

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Westar Energy, Inc.

Docket No. ER05-925-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 24, 2005)

1. On May 2, 2005, Westar Energy, Inc. (Westar) filed revised rates for transmission and ancillary services under its open access transmission tariff (OATT). In this order, the Commission accepts for filing Westar's proposed rates, suspends them for five months, to become effective December 1, 2005, subject to refund, and establishes hearing and settlement judge procedures. This action benefits customers because it provides the parties with an appropriate forum in which to resolve their disputes over Westar's proposed tariff revisions.

Application

2. In the instant filing, Westar proposes to adopt a formula rate to determine charges for transmission service and to revise its rates for ancillary services. Westar states that, because it participates in the Southwest Power Pool (SPP), the rates in its OATT are also set forth in the SPP Regional OATT for service in the Westar pricing zone. In its application, Westar states that SPP plans to file changes to the SPP Regional OATT that will track the changes proposed in the instant filing.¹

3. Westar states that its proposed rate formula is modeled after the rate formula in Attachment O of the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) OATT. Under the proposed formula, transmission rates would be updated June 1 of each year to reflect Westar's actual costs as reported in the FERC Form 1 reports for Westar and Kansas Gas and Electric Company (KG&E), Westar's

¹ On May 19, 2005, as amended on May 27, 2005, SPP filed such proposed revisions to the SPP Regional OATT in Docket Nos. ER05-990-000 and ER05-990-001.

wholly-owned subsidiary, for the prior calendar year. Westar proposes to use a return on equity (ROE) of 11.5 percent plus a 50 basis point adder to recognize its participation in a Regional Transmission Organization (RTO). Westar estimates a proposed increase in annual revenues for long-term firm transmission service and ancillary services under its OATT and the Westar pricing zone under the SPP Regional OATT of \$11,466,849, a 17.7 percent increase.

4. Westar requests that the proposed revisions to its OATT be made effective July 1, 2005.

Notice of Filing and Responsive Pleadings

5. Notice of Westar's filing was published in the *Federal Register*, 70 Fed. Reg. 25,563 (2005), with interventions, protests and comments due on or before May 23, 2005. A timely notice of intervention was filed by the Kansas Corporation Commission (KCC). A timely motion to intervene was filed by Oklahoma Municipal Power Authority (OMPA). Timely motions to intervene and protest were filed by Kansas Electric Power Cooperative, Inc. (KEPCO), Kansas Municipal Utilities (KMU), Missouri Joint Municipal Electric Utility Commission (MJMEUC) and, jointly, the Kansas Power Pool (KPP), Kansas City, Kansas Board of Public Utilities (KCBPU) and Kansas Municipal Energy Agency (KMEA). On June 6, 2005, Westar filed an answer. On June 9, 2005, the KCC filed comments on Westar's proposal.

6. Protesters request that the Commission suspend Westar's filing for the maximum five-month period with the rates to be collected thereafter subject to refund and set for hearing. Among other things, they argue that Westar's proposed ROE is excessive, that Westar's proposed formula rate structure requires refinements, and that Westar does not provide workpapers for proper evaluation of Westar's implementation of the proposed formula rate. The protesters also object that Westar's proposed formula rate process does not include consumer protections or procedures to ensure that annual rate updates under the formula are properly implemented.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Westar's answer and will, therefore, reject it.

Analysis

8. The protests raise a number of issues of material fact that are best addressed through a trial-type evidentiary hearing, which we order below. Our preliminary analysis indicates that Westar's proposed transmission and ancillary service rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept them for filing, suspend them for five months, as discussed below, to become effective December 1, 2005, subject to refund, and set them for hearing and settlement judge procedures.

9. In *West Texas Utilities Company*,² the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission would generally impose a maximum suspension. In the instant proceeding, our preliminary analysis indicates that Westar's proposed rates may be substantially excessive. Therefore, we will suspend the proposed rates for the maximum five-month period.

10. Westar requests a 50 basis point adder to its ROE for its participation in SPP, an RTO. Westar states that the Commission has previously authorized a 50 basis point adder for transmission owners that have turned over control of their transmission system to an RTO. Protestors object to the proposed 50 basis point ROE adder. They argue, among other things, that Westar's request is premature because Westar has yet to make the necessary filings to gain regulatory approval to participate in the SPP RTO and has perennially given SPP conditional written notices of withdrawal. They state that, if the Commission is inclined to authorize the 50 basis point adder for RTO participation on policy grounds, it should be denied as long as Westar maintains its conditional withdrawal status with SPP. The KCC also questions whether the incentive adder for RTO participation is warranted in this instance because the SPP RTO is not committed to operate the traditional least-cost, security constrained economic dispatch employed by the other Commission-approved RTOs. It states that the additional economic benefits for customers that come from RTO participation and that formed the basis for awarding incentive adders to transmission owners participating in other RTOs is not present here.

11. In a prior order regarding the transmission-owning members of ISO New England, the Commission found that their voluntary proposal to establish an RTO warranted a 50 basis point incentive adder to the ROE component of their transmission rates.³ However,

² *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982) (*West Texas*).

³ *ISO New England*, 106 FERC ¶ 61,280 at P 245-246, *order on reh'g*, 109 FERC ¶ 61,147 (2004).

here, Westar's RTO membership is conditional and it has not yet made the filings necessary to seek state regulatory approval to continue to participate in the SPP RTO. In these circumstances, we find that the issue of whether the 50 basis point adder is warranted should be considered at hearing to ensure a full record on which we can base our decision.

12. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004). If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁴

13. The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Westar's filing is hereby accepted for filing, suspended for five months, to become effective December 1, 2005, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the issues raised in this proceeding, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (C) and (D) below.

⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.