

130 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Westar Energy, Inc.

Docket No. ER09-1273-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS

(Issued March 18, 2010)

1. On June 4, 2009, Westar Energy, Inc. (Westar) filed, as new attachments to its Open Access Transmission Tariff (OATT), a *pro forma* Balancing Area Services Agreement (Balancing Agreement) and Schedule 3A, Generator Regulation and Frequency Response Service (Schedule 3A). Westar's proposed Balancing Agreement and Schedule 3A will allow Westar to charge for and provide generation regulation and frequency response services to generators located in Westar's balancing authority area (balancing area) whose output is delivered outside Westar's balancing area or to the Southwest Power Pool, Inc. (SPP) energy imbalance market. In this order, the Commission conditionally accepts Westar's proposal, suspends it for a nominal period to be effective August 3, 2009, subject to refund and a compliance filing, as discussed below.

I. Background

2. Westar is a public utility with a transmission system located in Kansas and is under the functional control of SPP. The Westar balancing area includes load on seven different transmission owners' systems, on behalf of four different wholesale suppliers. In addition, multiple generators across the SPP serve as Designated Resources to load within Westar's balancing area. Westar, as a balancing area operator, is subject to the North American Electric Reliability Corporation's (NERC) Reliability Standards, including standards requiring Westar to continuously balance the output of generators to the load in its balancing area. For transmission service, SPP is the transmission provider responsible for ensuring that all necessary ancillary services required for transmission customers within its footprint are available. SPP provides some ancillary services directly while for others SPP relies on each balancing area operator to supply those

services under approved tariff schedules.¹ Schedule 3 (Regulation and Frequency Response Service) of the SPP OATT provides that each balancing area operator is responsible for maintaining the balance between load and generation in its balancing area. Schedule 3 of Westar's OATT authorizes Westar to charge for Regulation and Frequency Response Service "when the transmission service is used to serve load within its Control Area."²

II. Westar's Filing

3. Westar states that in the past year, it has received several requests from generators to become part of the Westar balancing area. Westar states that a majority of these requests originate from a particular wind farm that is located within the Westar balancing area, but is physically interconnected to a transmission owner other than Westar. Westar also states that it recovers its costs related to the balancing area services provided to generators serving load in the balancing area through bilateral agreements or through the SPP OATT. However, the Westar and SPP OATTs do not currently contain provisions applicable to independent generators seeking to become a part of Westar's balancing area but who serve load located outside of Westar's balancing area. Westar states that its proposed Balancing Agreement and Schedule 3A will allow Westar to charge for and provide generation regulation and frequency response services to generators located within Westar's balancing area and whose output is delivered to load outside Westar's balancing area or to the SPP energy imbalance market.

4. Westar states that the Balancing Agreement is the *pro forma* agreement that all generators wishing to be included in Westar's balancing area must sign. Westar states that because it will not always be a party to the interconnection agreements of these independent generators, the Balancing Agreement is necessary to establish a contractual basis under which Westar may assess the charges in Schedule 3A. Westar further explains that generators will only be assessed for regulation service under either Schedule 3A or Schedule 3.

5. Westar explains that the proposed Schedule 3A will require generators delivering output to load outside the Westar balancing area or selling into the SPP energy imbalance market to purchase or self-provide regulating capacity as set forth in the Westar OATT. Westar states it will not assess a generator a Schedule 3A charge if it is a Designated

¹ See SPP FERC Electric Tariff, Fifth Revised Vol. No. 1, First Revised Sheet No. 35.

² See Westar FERC Electric Tariff, Second Revised Vol. No. 5, 3rd Revised Sheet No. 132.

Resource of a transmission customer serving load inside of the Westar balancing area. Westar states that in such a case, the transmission customer is already paying the average regulation cost in which off-system sales are included.³

6. Westar states that under NERC Reliability Standards, balancing area operators such as Westar are responsible for continuously balancing generating resources with load and must maintain adequate generating reserves that are quickly available to accomplish this task. Westar adds that NERC measures a balancing authority's compliance with this requirement through its Control Performance Standard 2, which measures the balance over 10-minute periods of each month, and it sets a limit on the maximum permitted "Area Control Error." The Area Control Error is the instantaneous difference between actual and scheduled flow on tie lines between a balancing area and surrounding balancing areas. Westar states that in order to be in compliance, a balancing area operator must pass this measurement in at least 90 percent of the 10-minute periods in each one month period.

7. Westar adds that the output from fossil-based generation is typically set at a certain level, and this fossil-based generation can maintain this level as long as the unit is performing properly. Westar states that this type of generation has very little variability in output from the amount scheduled each hour; thus the regulation function under Schedule 3 historically has been focused on moment-to-moment deviations in loads and the ability of the generation output to match the load levels. Westar explains that to provide this instantaneous balancing function on average it reserves 60 megawatts (MW) of its online generating capacity, from dispatchable generation (often natural gas-fired plants) that can respond quickly to signals from Westar's control room to compensate for these deviations within the Westar balancing area.⁴

8. Westar explains that wind generation output varies with the speed of the wind and is also susceptible to a phenomenon known as "high speed cutout" which can occur during high wind conditions when governors on the generators shut them down as a protective mechanism. In addition, Westar states, during times of low load levels, wind projects may produce energy that is not needed, which requires other generation to back down to preserve balance on the system. According to Westar, this variability means that it must manage not only the variability of its load, but in the case of wind generation, it must also manage the variability of the generation itself.

³ See Westar June 3, 2009 Filing at 5 n.8.

⁴ See *id.* Dietz Aff. at 5.

9. With regard to its proposed Schedule 3A, Westar states that for dispatchable generators, the regulating obligation will be 1.35 percent of the generator's nameplate capacity. Westar asserts that this percentage is the same as the percentage obligation Westar currently applies to transmission customers serving load within the Westar balancing area under Schedule 3, except the percentage in Schedule 3 applies to the network transmission customer's coincident peak load,⁵ instead of nameplate capacity. Westar states that it developed this percentage based on the average percentage of capacity that Westar historically has needed to commit to regulate, or balance, the output of generation to load in its balancing area.⁶ According to Westar, the Commission accepted a utility's proposal to assess the Schedule 3 charge to generator exports because generator regulation service used the system in a comparable manner to regulation service under Schedule 3, except that it served export transactions.⁷

10. Westar also states that it has been experiencing an increase in intermittent generation operating in its balancing area, which is significantly increasing the regulating burden on the Westar system.⁸ Westar states that because of the variable nature of intermittent facilities' output these generators impose a greater regulation burden on Westar's transmission system than imposed by dispatchable generation.

11. To determine the regulation requirement for intermittent generators under Schedule 3A, Westar conducted a study of the impact of wind generation on the Westar system. Westar states that it collected 10-minute electrical output and wind data converted to power output from three different wind sites in western, central and eastern Kansas over a one-year period (from December 2005 through November 2006). For each 10-minute interval, Westar added together data from the three sites into one aggregated value. Westar explains that using the observations based on the aggregate value as opposed to using the individual wind farms' observations allowed it to capture the diversity⁹ associated with geographically separated wind generators.¹⁰ Westar states that

⁵ For point-to-point transactions, under Schedule 3, transmission customers also have a regulation requirement of 1.35 percent of reserved capacity.

⁶ See Westar June 3, 2009 Filing at 5.

⁷ *Id.* (citing *Florida Power Corp.*, 89 FERC ¶ 61,263, at 61,765 (1999)).

⁸ *Id.*

⁹ Diversity describes the effect of offsetting deviations between different customers. For example, a fluctuation decreasing one customer's value and a fluctuation increasing another customer's value would be a diversity benefit, as the two deviations would offset each other.

after determining an observation for the group of wind farms for each 10-minute interval, it compared the group's observation for each 10-minute interval to the group's observation for the previous 10-minute interval and calculated the difference in MW.¹¹ Westar states that the difference represented the group's deviation from its dispatch instruction. Next, Westar calculated a standard deviation for the group's deviations for a year. To calculate the regulation requirement percentage for intermittent generators to be used under Schedule 3A, Westar multiplied the group's standard deviation by two and divided that amount by the total nameplate capacity of the three wind generators.¹²

12. Westar explains that based on this study the appropriate regulation requirement for intermittent generators under proposed Schedule 3A is 7.8 percent of nameplate capacity (less the amount of generation used to supply load inside the Westar balancing area, if any). Westar requests an effective date of August 3, 2009 for its tariff revisions.

III. Deficiency Letter and Westar's Response

13. On August 3, 2009, Commission staff issued a deficiency letter requesting further information regarding Westar's filing. In the deficiency letter, staff directed Westar to demonstrate that the regulation requirement of 1.35 percent in Schedule 3 does not already reflect regulation capacity required for exports and sales into the SPP energy imbalance market considering that Schedule 3 provides for the balancing of both generation and interchange with load. Staff also directed Westar to provide support for the proposed 1.35 percent regulation requirement for dispatchable generators in Schedule 3A. Staff noted that Westar's proposed regulation requirements do not take into account the diversity in deviations among all system resources and load. Staff directed Westar to explain why, without reflecting the diversity of deviations among generators and load, the proposed regulation requirements in Schedule 3A, combined with those in Schedule 3, will not result in over-recovery of total system regulation costs. Staff also requested Westar to explain why it is reasonable to distinguish generators based on dispatchability or fuel type to establish regulation requirements rather than distinguishing resources based upon their individual operating characteristics.

¹⁰ See Westar June 3, 2009 Filing, Deitz Aff. at 6-7.

¹¹ See *id.* Deitz Aff. at 7-8.

¹² Westar states that by using two times the standard deviation, it was able to establish a 95 percent confidence interval, which ensures a high likelihood of compliance with NERC standards.

14. Staff also asked Westar to explain the terms and conditions of the proposed Schedule 3A and the Balancing Agreement. Specifically, Staff requested that Westar explain why the use of the term “Transmission Customer” is appropriate in Schedule 3A when customers taking service under Schedule 3A and executing a Balancing Agreement do not need to take transmission service from Westar. Additionally, Staff noted that in Westar’s transmittal letter, Westar asserted that sales into the SPP energy imbalance market will be covered by the proposed Schedule 3A but the terms of Schedule 3A, as proposed, did not state explicitly that sales into the SPP energy imbalance market are subject to the charges in Schedule 3A. Staff directed Westar to explain how Schedule 3A provides that it is applicable to sales into the SPP energy imbalance market.

15. In response to the deficiency letter, Westar states that it assesses the regulation charge in Schedule 3 of its OATT only when a transmission customer uses transmission service to serve load within its balancing area. Westar states that it developed that charge based on its need to maintain enough on-line generation in order to match the generation output to load. Westar states that the charge was calculated based solely on the regulation burden imposed on Westar by the load in its balancing area.

16. Westar also states that any regulation burden imposed by sources other than load is not accounted for in the regulation charge in Schedule 3. According to Westar, all of the costs associated with the regulation burden imposed by sources other than load are currently being absorbed by Westar’s wholesale and retail customers through their fuel adjustment clauses. However, Westar contends that it is inappropriate for its wholesale and retail customers to subsidize the costs of the regulation burden imposed by generators located in Westar’s balancing area that either export out of Westar’s balancing area or make sales into the SPP energy imbalance market.¹³ Westar explains that it credits its ancillary service revenue to its retail and wholesale customers, and because it cannot currently charge for regulation service on transactions involving exports out of its balancing area for the regulation burden they put on the Westar system, Westar’s retail and wholesale customers are subsidizing these transactions.

17. Westar states that generators that are Designated Resources for load inside Westar’s balancing area and that, from time-to-time, sell into the SPP energy imbalance market or export power outside the balancing area would not be assessed the Schedule 3A charge. According to Westar, in such a case, any off-system sale made by the generator benefits Westar’s retail and wholesale customers because the margins from those sales are credited back to customers through their respective fuel adjustment clauses. Westar states that it is appropriate for retail and wholesale customers that

¹³ Westar states that sales into the SPP energy imbalance market are essentially exports of power to SPP for which there is no identifiable load.

receive the margin for these off-system transactions to be responsible for the regulation cost of such transactions. Because these customers pay for the regulation costs through their fuel adjustment clauses, Westar argues that it is not necessary to assess a separate charge to the Designated Resources when they export power from the balancing area.

18. Additionally in response to the deficiency letter, Westar conducted a portfolio-wide¹⁴ study of the regulation requirements for generation and load on Westar's system for April 2009 through November 11, 2009¹⁵ reflecting the diversity of deviations on Westar's system. Westar's portfolio-wide study produced a regulation requirement of 1.24 percent for dispatchable generation¹⁶ and 4.05 percent for intermittent resources (compared to the proposed 7.8 percent). Westar states that because of the partially offsetting deviations in the portfolio, the regulation requirement for the portfolio is smaller than would be needed to cover each individual source separately.¹⁷

19. Westar explains that it distinguishes between dispatchable and intermittent generation because of the way in which SPP's deployment software applies to the generation. The amount of generation Westar is required to have on-line is dependent upon the expected difference between what a generator is producing compared to what it is supposed to produce (i.e., deployment signal output versus actual output). Westar

¹⁴ Under the portfolio-wide study, Westar first calculated the amount of regulation capacity needed to meet regulation standards 95 percent of the time for each source of deviation on the system including intermittent generation, dispatchable generation, and load. Westar then calculated the amount of regulation capacity needed to meet the regulation standards 95 percent of the time for all sources of deviations combined together taking account of correlation and portfolio diversity. Finally, Westar adjusted the regulation requirement for each individual source to reflect its share of the combined portfolio regulation requirement.

¹⁵ Westar states that this is the only period in which it had all of the data needed to conduct the analysis. *See* Westar Response to Deficiency Letter, Dietz Aff. at 8.

¹⁶ Westar notes that the regulation requirement for dispatchable generation is 2.25 percent according to the stand-alone approach which does not reflect diversity, but Westar is proposing a regulation requirement of only 1.35 percent for dispatchable generation which is the same percentage used in Schedule 3.

¹⁷ *See* Westar Response to Deficiency Letter at 8 (stating, "Overall, diversity helps mitigate the need for regulation.").

states that SPP calculates deployment signals differently for dispatchable generators from the manner in which it calculates deployment signals for wind generators.¹⁸

20. Westar reiterates that intermittent generation causes a regulation burden greater than dispatchable generation because of wind variability and high speed cut out. Westar states that its portfolio-wide analysis confirms its conclusion that wind generators impose a significantly higher regulation burden on Westar's system than the burden imposed by other generators.

21. Westar maintains that its proposed regulation requirement for intermittent generators, based on a stand-alone analysis, is appropriate. However, Westar acknowledges that whether to charge intermittent generators on a stand-alone basis or a portfolio-wide basis is a policy decision to be made by the Commission.¹⁹ Westar notes that any amount recovered from exporting intermittent generators will be returned to Westar's retail and wholesale customers as credits. Westar argues that reducing the proposed regulation requirement for intermittent generation would require Westar's retail and wholesale customers to continue to subsidize these exporting generators. In addition, Westar states that over time, as technology improves and Westar has more experience with intermittent generation, the regulation requirement under Schedule 3A may decrease. Westar states that, if the Commission decides to utilize the portfolio-wide approach, it will make a filing within three years with updated data and updated regulation requirement percentages.²⁰ Westar also states that SPP is expected to initiate reforms to consolidate balancing areas and establish ancillary service markets, which will supersede Westar's Schedule 3A generator regulation service.

¹⁸ According to Westar, the deployment instructions for dispatchable generation are based on meeting the total obligation of the market footprint minus the expected output of intermittent generation with the greatest deviations occurring when a unit is ramping up or down to meet its deployment value. For intermittent generation, the deployment signal for the interval is based on the actual observation taken 10 minutes prior to the deployment interval.

¹⁹ See Westar Response to Deficiency Letter at 5.

²⁰ Westar also states that it is willing to modify Schedule 3A as necessary to clarify which parties are subject to the charges and to specify that the charges apply to sales into the SPP energy imbalance market.

IV. Notice of Filings and Responsive Pleadings

22. Notice of Westar's June 4, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 29202 (2009), with interventions or protests due on or before June 24, 2009. Notice of Westar's response to the deficiency letter was published in the *Federal Register*, 75 Fed. Reg. 4370 (2010), with interventions or protests due on or before February 10, 2010. Horizon Wind Energy LLC, Smoky Hills Wind Project II, LLC, Iberdrola Renewables, Inc., Sunflower Electric Power Corporation, and American Wind Energy Association filed timely motions to intervene. On February 12, 2010, Xcel Energy Services Inc. (Xcel) filed a motion to intervene out-of-time. American Wind Energy Association, jointly with the Wind Coalition, filed a protest of Westar's filing.²¹ On February 25, 2010, Westar filed an answer to AWEA's protest. AWEA filed an answer to Westar's answer on March 10, 2010.

A. Protest

23. In its protest, AWEA argues that the costs Westar proposes to assign to intermittent generators are overstated and that to the extent that integration costs for intermittent generators exist, these costs are largely the product of outdated power system operating procedures. AWEA argues that studies have demonstrated that balancing area consolidation or coordination greatly reduces the cost of integrating intermittent generators with the power system and reduces the cost of operating the power system even in the absence of intermittent generators.²² According to AWEA other operating procedure reforms, including the use of dynamic scheduling on transmission ties to neighboring balancing areas, shorter generator dispatch intervals, and more comprehensive energy and ancillary services markets, are cost effective and reduce the cost of integrating intermittent generation. AWEA requests that the Commission encourage Westar to make such reforms to reduce the regulation requirement percentage required for intermittent generators.

24. AWEA also argues that Westar's stand-alone approach results in an excessive regulation requirement because it does not reflect diversity of deviations on Westar's system. According to AWEA, identifying the incremental burden posed on the system by a particular resource must take into consideration the aggregate variability of the system with the resource added minus the aggregate variability of the system without that

²¹ For the purposes of this order, we will refer to these joint protesters as "AWEA."

²² See AWEA Protest at 5.

resource.²³ AWEA asserts that Westar's proposal results in an overstatement of the impact of intermittent generation's variability by assuming that the variability of the resource alone is identical to the incremental impact of that resource on aggregate power system variability.

25. AWEA also contends that both the stand-alone and the portfolio methods overstate the incremental regulation burden associated with wind plants in existence today as well as overstate the regulation burden of future wind plants. According to AWEA, the aggregate variability of two wind plants is almost always going to be smaller (on a share-of-nameplate-capacity basis) than the variability of one of those wind plants. Thus, AWEA reasons, the incremental, system-wide variability associated with future wind plants will tend to be smaller than the incremental variability associated with a wind plant installed today. AWEA also argues that Westar's use of only nine months of data does not represent a full assessment of wind plant variability and aggregate power system variability over all seasons of the year. AWEA contends that Westar should have based the study on three years or more of data. Likewise, AWEA contends that a study based on five wind plants may not be representative of all wind generators that will be charged for Schedule 3A service. AWEA also states that some of the wind farms in Westar's analysis were just beginning commercial operation at the start of the study period. AWEA argues that because many wind plants experience a higher frequency of wind turbine outages and other anomalous events in the first months of commercial operation, as do conventional generators, Westar's data may not be a valid representation of normal wind plant output.

26. In addition, AWEA argues that Westar inaccurately assumes that reserves would need to be maintained at uniform levels at all times. AWEA states that recent peer-reviewed wind integration studies have found that the actual incremental regulation needs for wind energy vary depending on the level of wind output at any one point in time. Thus, AWEA argues, it is possible to significantly reduce wind's incremental regulation needs during those and other time periods that are statistically unlikely to see major wind ramps in a certain direction.

27. AWEA requests that the Commission reject the filing, require Westar to make a supplemental filing addressing the issues AWEA states Westar failed to address in its response to the deficiency letter, or in the alternative, suspend the filing for the maximum statutory period and set it for hearing and settlement judge procedures.

²³ AWEA Protest at 8.

B. Answers

28. Westar states that many of the reforms AWEA claims would reduce the cost of regulating intermittent generation are either outside of Westar's control or would have no effect on Westar's need to reserve regulating capacity.²⁴ Using numerical examples, Westar challenges AWEA's assertion that the appropriate method of determining a regulation requirement is by taking into consideration the aggregate variability of the system with the resource minus the aggregate variability of the system without that resource. Westar adds that, contrary to AWEA's claim, to avoid skewing the results it included data from only those wind generators that had been in operation for a sufficient amount of time before the study commenced.

29. Westar argues that the studies AWEA relied on in its protest, which Westar states are unrelated to the instant proceeding and contain flaws, in fact support the regulation requirement percentage Westar developed.²⁵

30. In its answer, AWEA contends that the analysis Westar presented in its answer contains errors, including failing to recognize that the minute-to-minute variability of individual loads and individual wind plants is typically highly uncorrelated, and that consequently, regulation requirements do not add arithmetically. AWEA states that in spite of evidence from Westar's own data and analysis that the total system regulation requirements combine statistically, Westar still claims that its proposed stand-alone approach is appropriate.²⁶

²⁴ Westar states that for the past two years SPP has been working towards a consolidated SPP balancing area and ancillary services market and that these efforts are expected to be completed in approximately three years. *See* Westar Answer at 6.

²⁵ *Id.* at 14. For example, Westar states that a study prepared for the Minnesota Public Utilities Commission by the EnerNex Corporation (Minnesota Study) demonstrates that when intermittent generation is added to the system, the total variance of the system increases. Westar states that the study shows that intermittent generation adds an additional regulation burden and additional costs to the balancing area and that under the Minnesota Study the regulation requirement applicable to newly-added wind generators equals 7.53 percent. *Id.* at 14-15.

²⁶ AWEA Answer at 3.

V. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant Xcel's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept Westar's and AWEA's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

33. The Commission conditionally accepts Westar's proposed Balancing Agreement and Schedule 3A, suspends them for a nominal period to be effective August 3, 2009, subject to refund and a compliance filing, as discussed below.

34. In Order No. 890, the Commission revised the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.²⁷ In Order No. 890-A, the Commission further clarified that "transmission providers may propose to assess regulation charges to generators selling in the control area, as well as generators selling outside the control area, and the Commission will consider such proposals on a case-by-case basis."²⁸ In

²⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009) *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

²⁸ Order No. 890-A, FERC Stats & Regs. ¶ 31,261 at P 313.

addition, the Commission has accepted utilities' proposals for separate regulation charges for generators exporting from the balancing area.²⁹

35. The Commission finds that like the proposals accepted in *Florida Power and Entergy*, Westar's proposed Balancing Agreement and Schedule 3A will allow Westar to charge for generation regulation resulting from transactions involving exports of power out of the Westar balancing area. Here, however, Westar proposes to charge different generator regulation charges for dispatchable and intermittent generation. The Commission finds that Westar's proposal to assess generator regulation charges, an interim measure which will be effective only until SPP's expected balancing area consolidation and ancillary services market are implemented, modified as discussed herein, is just and reasonable and consistent with Commission policy.³⁰

36. Westar asserts that intermittent generation places a heavier burden on its system than dispatchable generation and has provided data supporting this claim. Specifically, Westar's analysis submitted in response to the deficiency letter provides data showing, among other things, that intermittent generators' deviations from the deployment signal are more than three times greater than those of dispatchable generators.³¹ Accordingly, the Commission finds that Westar's proposal reasonably assesses intermittent generation a higher regulation requirement consistent with cost causation principles.

37. The Commission disagrees with both Westar and AWEA concerning the reasonableness of the portfolio-wide method. Westar claims that if export transactions are assessed regulation requirements based on the portfolio-wide approach, then retail and wholesale customers would subsidize these transactions through their fuel clause. By contrast, AWEA claims that if Westar assesses regulation charges using the portfolio method, then wind generation will pay too much.³² However, the portfolio study reflects that in the day-to-day operation of the system, Westar regulates the aggregate variations of all resources and that one resource's negative deviation can offset some or all of

²⁹ See *Florida Power Corp.*, 89 FERC ¶ 61,263 (1999) (*Florida Power*); *Entergy Services Inc.*, 120 FERC ¶ 61,042, at P 66 (2007) (*Entergy*).

³⁰ These SPP reforms are expected to occur in approximately 2013. See Westar Answer at 6.

³¹ See Westar Response to Deficiency Letter, Deitz Aff. at 7.

³² AWEA asserts that generators should not pay more than the incremental costs of regulation for the last generator added to the system (which AWEA assumes is an intermittent generator).

another resource's positive deviation. When the transactions of two customers result in diversity benefits, it is incorrect to say that one customer is benefitting the other but not vice versa. Instead, the diversity benefits result from both transactions, and the Commission finds that sharing of these benefits among the customers is reasonable. Westar's portfolio-wide approach appropriately shares the diversity benefits among generators and load, and does not inappropriately allocate costs to any one customer.

38. Moreover, such sharing of diversity benefits is consistent with traditional ratemaking practices of allocating fixed costs where exact precision in cost allocation is not always possible. For example, ancillary service costs and transmission revenue requirements are currently allocated among load where the diversity benefits are shared among load, not allocated to particular loads. As the Supreme Court has found, "allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."³³

39. Thus, regulation requirements based on the portfolio-wide approach, which reasonably share the benefits of diversity among all generators and load, are just and reasonable for use on an interim basis. Accordingly, we accept for filing Westar's Schedule 3A subject to Westar revising the regulation requirement percentages applicable to intermittent and dispatchable generators. During the interim period, until the SPP energy imbalance market renders Schedule 3A unnecessary, Westar is directed to use regulation requirements based on the portfolio-wide analysis. Westar is directed to make this change in a compliance filing submitted within 30 days from the date of this order.

40. Additionally, we note that in Westar's calculation of the portfolio-wide regulation requirement percentages, Westar divided the regulation capacity for dispatchable generation by "Average Peak Generation (MW)" and divided the regulation capacity for wind generation by "Maximum Observation (MW)." The resulting percentage is then applied, per Schedule 3A, to a generator's name plate capacity, as adjusted in Schedule 3A. We find that Westar's divisors of average peak generation and maximum observed MW are inconsistent with the use of name plate capacity as the billing determinant and inconsistent with the methodology used in the June 3, 2009 filing.³⁴ The Commission's acceptance of Westar's proposal is further conditioned on Westar revising its calculation to use name plate capacity in the derivation of the portfolio-wide regulation requirement percentages when it submits its compliance filing.

³³ *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589, 65 S. Ct. 829, 89 L. Ed. 1206, *reh'g denied*, 325 U.S. 891, 65 S. Ct. 1082, 89 L. Ed. 2004 (1945).

³⁴ See Westar June 3, 2009 Filing, Dietz Aff. at 8 and Appendix A.

41. While we agree with Westar that it must reserve regulation capacity to adequately serve exports from its balancing area or to serve sales into the SPP energy imbalance market,³⁵ Westar has not adequately justified exempting Designated Resources that make occasional export transactions or sales into the SPP energy imbalance market. Moreover, Schedule 3A could be read to exempt a generator from charges under Schedule 3A for its exports if any part of the generator is designated to serve load internal to Westar's balancing area. Westar is required to reserve capacity to regulate these transactions just as it is required to do for other exports or sales into the SPP energy imbalance market, and the capacity needed to regulate these transactions will be in addition to the capacity needed to provide Schedule 3 regulation service for network load. Westar has not contested this point. Instead, Westar argues that its retail and wholesale load customers benefit from the margins associated with such transactions and should pay for the regulation capacity through their fuel clauses. We do not find this argument to be persuasive. Assessing Schedule 3A generation regulation charges for exports or sales into the SPP energy imbalance market from generators that are, in whole or in part, designated to serve load internal to Westar's balancing area is necessary to ensure that all generators in the Westar control area competing to engage in such transactions are treated in a manner under Schedule 3A that is not unduly discriminatory. Accordingly, we accept Westar's proposal subject to Westar revising its tariff sheets in the compliance filing discussed above to apply charges under Schedule 3A to all customers exporting power out of the Westar balancing area or making sales into the SPP energy market, whether such generators are, in whole or in part, Designated Resources serving load in the Westar balancing area and occasionally making exports or sales to the SPP energy imbalance market.

42. With regard to AWEA's argument that Westar's proposal is a result of outdated operating procedures, we agree that reforms may be necessary for transmission providers to address the integration of new types of resources. The Commission is currently examining some of the reforms AWEA advocates in a rulemaking proceeding regarding integration of variable energy resources.³⁶ We expect the rulemaking proceeding to address many of the issues raised by AWEA, such as the need for operating procedure

³⁵ Westar's reserved regulation capacity must stand ready moment-to-moment. The fact that intermittent generation does not use that capacity in one moment does not mean it will not need the capacity in the next moment. Under Schedule 3A, intermittent generators purchase the capability to have their generators regulated and should pay for that capability regardless of whether they actually use it in any given moment. *See Calpine Oneta Power L.P.*, 116 FERC ¶ 61,282, at P 28 (2006).

³⁶ *Integration of Variable Energy Resources*, 130 FERC ¶ 61,053 (2010).

reforms. However, these reforms are not before the Commission in this proceeding. Here, the issue before the Commission is whether Westar's proposal to adopt generator regulation service, which will be required only until the reforms Westar expects SPP to make or other potential industry-wide reforms are instituted, is just and reasonable.

43. In addition, regarding AWEA's concern about the sufficiency of the data used in this study, while more data may be helpful under the present circumstances, where Westar's proposal is interim in nature, and Westar has provided data it states is the most up-to-date information available to support its analysis,³⁷ we find the data provided to be sufficient to demonstrate the reasonableness of Westar's proposal. Westar proposes that, if the Commission decides to utilize the portfolio-wide approach, it will make a filing within three years with updated data and updated regulation requirement percentages. We believe that an informational report will be useful in determining whether there have been changes in the makeup of the portfolio on Westar's system. However, in lieu of Westar's proposal for a three year filing, we will require Westar to make an informational report on an annual basis in light of the limitations in the data currently available to support Westar's portfolio-wide analysis. The annual informational report should include updated data.³⁸ Accordingly, we will accept Westar's proposal conditioned on Westar submitting annual informational filings as described above. .

44. The Commission's acceptance of Westar's proposal is also conditioned on Westar including a few additional revisions in its compliance filing. Westar's proposed Schedule 3A refers to customers taking service under that schedule as "Transmission Customers." However, Westar states that customers taking service under Schedule 3A and executing a Balancing Agreement might not be located on Westar's system and as such, might not need to take transmission service from Westar. Thus, the Commission further conditions acceptance of Westar's proposal on Westar modifying Schedule 3A in the compliance filing discussed above to adopt an alternative name for a customer taking service (e.g., Regulation Service Customer) which may or may not be a transmission customer. Further, our acceptance of Westar's proposal is subject to Westar clarifying Schedule 3A to state explicitly that the schedule applies to sales into the SPP energy imbalance market because these transactions are essentially exports to SPP without any identified load.

³⁷ See Westar Response to Deficiency Letter, Dietz Aff. at 8.

³⁸ The Commission does not intend, to set this informational filing for notice and comment, nor issue an order on it.

45. Lastly, the tariff designations Westar used in the instant filing do not comply with Order No. 614.³⁹ Proposed Sheet Nos. 132 and 133 use revision numbers that have already been superseded. The Commission further conditions acceptance of Westar's proposal on Westar revising these designations accordingly in the compliance filing.

46. For the reasons stated above, the Commission conditionally accepts Westar's proposed Balancing Agreement and Schedule 3A, suspends them for a nominal period to be effective August 3, 2009, subject to refund and a compliance filing, as discussed above.

The Commission orders:

(A) Westar's filing is hereby conditionally accepted for filing and suspended for a nominal period to become effective August 3, 2009, subject to refund and a compliance filing, as discussed in the body of this order.

(B) Westar is hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) Westar is hereby directed to submit a report of any refunds made in compliance with this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁹ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).