

117 FERC ¶61,293  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

NorthWestern Corporation

Docket No. ER07-46-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS  
SUBJECT TO REFUND AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 15, 2006)

1. In this order, we accept for filing NorthWestern Corporation's (NorthWestern), tariff sheets,<sup>1</sup> and suspend them for five months, to become effective May 18, 2007, subject to refund. We also establish hearing and settlement judge procedures. In addition, we accept NorthWestern's proposed ministerial changes to Attachments E and I, effective December 18, 2006, as requested.<sup>2</sup> Finally, we accept Original Sheet No. 17A,<sup>3</sup> incorporating the Wholesale Electric Quadrant Standards of the North American Energy Standards Board (NAESB), as required by Order No. 676,<sup>4</sup> without suspension or hearing, effective July 1, 2006, as requested.

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<sup>1</sup> See Appendix.

<sup>2</sup> Second Revised Sheet No. 86 and Second Revised Sheet No. 107 to its FERC Electric Tariff, Sixth Revised Volume No. 5, respectively.

<sup>3</sup> Original Sheet No. 17A to its FERC Electric Tariff, Sixth Revised Volume No. 5.

<sup>4</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, 71 *Fed. Reg.* 26,199 (May 4, 2006), FERC Stats. & Regs. ¶ 31,216 (2006).

## **Background**

2. NorthWestern owns and operates electric and transmission facilities in Montana and South Dakota. NorthWestern acquired its Montana transmission system from Montana Power Company (Montana Power) in 2002. NorthWestern explains that it maintains a separate Open Access Transmission Tariff (OATT) for its services in Montana because its Montana and South Dakota facilities are not physically connected and are situated in different North American Reliability Council (NERC) regions.

## **NorthWestern's Filing**

3. On October 17, 2006, NorthWestern submitted revised tariff sheets amending its transmission service rates under its Montana OATT and revising other sections of its Montana OATT. As part of its proposed changes, NorthWestern seeks to raise its existing annual transmission revenue requirement by approximately 59 percent, as well as raise its proposed monthly firm point-to-point transmission rate by 10.4 percent.<sup>5</sup>

4. NorthWestern seeks a rate of return on equity (ROE) of 12.0 percent and an overall rate of return of 8.92 percent. NorthWestern argues that this ROE is justified by Commission policy, capital market and industry trends, and a comparison to benchmark groups. NorthWestern also proposes to change its rate design by establishing a stated rate for Network Integration Transmission Service in place of using load ratio share billing.<sup>6</sup> NorthWestern argues that this change will provide customers with greater rate certainty, and will allow each Montana network customer to pay for the amount of transmission service that it takes in a particular month without being affected by other customers' usage or changes in loads.

5. NorthWestern also proposes changes to its rates for several ancillary services. First, it proposes to eliminate its current charges for services provided under Schedules 2, 5, and 6; NorthWestern provides reactive supply and voltage control under Schedule 2, and spinning and supplemental reserve service under Schedules 5 and 6. Instead, the Schedules will be amended to allow for a passthrough of actual costs incurred by NorthWestern. NorthWestern states it is eliminating these charges in favor of a

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<sup>5</sup> Under NorthWestern's proposal, the annual transmission revenue requirement would increase by \$28.8 million, going from \$48.8 million to \$77.6 million. The proposed monthly firm point-to-point transmission rate would increase \$0.32, from \$3.10 to \$3.42.

<sup>6</sup> NorthWestern has made corresponding changes to section 34 and Attachments F and H.

passthrough because it no longer owns any generation capable of providing these services, and must acquire them in the marketplace.

6. Next, NorthWestern proposes to update charges for scheduling, system control, and dispatch service under Schedule 1. NorthWestern explains that the yearly rates for this service will decrease from \$2.04 per kW per year to \$2.00 per kW per year. NorthWestern notes, however, that the monthly charges for this service will not change because of rounding. NorthWestern also proposes to revise its charge for regulation and frequency response service under Schedule 3 to reflect the current cost of the service, which NorthWestern purchases from providers outside its control area. NorthWestern is also seeking to amend the tariff to allow for a passthrough of the costs incurred by NorthWestern in providing regulation and frequency response service should they change.

7. Next, NorthWestern proposes to address generation imbalances by adding Schedule 9 to its OATT. Schedule 9 states that when a generation-to-schedule imbalance occurs, the transmission customer must take generation imbalance service from NorthWestern or through a prearranged alternative service.<sup>7</sup> Schedule 9 establishes a deviation band to determine generation imbalance service charges.<sup>8</sup> Under NorthWestern's proposal, for negative imbalances within the deviation band, the generator will pay NorthWestern 100 percent of the System Incremental/Decremental Cost for the energy associated with the imbalance. For negative imbalances outside the

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<sup>7</sup> There are three exceptions to Schedule 9: (1) if a generation-to-schedule imbalance is offset by a schedule-to-load imbalance for the same transaction that is covered by a charge under Schedule 4 (energy imbalance service), then no charge will be assessed under Schedule 9 to the extent of the offset; (2) no generation imbalance service charge will be assessed if the imbalance occurs because the generator is providing frequency response service at the request of NorthWestern; and (3) no generation imbalance service charge will be assessed if the imbalance occurs because the generator is providing operating (spinning or supplemental) reserves at the request of NorthWestern.

<sup>8</sup> The deviation band covers imbalances within plus or minus 10 percent of the scheduled transaction for intermittent generators and within plus or minus 5 percent for all other generators. If the imbalance during any hour is 2 MW or less, it will be deemed within the deviation band. NorthWestern states that a negative imbalance occurs when the amount of energy received from the generator is less than the amount scheduled, and a positive imbalance occurs when the amount of energy received from the generator is more than the amount scheduled.

deviation band, the generator will pay NorthWestern 110 percent of the System Incremental/Decremental Cost. For positive imbalances within the deviation band, NorthWestern will pay the generator 100 percent of the System Incremental/Decremental Cost; for positive imbalances outside the deviation band, NorthWestern will pay the generator 90 percent of the System Incremental/Decremental Cost. Schedule 9 defines “System Incremental/Decremental Cost” as NorthWestern’s “actual cost, which is the hourly weighted average cost of its contracted system balancing and load following energy costs.”<sup>9</sup> NorthWestern also proposes to replace the term “Market Power Price” in Schedule 4 with “System Incremental/Decremental Cost.”

8. Finally, NorthWestern proposes to revise Attachments E and I of its OATT to replace the list of customers with a reference to NorthWestern’s Electronic Quarterly Reports. It also proposes a new section 17.8, which incorporates into its OATT time limits regarding the earliest time a request for short-term firm point-to-point transmission service may be queued on NorthWestern’s Open Access Same-Time Information System (OASIS).

9. NorthWestern requests an effective date of December 18, 2006 for each of its tariff sheets except Original Sheet No. 17A, for which it requests an effective date of July 1, 2006.

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

10. Notice of NorthWestern’s filing published in the *Federal Register*,<sup>10</sup> with interventions and protests due on or before November 7, 2006. A notice of extension of time was issued on November 7, 2006, granting an extension of time for filing to November 14, 2006.

11. Timely motions to intervene were filed by: Exergy Development Group of Idaho, Wind Hunter, LLC., Basin Electric Power Cooperative, Great Northern Power Development, L.P., and Montana Consumer Counsel. The Central Montana Electric Power Cooperative, Inc. submitted a timely motion to intervene and request for suspension. Protests were filed by Pacific Northwest Generating Cooperative, Bonneville Power Administration, PPL EnergyPlus, LLC & PPL Montana, LLC, and the Montana Large Customer Group (collectively, Protestors).

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<sup>9</sup> NorthWestern’s October 16, 2006 filing at 10.

<sup>10</sup> 71 Fed. Reg. 63,303 (2006).

12. The Protestors object to various aspects of NorthWestern's proposal, including, but not limited to, NorthWestern's proposed: 12 percent ROE, increase in the annual transmission revenue requirement, its division of merger and acquisition costs related to the former Montana Power transmission facilities, passthrough of certain ancillary service costs, imbalance costs and penalties, Grid West costs, the adoption of stated rates, and the treatment of agreements which pre-date the 2002 purchase of the Montana Power transmission facilities by NorthWestern. The Protestors also request an evidentiary hearing.

13. NorthWestern filed an answer on November 29, 2006. NorthWestern argues that the Protestors raise either unsupported allegations or misconstrue NorthWestern's rate filing. NorthWestern also argues that its proposals are factually supported and consistent with Commission precedent.

### **Discussion**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>11</sup> the unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>12</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept NorthWestern's answer and will, therefore, reject it.

16. NorthWestern's filing raises issues of material fact regarding, among other things, capital structure and ROE, annual transmission revenue requirement, and cost allocation issues that cannot be resolved on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. However, prior Commission action results in summary determinations as to the two issues discussed below.

17. First, we will accept NorthWestern's proposal to convert from load ratio share pricing to a stated rate for its Network Integration Transmission Service. We have explained in prior orders that for purposes of open access transmission service, either the load ratio share pricing or stated rate pricing is acceptable, and that, a stated rate for network transmission service is just and reasonable as it provides rate certainty to

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<sup>11</sup> 18 C.F. R. § 385.214 (2006).

<sup>12</sup> 18 C.F.R. § 385.213(a)(2) (2006).

suppliers and customers.<sup>13</sup> However, as discussed below, we will set for hearing and settlement judge procedures the appropriate level of the stated rate, as well as whether any further modifications are required to the proposed rate design.

18. Second, we will accept NorthWestern's proposed more ministerial changes to Attachments E and I of its OATT, effective December 18, 2006, as requested. We note that these two revisions have not been protested, are ministerial in nature, and do not impact the existing rates, terms or conditions of NorthWestern's OATT. We have approved similar requests in the past, and will do so here.<sup>14</sup> Third, we also accept Original Sheet No. 17A, which incorporates the NAESB Wholesale Electric Quadrant Standards into NorthWestern's OATT, effective July 1, 2006, as requested.

19. Our preliminary review indicates that NorthWestern's proposed revisions otherwise have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept NorthWestern's proposed revisions for filing, suspend them and make them effective, subject to refund, and set them for hearing and settlement judge procedures.

20. In *West Texas Utilities Company*,<sup>15</sup> the Commission explained that when its preliminary analysis indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission generally would impose a maximum suspension. In the instant proceeding, our preliminary analysis indicates that NorthWestern's proposed rates may be substantially excessive. Therefore, we will suspend NorthWestern's proposed revisions for the maximum five-month period to become effective May 18, 2007, subject to refund.

21. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.<sup>16</sup> If the parties desire, they may,

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<sup>13</sup> See *Sierra Pacific Resources Operating Companies*, 109 FERC ¶ 61,245, at P 9, order granting clarification, 110 FERC ¶ 61,126, at P 8 (2005).

<sup>14</sup> *Virginia Electric Power Co.*, 108 FERC ¶ 61,108, at P 30-31 (2004).

<sup>15</sup> 18 FERC ¶ 61,189 (1982).

<sup>16</sup> 18 C.F.R. § 385.603 (2005).

by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>17</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of 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 assigning the case to a presiding judge.

The Commission orders:

(A) NorthWestern's proposed more ministerial changes to Attachments E and I of its OATT are hereby accepted, effective December 18, 2006, as requested. NorthWestern's Original Sheet No. 17A, is hereby accepted, effective July 1, 2006, as requested. NorthWestern's proposed tariff sheets otherwise are hereby accepted for filing and suspended for five months, to become effective May 18, 2007, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 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 concerning NorthWestern's proposed tariff revisions. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within fifteen (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 the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

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<sup>17</sup> 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 days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

(D) Within thirty (30) days of the date 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 the 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 sixty (60) days thereafter informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) 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 fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such 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 )

Magalie R. Salas,  
Secretary.

Docket No. ER07-46-000

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APPENDIX

NorthWestern Corporation  
Docket No. ER07-46-000

**Tariff Sheets Accepted for Filing, Suspended, Subject to Refund  
and Set for Hearing To Be Effective May 18, 2007**

To FERC Electric Tariff, Sixth Revised Volume No. 5:

First Revised Sheet No. 2  
First Revised Sheet No. 4  
First Revised Sheet No. 8  
First Revised Sheet No. 17  
First Revised Sheet No. 37  
First Revised Sheet No. 61  
First Revised Sheet No. 62  
First Revised Sheet No. 64  
First Revised Sheet No. 65  
First Revised Sheet No. 66  
First Revised Sheet No. 67  
First Revised Sheet No. 68  
First Revised Sheet No. 69  
First Revised Sheet No. 70  
First Revised Sheet No. 71  
First Revised Sheet No. 72  
First Revised Sheet No. 73  
First Revised Sheet No. 74  
First Revised Sheet No. 75  
First Revised Sheet No. 76  
Original Sheet No. 76A  
Original Sheet No. 76B  
First Revised Sheet No. 90  
First Revised Sheet No. 106