

131 FERC ¶ 61,183
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 Nos.	ER10-947-000
		ER10-948-000
		ER10-949-000
		ER10-950-000

ORDER CONDITIONALLY ACCEPTING IN PART AND REJECTING IN PART
TARIFF FILING AND DIRECTING COMPLIANCE FILING

(Issued May 28, 2010)

1. On March 29, 2010, Westar Energy, Inc. (Westar) filed proposed revisions to rate schedules and a tariff under which Westar provides service to requirements customers. The proposed revisions would modify the generation formula rate templates in the agreements used to recover the costs of providing service to the customers. In this order, we conditionally accept, in part, and reject, in part, the proposed revisions, subject to a compliance filing, effective June 1, 2010, as requested.

I. Background

A. Description of Prior Proceedings

2. Westar entered into a twenty-year cost-based generation formula rate contract with Kansas Electric Power Cooperative, Inc. (KEPCo) in Docket No. ER07-1344-000. After the Commission set the filing for hearing and settlement discussions, the parties ultimately reached a non-unanimous settlement which was accepted by the Commission.¹ KEPCo began taking service under the rate schedule on September 1, 2009. Westar subsequently filed an amendment to the KEPCo rate schedule to, among other things, provide KEPCo a revenue credit as required by the Kansas Corporation Commission (KCC).

3. On February 3, 2009, the City of Arma, Kansas (Arma), filed a complaint against Westar in Docket No. EL09-33-000 raising several objections to a twenty-year agreement offered by Westar. The Commission established settlement proceedings and the parties reached an uncontested settlement under which Arma would pay a cost-based generation

¹ *Westar Energy, Inc.*, 128 FERC ¶ 61,174 (2009).

formula rate. The settlement was approved by the Commission and Arma began taking service under the Arma rate schedule on October 1, 2009.²

4. Westar filed in Docket No. ER09-1762-000 a tariff and standard form of service agreement under which it recovers its power sales costs pursuant to a generation formula rate. Westar based the filing on the rate schedule of Arma. The Commission accepted the tariff and thirteen municipals³ began taking service under the tariff on December 1, 2009.⁴ Subsequently, two additional municipals, the Cities of Elwood and Toronto, began taking service under the tariff.

5. Westar filed rate schedules with Doniphan Electric Cooperative, Inc., Kaw Valley Electric Cooperative, Inc., and Nemaha-Marshall Electric Cooperative, Inc. (collectively, Kansas Cooperatives) in Docket No. ER08-1062-000 under which Westar provides capacity and energy pursuant to formula rates. After the Commission set the agreements for hearing and settlement procedures, the parties reached an uncontested settlement under which Westar and Kansas Cooperatives agreed to amend the agreements to incorporate the terms and conditions and the generation formula rate template contained in the Arma rate schedule. The Commission accepted the revised rate schedules⁵ and the Kansas Cooperatives began taking service under the rate schedules on February 1, 2010.

B. Instant Submittal

6. In this proceeding, Westar is proposing several revisions to the generation formula rate templates found in the rate schedules and tariff. Westar is proposing to change the methodology for recovering Construction Work in Progress (CWIP) to include CWIP work requests in the formula rate only if they equal or exceed \$1 million. Westar states that this change will decrease the rate base impact of CWIP as well as the number of separate CWIP work requests included in the formula rate.⁶ Westar is also proposing to reflect Allowance Funds Used During Construction (AFUDC) as a regulatory liability for any facility included in rate base as CWIP. The AFUDC regulatory liability would be an

² *City of Arma, Kansas v. Westar Energy, Inc.*, 128 FERC ¶ 61,094 (2009).

³ The thirteen municipals include the Kansas cities of Alma, Blue Mound, Bronson, Elsmore, La Harpe, Moran, Mulberry, Robinson, Savonburg, Troy, Vermillion, and Wathena and the City of Mindenmines, Missouri.

⁴ *Westar Energy, Inc.*, 129 FERC ¶ 61,128 (2009).

⁵ *Westar Energy, Inc.*, 130 FERC ¶ 61,007 (2010).

⁶ See Westar Transmittal Sheet at 4.

offset to the CWIP balances in rate base and after the facility is placed in service the AFUDC regulatory liability would be amortized as an offset to depreciation expense.

7. Westar is also proposing to modify the depreciation rates included in the generation formula rates. Westar states that the KCC recently accepted new depreciation rates,⁷ which Westar will report in its 2009 FERC Form No. 1. Thus, Westar explains that it seeks to modify the depreciation rates to be the same as those that are in the FERC Form No. 1. In support of this proposal, Westar submitted the same depreciation study that it submitted to the KCC to support its retail depreciation rates.

8. Westar also proposes to change the definition of losses to ensure the definition is consistent with the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (OATT). Specifically, Westar proposes to change the definition of losses from the percentage identified in SPP's OATT multiplied by the usage at the customer's point of receipt to an amount "calculated in a manner consistent with the practices in the effective SPP OATT." Westar claims that the original definition, as agreed to by the parties to the settlement, was not as clear as intended.⁸

9. Westar also proposes several ministerial changes to the formula rate template included in the rate schedules and tariff that Westar states has no impact on the rate calculation. According to Westar, the purpose of these changes is to make the formula rates in all of the rate schedules and the tariff at issue in this proceeding the same.⁹ Westar indicates that it held customer meetings on March 2, 2010, and March 16, 2010 to discuss the changes proposed in this filing and that no customer voiced any objection to the proposed changes.

10. Finally, while Westar states that it has filed sufficient information for the Commission to determine the reasonableness of the proposed amendments, to the extent the filing fails to contain information required for technical compliance with the Commission's regulations, Westar requests waiver of 18 C.F.R. § 35.13.¹⁰ Westar requests a June 1, 2010 effective for the proposed revisions.

⁷ The depreciation rates were approved in Docket No. 08-WSEE-1041-RTS. *See id.*

⁸ *See id.* at 5.

⁹ *See id.* at 4.

¹⁰ *See id.* at 7.

II. Public Notice, Intervention and Comments

11. Notice of Westar's filing was published in the *Federal Register*, 75 Fed. Reg. 17,404 (2010), with interventions and comments due on or before April 19, 2010.

12. KEPCo filed a timely intervention. Kansas Cooperatives jointly filed a timely motion to intervene and protest. Arma filed an untimely motion to intervene and protest. On April 29, 2010, Westar filed a motion for leave to answer and answer to the protests. On May 13, 2010, Westar filed an additional motion for leave to answer and answer to the protests. On May 14, 2010, Kansas Cooperatives filed a motion for leave to answer and answer to Westar's April 29, 2010 answer.

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the notices of intervention and 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 the late-filed joint motion to intervene of Arma given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

14. Rule 213(a) of the Commission's Rules of Practice and Procedure¹² prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We will accept Westar's April 29, 2010 answer and its May 13, 2010 answer because it has provided information that assisted us in our decision-making process. Additionally, we will accept Kansas Cooperatives' answer because it has also provided information that assisted us in our decision-making process.

III. Discussion

A. Depreciation Rate Revisions

1. Comments and Protests

15. Arma and Kansas Cooperatives argue that Westar has not supported the proposed change in the depreciation rates. Arma states that Westar filed the KCC order approving the depreciation rates for retail ratemaking. However, Arma contends that this documentation does not show the vetting of the depreciation rates by the KCC, the rationale for applying such depreciation rates at the wholesale level, nor the rate impact of the proposed change.¹³ Arma requests that the Commission require Westar to

¹¹ 18 C.F.R. § 385.214 (2009).

¹² *Id.* § 385.213(a)(2).

¹³ *See* Arma Protest at 3-4.

supplement its filing by providing justification for the proposed depreciation rates as well as the impact to wholesale customer's power charges of the proposed changes.¹⁴ Furthermore, Arma requests that parties have an opportunity to review and comment on any supplemental filing.¹⁵

16. Kansas Cooperatives add that Westar filed the depreciation study to support the initial rate application before the KCC. However, Kansas Cooperatives contend that the depreciation rates approved by the KCC were part of a settlement agreement and were different from those presented in Westar's initial rate application. Therefore, Kansas Cooperatives assert that the rates finally approved were not supported by a separate depreciation study.¹⁶ Moreover, Kansas Cooperatives state that the actions of a state regulatory commission in retail electric ratemaking proceedings do not bind the Commission.¹⁷ Thus, Kansas Cooperatives contend that because Westar has not shown its proposed change is just and reasonable it should be rejected.¹⁸

2. Westar's Answer

17. Westar counters that the protesters' arguments ignore the fact that each of the depreciation rates proposed in its filing is equal to or lower than the rate supported by the study submitted to the KCC and accepted in a settlement by the KCC that all parties, including the Kansas Cooperatives, supported. Westar adds that, contrary to assertions otherwise, Westar's proposed depreciation rates are supported by a depreciation study that was submitted in this filing.¹⁹ Moreover, Westar argues that it is not asking the Commission to be bound by the KCC. Instead, Westar requests that the Commission accept the depreciation rates derived from a well-reasoned process that was based on a fully supported depreciation study.²⁰

¹⁴ *See id.* at 4.

¹⁵ *See id.*

¹⁶ *See* Kansas Cooperatives Protest at 14.

¹⁷ *See id.* (citing *Midwest Power Systems Inc.*, 67 FERC ¶ 61,076, at 61,210 & n.12 (1994)).

¹⁸ *See id.*

¹⁹ *See* Westar April 29 Answer at 7.

²⁰ According to Westar, the existing depreciation rates in the rate schedules and tariff reflected the depreciation rates in the 2008 FERC Form No. 1 and resulted from an order issued by the KCC. Westar states that the Commission Staff reviewed those

18. Westar also responds to the suggestion that the filing is deficient because it did not provide an identification of the rate impact of the proposed change in depreciation rates on wholesale customers. Westar states that the filing implements the rate formula to which the parties agreed in prior dockets and complies with the requirement that depreciation rates not be changed without a filing with the Commission.²¹ Westar further asserts that comparing existing rates to proposed rates in this situation is not possible and that to the extent such an impact analysis is required, they have previously requested a waiver to the extent it is required.²²

3. Kansas Cooperatives' Answer

19. Kansas Cooperatives reiterate that the depreciation study is insufficient to support the proposed depreciation rates. Kansas Cooperatives state that Westar has failed to provide the Kansas Cooperatives with an estimate of the impact of the proposed depreciation rates on the rates they pay and that the filing ignores the fact that the depreciation rates have an impact on two aspects of the cost of service formula rate.²³ While lower depreciation rates result in a lower depreciation expense, they also result in a lower accumulated depreciation balance, a larger rate base and more return dollars over time than otherwise would be the case. Furthermore, Kansas Cooperatives challenge as “completely misleading” Westar’s assertion that the Kansas Cooperatives supported without condition the depreciation rates before the KCC. Kansas Cooperatives explain that they participated in the state proceeding on non-depreciation issues, and as a wholesale customer would not be subject to the retail rates that were the subject of the state proceeding. Accordingly, Kansas Cooperatives contend that the Commission should give no weight to Westar’s assertions that the Kansas Cooperatives supported the depreciation rates before the state commission and they now oppose them.²⁴

depreciation rates during the settlement of Docket Nos. EL09-33-000 and ER09-680-000, no issues were raised, and Commission Staff supported that settlement. Westar April 29 Answer at 7.

²¹ Westar May 13 Answer at 2.

²² *See id.* at 3.

²³ *See* Kansas Cooperatives Answer at 14.

²⁴ *See id.* at 16-17. Kansas Cooperatives state that its issue before the KCC involved the allocation of a portion of off-system sales revenue to wholesale customers. *See id.* at 16 n.45.

4. Determination

20. As acknowledged by all parties, the Commission is not bound by an order on depreciation rates of a state commission in a retail ratemaking proceeding.²⁵ Instead, the Commission must evaluate, on its own, whether the proposed depreciation rates are just and reasonable. Based on our own review of the depreciation rates, the Commission finds the proposed depreciation rates to be reasonable and adequately supported by the depreciation study. We find that there is no need for Westar to file a wholesale depreciation study in lieu of the retail depreciation study that was filed because depreciation studies measure, among other things, the estimated average life of facilities and those facilities providing retail service are the same facilities that provide wholesale service. The assumptions in the study are reasonable and sufficient for the Commission to make a determination on this filing, and the protests raise no basis for challenging the assumptions or results of the study. Moreover, Westar proposes depreciation rates that are equal to or lower than the rates supported by the study. We will accept the depreciation rates as filed.

21. Arma and Kansas Cooperatives argue that the Commission should require Westar to identify the impacts on wholesale customers resulting from the change in depreciation rates.²⁶ Absent waiver from the Commission, Westar is required to provide such an analysis pursuant to the Commission's regulations.²⁷ Consistent with similar requests for waiver in other cases, we will grant Westar's request for waiver.²⁸ Furthermore, we note that pursuant to the formula rate protocols,²⁹ Westar is required to post its annual rate update on its website on or before June 1 of each year (the beginning of the rate year). This annual rate update reflects the new rate, which the customer can compare to the existing rate it is paying to ascertain the rate impacts. Accordingly, Westar will provide the requested information as part of its annual rate update on June 1.

²⁵ See *Midwest Power Systems Inc.*, 67 FERC ¶ 61,076, at 61,210 (1994).

²⁶ See Kansas Cooperatives Answer at 15, n.42 (citing 18 C.F.R. § 35.13(c)(1) and 35.13(c)(2)(2009)).

²⁷ 18 C.F.R. § 35.13(c)(1) and 35.13(c)(2) (2009).

²⁸ See, e.g., *Southern Indiana Gas and Electric Co.*, 125 FERC ¶ 61,124, at P 59, n.63 (2008).

²⁹ See, e.g., Attachment H, Section 1 of FERC Rate Schedule No. 301.

B. Loss Revisions**1. Comments and Protests**

22. Kansas Cooperatives object to the change to the definition of losses in Westar's filing. Kansas Cooperatives contend that the proposed loss calculation is contrary to the cost-based formula rate agreements that were negotiated as part of a settlement agreement and improperly seek to change the manner in which losses are calculated under that settlement. Kansas Cooperatives assert the proposed definition of losses does not provide any direction as how the losses calculation will be performed and therefore is a more vague and ambiguous definition than the previous definition.³⁰

23. Moreover, Kansas Cooperatives argue that Westar's definition of losses is also contrary to the Commission's established practice of rejecting rates by reference.³¹ Kansas Cooperatives also assert that the proposed definition is contrary to the definition contained in the prior settlement agreement, as it does not specify the calculation method to be used, but instead states that whatever calculation method is used shall not be inconsistent with the SPP OATT.³²

24. Furthermore, Kansas Cooperatives state that if Westar intended the loss calculation to be consistent with the SPP OATT it should have included this language in the prior settlement agreement.³³ Kansas Cooperatives contends that this proposed change will upset the balance of the settlement agreement and should therefore be rejected. Kansas Cooperatives assert that the proposed change to the definition of losses is aimed to give Westar flexibility to support the new loss calculation that was introduced in its initial service bills to the Kansas Cooperatives.³⁴ Finally, Kansas Cooperatives take issue with the assertion that it did not voice objections to the proposed changes.³⁵

³⁰ See Kansas Cooperatives Protest at 8.

³¹ See *id.* (citing *Detroit Edison Company*, 78 FERC ¶ 61,149, at 61,628 (1997)).

³² See *id.* at 7-8.

³³ See *id.* at 12.

³⁴ Kansas Cooperatives received their first loss charges pursuant to the settlement agreement on or about March 8, 2010.

³⁵ See Kansas Cooperatives Protest at 6-7.

2. Westar's Answer

25. In its answer, Westar asserts that the proposed revision is designed to ensure appropriate recovery of transmission losses Westar incurs delivering power supply service under the generation formula rate templates. Westar contends that the revision is also intended to track the way transmission losses are billed under the SPP OATT.³⁶ Westar states the revision is intended to ensure that its method matches SPP's method, so that billings to its customers will reflect the appropriate level of losses.

26. Westar contends that because the amount of service to be provided by Westar is determined at the opposite end of the system than is used in the SPP OATT Point-to-Point service, the composite loss factor stated in the SPP OATT must be translated into a loss percentage applicable at the customer's Point of Receipt.³⁷ As an alternative to the proposed revision, Westar proposes to substitute the following language:

Losses shall be calculated by multiplying (1) the composite loss factor stated in the Transmission Provider's currently effective OATT by (2) the quotient resulting from dividing 1 by 1 minus such composite load factor by (3) the Customer's usage (measured in kWh and kW) as measured by the revenue-quality meter(s) installed at the Point(s) of Receipt. In no case will losses included losses that may be incurred from the Point(s) of Receipt to Customer's Load.³⁸

27. Westar states that the filing does not change the loss calculation, but it merely "clarifies that losses will be calculated in a manner that conforms to the practices of the Transmission Provider consistent with the intent of the parties to the settlement agreement."³⁹ Westar asserts that this filing will therefore have no financial implications for these customers.⁴⁰ Finally, Westar contends that it has continually met with Kansas Cooperatives to address their concerns and would be willing to continue to meet with them informally or in the context of a Settlement Judge proceeding in order to resolve these issues.⁴¹

³⁶ See Westar April 29 Answer at 2.

³⁷ See *id.* at 3.

³⁸ *Id.* at 4-5.

³⁹ *Id.* at 5.

⁴⁰ See *id.*

⁴¹ See *id.* at 6.

3. Kansas Cooperatives' Answer

28. In its answer, Kansas Cooperatives clarify that they were not arguing the proposal is a violation of rate by reference but instead that Westar's proposed revision to the losses provision is impermissibly vague.⁴² Kansas Cooperatives state that the provisions in SPP's Attachment M that Westar cites in its answer do not support Westar's transmission loss proposal because they do not apply to the Kansas Cooperatives.⁴³ Specifically, the Kansas Cooperatives argue that the composite loss factors to which Westar refers are applicable to the loss determination for Point-to-Point customers under the SPP OATT, as opposed to Network Integration Transmission Service (NITS) customers, such as Kansas Cooperatives.⁴⁴ Kansas Cooperatives also contend that the SPP OATT specifies the use of an average loss factor, not a composite loss factor for NITS customers.⁴⁵ Therefore, Kansas Cooperatives assert that the proposal "is not consistent with past practices and it does not 'track' the way NITS customers are charged under SPP's OATT for transmission losses."⁴⁶

29. Kansas Cooperatives assert that Westar is proposing to change its loss provision to be able to (1) inappropriately charge for non-transmission level losses and (2) over-charge for transmission level losses under the formula rates.⁴⁷ Finally, Kansas Cooperatives argue that the proposal will cost the Kansas Cooperatives collectively \$2 million over the life of the contracts.⁴⁸

⁴² See Kansas Cooperatives Answer at 6.

⁴³ See *id.* at 7-9.

⁴⁴ See *id.* at 7-8.

⁴⁵ See *id.* at 11.

⁴⁶ *Id.* at 13. Kansas Cooperatives contend that the loss calculation under the Formula Rate Agreement should be 2.94% times the Customer's usage (measured in kWh and KW) as measured at the Point(s) of Receipt. It states that this methodology is consistent with (a) the SPP OATT, (b) the provision in the existing, approved Formula Rate Agreements, and (c) the methodology presented throughout the negotiations between Westar and the Kansas Cooperatives.

⁴⁷ See *id.* at 12.

⁴⁸ See *id.* at 12-14.

4. Determination

30. We reject Westar's proposed revisions to the loss provisions of the full-requirements rate schedules and tariff. The Commission has previously rejected tariff provisions when it concludes that they are too vague and not appropriately define the meaning of the provision.⁴⁹ The proposal, as discussed by the Kansas Cooperatives, is impermissibly vague⁵⁰ and parties would be unable to calculate the appropriate rate from such a provision.⁵¹ The existing loss provision in the settlement agreement provides the essential elements necessary for customers such as the Kansas Cooperatives to calculate the applicable loss percentage, while the proposed revisions, as evidenced by Westar's Answer and Kansas Cooperatives' Answer, will lead to unnecessary disputes as to the interpretation of the provision.

31. In Westar's Answer, Westar provides an alternative to the proposal before us and claims that it addresses the Customer's concerns. While this alternative provides additional detail regarding the loss calculation, we find it unsupported.⁵² Westar argues that the changes are necessary to recover the correct amount of losses and cites to various provisions of the SPP OATT in support of its proposed revisions. However, the provisions of the SPP OATT to which Westar cites pertain to Point-to-Point transmission customers when the customers at issue in this proceeding are in fact NITS customers.

32. By citing to the provisions applicable to Point-to-Point transmission customers and stating that the loss factors in the SPP OATT are applicable to injection points, Westar argues that the loss factor needs to be grossed-up to equal the appropriate loss factor at the withdrawal point. However, because the customers are NITS customers instead of Point-to-Point customers, the loss provisions in the rate schedules and tariff should be based on the NITS loss provisions in the SPP OATT which state that, a "Network

⁴⁹ See, e.g., *California Independent System Operator Corp.*, 123 FERC ¶ 61,283, at P 79 (2008); see also *California Independent System Operator Corp.*, 108 FERC ¶ 61,022, at P 45 (2004) (finding a tariff revision to be vague and requesting further definition of the proposal).

⁵⁰ Section 35.1 of the Commission's Regulations requires that all rates and charges for any transmission or jurisdictional sale and the classifications, practices and regulations affecting such rates and charges be on file.

⁵¹ According to Kansas Cooperatives' answer to Westar's answer, no party is contesting Westar's loss proposal on a rate by reference basis. Thus, we shall not address rate by reference in the resolution of the loss proposal.

⁵² We assume that Westar intends for the proposal to read "loss factor" instead of load factor.

Customer's loss responsibility is the product of the Zone loss factor and the energy delivered within that Zone by the Network Customer."⁵³ This is exactly how the existing loss provision calculates losses. Thus, no gross-up of the loss factor is necessary for NITS customers under the SPP OATT.

33. Moreover, as noted by the Kansas Cooperatives, Westar's alternative language uses the term "composite loss factor" instead of the average loss factor. Under the SPP OATT, SPP calculates a "composite loss factor" for Point-to-Point transactions by weighting the average loss factor for each affected zone according to the MW-mile impact of the transaction over the transmission system. Westar does not explain why it proposes to treat NITS customers as though they were Point-to-Point customers. For all of the above reasons, we reject Westar's line loss proposal as ambiguous and vague. We also dismiss the alternative to the line loss proposal before us, as unsupported.

C. CWIP

34. No protester contests the proposed revisions to the generation formula rate pertaining to CWIP. However, to avoid potential disputes and to ensure the proposed revisions are consistent with Commission regulations, the Commission directs Westar to clarify the CWIP revision included in Attachment H, paragraph 6, which states that "all CWIP work authorizations with a balance of \$1 million or more shall be included in the formula and 100 percent of the environmental and 50 percent of the non-environmental generation CWIP will be included." The Commission will require Westar to modify the provision to read that "all generation Construction Work in Progress ("CWIP") work authorizations with a year-end balance equal to or exceeding \$1,000,000 shall be included in the Formula Rate Template and shall be limited to 100% environmental and 50% non-environmental purposes of calculating rate base." This clarification will ensure that Westar does not include more CWIP in rate base than permissible under Commission regulations.

D. Ministerial Changes

35. The Commission has reviewed the ministerial changes contained in the filing. No party objected to these revisions, which we find have been supported adequately by Westar. Furthermore, the Commission determines that these revisions have no impact on the rate calculated by the template, are just and reasonable and should become effective June 1, 2010, as proposed.

⁵³ SPP OATT, Attachment M, Section II ("Loss Determination – Network Integration Transmission Service") at Original Sheet No. 275.

The Commission orders:

(A) The proposed rate schedules and tariff are hereby accepted in part and rejected in part, effective June 1, 2010, as discussed in the body of this order.

(B) Westar's request for waiver of the requirements of section 35.13 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(C) Westar is hereby directed to submit a compliance filing with revised language, within 30 days of the date of this order consistent with the discussion above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.