

134 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Westar Energy, Inc.

Docket Nos. ER10-947-001
ER10-948-001
ER10-949-001
ER10-950-001

ORDER DENYING REHEARING

(Issued March 7, 2011)

1. In this order, the Commission denies the request for rehearing filed by Westar Energy, Inc. (Westar) of the Commission's May 28, 2010 order in the above-captioned proceedings.¹ As discussed herein, we affirm that Westar's filed proposal for loss compensation is ambiguous and Westar's alternative proposal for loss compensation is inconsistent with the methodology for calculating losses in the Southwest Power Pool, Inc., (SPP) Open Access Transmission Tariff (OATT).

I. Background

2. On March 29, 2010, Westar filed revisions to rate schedules and a tariff under which it provides service to certain of its requirements customers² (March 29 Filing). In the March 29 Filing, Westar proposed to modify the generation formula rate templates used to recover the costs of providing service to those customers. Specifically, Westar proposed to modify the recovery of Construction Work in Progress, depreciation rates, the definition of losses, and several ministerial changes. The only modification still relevant in this proceeding is Westar's proposed revision to the definition of losses.

¹ *Westar Energy, Inc.*, 131 FERC ¶ 61,183 (2010) (May 28 Order).

² Those customers are: Doniphan Electric Cooperative, Inc., Kaw Valley Electric Cooperative, Inc., and Nemaha-Marshall Electric Cooperative, Inc. (collectively, Kansas Cooperatives); Kansas Electric Power Cooperative, Inc.; City of Arma, Kansas; and tariff customers.

3. Prior to the March 29 Filing, the definition of losses contained in the rate schedules and tariff stated that losses are calculated as the percentage identified in the transmission provider's OATT multiplied by the customer's usage as measured at the customer's point of receipt.³ The definition also stated that in no case will losses include those losses that may be incurred from the customer's point of receipt to the customer's load.

4. In the March 29 Filing, Westar proposed to modify the definition of losses to read: "Losses shall be calculated in a manner consistent with the practices under the effective SPP OATT." Kansas Cooperatives opposed Westar's revisions to the definition of transmission losses, among other aspects of the March 29 Filing. Noting that they were currently involved in a billing dispute with Westar over transmission losses, Kansas Cooperatives alleged that Westar was trying to resolve that billing dispute through a proposal that was ambiguous, violated the spirit of an earlier settlement they had entered,⁴ and was contrary to Commission precedent that generally does not permit setting a rate by reference.

5. Westar subsequently filed an answer that provided additional detail regarding its proposed losses provisions.⁵ Westar argued that its proposal was designed to ensure appropriate recovery of the transmission losses it incurs when it delivers power supply service under the rate schedules, and that the proposal tracked the way transmission losses are billed under the SPP OATT. In response to Kansas Cooperatives' argument that it was inappropriate for its rate to be set by reference to the SPP rate, Westar asserted that there was no other practical way for the loss rate to be established, and noted that the existing rate that was agreed to by Kansas Cooperatives and approved by the Commission sets the loss rate by reference to the SPP rate. Westar explained that confusion arises from the fact that while the SPP OATT states "composite loss factors" from which loss percentages must be derived, it does not expressly state the loss percentages needed to calculate losses based on deliveries to customers. Westar pointed to certain provisions of the SPP OATT, including the loss factors applicable to Westar in

³ The agreements and SPP OATT use the terms point of delivery and point of receipt differently. The customer's point of receipt under the agreements is the same as the SPP point of delivery under the SPP OATT.

⁴ The settlement referenced by Kansas Cooperatives, including the revisions to the rate schedules and tariff agreed to by the parties, was approved by the Commission. *Westar Energy, Inc.*, 130 FERC ¶ 61,007 (2010). Other settlements between Westar and wholesale customers are referenced in the May 28 Order, 131 FERC ¶ 61,183 at P 2-3.

⁵ See *Motion for Leave to Answer and Answer of Westar Energy, Inc.*, Docket Nos. ER10-947-000, *et al.* at 4-5 (April 29, 2010) (April 29 Answer).

Appendix 1 to Attachment M, which indicate the amount by which power received into the system at the SPP point of receipt will be reduced through losses before it is delivered at the SPP point of delivery. By contrast, Westar argued, service to Kansas Cooperatives under the rate schedules is based on what is provided at the SPP point of delivery. Because of this discrepancy, Westar contended the applicable composite loss factor stated in the SPP OATT must be translated into a loss percentage applicable at the SPP point of receipt. Westar claimed that it was essential that the method it used matches the method used by SPP; otherwise, it asserted, losses would be understated by almost six percent.

6. Westar included in its answer an alternative proposal to make its intent clearer. This alternative proposal provided that losses would be calculated by multiplying the loss factor stated in SPP's OATT by the quotient resulting from dividing 1 by 1 minus the loss factor by the customer's usage as measured by the meter(s) installed at the customer's point of receipt (i.e., the SPP point of delivery).

7. The May 28 Order accepted in part and rejected in part the proposed revisions, and directed Westar to submit a compliance filing.⁶ As relevant here, the May 28 Order rejected Westar's proposed revisions to the loss provisions of the rate schedules and tariff, finding that the proposal was impermissibly vague and that parties would be unable to calculate the appropriate rate from such a provision.⁷ The May 28 Order pointed to settlement agreements between Westar and wholesale customers such as Kansas Cooperatives that provided the essential elements necessary for those customers to calculate the applicable loss percentage.⁸ The May 28 Order found, by contrast, that Westar's proposed revision would lead to unnecessary dispute. The May 28 Order further found that the alternative proposal proffered by Westar in the April 29 Answer was unsupported, though it provided more detail than the original proposal. In response to Westar's citation to various provisions of the SPP OATT governing transmission losses, the May 28 Order concluded that those provisions involved Point-to-Point Transmission Service (Point-to-Point Service) customers; in this case, the customers were Network Integration Transmission Service (Network Service) customers. The May 28 Order noted that losses for Network Service customers under the SPP OATT are the same as what is currently in the rate schedules and tariff. Thus, the May 28 Order found that Westar had based its alternative proposal on the wrong provisions and, therefore, no gross-up to losses was necessary, contrary to Westar's contentions.

⁶ Westar submitted the compliance filing on June 25, 2010. The Commission accepted the compliance filing via delegated letter order on October 12, 2010.

⁷ May 28 Order, 131 FERC ¶ 61,183 at P 31.

⁸ *Id.* P 30.

II. Westar Request for Rehearing

8. On rehearing, Westar argues that the Commission erred in finding that no-gross up on the loss factor is necessary for Network Service because it: (1) will result in under-recovery of losses from Kansas Cooperatives; (2) will impose costs on Westar's retail customers; (3) is inconsistent with the basis on which the loss factors were derived; and (4) is inconsistent with longstanding practice in the SPP.

9. Westar explains that it sells Kansas Cooperatives their electric demand and energy requirements under the rate schedules, and that these requirements are determined at the point where the power is delivered to Kansas Cooperatives. Westar notes that, to ensure Kansas Cooperatives purchase sufficient capacity and energy from Westar's generation resources for delivery to the transmission system to meet their requirements, both coincidental peak demand and firm energy are adjusted for losses. Westar further explains that the rate schedules define losses by reference to the SPP OATT. "Losses" are thus defined in part as "the percentage identified in the Transmission Provider's [i.e., SPP's] currently effective OATT multiplied by Customer's usage . . . as measured by the revenue-quality meter(s) installed at the point(s) of receipt."⁹ According to Westar, this language is intended to make its requirements customers responsible for purchasing and delivering to the transmission system sufficient capacity and energy to meet their requirements, "plus an increment to replace real power losses across the transmission system in an amount equal to the losses as determined by" SPP.¹⁰

10. Westar argues, however, that neither the rate schedules nor the SPP OATT contemplate that the "Average Loss Factor" applicable to Westar in Appendix 1 of Attachment M of the SPP OATT is the only loss factor that could be applied.¹¹ Westar then describes the SPP OATT provisions that provide the basis for determining losses associated with Network Service. First, Westar points to section 28.5 "Real Power Losses" of the SPP OATT, which provides that real power losses are associated with all Network Service and that the applicable loss factors are set forth in Appendix 1. Westar next notes that Attachment M requires each transmission owner to maintain a schedule showing its allocation of loss energy for the provision of transmission service on its

⁹ Westar Rehearing Request at 3 (citing Article I, ¶ 31 of the rate schedules). As noted in footnote 3, *supra*, the term "Point of Receipt" in the rate schedules is identical to the term "Point of Delivery" in the SPP OATT.

¹⁰ *Id.* at 4.

¹¹ This appendix sets forth the average loss factor for each of SPP's transmission-owning members, including Westar. The average loss factor for Westar (Zone 14) is 2.94 percent. *See* SPP OATT at Fifth Revised Sheet No. 281.

system, and that the average loss factor (or “LAVG”) for each transmission owner is stated in Appendix 1 to Attachment M. Westar explains that Section II of Attachment M provides that a Network Service customer is responsible for replacing losses, associated with Network Service to its network load, to each zone in which its network load is located, and that the customer’s loss responsibility is the product of the zone loss factor and the energy delivered within that zone by the customer. However, according to Westar, the zone loss factor referenced in Section II is not the same as the average loss factor shown in Appendix 1. Westar asserts that this distinction is further supported by the fact that the term “LAVG” is used in Section III of Attachment M in explaining the calculation of losses for Point-to-Point Service customers but that the term is not used in Section II related to losses for Network Service customers. Westar states that, as a transmission owner in the SPP, it used its Commission-approved loss factors identified in its OATT to calculate losses in compliance with the requirements of Attachment M of the SPP OATT.

11. Westar states that it has developed the system loss factors for use on its own system, and claims that the requirement to develop appropriate loss factors was embedded in the Commission’s original *pro forma* OATT. Westar explains that, at the time, it was the transmission provider for all transmission service on its network. Westar points out that section 28.5 of the Order No. 888 *pro forma* OATT, governing real power losses for network customers, provided that the applicable real power loss factors would be completed by the transmission provider.¹² Section 28.5 of Westar’s OATT provided that “Real Power Losses shall be calculated by multiplying the capacity and energy received at the Receipt Points by the applicable Real Power Loss Factors stated below.”¹³ This section then stated transmission losses associated with various categories of delivery voltages.¹⁴ Westar notes that language had been part of its OATT, without change, since the original July 9, 1996 effective date.¹⁵

¹² *Id.* at 5 (citing section 28.5 of the *pro forma* OATT).

¹³ *Id.* at 6 (citing section 28.5 of the Westar OATT).

¹⁴ *Id.* For example, where the delivery voltage ranged from 230-345 kV, the transmission losses for the high side of the meter was 0.87 percent and the transmission losses for the low side of the meter was 1.62 percent.

¹⁵ Westar also includes as an attachment an email from its then-Executive Director to SPP confirming that “for ease of administration the factors stated in Section 28.5 of the Westar OATT were used to calculate a single average loss factor for deliveries from the Westar transmission system for use in the SPP OATT.” *Id.* at 7.

12. Westar states that the intent of the losses section in the rate schedules is to calculate the amount of energy available to a customer at the SPP point of delivery by taking the amount of power it purchased or generated and injected into the transmission system at a defined SPP point of receipt and reducing it for losses. Because the loss percentages are calculated based on SPP point of receipt values, the Average Loss Factor (i.e., the 2.94 percent set forth in Appendix 1 to Attachment M of the SPP OATT) only produces correct results when it is multiplied by the capacity and energy received at the SPP points of receipt and only applies to losses associated with transmission facilities that are subject to the SPP OATT. However, Westar explains, the “known value” for Network Service customers is the amount of capacity and energy delivered to these customers at their SPP points of delivery.¹⁶ Thus, Westar contends, to account for real power losses on Westar’s transmission system accurately, the factors need to be converted for application to SPP point of delivery values, i.e., grossed-up.¹⁷

13. Applying its formula for making this conversion,¹⁸ Westar points out that the loss percentage that should be applied to the SPP point of delivery values is 1.0303 percent. According to Westar, the resulting product is the amount of capacity and energy Kansas Cooperatives must purchase at the SPP point of delivery in order to acquire both their requirements for capacity and energy and a sufficient increment to replace real power losses across the system.¹⁹

14. Westar asserts that both it and SPP have consistently applied this gross-up practice since 1996. Westar explains that, in practice, it performs the gross-up and provides the resulting values to SPP, which then uses the grossed-up values to bill all transmission customers whose transactions sink in the Westar zone (including Westar’s own

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 8.

¹⁸ Westar explains that the formula for making this conversion is to subtract the product of (1) the amount of power received into the transmission system at the SPP point of receipt and (2) the loss percentage from the SPP point of receipt to the SPP point of delivery from the power received into the transmission system at the SPP point of receipt. *Id.*

¹⁹ *Id.* at 8-9. Westar also provides an illustration of how this approach would work. *Id.* at 9-10.

transactions to serve native load). Westar states that, despite this being its practice since 1996, only Kansas Cooperatives have suggested that the gross-up is inappropriate.²⁰

15. In conclusion, Westar argues that failing to gross-up the loss factor for the point of delivery will result in under-collection of losses to be made up by transmission customers with transactions sinking in Westar's zone. According to Westar, these losses will continue to occur, and Westar's own generating resources will be called on to produce the capacity and energy needed to make up those losses. Westar argues that the cost of doing so will fall on its retail customers and will thus provide a subsidy to other transmission customers on its system.

III. Kansas Cooperatives' Answer

16. On July 12, 2010, Kansas Cooperatives filed a motion for leave to answer and answer to Westar's request for rehearing. Kansas Cooperatives argue that Westar's request for rehearing is improper procedurally, because Westar submits two new affidavits and offers new rationales regarding what amounts to a third attempt to amend the definition of losses under the agreements with Kansas Cooperatives. Kansas Cooperatives state that the Commission has held consistently that the submission of additional information in a request for rehearing is not appropriate.²¹ Kansas Cooperatives argue that the new affidavits, new exhibit, and new arguments contained in Westar's rehearing request amount to a moving target.

17. Kansas Cooperatives state that even if Westar's request for rehearing were proper, some of the new information submitted by Westar actually supports the existing definition of losses in the agreements. Kansas Cooperatives contest Westar's suggestion that it has flexibility under the agreements to choose from a variety of loss factors that could be applied. According to Kansas Cooperatives, Westar's opinion is in keeping with the flexibility it originally sought with its proposed revision to the agreements which the Commission found impermissibly vague. Kansas Cooperatives state that there is no ambiguity in either the agreements or the SPP OATT regarding the transmission loss factor to be used. Kansas Cooperatives state that Appendix 1 to Attachment M includes a 2.94 percent loss factor for the Westar zone.

²⁰ Westar asserts that in discussions with other customers since Kansas Cooperatives raised the issue, several customers have informed Westar that they believe Westar is properly applying the loss calculation.

²¹ Kansas Cooperatives at 1 (citing *Pacific Gas and Elec. Co., et al.*, Opinion No. 471-A, *order denying reh'g*, 108 FERC ¶ 61,304, at P 9 (2004)).

18. Kansas Cooperatives also assert that Westar's lengthy discussion of its OATT is not relevant to this proceeding because SPP, and not Westar, is the transmission provider. However, Kansas Cooperatives state that Westar's discussion indicates that transmission losses on its system were provided from voltages of 345 kV down to voltages below 12.5 kV and the derivation of the 2.94 percent loss factor is for all transmission voltages for all hours.²² Thus, Kansas Cooperatives contend that the 2.94 percent loss factor is appropriate for service to their loads under the agreements.

19. Finally, Kansas Cooperatives state that Westar will be fully compensated for losses because the agreements require billing demand and energy, coincident peak demand, and firm energy to be adjusted for losses.

IV. Westar Answer to Kansas Cooperatives' Answer

20. Westar claims that its rehearing request was not a moving target. Westar states that its request for rehearing merely amplified its earlier discussion of the loss calculation proposal that it provided in the April 29 Answer. Westar contends that it supplied the additional information in order to support its earlier filing that appeared to be needed in light of the May 28 Order's finding that the proposal was unsupported. Westar also notes that Kansas Cooperatives have not suggested that the additional evidence that it filed in connection with its request for rehearing was inaccurate in any regard.

21. Westar responds to Kansas Cooperatives' argument that the loss adjustment will ensure full compensation, arguing that without its proposal being accepted, the loss adjustment will not be enough. Westar also states that although its OATT provided loss factors for facilities below 34.5 kV, the loss factor calculated by Westar applies only to deliveries from facilities that are subject to the SPP OATT.

V. Commission Determination

A. Procedural Matters

22. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2010), prohibits an answer to a request for rehearing unless accepted by a decisional authority. We will accept the Kansas Cooperatives' answer to Westar's request for rehearing and Westar's answer to Kansas Cooperatives' answer because they have assisted in our decision-making.

23. Normally, the Commission rejects requests for rehearing that raise new issues on rehearing. While Westar claims that it did not raise any new issue in its rehearing, it

²² This is in contrast to the statements made in this proceeding that the loss provisions of the SPP OATT reflect losses on facilities with voltages as low as 34.5 kV.

admits that it submitted new evidence to support its earlier unsupported proposal. That new evidence consists of the affidavits and email exhibit that Westar appended to its request for rehearing. This evidence should have been submitted earlier in the proceeding. The Commission looks with disfavor on parties raising issues for the first time on rehearing.²³ This is because other parties are not permitted to respond to a request for rehearing.²⁴ Such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision. Moreover, Westar offers no reason why its arguments could not have been raised in its earlier pleading in this proceeding. However, as discussed below, even if we were to consider such new evidence and arguments raised by Westar, we would nonetheless deny Westar's request for rehearing.

B. Substantive Issues

24. The Commission denies Westar's rehearing request because it misses the point of the May 28 Order's rejection of the proposed change in the definition of losses. The Commission rejected Westar's initial proposal because the proposal was impermissibly vague and would lead to unnecessary disputes between the parties. Westar does not address the Commission's determination on this point at all.

25. While the Commission noted that Westar's alternative proposal to change the definition of losses, which Westar first raised in its answer to protests, was more detailed than the initial proposal, the Commission nonetheless rejected it as unsupported. The Commission also noted that Westar, in its limited support for the proposal, referenced portions of the SPP OATT that pertained to Point-to-Point Service customers, even though the customers affected by Westar's proposal would be Network Service customers. The Commission stated that the loss provisions in the rate schedules and tariff should therefore be based on the Network Service loss provisions in the SPP OATT, which is exactly how the existing loss provisions in the agreements calculate losses.²⁵ Thus, the Commission found that no gross-up of the loss factor would be

²³ See, e.g., *Calpine Oneta Power v. American Elec. Power Serv. Corp.*, 114 FERC ¶ 61,030, at P 7 (2006); *Midwest Indep. Transmission Sys. Op., Inc.*, 112 FERC ¶ 61,211, at P 34 (2005) (citing *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270, at 61,922 (2000)); *Baltimore Gas & Elec. Co.*, 92 FERC ¶ 61,043, at 61,114 (2000).

²⁴ 18 C.F.R. § 385.713(d) (2010).

²⁵ May 28 Order P 32.

necessary with respect to Network Service customers.²⁶ In its request for rehearing, Westar does not argue that Commission misinterpreted the SPP OATT.

26. Westar argues that it has flexibility in the calculation of real power losses for Network Service because neither the rate schedules nor the tariff applicable to its wholesale customers contemplate that the average loss factor applicable to Westar in Appendix 1 of Attachment M of the SPP OATT is the only loss factor that could be applied. However, our review of the SPP OATT indicates that the only loss factor percentage stated in Attachment M of the SPP OATT is the 2.94 percent included in Appendix 1 of Attachment M. Further, we find that section 28.5 of the SPP OATT, which addresses “Real Power Losses” for Network Service, is the applicable section given that the customers under the rate schedules and tariff are Network Service customers. That section identifies the loss factors stated in Appendix 1 to Attachment M as the applicable loss factors for Network Service. Thus, we disagree with Westar that it has flexibility to adjust the Network Service loss factors identified in the SPP OATT for these Network Service customers because Westar’s proposal is expressly based on the SPP OATT and the SPP OATT does not currently provide for any such adjustment.²⁷

27. Westar argues that the Commission should allow a gross-up of the loss factor despite the ambiguous language it had submitted in the March 28 Filing and the inconsistency between its proposal and the losses provisions included in the SPP OATT. We agree with Kansas Cooperatives, however, that Westar’s discussion of this issue focuses on the treatment of losses under the Westar OATT when it should have focused on the SPP OATT. The agreements at issue apply the percentage in the Transmission Provider’s currently-effective OATT (i.e., SPP’s as it is the Transmission Provider) by the customer’s usage as measured at the point of receipt under the agreements. Westar proposed to revise the agreements to state that losses are calculated in a manner consistent with the practices under the SPP OATT. Neither the agreements nor and Westar’s filing refer to the Westar OATT. Therefore, we conclude that Westar’s

²⁶ *Id.*

²⁷ We note that SPP has filed revisions under section 205 of the Federal Power Act in Docket No. ER11-2428 to revise the OATT’s loss provisions, particularly as they apply to Network Service customers. As discussed herein, the SPP OATT in effect at the time of Westar’s filing does not provide for any adjustment of the loss factors for Network Service customers.

arguments with regard to the treatment of losses under the Westar OATT to be irrelevant in this context. Thus, as discussed above, the Commission will deny Westar's request for rehearing.²⁸

The Commission orders:

Westar's request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁸ Because we are denying rehearing of the change to the definition of losses, the Commission will not address in this proceeding the issue raised by the Cooperatives of whether the 2.94 percent loss factor is appropriate for service to the Cooperatives which take service at voltages as low as 12.5 kV.