

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

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

Westar Energy, Inc.

Docket Nos. ER09-1273-002
ER09-1273-004
EL12-4-000

ORDER GRANTING REHEARING IN PART, DENYING REHEARING IN PART,
INSTITUTING SECTION 206 PROCEEDING, AND ESTABLISHING REFUND
EFFECTIVE DATE

(Issued November 17, 2011)

1. On May 12, 2010, American Wind Energy Association and the Wind Coalition (collectively, AWEA) filed a request for rehearing and reconsideration (May 12 Request for Reconsideration) of a May 5, 2010 notice¹ rejecting AWEA's April 19, 2010 request for rehearing (April 19 Request for Rehearing) of the March 18, 2010 order in this proceeding.² In the March 18 Order, the Commission accepted Westar Energy, Inc.'s (Westar) proposed *pro forma* Balancing Area Services Agreement (Balancing Agreement) and Schedule 3A, Generator Regulation and Frequency Response Service (Schedule 3A). As discussed below, we dismiss AWEA's May 12 Request for Reconsideration as moot, grant in part, and deny in part AWEA's April 19 Request for Rehearing, institute a proceeding under section 206 of the Federal Power Act (FPA),³ establish a refund effective date, and direct Westar to submit a compliance filing within thirty days of the date of this order.

¹ Notice Rejecting Request For Rehearing, Docket No. ER09-1273-002 issued May 5, 2010 (May 5 Notice).

² *Westar Energy, Inc.*, 130 FERC ¶ 61,215 (2010) (March 18 Order).

³ 16 U.S.C. § 824e (2006).

I. Background

2. Westar is a public utility with a transmission system that is located in Kansas and under the functional control of the Southwest Power Pool, Inc. (SPP). Westar is also a balancing area operator and is subject to the North American Electric Reliability Corporation's Reliability Standards, including standards requiring Westar to continuously balance the output of generators to the load in its balancing area. SPP is the transmission provider responsible for ensuring that all necessary ancillary services required for transmission customers within the SPP footprint are available. SPP provides some ancillary services directly, while for others SPP relies on each balancing area operator to supply those services under approved tariff schedules. Schedule 3 (Regulation and Frequency Response Service) of the SPP Open Access Transmission Tariff (OATT) provides that each balancing area operator is responsible for maintaining the balance between load and generation in its balancing area. Schedule 3 of Westar's OATT authorizes Westar to charge transmission customers for Regulation and Frequency Response Service when such transmission service is used to serve load in the Control Area. The charge for such Schedule 3 service is calculated by multiplying a regulation requirement percentage of 1.35 percent by the amount of transmission service and the cost of the capacity to provide the Regulation and Frequency Response Service.⁴

3. On June 4, 2009, Westar filed the Balancing Agreement and Schedule 3A as attachments to its OATT. In its filing, Westar stated that it must hold sufficient on-line generating capacity in reserve to make up the moment-to-moment differences between scheduled generator output and actual generator output to match the transmission schedules at the control area interface. Westar also explained that it recovers its costs related to the balancing area services provided to generators serving load in the balancing area through bilateral agreements or through the SPP OATT. However, the Westar and SPP OATTs do not contain similar provisions applicable to generators seeking to become a part of Westar's balancing area but who serve load located outside of Westar's balancing area.⁵ According to Westar, its proposed Balancing Agreement and Schedule 3A will allow Westar to charge for and provide Generation Regulation and Frequency Response Services to generators located within Westar's balancing area whose output is delivered to load outside Westar's balancing area or to the SPP energy imbalance market.

⁴ See Westar FERC Electric Tariff, Second Revised Vol. No. 5, 3rd Revised Sheet No. 132.

⁵ Westar stated that sales into the SPP energy imbalance market are essentially exports of power from the Westar balancing area to SPP for which there is no identifiable load.

4. In addition, Westar stated that given the ability of the generators to match the load levels, the regulation function under Schedule 3 historically has been focused on moment-to-moment deviations in loads. Because fossil-based generation can maintain a set level of output as long as the unit is performing properly, Westar explained that this type of generation has very little variability in output from the amount scheduled each hour. Westar also explained that wind generation output varies with the speed of the wind and is also susceptible to “high speed cutout,” which can occur during high wind conditions when governors shut the generators down as a protective mechanism. Westar stated that during times of low load levels, wind projects may produce energy that is not needed, which requires other generation to back down to preserve balance on the system. According to Westar, this variability means that it must manage not only the variability of its load, but in the case of wind generation, it must also manage the variability of the generation itself.

5. Based on these differences in variability, Westar proposed to assess dispatchable generators a regulating obligation of 1.35 percent of a generator’s nameplate capacity, which is the percentage obligation that applies to transmission customers serving load within the Westar balancing area under Schedule 3. Based on a study of three different wind sites in western, central and eastern Kansas over a one-year period, Westar developed a 7.8 percent regulating obligation for variable generators.⁶ Westar requested an effective date of August 3, 2009 for its tariff revisions.

6. On August 3, 2009, Commission staff issued a deficiency letter, noting, among other things, that Westar’s proposed regulation requirements do not take into account the diversity in deviations among all system resources and load. Staff directed Westar to explain how the proposed regulation requirements in Schedule 3A, combined with those in Schedule 3, will not result in over-recovery of total system regulation costs, when these regulation requirements do not reflect the diversity of deviations among generators and load.

7. In response to the deficiency letter, Westar explained that the regulation charge in Schedule 3 does not account for any regulation burden imposed by sources other than load. According to Westar, all of the costs associated with the regulation burden imposed by sources other than load are currently being absorbed by Westar’s wholesale and retail customers through their fuel adjustment clauses. However, Westar contended that it is inappropriate for its wholesale and retail customers to subsidize the costs of the regulation burden imposed by generators located in Westar’s balancing area that either

⁶ The terms “variable” and “intermittent” are often used interchangeably to refer to wind resources. For the purposes of this order, we will refer to these resources as “variable” resources.

export out of Westar's balancing area or make sales into the SPP energy imbalance market. Westar explained that it credits its ancillary service revenue to its retail and wholesale customers, and because it cannot currently charge for regulation service on transactions involving exports out of its balancing area for the regulation burden they put on the Westar system, Westar's retail and wholesale customers are subsidizing these transactions.

8. Additionally in response to the deficiency letter, Westar conducted a portfolio-wide⁷ study of the regulation requirements for generation and load on Westar's system for the period from April 2009 through November 11, 2009,⁸ evaluating the diversity of deviations on Westar's system. Westar's portfolio-wide study produced a regulation requirement of 1.24 percent for dispatchable generation and 4.05 percent for variable resources. Westar stated that because of the partially offsetting deviations in the portfolio, the regulation requirement for the portfolio is smaller than would be needed to cover each individual source separately.⁹ Westar maintained that its proposed regulation requirement for variable generators, based on a stand-alone method, was appropriate. However, Westar acknowledged that the issue of whether to charge variable generators on a stand-alone basis or a portfolio-wide basis is a policy decision to be made by the Commission.

9. In addition, Westar stated that over time, as technology improves and Westar has more experience with variable generation, the regulation requirement under Schedule 3A may decrease. According to Westar, if the Commission decides to utilize the portfolio-wide method, Westar will make a filing within three years with updated data and updated regulation requirement percentages. Westar added that SPP is expected to initiate

⁷ Under the portfolio-wide study, Westar first calculated the amount of regulation capacity needed to meet regulation standards 95 percent of the time for each source of deviation on the system including variable generation, dispatchable generation, and load. Westar then calculated the amount of regulation capacity needed to meet the regulation standards 95 percent of the time for all sources of deviations combined together taking account of correlation and portfolio diversity. Finally, Westar adjusted the regulation requirement for each individual source to reflect its share of the combined portfolio regulation requirement.

⁸ Westar stated that this is the only period in which it had all of the data needed to conduct the analysis. *See* Westar Response to Deficiency Letter, Dietz Aff. at 8.

⁹ *See* Westar Response to Deficiency Letter at 8 (stating, "Overall, diversity helps mitigate the need for regulation.").

reforms to consolidate balancing areas and establish ancillary service markets, which will supersede Westar's Schedule 3A generator regulation service.¹⁰

10. AWEA filed a protest in response to Westar's response to the deficiency letter, requesting that the Commission: (1) reject Westar's filing; (2) require Westar to make a supplemental filing to address issues AWEA argued that Westar did not adequately address in response to the deficiency letter; or (3) establish a formal hearing.

11. In the March 18 Order, the Commission conditionally accepted Westar's proposed Balancing Agreement and Schedule 3A, suspended them for a nominal period to be effective August 3, 2009, subject to refund, and directed Westar to make a compliance filing. Among other things, the Commission directed Westar to incorporate the portfolio-wide methodology of calculating regulation requirements, revised to use name plate capacity in the divisor of the percentages consistent with the use of name plate capacity used in the billing determinants.¹¹

II. Requests for Rehearing and Reconsideration

12. In its May 12 Request for Reconsideration, AWEA asks the Commission to grant rehearing of the determination in the May 5 Notice that AWEA's April 19 Request for Rehearing was untimely, and therefore had to be rejected. AWEA requests that if the Commission denies rehearing of the May 5 Notice, it should reconsider its finding in the March 18 Order that Westar's proposal was consistent with cost-causation principles and is just and reasonable.

13. In its April 19 Request for Rehearing, AWEA alleges that the Commission erred because: (1) the Commission's approval of Westar's proposal deviated from the Commission's cost-causation principles and produces unjust and unreasonable rates; and (2) the Commission's approval of Westar's proposal on the basis that it would be an "interim" measure is not the result of reasoned decision-making based on substantial record evidence.¹² With regard to cost causation, AWEA argues that "the well-established principle of cost causation requires that costs should be allocated . . . to

¹⁰ *Id.* at 4.

¹¹ Westar submitted its compliance filing on April 19, 2010, which it subsequently revised in Docket No. ER11-2646-000. Westar's compliance filing, as revised, was accepted for filing by delegated letter order on February 2, 2011. *See Westar Energy, Inc.*, Docket Nos. ER09-1273-003 and ER11-2646-000 (Feb. 2, 2011) (delegated letter order).

¹² AWEA April 19 Request for Rehearing at 6.

customers based on customer benefits and cost incurrence”¹³ and that costs should be fairly allocated among participants, “including those who cause them to be incurred and those who otherwise benefit from them.”¹⁴ While maintaining that a regulation charge on variable generation is unnecessary, AWEA argues that even if such a charge is reasonable, the portfolio-wide method departs from cost-causation principles. AWEA states that according to Westar all costs associated with the regulation burden imposed by sources other than load were being absorbed by Westar’s wholesale and retail customers through their fuel clauses and that “[exporting] generators should be responsible for paying the costs associated with the incremental burden they impose on the system.”¹⁵ AWEA argues that because Westar sought to recover costs associated with the regulation burden imposed by sources other than load, a just and reasonable rate would have recovered only those costs that had not been recovered previously. AWEA contends the Commission erred by allowing Westar to recover more than these incremental costs from these exporting generators, effectively subsidizing Westar and its existing customers.

14. AWEA challenges the Commission’s premise in the March 18 Order that “sharing of diversity benefits is consistent with traditional ratemaking practices of allocating fixed costs where exact precision in cost allocation is not always possible.”¹⁶ AWEA avers that this premise cannot be sustained here because it is possible to calculate precisely the cost of the incremental burden of accommodating exporting variable generators on Westar’s system in this case. In particular, AWEA argues that its witness’s testimony demonstrated that the correct way to calculate the incremental regulation burden associated with adding a resource to the power system is to calculate the regulation burden of the power system without the resource and subtract that from the regulation burden of the power system with the resource.

15. In addition, AWEA argues that the flaws the Commission identified in Westar’s stand-alone method and results are also contained in Westar’s portfolio-wide method and results. As it argued in its protest, AWEA asserts that the allocation of costs under the

¹³ *Id.* at 7 (citing *Cal. Power Exchange Corp.*, 106 FERC ¶ 61,196, at P 17 (2004)).

¹⁴ *Id.* (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 559, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

¹⁵ *Id.* at 8 (citing Westar June 4, 2009 Filing, Dietz Testimony at 10).

¹⁶ *Id.* at 10 (quoting March 18 Order, 130 FERC ¶ 61,215 at P 38).

portfolio-wide method is directly derived from the stand-alone method with only one mathematical adjustment. AWEA argues that the Commission should have concluded that Westar's portfolio-wide approach fails to take into account the diversity in deviations among all system resources and load.¹⁷

16. AWEA also contends that the portfolio-based method unreasonably and unjustly assigns larger integration charges to less aggregated generators and loads relative to more aggregated generators and loads because the manner in which Westar groups generators and load is arbitrary.¹⁸ AWEA explains that Westar separated "Other Wind" and "Westar Wind," as well as "Frequency" and "RBASE Generation" when these groups could have been aggregated into a single group labeled "generation," just as Westar aggregated "load" into a single group. AWEA states that the variability of an aggregated group is always going to be smaller than if the component parts had been treated on an individual or less aggregated basis.

17. Regarding the second alleged error, AWEA argues that the Commission's approval of Westar's proposed integration charge as a reasonable "interim measure" was arbitrary and capricious. AWEA argues that the only basis for the Commission to approve a particular proposal for charges is whether it is just and reasonable, regardless of the temporal nature of the proposal. AWEA argues that the rates must be just and reasonable on their own merits and the Commission cannot rely on the possibility that the charges may be rendered unnecessary at some point in the future.

18. AWEA concludes that the Commission should grant its request to rescind the March 18 Order and set the matter for a hearing and settlement judge procedures to determine a just and reasonable regulation requirement for variable generation.

III. Commission Determination

A. Procedural Matters

19. When AWEA filed its April 19 Request for Rehearing the electronic time stamp of AWEA's electronic filing indicated that AWEA submitted its request for rehearing one minute and fifty-one seconds after the Commission's official 5:00 p.m. close of business (18 C.F.R. § 375.101(c) (2011)) on the date that requests for rehearing were due in this case. However, it has since been determined that, at the time that AWEA submitted its April 19 Request for Rehearing, the electronic time stamp on the Commission's server

¹⁷ *Id.* at 12.

¹⁸ *See id.* at 14-15.

was incorrect. Accordingly, we will accept AWEA's April 19 Request for Rehearing as timely submitted and dismiss AWEA's May 12 Request for Reconsideration as moot.¹⁹

B. Substantive Matters

20. For the reasons discussed below, we deny in part and grant in part AWEA's request for rehearing of the March 18 Order, institute a proceeding under section 206 of FPA, establish a refund effective date, and direct Westar to submit a compliance filing, within thirty days of the date of issuance of this order.

21. AWEA is mistaken that the Commission's acceptance of Westar's proposed Balancing Agreement and Schedule 3A deviated from cost-causation principles and produces unjust and unreasonable rates. As the Commission stated in the March 18 Order, Order No. 890-A clarified that "transmission providers may propose to assess regulation charges to generators selling in the control area, as well as generators selling outside the control area, and the Commission will consider such proposals on a case-by-case basis."²⁰ The Commission found that Westar's proposed Balancing Agreement and Schedule 3A, like other proposals the Commission had accepted previously, allows Westar to charge for generation regulation resulting from transactions involving exports of power out of the Westar balancing area.²¹ Thus, under Commission policy and

¹⁹ Since that time, the Commission has put in place processes to check the accuracy of its server's time on a regular basis. Additionally, current Commission time is now displayed during the eFiling submission process so that filers know the Commission's time as they make their filing. Moreover, for every electronic filing, an electronic receipt is provided that shows the time the filing was made, and thus whether the filing was (or was not) timely made. With these protections in place, the Commission will rely on its electronic time stamp to establish the date and time a filing is made and, thus, whether electronic requests for rehearing are submitted untimely after close of business on the date that such filings are due. *E.g.*, *North American Electric Reliability Corp.*, 130 FERC ¶ 61,002, at P 12 (2010); *Pacific Gas and Electric Co. v. Delta Energy Center, LLC*, 116 FERC ¶ 61,207, at 61,866-67 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,211, at P 10 (2005); *accord Boston Gas Co. v. FERC*, 575 F.2d 975, 977-79 (1st Cir. 1978); *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985).

²⁰ March 18 Order, 130 FERC ¶ 61,215 at P 34 (citing Order No. 890-A, FERC Stats & Regs. ¶ 31,261 at P 313).

²¹ *Id.* P 35 (citing *Florida Power Corp.*, 89 FERC ¶ 61,263 (1999); *Entergy Services Inc.*, 120 FERC ¶ 61,042, at P 66 (2007)).

precedent, it was not unreasonable for Westar to propose to assess regulation charges to exporting generators.

22. Further, the Commission found that unlike the generation regulation charges that the Commission had accepted previously, Westar's proposal would assess different charges for dispatchable and variable generation. Accordingly, under section 205 and the Commission's cost-causation principle,²² Westar was required to demonstrate that its proposed charges for dispatchable and variable generation were just and reasonable and not unduly discriminatory or preferential. Westar argued that variable generation places a heavier burden on its system than dispatchable generation. Westar also provided data supporting that claim including data showing that variable generators' deviations from the deployment signal are more than three times greater than those of dispatchable generators.²³ Accordingly, the Commission found that Westar's proposal reasonably assesses variable generation a higher regulation requirement consistent with cost causation principles—i.e., the proposed rate design would reflect the costs caused by the customers that would pay them.

23. We disagree with AWEA's position that the generation burden on Westar's system caused by exporting generators can be determined precisely by calculating the regulation burden of the power system without the resource and subtract that from the regulation burden of the power system with the resource. AWEA's proposal, like Westar's original stand-alone method, fails to reasonably account for diversity benefits that result from multiple transactions on Westar's system. As the Commission stated in the March 18 Order,

[T]he portfolio study reflects that in the day-to-day operation of the system, Westar regulates the aggregate variations of all resources and that one resource's negative deviation can offset some or all of another resource's positive deviation. When the transactions of two customers result in diversity benefits, it is incorrect to say that one customer is benefitting the other but not vice versa. Instead, the diversity benefits result from both

²² See *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (finding that under the cost causation principle, "it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.").

²³ March 18 Order, 130 FERC ¶ 61,215 at P 36 (citing Westar Response to Deficiency Letter, Deitz Aff. at 7).

transactions, and the Commission finds that sharing of these benefits among the customers is reasonable.²⁴

24. AWEA's proposal for each new exporting generator to pay a rate based on the difference between the regulation burden of Westar's system with the new generator and the resource regulation burden on Westar's system without the new generator resource would result in rates that do not reasonably reflect the diversity of transactions. This is because under AWEA's proposal, the new generator's deviations would be offset by the deviations of Westar's existing system, and load and all existing generators in Westar's balancing area would continue to pay a rate reflecting the cost of the existing regulation burden which is a rate that would not reflect the deviations of the new generator. Thus, AWEA's approach would allocate all of the diversity benefits to new generators. While AWEA may prefer such an approach its preference is not a sufficient basis to find unjust and unreasonable Westar's proposal, which reflects traditional ratemaking.²⁵

25. Although we do not agree that Westar should adopt AWEA's proposed method of recovering the costs caused by exporting generators, upon further consideration, we find merit in AWEA's argument that Westar's disaggregation of groups of generators may not reasonably account for diversity on Westar's system. AWEA first alluded to this issue in its protest, stating, "[a]s FERC staff rightly pointed out in its deficiency letter, when sources of variability are analyzed alone, the total amount of regulation to serve all of them individually is larger than the amount required to serve them if they were operating together and their variability were netted in real-time."²⁶ AWEA argued that "since intermittent generators are not balanced separately from Westar's load and other generation, they should not be charged for the amount of regulation that would be required if they were operating in their own Balancing Authority separate from load and other generation."²⁷ In its April 19 Request for Rehearing, AWEA explains that Westar separated "Other Wind" and "Westar Wind," as well as "Frequency"²⁸ and "RBASE

²⁴ *Id.* P 37 (footnote omitted).

²⁵ *See Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Circuit 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate one").

²⁶ AWEA Protest at 10.

²⁷ *Id.* at 11.

²⁸ "Frequency" includes deviations of generators from dispatch instructions that are providing regulation to control frequency. Westar Response to Deficiency Letter, Deitz Aff. at 7.

Generation,”²⁹ when it could have aggregated these resources into a single group labeled “generation,” just as “load” was aggregated into a single group. The Commission finds that because Westar proposed one regulation requirement for variable generation and one regulation requirement for dispatchable generation, the underlying data should have corresponded to the rate design—i.e., variable generation and dispatchable generation.³⁰ Absent such aggregation, the diversity benefits are not fully reflected in the portfolio-wide regulation requirements.

26. While we agree with AWEA that Westar improperly disaggregated the generator data underlying the rates, we disagree that Westar should have aggregated “Frequency” and “RBASE” resources. Westar stated that “‘Frequency’ includes deviations of generators from dispatch instructions that are providing regulation to control frequency.”³¹ The Commission interprets this to mean that “frequency” generators are used to respond automatically to the moment-to-moment deviations on the system to maintain frequency within appropriate limits. Accordingly, because the deviations of these resources reflect their provision of regulation to maintain frequency rather than a contribution to the need for regulation service, as do the other generator groups, we will not direct Westar to aggregate data for “Frequency” and “RBASE” resources.

27. Furthermore, in the March 18 Order, the Commission found Westar’s proposal to charge different rates for variable and dispatchable generation, based upon their operational differences, to be consistent with the cost-causation principle. An aggregation of all generation into one single generation grouping as AWEA suggests would be inconsistent with this rate structure that differentiates variable and dispatchable resources. However we find that, although Westar satisfactorily explained why dispatchable generation and variable generation should be treated differently, Westar’s rationale for different rates for dispatchable and variable generation does not support

²⁹ “RBASE Generation” includes deviations of generators set to the code RBASE during a given interval. When set to RBASE, control of the generator is transferred to SPP which issues dispatch instructions to the generator and the generator tries to follow those dispatch instructions. Any deviation from that signal is a result of the generator’s inability to comply. According to Westar, “RBASE Generation” provides a good representation of the regulation burden imposed by dispatchable generators exporting out of the Westar Balancing Area. Westar Response to Deficiency Letter at 6-7.

³⁰ Because “Westar Wind” resources may pay the charges in Schedule 3A to the extent they export or sell energy into the SPP energy imbalance market, it is reasonable to combine the “Westar Wind” with “Other Wind” groups.

³¹ Westar Response to Deficiency Letter, Deitz Aff. at 7.

disaggregating “Other Wind” and “Westar Wind” to determine the appropriate regulation charge for variable generators that export their output out of the Westar balancing area. Instead, we find that disaggregating “Other Wind” and “Westar Wind” in the data and calculations underlying the Schedule 3A regulation requirements unreasonably denies variable resources the diversity benefits of that entire resource class.

28. Accordingly, we find the Schedule 3A regulation requirement to be unjust and unreasonable. We therefore establish under FPA section 206 of the FPA an investigation to evaluate the justness and reasonableness of the generation regulation charges under Schedule 3A of the Westar OATT. Based on the record, we find that Schedule 3A regulation charges based on the aggregation of “Other Wind” and “Westar Wind” would be just and reasonable. We direct Westar to revise its Schedule 3A regulation requirements to reflect the aggregation of “Other Wind” and “Westar Wind” data within thirty days from the date of this order is issued.

29. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of notice of the Commission’s initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date. We establish a refund date to be the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL12-4-000 is published in the *Federal Register*.

30. Finally, we disagree with AWEA that the Commission exceeded its statutory authority under section 205 by recognizing the interim nature of the need for Westar’s proposed generation regulation charges. As discussed above, Westar demonstrated that, at the time of its filing, it was not recovering its regulation costs caused by generators located in the Westar balancing area whose output is delivered outside Westar’s balancing area or to the SPP energy imbalance market. Accordingly, based on the pleadings and testimony presented, the Commission found Westar’s proposal to be just and reasonable to address its on-going underrecovery. Furthermore, AWEA itself argued that balancing area consolidation and other operating procedure reforms may reduce the cost of integrating variable generators and operating the transmission system.³² In addition, Westar noted that SPP has been working toward a consolidated SPP balancing area and ancillary services market, and Westar expects that, when these developments come to fruition, they will obviate the need for the Balancing Agreement and Schedule

³² See March 18 Order, 130 FERC ¶ 61, 215 at P 23 (citing AWEA Protest at 5).

3A.³³ Thus, the parties argued that future transmission system reforms in the SPP region are reasonably expected to eliminate the need for Westar's generator regulation charges accepted by the Commission in this proceeding. Therefore, the Commission acknowledged that Westar's Schedule 3A generator regulation charges may become unnecessary due to the implementation of system reforms.³⁴ However, the Commission's recognition of the potentially temporary nature of the need for the regulation requirements should not be misconstrued as the Commission using a lower standard for evaluating the proposal. As noted above, the Commission found the proposal to be just and reasonable based on the record in this proceeding.

31. Accordingly, AWEA's April 19 Request for Rehearing is denied in part and granted in part, as discussed above.

The Commission orders:

(A) AWEA's May 12 Request for Reconsideration is hereby dismissed as moot, as discussed in the body of the order.

(B) AWEA's April 19 Request for Rehearing is hereby granted in part and denied in part, as discussed in the body of the order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL12-4-000 concerning the justness and reasonableness of Westar's Schedule 3A, as discussed in the body of this order. Westar is hereby directed to revise Schedule 3A of its OATT to include rates reflecting the aggregation of "Other Wind" and

³³ Westar Response to Deficiency Letter at 4 ("As proposed by Westar, the form Balancing Area Services Agreement and Schedule 3A would only be in place until SPP implements its SPP-wide ancillary services market. At that time, SPP would begin regulation services as part of its operation of the SPP balancing area.").

³⁴ See March 18 Order, 130 FERC ¶ 61, 215 at P 35 ("Westar's proposal to assess generator regulation charges, an interim measure which will be effective only until SPP's expected balancing area consolidation and ancillary services market are implemented, modified as discussed herein, is just and reasonable and consistent with Commission policy.").

“Westar Wind” data in a compliance filing no later than 30 days from the date of this order, as discussed in the body of this order.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (C) above, under section 206 of the FPA.

(E) The refund effective date established pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (D) above.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.