

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

State Corporation Commission of the)	Docket No. EL14-93-000
State of Kansas)	
)	
v.)	
)	
Westar Energy, Inc.)	

**EXPLANATORY STATEMENT IN SUPPORT OF
UNOPPOSED OFFER OF SETTLEMENT AND SETTLEMENT AGREEMENT**

Pursuant to Rule 602 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ Westar Energy, Inc. (“Westar”), the State Corporation Commission of the State of Kansas, Kansas Electric Power Cooperative, Inc., Kansas Power Pool, and the City of Lindsborg, Kansas (each a “Settling Party” and all collectively, the “Settling Parties”) hereby submit this Explanatory Statement in support of the Unopposed Offer of Settlement and Settlement Agreement (“Settlement”) filed contemporaneously herewith. The Missouri Public Service Commission and the Missouri Joint Municipal Electric Utility Commission, which are not signatories to this Settlement, each has authorized the Settling Parties to state that they do not oppose the Settlement. The Settlement is intended to resolve all contested issues raised in Docket No. EL14-93-000.

Nothing in this Explanatory Statement is intended to change or supersede the terms of the Settlement. To the extent there is any inconsistency between this Explanatory Statement and the Settlement, the Settlement shall control.

¹ 18 C.F.R. § 385.602 (2015).

I. SUMMARY OF THE SETTLEMENT

Article I of the Settlement provides the procedural background relevant of this proceeding and is self-explanatory.

Article II provides that the Settling Parties agree that Westar's fixed, base ROE shall be 9.8 percent, effective August 20, 2014, and explains the conditions under which the settlement ROE shall remain in effect. Further, Article II provides that the Settling Parties agree that the total ROE applicable to any individual transmission project of Westar for which the Commission has granted or may grant transmission incentive adders shall not exceed 11.0 percent, inclusive of all transmission incentive adders, effective August 20, 2014, and explains the conditions under which the settlement cap shall remain effect. Article II explains how, upon Commission approval or acceptance of the Settlement, Westar will pay refunds related to the reduction of its base ROE, with interest calculated in accordance with 18 C.F.R. § 35.19a (2015) of the Commission's regulations, and that the Settling Parties agree that Westar shall amend its Transmission Formula Rate Template to add the necessary field(s) to the True-Up tab for "Prior Period Adjustments." Finally, Article II provides that within thirty days after the date the Settlement becomes effective pursuant to Article V of the Settlement Westar shall file with the Commission, and cause the Southwest Power Pool, Inc. to file with the Commission, eTariff revisions to reflect the *pro forma* revised Transmission Formula Rate Template in Exhibit 1 to the Settlement, and that no Settling Party shall oppose such filings.

Article III of the Settlement provides that the various provisions of the Settlement are not severable.

Article IV identifies when the Settlement will become effective.

Article V explains that the Settlement shall be of no effect unless the Commission accepts or approves the Settlement by a Final Order (which is defined in Article IV of the Settlement) and the Settlement is made effective as to all of its terms and conditions without modification or condition, except as provided under the scenarios described in subsections 5.3 and 5.4 of Article V. Subsection 5.3 of Article V provides the condition under which the Settlement shall be effective if the Commission accepts or approves the Settlement with condition or modification. Subsection 5.4 of Article V outlines the steps available to a Settling Party if the Commission approves or accepts the Settlement with condition or modification and the condition or modification is not acceptable to that Settling Party. Article V also explains the result in the event the Commission does not approve or accept the Settlement.

Article VI provides that the Settlement does not have any precedential effect.

Article VII expressly reserves, subject to subsections 2.5 and 5.4, the Settling Parties' respective rights to file to modify, in whole or in part, the Transmission Formula Rate Template under section 205 or section 206 (with the exception of subsection 2.5 of Article II of the Settlement) of the Federal Power Act ("FPA"), as applicable, or to oppose any filing made or action taken. Article VII provides that the standard of review for any proposed modification to the Settlement shall be the "just and reasonable" standard of review.

Article VIII includes certain miscellaneous provisions and reservation of rights.

II. INFORMATION TO BE PROVIDED WITH SETTLEMENT AGREEMENTS

In accordance with the “Notice to the Public: Information to be Provided with Settlement Agreements” issued by the Chief Judge on October 23, 2003, the Settling Parties provide the following responses to the five questions posed in the notice.

1. What are the issues underlying the Settlement and what are the major implications?

The issue underlying the Settlement is the justness and reasonableness of Westar’s base ROE. The major implications of resolving that issue is rate relief for Westar’s customers.

2. Whether any of the issues raise policy implications?

The Settlement and the issues resolved do not raise any policy implications and do not require the Commission to change any existing policy.

3. Whether other pending cases may be affected?

There are no other pending cases that will be affected by this Settlement. The resolution of the issues in this case will only affect the resolution of issues in this proceeding.

4. Whether the settlement involves issues of first impression, or if there are any previous reversals on the issues involved?

The Settlement does not involve issues of first impression. The Settling Parties are not aware of any reversals of the issues involved.

5. Whether the proceeding is subject to the just and reasonable standard or whether there is *Mobile-Sierra* language making it the standard, i.e., the applicable standard of review?

Article VII of the Settlement provides the standard of review for any modifications to the Settlement shall be the “just and reasonable” standard of review.

III. CONCLUSION

As discussed above, the Settlement resolves all issues in this proceeding, and is consistent with the Commission's policies encouraging settlements. Further, the Settlement is fair, reasonable and in the public interest and the Settling Parties' interests to resolve this proceeding without protracted litigation. Accordingly, the Commission should approve the Settlement without condition or modification.

Respectfully submitted,

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Dated: June 30, 2015

**UNITED STATES OF AMERICA
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State Corporation Commission of the)	Docket No.	EL14-93-000
State of Kansas)		
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Westar Energy, Inc.)		

UNOPPOSED OFFER OF SETTLEMENT AND SETTLEMENT AGREEMENT

This Unopposed Offer of Settlement and Settlement Agreement (“Settlement”) is made pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.602 (2015), by and among Westar Energy, Inc. (“Westar”), the State Corporation Commission of the State of Kansas (“KCC”), Kansas Electric Power Cooperative, Inc. (“KEPCo”), Kansas Power Pool (“KPP”), and the City of Lindsborg, Kansas (each a “Settling Party” and all collectively, the “Settling Parties”) in the above-captioned proceeding. The Missouri Public Service Commission (“Missouri PSC”) and the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), which are not signatories to this Settlement, each has authorized the Settling Parties to state that they do not oppose the Settlement.

If approved by the Commission without material condition or modification, or if approved by the Commission with condition or modification acceptable to the Settling Parties pursuant to Article V of this Settlement, this Settlement will resolve all contested issues raised in above-captioned proceeding.

Subject to the conditions set forth in this Settlement, including the approval of the Settlement in its entirety without condition or modification by the Commission, unless the provisions of Article 5.4 are met, and with the understanding that each term of the Settlement is in consideration and support of every other term, the Settling Parties agree as follows:

ARTICLE I

Background

1.1 Westar recovers its transmission revenue requirement through a transmission formula rate (“Transmission Formula Rate”) included in Westar’s Open Access Transmission Tariff (“Tariff”) and in the Southwest Power Pool, Inc.’s (“SPP”) Tariff. Westar’s Transmission Formula Rate is comprised of a Transmission Formula Rate Template and Protocols. Westar’s current, Commission-approved base return on equity (“ROE”) in its Transmission Formula Rate Template is 10.8 percent. In addition to its base ROE, Westar receives a 50 basis point adder for its participation in the SPP Regional Transmission Organization. Additionally, Worksheet A-11 of Westar’s Transmission Formula Rate Template reflects a transmission project for which the Commission in 2008 granted Westar a 100 basis point adder, such that the current total ROE for that project is 12.3 percent.

1.2 On August 20, 2014, the KCC filed a complaint pursuant to sections 206 and 306 of the Federal Power Act (“FPA”) against Westar alleging that the current 10.8 percent base ROE component of Westar’s Transmission Formula Rate is unjust, unreasonable, and unduly discriminatory and that a just and reasonable base ROE for Westar’s Transmission Formula Rate is 8.87 percent (“Complaint”).

1.3 The Missouri PSC, MJMEUC, KPP, KEPCo and the City of Lindsborg each filed a timely motion to intervene in the proceeding. The Missouri PSC also filed comments in support of the Complaint.

1.4 On September 29, 2014, Westar timely filed an answer to the Complaint, including supporting testimony, and a motion for summary disposition. Westar argued, among other things, that the KCC failed to meet its burden of proof under section 206 of the FPA to demonstrate that Westar's existing Transmission Formula Rate base ROE is not just and reasonable and that the KCC's proposed ROE is just and reasonable.

1.5 On October 14, 2014, the KCC filed an answer to the Westar Answer. On October 29, 2014, Westar filed a motion requesting the Commission to deny the KCC's answer and exclude information introduced by the KCC's answer.

1.6 On December 18, 2014, the Commission issued its Order on Complaint and Establishing Hearing and Settlement Judge Procedures, 149 FERC ¶ 61,235 (2014). The Commission found that the Complaint raised issues of material fact that could not be resolved based upon the record before the Commission and set the Complaint for investigation and a trial-type evidentiary hearing under section 206 of the FPA. The Commission held the hearing in abeyance and directed that a settlement judge be appointed to aid the parties in their settlement efforts. In accordance with section 206(b) of the FPA, the Commission established the earliest possible refund effective date, *i.e.*, August 20, 2014.

1.7 On January 5, 2015, the Chief Administrative Law Judge at the Commission appointed Judge Dawn E. B. Scholz as the settlement judge. The first settlement meeting in front of Judge Scholz was held on January 22, 2015. The parties and FERC Trial Staff convened again for a conference call on February 12, 2015, and an in-person settlement

conference on March 4, 2015. In the interim, Westar, the KCC and FERC Trial Staff engaged in ongoing settlement discussions. At the KCC's and Westar's joint request, with FERC Trial Staff concurring, Judge Scholz cancelled a settlement conference that had been scheduled for May 12, 2015 because a settlement in principle had been reached.

1.8 The Settling Parties and FERC Trial Staff have continued to exchange settlement proposals and comments on a settlement agreement throughout the settlement judge procedures. The Settling Parties, in consideration of the promises and mutual covenants contained herein, have agreed to settle all contested issues as set forth in this Settlement.

ARTICLE II

Resolution of Issues

2.1 The Settling Parties hereby settle and resolve all outstanding issues between and among them involving the matters raised in the above-captioned docket, on the terms set forth in this Settlement.

2.2 The Settling Parties agree that the fixed, base ROE set forth in Westar's Transmission Formula Rate Template shall be 9.8 percent, effective August 20, 2014. This 9.8 percent base ROE shall remain in effect until (i) Westar makes a filing under section 205 of the FPA to change its Transmission Formula Rate base ROE and the changed base ROE becomes effective by operation of law or by a Commission order, or (ii) a complaint is filed pursuant to section 206 of the FPA or action taken pursuant to section 206 of the FPA by the Commission acting *sua sponte* that results in a Commission order directing a change in the stated base ROE. A section 205 filing pursuant to (i) would constitute a comprehensive rate reopener consistent with Commission policy.

2.3 The Settling Parties further agree that the total ROE applicable to any individual transmission project of Westar for which the Commission has granted or may grant

transmission incentive adders shall not exceed 11.0 percent, inclusive of all transmission incentive adders, effective August 20, 2014. This cap on total ROE is applicable to any individual transmission project of Westar for which the Commission has granted or may grant transmission incentive adders. The 11.0 percent cap shall remain in effect until (i) Westar, as part of a rate filing under section 205 of the FPA, demonstrates that the top end of the zone of reasonableness for Westar is different than the 11.0 percent cap and the filing results in a Commission order establishing a new top end of the zone of reasonableness for Westar, or (ii) a complaint is filed pursuant to section 206 of the FPA or action taken pursuant to section 206 of the FPA by the Commission acting *sua sponte* that results in a Commission order establishing a new top end of the zone of reasonableness for Westar. A section 205 filing pursuant to (i) would constitute a comprehensive rate reopener consistent with Commission policy.

2.4 Upon Commission approval or acceptance of the Settlement, Westar agrees to pay refunds related to the reduction to its base ROE, with interest calculated in accordance with 18 C.F.R. § 35.19a (2015) of the Commission’s regulations, as follows:

(a) For refunds due for the period from August 20, 2014, through December 31, 2014, Westar will (i) include the refund amount in Westar’s June 2015 Transmission Formula Rate Annual True-Up; (ii) flow the refund amount through Westar’s Annual Transmission Revenue Requirement (“ATRR”) Projection to be posted in October 2015 (“2015 ATRR Projection”); and (iii) cause SPP to reflect the refund amount in transmission rates for Westar’s Zone and the Region-Wide ATRR beginning January 1, 2016.

(b) Assuming Commission approval of the Settlement on or before

January 15, 2016, for refunds due for the period from January 1, 2015, through the effective date of this Settlement, Westar will recalculate the 2015 ATRR Projection to include the resulting refund for both Westar's Zonal ATRR and Westar's Base Plan Funded Regional ATRR, and cause SPP to reflect the refund amount in transmission rates for Westar's Zone and the Region-Wide ATRR in the January 2016 invoices that are anticipated to be issued in February 2016.

In the event the Commission approves the Settlement later than January 15, 2016, Westar will recalculate the 2015 ATRR Projection to include the resulting refund for both Westar's Zonal ATRR and Westar's Base Plan Funded Regional ATRR, and cause SPP to reflect the refund amount in transmission rates for Westar's Zone and the Region-Wide ATRR as soon as possible following the Commission Order. Westar also will direct SPP to resettle any invoices for transmission services in 2016 that do not reflect the recalculated ATRR projection and provide refunds for any amounts due.

In order to allow for transparency of these refunds, the Settling Parties agree that Westar shall amend its Transmission Formula Rate Template to add the necessary field(s) to the True-Up tab for "Prior Period Adjustments."

2.5 In order to implement subsections 2.2, 2.3, and 2.4 of this Article II, the Settling Parties agree that within thirty (30) days after the date this Settlement becomes effective pursuant to Article V: (1) Westar shall file in eTariff a compliance filing containing revisions to Attachment H of its OATT as reflected in the *pro forma* revised Transmission Formula Rate Template in Exhibit 1 to this Settlement; (2) Westar shall cause the SPP to

file in eTariff a compliance filing containing revisions to Attachment H of the SPP OATT as reflected in the *pro forma* revised Transmission Formula Rate Template in Exhibit 1 to this Settlement; and (3) no Settling Party shall oppose such compliance filings.

ARTICLE III

Non-Severability

3.1 It is agreed and understood that the various provisions of this Settlement are not severable and shall not become operative unless and until the Commission issues a Final Order (as defined in Article IV hereof) accepting or approving this Settlement as to all its terms and conditions without modification or condition, or, if the Commission accepts or approves this Settlement with modification or condition, unless all of the Settling Parties otherwise agree in writing to any modification or condition as set forth in Article V.

ARTICLE IV

Conditions Precedent to Effectiveness of Settlement

4.1 This Settlement and the provisions hereof shall become effective when the Commission issues a Final Order accepting or approving all of the terms and provisions of the Settlement without modification or condition, or, if the Commission modifies or conditions any portion of this Settlement, if and when the Settling Parties accept such modification or condition in accordance with Article V of this Settlement. For purposes of this Settlement, an order shall be deemed to be a “Final Order” as of the date rehearing is denied by the Commission, or if rehearing is not sought, the day following the date by which any request for rehearing would have been required to be filed with the Commission.

ARTICLE V

Settlement Contingent on Commission Approval

5.1 The discussions between and among the participants in this proceeding that have produced this Settlement have been conducted with the explicit understanding, pursuant to

Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602, that all offers of settlement and discussions relating thereto shall be privileged and confidential, shall be without prejudice to the position of any party or any participant presenting such offer or participating in any such discussions, and are not to be used in any manner in connection with this proceeding, any other proceeding, or otherwise, except to the extent necessary to enforce its terms.

5.2 This Settlement shall be of no effect unless it is accepted or approved by a Final Order of the Commission and made effective as to all of its terms and conditions without modification or condition, except as provided in subsections 5.3 and 5.4 of this Article V.

5.3 If the Commission accepts or approves the Settlement with condition or modification, the Settlement shall be deemed to be withdrawn, shall not be considered to be part of the record in this proceeding, and shall be null and void and of no force and effect, only if a Settling Party, within seven (7) business days of the issuance of the Commission's order on the Settlement, notifies the other participants to the case in writing that the condition or modification is not acceptable to that Settling Party and the provisions of Article 5.4 are not met.

5.4 If the Commission approves or accepts this Settlement with condition or modification, a Settling Party shall have seven (7) business days from the date of the issuance of the Commission's order on the Settlement to notify the other participants to the case in writing that the condition or modification is not acceptable to that Settling Party. If that event occurs, within seven (7) business days of the Settling Party's notice, the participants shall meet in person or by phone to determine whether to propose an alternative modification or condition, or determine that the modification or condition is unacceptable. If within twenty (20) days of the Commission's order on the Settlement the participants are unable to mutually agree, then

the obligation to meet shall cease, the Settlement shall be deemed to be withdrawn, shall not be considered to be part of the record in this proceeding, and shall be null and void and of no force and effect. If the participants are able to agree on an alternative, this Settlement shall be null and void and of no force and effect, and the Settling Parties shall submit the alternative to the Commission as a new settlement in this docket.

5.5 If the Commission does not approve or accept this Settlement, then:

- (a) it shall not be binding on the Settling Parties;
- (b) the Settling Parties shall not be obligated to negotiate further; and
- (c) the Settling Parties shall be deemed to have reserved all of their respective rights and remedies in this proceeding, including the right to proceed to hearing on all issues properly raised in this proceeding.

ARTICLE VI

No Precedential Effect

6.1 This Settlement and its acceptance or approval by the Commission shall not in any respect constitute an admission by any participant, or a determination by the Commission, that any allegation or contention in these proceedings, or concerning any of the foregoing matters, is true or valid or untrue or invalid. The Commission's approval of this Settlement shall not constitute precedent nor be used to prejudice any otherwise available rights or arguments of any Settling Party in a future proceeding, other than to enforce the terms of this Settlement, and shall not be used as evidence that a particular method is a "long-standing practice" as that term is used in *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578 (D.C. Cir. 1975), or a "settled practice" as that term is used in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980). It is further understood and agreed that this Settlement constitutes a negotiated agreement and, except

as explicitly set forth herein, no Participant shall be deemed to have approved, accepted, agreed or consented to any principle or position in this proceeding, and none of the provisions of this Settlement shall be cited or referenced by any party in any federal or state proceeding as establishing any precedent or settled practice.

ARTICLE VII

Reservation of Rights; Standard of Review for Settlement Modification

7.1 With the exception of subsections 2.5 and 5.4 above, nothing contained herein shall be construed as affecting in any way the right of Westar unilaterally to make an application of any type to the Commission seeking to modify, in whole or in part, the Transmission Formula Rate Template under section 205 of the FPA and pursuant to the Commission's Rules and Regulations promulgated thereunder, or to make any other filing under section 205 of the FPA, or to oppose any filing made or action taken under section 206 of the FPA with respect to the Transmission Formula Rate Template.

7.2 With the exception of subsections 2.5 and 5.4 above, nothing contained herein shall be construed as affecting in any way the right of any Interested Party, as that term is defined in Westar's Transmission Formula Rate Protocols, unilaterally to make an application of any type to the Commission seeking to modify, in whole or in part, the Transmission Formula Rate Template under section 206 of the FPA and pursuant to the Commission's Rules and Regulations promulgated thereunder, or to make any other filing under section 206 of the FPA, or to oppose any filing made or action taken under section 205 of the FPA with respect to the Transmission Formula Rate Template.

7.3 The standard of review the Commission shall apply when acting on proposed modifications to this Settlement shall be the "just and reasonable" standard of review under sections 205 and 206 of the FPA. The "just and reasonable" standard shall apply whether

the change is proposed by a Settling Party, a non-party or by the Commission acting *sua sponte*.

ARTICLE VIII

Miscellaneous

8.1 This Settlement shall be a final and complete resolution of all contested issues in this proceeding.

8.2 All Settling Parties participated in the preparation of this Settlement and no ambiguity should be construed against any Settling Party as the primary drafter hereof.

8.3 This Settlement constitutes the entire agreement among the Settling Parties with respect to the subject matter addressed herein, and supersedes any and all prior or contemporaneous representations, agreements, instruments, and understandings between them, whether written or oral. There are no other oral understandings, terms or conditions, and none of the Settling Parties has relied upon any representation, express or implied, not contained in this Settlement.

8.4 This Settlement is binding upon and for the benefit of the Settling Parties and their successors and assigns.

8.5 The captions in this Settlement are for convenience only and are not a part of this Settlement and do not in any way limit or amplify the terms and provisions of this Settlement and shall have no effect on its interpretation.

8.6 In the event of a conflict between terms contained in this Settlement and those of the attached Explanatory Statement, the terms of this Settlement shall control.

8.7 Any failure of any Settling Party (i) to enforce any of the provisions of this Settlement or (ii) to require compliance with any of its terms shall in no way affect the

validity of this Settlement, or any part hereof, and shall not be deemed a waiver of the right of such Settling Party thereafter to enforce any and each such provision.

8.8 Commission approval of this Settlement shall constitute a grant of any waivers of the Commission's regulations that may be necessary to effectuate all of the provisions of this Settlement.

8.9 Each Settling Party shall cooperate with and support, and shall not take any action inconsistent with: (i) the filing of this Settlement with the Commission and (ii) efforts to obtain Commission acceptance or approval of the Settlement. No Settling Party shall take any actions that are inconsistent with the provisions of this Settlement.

8.10 No provision of this Settlement may be waived except through a writing signed by an authorized representative of the waiving party. Waiver of any provisions of this Settlement shall not be deemed to waive any other provision.

8.11 Each person executing this Settlement on behalf of a Settling Party represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to authorize this Settlement to be executed on behalf of, the Party that he or she represents.

8.12 This Settlement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

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Conclusion

IN WITNESS WHEREOF, this Settlement is entered into by and among the Settling Parties through their authorized representatives who represent that they are fully authorized to do so on behalf of their principals. Each of the Settling Parties through its authorized representative has authorized the undersigned to execute and file this Settlement on its behalf. The Settling Parties respectfully request that the Commission approve the Settlement without condition or modification.

Respectfully submitted,

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Dated: June 30, 2015