

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Westar Energy, Inc.  
ONEOK Energy Services Company, L.P.

Docket No. EC06-48-002

ORDER ON REHEARING

(Issued March 23, 2007)

1. The Oklahoma Municipal Power Authority (OMPA) requests rehearing of the order on rehearing that the Commission issued in this proceeding (Order on Rehearing).<sup>1</sup> In the Order on Rehearing, the Commission granted Westar Energy Inc.'s (Westar Energy) request for rehearing in part and accepted Westar Energy's alternative proposal to satisfy its mitigation responsibilities by committing not to use the Spring Creek generating facility (the Facility) as a network resource during the Winter Super Peak period. As discussed below, the Commission grants in part OMPA's request for rehearing.

**I. Background**

2. The background to this case is described in detail in the Order on Rehearing. Briefly, in the May Order, the Commission conditionally authorized disposition and acquisition of jurisdictional and generating facilities involving the sale of the Facility from ONEOK Energy Services Company L.P. (ONEOK) to Westar Energy (Transaction).<sup>2</sup> The Facility is interconnected with the Oklahoma Gas and Electric Company (OG&E) transmission system. The conditions were based on our finding that additional transmission upgrades would be needed to mitigate adverse effects on competition if the Facility becomes a network resource, enabling the Facility to sell into the Westar Energy market, thus increasing Westar Energy's market share.

---

<sup>1</sup> *Westar Energy, Inc.*, 117 FERC ¶ 61,011 (2006).

<sup>2</sup> *Westar Energy Inc.*, 115 FERC ¶ 61,228 (2006) (the May Order).

3. The May Order directed Westar Energy to make a compliance filing within 30 days after the Southwest Power Pool (SPP) acts on any Westar Energy application to have 225 megawatts (MWs) from the Facility designated as a network resource. As a network resource, the Facility would get transmission priority and could be called upon to meet the network customer's network load on a non-interruptible basis, and would therefore be considered available capacity in the Westar Energy market at all times. Westar Energy was directed to address in the compliance filing whether the transmission upgrades required by the SPP in order to designate the Facility as a network resource would provide sufficient available transmission capability (ATC) to restore market concentration to within 100 HHI of the pre-transaction level. If they would not, Westar Energy was required to pay for additional transmission upgrades to provide such additional ATC.

4. In its request for rehearing of the May Order, Westar Energy proposed alternative mitigation. One alternative was that if the Facility becomes a network resource, Westar Energy will commit not to use its 225 MW of network integration transmission services during the Winter period (December, January, and February) until market conditions change so that the resulting change to the HHI would be 100 or less. Westar Energy noted that the only time the analysis showed there would be an adverse competitive effect was a violation of the available economic capacity (AEC) measure that occurred during the Winter Super Peak period, assuming Westar Energy designated 225 MW of the Facility's capacity as a network resource. Westar Energy claimed that, in any event, operation of the Facility is likely to be economic only during the Summer Peak. The Commission granted Westar Energy's rehearing request in part, accepting the proposed alternative mitigation discussed above because it addressed the competitive harm identified in the May Order.

## **II. Arguments Raised**

### **A. OMPA Rehearing Request**

5. OMPA filed a request for rehearing of the Order on Rehearing, arguing that the Commission erred in accepting the proposed mitigation. OMPA claims that Westar Energy has recently asked the Southwest Power Pool (SPP) to move the Facility from the OG&E control area to the Westar Energy control area.<sup>3</sup> OMPA states that this would be likely to undermine the mitigation. According to OMPA, because intra-control area

---

<sup>3</sup> OMPA request for rehearing at 2. In this case, "moving" the Facility to the Westar Energy control area would mean that the Facility would be under the central dispatch of the Westar Energy control area rather than the OG&E control area.

transactions are not “tagged,”<sup>4</sup> the change in control area would reduce the likelihood that Westar Energy’s use of the Facility would be subject to transmission load relief (TLR), even when it is not a designated network resource. OMPA believes that the change would likely make the Facility effectively a firm network resource; it would affect the circumstances under which the Facility would be “competing with rival generation for scarce transmission capacity,” undermining one of the assumptions the Commission relied on in accepting Westar Energy’s alternative mitigation proposal.<sup>5</sup>

**B. Westar Energy Answer**

6. Westar Energy claims that OMPA has misunderstood discussions and data exchanges between Westar Energy and the SPP that took place before the Order on Rehearing. According to Westar Energy, these exchanges with the SPP concerned administrative details of *modeling* the Facility in the SPP’s computerized power flow program. The Facility could be modeled as part of the OG&E control area, which is how it was modeled in the past; it could be modeled as part of the Westar Energy control area; or it could be modeled as its own control area.<sup>6</sup>

7. Westar Energy states that it began evaluating its options before the Order on Rehearing. In light of that order, Westar Energy says it understands that “any treatment of [the Facility] must comply with its commitment not to use NITS [network integration transmission service] service to import energy from [the Facility] area into the Westar [Energy] control area on a firm basis during the winter months.”<sup>7</sup> Westar Energy confirms that from an *operational* standpoint, it plans to keep the Facility in the OG&E control area, and is working with OG&E to accomplish that. In addition, Westar Energy states that it is working to ensure that the SPP power flow model accurately reflects the use of the Facility consistent with Westar Energy’s mitigation commitment. These administrative details do not affect its use of the transmission system or its mitigation

---

<sup>4</sup> A North American Electric Reliability Corporation tag represents a transaction scheduled to flow across control areas.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> Westar Energy answer at 2-3.

<sup>7</sup> *Id.* at 3.

obligation, and will not affect market power.<sup>8</sup> Westar Energy claims that there is no need for a hearing on the issues raised by OMPA.<sup>9</sup>

### **C. OMPA Reply to Westar Energy Answer**

8. OMPA states that the Commission should reject Westar Energy's answer as a violation of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2006), which prohibits answers to requests for rehearing. However, if the Commission accepts Westar Energy's answer, OMPA requests that the Commission also accept OMPA's reply.<sup>10</sup>

9. OMPA questions Westar Energy's statement that "[f]rom an operational standpoint, Westar Energy plans to keep Spring Creek in the OG&E control area and is working out the necessary administrative details with OG&E to accomplish this result." Specifically, OMPA questions the meaning of the qualifier, "from an operational standpoint." OMPA has sought assurance that the Facility will continue to be modeled as being located within the OG&E control area, but has not received such assurance.<sup>11</sup> OMPA sent a correction to the SPP in September 2006 stating that it would not accept the spreadsheet used as part of the SPP's 2007 power flow model because it showed the power purchases from the Facility as a delivery to OMPA from the Westar Energy control area. OMPA clarified to the SPP that its contract for the purchase of output from the Facility is through the OG&E control area, not the Westar Energy control area. When the SPP re-posted an updated spreadsheet on November 2, 2006, it still modeled the Facility as being in the Westar Energy control area. OMPA again notified the SPP that it disagreed with this, but the next version of the spreadsheet again did not include OMPA's proposed correction.<sup>12</sup>

10. OMPA states that OMPA and Westar Energy received an email from the SPP stating that its 2007 flow models:

will show the Spring Creek units and the associated 345 kV transmission bus in a new control area 535 labeled "SCGS" for modeling purposes. The new control area and its associated data may change in the current model update process or subsequent model updates to meet the requirements of the

---

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4.

<sup>10</sup> OMPA reply at 1.

<sup>11</sup> *Id.* at 1-2.

<sup>12</sup> *Id.* at 2-3.

MDWG Charter and the SPP Power Flow Model Development Procedure manual.

OMPA interprets the email to suggest that the Facility will be its own control area, one of the options mentioned by Westar Energy in its answer.<sup>13</sup>

11. OMPA challenges Westar Energy's position that the correspondence between Westar Energy and the SPP simply concerns "administrative matters" that "do not affect Westar's use of the transmission system, do not alter Westar's mitigation commitment, and have no impact on market power as claimed by OMPA." OMPA notes that Westar Energy does not challenge OMPA's statement that moving the Facility from the OG&E control area to the Westar Energy control area would be likely to reduce the chance that Westar Energy's use of the unit would be subject to TLRs, effectively transforming Westar Energy's non-firm use of the resource to a firm network resource.<sup>14</sup>

12. OMPA also is concerned that if the Facility is moved out of the OG&E control area, OMPA might not be able to rely on the output of the Facility. It points to TLRs OMPA faces when scheduling output from the Jeffries Energy Center in the Westar Energy control area. According to OMPA, if the Facility is modeled in the Westar Energy control area, the resulting tags could increase the risks that OMPA's deliveries will be subject to TLRs, reducing OMPA's ability to rely on the Facility.<sup>15</sup>

### **III. Commission Determination**

#### **A. Procedural Matters**

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to an answer or a request for rehearing unless otherwise ordered by the decisional authority. However, the Commission will accept Westar Energy's answer and OMPA's reply because they have provided information that assisted us in our decision-making process.

#### **B. Analysis**

14. In the Order on Rehearing, we accepted Westar Energy's proposed alternative mitigation because it addressed the competitive harm identified in the May Order. Westar Energy has committed not to use NITS to import energy from the Facility into the

---

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.*

Westar Energy control area on a firm basis during the winter months, as required by the Order on Rehearing. We relied on that commitment in finding that the Transaction will not adversely affect competition.

15. The Facility is located on the OG&E system and should be modeled as such. We agree with OMPA that modeling the Facility in the Westar Energy control area or as its own control area would undermine the mitigation. If it is modeled in the Westar Energy control area, then it is assumed to be in that control area and would not need to compete for whatever transmission is available. Westar Energy confirms that from an operational standpoint, it plans to keep the Facility in the OG&E control area, and is working with OG&E to accomplish that. In addition, Westar Energy states that it is working to ensure that the SPP power flow model accurately reflects the use of the Facility consistent with Westar Energy's mitigation commitment. Westar Energy is obligated to comply with the conditions of the Order on Rehearing. We, therefore, condition our approval of the alternative mitigation on the Facility continuing to be modeled in the OG&E control area and continuing to be in the OG&E control area from an operational standpoint.

16. In order to ensure that Westar Energy is complying with these conditions, we require that Westar Energy file quarterly updates with the Commission, beginning 30 days from the issuance of this order, addressing (1) in which control area the Facility is located from an operational standpoint; and (2) how the Facility is being modeled by the SPP.

The Commission orders:

(A) Rehearing is granted in part, as discussed in the body of this order.

(B) Westar Energy shall file quarterly updates with the Commission, beginning 30 days from the issuance of this order, addressing (1) in which control area the Facility is located from an operational standpoint; and (2) how the Facility is being modeled by the SPP.

By the Commission.

( S E A L )

Philis J. Posey,  
Acting Secretary.