

147 FERC ¶ 61,092
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Westar Energy, Inc.

Docket Nos. ER14-804-000
ER14-804-001
ER14-805-000
ER14-805-001
(consolidated)

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF AND RATE
SCHEDULE REVISIONS, ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued May 2, 2014)

1. In this order, we accept for filing certain revisions filed by Westar Energy, Inc. (Westar) to its First Revised Volume No. 20, Full Requirements Electric Service Rate Schedule (Formula Rate Tariff), and revised Cost-Based Formula Rate Agreements for Full Requirements Electric Service with each of certain of Westar's full requirements electric service customers (Formula Rate Schedules), suspend them for a nominal period, to become effective March 1, 2014, as requested, subject to refund, and consolidate them and establish hearing and settlement judge procedures.

I. Background

2. Westar, a public utility primarily engaged in the generation, transmission, distribution, and sale of electricity, provides retail and wholesale electric service to approximately 684,000 customers in Kansas.¹ Westar's transmission system is under the functional control of Southwest Power Pool, Inc. (SPP), a Commission-approved regional transmission organization. Westar provides full requirements electric service to Kansas

¹ See Docket No. ER14-804 Transmittal Letter at 2.

Electric Power Cooperative, Inc. (KEPCo), the City of Arma, Kansas (Arma), Doniphan Electric Cooperative Association, Inc. (Doniphan), Kaw Valley Electric Cooperative, Inc. (Kaw Valley), and Nemaha-Marshall Electric Cooperative Association, Inc. (Nemaha-Marshall) pursuant to the Formula Rate Schedules, each of which includes a cost-based generation formula rate template (Formula Rate Template).² The Formula Rate Template is also attached to Westar's Formula Rate Tariff as Attachment D.

3. Arma receives service under a Formula Rate Schedule (the Arma Rate Schedule) that is the product of an uncontested 2009 settlement between Arma and Westar,³ at Westar's embedded average system costs. The Arma Rate Schedule includes a demand charge and variable operations and maintenance protocols, and provides for a credit for the net margins related to off-system sales as provided in the Formula Rate Template.⁴ Westar's Formula Rate Tariff was based on, and thus contains substantively the same terms as, the Arma Rate Schedule.⁵ Likewise, Westar's Formula Rate Schedules for service to Doniphan, Kaw Valley, and Nemaha-Marshall (collectively, the Cooperative Rate Schedules) all incorporate the same terms as the Arma Rate Schedule.⁶

4. Under Westar's Formula Rate Schedule for service to KEPCo (the KEPCo Rate Schedule), Westar provides KEPCo with the capacity and firm energy KEPCo needs for its retail member cooperatives, less any generation and purchased power of KEPCo.⁷ The KEPCo Rate Schedule includes a demand charge, an energy charge, and a credit for KEPCo's resources. However, while the KEPCo Rate Schedule uses the same Formula Rate Template approved in the Arma Rate Schedule, the KEPCo Rate Schedule includes certain different terms and conditions. Westar states that, for this reason, the revisions to the KEPCo Rate Schedule submitted in Docket No. ER14-804-000 were negotiated and

² Docket No. ER14-804 Transmittal Letter at 1; Docket No. ER14-805 Transmittal Letter at 2.

³ *See City of Arma, Kansas v. Westar Energy, Inc.*, 128 FERC ¶ 61,094 (2009).

⁴ Docket No. ER14-805 Transmittal Letter at 3.

⁵ *Id.* *See Westar Energy, Inc.*, 129 FERC ¶ 61,128 (2009) (conditionally accepting Westar's filing of the Formula Rate Tariff, subject to a compliance filing).

⁶ *See* Docket No. ER14-805 Transmittal Letter at 3-4; *Westar Energy, Inc.*, 130 FERC ¶ 61,007 (2010).

⁷ Docket No. ER14-804 Transmittal Letter at 3.

filed separately from the revisions to the Formula Rate Tariff, Arma Rate Schedule, and Cooperative Rate Schedules submitted in Docket No. ER14-805-000.

5. On March 1, 2014, SPP transitioned from operating an Energy Imbalance Service market to an Integrated Marketplace.⁸ Under the Integrated Marketplace, SPP administers day-ahead and real-time energy markets, operating reserve markets, and a market for transmission congestion rights and auction revenue rights.⁹ In connection with the Integrated Marketplace, SPP also combined the sixteen separate balancing authorities currently operating within the SPP footprint into a single balancing authority.

II. Westar's Filings

6. On December 23, 2013, Westar filed with the Commission in Docket No. ER14-804-000 proposed changes to the KEPCo Rate Schedule. That same day, Westar also submitted in Docket No. ER14-805-000 proposed changes to Westar's Formula Rate Tariff, as well as proposed changes to the Arma Rate Schedule and Cooperative Rate Schedules. Westar proposes three types of revisions to the Formula Rate Tariff and Formula Rate Schedules: (1) revisions that Westar believes are necessary to ensure that the Formula Rate Schedules and Formula Rate Tariff continue to operate as intended upon implementation of the SPP Integrated Marketplace; (2) changes to certain fixed components in the Formula Rate Template; and (3) "ministerial changes and typographical corrections" to the Formula Rate Template.¹⁰

7. Westar explains that, under the Integrated Marketplace, transactions in the SPP market will no longer be scheduled on a unit-specific basis and, instead, Westar will be required to bid its generation into the SPP Integrated Marketplace.¹¹ Accordingly, Westar proposes changes (listed in Exhibit No. JW-1 to each filing and described in the testimony) to the terms and conditions of the Formula Rate Schedules, the standard form of agreement in the Formula Rate Tariff, and the Formula Rate Template to accommodate changes in the SPP market. In addition, Westar proposes changes to

⁸ See *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,130 (2014) (accepting compliance filing containing certification of readiness to implement the Integrated Marketplace effective March 1, 2014).

⁹ Docket No. ER14-804 Transmittal Letter at 2.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 4; ER14-805 Transmittal Letter at 4.

certain fixed inputs in the Formula Rate Template incorporated into the Formula Rate Schedules and Formula Rate Tariff. First, Westar proposes to adopt the depreciation rates recently approved by the Kansas Corporation Commission (Kansas Commission).¹² Westar notes that, while the Commission is not bound by a state commission order on depreciation rates in a retail ratemaking proceeding and must evaluate the proposed depreciation rates on its own, the Commission has previously accepted a retail depreciation study as support for Westar's wholesale depreciation rates.¹³ Second, Westar proposes to update the fixed value for post-employment benefits other than pensions (PBOPs) expense based on a January 2013 Actuarial Valuation Report by Towers Watson.¹⁴ Next, Westar proposes to change the decommissioning expense in the Formula Rate Template to reflect a recent reduction in Westar's contribution to its Nuclear Decommissioning Trust Fund, approved by the Kansas Commission in 2012.¹⁵ Finally, in light of "extensive negotiations" with its customers, Westar wishes to reduce its rate of return on equity for common stock (ROE) from 10.8 percent to 10.2 percent, subject to a three-year moratorium on filing to change the ROE under either section 205 or section 206 of the Federal Power Act (FPA).¹⁶ In conjunction with the proposed substantive revisions to the Formula Rate Template, Westar also submits ministerial edits to the Formula Rate Template "to facilitate transparency and correct references within the template."¹⁷

¹² Docket No. ER14-804 Transmittal Letter at 4-5; Docket No. ER14-805 Transmittal Letter at 4-5.

¹³ See Docket No. ER14-805 Transmittal Letter at 5 (citing *Westar Energy, Inc.*, 131 FERC ¶ 61,183, at P 20 (2010), *reh'g denied*, 134 FERC ¶ 61,176 (2011)).

¹⁴ Docket No. ER14-804 Transmittal Letter at 5; Docket No. ER14-805 Transmittal Letter at 5.

¹⁵ *Id.*

¹⁶ Docket No. ER14-804 Transmittal Letter at 5; ER14-805 Transmittal Letter at 5-6 (citing 16 U.S.C. §§ 824d, 824e (2012)). Westar states that it reserves the right to supplement the December 23, 2013 filings to retain the existing 10.8 percent ROE or to request approval of an alternative ROE if this proposed revision is not accepted without modification or conditions.

¹⁷ Docket No. ER14-804 Transmittal Letter at 6; Docket No. ER14-805 Transmittal Letter at 6.

8. Westar requests that the Commission accept the proposed revisions to the Formula Rate Template effective March 1, 2014, and the proposed changes to the Formula Rate Schedules and Formula Rate Tariff effective as of the date on which the SPP Integrated Marketplace commences (also March 1, 2014).¹⁸

III. Notice and Responsive Pleadings

9. Notice of Westar's filings was published in the *Federal Register*, 79 Fed. Reg. 126 (2014), with interventions and protests due on or before January 13, 2014. KEPCo filed a timely motion to intervene in both dockets. The Kansas Commission filed a timely motion to intervene and comment in both dockets. The City of Lindsborg (Lindsborg) filed a timely motion to intervene in Docket No. ER14-805-000, and on March 6, 2014 filed a motion to intervene out-of-time in Docket No. ER14-804-000. Doniphan, Kaw Valley, and Nemaha-Marshall (collectively, Cooperatives) filed a timely motion to intervene, comment, and protest in both dockets. On January 28, 2014, Westar filed a motion for leave to answer and answer to Cooperatives' protest. On February 19, 2014, Cooperatives filed a motion for leave to answer and answer to Westar's answer.

A. Initial Pleadings

10. The Kansas Commission states that it supports Westar's proposal to reduce its ROE to 10.2 percent as a "step in the right direction," and urges Westar and the Commission to assess whether Westar's current transmission formula rate ROE (still set at 10.8 percent) continues to reflect current market conditions and capital costs.¹⁹

11. Cooperatives state that they support Westar's updates to the depreciation rates, PBOPs, decommissioning expenses, and ROE in the Formula Rate Template and "generally do not object" to Westar's proposed edits to account for implementation of SPP's Integrated Marketplace.²⁰ However, Cooperatives protest Westar's proposal to eliminate the credit for energy produced by Cooperatives' Southwestern Area Power

¹⁸ Docket No. ER14-804 Transmittal Letter at 6; Docket No. ER14-805 Transmittal Letter at 6. Westar's additional request for waiver of the Commission's prior notice requirement, to the extent necessary to accommodate a delay in the Integrated Marketplace, is moot because the Integrated Marketplace commenced operation on March 1, 2014.

¹⁹ Kansas Commission Motion at 3.

²⁰ Cooperatives Protest at 4.

Administration (SWPA) and Western Area Power Administration (WAPA) resources, which Cooperatives assert is unreasonable and unduly discriminatory, as Westar does not propose to eliminate this credit with respect to KEPCo and Arma's SWPA/WAPA resources.²¹ Cooperatives further assert that Westar's proposal to exclude charges or revenues associated with Auction Revenue Rights and Transmission Congestion Rights from the formula rate does not support Westar's failure to credit Cooperatives in the formula rate for energy associated with SWPA/WAPA resources.²² Cooperatives also object to Westar's proposal to cease acting as Scheduling Agent for Cooperatives, arguing that Westar has not proposed to do so for Arma, and that Cooperatives are not themselves equipped to act as Market Participants in the Integrated Marketplace.²³

12. Next, Cooperatives contend that component "P" of Westar's revised Energy Charge formula runs afoul of the filed rate doctrine by broadly incorporating "other charges and credits" without limitation.²⁴ Cooperatives allege that this open-ended language: (1) fails to provide adequate notice to customers or comply with the filed rate doctrine;²⁵ (2) could be read to include "all SPP charge types *created in the future*";²⁶ and (3) might include certain costs and charges that should not be passed through the formula rate.²⁷ Additionally, Cooperatives propose clarifying revisions to Westar's proposed definitions for Energy Losses and Firm Energy in the Cooperative Rate Schedules, and ask Westar to clarify what open access terms and conditions will apply to service over Westar's 34 kV transmission system.²⁸ Cooperatives also raise concerns with Westar's proposal to require payment of disputed charges pending resolution of billing disputes.²⁹

²¹ *Id.* at 5-7.

²² *Id.* at 7-9.

²³ *Id.* at 9-11.

²⁴ *Id.* at 11-15.

²⁵ *Id.* at 11-12.

²⁶ *Id.* at 13 (emphasis in original).

²⁷ *Id.* at 14-15.

²⁸ *Id.* at 15-18.

²⁹ *Id.* at 18-20.

Finally, Cooperatives assert that the time period during which Westar may correct invoices under the Cooperative Rate Schedules be limited to 18 months, consistent with the KEPCo Rate Schedule.³⁰

13. In its answer, Westar requests that the Commission dismiss Cooperatives' protest as an inappropriate attempt "to have the Commission selectively modify the terms of their negotiated full requirements service agreement to obtain terms the Cooperatives did not bargain for," despite the fact that each Cooperative expressed "unqualified agreement or satisfaction" with the proposed revisions via e-mail.³¹ Westar asserts that Cooperatives and KEPCo are not similarly situated because KEPCo's generation resources are more varied (consisting of nuclear, coal, peaking, and hydro units, as opposed to just hydro units for Kaw Valley and Nemaha-Marshall), and provide a greater percentage of KEPCo's total energy needs (51.9 percent versus 1.4 percent and 4.1 percent, respectively, for Kaw Valley and Nemaha-Marshall).³² Westar states that the revised KEPCo Rate Schedule allows Westar to take a "holistic" approach to KEPCo's resources that is less appropriate for transactions with entities—like Cooperatives—who have only a single type of resource.

14. Westar also argues that it is not obligated to act as Scheduling Agent and Marketing Participant for the resources of its full requirements customers, and has determined that continuing to provide this service is not economically feasible under the Integrated Marketplace.³³ Westar adds that, in any event, Cooperatives have already contracted with Westar for Westar to act as Scheduling Agent for their SWPA/WAPA resources, and argues that this issue is "likely moot." Additionally, Westar maintains that the "unprecedented extreme level of specificity" requested by Cooperatives in the revised Formula Rate Template is unnecessary and unreasonable, and that its proposed Energy

³⁰ *Id.* at 20.

³¹ Westar Answer at 1, 3.

³² *Id.* at 5-7.

³³ *Id.* at 7-8. Westar notes that, despite any inconsistencies in wording between the Arma and Cooperative Rate Schedules, this decision applies to *all* full requirements customers. Westar states that, should the Commission deem it necessary, Westar will revise the Arma Rate Schedule to conform to the wording with the Cooperative Rate Schedules in this respect.

Charge revisions are consistent with the Commission's Order No. 668 accounting requirements.³⁴

15. With respect to Cooperatives' requests for clarification, Westar: (1) proposes revisions to address Cooperatives' concerns with the definition of "Firm Energy;" (2) argues that clarification of the billing disputes provision is not necessary, because Kaw Valley and Nemaha-Marshall will not receive invoices giving rise to billing disputes related to transmission charges; and (3) states that it intended to reflect the 18-month limitation for correcting invoices in all of the Formula Rate Schedules, and would thus be amenable to making this change in the Cooperative Rate Schedules.³⁵

16. In their response, Cooperatives note that discussions with Westar "have yet to yield an agreement in principle."³⁶ Cooperatives refute Westar's characterization of the meetings as producing a "comprehensive resolution," explaining that the emails attached to Westar's answer only expressed that Cooperatives had no further comments on the last round of edits.³⁷ Additionally, Cooperatives argue that Westar has failed to establish a connection between the various differences mentioned in its answer and its failure to provide an energy credit for Cooperatives' SWPA/WAPA resources, and has not explained why its "holistic" approach to KEPCO's resources means that it does not have to treat other full requirements customers the same way.³⁸ Cooperatives note that the agreements are all for the same service, with an identical formula rate for existing customers and future customers. Finally, Cooperatives reiterate their request to have Westar provide the applicable charge type information for the formula rate (or at least to have a break out by charge type included in monthly invoices) so that customers can

³⁴ *Id.* at 8-10 (citing *Accounting and Financial Reporting for Public Utilities Including RTOs*, Order No. 668, FERC Stats. & Regs. ¶ 31,199, at PP 80-84 (2005), *reh'g denied*, Order No. 668-A, FERC Stats. & Regs. ¶ 31,215 (2006)).

³⁵ *Id.* at 10-12.

³⁶ Cooperatives Answer at 1.

³⁷ *Id.* at 2-4. Cooperatives also note that they declined to sign a concurrence letter provided by Westar (similar to the one signed by Lindsborg) because they had not seen a complete draft of the filing prior to submission and had not seen the Arma and KEPCo Rate Schedules.

³⁸ *Id.* at 4-6.

determine how the charges are derived, asserting that it should not be burdensome for Westar to provide detail it will already need to compile monthly invoices.³⁹

B. Deficiency Letter and Responsive Pleadings

17. On February 28, 2014, Commission staff issued a deficiency letter in both dockets directing Westar to provide additional information about its proposed revisions to the Formula Rate Schedules and Formula Rate Template. On March 25, 2014, Westar filed its response to the deficiency letter (Deficiency Response). Notice of Westar's Deficiency Response was published in the *Federal Register*, 79 Fed. Reg. 18,679 (2014), with interventions and protests due on or before April 4, 2014. On April 4, 2014, Cooperatives submitted comments.

18. On March 4, 2014, KEPCo filed a motion for emergency relief on an expedited basis and for shortened response time, requesting that the Commission either withdraw the deficiency letter with respect to Docket No. ER14-804-000 or grant alternative relief, such that the effective date of the revisions to the KEPCo Rate Schedule would be March 1, 2014. On March 5, 2014, the Commission issued a notice shortening the response period for KEPCo's emergency motion to and including March 10, 2014. Timely answers supporting the request to establish a March 1, 2014 effective date were submitted by Cooperatives and Lindsborg.

19. In the Deficiency Response, Westar asserts that discrepancies in its proposed revisions to the KEPCo and Cooperative Rate Schedules appropriately "preserve the benefit of the bargain of the currently effective rate schedule for both parties."⁴⁰ Westar explains that Cooperatives' limited portfolio of resources do not provide the same flexibility for optimizing scheduling as KEPCo's portfolio, but states that it originally agreed to reduce Cooperatives' energy and capacity requirements based on the energy scheduled to the Westar load "for contract administration purposes," consistent with its treatment of other full requirements customers with these types of resources.⁴¹ Westar argues that retaining the energy crediting provisions for KEPCo's resources will continue to help lower Westar's system average fuel cost for all customers under the SPP Integrated Marketplace, because KEPCo's generation portfolio continues to resemble

³⁹ *Id.* at 6-7.

⁴⁰ Deficiency Response at 3.

⁴¹ *Id.* at 2.

Westar's own resource mix.⁴² By contrast, Westar states that requiring other full requirements customers with owned resources or purchase power contracts to either schedule and settle the energy with the SPP Integrated Marketplace themselves or contract with a third party to do so is necessary to avoid incurring additional costs under the Integrated Marketplace. Westar asserts that this approach "provides the Cooperatives with credit for their energy based on the availability of their resource and not based on Westar's average system fuel costs."⁴³ Westar states that no other customers in the SPP footprint taking full requirements service are similarly situated to KEPCo in respect to owning a diversity of resources.⁴⁴

20. Westar explains that Nemaha-Marshall and Kaw Valley have contracted with Westar for Westar to provide third party energy management services, and that it has thus fully resolved the issue of whether Westar would continue to act as Scheduling Agent to Cooperatives.⁴⁵ With respect to the calculation of component "P" of the Energy Charge formula, Westar states that it is entitled to recover costs prudently incurred to provide Full Requirements Service to Cooperatives, and again alleges that Cooperatives are demanding an unprecedented level of detail.⁴⁶ Westar maintains that providing this detail would be overly burdensome, but states that, in an effort to address Cooperatives' request, it offered to provide to each customer monthly totals of SPP and non-SPP transactions by account for Account Nos. 447, 555, and 557.⁴⁷ Westar argues that its formula rate properly passes through to its full requirements customers and native load, on a load ratio share basis, costs reasonably and prudently incurred to provide Full Requirements Electric Service, including costs for Real-Time Contingency Reserve Deployment Failure and Real Time Regulation Non-Performance equally.⁴⁸ Finally, Westar explains that it proposes to decrease the Long Term Disability Expense and includes Worksheet T and provides an excerpt from the Towers Watson Actuarial

⁴² *Id.* at 3.

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.* at 5-6.

⁴⁶ *Id.* at 6.

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 8.

Valuation Report to support its proposed revisions to the Formula Rate Template.⁴⁹ Westar requests privileged treatment for this documentation, and proposes that access to this documentation be subject to execution of a protective order in the form of the Commission's Model Protective Order.⁵⁰ Westar requests that the Commission accept the proposed revisions as of March 1, 2014, the effective date originally requested in its December 23, 2013 filings.

21. In their response, Cooperatives continue to assert that Westar's failure to provide an energy credit for Cooperatives' SWPA and WAPA resources is discriminatory, arguing that whether or not a customer's resource portfolio is similar to Westar's does not justify crediting energy for KEPCo's resources but not for other full requirements customers.⁵¹ Cooperatives note that KEPCo also has entitlements to SWPA and WAPA hydroelectric power, and contend that hydroelectric resources that come from the same suppliers should be treated the same under Westar's Formula Rate Schedules.⁵² Additionally, Cooperatives claim that Westar's refusal to provide additional detail in the Energy Charge formula violates the requirement in section 205(c) of the FPA to keep schedules showing transmission rates and charges open for public inspection.⁵³ Cooperatives reiterate that making compiled monthly amounts for each charge type available should not be overly burdensome, and caution that, without this information, customers will not be able to verify the accuracy of the monthly net charge.⁵⁴ Finally, Cooperatives state that, if a failure to perform by Westar generation is not excused under the SPP Integrated Marketplace, the cost of the unexcused failure associated with Real Time Regulation and Real-Time Contingency Reserve Deployment Failure should not be passed through to customer load.⁵⁵

⁴⁹ *Id.* at 8.

⁵⁰ *Id.*

⁵¹ Cooperatives Comments at 2.

⁵² *Id.* at 2-3.

⁵³ *Id.* at 4-7 (citing 16 U.S.C. § 824d(c) (2012)).

⁵⁴ *Id.* at 8-9.

⁵⁵ *Id.* at 10-12.

IV. Discussion**A. Procedural Matters**

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.⁵⁶

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Westar and Cooperatives because they have provided information that assisted us in our decision-making process.

B. Commission Determination

24. Based upon a review of the filings, we find that Westar's Formula Rate Tariff and Formula Rate Schedules (including the Formula Rate Template incorporated therein) have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Westar's proposed revisions to its Formula Rate Tariff and Formula Rate Schedules raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in hearing and settlement judge procedures. Therefore, we will accept Westar's revised Formula Rate Tariff and Formula Rate Schedules for filing, suspend them for a nominal period to become effective March 1, 2014, as requested, subject to refund, and set them for hearing and settlement judge procedures. In light of the common issues of law and fact presented in Docket No. ER14-804 and Docket No. ER14-805, we will consolidate these proceedings for purposes of settlement, hearing, and decision.

25. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the 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.⁵⁷ If the parties desire, they may, by

⁵⁶ In light of the Commission's decision, below, to consolidate the proceedings in Docket No. ER14-804 and Docket No. ER14-805, and given Lindsborg's timely motion to intervene in Docket No. ER14-804-000, Lindsborg's late-filed motion to intervene in Docket No. ER14-805-000 is moot.

⁵⁷ 18 C.F.R. § 385.603 (2013).

mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.⁵⁸

26. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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. Should the settlement judge ultimately determine that a hearing is warranted, Westar shall file a full case in chief pursuant to the Commission's regulations to support its proposed Formula Rate Tariff and Formula Rate Schedules at hearing.

27. Finally, we will reject the Kansas Commission's request that the Commission undertake a review of Westar's current transmission formula rate ROE as beyond the scope of this proceeding because the amendments filed in this proceeding involve Westar's generation formula rate, not its transmission formula rate.

The Commission orders:

(A) Westar's proposed revisions to its Formula Rate Tariff and Formula Rate Schedules are hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2014, as requested, 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 Westar's Formula Rate Template, Formula Rate Tariff, and Formula Rate Schedules, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

⁵⁸ 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 the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 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 within five days of the date of this order.

(D) Within 30 days of the appointment of the settlement judge, 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 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 judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a 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.

(F) Docket Nos. ER14-804 and ER14-805 are hereby consolidated for the purposes of settlement, hearing, and decision.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.