedule 1 will be calculated using a projected formula rate, with a true up, and thus is a forward-looking formula rate.⁶⁵

55. NorthWestern states that the Ancillary Services Formula Rates will be updated annually pursuant to the same procedures applicable to the Transmission Formula Rate. NorthWestern explains that customers will be able to attend the annual meeting and submit information requests and challenges regarding the Ancillary Services Formula Rates in the annual update.⁶⁶

ii. Protests

56. Regarding NorthWestern's "units most likely" analysis, Montana Customers claim that NorthWestern did not explain why it excluded its Hauser, Holter, and Madison hydroelectric generation facilities from its analysis, and therefore has not shown why its analysis is just and reasonable.⁶⁷ Further, Wind Association argues that the generator availability and capacity factor data used in the "units most likely" analysis do not fully capture the ability of a resource to provide operating reserves.⁶⁸

57. Bonneville and Wind Association argue that, because the reserve capability of NorthWestern's resources exceed its operating reserve needs, NorthWestern's proposed ancillary services rates should be determined by using only its lowest cost resources. Further, Wind Association alleges that NorthWestern's proposal does not account for VERs with the ability to provide operating reserves.⁶⁹

⁶⁵ *Id.* at 18-19.

⁶⁶ *Id.* at 19.

⁶⁷ Montana Customers Protest at 10.

⁶⁸ Wind Association Protest at 13-14.

⁶⁹ Bonneville Protest at 13-14; Wind Association at Protest at 14-15.

58. Wind Association argues that NorthWestern's proposed rates are based on the assumption that all ancillary service operating reserve needs will be met using its own resources, but based on past practices and future projections, NorthWestern relied on and will continue to rely on market purchases from other BAAs.⁷⁰

59. Wind Association alleges that NorthWestern announced that it intends to join the Western Energy Imbalance Market (EIM) by April 2021, but NorthWestern's does not address or commit to update its rates over time for the effect of joining the EIM. Wind Association argues that, in particular, much of the Schedule 3 and 3A service that NorthWestern proposes to meet through Load-Following Reserve costs allocated to VERs should be picked up by EIM transactions. Wind Association contends that NorthWestern's proposed VER reserve requirements are significantly higher than other studies by other entities (e.g., PacifiCorp and PJM Interconnection, L.L.C.), which reflects flaws in NorthWestern's analysis and the importance of using external resources, including through the EIM.⁷¹

60. Bonneville and Wind Association argue that NorthWestern's proposed OATT revisions to Schedules 3, 3A, and 11 do not meet the requirements of Order No. 764. Specifically, these protestors argue that NorthWestern only used one year of data to calculate operating reserve needs and three years of data to estimate which generators would meet those needs, when it should have used many years of data.⁷²

iii. Answer

61. NorthWestern argues that concerns about NorthWestern's future integration in the EIM are premature and that it is not possible to anticipate all of the effects of joining the EIM at this time. NorthWestern also alleges that the Commission's precedent and regulations only require one test year of data, not multiple years. In addition, NorthWestern contends that its "units most likely" methodology is reflective of the costs of providing ancillary services using NorthWestern's resources and the purpose of the pro rata allocation of the capital costs of this methodology ensures a fair mix of units with lower capital costs and units with higher capital costs.⁷³

⁷⁰ Wind Association Protest at 4-7.

⁷¹ *Id.* at 7-8, 10-11.

⁷² Bonneville Protest at 15; Wind Association Protest at 11-12.

⁷³ NorthWestern Answer at 10-11.

iv. **Schedule 3 (Regulation and Frequency Response Service)**

(a) **NorthWestern's Filing**

62. NorthWestern proposes to revise the ancillary service rate for Schedule 3. NorthWestern explains that the proposed Schedule 3 rates are historical formula rates that distinguish among load, variable energy resources (VERs), and non-VERs (i.e., dispatchable generation). NorthWestern asserts that, populated with 2018 data, the proposed Schedule 3 rates are \$0.322/kW-month for load, \$1.415/kW-month for VERs, and \$0.112/kW-month for non-VERs.⁷⁴

63. NorthWestern states that the current rate for Schedule 3, which was set in 2014 and is approximately \$0.26/kW-month, does not recover NorthWestern's cost of service due to changed circumstances. First, NorthWestern explains that the North American Electric Reliability Corporation (NERC) Reliability Standard BAL-001 requires NorthWestern to have sufficient capacity to balance load or generation ramps 100 percent of the time within certain limits. Second, NorthWestern asserts that the resource mix on its system changed over time, with 234 megawatts (MW) of wind coming online with another 190 MW scheduled to come online in late 2019. Third, according to NorthWestern, it now uses a mix of resources (not only a single resource—the Dave Gates Generation Station) to provide service under Schedule 3.⁷⁵

64. NorthWestern asserts that, consistent with Commission precedent,⁷⁶ its rate design includes a regulation component for moment-to-moment fluctuations (Fast-Moving Reserves Component) and a following component for other changes that must be balanced to maintain reliability during a 15-minute scheduling interval (Following Reserves Component). NorthWestern states that it incorporated 15-minute intervals into its rate design for the Following Reserves Component.⁷⁷

⁷⁴ Filing at 19.

⁷⁵ *Id.* at 19-20.

⁷⁶ See *Integration of Variable Energy Resources*, Order No. 764, 139 FERC ¶ 61,246, *order on reh'g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

⁷⁷ Filing at 20.

65. NorthWestern asserts that different charges apply depending upon a customer's use of different types of resources. NorthWestern states that it distinguishes between load, VERs, and non-VERs because each separate class imposes a difference regulation and frequency response burden on NorthWestern's balancing area. NorthWestern asserts that its proposed rates are rationally related to each of the characteristics of the three classes. NorthWestern explains that, in calculating the reserve requirements for each class, it used a fair allocation methodology, which is a type of portfolio analysis that takes into account diversity benefits that result from aggregating the variations of all resources so that one load's or resource's negative deviation can offset some or all of another resource's positive deviation. NorthWestern continues that, based on the fair allocation method, the reserve requirements set forth in Schedule 3 total 81.6 MW, with a breakdown as follows: Fast-Moving Reserves—load at 16.8 MW, VERs at 3.5 MW, and non-VERs at 14.5 MW; Following Reserves—load at 19.7 MW and VERs at 27.1 MW.⁷⁸

66. NorthWestern asserts that it did not exclude any weather events and that its rate design uses three years of equivalent availability and net capacity factor data. NorthWestern also asserts that, while the use of intra-hour scheduling has been minimal, NorthWestern incorporated a 15-minute centered moving average interval into the calculation of the reserve requirements, which, according to NorthWestern, incorporates a conservative assumption that is beneficial to NorthWestern's transmission customers. In addition, NorthWestern states that it uses a 3TIER forecasting tool to forecast wind production.⁷⁹

67. NorthWestern explains that, after identifying the necessary reserve requirements for each class, NorthWestern applies a "units most likely" test to identify the resources that would be used to provide regulation and frequency response (and certain other services). NorthWestern asserts that it considered the available capacity of its resources to supply the ancillary services during the test period and calculated available capacity as the difference between the equivalent availability factor and net capacity factor of the resources.⁸⁰

68. According to NorthWestern, it ranked ancillary services to be provided from its resources according to the operational demands of the ancillary service. For example, NorthWestern provides that Fast-Moving Reserves (momentary response time) are ranked highest, followed by Spinning Reserves and Supplemental Reserves (ten minute

⁷⁸ *Id.* at 22-24.

⁷⁹ *Id.* at 24-26.

⁸⁰ *Id.* at 26.

response times), then Following Reserves (15 minute response time), and finally Flex Reserves (30 minute response time).⁸¹

(b) Protests

69. Montana Customers assert that NorthWestern proposes to use a gross levelized plant cost recovery method for the ATRR for Schedule 3 and its other generation-related ancillary service rates, which is a switch in rate method from the current Schedule 3 rate that applies a traditional non-levelized net plant cost recovery method. According to Montana Customers, the Commission has generally not allowed such a switch as it can lead to over-recovery because recovery under the non-levelized method is front-end loaded while the levelized method is tail-end loaded. Montana Customers claim that NorthWestern provided no support for its proposed switch and that its proposal should be rejected or modified to substitute net plant at the time of the switch in rate methods.⁸²

70. Montana Customers contend that NorthWestern proposes to increase its total reserve requirement to 81.6 MW, an increase of 329 percent from the current requirement. Montana Customers contend that NorthWestern has not demonstrated that its methods used to formulate the new 81.6 MW requirement are just and reasonable. Further, Montana Customers claim that NorthWestern has not demonstrated that it is just and reasonable to: (1) not have the moment-to-moment need to remove downward moment-to-moment capacity, (2) assume the maximum moment-to-moment capacity need occurs simultaneously with the maximum 15-minute load following need, and (3) use a 99 percent dispersal criterion rather than a 95 percent dispersal criterion to determine moment-to-moment and 15-minute load following capacity needs.⁸³

71. Basin Electric contends that NorthWestern incorrectly attempts to require that all network integration transmission service customers pay for regulation and frequency response service rather than permitting such customers the option of purchasing or self-supplying the service as provided under the Commission's *pro forma* OATT.⁸⁴

72. Wind Association argues that NorthWestern's Schedule 3 (and Schedule 3A) reserve requirements are excessive due to NorthWestern's adoption of a 99 percent dispersal criterion, and that NorthWestern should tailor its reserve levels to real-time

⁸¹ *Id.*

⁸² Montana Customers Protest at 6-7.

⁸³ *Id.* at 8-10.

⁸⁴ Basin Electric Protest at 7.

system needs. Wind Association also argues NorthWestern's proposed order of reserve allocation under Schedule 3 (and Schedule 3A) is incorrect and arbitrary (e.g., Following Reserves should not be allocated fourth out of the five types of reserves).⁸⁵

(c) **Answer**

73. According to NorthWestern, Schedule 3 allows all transmission customers the option of self-supply, as the customer must either purchase regulation and frequency response service from NorthWestern or "make alternative comparable arrangements to satisfy [the] obligation."⁸⁶

v. **Schedule 3A (Regulation and Frequency Response Service for Exports)**

(a) **NorthWestern's Filing**

74. NorthWestern proposes to establish a new Schedule 3A that is applicable to point-to-point transmission service customers taking service in the NorthWestern balancing authority area (BAA) to deliver to load outside the NorthWestern BAA. NorthWestern asserts that, in accordance with NERC Reliability Standard BAL-001-2, NorthWestern must provide regulating capacity when a generator in its BAA exports power via point-to-point transmission service, but NorthWestern does not recover any of these costs through Schedule 3 or any other provision of its OATT. Thus, NorthWestern asserts that Schedule 3A is intended to ensure that NorthWestern is compensated for this service. Further, to mitigate any possible concerns of double-charging under both Schedules 3 and 3A, the provisions of Schedules 3 and 3A clarify that no customer may be charged under both schedules for the same transaction.⁸⁷

(b) **Protests**

75. WAPA requests clarification that, given section 31.3 of NorthWestern's OATT allows for network load not physically interconnected with the transmission provider, whether Schedule 3A would, or should, also apply when network integration transmission service is used to deliver resources from the NorthWestern system, and within the NorthWestern BAA, to off-system load.⁸⁸

⁸⁵ Wind Association Protest at 8-10, 12-13.

⁸⁶ NorthWestern Answer at 15.

⁸⁷ Filing at 27-28.

⁸⁸ WAPA Protest at 7.

vi. **Schedules 5 (Operating Reserve Service—Spinning) and 6 (Operating Reserve Service—Supplemental)**

76. NorthWestern states that current Schedules 5 and 6 provide that the charges for these services are only to reflect a pass-through of NorthWestern's costs in obtaining them from a third-party. However, because NorthWestern acquired resources from which it can provide services under Schedules 5 and 6 directly, NorthWestern proposes to implement formula rates for Schedules 5 and 6. According to NorthWestern, using 2018 data, the proposed formula rates for Schedules 5 and 6 produce charges of \$14.59/kW-month and \$13.412/kW-month, respectively.⁸⁹

77. NorthWestern explains that the reserve requirements for Schedule 5 and 6 are a function of NERC Reliability Standard BAL-002-WECC-2a, which requires NorthWestern to hold contingency reserves in the amount of three percent of online generation plus three percent of load. NorthWestern provides that, based on this requirement, NorthWestern was required to hold 101 MW of contingency reserves in 2018. NorthWestern explains that it supplied 32 MW of spinning reserves and 31 MW of non-spinning reserves, and that the remaining 38 MW of reserves was self-supplied by customers. Accordingly, NorthWestern proposes to set the reserve requirements for Schedules 5 and 6 in the formula rates at fixed values of 32 MW and 31 MW, respectively.⁹⁰

78. NorthWestern also explains that because it no longer will rely on third-party to provide service under Schedules 5 and 6, NorthWestern will no longer conduct requests for proposals to obtain ancillary services from third parties for its customers. NorthWestern states that for those customers with existing service agreements specifying arrangements for third parties, NorthWestern plans to have those customers continue with the request for proposal arrangements in their service agreements until February 29, 2020, when their current contingency reserve arrangement expires. NorthWestern asserts that, at that time, NorthWestern will require those service agreements to be amended.⁹¹

⁸⁹ Filing at 28.

⁹⁰ *Id.* at 28-29.

⁹¹ *Id.* at 29.

vii. Schedule 11 (Flex Reserve Service)**(a) NorthWestern's Filing**

79. NorthWestern proposes to establish a new Schedule 11 that is applicable to transmission customers using VER generators within the NorthWestern BAA. NorthWestern asserts that it has approximately 378 MW of wind capacity located in its BAA and that due to the inherent variability of wind as a resource, NorthWestern has experienced significant and sudden losses of wind generation on its system. According to NorthWestern, such losses can have a corresponding negative effect in NorthWestern's area control error, which can place NorthWestern's area control error outside of the limit established by NERC Reliability Standard BAL-001-2 and therefore require NorthWestern to use its flex reserves.⁹²

80. NorthWestern states that the rate under proposed Schedule 11, which is \$2.369/kW-month, ensures that the costs of the additional flexible reserves are borne by those who cause the costs to be incurred. NorthWestern asserts that its other transmission customers do not subsidize the cost of these reserves. In addition, NorthWestern states that the proposed reserve requirement is 52.5 MW, which was calculated using a 30-minute downward wind ramp for the test year and then sorting these ramps from lowest to highest and then applying a 95 percent confidence interval.⁹³

81. According to NorthWestern, almost all of the wind in its BAA is contracted under power purchase agreements or is under NorthWestern's ownership to serve retail load. As such, NorthWestern asserts that Schedule 11 affects it the most, with only one customer also being subject to the proposed charges.⁹⁴

(b) Protests

82. According to Consolidated Edison, under Schedule 11, NorthWestern proposes to charge wind energy projects a new, additional fee for ancillary services. Consolidated Edison alleges that NorthWestern's proposal is an attempt to prohibit wind energy projects from being developed in Montana by making them cost prohibitive. Consolidated Edison also alleges that, through Schedule 11 charges, NorthWestern is

⁹² *Id.* at 29-31.

⁹³ *Id.* at 31.

⁹⁴ *Id.*

attempting to pass the cost of building new thermal resources from its resource plan on to renewable energy developers.⁹⁵

83. Consolidated Edison claims that NorthWestern's proposal to implement Schedule 11 raises issues of material fact, which include, among other things, NorthWestern's claimed flexible capacity need and its avoided cost rates.⁹⁶

84. Wind Association argues that NorthWestern's proposal is inconsistent with the principles of Order No. 764 because NorthWestern is not using wind energy forecasting to reduce the Schedule 11 charge. Wind Association also claims that NorthWestern is not accounting for the diversity benefits between load, VERs, and non-VERs.⁹⁷ Further, Wind Association alleges that NorthWestern's proposal is inconsistent with cost allocation principles such that NorthWestern cannot implement differential charges for VERs under Schedule 11 and allocate them differently than other resources' charges under Schedules 5 and 6.⁹⁸

c. Other Revisions

i. Schedule 2 (Reactive Supply and Voltage Control)

(a) NorthWestern's Filing

85. NorthWestern states that it proposes ministerial changes to Schedule 2 to remove placeholder text that was intended to be applicable in the event NorthWestern determined to procure reactive supply and voltage control from third parties. NorthWestern continues that, at this time, NorthWestern has no plans to charge customers for Schedule 2 and thus proposes to revise Schedule 2 and remove the placeholder text.⁹⁹

(b) Protests

86. Basin Electric argues that NorthWestern's proposed revisions require additional clarification. Specifically, Basin Electric argues that the proposed revisions suggest that a transmission customer may be required to pay for Schedule 2 service although

⁹⁵ Consolidated Edison Protest at 3-6.

⁹⁶ *Id.* at 6-10.

⁹⁷ Wind Association Protest at 16-18.

⁹⁸ *Id.* at 18-20.

⁹⁹ Filing at 31.

NorthWestern explains in its transmittal that it has no plans to charge customers for Schedule 2.¹⁰⁰

ii. **Schedules 4 (Energy Imbalance Service) and 9 (Generator Imbalance Service)**

(a) **NorthWestern's Filing**

87. NorthWestern proposes to implement the *pro forma* Order No. 890 deviation bands (i.e., bandwidths for imbalance charges) in Schedules 4 and 9.¹⁰¹ According to NorthWestern, as a result of the settlement in its 2006 transmission rate case, NorthWestern agreed to different deviation bands as set forth in Order No. 890 that permitted customers greater freedom to deviate from their schedules. NorthWestern explains that under the revised Schedules 4 and 9, imbalances of less than or equal to 1.5 percent of the scheduled energy (or two MW, whichever is larger) will be netted on a monthly basis and settled financially at 100 percent of incremental or decremental cost at the end of each month. NorthWestern continues that imbalances between 1.5 and 7.5 percent of the scheduled amounts (or two to ten MW, whichever is larger) will be settled financially at 90 percent of the transmission provider's system decremental cost for overscheduling imbalances that require the transmission provider to decrease generation or 110 percent of the incremental cost for underscheduling imbalances that require increased generation in the control area. Finally, NorthWestern states that imbalances greater than 7.5 percent of the scheduled amounts (or ten MW, whichever is larger) will be settled at 75 percent of the system decremental cost for overscheduling imbalances or 125 percent of the incremental cost for underscheduling imbalances.¹⁰²

88. NorthWestern asserts that adopting the *pro forma* Order No. 890 deviation bands will provide better incentives to encourage accurate scheduling by customers. Further, NorthWestern asserts that its proposed revisions will increase consistency among transmission providers in the application of imbalance charges and that its imbalance charges will remain just and reasonable. Finally, NorthWestern notes that it does not

¹⁰⁰ Basin Electric Protest at 36.

¹⁰¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹⁰² Filing at 31-32.

propose any change to its use of the Powerdex Mid-Columbia Hourly Index for purposes of pricing imbalance energy under Schedules 4 and 9.¹⁰³

(b) Protests

89. Basin Electric, Montana Customers, and Talen argue that NorthWestern has not justified its proposal to revise the deviation, which adopt the *pro forma* Order No. 890 deviation bands. For example, Talen contends that NorthWestern has not provided any empirical data that the current bandwidths incent improper scheduling behavior. In addition, Montana Customers claims that NorthWestern has not justified removing aggregation language that allows network integration transmission service customers with several delivery points to net their energy imbalances.¹⁰⁴

90. According to Talen, NorthWestern's OATT permits a transmission customer to make alternative comparable arrangements to satisfy its obligations under Schedule 9. Talen requests that NorthWestern clarify that, to the extent the customer has an existing Commission-approved generator interconnection agreement that addresses the implication of Schedule 9, nothing in NorthWestern's filing here amends or otherwise changes those provisions.¹⁰⁵

91. Wind Association contends that NorthWestern's proposal does not provide an exception, consistent with Order No. 890, recognizing that wind and solar resources are not fully dispatchable and therefore lack an effective means to avoid imbalance charges.¹⁰⁶

iii. Schedule 10 (Real Power Losses)

(a) NorthWestern's Filing

92. NorthWestern proposes to establish a new Schedule 10, which according to NorthWestern provides clarity on the calculation of the transmission customer's real power losses obligation incurred in connection with transmission service, and provides additional terms and conditions. NorthWestern explains that Schedule 10 supplements the existing provisions in sections 15.7 and 28.5 of NorthWestern's OATT, which

¹⁰³ *Id.* at 32.

¹⁰⁴ Basin Electric at 36-37; Montana Customers Protest at 10; Talen Protest at 12-13.

¹⁰⁵ Talen Protest at 13-14.

¹⁰⁶ Wind Association Protest at 20.

establish the responsibility of the point-to-point transmission and network integration transmission customers, respectively, to replace real power losses. In addition, NorthWestern proposes a reduction in its current real power loss factor for transmission service from four to 2.8 percent. According to NorthWestern, it was able to calculate the transmission loss factor based on actual data from its meters instead of using power flow models.¹⁰⁷

93. NorthWestern states that it proposes to require financial settlement of real power losses by transmission customers instead of in-kind replacement. NorthWestern asserts that, with in-kind replacement, NorthWestern experiences operational issues with receiving losses from the parties, and situations where parties do not schedule or schedule the incorrect amounts of losses concurrently. NorthWestern also asserts that there are rounding problems that arise with delivering losses concurrently when energy is only scheduled for delivery in whole MW amounts, yet the losses that must be provided are smaller or larger than whole MW amounts.¹⁰⁸

(b) Protests

94. Regarding NorthWestern's proposal to reduce real power system losses to 2.8 percent, WAPA requests additional information regarding if, and how, the loss calculation will be updated on an annual basis.¹⁰⁹ Montana Customers claim that, given that reduction, NorthWestern has not shown that it would not unjustly earn a margin by requiring transmission customers to purchase transmission losses from NorthWestern using the Powerdex Mid-Columbia Hourly Index price rather than NorthWestern actual incremental cost to provide energy.¹¹⁰

95. Talen argues that NorthWestern does not explain the rate impact of its proposal to require financial settlement of real power losses by transmission customers instead of in-kind replacement.¹¹¹

96. Basin Electric argues that NorthWestern has not provided adequate support for its proposed loss factor. Basin Electric also argues that, in section 28.5 of the revised

¹⁰⁷ Filing at 33.

¹⁰⁸ *Id.*

¹⁰⁹ WAPA Protest at 7.

¹¹⁰ Montana Customers Protest at 11.

¹¹¹ Talen Protest at 14.

OATT, NorthWestern proposes to assess losses for distribution facilities based on NorthWestern's Montana Commission-approved rates, but NorthWestern does not address this proposed revision in its filing.¹¹²

(c) **Answer**

97. NorthWestern argues that its methodology used to develop the proposed 2.8 percent loss factor here is consistent with the methodology applied in the study that was used to develop the current four percent loss factor. NorthWestern also argues that its proposal to require financial settlement of real power losses by transmission customers is consistent with Commission precedent. Further, NorthWestern clarifies that it is not proposing to update the loss calculation on an annual basis.¹¹³

98. NorthWestern contends that the purpose of the text in section 28.5 of the OATT is to notify customers taking service over distribution facilities that they will be responsible for distribution losses; section 28.5 does not require transmission customers to pay for distribution losses if they do not take service over distribution facilities.¹¹⁴

d. **Commission Determination**

99. Our preliminary analysis indicates that NorthWestern's proposed revisions to its OATT have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that NorthWestern's proposed revisions raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we accept NorthWestern's proposed revisions to its OATT, suspend them for a nominal period,¹¹⁵

¹¹² Basin Electric Protest at 6, 37-38.

¹¹³ NorthWestern Answer at 15-16.

¹¹⁴ *Id.* at 14-15.

¹¹⁵ In *West Texas Utilities Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982) (*West Texas*), the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. In the instant proceeding, our preliminary analysis indicates that the proposed rates may not be substantially excessive, as defined in *West Texas*, and therefore we deny Protestors' requests for the maximum suspension period.

to become effective July 1, 2019, subject to refund, and establish hearing and settlement judge procedures.

100. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹¹⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the Settlement Judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirement which determine judges' availability.¹¹⁷ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assignment of the case to a presiding judge.

2. Tax Proceeding in Docket No. EL18-104-000

a. NorthWestern's Filing

101. NorthWestern states that, as described in its proposed OATT revisions, NorthWestern proposes an overall increase in its transmission rates from \$3.16/kW-month to \$4.831/kW-month, which reflects an increase in NorthWestern's overall cost of service that has occurred since its current stated transmission rates went into effect in 2006. NorthWestern argues that the under-recovery of its costs outweighs the effect of the reduced federal corporate income tax rate, and thus no changes to its current stated transmission rates are necessary.¹¹⁸

¹¹⁶ 18 C.F.R. § 385.603 (2018).

¹¹⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

¹¹⁸ Filing at 15-17. NorthWestern also points out that its proposed Transmission Formula Rate uses the new 21 percent federal corporate income tax rate, and that, all other things being equal, using the 21 percent tax rate results in a decrease of \$6.2 million in its ATRR compared to the 35 percent tax rate.

b. Commission Determination

102. NorthWestern argues that no revisions to its current stated transmission rates are necessary because NorthWestern has offsetting increases in other expenses. NorthWestern supported its arguments by providing evidence of its increased costs, which act as an offset to the benefits of the reduced federal corporate income tax rate. Given NorthWestern's response and the fact that customers benefited from lower transmission rates, we find that no revisions to NorthWestern's current stated transmission rates are necessary here. Because NorthWestern has shown cause as to why its current stated transmission rates should not be revised to reflect the reduced federal income tax rate, we terminate the FPA section 206 proceeding in Docket No. EL18-104-000.

The Commission orders:

(A) NorthWestern's proposed revisions to its OATT are hereby accepted for filing and suspended for a nominal period to become effective as of July 1, 2019, subject to refund, as discussed in the body of this order.

(B) The proceeding in Docket No. EL18-104-000 is hereby terminated, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 205 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER19-1756-000 concerning the justness and reasonableness of NorthWestern's proposed revisions to its OATT, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(E) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this

case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.