

142 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

In re Westar Energy, Inc.

Docket No. IN13-7-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 25, 2013)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Westar Energy, Inc. (Westar). This Order is in the public interest because it resolves Enforcement's nonpublic investigation, under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012), into whether Westar committed violations of the open access transmission tariff (OATT) of Southwest Power Pool, Inc. (SPP) by the use of secondary network integrated transmission service (NITS) for the purchase of electricity to facilitate off-system sales. Westar has agreed to pay a civil penalty of \$420,000, disgorge \$758,816 to its non-affiliated firm transmission customers, disgorge \$395,020 to SPP, and make a compliance report to Enforcement.

I. Background

2. As described in the Agreement, Westar is headquartered in Topeka, Kansas and is the largest electric energy provider in Kansas, serving more than 700,000 retail and wholesale customers in the east and east-central portion of the state. It has rights to some 7,100 MW of generating capacity and operates over 35,000 miles of transmission and distribution lines. It is a transmission-owning member of SPP, a regional transmission organization with 60 members in nine states.

II. Investigation

3. Enforcement opened the instant investigation in August of 2007, which covered the twenty-month study period from July 1, 2006 through February 29, 2008.

4. Enforcement determined that Westar violated section 28.6 of the SPP OATT, which prohibits the use of secondary network transmission service for purposes other than to serve network load. Specifically, Enforcement determined that Westar made

numerous off-system short-term purchases during the study period, using secondary NITS. While some were economy energy purchases made to serve network load, others facilitated off-system sales instead, and therefore should have used point-to-point (PTP) transmission service.

5. Enforcement determined that Westar committed 823 such violations, consisting of 132,150 MWh. Enforcement determined that these violations resulted in \$758,816 of unjust profits, and net unpaid point-to-point (PTP) charges of \$395,020.

III. Stipulation and Consent Agreement

6. Enforcement staff and Westar resolved Enforcement's investigation by means of the attached Agreement.

7. Westar stipulates to the facts. Westar agrees that using network transmission service for purposes other than to serve network load is a violation of section 28.6 of the SPP OATT.

8. Westar neither admits nor denies violating section 28.6 of the SPP OATT, but agrees to pay a civil penalty of \$420,000, disgorge \$758,816 to its non-affiliated firm transmission customers, disgorge \$395,020 to SPP, and make a compliance report to Enforcement.

IV. Determination of the Appropriate Sanctions and Remedies

9. Pursuant to section 316A(b) of the Federal Power Act (FPA), the Commission may assess a civil penalty of up to \$1,000,000 for each day that a violation continues.¹ In determining the appropriate remedy for Westar, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines.²

10. Enforcement considered that there was no involvement or toleration of the violations by high-level personnel, Westar cooperated fully with the investigation, and resolved the matter without need for a trial-type hearing.

11. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of Westar's conduct.

¹ 16 U.S.C. § 825o-1(b) (2006).

² *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

United States of America
Federal Energy Regulatory Commission

Westar Energy, Inc.

Docket No. IN13-7-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Westar Energy, Inc. (Westar) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. part 1b (2012). The investigation examined possible violations of the open access transmission tariff (OATT) of Southwest Power Pool, Inc. (SPP) by the use of secondary network integrated transmission service (NITS) for the purchase of electricity to facilitate off-system sales (Westar is a member of and market participant in SPP).

II. STIPULATED FACTS

Enforcement and Westar hereby stipulate to the following:

2. Westar is headquartered in Topeka, Kansas and is the largest electric energy provider in Kansas, serving more than 700,000 retail and wholesale customers in the east and east-central portion of the state. It has rights to some 7,100 MW of generating capacity and operates over 35,000 miles of transmission and distribution lines. It is a transmission-owning member of SPP, a regional transmission organization with 60 members in nine states.

3. Enforcement opened the instant investigation in August of 2007, which covered the twenty-month study period from July 1, 2006 through February 29, 2008. Enforcement reviewed numerous documents provided by Westar, took the depositions of several Westar employees, conducted its own studies, and performed ancillary research to arrive at its conclusions.

4. Enforcement and Westar agree that using network transmission service for purposes other than to serve network load is a violation of section 28.6 of the SPP OATT. Westar, however, neither admits nor denies having committed such a violation.

III. VIOLATIONS

Enforcement determined that Westar violated section 28.6 of the SPP OATT, which prohibits the use of secondary network transmission service for purposes other than to serve network load. Specifically, Enforcement determined the following:

5. Westar made numerous off-system short-term purchases during the study period, using secondary NITS. While some were economy energy purchases made to serve network load, others facilitated off-system sales instead, and therefore should have used point-to-point (PTP) transmission service. Specifically, Enforcement determined that Westar committed 823 such violations, consisting of 132,150 MWh. These violations resulted in \$758,816 of unjust profits, and net unpaid point-to-point (PTP) charges of \$395,020. (The unpaid PTP charges consist of the amounts that Westar should have paid to SPP for the PTP transmission service it should have used instead of NITS; the netting represents the portion that would have been remitted to other SPP transmission-owning members after subtraction of the credit owing to Westar as a transmission-owning member.)

IV. REMEDIES AND SANCTIONS

6. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, Westar accepts the facts as stipulated above, but neither admits nor denies Enforcement's determinations that the facts set forth herein constitute violations by Westar of the Federal Power Act, Commission rules or regulations or the SPP OATT. In resolution hereof, Westar agrees to undertake the following obligations:

A. Civil Penalty

7. Westar shall pay a civil penalty in the amount of \$420,000, payable to the U.S. Treasury-FERC, within 10 days of the Commission's issuance of an order approving this Agreement without modification or condition.

B. Disgorgement

8. Westar shall pay to its non-affiliated firm transmission customers \$758,816, as a disgorgement of profits determined by Enforcement to have been received by Westar from relevant transactions, as follows: Westar shall identify the non-affiliated entities which purchased firm transmission from Westar during the period of July 1, 2006 through February 29, 2008, and shall allocate and pay the \$758,816 to such entities based on the dollar value of the customers' usage for the period.

9. Westar shall remit to SPP \$395,020, as payment of the PTP charges determined by

Enforcement to be the net amount that Westar would have owed had it used PTP transmission service in connection with the relevant transactions, to be distributed by SPP in accordance with its tariff procedures to the appropriate recipients, excluding Westar.

10. Westar shall submit proof of payment of all the foregoing disgorgement amounts to the Commission, provide certification of the identity and transmission purchases of the nonaffiliated firm transmission customers referenced above, and shall submit proof or other assurances, under oath, that none of the payments required hereunder have been or will be recovered from ratepayers, all within 30 days after the Effective Date of this Agreement.

C. Compliance Report

11. During the course of Enforcement's investigation, Westar voluntarily put into place administrative controls to ensure that its operators properly used PTP transmission service for any off-system short term purchases made to facilitate off-system sales. Enforcement has reviewed these controls and finds them helpful. Westar shall make a report to Enforcement on the date falling one year after the Effective Date of this Agreement, confirming that these controls remain in place. In its report, Westar shall include summary data indicating its compliance with the NITS and PTP requirements of the SPP OATT, as presently in effect or as may be hereafter modified by order of the Commission. The report shall include an affidavit executed by an officer of Westar that the report is true and accurate.

12. Upon request by Enforcement, Westar shall provide all documentation deemed necessary by Enforcement to support the report. After receipt of the report, Enforcement may, at its sole discretion, require Westar to submit one additional annual report, to be made on the date falling two years after the Effective Date of this Agreement.

V. TERMS OF CONSENT AGREEMENT

13. The Effective Date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without modification or condition.

14. Unless the Commission issues an order approving the Agreement in its entirety and without material modification or condition, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Westar shall be bound by any provision or term of the Agreement, unless otherwise agreed in writing by Enforcement and Westar.

15. The Agreement binds Westar and its agents, successors and assigns. The Agreement does not create or impose any additional or independent obligations on

Westar, or any affiliated entity, its agents, officers, directors or employees, other than the obligations specifically identified in this Agreement.

16. In connection with the payment of the civil penalty provided for herein, Westar agrees that the Commission's order approving the Agreement without modification or condition shall be a final order assessing a civil penalty under the Federal Power Act, 16 U.S.C. § 792, *et seq.*, as amended. Westar further waives rehearing of any Commission order approving the Agreement without material modification or condition, and judicial review by any court of any Commission order approving the Agreement without material modification or condition.

17. Commission approval of this Agreement without material modification or condition shall release Westar and forever bar the Commission from holding Westar, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all civil and administrative claims arising out of, related to, or connected with the investigation addressed in this Agreement. In further consideration for this release, Westar represents that it is not aware of any material facts concerning the events that were not disclosed to Enforcement during the investigation and which might reasonably be considered to constitute further violations of the NITS provisions of the SPP OATT. Upon the Effective Date of this Agreement, Enforcement's investigation of Westar shall terminate.

18. Failure to make a timely payment or to comply with any other provision of this Agreement shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act and may subject Westar to additional action under the enforcement and penalty provisions of the Federal Power Act.

19. If Westar does not make the civil penalty payment at or before the time agreed by the parties, interest on the portion payable to the United States Treasury will begin to accrue and be payable to the United States Treasury, pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii), from the date that payment is due.

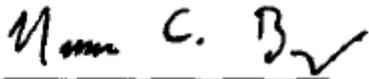
20. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Westar has been made to induce the signatories or any other party to enter into the Agreement.

21. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

22. The undersigned representative of Westar affirms that he or she read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

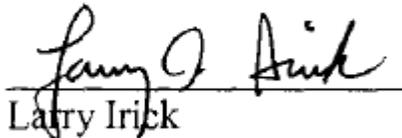
23. The Agreement may be signed in counterparts, and each counterpart so executed shall be deemed to be an original.

Agreed to and accepted:



Norman C. Bay
Norman Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: Jan. 14, 2013



Larry Irick
Larry Irick
General Counsel
Westar Energy, Inc.

Date: January 10, 2013