



March 12, 2020

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

via eFiling

ER20-1246-000

Re: *NorthWestern Corporation (South Dakota)*, Docket No. ER20-__-000

Rate Schedule No. 42-SD | Engineering, Procurement and Construction Agreement by and between East River Electric Power Cooperative, Inc., and NorthWestern Corporation d/b/a NorthWestern Energy

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act¹ and Part 35 of the Federal Energy Regulatory Commission's regulations,² NorthWestern Corporation d/b/a NorthWestern Energy hereby submits for filing and acceptance a fully executed Engineering, Procurement and Construction Agreement by and between East River Electric Power Cooperative, Inc., and NorthWestern Corporation d/b/a NorthWestern Energy. This Agreement is designated as Rate Schedule No. 42-SD under NorthWestern's Other Rate Schedules.³

NorthWestern respectfully requests waiver of the prior notice requirement to permit the Agreement to become effective on March 14, 2020.

I. Background

A. NorthWestern Energy

NorthWestern Energy is a public utility engaged in the generation, transmission, and distribution of electricity and the supply and transportation of natural gas. Its facilities are located primarily in Montana and South Dakota. In South Dakota, NorthWestern is a transmission owner within the Southwest Power Pool, Inc. (SPP) and has transferred functional control of its electric transmission facilities to SPP. In Montana, NorthWestern is a transmission owner/operator and

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

³ NorthWestern Corporation, FERC FPA Electric Tariff, Other Rate Schedules, Rate Schedules – South Dakota.



Balancing Authority Area operator within the Western Electricity Coordinating Council. NorthWestern's Montana and South Dakota transmission facilities are not physically connected and are not in the same electric reliability region. This filing concerns an agreement regarding NorthWestern's South Dakota operations.

B. East River Electric Power Cooperative, Inc.

East River is a non-jurisdictional, not-for-profit generation and transmission cooperative. East River delivers wholesale power to its members, which include 24 rural electric distribution cooperatives and one municipally-owned electric system in eastern South Dakota and western Minnesota. East River is also a transmission-owning member of SPP.

II. Description of Filing

NorthWestern is constructing a new 115-kV switchyard to replace its current Aberdeen A-Tap switching station located west of Aberdeen, South Dakota. The new switchyard was originally intended to be configured as a three-breaker, three-bay, 115-kV ring bus. However, based on East River's request, the new switchyard will be designed and constructed as a six-breaker, four-bay, 115-kV, breaker-and-a-half bus.

Exhibit 1 to the Agreement sets forth the specifications and description of the project. NorthWestern will develop the detailed design package, procure the associated equipment and materials, and construct and energize the new Aberdeen A-Tap Switchyard. The costs associated with design and construction of the new switchyard, development of the detailed design package, construction oversight, and general planning will be shared between East River and NorthWestern, as shown in Exhibit 1.

NorthWestern estimated East River's share of the costs for the project to be \$1,183,366 (Section 3.1 & Exhibit 1). These costs represent NorthWestern's actual costs in providing the requested services. Accordingly, there is no profit component to this Agreement. NorthWestern has not invoiced East River or received any payment under this Agreement. NorthWestern plans to begin work on this project immediately in order to meet the Milestone Schedule outlined in Exhibit 2.

III. Request for CEII Protection

This submission includes specific engineering information about existing critical infrastructure — i.e., a one-line diagram of the Aberdeen A-Tap Switchyard in Exhibit 1 to the Agreement. Pursuant to 18 C.F.R. § 388.113, NorthWestern respectfully requests Critical Energy/Electric



Infrastructure Information (CEII) protection for this diagram. The diagram qualifies as CEII as defined in 18 C.F.R. § 388.113(c)(2) because it contains specific engineering information about critical infrastructure that relates details about the transmission of energy. NorthWestern requests the CEII designation begin as of the date of filing — March 12, 2020 —and continue for a period of five years.

IV. General Information

Pursuant to 18 C.F.R. § 35.13(b), NorthWestern provides the following information:

A. List of Documents Submitted

This filing includes the following documents:

- 1) This transmittal letter;
- 2) Public version of Rate Schedule No. 42-SD | Engineering, Procurement and Construction Agreement by and between East River Electric Power Cooperative, Inc. and NorthWestern Corporation d/b/a NorthWestern Energy for posting on eLibrary;
- 3) Confidential version of Rate Schedule No. 42-SD; and
- 4) Electronic filing package containing the tariff record (with the one-line diagram in Exhibit 1 redacted) and associated metadata.

B. Proposed Effective Date & Request for Waiver

Pursuant to 18 C.F.R. § 35.11 and for good cause shown, NorthWestern respectfully requests waiver of the prior notice filing requirement under 18 C.F.R. § 35.3 of the Commission's regulations to permit the Agreement to become effective on March 14, 2020. This effective date is necessary in order to meet the Milestone Schedule outlined in Exhibit 2 of the Agreement. The Commission's policy permits waivers of the 60-day prior notice filing requirement in the case of uncontested filings that do not change rates.⁴

⁴ See *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).



C. Service

A copy of this filing is being provided to:

Mark Hoffman
East River Electric Power Cooperative, Inc.
211 South Harth Avenue
Madison, SD 57042
MHoffman@eastriver.coop

NorthWestern will provide a copy of this filing to the South Dakota Public Utilities Commission. In addition, this filing is available for public inspection at NorthWestern's Corporate Office, 3010 West 69th Street Sioux Falls, South Dakota.

D. Description of the Filing

A description of this filing is set forth above.

NorthWestern respectfully submits that the requirements of Section 35.13 of the Commission's regulations that have not been specifically addressed herein are inapplicable to this filing. To the extent that the Commission determines the requirements of Section 35.13 or any other rules to be applicable, NorthWestern respectfully requests waiver of the requirements of such provisions.

V. Communications

Communications concerning this filing should be directed to the following persons, who should be included on the official service list compiled by the Secretary in this proceeding:

Michael Cashell
Vice President – Transmission
NorthWestern Energy
11 East Park
Butte, MT 59701
Phone: (406) 497-4575
michael.cashell@northwestern.com

M. Andrew McLain
Director – Transmission Market Strategy &
FERC Compliance Officer
NorthWestern Energy
11 East Park
Butte, MT 59701
Phone: (406) 443-8987
andrew.mclain@northwestern.com



VI. Conclusion

For the foregoing reasons, NorthWestern respectfully requests the Commission to accept the enclosed Agreement for filing; grant waiver of the prior notice filing requirement to permit the Agreement to become effective March 14, 2020, as requested; and grant waiver of any other Commission regulations deemed applicable this filing.

Respectfully submitted,

s/ *M. Andrew McLain*

M. Andrew McLain

Director – Transmission Market Strategy & FERC Compliance Officer

andrew.mclain@northwestern.com

○ 406-443-8987

Enclosure

cc: Mark Hoffman, East River Electric Power Cooperative, Inc.
South Dakota Public Utilities Commission



Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated in the foregoing transmittal letter, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated this 12th day of March, 2020.

s/ Dori L. Quam _____

Dori Quam

Lead – Transmission Regulatory Support

dori.quam@northwestern.com

Rate Schedule No. 42-SD

Engineering, Procurement and Construction Agreement
by and between
East River Electric Power Cooperative, Inc.,
and NorthWestern Corporation
d/b/a NorthWestern Energy

Requested Effective Date: March 14, 2020

NorthWestern Corporation
Other Rate Schedules – South Dakota



NWE-0001102

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This Engineering, Procurement and Construction Agreement (“*Agreement*”) is made effective as of the 28th day of February, 2020 (“*Effective Date*”), by and between East River Electric Power Cooperative, Inc., located at 211 South Harth Avenue, Madison, SD 57042, (“*Customer*”), a cooperative organized under the State of South Dakota and NorthWestern Corporation d/b/a NorthWestern Energy (“*NorthWestern*”), a corporation organized under the State of Delaware.

WHEREAS, Customer has requested NorthWestern to incorporate one 115 kV line terminal into the design and construction of a new NorthWestern 115 kV switchyard to replace NorthWestern’s current three terminal Aberdeen A-Tap; and

WHEREAS, NorthWestern is willing to perform such work pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, NorthWestern and Customer agree as follows:

1. WORK DESCRIPTION.

1.1 Description. This Agreement is for the design and construction of one 115 kV line terminal (“*Project*”) in NorthWestern’s new Aberdeen A-Tap Switchyard (“*Project*”) at Edmunds and Brown Counties, west of Aberdeen (the “*Project Site*”) as described in the Specifications/Project Description attached as Exhibit 1 and incorporated herein by this reference (the “*Work*”). Upon filing of the Agreement with Federal Energy Regulatory Commission (“*FERC*”) and receipt of the required funding from Customer, NorthWestern will furnish all labor, equipment, parts and materials for the performance of the Work. NorthWestern is responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.

1.2 Representatives. NorthWestern’s Contract Manager for the purposes of this Agreement is Jamie Hajek. Jamie.Hajek@northwestern.com, 605-995-4416, 300 S Burr St, Mitchell, SD 57301

NorthWestern’s Construction Manager for the purposes of this Agreement is Krag Filius. Krag.Filius@northwestern.com, 406-497-3215, 11 East Park Street, Butte, MT 59701

Customer’s Contract Manager for the purposes of this Agreement is Mark Hoffman, Chief Operations Officer, mhoffman@eastriver.coop, 605-256-8005, 211 South Harth Avenue, Madison, SD 57042

1.3 Agreement Documents. Work will be completed in accordance with the requirements of this Agreement and the following Exhibits, which are incorporated by this reference:

- 1.3.1 Exhibit 1 - Specifications/Project Description
- 1.3.2 Exhibit 2 - Milestone Schedule
- 1.3.3 Exhibit 3 - NorthWestern Insurance Requirements
- 1.3.4 Exhibit 4 - Form of Change Order

1.4 Inclusion; Order of Precedence; Conflicts. The Agreement and Exhibits are to be considered complementary. In the event of a conflict between this Agreement and the



NWE-0001102

Exhibits, the Agreement governs. Each amendment or Change Order will take precedence over that part of the Agreement Document for which it supersedes.

2. **TERM AND SCHEDULE.**

- 2.1 **Term.** The term of this Agreement begins one day after filing with FERC, and unless terminated earlier in accordance with Section 4, ends upon NorthWestern's completion of the Work (the "*Term*").
- 2.2 **Milestone Schedule.** NorthWestern intends to perform the Work in accordance with the Milestone Schedule set forth in the attached Exhibit 2. NorthWestern may periodically update the Milestone Schedule during the performance of the Work.
- 2.3 **Project Completion.** NorthWestern will undertake commercially reasonable efforts to complete the Work by December 31, 2021 subject to the following: (i) the timely acquisition of equipment and materials; (ii) the timely receipt of all applicable governmental, regulatory and environmental approvals, permits and licenses required for the construction, installation and operation of the Work, (iii) the timely receipt of real property access rights for the Work; (iv) Force Majeure; and (v) acts or omissions of Customer, including but not limited to the failure of Customer to timely deliver security as required by Section 3.1. The completion date is subject to a commercially reasonable extension upon the occurrence or failure of any condition referenced above.

3. **PAYMENT AND INVOICING.**

- 3.1 **Cost Estimate and Security.** NorthWestern estimates the cost and expense of the Work at \$1,183,366 (the "*Cost Estimate*"), and includes materials, fully-loaded labor charges and applicable tax gross-up. Customer shall deliver security in the amount of the Cost Estimate in a form of cash or a letter of credit using a form acceptable to NorthWestern. No Work will be performed prior to NorthWestern's receipt of the security. NorthWestern reserves the right to require additional security if the Work exceeds or is reasonably likely to exceed the Cost Estimate.

If Customer delivers cash as security, the funds must be wired to NorthWestern within 30 day(s) of execution of this Agreement in accordance with the following instructions:

Account Name:	NorthWestern Corporation Generation Account
Account Number:	153910224325
ABA#:	123000848
Bank Name:	US Bank N.A. 800 Nicollet Mall Minneapolis, MN 55402

- 3.2 **Invoicing.** NorthWestern will invoice Customer for the design, engineering, construction and procurement costs of the Work contemplated by this Agreement on a monthly basis, or as otherwise agreed by the parties. Customer shall pay each bill within 30 calendar days of receipt, or as otherwise agreed to by the parties. In the event Customer delivers security in the form of cash, NorthWestern may draw down the funds after delivery to



NWE-0001102

Customer of a statement identifying the design, engineering, construction and procurement costs incurred during the prior month.

- 3.3 **Additional Work.** If work not included within the original scope set forth in Exhibit 1 is requested by Customer or deemed necessary by NorthWestern, such additional work shall be agreed to in writing by both parties prior to commencement and documented with change order in accordance with Section 9.1 of this Agreement. Labor and associated costs shall be estimated in a lump sum amount, mutually agreeable to both parties, and will be shown on the request for additional Work. NorthWestern may require an increase in the security prior to commencement of such additional Work.
- 3.4 **Payment Disputes.** In the event of a dispute regarding an invoice or statement of costs incurred, Customer shall pay the undisputed amount to NorthWestern and Customer shall further notify NorthWestern in writing of the amount(s) in dispute and the basis for the dispute. Payment disputes will be resolved in accordance with Section 13.2.
- 3.5 **True-Up.** Within three months of completing the Work, NorthWestern shall provide Customer with a final accounting report of any difference between (i) Customer's cost responsibility for the actual cost of the Work; and (ii) Customer's previous aggregate payments to NorthWestern for the Work. If Customer's cost responsibility exceeds its previous aggregate payments, NorthWestern shall invoice Customer for the amount due and Customer shall make payment to NorthWestern within 30 calendar days. If Customer's previous aggregate payments exceed its cost responsibility under this Agreement, NorthWestern shall refund to Customer an amount equal to the difference within 30 calendar days of the final accounting report.
- 4. SUSPENSION AND TERMINATION.**
- 4.1 **Suspension.** Customer may order NorthWestern to suspend, delay or interrupt the Work for such reasonable period of time as Customer may determine. Upon reinstatement of the Work, the Term and Cost Estimate will be amended by the parties pursuant to a change order. Customer is responsible for all reasonable costs incurred as a result of the suspension, including but not limited to storing equipment and materials. NorthWestern may terminate this Agreement pursuant to Section 4.3 if any Customer-ordered suspensions exceed 180 days in the aggregate.
- 4.2 **Termination for Convenience.** Customer may terminate the Agreement for its convenience, at any time upon 30 calendar days' written notice to NorthWestern.
- 4.3 **Termination for Cause.** Each party may, after providing 15 calendar days' written notice and opportunity to cure, terminate the Agreement upon the occurrence of a material default of the terms and conditions set forth herein.
- 4.4 **Preservation and Reclamation.** Upon receipt of notice from Customer of a suspension notice or in the event of any termination of this Agreement, NorthWestern will cease affected operations and take actions necessary for the protection and preservation of the Work. With the exception of Work directed to be performed prior to the effective date of suspension or termination, NorthWestern may suspend or terminate existing contracts and purchase orders and take such other reasonable action necessitated by the suspension or termination. If the Agreement is terminated after commencement of Work



NWE-0001102

at the Project Site, NorthWestern will undertake efforts to reclaim the property to its original condition.

- 4.5 Cost Responsibility. If the Agreement is terminated or the Project is not undertaken or completed by Customer, then Customer shall be responsible for payment to NorthWestern of all of the actual costs reasonably incurred by NorthWestern, including but not limited to fully-loaded labor costs (as described above), any costs and expenses associated with procurement and the actual cost of materials and equipment on order or delivered, including but not limited to, shipping and any cancellation fees, and any costs reasonably incurred in reclaiming the Project Site and disposing of materials procured for the Work.

5. STANDARD OF CARE.

- 5.1 Standard of Care. NorthWestern shall perform the Work in accordance with standards of care, skill and diligence normally provided by contractors in the performance of similar Work.

- 5.2 Correction of Defects. If the Work or any part thereof is defective, NorthWestern shall repair, replace or correct the defective Work. The cost of field labor associated with the repair, replacement or correction of defective Work, including parts and materials, will be borne by NorthWestern.

6. INDEMNIFICATION.

- 6.1 Indemnification. Each party shall indemnify, defend and hold the other Party and its officers, directors, affiliates, agents and employees harmless from and against any and all third party claims and liabilities to the extent the claim or liability is caused by any negligent or intentional act, error or omission of the indemnifying party. In the event that any loss, damage or liability with respect to any claim is caused by the negligence of both NorthWestern and Customer, such loss or damage shall be borne by NorthWestern and Customer in the proportion that their respective negligence bears to the total negligence causing such loss, damage or liability.

- 6.2 Procedural Requirements. Whenever any suit or other proceeding which involves any matter for which the indemnification provisions of this Agreement are applicable, the indemnifying party shall, upon receipt of timely notice of the institution of such suit or other proceedings, assume the defense thereof and defend the same at its own expense and shall pay any and all costs, charges, attorneys' fees and other expenses and any and all judgments that may be incurred by or obtained against the indemnified party in such suits or other proceedings, and if any judgment or other lien is placed upon or obtained against the property of the indemnified party as a result of such suits or other proceedings, the indemnifying party shall at once cause the same to be released and discharged by giving bond or otherwise.

7. INSURANCE.

NorthWestern is self-insured and will comply with the insurance requirements set forth in Exhibit 3.

8. DAMAGE LIMITATION.



NWE-0001102

Notwithstanding anything herein to the contrary: (i) NorthWestern is not liable to Customer for losses, damages or liabilities in excess of the amount paid to NorthWestern under this Agreement; and (ii) neither party is liable for indirect, incidental, consequential, special, exemplary or punitive damages arising from or related to this Agreement, its performance, enforcement, breach or termination, such as, but not limited to, loss of revenue, anticipated profits, or business.

9. PERFORMANCE OF WORK.

- 9.1 Work Modifications. Customer may, by written request to NorthWestern, at any time during the Term of this Agreement and without invalidating the Agreement, request changes to the general scope of the Work. NorthWestern may accept or reject any request for changes. If the change increases or decreases the cost of or time for performing the Work, the parties shall make an equitable adjustment in the payment to NorthWestern and/or the anticipated completion date. Any adjustment to the funding requirement will be based on the reasonable expenditures or savings realized in performing the Work, and shall be based on actual costs. All mutually agreed changes in the Work will be authorized using the form attached as Exhibit 4.
- 9.2 Subcontractors. Specific portions of the Work may be performed by subcontractors.
- 9.3 Laws and Regulations. NorthWestern shall comply with applicable federal, state and local laws, regulations, and ordinances.
- 9.4 Design and Engineering. If the Work includes any design component, NorthWestern will engage engineers licensed within the jurisdiction where the Work is performed. NorthWestern will prepare all drawings, specifications, calculations, plans, reports and other design documentation (collectively the "*Design Documents*") for such portions of the Work. Design Documents requiring certification or seal will be certified or sealed by a professional engineer, licensed and qualified to perform engineering services in jurisdiction of the Project Site.

10. OWNERSHIP OF DOCUMENTS.

All technical information, documents, and reports, in whatever medium or format, including but not limited to, data, specifications, drawings, designs, plans, records, reports and proposals prepared by NorthWestern during the performance of the Work will remain the exclusive property of NorthWestern.

11. DELAYS.

- 11.1 Force Majeure. If NorthWestern is delayed at any time in the commencement or progress of the Work by any unforeseeable condition, event, or circumstance beyond NorthWestern's control, then the Project Schedule for performance and the date for completion of the Work will be extended by Change Order for a period of time equal to the delay. NorthWestern is only entitled to an extension of the time to perform the Work if such condition, event, or circumstance is not within the reasonable control of NorthWestern and is not the result of NorthWestern's acts or omissions.
- 11.2 Weather Delays. If adverse weather conditions are the basis for an extension of time to perform the Work, the claim shall be documented by data substantiating that weather



NWE-0001102

conditions were abnormal for the period of time and had an adverse effect on the scheduled Work. No time extensions will be permitted for NorthWestern's failure to consider and account for normal seasonal weather.

- 11.3 Notice Requirements. NorthWestern will deliver notice of any delay or potential delay within a reasonable period of time after the occurrence of the event giving rise to the delay or the potential delay. The notice will include a description of the reason for the delay or potential delay and the actions NorthWestern is undertaking to remediate or avoid any delay.

12. TAXES.

NorthWestern will obtain necessary tax licenses for all jurisdictions where Work is performed. NorthWestern will collect from Customer and remit sales, consumer, use, contractor's excise and similar taxes for the Work performed.

13. APPLICABLE LAW, FORUM AND DISPUTE RESOLUTION.

- 13.1 Applicable Law and Forum. This Agreement is governed in all respects by the laws of the state where the Project Site is located. Any action arising out of this Agreement must be brought in state or federal courts of the state where the Project Site is located and Customer consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue therein. Process in any action or proceeding referred to in the preceding sentence may be served on either party electronically.

- 13.2. Dispute Resolution. When a dispute has arisen and negotiations between the parties have reached an impasse, either party may give the other party written notice of the dispute. In the event such notice is given, the parties shall attempt to resolve the dispute promptly by negotiations between representatives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for the matter. The representatives shall confer in person or by telephone promptly to attempt to resolve the dispute. If the dispute has not been resolved by negotiation within 30 calendar days of the notice, then either party may proceed to a court of competent jurisdiction.

14. MISCELLANEOUS.

- 14.1 Independent Contractor. NorthWestern is an independent contractor and not the employee, agent or representative of Customer. NorthWestern is responsible for and controls the means and details of performing the Work. This Agreement cannot be construed to create an employment relationship between NorthWestern and Customer or a partnership, joint venture or joint undertaking between the parties.

- 14.2 Rights and Remedies. Duties and obligations imposed by this Agreement and rights and remedies available herein are in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

- 14.3 Assignment. The Agreement is personal to Customer. Customer shall not assign this Agreement, in whole or in part, without the prior written consent of NorthWestern. Such consent not to be unreasonably withheld, conditioned or denied. No assignment is effective, notwithstanding a consent granted thereto, unless the assignee under such



NWE-0001102

assignment agrees in writing to unconditionally assume all of the duties, liabilities, and obligations of Customer under this Agreement. NorthWestern will make reasonable efforts to accommodate Customer’s request for collateral assignment consents and to execute certifications, representations and supply information for the purpose of assisting Customer in obtaining Facility financing; provided, however, that in responding to any such request, NorthWestern is not obligated to provide any consent or enter into any agreement that adversely affects NorthWestern’s rights, benefits, risks or obligations under this Agreement.

14.4 Entire Document. This Agreement represents the entire agreement between NorthWestern and Customer and supersedes any prior negotiations, representations or agreements, either written or oral. Covenants or representations not contained or incorporated therein are not binding upon the parties.

14.5 Severability. If any provision of this Agreement, or the application thereof, is to any extent held invalid or unenforceable, the remainder of the Agreement will not be affected thereby, and each and every remaining provision will be valid and binding to the fullest extent permitted by law; provided, however, the parties agree to negotiate in good faith and reform this Agreement to as closely as possible resemble the original intent and allocation of risks and benefits.

14.6 Notices. Written notice shall be deemed to have been duly served if delivered in person to the individual for whom it was intended, or if delivered at or sent by registered or certified mail to the business address identified in this Agreement. Written notice may be provided by e-mail and is effective upon confirmation of receipt. For purposes of written notice, the following addresses shall be used:

NORTHWESTERN	CUSTOMER
NORTHWESTERN ENERGY	EAST RIVER POWER COOPERATIVE, INC.
300 S Burr St	211 South Harth Avenue
Mitchell, SD 57301	Madison, SD 57042
Attn: Jamie Hajek	Attn: Mark Hoffman
Phone: 605-995-4416	Phone: 605-256-8005
Email: Jamie.hajek@northwestern.com	Email: mhoffman@eastriver.coop

14.7 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the heirs, legal representatives, successors and assigns of the parties.

14.8 No Waiver. No course of dealing or failure of NorthWestern or Customer to enforce strictly any term, right or condition of this Agreement may be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement will operate as a waiver of any other term, right or condition.

14.9 Amendments. This Agreement will not be modified, amended or changed in any respect except by a Change Order or by an instrument in writing signed by authorized representatives of the parties.

NorthWestern Energy

NWE-0001102

- 14.10 No Third Party Beneficiary. This Agreement is for the exclusive benefit of the NorthWestern and Customer and does not constitute a third party beneficiary agreement and may not be relied upon or enforced by a third party.
- 14.11 Non-Recourse. The obligations of NorthWestern under this Agreement do not constitute obligations of any shareholder, officer, director or employee of NorthWestern and no claim or action may be brought or maintained against any such individuals.
- 14.12 Authority. Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.
- 14.13 Survival. Each of the terms, conditions and obligations set forth in Sections 3,4, 5, 6, 7, 8, 9, 12, 13 and 14 shall survive the termination or expiration of this Agreement for the maximum period allowed under applicable law.
- 14.14 Counterparts. This Agreement may be executed in counterparts, which together constitute one instrument. Copies of this fully executed instrument have the same force and effect as the original.

NORTHWESTERN ENERGY

EAST RIVER ELECTRIC POWER COOPERATIVE, INC.



 (signature)




 (signature)

Mike Cashell
(printed name)

_Mark Hoffman_____
(printed name)

Vice President - Transmission
(title)

_Chief Operations Officer_____
(title)



 (date)

 3/11/2020

 (date)



NWE-0001102

EXHIBIT 1

SPECIFICATIONS/DESCRIPTION OF PROJECT

Work Description: NorthWestern shall design and construct a new 115 kV switchyard to replace NorthWestern's current three terminal "Aberdeen A-Tap" located west of Aberdeen on the Siebrecht to Ellendale 115 kV transmission line. The new switchyard, designated Aberdeen A-Tap Switchyard, was originally intended to be configured as a 3 breaker, 3 bay, 115 kV ring bus. However, based on Customer's request, the switchyard will be designed and constructed as a 6 breaker, 4 bay, 115 kV breaker-and-a-half bus. The expanded configuration of the planned switchyard is presented as a preliminary level one-line diagram below.

NorthWestern will be responsible for development of the detailed design package, procurement of all associated equipment and materials, construction and energization of the new switchyard. The costs associated with the design and construction of the Aberdeen A-Tap Switchyard will be shared between Customer and NorthWestern in accordance with assignment depicted by color in the attached one line. NorthWestern is responsible for costs associated with items depicted in green, and Customer is responsible for costs associated with items depicted in purple. Costs for development of the detailed design package, construction oversight and general planning have been allocated in similar fashion. The costs for which Customer will be responsible for under this Agreement are estimated in the following tables.

The cost estimates and one-line diagram included in this exhibit are based on preliminary level engineering only.

Separately, Customer will be responsible to build new 115 kV transmission line to interface with the new Aberdeen A-Tap Switchyard at the designated switchyard terminal. It is assumed that Customer will bring OPGW or other fiber connection to the switchyard in association with the new 115 kV line. NorthWestern will be responsible for extending this fiber connection from the substation dead end structure into the control house and providing associated terminations within the switchyard.

Customer will be provided detailed engineering documents as they are developed to provide necessary interface details.

[CEII - one-line diagram redacted]

Preliminary Cost Estimate - 8/9/2019, revised 2/4/20			
A-Tap Switchyard			
East River Assinged Costs			
	hrs	\$	Totals
Sub & Relay Engineering			\$ 91,609
Engineering & drafting (hrs)	\$ 530	\$ 33,909	
Contract Relay Engineering		\$ 53,950	
Travel & Meals		\$ 3,750	
Communications Engineering			\$ 10,749
Engineering & drafting (hrs)	\$ 168	\$ 10,749	
Material & Equipment			\$ 470,200
Construction			\$ 255,623
Internal Union Labor	1,458	\$ 111,587	
Contracted Construction		\$ 137,248	
Travel & Meals		\$ 6,788	
Project Management			\$ 21,962
Project Management	\$ 312	\$ 19,962	
Travel & Meals		\$ 2,000	
20% Contingency			\$ 170,000
Subtotal			\$ 1,020,143
Estimated CIAC (estimated @ 16%)			\$ 163,223
Total			\$ 1,183,366

Assumptions

1	Estimates based on preliminary engineering
2	Estimates loaded with NWE rates,
3	Includes 6% tax on contractor and equipment estimates
4	Excludes any AFUDC
5	East River to extend connecting 115kV line to substation dead end
6	NWE to extend East River fiber from dead end into control house and provide termination
7	Substation siting, permitting, site civil work and fencing assinged 100% to NWE

**East River Assigned Costs
Material & Equipment Breakout**

(3) 115kV Breakers	\$ 189,000
(3) 115kV CT/PT units	\$ 54,000
(3) ABSW 7 and Bus	\$ 30,300
Foundation materials	\$ 18,500
Structural steel	\$ 60,750
Misc materials	\$ 20,450
Relay and associated	\$ 72,200
Communications equip	\$ 25,000
Total	\$ 470,200



NWE-0001102

EXHIBIT 2
MILESTONE SCHEDULE

Preliminary Project Time Line:				2019				2020				2021					
				4	1	2	3	4	1	2	3	4	1	2	3	4	
Detailed Design		4Q 2019 - 2Q 2020															
Construction Bidding and Planning		3Q 2020 - 4Q 2020															
Site Grading (NWE only)		2Q 2020															
Equipment and Material Procurement		3Q 2020 - 1Q 2021															
Switchyard Construction		2Q 2021 - 3Q 2021															



NWE-0001102

EXHIBIT 3

INSURANCE REQUIREMENTS

NorthWestern Corporation

- Is a large publicly traded (Delaware) corporation:
 - Federal Tax ID number: 46-0172280
- Is self-insured to \$1 million for property and property of others in our care, custody, and control
- Is self-insured to \$2 million for general liability
- Is self-insured to \$1 million for auto liability
- Is self-insured to \$2 million for workers compensation liability and is duly registered with the State of Montana as a self-insured entity
- Maintains excess liability coverage above the self-insured amounts for catastrophic situations

Additional information may be obtained from:

Katelyn Allerdings

Risk Analyst

NorthWestern Energy

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NWE-0001102

EXHIBIT 4
CHANGE ORDER FORM
CHANGE ORDER

NORTHWESTERN ENERGY

CHANGE ORDER: _____

CUSTOMER: _____

<u>DESCRIPTION</u>	<u>AGREED VALUE</u>
---------------------------	--------------------------------

Original Cost Estimate: _____

Value of Change Orders to Date: _____

Value of this Change Order: _____

Currently Approved Cost Estimate: _____

SCHEDULE IMPACT

Calendar days added to Term: _____

Calendar days deducted from Term: _____

Revised completion date of Work: _____

The Agreement, with any amendments and Change Orders to date, is modified to the extent and in the manner described herein.

ACCEPTED BY CUSTOMER: _____ DATE: _____

AUTHORIZED BY NORTHWESTERN: _____ DATE: _____