

127 FERC ¶ 61,266
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

NorthWestern Corporation

Docket No. EL09-29-000

DECLARATORY ORDER ON OPEN SEASON PROPOSAL

(Issued June 18, 2009)

1. On January 15, 2009, NorthWestern Corporation (NorthWestern) filed a Petition for Declaratory Order seeking approval of its open season procedures for the proposed Collector Project, which NorthWestern proposes as a series of generator lead lines. To effectuate its proposed open season, NorthWestern seeks waivers of several Open Access Transmission Tariff (OATT) provisions, as well as waiver of section 37.6(h) of the Commissions Regulations.¹ In this order, we grant, in part, and deny, in part, NorthWestern's petition for a declaratory order on the proposed Collector Project open season.

I. Collector Project Proposal

2. NorthWestern describes its proposed Collector Project as a series of five generator lead lines, over which NorthWestern expects to offer service from five areas on NorthWestern's system to Townsend, Montana. NorthWestern states that, based on its current transmission queue, demand exists for five 230 kV generator lead lines that would run from Conrad, Judith Gap, Belt, Broadview, and Ennis, Montana, to Townsend. From Townsend, generators would have access to NorthWestern's system, markets in the Pacific Northwest, and to the proposed Mountain States Transmission Intertie (MSTI) Project.² NorthWestern states that although the Collector Project will provide energy

¹ 18 C.F.R. § 37.6(h) (2008) (Posting information summarizing the time to complete transmission service request studies).

² On January 15, 2009, Mountain States Transmission Intertie, LLC and NorthWestern filed a Petition for Declaratory Order in Docket No. EL09-30-000 seeking negotiated rate authority for the proposed MSTI Project. MSTI and NorthWestern

(continued...)

developers with access to the MSTI Project, the MSTI and Collector Projects are not dependent upon one another.

3. NorthWestern states that it has generation interconnection requests totaling more than 5,000 MW in its interconnection queue, of which approximately 3,000 MW is wind generation; however, NorthWestern already has 3,200 MW of generation connected to its system and its peak load is only 1,805 MW. NorthWestern proposes to establish an open season for the Collector Project to facilitate export of this generation to markets beyond Montana. NorthWestern explains that the 5,000 MW in its generation interconnection queue contributes to delays and uncertainties in the design of new transmission facilities. NorthWestern states that a single comprehensive study of service requests for the Collector Project will lessen the delays and uncertainty associated with case-by-case studies provided under the OATT.

4. NorthWestern explains that the Collector lines are not intended to be network facilities or to be looped with the NorthWestern system and that at Townsend, the Collector Project customers will have access to the following facilities for transmission services: MSTI, the jointly-owned Colstrip line, the NorthWestern system, and the Bonneville system.³ Thus, NorthWestern proposes to directly assign the Collector Project costs, such that Collector customers would pay a *pro rata* share of the costs for service over the generator lead line(s) to which they have committed.⁴

describe the MSTI Project as an approximately 433-mile, 500 kV merchant transmission line with estimated capacity of 1,500 MW, extending from Townsend, Montana, to an interconnection point at or near the Midpoint or Borah substations in southern Idaho. The MSTI Project is being addressed in a separate order to be issued concurrently with this order.

³ NorthWestern, March 27, 2009 Post-Technical Conference Comments at 15. The 500 kV Colstrip line (from the 2,200 MW Colstrip Power Station) is co-owned by NorthWestern, Puget Sound Energy, Inc., Portland General Electric Co., Avista Corp., and PacifiCorp.

⁴ In its initial filing in this proceeding, NorthWestern states that it will provide participants indicative *incremental rates* for each of the generator lead lines as part of the open season process. NorthWestern, January 15, 2009 Petition at 10. However, in NorthWestern's post-technical conference comments, it instead states that customers taking service on the Collector Project will pay a *direct assignment charge* for their proportionate share of the cost of the Collector Project line(s) they use. NorthWestern, Post-Technical Conference Comments at 3.

5. NorthWestern notes that the ultimate size and configuration of the Collector Project will depend on expressions of interest and binding customer commitments established through a two-phase open season process.⁵ Participants in Phase I of the open season must submit a non-binding conforming bid, but they may also submit a non-conforming bid. Based on the bids received, NorthWestern states that it may modify the services offered in Phase II. In Phase II, NorthWestern will provide estimated costs for the services offered, and participants can submit final conforming bids. NorthWestern will then award capacity, which will be allocated *pro rata* if demand exceeds capacity. Participants awarded capacity in the open season will be required to execute an agreement⁶ with a minimum term of 20 years⁷ and to pay a *pro rata* share of the cluster study costs (discussed further below). NorthWestern states that it will provide estimated incremental rates for each generator lead line following the study, with actual rates provided to customers prior to service commencement.

6. NorthWestern also proposes to defer customer payment of one month's charges as a deposit, which customers are normally required to submit with their completed applications, until 30 days before service commences.

7. NorthWestern proposes to offer customers termination rights, with associated security obligations, that vary over three stages as the project progresses. NorthWestern

⁵ NorthWestern notes that participation in the Collector Project is voluntary.

⁶ NorthWestern states that the agreements offered for the Collector Project will be *transmission service* agreements; however, as discussed below, we find the Collector Project, as proposed, to be an interconnection project, which would thus require NorthWestern and its customers to execute *interconnection* agreements. Because NorthWestern has not provided many details on its proposed Collector Project agreement (such as clarifying that the project will be for interconnection or whether there will be one standard Collector Project agreement or if each customer will have a unique agreement) and continually oscillates between calling the project a transmission project and an interconnection project, we will refer to the agreements we expect to be offered to Collector Project customers simply as "agreements." We note that, consistent with our finding in this order that the Collector Project is a series of generator lead lines, we expect such agreements to be for interconnection.

⁷ NorthWestern requests waiver of certain OATT provisions to allow for a minimum 20-year service term, because it believes that customers desire 20 years for financing in the current economic conditions. However, NorthWestern also states it would allow a customer to select a shorter term if the customer agrees to pay the entirety of its *pro rata* share of the costs of the generator lead line over the shorter term. NorthWestern, March 27, 2009 Post-Technical Conference Comments at 27.

states that the security requirements and lengths of the termination periods, which vary from the *pro forma* OATT provisions and thus require waivers, will be determined in the open season. NorthWestern states that in the first termination period, a customer may terminate its agreement without penalty by providing NorthWestern 30 days prior written notice; in the second termination period, a customer would be required to pay liquidated damages based upon a \$/kW charge of requested capacity equal to an amount that NorthWestern will determine in the open season. In the third termination period, NorthWestern proposes that a customer may terminate its agreement by paying the net present value of the remaining charges under its agreement. NorthWestern states that it would also have termination rights, as the service provider, if certain conditions precedent are not met such as receipt of: necessary Commission approvals; state and local permits; control of land rights; and executed agreements sufficient to justify proceeding with the construction of the Collector Project.

8. NorthWestern also requests waiver of OATT provisions to accommodate its cluster study proposal, in lieu of case-by-case studies provided under its OATT. NorthWestern states that customers will be required to pay a *pro rata* share of the costs of a single, comprehensive, combination system impact study and facilities study. This *pro rata* share would be based on the ratio of a customer's individual share of capacity on a generator lead line to the total requested capacity on that line. NorthWestern states that it will attempt to complete the cluster study within 120 days, provided, however, that additional time may be required depending on the complexity of the study. If additional time is needed to complete the study, NorthWestern will post that on its OASIS.⁸

9. Following the open season, NorthWestern commits to filing an open season report and executed agreements with the Commission. NorthWestern states, however, that it will not file unexecuted agreements for the Collector Project. Accordingly, NorthWestern requests waiver of OATT provisions that allow customers to request the filing of unexecuted agreements with the Commission if the customers are unable to reach agreement with NorthWestern on the terms of an agreement.

II. Notices, Interventions, and Procedures

10. Notice of NorthWestern's filing was published in the *Federal Register*, 74 Fed. Reg. 5155 (2009), with interventions and protests due on or before February 17, 2009. NaturEner USA, LLC (NaturEner USA), PacifiCorp, Avista Corporation, Western Area Power Administration, and Bonneville Power Administration (Bonneville) filed motions to intervene. Gaelectric, LLC (Gaelectric), the Renewable Northwest Project (Northwest

⁸ NorthWestern requests waiver of section 37.6(h) of the Commission's regulations, which establishes the requirements for posting information summarizing the time to complete transmission service request studies.

Renewables) and American Wind Energy Association (AWEA), and Montana Small Independent Renewable Generators (Montana Renewables) filed motions to intervene and comments. PPL EnergyPlus, LLC and PPL Montana, LLC (collectively, PPL) filed a motion to intervene, consolidate, and protest. The Montana Public Service Commission filed a motion to intervene out-of-time. On March 3, 2009, NorthWestern filed an answer to protests, and on March 4, 2009, NaturEner USA filed an answer to motions by PPL. On March 6, 2009, PPL filed an answer to NorthWestern's answer.

11. Based on the issues raised by NorthWestern's filing and in the protests (as discussed below), staff convened a technical conference on March 12, 2009 in Docket Nos. EL09-29-000 and EL09-30-000 to gain a better understanding of the Collector and MSTI Projects. On March 27, 2009, NorthWestern, along with MSTI, LLC, made a supplemental filing that addressed the issues raised at the technical conference. On April 14, 2009, AWEA and Northwest Renewables, PPL, and Montana Renewables filed comments in response. On April 21, 2009, NorthWestern and MSTI, LLC filed an answer. On May 6, 2009, PPL filed an answer to NorthWestern's and MSTI, LLC's answer.

12. PPL moves to consolidate the Collector (Docket No. EL09-29-000) and MSTI (Docket No. EL09-30-000) dockets, arguing that the issues raised by the petitions will similarly affect many of the parties participating in both dockets. PPL states that resolving the issues in both dockets simultaneously will lead to greater procedural and practical efficiency. In response, NaturEner USA states that it is important that the Collector and MSTI Projects advance as quickly as possible to bring additional renewable resources on line and, for that reason, it opposes PPL's request to consolidate the two petitions. NaturEner USA states that the facts, circumstances, and purposes of the two projects are distinct.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding in which such notices and motions were filed.

14. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2008), the Commission will grant the late-filed motion to intervene from the Montana Public Service Commission given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or answer unless otherwise

ordered by the decisional authority. We will accept the answers filed by NorthWestern, NaturEner USA, and PPL because they have provided information that assisted us in our decision-making process.

16. In response to PPL's motion to consolidate the Collector (Docket No. EL09-29-000) and MSTI (Docket No. EL09-30-000) dockets, we are not persuaded to do so. While we recognize that several parties may be affected by both projects, the two filings raise distinct issues and affect different customers. Therefore, the Commission will address the Collector Project here and the MSTI Project in a separate order, to be issued concurrently. Accordingly, we deny the motion for consolidation.

B. Substantive Matters

17. We find that based on NorthWestern's characterization of the Collector Project, it is appropriately classified as a series of generator lead line facilities. Further, we find that NorthWestern's open season and cluster study proposals should enable it to accommodate the large number of interconnection requests currently in NorthWestern's interconnection queue in a fair and streamlined manner. However, the waivers requested in this filing pertain to open access transmission service, and therefore are not applicable to the generator lead line interconnection service proposed in this declaratory order. NorthWestern may seek comparable waivers of the Large Generator Interconnection Procedures (LGIP) portion of its OATT, if necessary, to accommodate the Collector Project proposal.

1. Collector Project Pricing Proposal

a. Positions of the Parties

18. PPL contends that NorthWestern has not demonstrated that it has properly considered how the Collector Project will affect native load customers. It asserts that NorthWestern must demonstrate that the Collector Project will not benefit native load customers and should not assign the cost of these new facilities to new customers. PPL also contends that NorthWestern has not supported its claim that the Collector Project is not required for reliability on the NorthWestern existing system.

19. Furthermore, PPL contends that NorthWestern has a significant financial interest in the design of rates on its system, including rates for expansion capacity. PPL states that NorthWestern is an active participant in the Montana energy markets and an important user of its own system. PPL therefore contends that NorthWestern has a financial incentive to prevent the costs of the new facilities from being borne by existing customers.

20. Additionally, PPL argues that Order No. 2000 prohibits Regional Transmission Organizations (RTO) from pancaking the rates of multiple transmission owners within an RTO for a single transaction.⁹ PPL contends that the Commission has extended this prohibition to discourage non-RTO transmission owners from charging pancaked rates.¹⁰ PPL claims that NorthWestern and MSTI would be charging pancaked rates for new generation owners who seek to transmit power across both the Collector and MSTI Projects.

21. NorthWestern responded to PPL's concerns, reiterating its position that its project should be viewed as a series of generator lead lines and explains that the Collector Project will have cost-based rates, subject to Commission review, that will be directly assigned to interconnecting generators.¹¹ In support of its contention that the Collector Project is a generator lead facility, NorthWestern explains that the Collector Project will not be integrated with the NorthWestern transmission network or serve NorthWestern loads in the region. While NorthWestern initially stated that it would charge incremental rates for the Collector Project, in its post-technical conference comments it instead contends that, consistent with Commission policy, customers will be responsible for their *pro rata* share of the cost of the line(s) to which they interconnect.¹² NorthWestern further argued that its proposed open season will facilitate discussions between

⁹ PPL, February 17, 2009 Protest at 22 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

¹⁰ *Id.* (citing *Entergy Servs., Inc.*, 110 FERC ¶ 61,295, at P 72 (2005), *order on reh'g*, 116 FERC ¶ 61,275, at P 71 (2006)).

¹¹ NorthWestern, March 27, 2009 Post-Technical Conference Comments at 8.

¹² *Id.* (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 563, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007)). We find in this order that direct assignment of costs is an appropriate mechanism for generator lead lines, such as the proposed Collector Project, and we note that NorthWestern also proposed such pricing in its later filings (rather than proposing incremental rates as it did in its earlier filings in this proceeding). Thus, we do not address the possibility of charging incremental rates for the Collector Project, because we do not think that is what NorthWestern is proposing.

NorthWestern and its customers concerning the individual terms of service and/or any special terms and conditions.

22. NorthWestern states that direct assignment of interconnection facilities that are not part of the interstate transmission grid has never given rise to rate pancaking or “and” pricing.¹³ Thus, according to NorthWestern, the payment of a direct assignment charge for Collector, along with the payment of a NorthWestern transmission charge does not violate the Commission’s pricing policies. Moreover, NorthWestern states that customers who interconnect to NorthWestern via the Collector Project will have the option to deliver energy for transmission on the MSTI Project without paying an additional charge for transmission service on NorthWestern. This is because the proposed terminus of the various generator lead lines that comprise the Collector Project is at the Townsend hub where the proposed MSTI Project begins. Therefore, NorthWestern contends, there will be no impermissible rate pancaking, nor will there be an “and” pricing violation.

23. In their comments, Northwest Renewables and AWEA state that NorthWestern’s open season proposal is difficult to evaluate, as many commercial details are not yet determined. For example, Northwest Renewables and AWEA express concern about the proposed configuration of the Collector Project, noting that the manner in which substations will be situated relative to the different locations of customers’ interconnection requests has the potential to shift project costs among open season participants.

24. Furthermore, Northwest Renewables and AWEA state that although the five proposed lines may represent the bulk of the existing requests in the interconnection queue, this may not be a complete measure of the full level and location of demand for service in NorthWestern’s service area. Northwest Renewables and AWEA note that parties with viable renewable energy projects may not be located in the current queue. Northwest Renewables and AWEA contend that the decision to hold an open season for only certain parts of NorthWestern’s service area could generate additional interest from other areas in its service territory. Accordingly, Northwest Renewables and AWEA believe NorthWestern should not predetermine the regions that are eligible for participation in the Collector Project, and they urge the Commission to encourage NorthWestern to apply the Collector Project open season concept to its entire service territory, including any requested new points of delivery.

25. Finally, in its post-technical conference comments, PPL states that NorthWestern proposes to build hundreds of miles of generator lead lines to Townsend, Montana, rather than connect new generators to NorthWestern’s transmission system at the nearest

¹³ NorthWestern, March 27, 2009 Post-Technical Conference Comments at 9.

interconnection point. PPL contends that by building such long generator lead lines, NorthWestern can avoid any arguments that system enhancements (i.e., network upgrades) are required to accommodate the generation interconnections or the transmission service requests. PPL argues that NorthWestern will also avoid having to provide transmission service credits that otherwise would be required if the Collector customers were to fund any necessary network upgrades as part of the Commission's established generator interconnection process.¹⁴ PPL states that NorthWestern's proposal also ensures that native load customers will be insulated from the costs associated with any network upgrades necessary to accommodate the Collector Project.

b. Commission Determination

26. Throughout its pleadings in this proceeding, NorthWestern alternatively describes the Collector Project as a transmission service project and as an interconnection project. On the one hand, NorthWestern describes the Collector Project as a series of generator lead lines, the costs of which will be directly assigned to interconnection customers.¹⁵ NorthWestern argues that such pricing is consistent with the Commission's policy of holding interconnection customers responsible for their *pro rata* share of the costs of the line(s) to which they interconnect.¹⁶ On the other hand, in other places NorthWestern describes the Collector Project as providing transmission service,¹⁷ and it contends that issues such as those raised by Montana Renewables (discussed below) are more pertinent to the generation interconnection process than to the evaluation of transmission service requests for the Collector Project.¹⁸

27. Notwithstanding this ambiguity in NorthWestern's petition for declaratory order and subsequent pleadings, we agree with NorthWestern's Post-Technical Conference description of the Collector Project as a series of generator lead lines that are intended to interconnect project participants with NorthWestern's transmission system at

¹⁴ PPL, April 14, 2009 Post-Technical Conference Comments at 12-13 (citing Order No. 2003).

¹⁵ NorthWestern, March 27, 2009 Post-Technical Conference Comments at 6-8.

¹⁶ *Id.* at 8 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003)).

¹⁷ NorthWestern, January 15, 2009 Petition at 7 ("The Collector Project open season is designed to give generation developers and their customers a better method for obtaining transmission service by substituting a single, comprehensive study of their transmission service requests for the case-by-case studies provided under the OATT.").

¹⁸ NorthWestern, April 21, 2009 Answer at 11.

Townsend.¹⁹ Traditionally, generator lead lines (also known as generation-tie facilities) consist of “limited and discrete facilities” that do not form an integrated transmission grid, but instead connect at two points—a generating unit and a substation—without any electrical breaks between the two points.²⁰ Our understanding is that the Collector Project involves interconnection facilities (consisting of five different lines) that will not be integrated with NorthWestern’s transmission system, but will be interconnected at a single point, i.e., Townsend. As such, the Collector Project would provide generators along those facilities with interconnection service to the NorthWestern system at Townsend.²¹ Further, it has not been shown that the Collector Project will provide any benefits to NorthWestern’s existing customers or provide reliability benefits to the system at large; rather, the record in this proceeding indicates that benefits of the project will accrue only to those generators (and their customers) that interconnect via the Collector Project.

28. The Commission has permitted the direct assignment of the costs of generator lead lines to those generators that are solely benefitted by the access to a transmission system such facilities afford.²² Consistent with that precedent, we approve NorthWestern’s

¹⁹ NorthWestern, March 27, 2009 Post-Technical Conference Comments at 15. (“[T]he Collector Project will be a series of generator lead lines to satisfy customer requests to connect to the NorthWestern system in a least cost and efficient manner.”). See also NorthWestern, January 15, 2009 Petition at 7, 9, 10; NorthWestern, March 3, 2009 Answer at 1, 2; NorthWestern, March 27, 2009 Post-Technical Conference Comments at 3, 8.

²⁰ See *PSEG Energy Resources & Trade*, 123 FERC ¶ 61,001, at P 20 (2008) (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996); *Termoelectrica U.S., LLC*, 105 FERC ¶ 61,087, at P 10 (2003)).

²¹ We note that NorthWestern has not yet finalized the Collector Project and plans to do so after it elicits feedback through its open season process. If the technical circumstances of the Collector Project change such that it may no longer be appropriately characterized as a series of generator lead lines providing interconnection service (e.g., the Collector Project becomes looped with NorthWestern’s transmission system), NorthWestern must make a filing promptly informing the Commission of those changed circumstances. Similarly, if parties believe that NorthWestern has not prudently planned its interconnection facilities based on the open season feedback, they may bring their concerns to the Commission’s attention, and we will consider such issues at that time. Therefore, we find PPL’s concerns regarding the configuration of the Collector Project to be premature at this time.

²² See, e.g., *Southern California Edison Co.*, 112 FERC ¶ 61,014, at P 42 (2005) (*Southern California*) (“[O]ur precedent has been that it would be improper to shift the

proposal to directly assign the costs of the Collector Project to interconnection customers thereon.

29. In light of our determination that the Collector Project is a series of generator lead lines, rather than an integrated portion of NorthWestern's system, and that its costs may be directly assigned to those customers interconnecting via the Collector Project, we reject PPL's argument that the Collector Project will result in impermissible rate pancaking.²³ Because the directly assigned costs of the Collector Project would compensate NorthWestern for interconnection service only, such costs would not constitute a pancaked transmission rate. Generators interconnecting via the Collector Project would have to procure transmission service at the point of interconnection (Townsend) and pay the applicable rate for that service.

2. Open Season, Cluster Study, and Waiver Requests

a. Positions of the Parties

30. Gaelectric, Northwest Renewables, and AWEA support the general concept underlying the open season proposal; however, Northwest Renewables and AWEA note that it is difficult to weigh the strengths and weaknesses of the Collector Project's proposed open season process compared with service under NorthWestern's OATT, because many of the important commercial details have not yet been determined. For example, Northwest Renewables and AWEA seek clarification regarding bid evaluation criteria proposed by NorthWestern and thus, they request that the Commission conditionally approve NorthWestern's petition for declaratory order subject to it providing more specificity with respect to the method it proposes to use when conducting its open season.

31. Northwest Renewables and AWEA assert that, in general, the Commission should reconsider its policy of determining whether the open season process is non-discriminatory, fair, and transparent via a report detailing the bulk of the terms and

costs of [generation-tie] facilities from the interconnection customers to all users of the transmission grid.”). *But see Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061 (2007) (noting the interconnection challenges faced by location-constrained resources).

²³ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,173 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) (“Rate pancaking occurs when a transmission customer is charged separate access charges for each utility service territory the customer's contract path crosses.”).

conditions of the process that is filed after the open season concludes. Specifically, Northwest Renewables and AWEA believe that the Commission should encourage as much upfront detail as possible regarding the terms and conditions of the open season process. For instance, Northwest Renewables and AWEA think that the Commission should require transmission providers to file the proposed terms and conditions of any open season agreement, in template form, as well as requests for waivers, prior to conducting an open season. Northwest Renewables and AWEA state that such an approach would be consistent with Bonneville Power Administration's open season process.²⁴

32. Additionally, Northwest Renewables and AWEA state that NorthWestern still needs to work with customers to find an appropriate level for the security deposit requirements that are both commercially and financially viable. Northwest Renewables and AWEA are also concerned that the current Collector Project's terms and conditions for its open season provide too many opportunities for customers to be relieved of their open season commitments, which create uncertainty about the ultimate level of subscription and put greater risk on customers that continue to move forward in the open season process. Northwest Renewables and AWEA question the requirement that customers terminating open season commitments during the third termination period must pay the net present value of the remaining charges under their agreements. Northwest Renewables and AWEA state that the details of this net-present value charge have yet to be determined, but contend that it is likely that this charge will place a financial burden on customers that will prove to be unworkable.

33. NorthWestern states that it intends to address the issues raised by Northwest Renewables and AWEA with interested parties through the open season process, which will include an informational meeting, and to take any concerns expressed in that process into consideration in finalizing the open season documentation. NorthWestern also states that it expects to provide customers with proposed agreements in advance of the initial open season solicitations. NorthWestern further states that customers will have the opportunity to provide comments on those proposed agreements, which NorthWestern states it will consider, as appropriate, and reflect in revised agreements prior to Phase II of the open season.

²⁴ Northwest Renewables and AWEA, March 14, 2009 Post-Technical Conference Comments, at 2-3 (citing *Bonneville Power Administration*, 123 FERC ¶ 61,264 (2008) (*Bonneville*)). We note that *Bonneville* addressed an open season proposal and requested OATT waivers to address a backlogged transmission service queue. Here, NorthWestern is proposing an interconnection project; however, NorthWestern may still be able to model its open season and cluster study after *Bonneville*, but it would have to do so in terms of the OATT's interconnection procedures.

34. PPL argues that NorthWestern provides no justification for its request for waiver of OATT provisions related to the term for Collector Project agreements. PPL contends that NorthWestern's proposed 20-year minimum term for the Collector Project is arbitrary. PPL is also concerned with NorthWestern's requested waiver of tariff provisions that obligate transmission providers to file unexecuted agreements with the Commission at the request of a customer, if NorthWestern and the customer are unable to reach agreement. PPL argues that the ability of customers to request that a transmission provider file unexecuted agreements is a significant protection for customers as it acts as a check against unreasonable terms and conditions that NorthWestern may place in its Collector Project agreements.

35. In response, NorthWestern states that it anticipates reaching agreement with its customers on terms and conditions of service through the open season process, and that if there is no agreement, there will be nothing to file with the Commission. NorthWestern explains that customers who are unable to reach agreement with NorthWestern concerning the terms of service for the Collector Project will retain the right to proceed under NorthWestern's OATT, which includes the right to request that NorthWestern file unexecuted agreements with the Commission.

b. Commission Determination

36. NorthWestern requests waiver of several OATT provisions to accommodate its proposed open season and cluster study process for the Collector Project; however, we do not find the requested waivers to be supported for the Collector Project, as proposed. As discussed above, the Collector Project has been characterized as a series of five generator lead lines, which will serve to interconnect several resource areas to the grid. NorthWestern's proposal to hold an open season to solicit interest in the project, to design the project to meet customer preferences, and to conduct a cluster study is an efficient approach to addressing a large interconnection queue; however, the requested OATT waivers are all associated with transmission service provisions, rather than interconnection service, which is the type of service that the Collector Project—as a series of generator lead lines—would provide. Thus, we deny waiver of the requested tariff provisions, because they are not necessary to accommodate the Collector Project proposal.

37. The Large Generator Interconnection Procedures (LGIP), which are an attachment to NorthWestern's OATT, are more applicable to the interconnection service that would be provided by the Collector Project than those OATT sections pertaining to transmission service pointed to by NorthWestern. For example, the LGIP contains clustering provisions, under which a transmission provider may cluster interconnection requests for the purpose of the Interconnection System Impact Study,²⁵ similar to what NorthWestern

²⁵ *Pro forma* LGIP § 4.2.

has proposed to do for the Collector Project. Additionally, with regard to NorthWestern's request for waivers to accommodate a 20-year service term, we note that the *pro forma* Large Generator Interconnection Agreement (LGIA), which is part of the LGIP, contains a different term than the term of service for transmission service agreements as stated else where in the tariff. While, the term for firm point-to-point transmission service agreements can be from one day to any maximum length as mutually agreed upon by the parties,²⁶ the LGIA has a standard term of 10 years (or longer if otherwise requested by the customer).²⁷ Because the Collector Project, as a series of generator lead lines, would provide only interconnection service and not transmission service, NorthWestern should request waiver of provisions of the LGIP and LGIA portions of the OATT if necessary to effectuate its proposal, rather than the transmission-related OATT waivers it requested herein.

38. Notwithstanding the above, we generally find NorthWestern's proposed open season process and the flexibility it commits to providing throughout the process to be a reasonable means of accommodating the large number of interconnection requests in its queue. For example, although, NorthWestern proposes a minimum 20-year term for its agreements, it states that it will allow customers to choose shorter terms if they agree to pay their *pro rata* share of the line over that time.

39. We understand that NorthWestern is proposing the Collector Project as a means by which it can provide a more efficient interconnection process than is currently available. NorthWestern's proposal to hold an open season, with a non-binding initial phase, is an efficient and effective way to gauge interest in the project and size and locate the lines. We find that NorthWestern's proposal is generally consistent with the Commission's *Interconnection Queuing Reform* order, in which the Commission recognized the difficulties in the current interconnection queue management approach and that demand for new types of generation, principally renewable, places further stress on queue management.²⁸

40. While we find that the specific waivers that NorthWestern requested in the instant proceeding have not been supported for the Collector Project, we nonetheless find the Collector Project to be an innovative proposal to accommodate the large number interconnection requests currently in its queue. NorthWestern may request

²⁶ *Pro forma* OATT § 13.2 and Attachment A.

²⁷ *Pro forma* LGIA § 2.2.

²⁸ *Interconnection Queuing Practices*, 122 FERC ¶ 61,252 (2008).

interconnection-related waivers from the LGIP and LGIA portions of its OATT as may be required as the Collector Project develops.²⁹

3. Existing Queue Requests

a. Positions of the Parties

41. PPL seeks assurances that the Collector Project proposal does not diminish or devalue PPL's rights and protections under NorthWestern's OATT, including its right to the completion of the processing of its pending transmission service requests. Montana Renewables states that NorthWestern has not stated how it will manage projects already in the interconnection queue or projects that do not participate in the open season for the Collector Project. Montana Renewables believes that if the Commission is to exempt NorthWestern from OATT procedures with regard to the Collector Project, it must ensure that: (1) the proposed mechanisms for managing interconnection to the project will allow developers to maintain their places in the existing OATT-regulated interconnection queue; (2) developers' participation in the open season is voluntary; and (3) NorthWestern cannot discriminate against independent developers in favor of NorthWestern-sponsored or NorthWestern-owned projects.

42. Additionally, Montana Renewables argues that many details of the project remain unclear and poses a number of questions related to the Collector Project. Montana Renewables expresses concern as to whether customers financially invested in the interconnection study process will retain any preference or privilege over new bidders, and whether customers in the interconnection queue will have their financial investments credited against their open season participation costs or refunded to them if they join the Collector Project open season. Montana Renewables also questions whether customers will lose their place in the interconnection queue if they bid in the open season for the Collector Project and either do not receive interconnection service as a result of that

²⁹ The Commission has previously granted such waivers to accommodate unique projects. In *Tehachapi*, the Commission granted a one-time waiver of the OATT LGIP in order to change the 180-day Queue Cluster Window for the CAISO to conduct a clustered Interconnection System Impact Study for projects that planned to interconnect 19 generating facilities in a particular wind resource area (Tehachapi). *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007), *order on clarification*, 120 FERC ¶ 61,180 (2007) (*Tehachapi*). Waiver was granted to accommodate the unique cluster proposal, because individual studies and incremental system expansion would have been inefficient. The Commission also granted waivers of the LGIP in *CAISO*, in order for the CAISO to more efficiently manage its interconnection queue and comply with California's renewable portfolio standard. *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008) (*CAISO*).

process or fail to reach an agreement with NorthWestern. Montana Renewables questions whether NorthWestern's Mill Creek project (which is already in the existing interconnection queue) will be treated the same as all other projects in the queue. Lastly, Montana Renewables is concerned that NorthWestern would devote its resources and staff to the Collector Project, effectively halting progress through the existing queue. Montana Renewables states that such a result would discriminate against projects already in the queue and undercut the protections and expectations established under the OATT procedures.

43. In its answer, NorthWestern states that the Collector Project is an alternative to, and not a replacement for, the OATT service request processes, and thus affords developers a choice that they otherwise would not have. NorthWestern asserts that developers retain the option of pursuing serial requests under the OATT if they prefer.

44. NorthWestern notes that Montana Renewables has raised a number of concerns about the Collector Project open season process that, NorthWestern believes, are more pertinent to the generation interconnection process than to the evaluation of transmission service requests. That said, NorthWestern confirms that the Collector project will not affect the positions of generators in the generation interconnection queue, that developer participation in the Collector Project is voluntary, and that NorthWestern will not discriminate in favor of its own generation (i.e., the Mill Creek project).

b. Commission Determination

45. We accept and will hold NorthWestern to its commitments that participation in the Collector Project open season will be voluntary, that it will not affect any pending requests in either NorthWestern's transmission or interconnection queues, and that NorthWestern will not favor its own generation project. In response to concerns regarding the continued processing of the current interconnection and transmission queue requests, we affirm that NorthWestern is obligated to continue processing those requests pursuant to its OATT. To the extent that it is not doing so, customers retain the right to file a complaint with the Commission.

46. We agree that many of the concerns raised by Montana Renewables are not answered in NorthWestern's filing. Although NorthWestern answered some of these questions in its reply comments, it does not address issues regarding existing interconnection queue customers leaving that queue to join the open season for the Collector Project. We expect that if a customer desires to participate in the Collector Project, but also wants to limit its risk by remaining in NorthWestern's queue, that it will be able to do so, as long as it fully complies with both processes (i.e., to participate in the open season and pay *pro rata* study costs for Collector and also to continue with the NorthWestern queue process and make required payments as provided for under the OATT). If, however, a customer wishes to participate in the Collector Project, instead of remaining in the existing queue, the customer would not retain any preference or position in the existing interconnection queue. However, we find that to the extent a customer

moves from the existing queue to the Collector Project open season, any deposits it has paid to NorthWestern should not be forfeited but instead should be refunded to the customer or credited against any deposit obligations it has pursuant to the terms of the Collector Project open season.³⁰

47. Finally, once a customer withdraws from the queue it should not be entitled to the same queue position it vacated if ultimately it chooses to return to the queue. Given these options, customers should be able to make informed decisions as to the project or queue they prefer to participate in, the potential costs and time for each, and the associated risks. Again, we note the customers always retain the right to request traditional services under NorthWestern's OATT.

The Commission orders:

(A) NorthWestern's request for a declaratory order is hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) NorthWestern's requested waivers from its OATT and section 37.6(h) of the Commission's regulations are hereby found to be unnecessary or are otherwise denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁰ We note that NorthWestern currently refunds deposit amounts in response to voluntary withdrawals from the queue. *See* NorthWestern, March 3, 2009 Answer at 6-7 ("Throughout this entire time [2005-2008], participants were able to withdraw from the process without penalty, as many did. For those that withdrew, transmission deposits were refunded, including interest, with remaining portions of the customers' prorated share of the study deposits also returned" and adds that customers that currently remain in the queue are not "bound to finance the development of a transmission line and thus have no risk associated with the open season...").