

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Revision of Annual Charges to Public Utilities
(Westar Energy, Inc. and Kansas Gas and
Electric Company)

Docket No. RM00-7-011

ORDER DENYING REHEARING

(Issued April 19, 2005)

1. On April 12, 2004, the Director of the Commission's Division of Financial Services, Office of the Executive Director, issued an unpublished Letter Order to Westar Energy, Inc., and Kansas City Gas and Electric Company (collectively, Westar), concerning Westar's FERC Reporting Requirement No. 582 (Form No. 582) for Fiscal Year (FY) 2002 and FY 2003. Under section 385.201(c) of the Commission's regulations,¹ public utilities must file Form No. 582 annually with the Commission to report their total megawatt-hours of transmission of electric energy in interstate commerce, in order for the Commission to compute a utility's responsibility for the previous year's annual charges. In the Letter Order, the Director accepted corrections submitted by Westar for FY 2003 based on calendar year 2002 data. However, the Letter Order rejected as untimely Westar's corrections for FY 2002 based on calendar year 2001 data.

2. Westar filed a timely request for rehearing seeking to have the Commission reverse the Director's rejection of the FY 2002 corrections. In this order, the Commission denies Westar's request for rehearing. Our action today benefits customers by assuring that the Commission's annual charges are calculated in accordance with the applicable regulation.

Background

3. The Commission's regulations provide for the payment of annual charges by public utilities in order to recover the Commission's estimated electric regulatory program costs (other than the costs of regulating federal Power Marketing Agencies

¹ 18 C.F.R. § 382.201(c) (2004).

(PMAs) and electric regulatory program costs recovered through electric filing fees) for that fiscal year.² In calculating annual charges, the Commission determines the total electric regulatory program costs, less PMA-related costs and electric filing fee collections, to determine its collectible electric regulatory program costs. It then charges that amount to public utilities that provide transmission service.

4. Public utilities that provide transmission service and thus are subject to annual charges must submit Form No. 582 to the Office of the Secretary by April 30 of each year, providing data for the previous calendar year.³ The Commission uses this data to allocate the Commission's costs among the public utilities that provide transmission service. The Commission then issues bills for annual charges, which public utilities must pay within 45 days.⁴

5. The regulations allow public utilities to make corrections to their previously filed Form No. 582s, but they must do so within a specified time:

Corrections to the information reported on [Form] 582, as of January 1, 2002, must be submitted under oath to the Office of the Secretary on or before the end of each calendar year in which the information was originally reported (i.e., on or before the last day of the year that the Commission is open to accept such filings).⁵

The Commission adjusts the annual charges in the following fiscal year, using this corrected information, in order to eliminate any over or under recovery both of the Commission's actual costs and the charges to each utility.⁶

² *Id.*

³ 18 C.F.R. § 382.201(c)(1) (2004).

⁴ *See, e.g., Texas Utilities Electric Company*, 45 FERC & 61,007 at 61,026 (1988).

⁵ 18 C.F.R. § 382.201(c)(2) (2004).

⁶ *See generally Revision of Annual Charges to Public Utilities*, Order No. 641, 65 Fed. Reg. 65,757 (November 2, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,109 at 31,857 (2000), *reh'g denied*, Order No. 641-A, 66 Fed. Reg. 15,793 (March 21, 2001), 94 FERC ¶ 61,290 (2001); *Revision of Annual Charges to Public Utilities (California Independent System Operator, Inc.)*, 101 FERC ¶ 61,043 at 61,163, *reh'g dismissed*, 101 FERC ¶ 61,326 at P 9 (2002) (*CAISO*); *Annual Charges under the Omnibus Budget Reconciliation Act of 1986 (CNG Power Services, et al.)*, 87 FERC ¶ 61,074 at 61,303 (1999).

6. On December 18, 2003, Westar submitted a corrected Form No. 582 for both 2002 and 2003, correcting the data reported for the years 2001 and 2002, respectively. Westar explained that its internal review prompted by a change in the Commission's reporting requirements revealed that it had over-reported its total transmission in several particulars.

7. Westar stated that, under the Commission's regulations, its amended Form No. 582 for 2003 reporting "energy transmitted during calendar year 2002 [was] timely."⁷ Westar acknowledged, however, that its corrections for energy transmitted during calendar year 2001 were not timely under the regulations. Therefore, Westar requested a waiver of the Commission's regulations based on good cause. In this regard, Westar observed that the Commission had permitted another company, Kansas City Power and Light (KCPL), to file a correction for calendar year 2001 in 2003.⁸ Westar also argued that good cause was present in that "the Commission has recognized a systemic problem with Form No. 582 reporting, and has indicated that it is receptive to utilities filing corrected data."⁹

8. In the Letter Order, the Director accepted Westar's corrections for FY 2003 (reporting calendar year 2002 transmission data). However, the Director rejected Westar's proposed amendment for FY 2002, reporting transmission data for calendar year 2001, on the ground that it was untimely under section 382.201(c)(2) of the Commission's regulations.

9. In its request for rehearing, Westar takes the Letter Order to task for failing to address the arguments supporting the request for a waiver. Westar then goes on to reiterate and elaborate on these arguments, which we discuss below.

Discussion

10. The Commission denies rehearing. First, the Commission's regulations expressly provide that corrections of the information filed on Form No. 582 must be made promptly, by the end of the calendar year in which the information was originally filed.¹⁰

⁷ Westar Letter of December 18, 2003 at 2, citing 18 C.F.R. § 382.201(c)(2).

⁸ *Id.*, citing *Kansas City Power & Light*, Docket No. FA03-17-000 (August 14, 2003).

⁹ *Id.*, citing *Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,048 at P 13-14 (2003) (*MISO*).

¹⁰ 18 C.F.R. § 382.201(c)(2) (2004).

Second, we find that good cause does not exist to grant Westar's request for a waiver of the time limit on data correction. As explained above, the Commission allocates its program costs among all responsible public utilities. Changing the amount owed by one utility has an effect on the amount owed by all of the others. Therefore, in the normal course of events, waiving the regulatory deadline for one utility in response to its untimely request would require the recalculation and re-billing of annual charges to all public utilities, and would undermine the certainty of both the Commission and public utilities that annual charges would not be indefinitely subject to change.¹¹ Furthermore, permitting a utility to modify its calculations beyond the specified correction period would also, naturally, prompt other utilities to take the same action, further undermining the finality of the annual charges for a particular fiscal year. On balance, then, the Commission finds that the broader interest in rejecting the late correction outweighs Westar's individual interest, so that the waiver request must be denied.

11. Third, Westar's contention that precedent supports its waiver request is unfounded. In the course of denying a petition for rulemaking concerning the manner in which the Commission collects its annual charges, we stated:

Utilities file this data under oath, and the Commission accepts these statements as accurate, until a subsequent audit may reveal errors or a subsequent filing provides corrected data. Should an audit reveal errors, either in the number of reporting entities or in the figures reported, or both, or should public utilities provide corrected data, the Commission adjusts the annual charges in the next fiscal year up or down, as appropriate.^[12]

According to Westar, this language is significant because "the Commission offered assurances that it would correct erroneously filed information to ensure that its annual charge assessments are based upon accurate information."¹³ While this is true as far as it goes, the language in question does not state that the Commission will ignore the deadline expressly spelled out in its regulations.¹⁴

¹¹ See *CAISO*, 101 FERC ¶ 61,326 at P 9-11.

¹² *MISO*, 103 FERC ¶ 61,048 at P 13 (footnote omitted).

¹³ Westar Request for Rehearing at 5.

¹⁴ Indeed, since the Commission established this deadline in Order No. 641, it has never indicated that it would allow a public utility to make an untimely filing to correct its transmission data. See *CAISO*, 101 FERC ¶ 61,326 at P 10; accord *Revision of Annual Charges to Public Utilities (PJM Interconnection, L.L.C.)*, 105 FERC ¶ 61,093 at P 8-11 (2003).

12. Finally, the Commission rejects Westar's claim that the Commission's rejection of its waiver is inconsistent with our action in Docket No. FA03-17-000 and thus unduly discriminatory. There, the Commission's auditors delayed KCPL's filing because of their ongoing investigation. In those very different circumstances, where the Commission itself caused the late filing, it would have been inequitable to penalize the company. Westar, however, was subject to no such delay.

The Commission orders:

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

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.