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September 30, 2015

*By Electronic Filing*

Hon. Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

RE: NorthWestern Corporation, Docket No. ER15- -000

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, and section 35.15 of the Regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 35.15, NorthWestern Corporation d/b/a NorthWestern Energy, on behalf of its South Dakota operations (“NorthWestern”), hereby requests approval to terminate, with customer consent, nine long-term, firm point-to-point transmission service agreements (“TSAs”) that were entered into under NorthWestern’s Open Access Transmission Tariff (“NW-SD OATT”). This filing is necessary to implement NorthWestern’s plan to join the Southwest Power Pool, Inc. (“SPP”) Regional Transmission Organization (“RTO”) and to transfer certain transmission facilities to SPP’s functional control effective October 1, 2015.

NorthWestern requests effective dates of October 1, 2015 and November 1, 2015 for the terminations requested in this filing in accordance with 18 C.F.R. § 35.15(a), which authorizes the Commission “[f]or good cause shown” to establish an effective date for the termination that is less than 60 days from the filing. These effective dates are supported by NorthWestern and the TSA customers.

## **I. Background and Description of the Filing**

### **A. NorthWestern and its Transmission System**

NorthWestern Energy is a public utility engaged in the generation, transmission and distribution of electricity and supply and transportation of natural gas. NorthWestern Energy owns and operates electric transmission facilities in both Montana and South Dakota. These transmission facilities are not physically connected and are not located in the same geographic regions. As a result, NorthWestern Energy maintains separate OATTs for its Montana and South Dakota operations. This filing involves only NorthWestern Energy's South Dakota operations (which are referred to as "NorthWestern" in this filing).

NorthWestern owns transmission facilities in eastern South Dakota that serve approximately 62,500 retail customers, with a 2014 peak demand of approximately 304 MW and an annual electric load of approximately 1.57 GWh. NorthWestern owns approximately 339 miles of 115 kV transmission facilities that span from Western Area Power Administration's ("Western's") Gavins Point substation near Yankton, South Dakota to Montana-Dakota's Ellendale substation in North Dakota. NorthWestern also owns approximately 260 miles of 69 kV lines and 595 miles of 34.5 kV lines in and around the load centers in the area.

Most of NorthWestern's 115 kV transmission facilities are administered under Western's OATT.<sup>1</sup> NorthWestern's 69 kV and 34.5 kV facilities are used primarily for local distribution and to provide wholesale distribution service to certain customers.

### **B. NorthWestern's TSAs Under the NW-SD OATT**

NorthWestern currently has eleven long-term, firm point-to-point transmission customers under the NW-SD OATT who take transmission service on NorthWestern's lower voltage transmission facilities that are not under the Western OATT to transmit power and energy obtained from Western. The eleven point-to-point customers under the NW-SD OATT are: (1) City of Groton, S.D. ("Groton"); (2) City of Miller, S.D. ("Miller"); (3) Rolling Thunder I Power Partners, LLC/Titan Wind ("Titan Wind"); (4) Oak Tree Energy, LLC ("Oak Tree"); (5) Town of Langford, S.D. ("Langford"); (6) City of Bryant, S.D. ("Bryant"); (7) City of Aberdeen, S.D. ("Aberdeen"); (8) the State of South Dakota—South Dakota Human Services Center ("SD Services Center"); (9) the State of South Dakota—Mike Durfee State Prison ("SD Durfee Prison"); (10) the State of

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<sup>1</sup> The Western OATT is a reciprocity tariff that was originally accepted for filing by the Commission in Docket No. NJ98-1-000.

South Dakota—Northern State University (“SD NSU”); and (11) the State of South Dakota—South Dakota Development Center (“SD Development Center”).<sup>2</sup>

Each of these TSAs provides delivery service over NorthWestern’s lower voltage (< 100 kV) facilities that are not subject to the Western OATT. For each TSA, the Point of Receipt (“POR”) is the point where power is delivered from the 115 kV transmission system under the Western OATT to the lower voltage facilities and the Point of Delivery is the point where the power is delivered to the particular customer. All of the TSAs, except the TSA for Oak Tree, include a direct assignment charge to the customer based on the costs of the lower voltage facilities that are used to serve the customer under the TSA. The direct assignment charge is developed under a formula that is included in Attachment A of the TSA. All of the TSAs, except the TSA for Oak Tree, have been filed with and accepted by the Commission.<sup>3</sup>

The following table lists the eleven TSAs under the NW-SD OATT:

<b>Service Agreement No.<sup>4</sup></b>	<b>Customer</b>	<b>Docket for Last Filing at FERC</b>
10-SD/19-SD	Langford	ER04-1029
11-SD/20-SD	Groton	ER04-1031
12-SD/21-SD	Aberdeen	ER04-1029
13-SD/22-SD	SD Services Center	ER04-1029
14-SD/23-SD	SD Durfee Prison	ER04-1029
15-SD/24-SD	SD NSU	ER04-1029
16-SD/25-SD	SD Development Center	ER04-1029
17-SD/26-SD	Bryant	ER05-1526

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<sup>2</sup> NorthWestern has no non-firm or network service customers under the NW-SD OATT.

<sup>3</sup> The TSA with Titan Wind was not required to be filed with the Commission because it conforms to the *pro forma* service agreement under the NW-SD OATT and does not include a direct assignment charge.

<sup>4</sup> Amendments to extend the terms for Service Agreement Nos. 10-SD through 18-SD were filed through the Electric Quarterly Report (“EQR”) under the second service agreement listed. Consistent with Order No. 2001, the current TSAs will be terminated on the EQR.

18-SD/27-SD	Miller	ER05-1175
SD-19	Titan Wind	ER10-270
31-SD	Oak Tree	N/A

### C. NorthWestern's TSAs After NorthWestern Joins SPP

NorthWestern has decided to join SPP and transfer functional control of its transmission facilities to SPP on October 1, 2015. NorthWestern has proposed to transfer to SPP functional control of all of its 115 kV transmission facilities that are currently under the Western OATT and certain 69 kV transmission facilities that satisfy the requirements of Attachment AI of the SPP OATT. Once NorthWestern joins SPP, transmission service over the facilities that are transferred to SPP's functional control will be provided by SPP under the SPP OATT.<sup>5</sup>

When NorthWestern joins SPP on October 1, 2015, four of the TSAs—Groton , Miller, Titan Wind, and Oak Tree—will no longer be necessary because the lower voltage facilities serving those customers under the TSAs will be transferred to SPP's functional control. As a result, those customers will receive transmission service to their points of delivery under the SPP OATT, not the NW-SD OATT. NorthWestern has discussed with these customers the need to terminate these TSAs effective October 1, 2015, and all customers agree that they should be terminated. NorthWestern is seeking Commission approval to terminate these four TSAs under 18 C.F.R. § 35.15.<sup>6</sup>

For five of the TSAs—Aberdeen, SD-Services Center, SD-Durfee Prison, SD-NSU, and SD-Development Center—the TSAs will no longer be necessary after NorthWestern joins SPP because those customers will take distribution service under a South Dakota state tariff for delivery of power from the SPP-controlled transmission system to their points of delivery. Each of these customers are end-use customers that will consume the power delivered to them. Further, NorthWestern has determined that the lower voltage facilities used to serve those customers are radial facilities that qualify

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<sup>5</sup> On June 29, 2015, in Docket No. ER15-2069-000, NorthWestern requested approval of a transmission formula rate and protocols under the SPP OATT to allow NorthWestern to recover the costs of its transmission facilities that will be placed under the SPP OATT. This filing remains pending before the Commission.

<sup>6</sup> Under the Commission's rules, no notice of termination is required for the Oak Tree TSA because that is a conforming service agreement and the customer consents to termination of the service agreement. However, NorthWestern is including this TSA in its request in this filing for completeness and in the abundance of caution.

as distribution facilities under the Commission's seven-factor test.<sup>7</sup> Accordingly, service to those customers is appropriately provided under a South Dakota state-jurisdictional tariff. These customers have agreed to take distribution service under the South Dakota tariff, and they agree that the TSAs should be terminated. NorthWestern requests an effective date of November 1, 2015 for these five TSAs, which is the effective date of the South Dakota tariff that will govern service to these customers.

For the remaining two TSAs—Langford and Bryant, the customers are wholesale customers, *i.e.*, municipalities that will resell the power to end-use customers. For this reason, this Commission retains jurisdiction over delivery service to those customers under the facilities that are not being transferred to SPP, regardless of whether the facilities qualify as transmission or distribution facilities. NorthWestern is not seeking to terminate those TSAs in this filing. Instead, NorthWestern concurrently is making a separate filing to revise those TSAs to change the POR and to change the rate for service provided under those TSAs

NorthWestern expects the revised TSAs to be an interim step to serve Langford and Bryant over NorthWestern's non-transferred facilities. Subsequently, NorthWestern intends to transition those customers to wholesale distribution service under Schedule 10 of the SPP OATT rather than point-to-point transmission service under the NW-SD OATT. After those customers are transitioned to wholesale distribution service under the SPP OATT, NorthWestern will no longer have any customers under the NW-SD OATT, and, therefore, NorthWestern intends to make a filing with the Commission to terminate the NW-SD OATT. *See, e.g., Entergy Servs., Inc.*, 148 FERC ¶ 61,209 at P 6 (2013) (describing termination of Entergy's OATT upon Entergy joining the Midcontinent Independent System Operator, Inc.), citing *Entergy Servs., Inc.*, Docket No. ER14-648-000 (Jan. 31, 2004) (unpublished delegated letter order accepting termination of Entergy's OATT).

## II. Requests for Approval to Terminate Nine TSAs

NorthWestern requests Commission approval to terminate, effective October 1, 2015 and November 1, 2015, the following nine of its eleven TSAs under the NW-SD OATT: Groton, Miller, Titan Wind, Oak Tree, Aberdeen, SD-Services Center, SD-Durfee Prison, SD-NSU, and SD-Development Center.

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<sup>7</sup> *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. and Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,771, 31,981, *clarified*, 76 FERC ¶ 61,009 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in substantial part sub nom. Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

Four of these TSAs (Groton, Miller, Titan Wind and Oak Tree) are being terminated effective October 1, 2015 because, after NorthWestern joins SPP on October 1, 2015, transmission service to deliver power to the points of delivery for these customers will be provided under the SPP OATT, not the NW-SD OATT. As a result, these TSAs will no longer be necessary or appropriate.

Five of these TSAs (Aberdeen, SD-Service Center, SD-Durfee Prison, SD-NSU, and SD-Development Center) are being terminated effective November 1, 2015 because, after NorthWestern joins SPP, these customers will receive distribution service under a South Dakota state tariff to obtain delivery of power from the SPP-controlled transmission system to their points of delivery. As a result, these TSAs will no longer be necessary.

Service to those five customers from the SPP-controlled transmission system to their points of delivery qualifies as distribution service subject to state jurisdiction. Those five customers are state retail or end-use customers who consume the power that is delivered to them. Further, the non-transferred, lower voltage facilities that are used to deliver power to those customers are radial facilities that qualify as distribution facilities under the Commission's seven-factor test.<sup>8</sup>

NorthWestern has filed a settlement of its South Dakota rate case with the South Dakota Public Utilities Commission ("SD PUC"). Under the settlement, the facilities used to serve these five customers under the TSAs are classified as distribution facilities subject to a state-jurisdictional tariff that governs delivery service and charges over those facilities.<sup>9</sup> This settlement has been filed with the SD PUC, and it is currently pending before that commission. Staff of the SD PUC has recommended approval of the settlement.

NorthWestern has discussed the termination of these TSAs with all customers under those TSAs. All customers concur that these TSAs should be terminated, and they support and have consented to the termination of the TSAs.

### **III. Proposed Effective Date and Request for Waivers**

NorthWestern respectfully requests that the Commission accept termination of the nine TSAs, with effective dates of October 1, 2015 and November 1, 2015 as discussed above.

Under 18 C.F.R. § 35.15(a), the Commission has the authority to approve an effective date for termination of a rate schedule that is less than 60 days after filing the

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<sup>8</sup> See *supra* note 7.

<sup>9</sup> See *Application of NorthWestern Corp. d/b/a NorthWestern Energy for Auth. to Increase Elec. Rates*, Docket No. EL14-106, Settlement Stipulation (SD PUC filed Sept. 24, 2015).

notice of termination “[f]or good cause shown.” Here, good cause exists to approve the requested effective dates because all customers under the nine TSAs consent to the termination of the TSAs and because these effective dates will allow timely integration of NorthWestern’s transmission facilities into SPP in accordance with the parties’ plans, thereby promoting this Commission’s goal of expanding the reach of RTOs.

NorthWestern requests waiver of any other applicable requirement of 18 C.F.R. Part 35 for which waiver is not specifically requested in order for the Commission to accept NorthWestern’s filing, with the effective dates requested herein.

#### **IV. Communications**

Please place the following individuals on the official service list for this proceeding.

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#### **V. Persons Served**

NorthWestern has served a copy of this filing on SPP, Western, the SD PUC, and all customers under the nine TSAs that are subject to this filing.

**VI. Conclusion**

For the reasons stated herein, NorthWestern respectfully requests that the Commission accept the terminations as proposed herein.

Respectfully submitted,

/s/

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