

152 FERC ¶ 62,055

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Westar Energy, Inc.

Docket No. EC15-160-000

ORDER AUTHORIZING ACQUISITION OF
JURISDICTIONAL FACILITIES

(Issued July 24, 2015)

On June 29, 2015, Westar Energy, Inc. (Westar or Applicant) filed an application under section 203(a)(1)(B) of the Federal Power Act (FPA)¹ requesting Commission authorization for the acquisition of jurisdictional facilities. Specifically, Westar will acquire from The Empire District Electric Company (Empire) approximately 35 miles of a 161 kilovolt (kV) transmission line and related facilities, as detailed below (Facilities), located in southeastern Kansas (Proposed Transaction).

Westar is a Kansas corporation that, together with its wholly owned subsidiary Kansas Gas and Electric Company (KG&E), owns nearly 6,000 megawatts of electric generation capacity, operates and coordinates approximately 35,000 miles of electric distribution and transmission lines, and provides retail and wholesale electric service to approximately 684,000 customers. Westar's transmission system is located in eastern and central Kansas and is under the functional control of Southwest Power Pool, Inc. (SPP). Westar adds that it owns a 50 percent undivided interest in Prairie Wind Transmission, LLC, which, in turn, owns a 108-mile, 345 kV transmission line located in southern Kansas and is also under the functional control of SPP.

Empire is a Kansas corporation that provides electric service to approximately 169,000 customers in southwest Missouri, southeast Kansas, northeast Oklahoma, and northwest Arkansas. Empire's transmission facilities are under the functional control of SPP. Empire owns the Facilities, namely, 35 miles of Empire's Neosho-Litchfield 161 kV transmission line, the Neosho 161 kV line terminal for the Neosho-Riverton 161 kV line, the 161 kV portion of the Baker 161/12 substation, including the 161/12 kV transformers, and the Litchfield 161 kV line terminal for the Litchfield/Marmaton 161 kV line.

¹ 16 U.S.C. § 824b (2012).

The Proposed Transaction involves a letter of intent between Westar and Empire. According to Westar, KG&E, which currently leases the Facilities, will purchase from Empire 100 percent of its ownership interests in the Facilities. The purchase price for the Facilities will be based on the net book value of the assets as of closing. Westar states that the net book value of the assets as of April 1, 2015, was approximately \$1.6 million.

Westar states that the Proposed Transaction is consistent with the public interest and will have no adverse effect on competition, rates, or regulation. With respect to competition, both horizontal and vertical market power, Westar states that the Proposed Transaction raises no concerns. Westar states that the Proposed Transaction does not involve the acquisition of any generation assets or any essential inputs to electricity products or electric power production. Moreover, Westar states that the acquired Facilities are under the functional control of SPP, and service over the Facilities is provided under SPP's Open Access Transmission Tariff.

With regard to rates, Westar states that the Proposed Transaction will not have an adverse effect because the acquired Facilities will be transferred based on their net book value and will continue to be under functional control of SPP. With regard to regulation, Westar states that the Proposed Transaction will not have an adverse effect because it will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate it.

Westar states that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the closing or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Specifically, Westar states that the Proposed Transaction will not result in: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on June 30, 2015, with comments, protests, or interventions due on or before July 20, 2015. None were received.

Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North America Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.² The foregoing authorization may result in a change in status. Accordingly, applicants that have market-based rates are advised that they must comply with the requirements of Order No. 652. In addition, applicants shall make appropriate filings under section 205 of the FPA to implement the Proposed Transaction.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any

² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

estimate or determination of cost or any valuation of property claimed or asserted;

- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (5) If the Proposed Transaction results in changes in the status or upstream ownership of Westar's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2014) shall be made;
- (6) Westar must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of material change in circumstances;
- (7) Westar shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction;
- (8) Westar shall notify the Commission within 10 days of the date that the acquisition of jurisdictional facilities has been consummated; and
- (9) Westar shall account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform Systems of Accounts. Westar shall submit its final accounting entries within 6 months of the date that the Proposed Transaction is consummated, and the accounting submissions shall provide all of the accounting entries and amounts related to the transfer with narrative explanations describing the basis of the entries.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307 (2014). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2014).

Steve P. Rodgers, Director
Division of Electric Power
Regulation - West