

122 FERC ¶ 61,268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Westar Energy, Inc.

Docket Nos. EL08-31-000
and ER08-396-000

ORDER DENYING, IN PART, AND GRANTING, IN PART, PETITION FOR
DECLARATORY ORDER, AND ACCEPTING, IN PART, AND DENYING, IN
PART, PROPOSED FORMULA RATES, SUBJECT TO CONDITIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 24, 2008)

1. Westar Energy, Inc. and its wholly-owned subsidiary, Kansas Gas and Electric Company (collectively, Westar), requests a declaratory order¹ approving accelerated depreciation over a 15 year period and an incentive rate of return on common equity (ROE) reflecting a 100 basis-point adder for three specified new high voltage transmission projects, as consistent with Order No. 679.² In a related filing under section 205 of the Federal Power Act (FPA),³ Westar proposes revisions to its existing cost-of-service formula transmission rate for all transmission facilities turned over to the

¹ Westar December 28, 2007 Petition for Declaratory Order, Docket No. EL08-31-000 (Petition).

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222 (Order No. 679), *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1,152 (January 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006) (Order No. 679-A), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

³ 16 U.S.C. § 824d (2000).

operational control of Southwest Power Pool, Inc. (SPP).⁴ For the reasons discussed below, we will grant, in part, and deny, in part, Westar's Petition. We will also accept, in part, and deny, in part, Westar's proposed revisions to its formula rate, subject to a nominal suspension and conditions, to become effective June 1, 2008, subject to refund, and hearing and settlement judge procedures.

I. Background

2. Westar's Petition requests incentive-rate treatment for three projects: a 345 kV transmission upgrade project (Wichita-to-Reno-to-Summit Line), a 345 kV transmission line from the Rose Hill substation to the Kansas/Oklahoma border (Rose Hill-to-Sooner Line), and a 560 MVA 345 kV to 230 kV transformer (Swissvale Transformer). Its Petition seeks a ROE adder of 100 basis points and accelerated depreciation over a 15 year period for these projects.

3. Westar argues that its incentives are narrowly tailored and notes that it is not requesting an incentive for advanced technology. Nonetheless, it states that it has included fiber optic communication in the design of the Wichita-to-Reno-to-Summit Line and Rose Hill-to-Sooner Line that will provide communication paths between substations on each line. In addition, the Reno County Substation and the Rose Hill Substation will include a "fault locator" which Westar claims will improve reliability and lower maintenance costs.

4. In its section 205 Filing, Westar states that its proposed formula rate revisions are intended to: (1) incorporate a mechanism to recover the project-specific incentives requested in the Petition; (2) reflect the use of forward-looking capital additions with a true-up instead of the historical test year method for recovering transmission capital additions; (3) reflect a ROE adder of 50 basis points for continued participation in SPP;⁵ (4) modify the salaries and wages allocator related to two generating facilities that are jointly owned with unaffiliated utilities to harmonize the calculation between wholesale and retail rates, which has the effect of reducing the transmission portion of wages and salaries; (5) modify the determination and crediting of "base plan" charges under the SPP

⁴ Westar December 28, 2007 Filing, Docket No. ER08-396-000 (section 205 Filing).

⁵ Westar is not proposing to change the base ROE of 10.8 percent, which was recently accepted by the Commission in a settlement agreement. Thus, the base ROE in addition to the 50 basis points would result in an 11.3 percent ROE without any of the project-specific ROE adders requested in Westar's Petition.

Open Access Transmission Tariff (OATT), which Westar claims will have no rate impact; and (6) clarify that the workpapers attached to the formula rate serve an illustrative purpose and that line entries and inputs may change from year to year as necessary to provide the transparent calculations they are intended to provide.⁶

II. Procedural Matters

5. Notice of Westar's Petition was published in the *Federal Register*, 73 Fed. Reg. 2243 (2008), with protests and interventions due on or before January 28, 2008. SPP filed a motion to intervene. Kansas Electric Power Cooperative, Inc., (Kansas Cooperative); Western Farmers Electric Cooperative (Western Farmers); Oklahoma Municipal Power Authority (OMPA); Occidental Power Marketing, L.P., Occidental Permian Ltd, and Occidental Chemical Corporation (collectively, Occidental); and Kansas Municipal Utilities, Kansas Municipal Energy Agency and Kansas Power Pool (collectively, Kansas Municipals) filed motions to intervene and protests. Arkansas Electric Cooperative Corporation (AECC) and Golden Spread Electric Cooperative, Inc., (collectively, Golden Spread) jointly filed a motion to intervene out-of-time.

6. Westar filed a motion for leave to answer protests and Occidental filed an answer in opposition to Westar's motion for leave to answer protest.

7. Notice of Westar's Section 205 Filing was published in the *Federal Register*, 73 Fed. Reg. 2471 (2008), with protests and interventions due on or before January 18, 2008. The Kansas Corporation Commission (Kansas Commission) filed a notice of intervention. Occidental, SPP and OMPA filed motions to intervene. Golden Spread filed a motion to intervene and comments. Kansas Municipals and Kansas Cooperative filed motions to intervene and protests.

8. Westar filed a motion for leave to answer protests, and Kansas Municipals filed an answer in opposition to Westar's motion for leave to answer protest.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motion to intervene serves 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), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers

⁶ On the workpapers, themselves, Westar states that sub-accounts, inputs, and calculations may change to accomplish the purpose of the workpapers.

filed in both dockets because they have provided information that assisted us in our decision-making process.

III. Discussion

A. Westar's Petition

1. Wichita-to-Reno-to-Summit Line

10. Westar states that the Wichita-to-Reno-to-Summit Line is a new 345 kV transmission upgrade project that it will construct in two phases. Phase I is a 44-mile line from the Wichita 345 kV substation to a new Reno County 345 kV substation, with substation work at each end. Westar expects to place Phase I facilities into service by the end of 2008.⁷ Phase II is a 53-mile 345 kV line from the Reno County 345 kV substation to the existing Summit 345 kV substation. Westar contends that Phase II will eliminate a flowgate in the region that has been a significant limitation of transmission service into and out of central and western Kansas. It expects to place Phase II into service by the end of 2009. According to Westar, Phase I and II will complete a 345 kV loop of the Westar transmission system at an expected cost of approximately \$150 million.

11. To address incentive eligibility, Westar states that Phase I of the Wichita-to-Reno-to-Summit Line has already received all the necessary approvals from SPP and the Kansas Commission.⁸ Westar also claims that the Kansas Commission has approved the construction of Phase II and that SPP has found Phase II to be superior to the other alternatives that it examined because it will pay for itself when comparing the estimated production cost savings versus incremental transmission installation costs.⁹ Thus, Westar

⁷ Westar states the area does not have sufficient import capability without operating expensive generation and Phase I must be built before Phase II could be built to avoid running expensive gas-fire generation.

⁸ Westar states that the Kansas Commission held a hearing that evaluated whether the project will ensure reliability or reduce the delivered cost of power. *Citing In re Westar Energy, Inc., and Kansas Gas and Electric Company*, Docket No. 07-WSEE-715-MIS, at P 19, 21 (Kansas Commission March 16, 2007).

⁹ Westar states that SPP assumed in its study of the second phase that the first phase would be built and did not separately analyze that portion of the project. *See* Petition at 18 and Ex.WRI-4.

argues that both Phase I and Phase II of the Wichita-to-Reno-to-Summit Line are presumptively eligible for rate incentives.

2. Rose Hill-to-Sooner Line

12. The Rose Hill-to-Sooner Line is a proposed 345 kV project from the Rose Hill substation to the Kansas/Oklahoma border.¹⁰ Westar's portion of the line will be 49 miles long and cost approximately \$70 million. It argues that the line will eliminate major transmission constraints that currently limit power flows between Kansas and Oklahoma. Upon approval by the Kansas Commission, Westar states that it will begin to acquire rights-of-way and construct the line with the goal of placing it in service by 2010, assuming OG&E completes its portion of the line by that time.

13. Westar argues that the Rose Hill-to-Sooner Line is presumptively eligible for the rate incentives because SPP has reviewed the line and included it in the SPP Transmission Expansion Plan (STEP) as a "base plan upgrade" under the SPP OATT. Westar explains that, in designating projects as base plan upgrades, the SPP must find that they will be constructed pursuant to the STEP in order to ensure the reliability of the transmission system.¹¹ Westar provides a letter from SPP authorizing construction. It further notes that it made a filing with the Kansas Commission on December 27, 2007 seeking siting approval, and that it expects an answer within 120 days of that date.

3. Swissvale Transformer

14. Westar placed the Swissvale Transformer into service on December 15, 2007. It states that it installed the 560 MVA 345 kV to 230 kV transformer on its own initiative as an economic upgrade to the transmission system. The new transformer will eliminate the need to curtail transmission service on a critical transmission facility that serves as a path to get low-cost energy from the coal-fired Jeffrey Energy Center to markets.¹²

¹⁰ At the Kansas/Oklahoma border, the Rose Hill-to-Sooner Line will interconnect with a 345 kV line being built by Oklahoma Gas & Electric Company (OG&E) on the Oklahoma side of the border.

¹¹ *Citing* SPP FERC Electric Tariff, Fourth Revised Vol. No. 1, Third Revised Sheet No. 7A.

¹² Westar states that as a result of the flowgate, the SPP curtailed or redispatched over 38,000 MWh of transactions at an estimated cost to consumers through October 31, 2007, of approximately \$1.1 million.

15. Westar argues that the Swissvale Transformer is eligible for incentive-rate treatment because it provides regional relief from transmission congestion and lowers energy costs.¹³ It admits that the project was neither evaluated through a process similar to SPP's planning process nor approved by a state commission.

4. Nexus Test for Eligible Projects

16. Westar argues that the projects satisfy the Commission's nexus requirement. It states that the projects are not routine because they involve high voltage 345 kV lines that will cost four to ten times as much as routine upgrades and replacements and provide significant regional transfer capability and congestion relief.¹⁴ It further states that the three projects require major capital commitments of approximately \$225 million, which is approximately 60 percent of the \$387 million of net transmission plant that it had in service at the end of 2006. With respect to total projected transmission expansions, Westar states that its average annual capital expenditures on transmission will increase from about \$18.7 million a year over the past five years to about \$125 million over the next several years, or more than six times the historical average. It argues that the Wichita-to-Reno-to-Summit Line and the Rose Hill-to-Sooner Line reflect major portions of these total expenditures that are far in excess of routine transmission replacements and routine upgrades.

17. Westar maintains that the three projects will provide substantial congestion and reliability benefits in the SPP region. It explains that the projects will virtually eliminate transmission congestion between Kansas and Oklahoma, reducing annual number of hours with binding congestion on major flowgates from 2,290 hours to two hours and provide tens of millions of dollars in annual energy savings.

18. Westar contends that the requested incentives will provide up-front regulatory certainty that will provide firmer financial footing and improved credit metrics that will reduce borrowing costs. It states that its investments in these projects will be the company's largest capital improvement program in the last 30 years, and when combined with its other planned capital expenditures over the next several years, will add

¹³ Petition at 12.

¹⁴ Westar states that, while the cost of the Swissvale Transformer project is in the range of routine transmission expenditures, it differs from routine transmission investments markedly in that, unlike routine projects, Swissvale provides substantial regional transmission congestion benefits.

approximately \$2.3 billion to its total plant in service, which is about equal to Westar's current market capitalization.

19. It claims that undertaking this massive capital expenditure program without rate incentives will depress its credit rating, which it claims is already below average.¹⁵ Westar notes that the Commission has found that undertaking simultaneous capital-intensive projects can affect a utility's borrowing needs, expose it and its equity investors to greater risk, and negatively affect its credit rating.¹⁶ These effects are important factors that must be taken into account in deciding how best to deploy capital. While Westar acknowledges that the Commission does not require an applicant to show financial weakness to qualify for incentives, in certain cases the Commission may take this into account.¹⁷

20. Westar argues that the 12.3 percent ROE (10.8 percent base ROE plus 50 basis points for participation in SPP and 100 basis points for project incentive) is within the zone of reasonableness. It calculates a zone of reasonableness of 7.7 percent to 15.3 percent with a mid-point of 11.5 percent, and it claims that the incentive ROE is appropriate to offset the financial risks to the company of constructing the three projects in the context of its overall capital expansion plan. Westar also argues that the incentive ROE is consistent with Commission and court precedent holding that a higher ROE is necessary when a company engages in an extensive construction program because of the financial risk involved.¹⁸

¹⁵ Westar notes that it only recently returned to investment-grade status and that its Standard & Poors (S&P) credit rating for its senior unsecured debt is BBB-, or below average for electric utilities.

¹⁶ *Citing Southern California Edison Co.*, 121 FERC ¶ 61,168, at P 134 (2007) (*Southern California*).

¹⁷ *Id.*

¹⁸ *Citing Utah Power and Light Company*, 14 FERC ¶ 61,162, at 61,300-01, n.31 (1981); *Public Service Company of New Mexico v. FERC*, 832 F.2d 1201, 1210-11 (10th Cir. 1987) ([c]onstruction expenses ... must be considered in determining the overall rate of return because they undeniably affect the rate of return on common equity."); and *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 288-89 (D.C. Cir. 2006) (an ROE may be based on a range of reasonable returns that considers "a number of factors that may be both cost-related and policy related, including [but not limited to] business risk factors....").

21. Westar argues that the three transmission expansion projects also involve continuing regulatory risk. Westar has not yet obtained state commission approval for the Rose Hill-to-Sooner Line. Additionally, although it plans to use existing rights of way to the extent possible, Westar has not yet obtained all of the necessary rights of way to build all phases of the project, making unanticipated delays possible. Additionally, Westar states that it is possible that OG&E will not complete its portion of the Rose Hill-to-Sooner Line on time or may cancel it, which would completely strand any investment that Westar makes in anticipation of connecting its portion of the line to OG&E's portion at the Kansas/Oklahoma border.

22. Westar further argues that major transmission projects must compete for capital with alternatives that include new investments in generation, distribution and other transmission projects. It states that the requested ROE incentive, which will add approximately \$1.5 million a year to its total transmission revenue requirement in 2011, will encourage beneficial transmission investment projects.

23. With regard to the accelerated depreciation incentive, Westar notes that the Commission has stated the purpose of allowing non-traditional depreciation schedules is to remove disincentives for the construction of new facilities¹⁹ and to increase the cash flow of public utilities, thereby providing an incentive to undertake transmission investment.²⁰ It argues that accelerated depreciation is necessary for many of the same reasons as the ROE incentive. Westar further states that accelerated depreciation will better enable it to finance the three projects and to choose transmission expansion investment given the many competing demands on its capital. Additionally, Westar argues that accelerated depreciation will help Westar maintain credit quality through improved cash flow as it embarks upon its most substantial capital expansion program in the past 30 years.²¹

¹⁹ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,194 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

²⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 146.

²¹ Westar calculates that accelerated depreciation will in 2011 increase Westar's revenue requirement by \$9.0 million; however, Westar notes the Commission's statement in Order No. 679 that accelerated depreciation changes the timing of cost recovery, but not the ultimate level of cost recovery.

24. Westar states that accelerated depreciation is well-matched to Westar's capital improvement program, which due to its size, is currently placing additional stress on Westar's finances. Additionally, Westar states that the 15 year depreciation schedule is identical to applicable tax life of transmission assets under the Modified Accelerated Cost Recovery System (MACRS). Westar states that, given that the policy behind MACRS – to stimulate investment – is the same as the reason for the Commission's transmission investment, it appears logical to apply the same useful life as is used for tax purposes. By doing so, Westar states that it will not only increase cash flow to fund its significant capital expenditure program, but that it will match closely the tax benefits of the depreciation deductions against the higher depreciation expense.

25. Westar notes that, by limiting its incentive request to 100 basis points of ROE and accelerated depreciation, it tailored the request for incentives to the company's needs as required by Order Nos. 679 and 679-A.

5. Protests

26. Western Farmers states that the two transmission line projects appear to reduce congestion and enhance reliability, but it questions whether the proposed rate incentives are necessary to promote the construction of the facilities at issue.²² Kansas Municipals also note that under Order No. 679, a transmission owner must show more than reduced congestion and increased reliability. Additionally, both Western Farmers and Kansas Municipals argue that Westar has not made adequate investments to upgrade its system in previous years, which to some degree caused the congestion Westar hopes to relieve by its projects. Therefore, Kansas Municipals and Western Farmers assert that these projects should be considered routine projects, not deserving of rate incentives. Kansas Municipals argue that the Commission should take Westar's formula rate into account in deciding whether to grant transmission incentives proposed herein, arguing that the formula rate acts as a sort of incentive that guarantees cost recovery plus a rate of return. Kansas Municipals further argue that this "incentive" is increased by adopting the forward-looking cost recovery mechanism Westar proposes in the Section 205 Filing.

27. Occidental argues that the two 345kV transmission lines are self-serving and not entitled to incentives. Occidental states that, because the Rose Hill-to-Sooner Line and possibly the Wichita-to-Reno-to-Summit Line are designed primarily to enable specific transactions by Westar's merchant function, including transactions involving specific Westar generation facilities, Westar already has sufficient incentive to construct the

²² Kansas Cooperative takes no position on the incentives requested for the Wichita-to-Reno-to-Summit Line or the Rose Hill-to-Sooner Line.

facilities and no further incentives are necessary. Occidental states that SPP's approval of the facilities and treatment of them as eligible for base plan funding should not be determinative, because the Commission reviews regional planning reliability determinations in the context of specific transmission projects and has denied or modified requested incentives accepted through a regional planning process.²³ Occidental contends that SPP's approval appears based on Westar's commitment to construct the lines for Westar's merchant function, which is not a sufficient reason to grant incentives.

28. With respect to the Rose Hill-to-Sooner Line, Occidental states that it is in the SPP base plan largely because the Kansas Cooperative submitted a firm request for transmission service based on a long-term full requirements contract with Westar's merchant function that caused SPP to determine that the line was necessary. Occidental notes that the Petition explains that "SPP determined that the Rose Hill-to-Sooner Line is necessary to provide 225 MW of transmission service in order for Westar's customers to utilize, on a long-term firm basis, the energy from Westar's recently acquired Spring Creek combustion turbine plant near Edmond, Oklahoma."²⁴ Occidental contends that that is enough of an incentive to build the transmission line.

29. OMPA adds that when Westar filed a section 203 application for authorization to purchase the Spring Creek plant from ONEOK Energy Services Company, L.P. (Docket No. EC06-48), it committed to construct transmission facilities to mitigate any harm to competition resulting from the acquisition of Spring Creek plant and designating it as a network resource. OMPA notes that the Commission conditioned its section 203 approval of the Spring Creek acquisition on Westar's increasing the transfer capability into its market to lower its market concentration to within screening tolerances. OMPA explains that on rehearing of that decision, the Commission allowed alternative mitigation as long as Westar did not designate the Spring Creek plant as a network resource in the winter period. OMPA states that the Rose Hill-to-Sooner Line will allow Westar to designate the Spring Creek plant a network resource during the winter period.²⁵

²³ *Citing Baltimore Gas and Elec. Co.*, 122 FERC ¶ 61,034, at P 12 (2008).

²⁴ *Citing* Petition at P 19.

²⁵ In fact, according to OMPA, Westar's base plan funding eligibility for the Rose Hill-to-Sooner Line is premised on Westar's maintaining Spring Creek's network resource status for five years. OMPA states that if Westar claims it is not obligated to build the infrastructure if it does not designate Spring Creek as a network resource, then the project should not be presumptively eligible for the incentives.

30. OMPA adds that Westar has failed to show a nexus because it previously committed to build the Rose Hill-to-Sooner Line.²⁶ Moreover, OMPA notes that during the application for acquisition of the Spring Creek plant, Westar never indicated that it needed transmission rate incentives to construct the Spring Creek-related transmission. Because Westar has already committed to build the Spring Creek-related transmission, OMPA argues that the incentives will not encourage new infrastructure as required to qualify for rate incentives, but instead will actually reward Westar for mitigating the market power resulting from the acquisition of the Spring Creek plant. Kansas Municipals echo this concern, arguing that the Commission's incentives policy does not extend to upgrades required by the Commission to mitigate an increase in market power caused by acquisition of a facility such as Spring Creek. Additionally, OMPA states that Westar knew that transmission upgrades were likely necessary when it acquired the Spring Creek plant. Thus, OMPA concludes that Westar believed the transmission upgrades did not pose any risks or challenges which renders the project routine. Furthermore, Kansas Municipals state that SPP's base plan funding policy socializes one third of the cost of such projects throughout the SPP footprint. Therefore, Kansas Municipals state that because the Rose Hill-to-Sooner Line is in the SPP base plan, a significant portion of its costs will be allocated to transmission owners other than Westar, and therefore, the risk to Westar is significantly reduced. Finally, Kansas Municipals also note that other risks cited by Westar, such as regulatory uncertainty or unanticipated opposition, were either known to Westar before undertaking the project or too speculative to deserve incentives.

31. Kansas Cooperative states that Westar has not demonstrated that the Swissvale Transformer deserves incentive-rate treatment. Kansas Cooperative argues that, because the Swissvale Transformer was completed in 2007, incentive-rate treatment will not afford Westar any incentive to build the transformer.²⁷ Kansas Cooperative and OMPA state that the project was not subject to review by SPP or the Kansas Commission and as a result is not entitled to presumptive eligibility.²⁸ Kansas Cooperative and Occidental

²⁶ OMPA cites Order No. 679-A which states that a "prior contractual commitment or statute may have bearing on our nexus evaluation of individual applications." Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 122.

²⁷ Western Farmers and Occidental concur on this point raised by Kansas Cooperative, and Occidental requests that the incentive-rate treatment for Swissvale Transformer be summarily rejected.

²⁸ Occidental adds that, because Westar bypassed the SPP planning process for the Swissvale Transformer, Westar should not even receive the 50 basis point adder for RTO participation for the project. Occidental asserts that the Commission should investigate

(continued)

argue that Westar installed the transformer so it would not be limited in sales to market that it could make from one of its generating resources. Additionally, Kansas Cooperative states that the cost of the project is insubstantial relative to Westar's rate base and in comparison to the other two projects. Thus, Kansas Cooperative and OMPA conclude that the Swissvale Transformer should be found to be merely a routine transmission investment that does not present unique risks or challenges.²⁹

32. With regard to the Wichita-to-Reno-to-Summit Line, Occidental states that it may also be designed largely to enable Westar's merchant function to utilize Westar's generation facilities to engage in merchant transactions because Phase 1 of the project begins at the Wichita substation near Westar's Gordon Evans Energy Center and ends at a new Reno substation near Westar's Hutchinson Energy Center. Thus, Occidental questions whether any additional benefits to other customers, besides Westar's merchant function, would be more than de minimus and localized. Occidental states that the Commission should set the issue for hearing so that customers may seek discovery and present evidence. Kansas Municipals argue that because base plan funding generally applies to projects needed for reliability, qualification of the Wichita-to-Reno-to-Summit Line for incentives would be suspect if it were not so approved.

33. Kansas Municipals argue that there is no nexus between the Wichita-to-Reno-to-Summit Line and the requested incentive because there are no specific, extraordinary challenges or hurdles faced by Westar in completing this project. They state that there is no evidence of factors such as long lead times, regulatory uncertainty or financing challenges that would increase the risk of building this line. Further, Kansas Municipals argue that there are a number of investors who would compete to build this line and that such competition is a sufficient incentive for any of a number of parties to undertake constructing this line. Kansas Municipals also note that they have expressed interest in transmission ownership opportunities for years but that Westar has never explored any of these options. They further assert that the Commission should consider whether Westar is making investments that benefit the greater good because no one else can or will, or whether it has neither accepted nor sought participation by others, preferring to maintain control and seek to be rewarded through the requested incentives. Finally, Kansas

the potential discrimination by Westar in favor of its merchant function in this project unless the Commission concludes that Westar would have installed a facility for similarly-situated merchant competitor.

²⁹ OMPA asserts that the cost of the Swissvale Transformer is \$6 million and that Westar has acknowledged that normal transmission expenditures range from \$1 million to \$10 million. *Citing* Petition at 22.

Municipals state that any savings resulting from relieved congestion do not override the absence of special challenges. Therefore, Kansas Municipals state that Westar does not meet the nexus test requirement for the Wichita-to-Reno-to-Sooner Line and that incentives should be denied.

34. Occidental argues that there is no nexus between the projects and the requested incentives because of Westar's self-interest in the projects. Occidental states that Westar's claim that the scope of the projects supports the incentives is not persuasive because one of the projects is already completed and the other two projects are intended to benefit Westar's merchant function. Occidental also states that Westar's claim that the projects are not routine is not credible. Occidental notes that the 345kV voltage is not unusual because Westar already has 1,000 miles of 345 kV transmission lines. Occidental notes that the facilities are all built within one state, there is no indication of any difficult or unusual challenges in planning and constructing the facilities, and as a result, the projects will be completed in a short amount of time.³⁰ Occidental also states that the projects do not involve advanced technology, which would make the projects not routine. Kansas Municipals argue that although Westar may like a higher investment rating, its rating is investment grade and is not the result of specific industry risks or region-specific issues.

35. Occidental also argues that Westar has not demonstrated that the specific incentives requested, the 100 basis points ROE and accelerated depreciation for the three projects, are appropriately tailored to address the demonstrable risks or challenges Westar faces. Kansas Municipals cite a statement made by Westar that accelerated depreciation will have no measurable impact on its overall risks or investors' required returns. Kansas Municipals argue that this lack of impact on the level of risk provides a compelling reason to deny Westar's request for accelerated depreciation. Occidental requests that the Commission set for hearing the issue of the appropriate ROE to determine the zone of reasonableness and where within that zone Westar's requested ROE falls. Moreover, it argues the parties need to investigate the effect of the additional \$9.5 million in annual revenue that would occur due to Westar's accelerated depreciation proposal. Occidental also states that Westar has failed to demonstrate that the additional cash flow provided by its 15 year depreciation proposal is needed to fund the two 345 kV transmission line projects, which it argues is required to support accelerated depreciation.

³⁰ Occidental notes that Westar claims there is risk the projects may not receive Kansas Commission approval, but also claims that Rose Hill-to-Sooner already received such approval. Petition at 16.

6. Answer**a. Westar's Answer**

36. Westar disputes protesters' assertions that the transmission projects are ineligible for incentives because they benefit Westar's merchant function. With respect to the Rose Hill-to-Sooner Line, Westar argues that SPP determined that there is regional need for the line after performing an aggregate study of transmission requests. Thus, Westar asserts that there is a regional need for an upgrade and that building the line benefits the region.

37. Westar states that any benefit to its merchant function is incidental to the regional benefits provided by its transmission projects and not pertinent to the Commission's incentives analysis. Furthermore, Westar states that each of its projects eliminates regional flowgates, which by definition provides regional benefits. Westar also notes that protestors do not provide alternatives to either the congestion analysis proffered by Westar in support of the Rose Hill-to-Sooner Line or the Kansas Commission's analysis finding that the Wichita-to-Reno-to-Summit Line will enhance reliability in the SPP region.

38. Westar also disputes the notion that this Commission "required" Westar to build the Rose Hill-to-Sooner Line to mitigate generation market power associated with Westar's purchase of the Spring Creek facility. Rather, Westar states that it committed not to designate the Spring Creek power plant as a network resource in its home control area during the three winter months because of a Commission finding that such designation would violate competitive impact screens during those months. However, because Westar is free to designate Spring Creek as a network resource during the other nine months, it argues that such designation is not solely or even principally responsible for the need to build the Rose Hill-to-Sooner Line. Westar states that its designation of Spring Creek as a network resource would not make the Rose Hill-to-Sooner Line ineligible for base plan funding because the line is being built to meet regional need. Moreover, Westar asserts that the Kansas Commission will likely perform the same regional benefits analysis that it performed for the Wichita-to-Reno-to-Summit Line, thereby establishing an independent basis for eligibility.

39. Westar next argues that historical transmission investment levels are irrelevant to the Commission's incentives analysis, disputing protesters' assertions that Westar has neglected its transmission system and somehow caused the transmission congestion that it now seeks to relieve through the proposed incentives projects. Westar reiterates that its projects are not routine projects designed to maintain system reliability, but are projects undertaken to alleviate transmission congestion and to lower the cost of delivered power.

40. Westar further asserts that: its rate formula is irrelevant to the Commission's incentives analysis; Kansas Municipals' lack of equity participation in major regional transmission expansions is no basis to deny incentives to Westar's transmission projects; and SPP's allocation of base plan project costs to multiple rate zones is not relevant to whether Westar's projects should receive transmission incentives. Westar further argues that Kansas Municipals' arguments with respect to base plan funding are contradictory and under their theory, transmission owners approved for base plan funding would not receive incentives because their project would be suspect in terms of reliability benefits, and those not approved for base plan funding would not receive incentives because they would face a reduced financial risk.

41. Westar reiterates that its three projects meet the Commission's nexus test, noting that they are not routine and arguing that its projects meet or exceed the factors outlined in *BG&E*.³¹ Westar objects to protestors' arguments that Westar fails the nexus test because Westar is somehow obligated to build these projects or because Westar's barely investment grade credit rating is not sufficiently dire to merit incentives. Westar argues that these issues are not pertinent to the Commission's analysis and find no support in Order No. 679. Westar also disputes protestors' claims that its projects do not face sufficient risks to warrant incentives.

42. With respect to the Swissvale Transformer, Westar argues that it should not be denied an incentive simply because it saw a need for the project and acted quickly to provide a solution instead of waiting for this Commission review of its petition for incentives. Westar notes that the Swissvale Transformer was a non-routine investment that eliminated a major regional flowgate and provided regional cost savings. Westar argues that if it is denied the incentives for this project, it will send an improper signal to the market to delay transmission projects until they are reviewed by the Commission.

43. With respect to the accelerated depreciation incentive, Westar argues that it is not intended to reduce the risk of investments (as is the case with incentive ROE), but rather to change the timing of cost recovery. Thus, Westar states that its requested ROE incentives address project risk and its requested accelerated depreciation addresses the timing of cost recovery and cash flow needs. Westar also notes that the Commission requires applicants to address the inter-relationship of requested rate incentives. Westar states that it addressed this requirement by explaining how its request for accelerated depreciation for a limited number of transmission projects will not lead to a significant reevaluation of investor risk perceptions of Westar. Thus, Westar states, its request for accelerated depreciation will affect its overall risk profile.

³¹ *Baltimore Gas and Elec. Co.*, 120 FERC ¶ 61,084, at P 48 (2007) (*BG&E*).

b. Occidental's Opposition to Westar's Answer

44. Occidental opposes Westar's answer, noting that it does little more than repeat the arguments Westar made in its Petition. Occidental argues that Westar incorrectly dismisses as irrelevant Occidental's contention that the projects fail the nexus test because they primarily benefit Westar's merchant function. Occidental states that Westar's merchant function provides a sufficiently powerful incentive to build these projects. It reiterates that Westar should not be granted an incentive for the Swissvale Transformer because the project has already been completed. Finally, Occidental argues that Westar's broad capital operating plans are not relevant to whether transmission incentives are appropriate for certain projects, and that instead, Westar must demonstrate that proposed incentives are needed for the specific projects. Occidental argues that Westar has failed to do so.

B. Commission Determination on Petition

1. Wichita-to-Reno-to-Summit Line

45. Order No. 679, as modified by Order No. 679-A, provides that a rebuttable presumption can be applied to a transmission project that results from a fair and open regional planning process or one that has received construction approval from the appropriate state authority, if the process requires that a project ensures reliability or reduces the cost of delivered power by reducing congestion.³² The Wichita-to-Reno-to-Summit Line is presumptively eligible for incentive rates because it has been approved by the Kansas Commission, which evaluated whether the project would ensure reliability or reduce the delivered cost of power.³³ The Kansas Commission determined that the proposed line would increase economic dispatch of generation, thereby reducing fuel and purchased power expenses.³⁴ It further stated that the proposed line would improve the transmission path from Nebraska to Oklahoma while also improving local performance and reliability through the rebuilding and upgrading of various lower voltage lines.³⁵

³² 18 C.F.R. § 35.35(i) (2007).

³³ Petition, Ex. WRI-5 at P 18-21.

³⁴ *Id.* at P 19.

³⁵ *Id.*

46. Westar has also shown that there is a nexus between the ROE incentive and accelerated depreciation of 15 years on the one hand, and its investment in the Wichita-to-Reno-to-Summit Line on the other hand.³⁶ In evaluating the nexus requirement, the Commission focuses on whether a project is routine.³⁷ To determine whether a project is routine, the Commission will consider all relevant factors presented by the applicant, including the scope of the project, the effect of the project and the challenges or risks faced by the project.³⁸ The Commission will next review the detailed factual information provided by the applicants in support of the factors they rely upon. Finally, if the applicant shows the project is not routine, the Commission will evaluate the specific proposed incentives and decide what incentives are appropriate for each project proposed.

47. As to scope and effect, the Wichita-to-Reno-to-Summit Line is estimated to cost \$150 million for both phases. The line will extend a combined length of 97 miles and will remove a major constraint across Westar's transmission system. Westar has provided evidence that such an expenditure is not routine because, during the last five years, Westar has spent on average about \$19 million per year in capital improvements to its transmission system.³⁹ In addition, Westar has provided evidence that the line will benefit customers across the SPP region by lowering production costs and allowing for additional wholesale sales and purchases.⁴⁰ The challenges faced by the project include delays in obtaining rights-of-way, increased costs for labor and materials due to competition with other projects in the region and the need to coordinate construction schedules with third party utilities.⁴¹ In addition, the Commission has noted that, while Order Nos. 679 and 679-A do not require a showing of financial weakness to be entitled to incentive-rate treatment, an applicant's financial position is relevant.⁴² Westar's BBB- credit rating demonstrates an investment grade rating that is not significantly above a non-investment grade rating. Accordingly, Westar's financial position could be stressed

³⁶ See 18 C.F.R. § 35.35(d) (2007).

³⁷ *BG&E*, 120 FERC ¶ 61,084 at P 48.

³⁸ *Id.* at 52.

³⁹ See Petition, Ex. WRI-2 at 4.

⁴⁰ Petition, Ex. WRI-2 at 14-16; Petition, Ex. WRI-13.

⁴¹ Petition, Ex. WRI-2 at 18.

⁴² *Southern California*, 121 FERC ¶ 61,168 at P 145.

as it takes on a large amount of additional debt to support the Wichita-to-Reno-to-Summit Line, especially in light of the numerous financial, regulatory and other risks related to the project.

48. Given the size of the project and Westar's low credit rating, we find that Westar meets the nexus test for this project. Moreover, the incentives sought are narrowly tailored to address the challenges faced by the Wichita-to-Reno-to-Summit Line. The ROE incentive will serve to offset the financial risk that Westar will incur in constructing the line.⁴³ Similarly, the accelerated-depreciation incentive is appropriate because Westar has shown a need for increased cash flow to fund the line as discussed above. For these reasons, we will grant the requested incentives.

2. Rose Hill-to-Sooner Line

49. The Rose Hill-to-Sooner Line also is presumptively eligible conditioned on receipt of state commission approval.⁴⁴ In contrast with the Wichita-to-Reno-to-Summit Line, however, Westar has failed to demonstrate the requisite nexus between the incentives requested and the demonstrable risks or challenges associated with the Rose Hill-to-Sooner Line. In particular, Westar has not adequately explained why it requires incentives to encourage investment in this project when the Commission has already directed Westar to increase transfer capability on this line as part of the mitigation requirements in Docket No. EC06-48-000.

50. We note that projects that an entity is required to build may not always qualify for certain incentives because there is an obligation to construct the line and a high assurance of recovery of the related costs.⁴⁵ In Order No. 679-A, the Commission clarified that, while it does not consider that contractual commitments or mandatory projects, such as section 215 reliability projects, disqualify a request for incentive-based rate treatment,

⁴³ As discussed more fully below, the Commission's Discounted Cash Flow (DCF) analysis indicates that Westar's proposed 12.3 percent ROE is within the zone of reasonableness for ROE.

⁴⁴ *Xcel Services, Inc.*, 121 FERC ¶ 61,284 (2007) (allowing rebuttable presumption for facilities undergoing state review contingent on receipt of certificate of need).

⁴⁵ See, e.g., Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 94.

such obligations “may have a bearing on our nexus evaluation of individual applications.”⁴⁶

51. Here, Westar is asking for incentives for a project that was previously considered when Westar applied for authority to acquire certain jurisdictional facilities from ONEOK Energy Services Company, L.P. in 2005.⁴⁷ In that case, the Commission conditioned its approval of the acquisition on Westar mitigating its market power. It initially held that if Westar choose to designate the Spring Creek facility as a network resource during the winter, then Westar must mitigate its market power by increasing transfer capability into its market by an amount that would bring the market concentration within screening tolerances of the pre-transactional level.⁴⁸ On rehearing, the Commission held that as an alternative, Westar could choose not to designate the Spring Creek facility as a network resource during the winter period until market conditions changed so that the change to the HHI would be 100 or less. Westar mitigated its market power using the alternative method by not designating its Spring Creek as a network resource during the winter. Now that Westar has chosen to designate the Spring Creek facility as a network resource, and absent a showing that market conditions have changed so that the change to the HHI would be 100 or less, Westar must mitigate its market power using the original method by increasing transfer capability.

52. In light of Westar’s prior obligation, and because Westar has offered no evidence or showing of any kind to suggest that the market conditions have changed, it is not appropriate to grant either ROE or accelerated-depreciation incentives for Westar’s upgrade. The Commission has already ordered Westar to take steps to mitigate the increase in Westar’s market power resulting from its acquisition of Spring Creek, and therefore, additional incentives are not required to facilitate this project.

3. Swissvale Transformer

53. We deny Westar’s request for incentives for the Swissvale Transformer. A project’s planning and completion dates are germane when determining whether

⁴⁶ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 122.

⁴⁷ See *Westar Energy, Inc.*, 115 FERC ¶ 61,228, at P 81, *order on reh’g*, 117 FERC ¶ 61,011 (2006) (Rehearing Order).

⁴⁸ *Id.*

incentives may be appropriate.⁴⁹ As we stated in Order No. 679, “[t]he purpose of our Rule is to benefit customers by providing real incentives to encourage new infrastructure, not simply increasing rates in a manner that has no correlation to encouraging new investment.”⁵⁰ Westar has not shown that the ROE incentive or the accelerated-depreciation incentive it requests could encourage investment in the Swissvale Transformer because the project was completed and put into service on December 15, 2007.⁵¹

C. Westar’s Section 205 Filing

1. Westar’s Proposed Revisions to Formula Rates

54. Westar submitted revised tariff sheets showing proposed changes to Schedules 7 and 8, and Attachments H and H-1 to the Westar OATT.⁵² Attachment H-1 to the Westar OATT reflects a formula cost-of-service transmission rate for Network Integration Transmission Service, Long Term Firm and Short Term Firm Point-to-Point Transmission Service and its Non-Firm Point-to-Point Transmission Service.

55. Westar states that the changes to the formula rate in Attachment H-1 are designed to do the following: (1) use forward-looking capital additions; (2) reflect a 50 basis point adder for participation in SPP;⁵³ (3) incorporate a mechanism to recover the incentives

⁴⁹ See *Commonwealth Edison Company*, 122 FERC ¶ 61,037, at P 32 (2008) (*Commonwealth*).

⁵⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 6.

⁵¹ See, e.g., *Commonwealth*, 122 FERC ¶ 61,037 at P 32.

⁵² Westar states that the SPP OATT references the rates in Westar’s OATT for service in Westar’s pricing zone.

⁵³ Westar is not proposing to change the existing 10.8 percent ROE, but is requesting permission to add an additional 50 basis points above the base ROE for a total ROE of 11.3 percent. Westar claims this is within the zone of reasonableness.

requested in the Petition; (4) revise the wages and salaries allocator for jointly owned facilities; (5) clarify workpapers;⁵⁴ and (6) adopt ministerial changes.⁵⁵

56. With regard to the revisions to the formula rate to use forward-looking capital additions, Westar is proposing to update its rates for the rate year beginning June 1 of each year to include the projected transmission revenue requirement related to depreciation, return and income taxes for the current calendar year, subject to true-up to actual expenditures (with interest pursuant to section 35.19a of the Commission's regulations) the following year. According to Westar, these revisions will reduce the potential lag in cost recovery, which is important because Westar's capital expansion plan is the largest in the past 30 years. Westar also states that the proposed change will improve Westar's cash flow, bolster its credit quality and facilitate Westar's ability to undertake needed capital improvements to its system. Finally, Westar states that the proposed revision is consistent with Commission policy allowing the use of projected costs⁵⁶ and will make its cost recovery more consistent with the approach allowed by state law at the retail level.

57. Regarding Westar's proposed revisions to the wages and salaries allocator in the formula rate, Westar asserts that these revisions are necessary to reflect the wages and salaries associated with two generating facilities that are jointly-owned with unaffiliated utilities. Westar states the effect will be to lower Westar's annual transmission revenue requirement and to harmonize the calculations between state and retail rates.

58. Westar requests a June 1, 2008 effective date.

⁵⁴ Westar states that it clarified on the workpapers attached to the formula that they serve a purely illustrative purpose. For example, Worksheet G – WES [Westar South] ADIT states, "This worksheet is illustrative. Sub-accounts, inputs, and calculations may change to accomplish the purpose of this worksheet."

⁵⁵ Westar states that it is making ministerial changes to the determination and crediting of "base plan" charges under the SPP OATT, and that these changes will have no impact on the rates charged to transmission customers.

⁵⁶ Section 205 Filing at 3 (citing *Michigan Electric Transmission Company*, 117 FERC ¶ 61,314, at P 17 (2006), *order on reh'g*, 118 FERC ¶ 61,139, *order on compliance filing*, 119 FERC ¶ 61,203 (2007) (*METC*)).

2. Protests

a. Projected Transmission Plant Additions and True-up

59. The Kansas Cooperative expresses concern that the formula rates of Westar and other SPP transmission owners may make it more difficult for SPP to calculate and distribute zonal revenues. It is concerned that a formula rate with projected components may adversely impact transmission construction and alleviation of constraints in SPP. Moreover, they assert that such automatic adjustments to the formula rate may send improper price signals to the transmission providers, removing incentives to construct needed transmission.

60. Kansas Cooperative protests Westar's proposed true-up stating that it is only a partial true-up. It argues that only the projected transmission plant additions are trueed-up, with the difference in such capital addition costs rolled forward into the revenue requirements for the following calendar year.⁵⁷ It states that the true-up mechanism should reflect a true-up of costs associated with existing transmission facilities because changes in costs associated with existing transmission plant may occur with capital additions.⁵⁸ Kansas Municipals request that the Commission clarify that Westar's comparison of estimates and actual figures must be consistent for all components and yield true comparison results (i.e., use the same formula during the true-up process, for both estimates and actual figures).

61. Kansas Cooperative asserts that the filing revises the formula rate under the Westar OATT, which is closed to new service. However, because the SPP OATT refers to the formula rate in the Westar OATT, the filing also implicates transmission service provided under the SPP OATT. Kansas Cooperative states that under the SPP OATT the load ratio share for network customers is applied on a one-year lagging basis. By contrast, Westar's formula rate would use projected capital additions resulting in a

⁵⁷ Kansas Cooperative states that Westar's existing formula rate uses historical costs from the previous calendar year for charges from June 1 of the current calendar year through May 31 of the following year. Kansas Cooperatives explain that Westar's proposal would add to this structure the use of projected transmission plant additions Westar expects to place into service during the current calendar year.

⁵⁸ For example, these changes in costs may include the existing transmission plant's depreciation for an additional year, potential increases or decreases in expenses, and changes in capital structure and weighted cost of capital.

formula rate not being fully synchronized, either for billing purposes or true-up purposes, with the customer's load.

62. Moreover, Kansas Cooperative argues that the partial true-up does not consider the impacts of load growth associated with the use of a lagging load ratio share. Specifically, the partial true-up does not take into account the impact of load growth on the allocation of costs among customers, or the impact of load growth associated with increased point-to-point transmission service, or the impact on the unit charge as a result of load growth. Kansas Municipals add that the true-up should compare estimated costs with actual costs, but using the appropriate demand divisor in each instance.

63. Kansas Cooperative argues that, if Westar is permitted to use projected capital additions and a true-up of only those capital additions, then Westar should be required to use the 13 month average to take into account the actual facilities in service during the course of the historical year.

64. Kansas Municipals argue that, with the requested incentives, a 17 month lag in recovery, as claimed by Westar, is not unreasonable. Kansas Municipals acknowledge that the Commission has granted similar requests for using projected capital additions in formula rates, but they maintain that using the FERC Form 1 data is a customer-protective approach that does not present any risk for the transmission owner. Kansas Municipals argue that, if the Commission allows the use of projected capital additions, then it must ensure customers have the greatest protection possible and require that the proposal be clarified and modified as discussed below.

b. Formula Rate Revisions

65. Kansas Cooperative also argues that the revisions to the formula rate related to the determination of the base plan funded charges recovered through SPP Schedule 11 are unclear and require clarification.⁵⁹ The revised formula rate references Worksheet K for the calculation of the revenue requirements for the base plan funded projects and Zonal Annual Transmission Revenue Requirement. Kansas Cooperative states that there is no explanation of the various components of the calculations in Worksheet K, how they work or how they relate to the SPP OATT. Moreover, Kansas Cooperative asserts that there is no discussion of how these charges are assessed under the SPP OATT, how the revenues associated with such charges flow back to the pricing zones, and how any true-up mechanism would affect such calculations. Kansas Cooperative recommends that the

⁵⁹ Under the SPP OATT, a portion of the cost of base plan funded upgrades are recovered regionally.

Commission either reject the formula or in the alternative issue a deficiency letter to clarify these provisions.

66. Kansas Cooperative also contests Westar's use of the new term "direct facility charge," which it asserts is undefined and unexplained in the filing. Kansas Cooperative states that the term apparently permits the application of a facilities carrying charge to any type of direct assignment facility including radial lines that historically may have been treated as network upgrades but which subsequently may be directly assigned to customers. Kansas Cooperative argues that such a facilities charge is improper because it does not reflect the vintage of the direct assignment facility which may already be heavily depreciated. Kansas Cooperative states that Westar's failure to address this change and the reason behind it should be recognized by the Commission in the form of a deficiency letter or at least a requirement that Westar make a compliance filing to explain it.

67. Kansas Cooperative objects to Westar's proposed revisions to depreciation.⁶⁰ Kansas Cooperative states that Westar's depreciation revision appears to be intended to make certain that the calculations under the rate formula reflect the depreciation rates approved by the Commission. However, a review of Worksheet H, which contains the depreciation rates, seems to indicate that the adjustments will be to depreciation expense for the historical year but to the accumulated depreciation reserve only for the formula rate year. Kansas Cooperative is concerned that these adjustments, based on the differing practices regarding depreciation rates, will not be reflected on a cumulative basis with regard to the adjustment of the accumulated depreciation reserve. Kansas Cooperative contends that such treatment would fail to fully synchronize the formula rate to reflect Commission-approved depreciation rates and the effect on the accumulated depreciation reserve.

68. Kansas Municipals contend that Westar is requesting to not only revise the formula to reflect formula components for rate incentives but also to include the rate incentives in those formula components even though the rate incentives are pending Commission review in Docket No. EL08-31-000 (discussed above). Kansas Municipals argue that the reasonableness of the rate incentives should be determined in the proceeding involving Westar's Petition and not in the formula rate proceeding. Further,

⁶⁰ The formula rate states that "if the depreciation expenses on the FERC Form 1 do not reflect the Commission-approved depreciation rates (for example, because the state-approved depreciation rates differ from those at the Commission-jurisdictional wholesale level), Westar will calculate its depreciation expense using the Commission-approved depreciation rates, and this calculation will be set forth on Worksheet H." Westar Ex. WRI-1 at 17-8.

Kansas Municipals contend that it is premature to grant modification of the formula rate to incorporate incentives since the Commission has not acted upon the Petition.

c. **Formula Rate Implementation Protocols**

69. Kansas Cooperative states that with the proposed formula revisions, Westar should have also made revisions to the formula rate implementation protocols. Kansas Cooperative notes that the implementation protocols make no mention of the capital additions as being part of the annual update under the formula rate nor do the implementation protocols mention the true-up procedures that are being proposed by Westar. Kansas Cooperative states that Westar should be required to revise the implementation protocols either in response to a deficiency letter or in a compliance filing. Kansas Cooperative also argues that the 18 month window for formal challenges should be revisited in light of the proposed revisions to the formula rate to reflect projected capital addition and true-ups.

70. Kansas Municipals suggest several proposals that they refers to as “customer protections”: (1) Westar should be required to file an annual true-up statement with the Commission within 30 days of filing the prior FERC Form 1; (2) interest on under-collections should be based on Westar’s short term debt cost capped at the FERC interest rate in section 35.19a;⁶¹ (3) interest rate on over-collections should be at Westar’s rate of return;⁶² (4) Westar should have the burden of proof on any customer challenges; and (5) Westar’s proposal to use projected capital additions should be limited to a period of time (e.g., not to exceed five years) to reflect the time frame during which Westar plans to significantly increase transmission investment.

⁶¹ Kansas Municipals January 18, 2008 Protest at 9-10 (*citing METC*, 117 FERC ¶ 61,314 at P 19; *ITC Holdings Corp.*, 116 FERC ¶ 61,036, at P 20 (2006) (*ITC*)).

⁶² Kansas Municipals argue that the formula rate does not discourage over collection, and over collections may occur on a perpetual basis. Kansas Municipals suggest that one way to discourage over collection is to apply a refund rate that is marginally higher than the FERC-approved refund rate.

3. Answers

a. Projected Transmission Plant Additions and True-up

71. In its answer, Westar states that it is revising its formula to eliminate a delay in recovering the portion of its costs related to depreciation, return and taxes associated with new plant placed in service during the then-current rate year. Because it will use estimated capital additions for the then-current calendar year, Westar argues that the only true-up that is appropriate is with respect to these estimates. Furthermore, Westar clarifies that its proposed formula does not estimate demand and that such a mechanism is unnecessary and would be inappropriate because SPP, which will implement Westar's annual rate change through its tariff, bills customers based on prior year demand.

72. Westar objects to protestors' arguments in favor of using a 13-month average balance method, instead of end-of-year plant balance method, for existing transmission plant in the prior year's FERC Form No. 1 because Westar has filed to include estimated plant for the current rate year. Westar states that this protest is groundless because Westar's revised formula does not use estimated plant but instead continues to use existing transmission plant as reported in the annual FERC Form No. 1 and thus, there is nothing to true-up against actual plant in service. Westar argues that Kansas Cooperative fails to show that Westar's current end-of-year plant balance method fails to synchronize expenses and investment with revenue for the test period. Westar also notes that using a 13-month average balance would delay Westar's cost recovery for new plant investment.

73. In their answer, Kansas Municipals seek clarification as to which of Westar's figures will be actual figures and which will be estimates for the purpose of the forward looking rate. Kansas Municipals note that in their protest, they did not seek to require Westar to estimate its demand figure. Rather, they used that example to illustrate that what may be viewed as a simple ministerial issue could have consequences in the order of millions of dollars. Thus, Kansas Municipals argue that during the true-up process, Westar should run the same formula using actual figures for each and every field in which an estimate was used, so as to produce the amount over- or under-collected as a result of the estimates.

b. Formula Rate Revisions

74. Westar states that its filing in this case modifies its transmission rate formula to provide the means for Westar to recover the incentives the Commission approves in response to its Petition. Thus, Westar argues that no clarification or modification is necessary because Westar's section 205 Filing is consistent with Commission policy as it demonstrates that Westar's total ROE for the incentive projects will fall within the zone of reasonableness.

75. With respect to protests regarding Westar's changes to reflect SPP base plan funded projects, Westar states that its proposal makes no substantive modifications to the formula. Rather, Westar states that it revised the formula to provide for the calculations related to the revenue requirements for base plan funded projects, which SPP uses in its OATT. Westar notes that under its proposal, Worksheet K provides these calculations and will enable customers to review annual revenue requirement calculations for base plan funded projects and will make it easier for SPP to incorporate the revenue requirements for base plan funded projects from the Westar zone into its OATT.

c. Formula Rate Implementation Protocols

76. Westar objects to Kansas Cooperative's request for more than eighteen months to make formal challenges to Westar's annual updates; Kansas Cooperative's request for adjustments to the facilities carrying charge as it applies to future direct assignment facilities; Kansas Municipals' requested interest rates on over- and under-collections;⁶³ and the five-year sunset provision proposed by Kansas Municipals. Westar also clarifies that to the extent necessary, the transmission formula will recover only that amount of depreciation expense each year that results from applying the Commission-approved depreciation rate to Westar's transmission plant.

77. Westar also objects to Kansas Municipals' request for annual "informational" filings with the Commission. Westar argues that it is not changing its existing protocols and that Kansas Municipals fail to show that its current review procedures are unjust and unreasonable. Westar also argues that there is no basis to treat its annual updates as filings with the Commission because such a requirement would be contrary to Commission policy that accepts the formula rate, not the inputs to the formula rate, as the filed rate. Finally, Westar notes that it already has the burden to support that it has properly calculated its annual update pursuant to the formula and, therefore, it should not have the added burden of showing that its resulting rate is just and reasonable, as proposed by Kansas Municipals.

78. Kansas Municipals reiterate their request that the Commission require Westar to apply Westar's actual cost of debt in circumstances involving an under-collection, capped at the Commission-approved interest rate. Kansas Municipals argue that the Commission

⁶³ Westar argues that the Kansas Municipals have not demonstrated that Westar's true-up process, including the interest rate applied for under- and over-collections, is unjust and unreasonable.

has previously accepted such a provision in cases that Westar relies on in its proposal⁶⁴ and argues that such a provision is necessary to ensure the overall proposal is just and reasonable and consistent with other forward looking formula rates. Kansas Municipals reiterate that consistent with Westar's formula rate, in any formal challenges to the inputs or estimated values used under Westar's proposed rate formula, the burden of proving the data is just and reasonable lies with Westar. Kansas Municipals' also clarify that they are not seeking a five-year sunset provision for Westar's formula rate program, but rather for the forward-looking aspect of Westar's proposal. Kansas Municipals argue that this is reasonable because the proposal is based on an accelerated cost-recovery scheme to recoup unusually large capital outlays in the next few years.

D. Commission Determination on Section 205 Filing

79. For the reasons discussed below, we will accept, in part, Westar's proposed revisions to its formula rate, subject to a nominal suspension and conditions, to become effective June 1, 2008, as requested, subject to refund. In addition, we will establish hearing and settlement judge procedures to resolve all issues not summarily decided in this order.

1. Hearing and Settlement Judge Procedures

80. Westar's proposed tariff revisions raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

81. Our preliminary analysis indicates that Westar's proposed revised tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept, in part, Westar's filing subject to a compliance filing as discussed below, suspend it for a nominal period to be effective on June 1, 2008, as requested, subject to refund, and set it for hearing and settlement judge procedures.

82. At the hearing, Westar will be required to demonstrate the justness and reasonableness of its proposal except to the extent the Commission has made summary findings below.

⁶⁴ Kansas Municipals February 14, 2008 Answer at 3 (*citing METC*, 117 FERC ¶ 61,314, at P 19 and *International Transmission Company*, 116 FERC ¶ 61,036, at P 20 (2006)).

83. While we are setting this matter for a trial-type evidential hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶⁵ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.⁶⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

2. **Specific Findings**

84. We make specific findings on the following issues:

a. **ROE Zone of Reasonableness**

i. **Westar's Request**

85. Westar filed the testimony of Dr. William Avera who performed a DCF analysis supporting a zone of reasonableness of 7.7 percent to 15.3 percent with a midpoint of 11.5 percent.⁶⁷ Westar notes that the 10.8 percent base ROE was established in a recent Commission-approved settlement,⁶⁸ and that the 50 basis points for continued participation in SPP and 100 basis points for projects results in a total ROE of 12.3 percent, which falls within Westar's zone of reasonableness.

⁶⁵ 18 C.F.R. § 385.603 (2007).

⁶⁶ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

⁶⁷ Westar filed Dr. Avera's testimony as Ex. WRI-16 in the Petition and as Ex. WRI-5 in the Section 205 Filing.

⁶⁸ *Westar Energy, Inc.*, 117 FERC ¶ 61,172 (2006).

86. Westar states that it formed its proxy group consistent with *Bangor Hydro*⁶⁹ by utilizing the transmission-owning utilities located in the footprints of SPP, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and PJM Interconnection, LLC (PJM) with publicly traded stock. Westar states that it reduced the number of companies in the proxy group to 23 by excluding companies in SPP and the two adjacent RTOs: (1) that did not pay dividends during the last six months; (2) for which there were no data from IBES International, Inc., (IBES) or no Value Line Investment Survey (Valueline) data; and (3) UGI Corporation was excluded, consistent with *Bangor Hydro*.

87. Westar explains that it is not reasonable to limit the proxy group solely to SPP transmission owners because there are only five transmission owners in SPP with sufficient data to apply the DCF model. Westar states that the potential for misleading findings increases as the proxy group is narrowed; therefore, using a proxy group of companies from SPP and the two adjacent RTOs will provide a greater number of data points of similarly situated transmission owners. Westar claims that its proxy group will provide a large enough sample so that the Commission can be assured that it is representative of industry conditions and investor expectations.

88. Additionally, Westar argues that balkanizing the process of proxy group selection based solely on membership within a single transmission organization would increase the potential for disparate ROE findings that are entirely unrelated to meaningful differences in investment risk. Such treatment could result in significant deviations in allowed ROEs for utilities that otherwise operate under similar circumstances and in adjacent transmission organizations. Westar contends that artificially restricting the proxy group to the geographical boundaries of a single transmission organization poses the risk of stimulating capital investment in one transmission organization while artificially stifling grid expansion in an adjacent transmission organization.

89. Westar also states that a SPP-only proxy group is a fallacy because it would include utilities engaged in business beyond the SPP's regional boundaries. For example, American Electric Power Company, Inc. (AEP), parent company of Public Service Company of Oklahoma and Southwestern Electric Power Company and the source of their equity capital, owns more transmission assets outside of SPP than it does within SPP, and its other operating subsidiaries are members of PJM. Similarly, in addition to owning Southwestern Public Service Company, which is a SPP transmission owner, Xcel Energy, Inc. is the parent company of Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), which operate inside the Midwest ISO

⁶⁹ *Bangor Hydro Electric Co.*, 117 FERC ¶ 61,129 (2006) (*Bangor Hydro*).

footprint. Westar argues that expanding the proxy group to include utilities operating in adjacent transmission organizations and facing similar circumstances helps to avoid regional discrimination with no underlying economic justification and provides greater assurance that the resulting ROEs will further the Commission's policy.⁷⁰

90. Westar states that it considered corporate credit ratings, but does not explain how it considered them.⁷¹ Westar also excluded the cost of equity estimates of 7.6 percent or less at the low end of the zone of reasonableness because the estimate was not much greater than the cost of debt. Further, citing *Bangor Hydro*, Westar states that it excluded the cost of equity estimates at the high end of the zone of reasonableness as extreme outliers.

91. As explained above, Occidental requests the Commission set the ROE and zone of reasonableness for hearing but does not provide any alternative DCF analysis nor does Occidental identify any problems with Westar's analysis.

ii. Determination

92. As discussed below, we find Westar's 12.3 percent ROE request reasonable based on a regional proxy determined by the Commission. Accordingly, we deny Occidental's request to set the ROE and zone of reasonableness for hearing.

93. As the Commission explained in our recent determinations in a proceeding involving *Atlantic Path 15*,⁷² and *Southern California*,⁷³ as well as the Commission's orders in *Bangor Hydro* and *Midwest ISO*, the appropriate proxy group for use in

⁷⁰ Westar notes that in *Bangor Hydro*, the Commission used a proxy group that included the companies doing business in the market operated by ISO-New England and two adjacent RTOs (i.e., New York Independent Transmission System Operator and PJM). Westar claims its proxy group is analogous to what the Commission accepted in *Bangor Hydro* because it provides a sufficiently representative universe of companies for calculating an ROE.

⁷¹ Westar states that it has been assigned a corporate credit rating of "BBB-" by S&P while the average S&P credit rating for the utilities in its proxy group is "BBB+."

⁷² *Atlantic Path 15, LLC*, 122 FERC ¶ 61,135 (2008) (*Atlantic Path 15*).

⁷³ *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007) (*Southern California*).

calculating an ROE using the DCF method is comprised of companies from the region in which the utility is located.⁷⁴ We find that being located in the same geographic and economic region is a relevant factor to consider in determining whether companies face similar business risks. Once the appropriate proxy group is identified, it should be screened to ensure that only companies with comparable risks are included.

94. Further, as we stated in our recent order on *Atlantic Path 15*,⁷⁵ the use of an established proxy group, such as a SPP-Midwest ISO-PJM proxy group here, will allow for an up-front determination of the appropriate ROE for entities seeking general rate changes and those seeking incentive rates under Order No. 679. The Commission has previously found the SPP-Midwest ISO-PJM region to be integrated both electrically and commercially.⁷⁶ Additionally, as Westar has noted, AEP owns more transmission assets outside of SPP than it does within SPP, and its other operating subsidiaries are members of PJM. Thus, we conclude that use of the SPP-Midwest ISO-PJM region here is reasonable. We also find that this approach will provide a significant measure of regulatory certainty in the determination of the appropriate ROE and will improve the Commission's ability to decide cases quickly for entities seeking financing of necessary infrastructure. Further, we believe this approach will simplify rate proceedings and reduce litigation costs, while still producing reasonable ROE allowances. Finally, this approach is consistent with our precedent in this area, particularly our orders in *Bangor Hydro* and *Midwest ISO*.

95. As explained above, Westar applied many of the criteria the Commission requires for a regional proxy group in the development of its twenty-three company proxy group. For example, Westar excluded those companies that did not pay dividends during the last six months or for which there was no IBES or Valueline information. However, we find that Westar has not sufficiently screened the proxy group. Therefore, the Commission, applied additional screens to Westar's twenty-three company proxy group to ensure the

⁷⁴ See *Bangor Hydro*, 117 FERC ¶ 61,129 (2006); *Midwest Independent System Operator*, 100 FERC ¶ 61,292 (2002) (*Midwest ISO*).

⁷⁵ *Atlantic Path 15*, 122 FERC ¶ 61,135 at P 23.

⁷⁶ See, e.g., *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 62-63 (2004) (finding that SPP must file a seams agreement with the Midwest ISO to assure effective interregional coordination of reliability practices and market interface practices); *Midwest Independent Transmission System Operator, Inc.*, 104 FERC ¶ 61,105, at P 33 (2003) (finding that the seam between Midwest ISO and PJM is "a highly interconnected portion of the grid...across which significant trading takes place.").

proxy group is composed of companies of comparable risk to Westar.⁷⁷ For example, the Commission excluded companies that are not classified by Valueline, S&P and IBES as electric utilities. Further, while Westar states that it did “consider” risk, Westar’s proxy group does not sufficiently screen for risk because it includes various companies in its proxy group whose corporate credit ratings are not comparable. Westar’s corporate credit rating is BBB-. Consistent with Commission precedent, companies with a corporate credit rating above BBB were excluded.⁷⁸ Additionally, because Westar did not sufficiently screen its proxy group for unsustainable growth rates, the Commission applied a screen for sustainable growth rates. Finally, the Commission excluded those companies whose ROE, at the low end of the zone of reasonableness, was approximately the cost of debt.⁷⁹

96. Based on this analysis, we establish a zone of reasonable returns of 7.65 percent to 13.33 percent, based on a DCF analysis of Westar Energy Inc. and a proxy group including: Ameren Corporation, AEP, Empire District Electric Company, First Energy Corporation, and Great Plains Energy Inc. Based on this revised proxy group and the risks faced by the project, the Commission finds that Westar’s requested 12.3 percent ROE for the approved incentive project and 11.3 percent ROE for Westar’s remaining facilities are within the zone of reasonableness.

b. ROE Incentive for Participation in SPP

97. We will grant Westar’s request to increase its ROE by 50 basis points, conditioned on Westar’s continued participation in SPP. Our decision to grant Westar this incentive ROE for participation in SPP is consistent with the stated purpose of section 219 of the FPA⁸⁰—that the incentive applies to all utilities joining a transmission organization—and

⁷⁷ The Commission used in its DCF analysis six months of market data ending January 31, 2008.

⁷⁸ *Southern California Edison Co.*, Opinion No. 445, 92 FERC ¶ 61,070, at 61,264 (2000) (advocating the use of a proxy group of companies with comparable bond ratings) (Opinion 445).

⁷⁹ See Opinion 445, 92 FERC ¶ 61,070 at 61,266; *Bangor Hydro*, 117 FERC ¶ 61,129 at P 53-60.

⁸⁰ 16 U.S.C. § 824s (2000 & Supp. V. 2005).

is intended to encourage Westar's continued involvement with SPP.⁸¹ Granting 50 basis points in addition to Westar's base ROE of 10.8 percent yields a ROE of 11.3 percent, which we find to be within the zone of reasonableness, as discussed above.

c. Projected Transmission Plant Additions and True-up

98. Westar proposes to switch from an historical test year method for recovering its costs to a method that uses estimated costs for a projected test year (subject to a true-up) for transmission plant additions and costs from an historical test year for the rest of the formula rate inputs. In support of its proposal, Westar cites Commission orders that have accepted forward-looking cost recovery methods that use cost estimates in the formula.⁸² In those orders, however, the formula rates at issue synchronized the cost inputs by using estimated costs for one test year, subject to true-up.⁸³ Under Commission policy, companies must use a fully-synchronized test period cost-of-service study that uses either an historical test period or a projected test period.⁸⁴ Accordingly, Westar's proposal to

⁸¹ See *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 26 (2007) (*SDG&E*). (finding that there are considerable benefits associated with a utility's membership in a transmission organization).

⁸² See, e.g., *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284 (2007) (*Xcel Energy*); *METC*, 117 FERC ¶ 61,314; *Boston Edison Co.*, 91 FERC ¶ 61,198 (2000).

⁸³ For example, in *Xcel Energy*, the Commission explained the proposal of the NSP Companies as,

The NSP Companies propose to implement the Attachment O rate formula using projected test period cost inputs. Under their proposal, the NSP Companies' revenue requirement and rates for transmission service would change each January 1 to reflect their estimated costs for the following calendar year, and these rates would be subject to subsequent true-up, with interest, based on actual costs, as reported in the NSP Companies' FERC Form No. 1. The estimated revenue requirement for the following calendar year would be provided to customers no later than October 1 of each year. The NSP Companies would hold a customer meeting by October 31 of each year to explain those rate formula input projections and cost details.

⁸⁴ See, e.g., *Delmarva Power & Light Co.*, Opinion No. 262, 38 FERC ¶ 61,098, at 61,257 (1987) ("If the utility has accurately projected each of these three parameters—expenses, allocation factors, and billing determinants—then the utility should fully recover its cost of providing wholesale electric service. To the extent that each of these

(continued)

use different test periods for formula rate inputs (i.e., to use an historical test year for most formula rate inputs and a projected test year for transmission capital additions) is inconsistent with Commission precedent.

99. For this reason, we direct the parties to address the issue of synchronizing Westar's cost data during the settlement and hearing process. Additionally, because protestors raise valid issues related to the proposal, we will set the specific details of Westar's proposal for hearing and settlement judge procedures. Such details include, but are not limited to, how Westar will derive its estimated values, what customer protections it will include, and what protocols Westar will follow in implementing its formula rate.

d. Depreciation Rates

100. In its proposed formula rate, Westar does not specify the incentive accelerated depreciation rates that apply to the transmission facilities discussed above. The Commission permits changes to depreciation rates only through a filing under section 205:

To change prices charged for power sales or transmission services (whether determined by stated rates or formula rates) to reflect a change in depreciation, a utility would first have to make a filing with [the Commission] pursuant to sections 205 or 206, . . . as appropriate, to that effect.⁸⁵

101. Therefore, we direct Westar to file within thirty days of the date of this order, new tariff sheets stating the accelerated depreciation rates approved herein and stating how they will be used in calculating Westar's formula rate.⁸⁶

parameters has been forecast for a particular twelve-month period, they are, by definition, synchronized.”). *See also Carolina Power & Light Company*, 47 FERC ¶ 61,160, at 61,530 (1989) (“[o]ur holding is based on our desire to maintain the integrity of our test year methodology”).

⁸⁵ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,695 & n.25 (2000). *See also* Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁸⁶ Our finding here does not preclude protestors from raising other depreciation-related concerns during settlement and hearing discussions.

e. **Illustrative Workpapers**

102. Westar proposes formula revisions that, among other things, will incorporate projected plant additions, transmission ROE incentives and ministerial changes to the determination and crediting of base plan charges.⁸⁷ Additionally, Westar is proposing formula revisions that “clarify” that the worksheets are merely illustrative. Specifically, all of the worksheets (both existing and new) state, “[t]his worksheet is illustrative. Sub-accounts, inputs and calculations may change to accomplish the purpose of this worksheet.”

103. We find that Westar’s classification of its worksheets as “illustrative” provides Westar with too much discretion in the way in which it will calculate its rates under the formula, and accordingly, we reject Westar’s “illustrative” worksheets. The Commission requires that specific formula calculations be reduced to writing and incorporated into rate schedule so that a transmission provider will not have any discretion in changing the calculations.⁸⁸ By making the worksheets “illustrative,” Westar states that it may change the calculations so long as such changes fit the purpose of the worksheet. This vests Westar with too much discretion in calculating its formula rates. Furthermore, these changes in calculations as well as in the sub-accounts and inputs will affect the charges paid by customers. Using Westar’s “illustrative” worksheets, the Commission or other parties might not be able to duplicate the company’s results when provided with the annual inputs because of Westar’s discretion to change the sub-accounts and calculations. Therefore, we direct Westar to include new worksheets that state with specificity the calculations Westar will use in developing its formula rates in Westar’s case-in-chief.⁸⁹

⁸⁷ Westar has proposed new worksheets to calculate the following: amount of plant additions for the upcoming year; transmission plant qualified for incentives; revenue requirement of SPP base plan funded projects included in Westar’s total revenue requirement; and reconciliation of projected to actual plant additions.

⁸⁸ See *Maine Yankee Atomic Power Co.*, 42 FERC ¶ 61,307, at 61,923 (1988) (*Maine Yankee*) (rejecting a formula rate due to a lack of specificity that would allow Maine Yankee to revise its calculations at its discretion).

⁸⁹ We note, however, that nothing in our order is intended to prevent Westar’s formula rate from permitting the inputs to change each year, as in a typical formula rate. Our objection is merely with the above-quoted statement, which would grant Westar the right to unilaterally change the calculations and sub-accounts upon which its formula rate is based.

f. Ministerial Changes

104. Westar submitted revised tariff sheets to its OATT including revised sheets clarifying the charges under schedules 7 and 8. These charges under schedules 7 and 8 reflect peak pricing.⁹⁰ To protect customers from excessive charges, the Commission requires that the total demand charge assessed at the peak hourly rate be capped at both the peak daily rate and the weekly rate. On the tariff sheets submitted by Westar, the peak hourly rate is missing the cap. Within 30 days from the date of this order, Westar must submit a compliance filing to the Commission to place the cap on the peak hourly rate as required by Commission policy.

105. Westar did not submit revised pro forma tariff pages to the SPP OATT for service over its transmission system because the relevant pages in the SPP OATT refer to the formula rate in Westar's OATT. Section 35.1 of the Commission's regulations requires that every public utility shall file with the Commission and post full and complete rate schedules setting forth all rates and charges for transmission service.⁹¹ Thus, the reference to Westar's OATT in the SPP OATT is an impermissible rate by reference. During the hearing and settlement process, Westar must provide pro forma tariff pages including Westar's formula rate as Westar believes they would appear in the SPP OATT. Upon the Commission's acceptance of the pro forma tariff pages, SPP can then file the actual tariff pages.

g. Waivers

106. We will grant Westar's requests for waivers consistent with our prior approval of formula rates.⁹² Nonetheless, to the extent that parties at the hearing procedures ordered below can show the relevance of additional information needed to evaluate this proposal, the presiding judge can provide for appropriate discovery of such information.⁹³

⁹⁰ Under this type of peak pricing, the peak daily rate is calculated as one-fifth of the weekly rate and the peak hourly rate is calculated as one-sixteenth of the peak daily rate.

⁹¹ 18 C.F.R. § 35.1 (2007).

⁹² *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007).

⁹³ *Id.*

The Commission orders:

(A) Westar's petition for a declaratory order in Docket No. EL08-31-000 is hereby accepted, in part, and denied, in part, as discussed in the body of this order.

(B) Westar's proposal in Docket Nos. ER08-396-000 is hereby accepted, in part, for filing and suspended for a nominal period, to become effective June 1, 2008, as requested, subject to refund, subject to conditions and the outcome of hearing and settlement judge procedures, as discussed in the body of this order, and subject to the compliance filing ordered in Ordering Paragraph (C).

(C) Westar is hereby directed to submit a compliance filing within thirty (30) days, as discussed in the body of this order.

(D) Westar's request for waiver of the requirements of section 35.13 to provide full Period I and Period II data, and waiver of sections 35.13(a)(2)(iv) is hereby granted.

(E) 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 the Federal Power Act, particularly sections 205 and 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), a public hearing shall be held concerning Westar's proposed tariff revisions as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(G) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least sixty (60)

days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with a Separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Westar Energy, Inc.

Docket Nos. EL08-31-000
and
ER08-396-000

(Issued March 24, 2008)

KELLY, Commissioner, *dissenting in part*:

This order addresses, among other things, a request for certain transmission rate incentives filed by Westar Energy, Inc. and its wholly-owned subsidiary, Kansas Gas and Electric Company (Westar). Westar requests that the Commission approve accelerated depreciation over a 15 year period and a 100 basis point adder to its return on common equity (ROE) reflecting for three individual new high voltage transmission projects. I fully support the Commission's conclusion that two of the three projects—the Rose Hill-to-Sooner Line and Swissvale Transformer—are ineligible for incentive rate treatment for the reason expressed within the order. However, based on criteria I have specified in previous statements,¹ I conclude that Westar's Wichita-to-Reno-to-Summit Line is not eligible for incentive rate treatment and therefore I cannot support the requested incentive rate treatment.

The first step I take in evaluating whether a particular project is eligible for incentive rate treatment is to assess whether the project brings broad regional benefits to the public interest. Westar's application enumerates several benefits that result from completion of the Wichita-to-Reno-to-Summit Line, including the elimination of a major constraint that currently limits transactions into and out of central and western Kansas and strengthens ties between the Westar North and Westar South systems. While I believe that many of the benefits that Westar has presented are laudable, they appear to offer benefits primarily within Kansas. I therefore I do not believe that they provide broad regional benefits to the public interest. I do note that Westar also estimates cost savings to customers over an eleven year period, including \$166 million in benefits for customers in the SPP region on a net present value basis. However, given the estimated costs of the

¹ See *American Electric Power Service Corporation*, 118 FERC ¶61,041 (2007).

combined project (\$150 million), I do not believe that these benefits are so significant as to merit incentive rate treatment. I note that though the estimated cost of the project is roughly 39% of Westar's year-end 2006 net transmission plant in service, the size of the investment in absolute terms is not exceptionally large by public utility standards.

Moreover, the stated characteristics of the Wichita-to-Reno-to-Summit Line do not appear to entail significant risks associated with siting and construction or to provide broad regional benefits. First, the projected in-service dates are relatively close (year-end 2008 and year-end 2009 for phases I and II, respectively), which reduces the risks associated with the project. I would also note that phase II will be built once the Phase 1 line segment is in service, meaning that the construction time of each project is one year or less. Second, given that the line is entirely located fully within Kansas, Westar will not have to deal with multiple state and local authorities. Furthermore, Westar states that Phase I has already received all the necessary approvals from SPP and the Kansas Commission and that the Kansas Commission has approved the construction of Phase II.

For this reason, I respectfully dissent in part from this order.

Suede G. Kelly