

UNITED STATES OF AMERICA 118 FERC ¶61,029
FEDERAL ENERGY REGULATORY COMMISSION

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

In re NorthWestern Corporation

Docket No. IN07-1-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 18, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and NorthWestern Corporation, d/b/a NorthWestern Energy (NorthWestern). This order is in the public interest because it resolves alleged violations of the Commission's Business Practice Standards with a settlement that provides for a \$1,000,000 civil penalty and requires NorthWestern to follow a detailed two year compliance plan to ensure that in the future it acts in a timely manner on all requests for firm monthly and yearly transmission service.
2. The Agreement resolves all issues relating to a non-public, preliminary investigation pursuant to Part 1b of the Commission regulations, 18 C.F.R. Part 1b (2006). The investigation concerned alleged violations of the Business Practice Standards for OASIS Transactions (Business Practice Standards) promulgated by the Commission in Order No. 638, which were in effect at the time of the alleged violations.¹

¹ *Open Access Same-Time Information System and Standards of Conduct*, Order Adopting Revised "Business Practice Standards for OASIS Transactions," FERC Stats. & Regs. ¶ 31,093 (2000). The Business Practice Standards were replaced, as of July 1, 2006, under Order No. 676, by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB), including the Open Access Same-Time Information Systems (OASIS) Standards. *Standards for Business Practices and Communication Protocols for Public Utilities*, 115 FERC ¶ 61,102 (2006). The Wholesale Electric Quadrant did not substantively change the Business Practice Standards at issue in this matter.

3. Enforcement alleges that NorthWestern failed to act within 30 days on 83 requests for firm monthly or firm yearly transmission service. The Business Practice Standards required a transmission provider to respond to such requests within 30 days of their posting, by setting the state of the request to one of the following: invalid, declined, refused, counteroffer, accepted, or study. (Standard 4.13, table 4-2; Standard 4.6).² Furthermore, section 17.5 of NorthWestern's Open Access Transmission Tariff (OATT) requires the company within 30 days to notify a customer who requests firm point-to-point transmission service whether it can fulfill its request or whether a system impact study is needed.³

4. Enforcement concluded that NorthWestern's actions constituted violations of the Business Practice Standards and its tariff. On one occasion these actions led to a customer complaint to the Enforcement Hotline. NorthWestern has neither admitted nor denied that it engaged in any violations of the Business Practice Standards or its OATT.

5. NorthWestern has fully cooperated with staff's investigation and has proactively enlarged its planning staff to deal with the increased number of transmission studies it anticipates. It is also reviewing its business practices that are not set forth in its OATT to make sure they are clear and in compliance with Commission rules.

6. Of the identified alleged violations, 39 arose or continued after August 8, 2005. As a result, the Commission may impose civil penalties against NorthWestern in this matter pursuant to section 316A of the Federal Power Act, as amended by the Energy Policy Act of 2005.⁴ In reviewing the Agreement, we considered the factors set forth in the Federal Power Act⁵ and our recent Policy Statement on Enforcement.⁶

² Order No. 638 at 31,459-61.

³ NorthWestern Energy FERC Electric Tariff Fifth Revised Volume No. 5, Open Access Transmission Tariff, § 17.5.

⁴ Section 1284(e) of the Energy Policy Act of 2005 amended section 316A(b) of the Federal Power Act (FPA), 16 U.S.C. § 825o-1(b), to grant the Commission authority to assess a civil penalty of not more than \$1,000,000 for each day that a violation of any provision of Part II of the FPA or any provision of any rule or order thereunder continues.

⁵ Section 316A(b) of the Federal Power Act, 16 U.S.C. § 825o-1(b).

⁶ 113 FERC ¶ 61,068 (2006).

7. Given the fact that NorthWestern did not appreciably profit from the alleged violations and created little harm to the market, we conclude that the penalty specified in the Agreement provides a fair and equitable resolution of this matter and is in the public interest. We also conclude that the compliance program specified in the Agreement, under which NorthWestern will monitor its ongoing compliance with Commission rules and regulations with regard to the timeliness of its responses to requests for firm monthly and yearly transmission service, is in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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STIPULATION AND CONSENT AGREEMENT

INTRODUCTION

The staff of the Office of Enforcement (“OE”) of the Federal Energy Regulatory Commission (the “Commission”) and NorthWestern Corporation, doing business as NorthWestern Energy (“NorthWestern”), enter into this Stipulation and Consent Agreement (“Agreement”) to resolve all outstanding issues of fact and law arising from a non-public investigation pursuant to Part 1b of the Commission regulations, 18 C.F.R. Part 1b (2006), concerning NorthWestern’s failure to act upon certain requests for firm monthly and firm yearly transmission service within 30 days of posting, as required by the Business Practice Standards for OASIS Transactions (“Business Practice Standards”), promulgated by the Commission in Order No. 638.¹

A. STIPULATION

OE and NorthWestern hereby stipulate and agree to the following:

1. NorthWestern is a provider of electricity and gas in the Northwest, serving customers in Montana, South Dakota and Nebraska. Its electric transmission system, located within Montana, consists of over 7,000 miles of transmission lines and associated terminal facilities. The system has interconnections to five major transmission systems located in the Western Electricity Coordinating Council (“WECC”) area, as well as one interconnection to a system that connects with the Mid-Continent Area Power Pool region.

Origins and Nature of Investigation:

2. OE’s investigation of NorthWestern was triggered by a Hotline call received by OE on March 1, 2006. The caller complained that NorthWestern had denied it firm, monthly, point-to-point transmission service over a constrained path and had instead

¹ Open Access Same-Time Information System and Standards of Conduct, Order Adopting Revised “Business Practice Standards for OASIS Transactions,” FERC Stats. & Regs. ¶31,093 (2000).

awarded the service to another company, which had also requested firm, monthly, point-to-point transmission service over the same path 19 months before the caller's request. The first customer had submitted its request 26 months before the designated date of service, and NorthWestern did not know if it would have available transmission capacity ("ATC") with which to fulfill the request. Due to this uncertainty, NorthWestern kept the request in "received" mode, thereby merely acknowledging its receipt and placing it in the "first-come, first-served" queue, rather than acting on it.

3. The Business Practice Standards require that transmission providers respond to requests for firm monthly service within 30 days of their posting, by setting the state of the reservation to one of the following: invalid, declined, refused, counteroffer, accepted, or study. (Standard 4.13, table 4-2; Standard 4.6).² Furthermore, Section 17.5 of NorthWestern's Open Access Transmission Tariff ("OATT") requires the company within 30 days to notify a customer who requests firm point-to-point transmission service whether it can fulfill its request or whether a system impact study is needed.³

4. With the assistance of Commission staff, the entities involved in the Hotline dispute resolved it without the filing of a formal complaint with the Commission. However, several other requests for firm monthly transmission service, all with long lead times, were also outstanding on NorthWestern's OASIS at the time of this Hotline dispute. After Hotline staff informed NorthWestern that, in staff's opinion, NorthWestern was violating Order No. 638 by not acting on these outstanding requests, NorthWestern placed them in study mode, a temporary state, while it determined what to do with them (NorthWestern still did not know if it would have sufficient ATC to accept them). These requests presented similar priority problems as did the requests that were the subject of the Hotline complaint.

5. After staff opened its investigation, it learned that NorthWestern had also failed to act on certain requests for firm yearly point-to-point transmission service within 30 days. The Business Practice Standards require that transmission providers respond to requests for firm yearly service within 30 days of their posting, by setting the state of the reservation to one of the following: invalid, declined, refused, counteroffer, accepted, or study. (Standard 4.13, table 4-2; Standard 4.6).⁴

6. The monthly requests which staff identified presented priority problems because NorthWestern had not acted upon the original transmission requests within the 30 days required by Order No. 638. Had NorthWestern done so, the various priority provisions of that Order clearly would have governed the appropriate sequence of events. Since the

² Order No. 638 at 31,459-61.

³ NorthWestern Energy FERC Electric Tariff Fifth Revised Volume No. 5, Open Access Transmission Tariff, § 17.5.

⁴ Order No. 638 at 31,459-61.

Order did not contemplate that a transmission provider would allow transmission requests to remain in received mode beyond the date for action, its provisions did not squarely address the question of which customer should be awarded the desired transmission service when there is a conflict among multiple, unacted-upon requests received by a transmission provider.

7. Staff opened a non-public, preliminary investigation to determine whether NorthWestern had violated the Business Practice Standards and, if so, to determine the extent and impact of the violation. NorthWestern cooperated with OE in its efforts to seek information regarding transmission service requests. The period investigated was from January 31, 2003 to August 7, 2006 (“Investigation Period”).

Particulars of Alleged Violations:

8. Staff identified 83 instances in which NorthWestern failed to act on requests for firm yearly service or firm monthly service within 30 days of their receipt by setting the state of the reservation to one of the following: invalid, declined, refused, counteroffer, accepted, or study. NorthWestern states that it left these requests in received mode beyond the 30 days either because it did not know if it would have ATC with which to fulfill them, or to negotiate the terms of service agreements. Staff found no evidence that NorthWestern’s failure to timely act on these requests was occasioned by any desire to ultimately decline the requests, or to favor itself or another applicant.

9. However, in the case of the Hotline complaint, NorthWestern’s failure to act within the requisite 30 days frustrated the orderly application of the priority provisions of the Business Practice Standards, and thereby engendered a dispute over scarce transmission service.

10. Of the identified requests for firm service upon which NorthWestern did not timely act, 39 arose or continued after August 8, 2005, the effective date of the Commission’s expanded civil penalty authority under the Energy Policy Act of 2005.

11. After this investigation was opened, NorthWestern fully cooperated with staff, promptly responded to data requests, and provided expeditious and complete answers. Once the company’s employees understood from staff that it was inappropriate to simply leave transmission requests in received mode after expiration of the time period for action specified in Order No. 638, NorthWestern took steps to rectify the misconduct. The company placed in study mode all requests for firm monthly and yearly service outstanding for more than 30 days, and posted on its OASIS a notice stating (1) that it would place in study mode all outstanding requests as to which it had not acted within the requisite time, and (2) that it would in the future act upon all requests within the time periods specified in the Business Practice Standards.

12. NorthWestern states that it is committed in the future to following the requirements of the Commission's Business Practice Standards. The company has informed the Commission that it has almost doubled its planning staff in order to deal with the increased number of studies it anticipates. It also states that it is reviewing its business practices posted on its Website, but not included in its OATT, to make sure they are clear and in compliance with Commission rules.

B. REPRESENTATIONS

OE states:

1. Staff alleges that NorthWestern violated the Business Practice Standards when it failed to act (by setting the state of the reservation to either invalid, declined, refused, counteroffer, accepted, or study) upon the identified 52 firm yearly transmission requests and the 31 firm monthly transmission requests within 30 days of their posting.
2. Staff alleges that NorthWestern violated Section 17.5 of its OATT when it failed to act (by refusing, accepting or placing in study mode) on the identified 52 firm yearly transmission requests and the 31 firm monthly transmission requests within 30 days of their posting.

NorthWestern states:

1. NorthWestern neither admits nor denies the allegations in Paragraphs B.1-2 immediately above, and neither admits nor denies that its failure to act upon various transmission requests for firm monthly or yearly service within 30 days of their posting constitutes a violation of the Business Practice Standards or of its OATT.
2. Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving any dispute between OE and itself regarding the timeliness of its responses to transmission requests, NorthWestern agrees to undertake the payment and performance obligations set forth in this Agreement.

C. REMEDY AND SANCTION

For purposes of settling any and all civil and administrative disputes, and in lieu of any other remedy that the Commission might assess, determine, initiate, or pursue, concerning any of the matters described in or referred to in Paragraph "A" above, OE and NorthWestern agree that on and after the effective date of this Agreement, NorthWestern shall take the following actions:

1. NorthWestern shall pay a civil penalty in the total amount of \$1,000,000 (\$1 million) to the United States Treasury, by wire transfer, and submit proof of payment to

the Commission, in accordance with the following schedule:

- a. \$500,000 within ten (10) days of the Commission issuing an order approving this Agreement without material modification;
- b. \$250,000 within ten (10) days of the first anniversary of said initial payment;
and
- c. \$250,000 within ten (10) days of the second anniversary of said initial payment.

2. Northwestern shall undertake a compliance program whereby it will submit a report under oath to OE every six months from the date of the Commission order approving this Agreement without material modification, for a period of two years. Said report shall for any firm monthly or firm yearly transmission service:

- a. state whether NorthWestern has failed to act on any service requests within the period of time specified by then current Commission rules and regulations;
- b. state whether NorthWestern has received any requests for service submitted more than six months in advance of the requested service date, and how it has acted on each such request; and
- c. provide a corroborating printout of NorthWestern's relevant OASIS activity adequate for OE to ascertain whether NorthWestern has acted in a timely manner on all the requests it has received for service within the period covered by the report.

D. TERMS

1. The effective date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein, and the Commission shall release and be forever barred from bringing or assessing against NorthWestern and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to NorthWestern (collectively, NorthWestern) any and all administrative or civil claims or matters asserting any claims, liability, causes of action, demands, rights, alleged entitlements, obligations, known or unknown, asserted or not asserted, vested or unvested arising out of, related to or connected with any and all activities of NorthWestern during the Investigation Period with regard to the matters described and referred to in Paragraph "A" above. The Agreement shall have no precedential value for any other purposes.

2. OE and NorthWestern acknowledge and agree that this Agreement is a settlement of claims investigated by OE pursuant to the Commission's authority over interstate transmission of electricity and is a compromise and settlement of disputed claims. This Agreement and any Commission order approving this Agreement shall not be deemed or construed as an admission or as evidence of any violation of any law or regulation, or any Commission rule, regulation, or order issued thereunder, by NorthWestern.

3. Failure to make a timely civil penalty payment or to comply with the compliance program agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act, 16 U.S.C. § 792 *et seq.*, and may subject NorthWestern to additional action under the enforcement and penalty provisions of the FPA.

4. If NorthWestern does not make the civil penalty payments above at the times agreed by the parties, interest payable to the United States Treasury will begin to accrue, pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii), from the date that payment is due, in addition to the civil penalty specified above and any other remedy or penalty imposed pursuant to Paragraph D. 3 above.

5. With the exceptions of any additional administrative or civil remedies that may be imposed for failure to comply with the terms of Paragraph D.3 of this Agreement, any and all administrative civil remedies that the Commission may assess or determine against NorthWestern either before the Commission or in the courts, arising from the matters set forth in this Agreement, shall be forever barred upon compliance with provisions in Paragraphs C. 1 and 2 of this Agreement.

6. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of OE or NorthWestern has been made to induce the signatories or any other party to enter into the Agreement.

7. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither OE nor NorthWestern shall be bound by any provision or term of the Agreement, unless otherwise agreed in writing by OE and NorthWestern.

8. The Agreement binds NorthWestern and its agents, successors and assigns.

9. In connection with the payment of the civil penalty provided for herein, NorthWestern agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty

under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. Further, by the Commission's order approving this Agreement without material modification, the Commission shall terminate with prejudice OE's investigation of the matters resolved by this Agreement. Finally, NorthWestern waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

10. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

11. The undersigned representative of NorthWestern affirms that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by OE in express reliance on those representations.

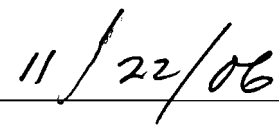
12. The Agreement may be signed in counterparts.

13. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

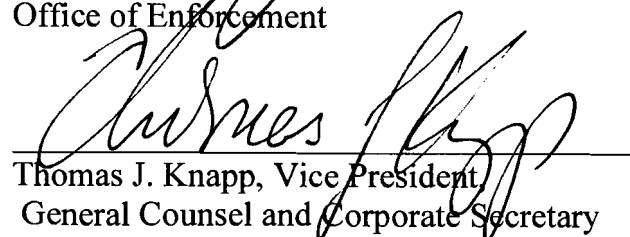
Agreed to and accepted:



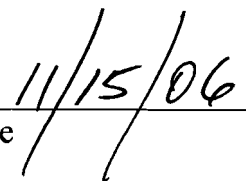
Susan J. Court, Director
Office of Enforcement



Date



Thomas J. Knapp, Vice President,
General Counsel and Corporate Secretary
NorthWestern Corporation



Date