

127 FERC ¶ 61,064  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

April 21, 2009

In Reply Refer To:  
Westar Energy, Inc.  
Docket No. ER09-742-000

Winston & Strawn, LLP  
1700 K Street, N.W.  
Washington, DC 20006

Attention: Jeanne M. Dennis  
Attorney for Westar Energy, Inc.

Reference: Extension of First Revised Rate Schedule No. 168

Dear Ms. Dennis:

1. On February 20, 2009, Westar Energy, Inc. and the Kansas Gas and Electric Company (KGE) (collectively, Westar) submitted Fourth Revised Sheet Nos. 1 and 11 to First Revised Rate Schedule FERC No. 168 to extend the Electric Power Supply Agreement, dated February 3, 1988 (Existing Agreement) between KGE and the City of Arma, Kansas (Arma) for five months, to July 31, 2009. Westar requests waiver of the 60-day prior notice requirement to allow the extension to become effective March 1, 2009. In addition to the proposed tariff sheets extending the Existing Agreement for an additional five months, Westar submitted a notice of cancellation of the Existing Agreement. Westar requests that the notice of cancellation become effective on August 1, 2009.

2. Westar explains that it is asking to extend the Existing Agreement because Arma and Westar have been unable to reach an agreement concerning the terms and conditions of a new agreement for full requirements power service to replace the Existing Agreement. Specifically, Westar explains that on February 3, 2009, Arma filed a complaint against Westar in Docket No. EL09-33-000, requesting that the Commission

delay action on the cancellation of the Existing Agreement, which is set to terminate on March 1, 2009.<sup>1</sup>

3. In its complaint, Arma argues that it has attempted to negotiate with Westar the terms and conditions of a new full requirements power service agreement, but that Westar will offer only one service product for a twenty-year term, to which Arma is unwilling to agree. Arma also argues that it has attempted to procure a new source of power supply, but has been unsuccessful. On February 5, 2009, the Commission issued an order in the complaint proceeding directing that a settlement judge be appointed and that a settlement conference be convened as soon as practicable.<sup>2</sup> As a result of the first round of settlement discussions on February 10 and 11, 2009, Westar agreed to a five-month extension of the Existing Agreement in order not to disrupt Arma's current service.

4. On February 20, 2009, Westar submitted the filing requesting a five-month extension of the Existing Agreement. Westar states that it will extend the Existing Agreement, provided that Arma and Westar mutually agree to an early termination of the Existing Agreement if: (1) the settlement discussions in the complaint proceeding result in a cost-based agreement between Arma and Westar; and (2) execution and Commission approval of such an agreement occur before August 1, 2009.

5. Notice of Westar's filing was published in the *Federal Register*, 74 Fed. Reg. 14,114 (2009), with interventions and comments due on or before March 13, 2009. None was filed.

6. We will grant waiver of the notice requirement, and will accept Westar's extension of First Revised Rate Schedule No. 168, effective March 1, 2009.<sup>3</sup> We find that the requested five-month extension is just and reasonable because it will allow Westar to continue service to Arma for an additional period of time without interruption. In addition, we find that granting the five-month extension will provide Arma and Westar additional time to work out the terms of a new agreement through the settlement judge procedures established in the complaint proceeding.

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<sup>1</sup> The Commission accepted Westar's notice of cancellation of the Existing Agreement to be effective March 1, 2009. *Westar Energy, Inc.*, Docket No. ER09-348-000 (Jan. 16, 2009) (unpublished letter order).

<sup>2</sup> *City of Arma, Kansas v. Westar Energy, Inc.*, 126 FERC ¶ 61,096, at P 4 (2009).

<sup>3</sup> See *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *clarified*, 65 FERC ¶ 61,081 (1993).

7. We will reject Westar's proposed notice of cancellation. We find that Westar's notice of cancellation, filed almost six months in advance of the proposed August 1, 2009 effective date, is premature. Our rejection of Westar's notice of cancellation is without prejudice to Westar's re-filing the notice of cancellation no earlier than 120 days prior to the proposed effective date, and no later than 60 days prior to the proposed effective date.<sup>4</sup>

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>4</sup> 18 C.F.R. § 35.3 (2008).