

157 FERC ¶ 61,165  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, and Colette D. Honorable.

Westar Energy, Inc.

Docket No. ER08-1396-002

ORDER DISMISSING REHEARING REQUEST AS MOOT

(Issued November 30, 2016)

1. In this order, we dismiss as moot the request for rehearing filed by Westar Energy, Inc. (Westar) with respect to the Commission's October 10, 2008 order<sup>1</sup> in this proceeding.

**I. Background**

2. Westar is a public utility primarily engaged in the generation, transmission, distribution and sale of electric energy with its principal office located in Topeka, Kansas. Westar's transmission system is located in eastern and central Kansas and is under the control of the Southwest Power Pool, Inc. (SPP), which is a Commission-approved regional transmission organization. At the time of the October Order, Westar provided firm capacity and energy to the City of Wathena, Kansas (Wathena) pursuant to an Agreement for Wholesale Electric Service between Wathena and Westar for fixed-rate bundled service with an initial term of October 1, 2007, through August 31, 2008.

3. On August 13, 2008, Westar filed a Petition for Approval of Settlement Agreement (Settlement Agreement) between Westar and Wathena requesting the Commission to approve without condition or modification the Settlement Agreement and an associated *pro forma* rate schedule (Cost-Based Formula Rate Agreement for Full Requirements Electric Service) between Wathena and Westar (Formula Rate Agreement).

4. The Settlement Agreement provided for the continued sale of capacity and firm energy to Wathena. However, the Formula Rate Agreement stated that the "public interest" standard of review would apply.<sup>2</sup>

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<sup>1</sup> *Westar Energy, Inc.*, 125 FERC ¶ 61,027 (2008) (October Order).

<sup>2</sup> Article XII.2 of the Formula Rate Agreement.

5. In the October Order, the Commission found that in light of *Maine Public Utilities Commission v. FERC*,<sup>3</sup> the Commission could not accept the standard of review in the Formula Rate Agreement. The Commission accepted the standard of review provision in the Formula Rate Agreement conditioned on the parties revising the standard of review applicable to third parties consistent with the Commission's decision in *Duke Energy Carolinas, LLC*.<sup>4</sup> The Commission also set the Formula Rate Agreement for hearing and settlement procedures.

## **II. Request for Rehearing**

6. On November 10, 2008, Westar filed a request for rehearing of the October Order. In its rehearing request, Westar argued that the Formula Rate Agreement was entitled to the presumption of reasonableness that may only be overcome by a showing of serious harm to the public interest, consistent with *Morgan Stanley Capital Group, Inc. v. Public Utility District No.1 of Snohomish County, Washington*.<sup>5</sup>

## **III. Subsequent Events**

7. On September 28, 2009, Westar filed a letter withdrawing its petitions for approval of several settlement agreements and *pro forma* rate schedules with municipal customers, including the Settlement Agreement and Formula Rate Agreement in this proceeding. In its letter, Westar stated that it was replacing the individual agreements with a standardized rate schedule and form of agreement that would apply to all municipal wholesale customers taking long-term full requirements service from Westar. On October 19, 2009, the Chief Administrative Law Judge issued an order terminating settlement judge and hearing proceedings and on November 19, 2009, the Commission accepted the proposed standardized rate schedule and form of agreement, subject to a compliance filing.<sup>6</sup>

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<sup>3</sup> October Order, 125 FERC ¶ 61,027 at P 23 (citing *Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008)).

<sup>4</sup> *Id.* (citing *Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,201, at P 10 & n.10 (2008)).

<sup>5</sup> Request for Rehearing at 4-6 (citing *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No.1 of Snohomish County, Wash.*, 554 U.S. 527 (2008)).

<sup>6</sup> *Westar Energy Inc.*, 129 FERC ¶ 61,128 (2009).

**IV. Determination**

8. We dismiss as moot Westar's request for rehearing of the October Order. Westar withdrew its proposed Settlement Agreement and Formula Rate Agreement and replaced them with a standardized rate schedule and form of agreement, which the Commission accepted in 2009. Accordingly, because the Formula Agreement, which was the subject of Westar's request for rehearing, was withdrawn, Westar's request for rehearing is moot.

The Commission orders:

Westar's request for rehearing of the October Order is dismissed as moot, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.