

676-5509 or fax (832) 676-2251 or Veronica Hill, Certificates & Regulatory Compliance, at (832) 676-3295 or fax (832) 676-2231.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued. *Comment Date:* March 6, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03-4843 Filed 2-28-03; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02-51-000]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell, Westar Energy, Inc.; Order Conditionally Granting Authorization To Issue Long-Term Unsecured Debt and Announcing New Policy on Conditioning Securities Authorizations

Issued: February 21, 2003.

1. In this order, the Commission will grant Westar Energy, Inc.'s (Westar, formerly Western Resources, Inc.) request to issue long-term, unsecured debt, but will do so conditionally with restrictions on this authorization. In addition, the Commission intends that all future issuances of secured and unsecured debt authorized by the Commission will be similarly conditioned. This order benefits customers by ensuring that the authorization of a public utility to issue securities accords with the requirements of section 204 of the Federal Power Act (FPA).¹

Background

2. On September 6, 2002, Westar submitted an application pursuant to section 204(a) of the FPA² seeking authorization to issue long-term, unsecured debt in an amount not to exceed \$650 million at any one time. Westar also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2 (2002).

3. On November 1, 2002, the Director of the Office of Markets, Tariffs, and Rates' Division of Tariffs and Market Development-Central requested additional information from Westar. Westar filed its response on November 15, 2002 (Westar Response). Westar, among other things, provided details related to its existing soon-to-mature debt securities,³ its proposed debt issuance and why it believes the proposed issuance of the long-term, unsecured debt is in the public interest.

Notice, Interventions and Motions

4. Notices of the application and the data request response were published in

the *Federal Register*, 67 FR 59058 (2002) and 67 FR 70725 (2002), respectively. The Kansas Commission filed a notice of intervention and comments on October 2, 2002. MBIA Insurance Company (MBIA) submitted timely motions to intervene and comments on October 3, 2002, and December 11, 2002.

5. The Kansas Commission states that the Commission should view Westar's application in the context of concerns about the capital structure and debt obligations of Westar and its affiliates.⁴ The Kansas Commission also states that the Commission should not construe its filing as a request to deny Westar financing. However, the Kansas Commission emphasizes that its decision not to protest is based and conditioned upon Westar's declarations that the proceeds will be used solely to retire existing debt and that any debt issued will be "unsecured."⁵

6. MBIA insures approximately \$500 million of bonds secured by the first mortgage pledge of Westar and its subsidiary, Kansas Gas and Electric Company, and closely tracks Westar's financial health. MBIA states that it has become alarmed at what it views as recent indications regarding troubling financial and management issues with Westar,⁶ and that Westar's application contains scant information on how Westar's proposed issuance will relate to Westar's strained financial status. MBIA encourages the Commission to exercise appropriate due diligence to ensure that the standards of section 204 are met and that the issuance of the securities will not lead to further deterioration.⁷

7. On October 18, 2002, Westar submitted an answer in response to the Kansas Commission's and MBIA's comments.

8. On November 26, 2002, the Kansas Commission filed a motion to lodge its Order No. 51, requiring financial and corporate restructuring by Westar. This order requires Westar to obtain Kansas Commission approval before the issuance of any debt, to structurally separate its utility subsidiaries from its non-utility businesses and to reverse certain accounting transactions among its affiliates. Order No. 51 also provides

⁴ See Kansas Commission Notice of Intervention at 2.

⁵ Id. at 3-4.

⁶ MBIA notes: (1) An anticipated Kansas Commission order requiring a comprehensive restructuring, (2) reports of grand jury investigations of company executives and (3) Westar's efforts in seeking an exemption from limitations imposed by the Investment Company Act of 1940.

⁷ See Motion to Intervene at 1-2.

¹ 16 U.S.C. 824c (2000).

² 16 U.S.C. 824c(a) (2000).

³ Westar's pre-existing debt issuances were authorized by either this Commission or the Kansas Corporation Commission (Kansas Commission) with no conditions imposed on how much of the borrowings could be used for non-utility businesses or the amount of Westar's assets that could be used to secure the debt.

that Westar should take steps to reduce its debt, utilizing available cash flow from electric operations to reduce non-utility debt secured by utility assets. The Kansas Commission states that Westar should consider the sale of subsidiaries Protection One, Inc. and ONEOK, Inc. stock, and a reduction of dividends.⁸

9. On January 6, 2003, the Kansas Commission filed a motion to lodge its Order

No. 55, clarifying Order No. 51. Among other things, Order No. 55 clarifies Westar's financial and corporate restructuring requirements; establishes an August 1, 2003, restructuring deadline; requires monthly progress reports on Westar's debt reduction; affirms that Westar must reduce secured utility debt by \$100 million per year from cash flow; affirms that the appropriate amount of debt after the restructuring is \$1.47 billion; and affirms the Kansas Commission's authority to require Kansas Commission approval before the issuance of any additional debt.⁹

Discussion

Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2002), the notice of intervention and timely, unopposed motion to intervene serve to make the parties that filed their parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213, prohibits answers to protests unless otherwise permitted by the decisional authority. We do not find that good cause exists to allow Westar's answer, as it does not provide additional information assisting us in the decision-making process.

11. Rule 212(a)(2) of the Commission's Rules of Practice and Procedure allows motions to be filed by participants who have filed timely, interventions that have not been denied.¹⁰ Accordingly, the Commission accepts, and the Commission will grant, the Kansas Commission's motions to lodge Order Nos. 51 and 55.

Westar's Conditional Securities Authorization

12. Section 204(a) of the FPA provides that requests for authority to issue securities or to assume liabilities shall be granted if the Commission finds that the issuance:

(a) is for some lawful object, within the corporate purposes of the applicant,

and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes.¹¹

13. The Commission concludes that Westar's requested authorization, as conditioned below, meets the standards of section 204.

14. The Commission finds that the proposed issuance of long-term, unsecured debt is for a lawful object within Westar's corporate purposes and is necessary, appropriate and consistent with Westar's performance as a public utility. Westar states it will issue the proposed debt in the second quarter of 2003 and use the proceeds to refinance debt that effectively matures in August 2003 by virtue of a put/call agreement.¹² Westar also states it is refinancing the unsecured debt in order to meet the requirements of a bank credit agreement requiring the debt to be retired 60 days prior to maturity and that without the ability to refinance Westar could potentially face a liquidity crisis.¹³ Refinancing or retiring debt is a lawful object and is routinely practiced in the electric industry. The Commission further finds that the authorization, as conditioned below, is necessary and appropriate, giving Westar, a non-investment grade issuer,¹⁴ the flexibility necessary to refinance its debt securities with the most favorable terms.

15. In reviewing filings under section 204, the Commission evaluates a utility's financial viability based on a review of the financial statements submitted in the application and the utility's interest coverage ratio. An interest coverage ratio is a measure of the utility's ability to meet future debt and interest payments.¹⁵ Westar's pro forma interest coverage ratio is less than what the Commission would typically prefer due in large part to approximately \$657 million of non-cash charges from its non-utility subsidiaries that negatively impacted Westar's financial statements. However, Westar has a bank covenant requirement in place, similar to the Commission's interest coverage ratio, whereby Westar must attain a

minimum ratio of consolidated earnings before interest, taxes, depreciation, and amortization to consolidated interest expense of 2.0 to 1.0. Westar's ratios on an actual and pro forma basis are 2.7 to 1.0 and 2.5 to 1.0, respectively, and as these ratios show, Westar meets the bank covenant requirement both before and after the proposed financing.¹⁶

16. In evaluating Westar's financial viability, the Commission also reviewed Westar's debt maturities and cash flow projections over the next five years. While Westar's debt maturities between October 2002 and December 2007 total more than \$2.7 billion, Westar projects it will be able to meet these obligations as they come due.¹⁷ Westar also projected a free cash flow remaining after the payment of interest and dividends in excess of \$115 million for each of the next four years¹⁸ and states it will be used to further reduce company debt.¹⁹

17. The Commission has considered all the above information concerning Westar's financial viability.²⁰ While we recognize that Westar's financial condition has deteriorated, in large part due to its non-utility business activities, without the proposed authorization to refinance soon-to-mature debt Westar could face a liquidity crisis, ultimately harming the public interest.

18. We also note that authorization can be granted only if doing so will be consistent with Westar providing public utility service and will not impair its ability to provide such service. We believe that with the conditions ordered below we can make this finding.

19. Therefore, the Commission will conditionally authorize Westar's request to issue long-term, unsecured debt in an amount not to exceed \$650 million, subject to the following conditions.²¹

¹⁶ See Westar Response 6.

¹⁷ See Westar Response 12.

¹⁸ Westar calculates free cash flow by adding depreciation and amortization to net income, then subtracting capital expenditures and stock dividends.

¹⁹ See Westar Response 12.

²⁰ The Division of Regulatory Audits in the Commission's Office of the Executive Director performed an audit and found that since 1995 Westar has issued substantial amounts of new debt and used the proceeds to finance non-utility business ventures and to cover operating losses incurred by non-utility businesses. The audit report identifies the following adverse consequences: The credit rating for Westar securities is "junk status;" Westar debt is more costly and more difficult to obtain on economically favorable terms; Westar's ratepayers are at risk for paying the increased cost of debt if Westar cannot generate enough cash flow from utility operations to cover the increased debt costs; and Westar will be left with a disproportionate amount of debt if it "spins off" some or all of its non-utility businesses.

²¹ The scope of the Commission's jurisdiction over securities issuances is limited. For example,

¹¹ 16 U.S.C. 824c(a) (2000).

¹² See Application at 2-3; Westar Response 7.

¹³ See Westar Response 7.

¹⁴ See Westar Response 7. Independent credit agencies, such as Standard and Poor's and Moody's Investors Services, rated Westar's unsecured debt securities as BB- and Ba2, respectively, with negative outlooks. See Application at 2.

¹⁵ The interest coverage ratio is a calculation of income before interest and taxes divided by total interest expense.

⁸ See Motion to Lodge Order No. 51 at 1-2.

⁹ See Motion to Lodge Order No. 55 at 2-3.

¹⁰ See 18 CFR 385.212 (2002).

First, the proceeds of the debt must be used solely for the purpose of retiring outstanding indebtedness, including accrued and unpaid interest due at maturity. Second, Westar is required to file quarterly informational status reports detailing its financial condition and debt-reduction efforts within 30 days of the end of each calendar quarter. Third, Westar must file a Report of Securities Issued within 30 days after the sale or placement of the long-term, unsecured debt, as stated in the Commission's regulations.²² Finally, Westar must also abide by the following restrictions on secured and unsecured debt.

20. The Commission will impose four additional restrictions and it is the Commission's intention that these restrictions will be applied to all future public utility issuances of secured and unsecured debt authorized by this Commission.²³ First, public utilities seeking authorization to issue debt that is secured (*i.e.*, backed) by utility assets must use the proceeds of the debt for utility purposes only. Second, with respect to such utility asset-secured debt issuances, if any utility assets that secure such debt issuances are divested or "spun off," the debt must "follow" the asset and be divested or "spun off" as well.

21. Third, if assets financed with unsecured debt are divested or "spun off," the associated unsecured debt must follow those assets. Specifically, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt likewise must "follow" the non-utility assets and if the non-utility assets are divested or "spun off" then a

section 204 of the FPA does not apply to a public utility organized and operating in a state where its securities issuances are regulated by a state commission. *See*, 16 U.S.C. 824c(f) (2000). The Kansas Commission follows a similar statute whereby it must authorize the issuance of long-term securities unless the issuance requires a registration statement to be filed with the Securities and Exchange Commission or the public utility obtains authorization from another state or federal agency. *See* K.S.A. § 66-125 (2001). As directed in Order Nos. 51 and 55, for all future securities authorizations Westar must receive Kansas Commission approval before the issuance of any future debt. Thus, as long as Westar complies with this requirement it will not need our approval prior to such issuance. Westar should, however, file with us an informational copy of any future securities issuance applications that are subject to approval by the Kansas Commission.

²² *See* 18 CFR 34.10, 131.43 (2002).

²³ MBIA recently testified at the Commission's January 16, 2003, technical conference on capital availability for energy markets, citing concerns that holding companies use assets of regulated utilities to keep shaky unregulated ventures afloat. MBIA requested that the Commission take a more active role in analyzing proposed securities issuances and use its section 204 authority to rigorously evaluate how debt will be used. *See* 16 U.S.C. 824c(a) (2000).

proportionate share of debt must "follow" the associated non-utility assets by being divested or "spun off" as well. Last, with respect to unsecured debt used for utility purposes, if utility assets financed by unsecured debt are divested or "spun off" to another entity, then a proportionate share of the debt also must be divested or "spun off".

22. These restrictions should prevent public utilities from borrowing substantial amounts of monies and using the proceeds to finance non-utility businesses. These restrictions thus should ensure that future issuances of debt are compatible with the public interest, will not impair a public utility's ability to perform in the future and provide appropriate ratepayer protection.²⁴

Information To Be filed in Future Section 204 Applications

23. Part 34 of the Commission's regulations sets out the filing requirements for public utilities seeking Commission authorization of the issuance of securities or the assumption of liabilities.²⁵ In order for the Commission to determine if a security issuance is in the public interest, an application for authority to issue securities must contain, among other things, certain corporate information, a statement as to whether or not any state regulatory body requires an application for authorization to issue the securities, a summary of any rate changes that may apply during or after the period of the issuances, along with accompanying exhibits.²⁶

24. The Commission takes this opportunity to remind public utilities that they must include in their applications all information required in part 34 of the Commission's regulations. Specifically, public utilities must include information on the amount, type, maturity date and whether any of the proposed debt issuances will be secured or unsecured. Public utilities also must provide a detailed explanation of the purpose for the requested securities and state if the issuance will be used for utility or non-utility purposes. Public utilities must explain how the proposed issuance meets the standards of section 204(a), rather than merely making a declaration that it does so. Finally, the board of directors' resolutions must include a discussion of the type, amount, and purpose of the proposed issuance and the financial statements should be

²⁴ These restrictions are also consistent with the audit report discussed above. *See supra* note 20.

²⁵ *See* 18 CFR part 34 (2002).

²⁶ *Id.* at §§ 34.3 through 34.9.

calculated on both an actual and pro forma basis.

25. We also remind public utilities that section 204 gives the Commission the authority to issue supplemental orders, and modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any security or the associated proceeds may be applied.²⁷ Westar as well as other public utilities are hereby put on notice that the Commission plans to review the required filings and reports, and may issue supplemental orders as necessary.

26. Finally, while state regulatory authorities may not have approval over a public utility's request for authority to issue securities or assume liabilities filed with the Commission pursuant to section 204 of the FPA, we recognize such matters can have a significant impact on the applicant's ability to perform its public utility obligations at the retail level. Thus, the Commission would find the views of the state commissions with retail rate jurisdiction over section 204 applicants helpful and we encourage those commissions to file comments in section 204 proceedings.

The Commission orders:

(A) Westar is hereby conditionally authorized to issue long-term, unsecured debt in an amount not to exceed \$650 million at any one time, under the terms and conditions and for the purposes specified in the application and this order, subject to the conditions discussed in the body of this order.

(B) Westar's requested waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2 is hereby granted.

(C) This authorization is effective as of the date of this order and terminates two years thereafter.

(D) The authorization granted in Ordering Paragraph (A) above is without prejudice to the authority of the Commission with respect to rates, services, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may come before the Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

(F) The Secretary is hereby directed to publish this order in the **Federal Register**.

²⁷ *See* 16 U.S.C. 824c(b) (2000).

By the Commission.

Magalie R. Salas,
Secretary.

[FR Doc. 03-4835 Filed 2-28-03; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01-156-003, et al.]

TRANSLink Development Company, LLC, et al.; Electric Rate and Corporate Filings

February 24, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. TRANSLink Development Company, LLC

[Docket Nos. EC01-156-003, ER01-3154-003 and ER03-83-002]

Take notice that on February 19, 2003, TRANSLink Development Company, LLC (TRANSLink) tendered for filing with the Federal Energy Regulatory Commission (Commission), for its review and approval, a compliance filing in the aforementioned dockets.

The compliance filing responds to Commission Orders regarding the rates and terms of service that TRANSLink will provide to customers after joining the Midwest ISO as an independent transmission company, thereby expanding the scope of the Midwest ISO regional transmission organization to include the transmission systems of the TRANSLink Participants, including both jurisdictional utilities and municipal and cooperative public power systems.

TRANSLink states that this compliance filing has been served on the parties for the service lists in Docket Nos. EC01-156, ER01-3154, and ER03-83, to the state regulatory authorities in each of the states in which any of the jurisdictional TRANSLink Participants provides electric service to consumers or operates transmission facilities, and to all customers taking service under an open transmission tariff of one of the TRANSLink Participants that will be superseded by the TRANSLink Rate Schedule.

Comment Date: March 12, 2003.

2. PJM Interconnection, L.L.C.

[Docket No. ER03-85-001]

Take notice that on February 19, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing Original Sheet No. 96GGGG to PJM's Open Access

Transmission Tariff, Fifth Revised Volume No. 1. PJM states that it submits this revised tariff sheet to comply with the Commission's order of December 12, 2002 in this proceeding. PJM proposes to make the subject tariff sheet effective on November 1, 2002, consistent with the effective date of the remainder of PJM's tariff revisions accepted in this docket and subject to the outcome of the Commission's final rule in Docket No. RM02-1-000.

PJM states that copies of this filing were served upon the official service list for Docket Nos. ER02-1333 and ER03-85, all members of PJM, and the state electric utility regulatory commissions within the PJM region.

Comment Date: March 12, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03-86-002]

Take notice that on February 19, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to certain provisions of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's December 19, 2002, Order in this docket. The Midwest ISO has requested an effective date of February 20, 2003.

The Midwest ISO states that it has served a copy of this filing electronically upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been posted electronically on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: March 12, 2003.

4. Unitol Energy Systems, Inc.

[Docket No. ER03-140-001]

Take notice that on February 20, 2003, Unitol Energy Systems, Inc., submitted a corrected Table of Contents to the Open Access Transmission Tariff dated November 1, 2002.

Comment Date: March 13, 2003.

5. Entergy Mississippi, Inc.

[Docket No. ER03-171-002]

Take notice that on February 19, 2003, Entergy Mississippi, Inc., (Entergy) tendered for filing with the Federal

Energy Regulatory Commission (Commission) pursuant to the Commission's order issued January 31, 2003, 102 FERC 61,105, directing Entergy to file an agreement for the lease of Silver Creek Substation (the lease agreement) or submit an explanation identifying why such a filing is not necessary. Entergy submitted its explanation as to why the submittal of the lease agreement is not required by either section 203 or section 205 of the Federal Power Act.

Comment Date: March 12, 2003.

6. Ameren Services Company

[Docket No. ER03-460-001]

Take notice that on February 19, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Service between ASC and Cinergy Services, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Cinergy Services, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: March 12, 2003.

7. Ameren Services Company

[Docket No. ER03-491-001]

Take notice that on February 19, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Service between ASC and Westar Energy, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Westar Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: March 12, 2003.

8. Public Service Company of New Mexico

[Docket No. ER03-542-000]

Take notice that on February 19, 2003, Public Service Company of New Mexico (PNM) tendered for filing a Revised Funding Agreement (designated as First Revised Service Agreement No. 198 under PNM Electric Tariff, Second Revised Volume No. 4) that modifies certain provisions of the original Funding Agreement for the design, engineering and construction services associated with the facilities necessary to interconnect the FPL Energy New Mexico Wind, LLC (FPLE) proposed 204 MW name plate capacity wind farm generation project in eastern New Mexico to PNM's transmission system.

PNM states that copies of the filing have been sent to FPLE, the New Mexico Public Regulation Commission, and the New Mexico Attorney General.