

126 FERC ¶ 61,096  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Arma, Kansas

Docket No. EL09-33-000

v.

Westar Energy, Inc.

ORDER ESTABLISHING SETTLEMENT JUDGE PROCEDURES

(Issued February 5, 2009)

1. On February 3, 2009, the City of Arma, Kansas (City of Arma) filed a complaint pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> and Rule 206 of the Commission's Rules of Practice and Procedure<sup>2</sup> against Westar Energy, Inc. (Westar). The City of Arma alleges that Westar is exercising its market power by refusing to provide generation service to the City of Arma under just and reasonable terms and conditions. The City of Arma requests that the Commission provide interim relief by issuing an order delaying the effectiveness of the Notice of Termination of the service agreement between itself and Westar pending the outcome of this proceeding. The City of Arma further requests that the Commission direct Westar to provide service at just and reasonable rates.
2. The City of Arma takes service from Westar under an existing agreement that, by its own terms, was scheduled to terminate on November 30, 2007. Westar and the City of Arma have entered into discussions regarding a replacement agreement and, to accommodate the discussions, agreed to extend the existing contract several times. The existing agreement will expire at the end of February 2009.
3. The City of Arma asserts that it has attempted unsuccessfully to resolve its dispute with Westar regarding a new service agreement. However, we find the involvement of a

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<sup>1</sup> 16 U.S.C. § 824e (2006).

<sup>2</sup> 18 C.F.R. § 385.206 (2008).

settlement judge may assist the parties in reaching a mutually agreeable resolution of this matter. We also find that the issues presented here may be amenable to settlement.

4. Accordingly, we encourage the parties to make every effort to settle their dispute before further Commission action in this case is required. To aid the parties in their settlement efforts, we direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>3</sup> The Chief Administrative Law Judge will select a judge for this purpose. The settlement judge shall initiate settlement judge procedures and convene a settlement conference as soon as practicable, but no later than February 11, 2009. The settlement judge shall submit an interim report to the Commission and the Chief Administrative Law Judge regarding the progress of settlement discussions no later than two days after the settlement conference.

The Commission orders:

(A) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within one (1) day 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.

(B) The settlement judge shall convene a settlement conference on or before February 11, 2009 and shall submit an interim report to the Commission and the Chief Administrative Law Judge regarding the progress of settlement discussions no later than two days after the settlement conference.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> 18 C.F.R. § 385.603 (2008).