

160 FERC ¶ 61,025
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Westar Energy, Inc.

Docket No. IN15-8-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 24, 2017)

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 on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2017). The investigation sought to determine whether Westar violated provisions of the Southwest Power Pool (SPP) Tariff and 18 C.F.R. § 35.41(b) by submitting inaccurate cost inputs for its mitigated energy offer curves (EOCs), or by intentionally targeting oversized make-whole payments.

2. Westar admits to the violations and agrees to pay a civil penalty of \$180,000 to the United States Treasury, and to be subject to monitoring that includes submission of annual compliance monitoring reports for two years, with the requirement of a third year at Enforcement's option.

I. Background

3. Westar is an investor-owned vertically-integrated electric utility. It is the largest electric utility company in Kansas and owns approximately 7,200 MW of generation capacity. Westar participates in the SPP Integrated Marketplace (SPP Market) with respect to certain of its owned and managed generation.

4. During the timeframe relevant to this investigation, Westar submitted mitigated EOCs into the SPP Market for six jointly-owned units in four separate power plants. These included: (1) Westar's share of two units in State Line; (2) Westar's share of two units at the 1,418 MW LaCygne coal plant located in LaCygne, Kansas; (3) a customer's share of Iatan 2, an 850 MW coal-fired plant in Platte County, Missouri; and (4) the same customer's share of the 1,200 MW Wolf Creek nuclear plant located in Coffey County, Kansas.

5. In the SPP Market, mitigated EOCs must be based on the individual resource's costs and unit characteristics. Mitigated EOCs are generated according to a formula that contains several different inputs. On December 23, 2014 and February 9 and 11, 2015, Westar's submitted cost inputs for State Line that were inconsistent with State Line's existing cost parameters on file with SPP's Market Monitoring Unit (MMU). The MMU noted this discrepancy, and that it resulted in Westar receiving significant make-whole payments. In March 2015, the MMU requested that Westar produce data validating its mitigated EOCs. The MMU found that Westar provided data insufficient to replicate its mitigated EOCs for State Line. The MMU referred Westar to Enforcement for submitting mitigated EOCs inconsistent with the SPP Tariff, and potentially targeting outsized make-whole payments. Enforcement subsequently opened an investigation.

6. One of the inputs for a mitigated EOC is a fuel cost adder for variable operating and maintenance (VOM) costs. Staff concluded from October 2014 to February 2015, a Westar employee inadvertently increased the fuel VOM charge from \$0.05 to \$0.50 for Westar's share of the two State Line units. Also, from May 2014 to February 2015, Westar input various heat rate coefficients for one of the State Line units, some higher and others lower than they should have been. As a result, Westar earned make-whole payments of approximately \$60,000 that it otherwise would not have earned for its share of the State Line units. Westar voluntarily refunded those monies to SPP in June 2015 and took effective measures to identify mitigated EOCs that Westar failed to properly update.

7. Westar also failed to update on each day, from July 2014 to October 2014, the fuel costs for State Line, LaCygne, Iatan 2, and Wolf Creek. Westar's inputs related to Iatan, LaCygne, and Wolf Creek during the relevant timeframe were not mitigated and did not result in make-whole payments.

8. As stated in the Agreement, Enforcement determined, and Westar admitted, that Westar violated the following SPP Tariff provisions:

- Section 2.13 of Attachment AE, which provides that "Market Participants must comply with the requirements and procedures described in the Transmission Provider's Tariff, the Market Protocols and the SPP Criteria." The section requires that mitigated EOCs be submitted on a daily basis by the market participant and that it be based on the resource's short-run marginal cost of producing energy. Enforcement found that Westar violated section 2.13 when it failed to properly update its EOCs for State Line, Iatan, LaCygne and Wolf Creek on each day from July 2014 to October 2014 and input the incorrect fuel VOM charge for State Line from October 2014 to February 2015. Westar also used incorrect heat rate coefficients for State Line from May 2014 to February 2015.

- Section 3.5 of Attachment AF, which provides that “[e]ach Market Participant is obligated to provide to the Market Monitor any cost data necessary to allow the Market Monitor to validate its mitigated Resource Offer.” Enforcement concluded that Westar failed to comply with this requirement when it submitted data to the SPP MMU in response to data requests that was not sufficient to validate Westar’s mitigated EOCs with respect to State Line’s fuel cost input.
- Section 3.2 of Attachment AF, which provides that “[m]itigated Energy Offer Curves shall be submitted on a daily basis by the Market Participant.” Enforcement found that Westar violated that section by failing to update its mitigated EOCs on a daily basis for State Line, Iatan, LaCygne and Wolf Creek.
- Section 3.2(C) of Attachment AF, which states that “[t]he mitigated energy offer shall be the Resource’s short-run marginal cost of producing energy.” Enforcement found that Westar violated that section by submitting mitigated EOCs with an incorrect fuel VOM charge of \$0.50 instead of \$0.05 for Westar’s share of the two State Line units. Also, from May 2014 to February 2015, Westar input various heat rate coefficients for one of the State Line units, some higher and others lower than they should have been for State Line.
- Section 3.2(D) of Attachment AF, which states in relevant part that “[t]he Market Participant shall submit heat rate curves, descriptions of how spot fuel prices and/or contract prices are used to calculate fuel costs, variable fuel transportation and handling costs, emissions costs, and VOM to the Market Monitoring Unit.” The information provided is expected to be sufficient for the MMU to replicate the mitigated EOCs that the Market Participant had previously provided. Enforcement found that Westar violated that section by submitting responses to the MMU’s data requests, which were insufficient to replicate the fuel cost calculation for Westar’s mitigated EOCs for State Line.

9. In addition to the SPP Tariff violations, Enforcement determined that by submitting mitigated EOCs that did not reflect actual costs or a reasonable estimate thereof, and failing to provide the MMU with data responses sufficient to replicate Westar’s mitigated EOCs for State Line, Westar violated 18 C.F.R. § 35.41(b).

10. Enforcement did not identify evidence indicating that Westar intentionally targeted oversized make-whole payments.

11. Westar cooperated throughout the Investigation and promptly responded to Enforcement's requests for data and testimony. Westar also submitted a detailed report in June 2015 explaining the origin of the errors in the mitigated EOCs, the steps taken to correct the errors, and the plans implemented to prevent future errors.

II. Stipulation and Consent Agreement

12. Enforcement and Westar have resolved the Investigation by means of the Agreement.

13. Westar stipulates to the facts recited in the Agreement, and admits that it violated the relevant SPP Tariff provisions and 18 C.F.R. § 35.41(b).

14. Westar agrees to pay a civil penalty of \$180,000 to the United States Treasury. In addition, Westar agrees to be subject to monitoring that includes submission of annual compliance monitoring reports, with the requirement of a third year of annual reporting at Enforcement's option.

III. Determination of Appropriate Sanctions and Remedies

15. 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 the conduct and recognizes that Westar cooperated fully with Enforcement during the investigation and admitted the violations.

16. The Commission also concludes that Westar's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.¹

¹132 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)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Westar Energy, Inc.

Docket No. IN15-8-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The 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 a non-public investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2016). This investigation examined whether between May 2014 and March 2015, Westar submitted energy offer curves (EOCs) and other information for certain units that violated: (1) section 2.13 of Attachment AE of the Southwest Power Pool (SPP) Tariff by failing to update its mitigated energy offer curves on a daily basis; (2) section 2.13 of Attachment AE and sections 3.2 and 3.2(C) of Attachment AF of the SPP Tariff, by submitting offers that did not reflect the short run marginal cost of producing energy; (3) section 3.5 of Attachment AF and section 3.2(D) of Attachment AF of the SPP Tariff by not providing sufficiently detailed responses to the SPP's Market Monitoring Unit's (MMU) data requests; and (4) 18 C.F.R. § 35.41(b) by submitting mitigated EOCs that did not reflect actual costs or a reasonable estimate thereof, and by its insufficient responses to MMU data requests. This investigation also examined whether Westar's EOCs for its share of the State Line Combined Cycle Plant (State Line), a 600 MW natural gas-fired combined cycle plant located in Joplin, Missouri, were intended to target oversized make-whole payments.

2. To settle Enforcement's findings of violations of SPP Tariff provisions and § 35.41(b) as described herein, Enforcement and Westar agree that Westar will do the following: (a) pay a civil penalty of \$180,000 to the United States Treasury; and (b) implement procedures to improve compliance going forward, subject to monitoring via submission of annual reports for two to three years.

II. STIPULATED FACTS

Enforcement and Westar hereby stipulate and agree to the following facts.

3. Westar is an investor-owned vertically-integrated electric utility. It is the largest electric utility company in Kansas and owns approximately 7,200 MW of generation capacity. Westar participates in the SPP Integrated Marketplace (SPP Market) with respect to certain of its owned and managed generation. As a SPP Market Participant, Westar is required to submit both an EOC and a mitigated EOC into the SPP Market for each resource it owns or manages that is offering energy. A market EOC reflects a set of prices at which the resource offers to provide energy, which varies depending on the amount of energy being taken. A mitigated EOC reflects a different set of prices at which the resource provides energy, adjusted to more closely align with the costs that the resource will incur to provide that energy. Generally, the mitigated EOC is used when the resource's offer does not clear in the market based on economics, but the unit is committed or dispatched anyway and it has market power.¹

4. During the timeframe relevant to this investigation, Westar submitted mitigated EOCs into the SPP Market for six jointly-owned units in four separate power plants. These included: (1) Westar's share of two units in State Line; (2) Westar's share of two units at the 1,418 MW LaCygne coal plant located in LaCygne, Kansas; (3) a customer's share of Iatan 2, an 850 MW coal-fired plant in Platte County, Missouri; and (4) the same customer's share of the 1,200 MW Wolf Creek nuclear plant located in Coffey County, Kansas.

5. In the SPP Market, mitigated EOCs must be based on the individual resource's costs and unit characteristics. Mitigated EOCs are generated according to a formula that contains several different inputs. On December 23, 2014 and February 9 and 11, 2015, Westar's submitted cost inputs for State Line that were inconsistent with State Line's existing cost parameters on file with the MMU. The MMU noted this discrepancy and in March 2015, requested that Westar produce data to validate its submitted mitigated EOCs. Westar submitted responses to the MMU later that month. The MMU found that the data provided in those responses were insufficient to replicate the company's mitigated EOCs for State Line. In May 2015, the MMU referred Westar to Enforcement for submitting mitigated EOCs inconsistent with the SPP Tariff and potentially targeting outsized make-whole payments. Enforcement subsequently opened this investigation to examine Westar's mitigated EOCs. Enforcement also examined Westar's State Line

¹ A market EOC is replaced with a mitigated EOC when: "(1) The Resource's Energy Offer Curve exceeds the mitigated Energy Offer Curve by the applicable conduct threshold; and (2) The Resource has local market power as determined in Section 3.1; and (3) The Resource either: (a) Fails the Market Impact Test as described in Section 3.7, or (b) Is manually committed by the Transmission Provider or by a local transmission operator." (italics removed)

EOCs but did not discover any evidence to suggest that they were intended to generate outsized make-whole payments.

6. One of the inputs for a mitigated EOC is a fuel cost adder for variable operating and maintenance (VOM) costs. From October 2014 to February 2015, a Westar employee inadvertently increased the fuel VOM charge from \$0.05 to \$0.50 for Westar's share of the two State Line units. Also, from May 2014 to February 2015, Westar input various heat rate coefficients for one of the State Line units, some higher and others lower than they should have been. As a result of Westar's cost inputs for its share of the State Line units, Westar earned make-whole payments of approximately \$60,000 that it otherwise would not have earned. Westar voluntarily refunded those monies to SPP in June 2015 and took effective measures to identify EOCs that failed to be properly updated.

7. Westar failed to update on each day, from July 2014 to October 2014, the fuel costs for State Line, LaCygne, Iatan 2, and Wolf Creek. Westar's inputs related to Iatan, LaCygne, and Wolf Creek during the relevant timeframe were not mitigated and did not result in make-whole payments.

8. Westar cooperated throughout this investigation and promptly responded to Enforcement's requests for data and testimony. Westar also submitted a detailed report in June 2015 explaining the origin of the errors in the mitigated EOCs, the steps taken to correct the errors, and the plans implemented to prevent future errors.

III. VIOLATIONS

9. Section 2.13 of Attachment AE provides that "Market Participants must comply with the requirements and procedures described in the Transmission Provider's Tariff, the Market Protocols and the SPP Criteria." That section requires market participants to submit on a daily basis mitigated EOCs based on their resource's short-run marginal cost of producing energy. Enforcement found that Westar violated section 2.13 when it failed to properly update its EOCs for State Line, Iatan, LaCygne and Wolf Creek on each day from July 2014 to October 2014 and input the incorrect fuel VOM charge for State Line from October 2014 to February 2015. Westar also used incorrect heat rate coefficients for State Line from May 2014 to February 2015. Enforcement did not identify evidence to suggest intentional misconduct by Westar. Nonetheless, these errors violate the identified provision of the SPP Tariff.

10. Section 3.5 of Attachment AF provides that “[e]ach Market Participant is obligated to provide to the Market Monitor any cost data necessary to allow the Market Monitor to validate its mitigated Resource Offer.” Enforcement concluded that Westar failed to comply with this requirement when it submitted data responses to the SPP MMU in March 2015 that were not sufficient to validate its mitigated EOCs with respect to State Line’s fuel cost input.

11. Section 3.2 provides that “[m]itigated Energy Offer Curves shall be submitted on a daily basis by the Market Participant.” Section 3.2(C) states that “[t]he mitigated energy offer shall be the Resource’s short-run marginal cost of producing energy,” and section 3.2(D) states, in relevant part, that “[t]he Market Participant shall submit heat rate curves, descriptions of how spot fuel prices and/or contract prices are used to calculate fuel costs, variable fuel transportation and handling costs, emissions costs, and VOM to the Market Monitoring Unit.” The information provided is expected to be sufficient for the MMU to replicate the mitigated EOCs that the Market Participant had previously provided. Enforcement found that Westar violated Section 3.2 by failing to update its mitigated EOCs on a daily basis for State Line, Iatan, LaCygne and Wolf Creek, and section 3.2(C) by submitting mitigated EOCs with an incorrect fuel VOM charge of \$0.50 instead of \$0.05 for Westar’s share of the two State Line units. Also, from May 2014 to February 2015, Westar input various heat rate coefficients for one of the State Line units, some higher and others lower than they should have been for State Line. Westar violated section 3.2(D) by submitting responses to the MMU’s data request in March 2015 which were insufficient to replicate the fuel cost calculation for Westar’s mitigated EOCs for State Line.

12. In addition to the SPP Tariff violations, Enforcement has determined that by submitting mitigated EOCs that did not reflect actual costs or a reasonable estimate thereof, and failing to provide the MMU with data responses sufficient to replicate Westar’s mitigated EOCs for State Line, as explained above, Westar violated 18 C.F.R. § 35.41(b).

IV. REMEDIES & SANCTIONS

13. Westar stipulates to the facts as described in Section II of this Agreement, and admits to the violation of SPP’s Tariff provisions and 18 C.F.R. § 35.41(b). For purposes of settling any and all civil and administrative disputes arising from this investigation, Westar agrees to the remedies set forth in the following paragraphs.

a. Penalties

14. Westar agrees to a total civil penalty in the amount of \$180,000, which it will pay to the United States Treasury within 10 days of the Effective Date.

15. Westar is not required to disgorge unjust profits because it has already refunded the \$60,000 in make-whole payments that the company earned from its energy offers for State Line.

b. Compliance Monitoring

16. During the course of this investigation, Westar voluntarily put into place administrative controls to ensure that its mitigated EOCs comply with the relevant SPP Tariff provisions. Westar shall continue to monitor those controls to ensure that Westar's mitigated EOCs comply with the relevant SPP Tariff provisions.

17. Westar shall formalize its compliance policies and associated processes necessary to ensure that it submits accurate cost inputs in its mitigated EOCs.

18. Westar shall make annual compliance monitoring reports to Enforcement for two years following the Effective Date of this Agreement. The first annual compliance monitoring report shall be submitted one year from the Effective Date. Westar shall submit the second annual report one year from the date of the first annual compliance monitoring report.

19. After the receipt of the second annual report, Enforcement may, at its sole discretion, require Westar to submit a report for one additional year.

20. Each compliance monitoring report shall: (1) identify any known violations of Commission regulations that occurred during the reporting period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe in detail all compliance measures and procedures instituted or modified, and all compliance training administered, during the reporting period; and (3) include an affidavit executed by an officer of Westar stating that the compliance monitoring report is true and accurate to the best of his or her knowledge.

21. Upon request by Enforcement, Westar shall provide to Enforcement documentation to support its reports.

V. TERMS

22. The Effective Date of this Agreement (Effective Date) shall be the earliest date on which the Commission has issued an order approving this Agreement without material modification or conditions. When effective, this Agreement shall resolve the matters specifically addressed herein as to Westar and any affiliated entity, and their agents, officers, directors, and employees, both past and present, and any successor in interest to Westar.

23. Commission approval of the Agreement without material modification shall release Westar and any successor or affiliate, and forever bar the Commission from holding Westar and any successor or affiliate, and their respective agents, officers, directors, and employees, past and present, liable for any and all administrative or civil claims, arising out of the conduct addressed and stipulated to in this Agreement.

24. Westar's failure to (a) make timely civil penalty payments set forth in Section IV above, (b) comply with the compliance requirements specified herein, or (c) comply with other provisions of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act, 16 U.S.C. § 792, *et seq.*, and may subject Westar and any successor companies to additional action under the enforcement and penalty provisions of the Federal Power Act.

25. Westar shall not seek to, and take no action to, pass through to ratepayers or customers any part of the Civil Penalty.

26. If Westar fails to make the civil penalty payment set forth in Section IV above by the deadlines set forth in this Agreement, interest shall begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a (a)(2)(iii) (A)(2016) from the date each payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

27. The Agreement binds Westar and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on Westar, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

28. The signatories to this 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.

29. Notwithstanding anything to the contrary herein, unless the Commission issues an order approving this Agreement in its entirety and without material modification, the

Agreement (including, without limitation, the civil penalty, and any and all stipulations and representations) shall be null and void and of no effect whatsoever, and neither Enforcement nor Westar shall be bound by any provision or term of this Agreement, unless otherwise agreed to in writing by Enforcement and Westar.

30. In connection with the civil penalty provided for herein, Westar agrees that the Commission's order approving this Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316(A)(b) of the Federal Power Act, 16 U.S.C. § 825o-1(b). Westar waives findings of fact and conclusions of law, rehearing of any Commission order approving this Agreement without material modification, and judicial review by any court of any Commission order approving this Agreement without material modification.

31. This Agreement may be modified only if in writing and signed by Enforcement and Westar. No modification will be effective unless approved by the Commission.

32. 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.

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

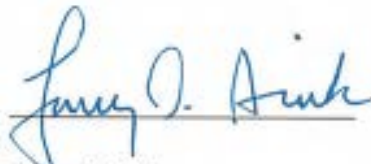
34. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Larry R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: July 25, 2017



Larry Irick
General Counsel
Westar Energy, Inc.

Date: July 11, 2017