

129 FERC ¶ 61,128  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Westar Energy, Inc.

Docket No. ER09-1762-000

ORDER CONDITIONALLY ACCEPTING FULL-REQUIREMENTS ELECTRIC  
SERVICE RATE SCHEDULE

(Issued November 19, 2009)

1. On September 28, 2009, Westar Energy, Inc. (Westar) filed a Full-Requirements Electric Service Rate Schedule (Rate Schedule)<sup>1</sup> including a standard form Electric Service Agreement (Service Agreement) setting out the terms and conditions under which municipal wholesale customers that desire long-term, full-requirements arrangements with Westar will take service. In this order, the Commission accepts the proposed Rate Schedule and Service Agreement, subject to Westar submitting a compliance filing, as discussed below.

**I. Background**

2. In 2007, Westar began offering a twenty-year cost-based generation formula rate contract to wholesale customers in its mitigated areas. Also in 2007, in Docket No. ER07-1344-000, Westar filed an agreement with Kansas Electric Power Cooperative, Inc. (KEPCo) to provide full-requirements service for a twenty-year term using a cost-based generation formula rate. The Commission set the agreement for hearing and settlement judge procedures. Subsequently, Westar and eighteen of its other wholesale customers (15 municipal customers and 3 electric cooperative customers) entered into service agreements based on the KEPCo agreement. The Commission also set these dockets for hearing and settlement judge procedures but held them in abeyance pending resolution of the docket involving the KEPCo agreement. Ultimately, the parties in the KEPCo

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<sup>1</sup> Westar designated this document as “Westar Energy, Inc., Rate Schedule FERC No. 324.”

proceeding reached a non-unanimous settlement, which the Commission approved on August 21, 2009.<sup>2</sup>

3. On February 3, 2009, the City of Arma, Kansas (Arma) filed a complaint against Westar in Docket No. EL09-33-000 objecting to certain aspects of the twenty-year generation formula rate. Ultimately, the parties reached settlement on a ten-year contract using a cost-based generation formula rate, including a system-average fuel price (Arma Agreement). The settlement was approved by the Commission on July 28, 2009.<sup>3</sup>

## II. Westar's Filing

4. Westar states that after receiving Commission acceptance of the Arma Agreement, it decided to convert that agreement into the proposed Rate Schedule and Service Agreement filed in the instant proceeding. Westar also states that the terms of the proposed Rate Schedule and Service Agreement are substantively the same as those of the Arma Agreement and that the formula rate template is identical except for a few word changes on the first few pages of the template. Westar also states that after calculating Arma's initial rate under this formula, Westar determined that some of the inputs to the formula were incorrect.<sup>4</sup> Westar states that it corrected the mistakes in the formula inputs; therefore, customers taking service under the proposed Rate Schedule will pay a slightly different rate than Arma until Arma's surcharge ends on June 1, 2011.<sup>5</sup>

5. The proposed Rate Schedule includes a cost-based generation formula rate that charges customers for Westar's embedded generation costs, included system average

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<sup>2</sup> See *Westar Energy, Inc.*, 128 FERC ¶ 61,174 (2009).

<sup>3</sup> *City of Arma, Kansas v. Westar Energy, Inc.*, 128 FERC ¶ 61,094 (2009).

<sup>4</sup> Westar states that it corrected the data inputs for construction work in progress (CWIP) included in the Arma formula by adding CWIP (for three generating stations) that was missed, removing an item from Account 283 that was included twice, correcting an allocation factor to a working capital item, and adjusting the divisor by substituting correct load data in certain months. See Oakes Test. at 7-8.

<sup>5</sup> According to the testimony filed by Robert Oakes, the correction of these inputs changed the rate from \$15.76/month in the Arma Agreement to \$16.36/month in the instant filing. See Oakes Test. at 7. As required by the Demand Charge and VOM Protocols, Westar states that a revenue requirement adjustment will be reflected at the time of the next annual update on June 1, 2010, to correct the errors in the formula. Arma will pay a surcharge in order to true-up for the following rate year beginning on June 1, 2010.

fuel. Westar requests a return on equity (ROE) of 10.8 percent, which Westar states is the same ROE the Commission accepted for the Arma Agreement. Under the proposed Rate Schedule, wholesale customers will pay a monthly charge for full-requirements electric service, which will include: (1) a Demand Charge; (2) an Energy Charge; (3) any costs Westar incurs in arranging transmission, ancillary and wholesale distribution services for the wholesale customer; (4) applicable taxes, fees and assessments attributable to the full-requirements electric service that are not included in any of the other elements of the monthly bill; and (5) any fees, fines, penalties or sanctions assessed Westar due to the customer's failure to comply with North American Electric Reliability Corporation standards. Under the formula, the Demand Charge and two of the three components of the Energy Charge (Variable Operation and Maintenance, and Off-System Sales Margin) will change each June 1 based on cost data from the prior calendar year. The third component of the Energy Charge will vary monthly and will recover the cost of fuel. Customers taking service under the proposed Rate Schedule will have the option of selecting a term of ten years or longer.

6. Westar states that it offered the Service Agreement to its municipal wholesale customers to replace the generation formula rate agreements previously filed with and pending before the Commission. Thirteen of the fifteen municipal wholesale customers that had signed settlement agreements elected to take service under the proposed Rate Schedule and Service Agreement.<sup>6</sup> Westar states that these thirteen customers have executed the Service Agreement to be effective on the first day of the month following acquisition of all applicable transmission rights from the transmission provider. Westar plans to report these executed service agreements, once they are effective, as part of its Electronic Quarterly Report.<sup>7</sup> Westar adds that concurrently with its filing in this proceeding it submitted a withdrawal of its petition for approval of settlements for the thirteen customers that have signed the proposed Service Agreement.<sup>8</sup> Westar adds that it is not withdrawing the settlement agreements with Doniphan Electric Cooperative, Kaw Valley Electric Cooperative, and Nemaha-Marshall Electric Cooperative (the

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<sup>6</sup> The thirteen wholesale customers that executed new service agreements are the following cities: Alma, Kansas; Blue Mound, Kansas; Bronson, Kansas; Elsmore, Kansas; La Harpe, Kansas; Mindenmines, Missouri; Moran, Kansas; Mulberry, Kansas; Robinson, Kansas; Savonburg, Kansas; Troy, Kansas; Vermillion, Kansas; and Wathena, Kansas.

<sup>7</sup> See Olsen Test. at 5.

<sup>8</sup> On September 28, 2009, Westar filed withdrawals in the following dockets: Docket Nos. ER08-808-000, ER08-949-000, ER08-989-000, ER08-992-000, ER08-994-000, ER08-998-000, ER08-1029-000, ER08-1031-000, ER08-1033, ER08-1035, ER08-1047-000, ER08-1396-000, and ER09-959.

Independent Cooperatives) filed in Docket No. ER08-1062-000. Rather, Westar plans to file amended settlement agreements for the Independent Cooperatives incorporating the formula rate included in the proposed Rate Schedule. Westar states that it is not withdrawing the previously-filed settlement agreements with the cities of Burlingame, Kansas and Elwood, Kansas because these customers have not executed the proposed Service Agreement.

7. Westar adds that for ten of the thirteen municipal customers<sup>9</sup> that executed the proposed Service Agreement, Westar had previously filed to delay notices of cancellation of existing service agreements. Westar states that in separate filings made contemporaneously with the instant filing, it amended the cancellation notices to tie them to the filing in this docket.<sup>10</sup> Westar notes that it has not filed cancellation notices for the other three municipal customers that have signed the Service Agreement (Alma, Troy, and Wathena) and will refrain from doing so in order to continue providing service under currently-effective agreements until the proposed Rate Schedule and Service Agreement become effective. Westar requests a December 1, 2009 effective date for the proposed Rate Schedule and Service Agreement.

### **III. Notice of Filing and Responsive Pleadings**

8. Notice of Westar's filing was published in the *Federal Register*, 74 Fed. Reg. 51844 (2009), with interventions and protests due on or before October 19, 2009. On October 19, 2009, the City of Lindsborg, Kansas (Lindsborg) timely filed a motion to intervene and protest. On October 21, 2009, Westar filed an answer.

9. Lindsborg states that the proposed Rate Schedule defines the term "Load" as follows:

**Load** shall mean the electric requirements of a Customer's end-use customers located within the franchised or certificated retail service territory that Customer has a statutory or contractual right or obligation to service. Unless otherwise agreed in writing, the electric requirements of end-use customers served by Customer pursuant to a contractual obligation included in Load is limited to contractual obligations that are in effect at the time the Agreement between Westar Energy and Customer is executed.

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<sup>9</sup> These customers are the cities of Blue Mound, Bronson, Elsmore, La Harpe, Mindenmines, Moran, Mulberry, Robinson, Savonburg, and Vermillion.

<sup>10</sup> Table 1 of Westar's filing provides a summary of each customer's status and lists each of the docket numbers associated with previous settlements for those customers and for the notices of cancellation.

10. Lindsborg states that the first sentence matches the language in the Arma Agreement but the second sentence is new and may be interpreted to limit the city's ability to serve load growth. Lindsborg also states that it anticipates load growth during the next year, including growth that may occur within the existing franchised or certificated retail service territory and growth that may result from annexation of the city limits. Lindsborg maintains that service for such growth in load may be provided under a contract between the city and the new customer, but executed long after Lindsborg renews its full-requirements agreement with Westar.

11. Lindsborg states that it does not believe that Westar intended to exclude Lindsborg's end-users from the definition of Load simply because Lindsborg takes on a new obligation within its service territory during the term of its agreement with Westar. Rather, Lindsborg believes that the proposed definition of Load may be intended to limit a city's ability to enter into new wholesale service agreements outside of the city's service territory, thereby expanding Westar's obligation to that city under the Westar full-requirements agreement. Lindsborg recommends that the term "end-use" in the second sentence be replaced with "sale for resale." Lindsborg states that this clarification would ensure that a municipal customer can service new load and load growth while addressing Westar's concern about unduly expanding its obligations under the Westar agreement.

12. In its answer, Westar agrees to Lindsborg's suggested revision. Westar states that it fully intends to serve the organic load growth of its full-requirements customers taking service under the proposed Rate Schedule and plans its system to take such growth into account. Westar adds that the definition, as modified, addresses its concern about having to serve new load without the opportunity to determine whether Westar has sufficient resources to serve that load or to take that load into account in its planning.

#### **IV. Discussion**

##### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene serve to make the entity that filed it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Westar's answer because it has provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

14. We will conditionally accept Westar's proposed Rate Schedule and form of Service Agreement to become effective December 1, 2009, as requested. The Commission finds that by agreeing to revise the definition of "Load" in the Rate

Schedule, Westar has addressed Lindsborg's concern that without modification the definition may be interpreted to limit a full-requirements customer's ability to serve its load growth. Accordingly, we direct Westar to replace the term "end-use" with "sale for resale" in the second sentence of the definition of "Load" as Westar agreed is appropriate.

15. While we will accept the Rate Schedule and Service Agreement subject to the revision discussed above, we find that Westar had not fully complied with Order No. 614.<sup>11</sup> Westar has filed a document listing the terms and conditions of its full-requirements service and setting out its formula rate as a "rate schedule." The Commission finds that Westar should have designated that document as a tariff because Westar plans to allow customers seeking to obtain service under the terms and conditions of that document to execute a service agreement (using the form of service agreement) and Westar plans to report these executed service agreements as part of its Electronic Quarterly Report. The proper designation for Westar's proposed Rate Schedule is as a tariff. Therefore, we direct Westar to submit a compliance filing within 30 days of the issuance of this order revising the definition of "Load" as discussed above, and re-designating Rate Schedule No. 324 to its next available service tariff.<sup>12</sup>

The Commission orders:

Westar's Rate Schedule and Service Agreement are hereby accepted effective December 1, 2009, subject to Westar submitting a compliance filing, within 30 days of the date of this order, revising the definition of "Load" and re-designating Rate Schedule No. 324 to its next available service tariff, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>11</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats & Regs. ¶ 31,096 (2000).

<sup>12</sup> We also note that the tariff should be paginated with Original Sheet Numbers and have an effective date of December 1, 2009 on each sheet.