

131 FERC ¶ 61,189  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 28, 2010

In Reply Refer To:  
Westar Energy, Inc.  
Docket Nos. ER10-998-000  
ER10-999-000  
ER10-1000-000  
ER10-1001-000

Westar Energy, Inc.  
818 S. Kansas Ave.,  
P.O. Box 889  
Topeka, KS 66601

Attention: Lisa K. Barnes, Senior Regulatory Analyst

Reference: Order on Request for Waiver

Ladies and Gentlemen:

1. On April 1, 2010, Westar Energy, Inc. (Westar) filed a request for waiver from the Protocols contained in certain full requirements agreements with the following customers: the Kansas Electric Power Cooperative, Inc. (KEPCo), Doniphan Electric Cooperative, Inc., Kaw Valley Electric Cooperative, Inc., and Nemaha-Marshall Electric Cooperative, Inc. (collectively, Kansas Cooperatives), the City of Arma, Kansas, and municipal customers currently taking service under Westar's Full Requirements Electric Service Rate Schedule and Electric Service Agreement (collectively, Formula Rate Customers). Specifically, because of a correction to Westar's FERC Form No. 1 applicable to the Formula Rate Customers, the Protocols of the above agreements require Westar to apply refund amounts prospectively in the Annual Update to these formula rates. Instead, Westar proposes to recalculate the 2008 generation formula rate templates for each month that each respective customer was taking service under its formula rate agreement and issue refund checks to each customer based on that calculation. As discussed below, the Commission grants the requested waiver for relief from the Protocols and approves the refund payments for Formula Rate Customers.

2. The rates charged by Westar to the Formula Rate Customers from the time they began taking service under the formula rate agreement through May 31, 2010 are charged based on date from Westar's 2008 FERC Form No. 1. On February 26, 2010, Westar filed an amended FERC Form No. 1 correcting a mistake on pages 310-311, where demand and energy charges received from Mid-Kansas Electric Company had been incorrectly classified. The effect of this correction is to lower the monthly rate that should have been charged to the Formula Rate Customers by approximately \$0.29/kW.

3. The Protocols approved by the Commission for the Arma Agreement, the Kansas Cooperative Agreement, and the Formula Rate Tariff provide that:

Corrections of mistakes in Westar's FERC Form No. 1 and specific data applied in the Formula Rate, and any resulting refunds or surcharges, shall be reflected in the Annual Update for the next effective Contract Year, with interest determined in accordance with 18 C.F.R. § 35.19a .... The Parties agree that corrections to erroneous FERC Form No. 1 references in the Formula Rate Template may be made in the Annual Update without a Section 205 or 206 filing.<sup>1</sup>

4. The Protocols in the KEPCo Agreement similarly state that:

If Westar Energy files any corrections to its FERC Form No. 1 during the Contract Year that affect the Demand Charge or VOM for that Contract Year, such corrections and any resulting refunds or surcharges shall be reflected in the Annual Update for the next effective Contract Year, with interest determined in accordance with 18 C.F.R. § 35.19a.<sup>2</sup>

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<sup>1</sup> Cost-Based Formula Rate Agreements for Full Requirements Electric Service with Doniphan Electric Cooperative, Inc., Kaw Valley Cooperative, Inc., and Nemaha-Marshall Electric Cooperative, Inc., Rate Schedule, FERC Nos. 326, 327, and 328, Attachment E, Demand Charge and [Variable Operations and Maintenance] VOM Protocols, ¶ 4; Full Requirements Electric Service Rate Schedule and Electric Service Agreement, FERC Electric Tariff Vol. 20, Attachment E, Demand Charge and VOM Protocols, ¶ 4; Ten-Year Cost-Based Formula Rate Agreement with the City of Arma, Kansas, FERC Rate Schedule No. 321, Attachment E, Demand Charge and VOM Protocols, ¶ 4.

<sup>2</sup> Cost-Based Formula Rate Agreements for Full Requirements Electric Service between Westar Energy, Inc. and Kansas Electric Power Cooperative, Inc., Substitute FERC Rate Schedule No. 301, Attachment H, Demand Charge and VOM Protocols, ¶ 3.

5. Under the provisions in these Protocols, Westar would be required to apply the refunds resulting from the correction in its 2008 FERC Form No. 1 in the June 1, 2010 Annual Update. Westar contends that because none of the Formula Rate Customers were taking service under the formula rate agreements for an entire year, such an application of the refund amounts would be inappropriate. Westar further asserts that returning the overbilled amount through refunds will ensure that the amount returned is proportionately divided among all customers based on the time each customer was taking service under its respective formula rate agreement.

6. Notice of Westar's filing was published in the *Federal Register*, 75 Fed. Reg. 18,827 (2010), with interventions and comments due on or before April 22, 2010. A timely motion to intervene was filed by KEPCo.

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. The Commission has previously granted one-time waivers of tariffs to alleviate the effects of errors by entities.<sup>3</sup> The Commission finds that granting this one-time waiver is just and reasonable. We find that because none of the Formula Rate Customers were taking service under the formula rate agreement for an entire year that such a limited waiver should be granted in this instance. The Commission will grant Westar's requested waiver of the formula rate Protocols to allow it to issue refund checks to each customer based on the recalculated 2008 generation formula rate templates for the Formula Rate Customers for each month that each respective customer was taking service under its formula rate agreement.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> See *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21, 22 (2006).