

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): March 21, 2013

Westar Energy, Inc.

(Exact Name of Registrant as Specified in Charter)

Kansas
(State or Other Jurisdiction
of Incorporation)

1-3523
(Commission
File Number)

48-0290150
(IRS Employer
Identification No.)

**818 South Kansas Avenue
Topeka, Kansas**
(Address of Principal Executive Offices)

66612
(Zip Code)

Registrant's telephone number, including area code: (785) 575-6300

Not Applicable
(Former name or former address, if changed from last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-11 under the Exchange Act (17 CFR 240.14a-11)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

Sales Agency Financing Agreement

On March 21, 2013, we entered into a Sales Agency Financing Agreement (the “Agreement”) with BNY Mellon Capital Markets, LLC (“BNYMCM”) and The Bank of New York Mellon (the “Forward Purchaser”). Under the terms of the Agreement, we may offer and, in some cases, issue and sell, shares of our common stock, par value \$5.00 per share (the “Common Stock”), from time to time through BNYMCM, as agent, up to an aggregate sales price of \$500,000,000 (subject to certain exceptions) and for a period of no more than three years.

The Common Stock may be offered in one or more selling periods, none of which will exceed 20 trading days. We shall specify to BNYMCM the aggregate selling price of the Common Stock to be sold during each selling period, which may not exceed \$50,000,000 without BNYMCM’s prior written consent, and the minimum price below which sales may not be made, which may not be less than \$5.00 per share without the prior written consent of BNYMCM. We will pay BNYMCM (or, in the case of a Forward Contract (as defined below) the Forward Purchaser through a reduced initial forward sale price) a commission equal to 1% of the sales price of all shares offered under the Agreement plus its reasonable documented out-of-pocket expenses, including fees and expenses of counsel, up to \$90,000. The Common Stock offered under the Agreement may be offered, issued and sold in at-market-sales through BNYMCM, as agent, or offered in connection with one or more Forward Contracts entered into pursuant to the Master Forward Sale Agreement described below.

The Common Stock will be offered pursuant to a registration statement previously filed with the Securities and Exchange Commission (the “Registration Statement”) on Form S-3 (File No. 333-187398).

The Agreement is filed as Exhibit 1.1 hereto, and the description of the material terms of the Agreement is qualified in its entirety by reference to that exhibit.

Master Forward Sale Agreement

On March 21, 2013, we entered into a Master Confirmation for Forward Stock Sale Transactions (the “Forward Agreement”) with the Forward Purchaser relating to the Common Stock. In connection with the execution and performance of the Forward Agreement, we may from time to time enter one or more forward sale contracts with the Forward Purchaser (each, a “Forward Contract”). In connection with each Forward Contract entered into pursuant to the Forward Agreement, the Forward Purchaser will, at our request, borrow from third parties and, through BNYMCM, sell a number of shares of the Common Stock equal to the number of shares underlying such Forward Contract to hedge such Forward Contract.

The initial forward sale price per share under each Forward Contract will equal 99% of the volume weighted average price per share at which the shares of Common Stock underlying such Forward Contract are sold pursuant to the Agreement, subject to the price adjustment provisions of the Forward Agreement. If we elect to physically settle any Forward Contract by delivering shares of Common Stock, we will receive an amount of cash from the Forward Purchaser equal to the product of the initial forward sale price per share under such Forward Contract and the number of shares underlying such Forward Contract, subject to the price adjustment and other provisions of the Forward Agreement. Each Forward Contract provides that the initial forward sale price, as well as the sales prices used to calculate the initial forward sale price, will be subject to adjustment based on a floating interest rate factor equal to the federal funds rate less a spread. In addition, the initial forward sale price will be subject to decrease on certain dates specified in such Forward Contract by the amount per share of quarterly dividends we currently expect to declare during the term of such Forward Contract. If the federal funds rate is less than the spread on any day, the interest rate factor will result in a daily reduction of the forward sale price.

Except under the circumstances described in the next paragraph, we have the right, in lieu of physical settlement of any Forward Contract, to elect cash or net share settlement of such Forward Contract. If we elect cash or net share settlement of any Forward Contract, the Forward Purchaser or one of its affiliates will purchase shares of Common Stock in secondary market transactions over a period of time for delivery to stock lenders in order to unwind the Forward Purchaser’s hedge. If the price of the Common Stock at which the Forward Purchaser or its affiliate unwinds the Forward Purchaser’s hedge is below the relevant forward sale price, the Forward Purchaser will pay us such difference in cash (if we cash settle) or deliver to us shares of Common Stock having a market value equal to such difference (if we net share settle). If the price of the Common Stock at which the Forward Purchaser or its

affiliate unwinds the Forward Purchaser's hedge exceeds the applicable forward sale price, we will pay the Forward Purchaser an amount in cash equal to such difference (if we elect to cash settle) or we will deliver to the Forward Purchaser a number of shares of Common Stock having a market value equal to such difference (if we elect to net share settle).

The Forward Purchaser will have the right to accelerate each Forward Contract and require us to physically settle on a date specified by the Forward Purchaser if (1) in the Forward Purchaser's commercially reasonable judgment, it or its affiliate is unable to hedge (or maintain a hedge of) its exposure under such Forward Contract because (x) insufficient shares of Common Stock have been made available for borrowing by share lenders or (y) the Forward Purchaser or its affiliate would incur a stock loan cost in excess of a specified threshold, (2) we declare any dividend or distribution on shares of Common Stock payable in (a) cash in excess of the specified amount, (b) securities of another company, or (c) any other type of securities (other than Common Stock), rights, warrants or other assets, (3) an event is announced that if consummated would result in a specified extraordinary event (including certain mergers, as well as certain events involving our nationalization or delisting of the Common Stock) or (4) certain other events of default or termination events occur, including, among other things, any material misrepresentation made in connection with such Forward Contract, our bankruptcy or a change in law (each as more fully described in each Forward Contract).

Item 8.01 Other Events.

Issuance of \$250 million of First Mortgage Bonds

On March 28, 2013, we expect to settle the issuance and sale of \$250,000,000 in aggregate principal amount of our First Mortgage Bonds, 4.10% Series due 2043 (the "Bonds"), pursuant to an underwriting agreement dated March 21, 2013 with BNY Mellon Capital Markets, LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated as representatives of the several underwriters listed therein, which is filed as Exhibit 1.2 hereto. The Bonds will be a separate series of securities issued and secured by the Mortgage and Deed of Trust, dated as of July 1, 1939, between us and the Bank of New York Mellon Trust Company, N.A. (as successor to Harris Trust and Savings Bank), as trustee (the "Mortgage"), as supplemented and amended by forty-two indentures supplemental thereto, in addition to the forty-second supplemental (reopening) indenture (together, the "Supplemental Indentures"), and as will be further supplemented and amended by a forty-third supplemental indenture thereto (together with the Mortgage and the Supplemental Indentures, the "Amended Mortgage"), the form of which is filed as Exhibit 4.1 hereto.

We will pay interest on the Bonds on April 1 and October 1 of each year, beginning on October 1, 2013. Interest on the Bonds accrues from and including March 28, 2013 at a rate of 4.10% per year. The Bonds will mature on April 1, 2043. Prior to October 1, 2042, we may redeem the Bonds, in whole at any time, or in part from time to time, at a redemption price equal to the greater of: (a) 100% of the principal amount redeemed, plus accrued and unpaid interest on those Bonds to the redemption date, or (b) as determined by the quotation agent, the sum of the present values of the remaining scheduled payments of principal and interest on the Bonds to be redeemed (not including any portion of payments of interest accrued as of the redemption date) discounted to the redemption date on a semi-annual basis at the adjusted treasury rate plus 15 basis points, plus accrued and unpaid interest on those Bonds to the redemption date. On or after October 1, 2042, we may redeem the Bonds, in whole at any time, or in part from time to time, at a redemption price equal to 100% of the principal amount redeemed, plus accrued and unpaid interest on those Bonds to the redemption date. The Bonds will be secured equally with all other bonds outstanding or hereafter issued under the Mortgage. The Bonds will be issued in minimum denominations of \$2,000 and in integral multiples of \$1,000 in excess thereof.

The Bonds are being offered pursuant to the Registration Statement. The foregoing description of the Bonds and the Amended Mortgage is qualified by reference to the full text of the Amended Mortgage, which is filed as Exhibit 4(a) and Exhibit 4(b) to our Registration Statement No. 33-21739, Exhibit 4(o), Exhibit 4(p) and Exhibit 4(q) to our Annual Report on Form 10-K for the year ended December 1, 1992, Exhibit 4(r) to our Registration Statement No. 33-50069, Exhibit 4(s) to our Annual Report on Form 10-K for the year ended December 31, 1994, Exhibit 4(v) to our Annual Report on Form 10-K for the year ended December 31, 2000, Exhibit 4.1 to our Quarterly Report on Form 10-Q for the period ended March 31, 2002, Exhibits 4.1, 4.2 and 4.3 to our Current Report on Form 8-K filed on January 18, 2005, Exhibit 4.1 to our Current Report on Form 8-K filed on June 30, 2005, Exhibit 4.16 to our Current Report on Form 8-K filed on May 16, 2007, Exhibit 4.1 to our Current Report on Form 8-K filed on November 24, 2008, Exhibit 4.1 to our Current Report on Form 8-K filed on February 28, 2012, Exhibit 4.1 to our Current Report on Form 8-K filed on May 16, 2012 and Exhibit 4.1 hereto, all of which are incorporated by reference herein.

Direct Stock Purchase Plan

On March 21, 2013, we filed a prospectus relating to 2,362,951 shares (the "Shares") of our Common Stock, that may be offered for sale pursuant to our direct stock purchase plan (the "Plan"). The Plan has previously been in use, and 1,000,000 shares are being added to the Plan in connection with the prospectus. The Shares have been registered under the Securities Act of 1933, as amended, pursuant to the Registration Statement.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit Number	Description
1.1	Sales Agency Financing Agreement, dated March 21, 2013, with BNY Mellon Capital Markets, LLC and The Bank of New York Mellon
1.2	Underwriting Agreement, dated as of March 21, 2013, among Westar Energy, Inc. and BNY Mellon Capital Markets, LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated
4.1	Form of Forty-Third Supplemental Indenture, dated as of March 28, 2013, by and between Westar Energy, Inc. and The Bank of New York Mellon Trust Company, N.A., as successor to Harris Trust and Savings Bank
5.1	Opinion of Larry D. Irick regarding the legality of the First Mortgage Bonds
5.2	Opinion of Larry D. Irick regarding the legality of the common stock
5.3	Opinion of Larry D. Irick regarding the legality of the common stock
10.1	Master Confirmation for Forward Stock Sale Transactions, dated March 21, 2013, between Westar Energy, Inc. and The Bank of New York Mellon
23.1	Consent of Larry D. Irick (contained in Exhibit 5.1)
23.2	Consent of Larry D. Irick (contained in Exhibit 5.2)
23.3	Consent of Larry D. Irick (contained in Exhibit 5.3)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

WESTAR ENERGY, INC.

Date: March 22, 2013

By: /s/ Larry D. Irick

Name: Larry D. Irick

Title: Vice President, General Counsel and
Corporate Secretary

INDEX TO EXHIBITS

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Sales Agency Financing Agreement

Sales Agency Financing Agreement (this “**Agreement**”), dated as of March 21, 2013 by and among WESTAR ENERGY, INC., a Kansas corporation (the “**Company**”), BNY MELLON CAPITAL MARKETS, LLC, a registered broker-dealer organized under the laws of New York (in its capacity as agent for the Company in connection with the offering and sale of any Issuance Shares hereunder, “**BNYMCM**” and in its capacity as agent for the Forward Purchaser in connection with the offering and sale of any Forward Hedge Shares hereunder, the “**Forward Seller**”) and THE BANK OF NEW YORK MELLON (as counterparty under any Forward Contract, the “**Forward Purchaser**”).

WITNESSETH:

WHEREAS, the Company has authorized and proposes to issue (in the case of any Issuance Shares), offer and sell in the manner contemplated by this Agreement Common Shares with an aggregate Sales Price of up to \$500,000,000 (or, if fewer, the lesser of (x) aggregate amount of Common Shares registered under the Registration Statement (as defined below) and (y) 25,229,267 (subject to adjustment for share splits, share combinations and share dividends)) upon the terms and subject to the conditions contained herein;

WHEREAS, BNYMCM has been appointed by the Company as its agent to sell the Issuance Shares and agrees with the Company to use its commercially reasonable efforts to sell the Issuance Shares to be offered and sold by the Company upon the terms and subject to the conditions contained herein;

WHEREAS, the Forward Seller has been appointed by the Forward Purchaser as its agent to sell the Forward Hedge Shares and agrees with the Company and the Forward Purchaser to use its commercially reasonable efforts to sell the Forward Hedge Shares to be borrowed by the Forward Purchaser and offered by the Company upon the terms and subject to the conditions contained herein; and

WHEREAS, the Company and BNYMCM, as successor to BNY Capital Markets, Inc., wish to terminate the Sales Agency Financing Agreement, dated as of April 2, 2010, between the Company and BNY Capital Markets, Inc. (the “**Prior Agreement**”).

NOW THEREFORE, in consideration of the premises, representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. Certain Definitions. For purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the following respective meanings:

“Actual Sold Forward Amount” means, for any Forward Hedge Selling Period for any Forward, the number of Forward Hedge Shares that the Forward Seller has sold during such Forward Hedge Selling Period.

“Actual Sold Issuance Amount” means, for any Issuance Selling Period for any Issuance, the number of Issuance Shares that BNYMCM has sold during such Issuance Selling Period.

“Affiliate” of a Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first-mentioned Person. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Applicable Time” means the time of sale of any Common Shares pursuant to this Agreement.

“Base Prospectus” has the meaning set forth in Section 3.01.

“Commission” means the U.S. Securities and Exchange Commission.

“Commitment Period” means the period commencing on the date of this Agreement and expiring on the earliest to occur of (x) the date on which BNYMCM and the Forward Seller, collectively, shall have sold the Maximum Program Amount pursuant to this Agreement, (y) the date this Agreement is terminated pursuant to Article 7 and (z) the third anniversary of the date of this Agreement.

“Common Stock” shall mean the Company’s common stock, \$5.00 par value per share.

“Common Shares” shall mean Issuance Shares and Forward Hedge Shares issued (in the case of Issuance Shares) or borrowed (in the case of Forward Hedge Shares) and offered and sold by BNYMCM or the Forward Seller, as the case may be, under this Agreement.

“Controlling Persons” has the meaning set forth in Section 6.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“FERC” has the meaning set forth in Section 5.01(j)(viii).

“Floor Price” means the minimum price set by the Company in the Transaction Notice below which BNYMCM (in the case of an Issuance) or the Forward Seller (in the case of a Forward), as the case may be, shall not sell Issuance Shares or Forward Hedge Shares, as the case may be, during any Selling Period, which may be adjusted by the Company at any time during such Selling Period and which in no event shall be less than \$5.00 without the prior written consent of BNYMCM, which may be withheld in BNYMCM’s sole discretion; *provided, however,* that notwithstanding anything herein to the contrary, no such adjustment will be effective until one of the individuals named on Schedule 1 hereto with respect to BNYMCM has been provided written notice of such adjustment from the Company.

“Forward” means each occasion on which the Company elects to exercise its right to deliver a Transaction Notice specifying that it relates to a “Forward” and requiring the Forward Seller to use its commercially reasonable efforts to sell, on behalf of the Company, the Forward Hedge Shares as specified in such Transaction Notice, subject to the terms and conditions of this Agreement.

“Forward Contract” for each Forward, the contract evidencing such Forward between the Company and the Forward Purchaser, which shall be comprised of the Master Forward Confirmation and the Supplemental Confirmation (as defined in the Master Forward Confirmation) for such Forward.

“Forward Date” means any Trading Day during the Commitment Period that a Transaction Notice specifying that it relates to a “Forward” is deemed delivered pursuant to Section 2.03(b) hereof.

“Forward Hedge Amount” means the aggregate Sales Price of the Forward Hedge Shares to be sold by the Forward Seller with respect to any Forward as specified in the Transaction Notice for such Forward, which may not exceed \$50,000,000 without the prior written consent of the Forward Seller, which consent may be withheld in the Forward Seller’s sole discretion.

“Forward Hedge Price” means, for any Forward Hedge Selling Period, the volume-weighted average of the Sales Prices per share for all Forward Hedge Shares sold during such Forward Hedge Selling Period, *less* Forward Hedge Selling Commission for such Forward Hedge Selling Period.

“Forward Hedge Selling Commission” means, for any Forward Hedge Selling Period, 1.0% of the volume-weighted average of the Sales Prices per share for all Forward Hedge Shares sold during such Forward Hedge Selling Period.

“Forward Hedge Selling Period” means the period of one to twenty consecutive Trading Days (as determined by the Company in the Company’s sole discretion and specified in the applicable Transaction Notice specifying that it relates to a “Forward”) following the Trading Day on which such Transaction Notice is delivered or deemed to be delivered pursuant to Section 2.03(b) hereof; provided that notwithstanding the foregoing or anything in this Agreement to the contrary, if, as of any Trading Day in any Forward Hedge Selling Period, the Forward Seller has completed the sale of Forward Hedge Shares (for any reason including, but not limited to, in order to avoid the aggregate Sales Price of the Forward Hedge Shares sold by the Forward Seller during such Forward Hedge Selling Period exceeding the Forward Hedge Amount specified in the Transaction Notice for the related Forward as required by this Agreement), then such Trading Day shall be the last Trading Day of such Forward Hedge Selling Period.”

“Forward Hedge Settlement Date” means the third (3rd) Trading Day immediately following the sale of any Forward Hedge Shares pursuant to this Agreement.

“Forward Hedge Shares” means all shares of Common Stock borrowed by the Forward Purchaser and offered and sold by the Forward Seller in connection with any Forward that has occurred or may occur in accordance with the terms and conditions of this Agreement.

“free writing prospectus” has the meaning set forth in Section 3.01.

“Indemnified Party” has the meaning set forth in Section 6.03.

“Indemnifying Party” has the meaning set forth in Section 6.03.

“Issuance” means each occasion on which the Company elects to exercise its right to deliver a Transaction Notice specifying that it relates to an “Issuance” and requiring BNYMCM to use its commercially reasonable efforts to sell, on behalf of the Company, the Issuance Shares as specified in such Transaction Notice, subject to the terms and conditions of this Agreement.

“Issuance Amount” means the aggregate Sales Price of the Issuance Shares to be sold by BNYMCM with respect to any Issuance as specified in the Transaction Notice for such Issuance, which may not exceed \$50,000,000 without the prior written consent of BNYMCM, which may be withheld in BNYMCM’s sole discretion.

“Issuance Date” means any Trading Day during the Commitment Period that a Transaction Notice specifying that it relates to an “Issuance” is deemed delivered pursuant to Section 2.03(b) hereof.

“Issuance Price” means, for any Issuance Selling Period, the volume-weighted average of the Sales Prices per share for all Issuance Shares sold during such Issuance Selling Period, *less* the Issuance Selling Commission for such Issuance Selling Period.

“Issuance Selling Commission” means, for any Issuance Selling Period, 1.0% of the volume-weighted average of the Sales Prices per share for all Issuance Shares sold during such Issuance Selling Period.

“Issuance Selling Period” means the period of one to twenty consecutive Trading Days (as determined by the Company in the Company’s sole discretion and specified in the applicable Transaction Notice specifying that it relates to an “Issuance”) following the Trading Day on which such Transaction Notice is delivered or deemed to be delivered pursuant to Section 2.03(b) hereof.

“Issuance Settlement Date” means the third (3rd) Trading Day immediately following the sale of any Issuance Shares pursuant to this Agreement.

“Issuance Shares” means all shares of Common Stock issued or issuable by the Company and sold by BNYMCM pursuant to any Issuance that has occurred or may occur in accordance with the terms and conditions of this Agreement.

“issuer free writing prospectus” has the meaning set forth in Section 3.01.

“KCC” has the meaning set forth in Section 5.01(j)(viii).

“Material Subsidiary” means Kansas Gas and Electric Company, a Kansas Corporation.

“Master Forward Confirmation” means the “Master Confirmation for Forward Stock Sale Transactions” dated as of March 21, 2013 by and between the Company and the Forward Purchaser.

“Maximum Program Amount” means Common Shares with an aggregate Sales Price of \$500,000,000 (or, if fewer, the lesser of (x) aggregate amount of Common Shares registered under the Registration Statement and (y) 25,229,267 (subject to adjustment for share splits, share combinations and share dividends)).

“Person” means an individual or a corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

“Principal Market” means the New York Stock Exchange.

“Prospectus” has the meaning set forth in Section 3.01.

“Prospectus Supplement” has the meaning set forth in Section 3.01.

“Registration Statement” has the meaning set forth in Section 3.01.

“SAFE Supplement” has the meaning set forth in Section 3.01.

“Sales Price” means, for each Forward or each Issuance hereunder, the actual sale execution price of each Forward Share or Issuance Share, as the case may be, sold by the Forward Seller or BNYMCM, as the case may be, on the Principal Market hereunder in the case of ordinary brokers’ transactions, or as otherwise agreed by the parties in other methods of sale.

“Securities Act” means the Securities Act of 1933, as amended.

“Selling Period” means any Forward Hedge Selling Period or any Issuance Selling Period.

“Settlement Date” means any Forward Hedge Settlement Date or any Issuance Settlement Date.

“Subsidiary” means any Person (other than a natural person), at least a majority of the outstanding Voting Stock of which is owned by the Company, by one or more Subsidiaries or by the Company and one or more Subsidiaries.

“Trading Day” means any day which is a trading day on the New York Stock Exchange, other than a day on which trading is scheduled to close prior to its regular weekday closing time.

“Transaction” means any Issuance or any Forward.

“Transaction Date” means any Issuance Date or any Forward Date.

“Transaction Notice” means a written notice to BNYMCM or the Forward Seller, as the case may be, delivered in accordance with this Agreement in the form attached hereto as Exhibit A.

“Voting Stock” of any Person as of any date means the capital stock of such Person that is at the time entitled to vote in the election of the board of directors (or equivalent governing body) of such Person.

ARTICLE 2 ISSUANCES AND FORWARDS

Section 2.01. Transactions. (a) (i) Upon the terms and subject to the conditions of this Agreement, the Company may issue Issuance Shares through BNYMCM, and BNYMCM shall use its commercially reasonable efforts to sell Issuance Shares with an aggregate Sales Price of up to the Maximum Program Amount, *less* the aggregate Sales Price for any Forward Hedge Shares previously sold by the Forward Seller hereunder, based on and in accordance with such number of Transaction Notices, each specifying that it relates to an “Issuance,” as the Company shall choose to deliver during the Commitment Period until the aggregate Sales Price of the Issuance Shares sold under this Agreement, *plus* the aggregate Sales Prices for any Forward Hedge Shares previously sold by the Forward Seller under this Agreement equals the Maximum Program Amount, or this Agreement is otherwise terminated. Subject to the foregoing and the other terms and conditions of this Agreement, upon the delivery of a Transaction Notice specifying that it relates to an “Issuance,” and unless the sale of the Issuance Shares described therein has been suspended or otherwise terminated in accordance with the terms of this Agreement, BNYMCM will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Shares up to the amount specified into the Principal Market, and otherwise in accordance with the terms of such Transaction Notice. BNYMCM will provide written confirmation to the Company no later than the opening of the Trading Day next following the Trading Day on which it has made sales of Issuance Shares hereunder setting forth the portion of the Actual Sold Issuance Amount for such Trading Day, the corresponding Sales Price and the Issuance Price payable to the Company in respect thereof. The Company acknowledges and agrees that (i) there can be no assurance that BNYMCM will be successful in selling Issuance Shares and (ii) BNYMCM will incur no liability or obligation to the Company or any other Person if it does not sell Issuance Shares for any reason other than a failure by BNYMCM to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Shares as required under this Section 2.01. In acting hereunder, BNYMCM will be acting as agent for the Company and not as principal.

(ii) In addition, upon the terms and subject to the conditions of this Agreement, the Forward Purchaser may borrow, offer and sell Forward Hedge Shares through the Forward Seller to hedge each Forward, and the Forward Seller shall use its commercially reasonable efforts to sell on behalf of the Company, Forward Hedge Shares with an aggregate Sales Price of up to the Maximum Program Amount, *less* the aggregate Sales Price for any Issuance Shares previously sold by BNYMCM hereunder, based on and in accordance with such number of Transaction Notices, each specifying that it relates to a “Forward,” as the Company shall choose to deliver during the Commitment Period until the aggregate Sales Price of the Forward Hedge Shares sold under this Agreement, *plus* the aggregate Sales Prices for any Issuance Shares previously sold by

BNYMCM under this Agreement, equals the Maximum Program Amount or this Agreement is otherwise terminated. Subject to the foregoing and the other terms and conditions of this Agreement, upon the delivery of a Transaction Notice specifying that it relates to a "Forward," and unless the sale of the Forward Hedge Shares described therein has been suspended or otherwise terminated in accordance with the terms of this Agreement, the Forward Purchaser will use its commercially reasonable efforts to borrow Forward Hedge Shares up to the amount specified and the Forward Seller will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell, on behalf of the Company, such Forward Hedge Shares into the Principal Market, and otherwise in accordance with the terms of such Transaction Notice. The Forward Seller will provide written confirmation to the Company and the Forward Purchaser no later than the opening of the Trading Day next following each Trading Day on which it has made sales of Forward Hedge Shares hereunder setting forth the portion of the Actual Sold Forward Amount sold on such Trading Day, the corresponding Sales Price and the Forward Hedge Price payable to the Forward Purchaser in respect thereof. Each of the Company and the Forward Purchaser acknowledges and agrees that (i) there can be no assurance that the Forward Purchaser will be successful in borrowing or that the Forward Seller will be successful in selling Forward Hedge Shares; (ii) the Forward Seller will incur no liability or obligation to the Company, the Forward Purchasers or any other Person if it does not sell Forward Hedge Shares borrowed by the Forward Purchaser for any reason other than a failure by the Forward Seller to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell, on behalf of the Company, such Forward Hedge Shares as required under this Section 2.01 and (iii) the Forward Purchaser will incur no liability or obligation to the Company, the Forward Seller or any other Person if it does not borrow Forward Hedge Shares for any reason other than a failure by the Forward Purchaser to use its commercially reasonable efforts to borrow such Forward Hedge Shares as required under this Section 2.01. In acting hereunder, the Forward Seller will be acting as agent for the Forward Purchaser and not as principal. No later than the fifth business day immediately following the last Trading Day of each Forward Hedge Selling Period (or, if earlier, the fifth business day immediately after the date on which any Forward Hedge Selling Period is suspended or terminated pursuant to Section 5.02), the Forward Purchaser shall execute and deliver to the Company a "Supplemental Confirmation" in respect of the Forward for such Forward Hedge Selling Period, which "Supplemental Confirmation" shall set forth the "Trade Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the last Trading Day of such Forward Hedge Selling Period), the "Effective Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date one Settlement Cycle (as such term is defined in the Master Forward Confirmation) immediately following the last Trading Day of such Forward Hedge Selling Period), the initial number of "Base Shares" for such Forward (which shall be the Actual Sold Forward Amount for such Forward Hedge Selling Period), the "Maturity Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date that follows the last Trading Day of such Forward Hedge Selling Period by the number of months set forth opposite the caption "Term" in the Transaction Notice for such Forward), the number of Forward Hedge Shares sold on each Trading Day of the Forward Hedge Selling Period for such Forward, the Sales Prices of the Forward Hedge Shares sold on each Trading Day of the Forward Hedge Selling Period for such Forward, the "Forward Price Reduction Dates" for such Forward (which shall be each of the dates set forth below the caption "Forward Price Reduction Dates" in the Transaction Notice for such Forward) and the "Forward Price Reduction Amounts"

corresponding to such Forward Price Reduction Dates (which shall be each amount set forth opposite each “Forward Price Reduction Date” and below the caption “Forward Price Reduction Amounts” in the Transaction Notice for such Forward) and the “Initial Forward Price” for such Forward. Notwithstanding anything herein to the contrary, (x) in no event shall the Forward Purchaser be required to borrow any Forward Hedge Shares to the extent it (or its affiliate) would incur a stock loan cost of more than 60 basis points per annum and (y) the Forward Purchaser shall in no event be deemed to have failed to use its commercially reasonable efforts to borrow any Forward Hedge Shares if the Forward Purchaser fails to borrow any Forward Hedge Shares because it (or its affiliate) would incur a stock loan cost of more than 60 basis points per annum. Notwithstanding anything herein to the contrary, no Transaction Notice that specifies that it relates to a “Forward” shall specify a “Term” that exceeds 18 months.

(b) **Method of Offer and Sale.** The Common Shares may be offered and sold by any method or payment permitted by law deemed to be an “at the market” offering as defined in Rule 415 of the Securities Act, including sales made directly on the Principal Market or sales made to or through a market maker or through an electronic communications network.

(c) **Transactions.** Upon the terms and subject to the conditions set forth herein, on any Trading Day as provided in Section 2.03(b) hereof during the Commitment Period on which the conditions set forth in Section 5.01 hereof have been satisfied, the Company may exercise an Issuance by the delivery of a Transaction Notice specifying that it relates to an “Issuance,” executed by an authorized officer of the Company, to BNYMCM. The number of Issuance Shares that BNYMCM shall use its commercially reasonable efforts to sell, on behalf of the Company, pursuant to such Issuance shall have an aggregate Sales Price equal to the Issuance Amount for such Issuance. Each sale of Issuance Shares will be settled as between BNYMCM and the Company on each applicable Issuance Settlement Date following the relevant Issuance Date.

Upon the terms and subject to the conditions set forth herein, on any Trading Day as provided in Section 2.03(b) hereof during the Commitment Period on which the conditions set forth in Section 5.01 hereof have been satisfied, the Company may exercise a Forward by the delivery of a Transaction Notice specifying that it relates to a “Forward,” executed by an authorized officer of the Company, to the Forward Seller and the Forward Purchaser. The number of Forward Hedge Shares that the Forward Purchaser shall use its commercially reasonable efforts to borrow and that the Forward Seller shall use its commercially reasonable efforts to sell, on behalf of the Company, pursuant to such Forward shall have an aggregate Sales Price equal to the Forward Hedge Amount for such Forward. Each sale of Forward Hedge Shares will be settled as between the Forward Seller and the Forward Purchaser on each applicable Forward Hedge Settlement Date following the relevant Forward Date.

Section 2.02. Effectiveness. The effectiveness of this Agreement (the “**Closing**”) shall be deemed to take place concurrently with the execution and delivery of this Agreement by the parties hereto and completion of the closing transactions set forth in the immediately following sentence. At the Closing, the following transactions shall take place, each of which shall be deemed to occur simultaneously with the Closing: (i) the Company shall deliver to BNYMCM and the Forward Seller a certificate executed by an authorized officer of the Company, signing in such capacity, dated the date of the Closing (A) certifying that attached thereto are true and

complete copies of the resolutions duly adopted by the Board of Directors or a duly authorized committee thereof of the Company authorizing the execution and delivery of this Agreement, the Master Forward Confirmation and the consummation of the transactions contemplated hereby and thereby, which authorization shall be in full force and effect on and as of the date of such certificate and (B) certifying and attesting to the office, incumbency, due authority and specimen signatures of each Person who executed this Agreement and the Master Forward Confirmation for or on behalf of the Company; (ii) the Company shall deliver to BNYMCM and the Forward Seller a certificate executed by the Company dated the date of the Closing, confirming that the representations and warranties of the Company contained in this Agreement and the Master Forward Confirmation are true and correct and that the Company complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder on or prior to the date of Closing; (iii) Larry D. Irick, Senior Vice President, General Counsel and Corporate Secretary of the Company, and Davis Polk & Wardwell LLP, special counsel to the Company shall each deliver to BNYMCM and the Forward Seller an opinion, dated the date of the Closing and addressed to BNYMCM and the Forward Seller as to the matters set forth in Sections 5.01(j) and 5.01(k), respectively; (iv) Deloitte & Touche LLP shall deliver to BNYMCM and the Forward Seller a letter of the kind described in Section 5.01(f), dated the date of Closing, in form and substance satisfactory to BNYMCM and the Forward Seller; and (v) the Company shall pay the expenses set forth in Section 9.02(ii), (iv) and (viii) hereof by wire transfer to the account designated by BNYMCM and the Forward Seller in writing prior to the Closing.

Section 2.03. Mechanics of Issuances. (a) On any Trading Day during the Commitment Period, the Company may deliver a Transaction Notice to BNYMCM (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward), subject to the satisfaction of the conditions set forth in Section 5.01; *provided, however,* that (1) the Issuance Amount or Forward Hedge Amount, as the case may be, for each Transaction as designated by the Company in the applicable Transaction Notice shall in no event exceed \$50,000,000 without the prior written consent of BNYMCM or the Forward Seller, as the case may be, which may be withheld in BNYMCM's or the Forward Seller's sole discretion, as applicable, and (2) notwithstanding anything in this Agreement to the contrary, neither the Forward Purchaser, BNYMCM nor the Forward Seller shall have any further obligations with respect to any Transaction Notice if and to the extent the aggregate Sales Price of the Common Shares sold pursuant thereto, together with the aggregate Sales Price of the Common Shares previously sold under this Agreement, shall exceed the Maximum Program Amount.

(b) **Delivery of Transaction Notice.** A Transaction Notice shall be deemed delivered on the Trading Day that it is received by facsimile or otherwise (and the Company confirms such delivery by e-mail notice or by telephone (including voicemail message)) by BNYMCM (in the case of a Transaction Notice specifying that it relates to an "Issuance") or by the Forward Seller and the Forward Purchaser (in the case of a Transaction Notice specifying that it relates to a "Forward"). No Transaction Notice may be delivered other than on a Trading Day during the Commitment Period, no Transaction Notice may be delivered during an Issuance Selling Period or Forward Hedge Selling Period specified in a previously delivered Transaction Notice, no more than one Transaction Notice may be delivered on any single Trading Day and no Transaction Notice specifying that it relates to a "Forward" may be delivered if an ex-dividend date or ex-date, as applicable for any dividend or distribution payable by the Company on the Common Stock is scheduled to occur during the period from, but excluding, the first scheduled Trading Day of the related Forward Hedge Selling Period to, and including, the last scheduled Trading Day of such Forward Hedge Selling Period.

(c) Floor Price. Neither BNYMCM nor the Forward Seller shall sell Issuance Shares or Forward Hedge Shares, as the case may be, below the Floor Price during any Selling Period. The Floor Price specified in any Transaction Notice may be adjusted by the Company at any time during any Selling Period upon notice to BNYMCM and confirmation to the Company.

(d) *Reserved.*

(e) Trading Guidelines. Each of BNYMCM and the Forward Seller may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell Common Stock for its own account while this Agreement is in effect *provided* that (i) no such purchase or sales shall take place while a Transaction Notice is in effect (except to the extent (x) BNYMCM may engage in sales of Issuance Shares purchased or deemed purchased from the Company as a “riskless principal” or in a similar capacity, (y) the Forward Seller may engage in sales of Forward Hedge Shares borrowed by the Forward Seller, as agent for the Forward Purchaser), and (z) nothing in this Agreement shall prohibit the Forward Purchaser or its affiliates from engaging in such transactions as are necessary or desirable to unwind the Forward Purchaser’s hedge in connection with any settlement under the Master Forward Confirmation), (ii) in no circumstances shall BNYMCM or the Forward Seller have a short position in the Common Stock for its own account and (iii) the Company shall not be deemed to have authorized or consented to any such purchases or sales by BNYMCM or the Forward Seller. Notwithstanding anything to the contrary, BNYMCM’s affiliates may make markets in the Common Stock or other securities of the Company, in connection with which they may buy and sell, as agent or principal, for long or short account, shares of Common Stock or other securities of the Company, at the same time BNYMCM or the Forward Seller is acting as agent pursuant to this Agreement.

Section 2.04. *Settlements.* (a) Subject to the provisions of Article 5, on or before each Issuance Settlement Date, the Company shall, or shall cause its transfer agent to, electronically transfer the Issuance Shares being sold by crediting the accounts designated by BNYMCM at the Depository Trust Company through its Deposit Withdrawal At Custodian System, or by such other means of delivery as may be mutually agreed upon by BNYMCM and the Company and, upon receipt of such Issuance Shares, which in all cases shall be freely tradable and transferable, BNYMCM shall deliver the related aggregate Issuance Price in same day funds delivered to an account designated by the Company prior to the relevant Issuance Settlement Date. If the Company defaults in its obligation to deliver Issuance Shares on an Issuance Settlement Date, the Company agrees that it will (i) hold BNYMCM harmless against any loss, claim, damage or expense (including, without limitation, penalties, interest and reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company, and (ii) pay to BNYMCM any Issuance Selling Commission to which it would otherwise have been entitled absent such default.

(b) Subject to the provisions of Article 5, on or before each Forward Hedge Settlement Date, the Forward Purchaser shall, or shall cause its transfer agent to, electronically transfer the Forward Hedge Shares being sold by crediting the Forward Seller or its designee’s account at the Depository Trust Company through its Deposit Withdrawal At Custodian System, or by such

other means of delivery as may be mutually agreed upon by the Forward Seller and the Forward Purchaser and, upon receipt of such Forward Hedge Shares, which in all cases shall be freely tradable and transferable, the Forward Seller shall deliver the related aggregate Forward Hedge Price in same day funds delivered to an account designated by the Forward Purchaser prior to the relevant Forward Hedge Settlement Date.

Section 2.05. Material Non-Public Information. Notwithstanding any other provision of this Agreement, BNYMCM shall not be obligated to sell any Issuance Shares hereunder during any period in which it reasonably believes that the Company is, or could be deemed to be, in possession of material non-public information.

Section 2.06. Suspension of Sales. If any party believes that the provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act (applicable to securities with an average daily trading volume of at least \$1,000,000 issued by an issuer whose common equity securities have a public float value of at least \$150,000,000) are not satisfied with respect to the Common Shares or the Company, as the case may be, such party shall, upon forming belief, promptly notify the other party, and sales of Common Shares under this Agreement shall be suspended until such later date as the parties mutually agree.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to, and agrees with, BNYMCM, the Forward Purchaser and the Forward Seller that as of the date of Closing, each Transaction Date and each Settlement Date:

Section 3.01. Registration. The Company has filed with the Commission a registration statement including a prospectus relating to the Common Stock and has filed with, or transmitted for filing to, or shall after the date of this Agreement file with or transmit for filing to, the Commission a prospectus supplement (the “**Prospectus Supplement**”) pursuant to Rule 424 under the Securities Act, specifically relating to the Common Shares. The term “**Registration Statement**” means the registration statement as amended to the relevant Transaction Date including any additional registration statement filed by the Company pursuant to Rule 462(b). The term “**Base Prospectus**” means the prospectus included in the Registration Statement. The term “**Prospectus**” means the Base Prospectus together with the Prospectus Supplement and any pricing supplement relating to a particular offer and sale of the Common Shares (each, a “**SAFE Supplement**”). The term “**free writing prospectus**” has the meaning set forth in Rule 405 under the Securities Act. The term “**issuer free writing prospectus**” has the meaning set forth in Rule 433 under the Securities Act. As used herein, the terms “Registration Statement,” “Base Prospectus,” and “Prospectus” shall include, in each case, the documents, if any, incorporated by reference therein. The terms “supplement,” “amendment” and “amend” as used herein with respect to the Registration Statement, Base Prospectus or Prospectus shall include all documents deemed to be incorporated by reference therein that are filed subsequent to the date of the Base Prospectus by the Company with the Commission pursuant to the Exchange Act.

Section 3.02. Incorporated Documents. Each document filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Registration Statement or the Prospectus complied or will comply when so filed in all material respects with the Exchange Act and the rules and regulations of the Commission thereunder.

Section 3.03. Registration Statement; Prospectus; Free Writing Prospectus. The Registration Statement is an “automatic shelf registration statement” as defined in Rule 405 under the Securities Act and has become effective under the Securities Act; the Company has not received any notice from the Commission objecting to the use of the automatic shelf registration form; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose are pending before or threatened by the Commission; the Company is a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act and otherwise meets the requirements for the use of the Registration Statement form. Each of the Registration Statement and the Prospectus comply in all material respects with the Securities Act and the rules and regulations of the Commission. Each part of the Registration Statement, when such part became effective, did not contain, and each such part, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and the Prospectus, as of its date, did not contain, or as amended or supplemented, if applicable, as of each Applicable Time and each Settlement Date will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the foregoing representations and warranties do not apply to statements or omissions in the Registration Statement or the Prospectus or any amendment or supplement thereto based upon information furnished to the Company in writing by BNYMCM expressly for use therein. The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. The Company has not used, authorized, approved or referred to any offer relating to the Common Shares that would constitute a free writing prospectus other than any written communications furnished in advance to, and consented to by, BNYMCM. Any such free writing prospectus as of its issue date complied in all material respects with the requirements of the Securities Act and the rules and regulations thereunder and was filed with the Commission in accordance with the Securities Act (to the extent required pursuant to Rule 433(d) thereunder).

Section 3.04. Changes. There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business, or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Prospectus, as amended or supplemented, if applicable, as of each Transaction Date and Settlement Date, and as of each Applicable Time since the most recent Transaction Date.

Section 3.05. No Conflicts. The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement and the Master Forward Confirmation will not contravene any provision of applicable law or the articles of incorporation or by-laws of the Company or any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its consolidated subsidiaries, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any of its consolidated subsidiaries, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the

performance by the Company of its obligations under this Agreement except such as may be required by the securities or blue sky laws of the various states in connection with the offer and sale of the Common Shares.

Section 3.06. No Defaults. Neither the Company nor any of its subsidiaries is (a) in violation of its articles of incorporation or by-laws (or similar organizational documents), (b) in default in the performance or observance of any obligation, covenant or condition contained in any contract or (c) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except in the case of clause (b) or (c), to the extent such violation or default would not have a material adverse effect.

Section 3.07. Legal Proceedings. There are no legal or governmental proceedings pending or threatened to which the Company or any of its consolidated subsidiaries is a party or to which any of the properties of the Company or any of its consolidated subsidiaries is subject that are required to be described in the Registration Statement and the Prospectus and are not so described or any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement and the Prospectus or to be filed or incorporated by reference as exhibits to the Registration Statement that are not described, filed or incorporated as required.

Section 3.08. Consents. Each of the Company and its consolidated subsidiaries has all necessary consents, authorizations, approvals, orders, certificates, licenses and permits of and from, and has made all declarations and filings with, all federal, state, local and other governmental authorities, all self-regulatory organizations and all courts and other tribunals, to own, lease, license and use its properties and assets and to conduct its business in the manner described in the Prospectus, except to the extent that the failure to obtain or file would not have a material adverse effect on the Company and its consolidated subsidiaries, taken as a whole.

Section 3.09. Financial Statements. The consolidated historical financial statements and schedules of the Company and its consolidated subsidiaries included in the Registration Statement and the Prospectus present fairly in all material respects the financial condition, results of operations and cash flows of the Company as of the dates and for the periods indicated, comply as to form with the applicable accounting requirements of the Securities Act and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as otherwise noted therein). The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the SEC's rules and guidelines applicable thereto.

Section 3.10. Internal Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (C) access to assets is permitted only in accordance with management's general or specific authorization; (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and

appropriate action is taken with respect to any differences and (E) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the SEC's rules and guidelines applicable thereto.

Section 3.11. ***Disclosure Controls.*** The Company and its subsidiaries maintain "disclosure controls and procedures" (as such term is defined in Rule 13a-15(e) under the Exchange Act); such disclosure controls and procedures are effective.

Section 3.12. ***Environmental Matters.*** To the Company's knowledge and except as set forth in or contemplated in the Prospectus, the Company and its Material Subsidiary have not received written notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except where such liability would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Company and its consolidated subsidiaries, taken as a whole.

Section 3.13. ***Pre-emptive; Registration Rights.*** The holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for any Issuance Shares; and, except as set forth in the Prospectus, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding and there are no outstanding securities or instruments of the Company containing anti-dilution or similar provisions that will be triggered by the issuance of the Common Shares as described in this Agreement. No Person has the right, contractual or otherwise, to cause the Company to name such Person as a selling securityholder in the Registration Statement or the Prospectus. The Common Shares (in an amount up to the Maximum Program Amount) have been duly and validly authorized by all necessary corporate action on the part of the Company.

Section 3.14 ***Finder's Fees.*** The Company has not incurred (directly or indirectly) nor will it incur, directly or indirectly, any liability for any broker's, finder's, financial advisor's or other similar fee, charge or commission in connection with this Agreement or the transactions contemplated hereby.

Section 3.15. ***Officer's Certificate.*** Any certificate signed by any officer of the Company and delivered to the Forward Purchaser, BNYMCM, the Forward Seller or to counsel for the Forward Purchaser, BNYMCM or the Forward Seller in connection with a Transaction shall be deemed a representation and warranty by the Company to the Forward Purchaser, BNYMCM or the Forward Seller, as the case may be, as to the matters covered thereby on the date of such certificate. Each delivery of a Transaction Notice and each delivery of Issuance Shares on an Issuance Settlement Date shall be deemed to be an affirmation to BNYMCM that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of the date of such Issuance Notice or Issuance Settlement Date, as the case may be, as though made at and as of each such date and time.

Section 3.16. Due Authorization of Issuance Shares. The Issuance Shares when issued and delivered to and paid for in accordance with the terms of this Agreement will be validly issued, fully paid and non assessable. The Company has an authorized capitalization as set forth in the Prospectus, and all of the issued shares of capital stock of the Company have been duly authorized and issued and are fully paid and non-assessable.

Section 3.17. Actively-Traded Security. Except under circumstances where the Company has provided BNYMCM with the notice required pursuant to Section 2.06 of this Agreement, the Common Stock is an “actively-traded security” exempted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of such rule.

ARTICLE 4 COVENANTS

The Company covenants and agrees during the term of this Agreement with BNYMCM and the Forward Purchaser as follows:

Section 4.01. Registration Statement and Prospectus. (a) To furnish to BNYMCM, without charge, a copy of the Registration Statement and two signed copies of any post-effective amendment thereto specifically relating to the Common Shares (including exhibits thereto and documents incorporated therein by reference) and, during the period mentioned in Section 4.01(e) below, as many copies of the Prospectus, any documents incorporated therein by reference and any supplements and amendments thereto as BNYMCM may reasonably request.

(b) To prepare, with respect to Common Shares to be sold pursuant to this Agreement, a SAFE Supplement with respect to such Common Shares in a form previously approved by BNYMCM and to file such SAFE Supplement pursuant to Rule 424(b) promulgated by the Commission under the Securities Act within the time period required thereby and to deliver such number of copies of each SAFE Supplement to each exchange or market on which such sales were effected, in each case unless delivery and filing of such a SAFE Supplement is not required by applicable law or by the rules and regulations of the Commission.

(c) To make no amendment or supplement to the Registration Statement or the Prospectus after the date of delivery of a Transaction Notice and on or prior to the related Settlement Date without providing BNYMCM prior notice thereof and a reasonable opportunity to review and comment thereon.

(d) To make no amendment or supplement to the Registration Statement or the Prospectus relating to the Common Shares without providing BNYMCM prior notice thereof and a reasonable opportunity to review and comment thereon.

(e) If, during such period after the first date of the public offering of the Common Shares during which in the opinion of counsel to BNYMCM or the Forward Seller, as the case may be, the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) under the Securities Act) is required by law to be delivered in connection with sales by BNYMCM or the Forward Seller, as the case may be, any event shall occur as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the

circumstances existing at the time, not misleading, forthwith to prepare and furnish, at its expense, to BNYMCM or the Forward Seller, as the case may be, on request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances existing at the time, be misleading.

Section 4.02. *Blue Sky*. To endeavor to qualify the Common Shares for offer and sale under the securities or Blue Sky laws of such U.S. jurisdictions as BNYMCM or the Forward Seller, as the case may be, shall reasonably request.

Section 4.03. *Rule 158*. To make generally available to the Company's security holders as soon as practicable an earnings statement covering the twelve month period beginning on the first day of the first fiscal quarter commencing after the date hereof, which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder (which may be accomplished by making generally available the Company's financial statements in the manner provided for by Rule 158 of the Securities Act).

Section 4.04. *Stand Off Agreement*. Without the written consent of BNYMCM, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any shares of Common Stock or securities convertible into or exchangeable for Common Stock (other than Common Shares hereunder), warrants or any rights to purchase or acquire, Common Stock during the period beginning on the first (1st) Trading Day immediately prior to the date on which any Transaction Notice is delivered to BNYMCM, the Forward Seller or the Forward Purchaser hereunder and ending on the first (1st) Trading Day immediately following the last Settlement Date with respect to Common Shares sold pursuant to such Transaction Notice; *provided, however,* that such consent will not be required in connection with the Company's issuance or sale of (i) Issuance Shares pursuant to any Transaction Notice (or the sale of Forward Hedge Shares by the Forward Seller, on behalf of the Company, pursuant to any Transaction Notice, if applicable), (ii) Common Stock, options to purchase shares of Common Stock or Common Stock issuable upon the exercise of options pursuant to any employee or director stock option, restricted stock unit or benefit plan (including dividend reinvestment thereunder), stock purchase or ownership plan or dividend reinvestment plan (but not shares in excess of plan limits in effect on the date hereof without giving effect to any waiver thereof) of the Company, (iii) Common Stock issuable upon conversion of securities or the exercise of warrants, options or other rights disclosed in the Company's Commission filings, (iv) Common Stock issuable as consideration in connection with acquisitions of business, assets or securities of other Persons or (v) Common Stock issuable by the Company upon settlement of any Forward Contract. For avoidance of doubt, this Section 4.04 shall not prohibit the sale of Common Stock by the Forward Purchaser.

Section 4.05. *Market Activities*. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Common Shares or (ii) sell, bid for or purchase the Common Shares, or pay anyone any compensation for soliciting purchases of the Common Shares other than BNYMCM or the Forward Purchaser; *provided, however* that this Section 4.05 shall not prohibit the Company from electing to net share or cash settle any Forward Contract.

Section 4.06. No Offer to Sell. Other than a free writing prospectus consented to in advance in writing by BNYMCM, the Company (including its agents and representatives, other than BNYMCM in its capacity as such) will not, directly or indirectly, use, authorize, approve or refer to any free writing prospectus relating to the Common Shares to be sold by BNYMCM hereunder.

Section 4.07. No Dividends. The Company shall not declare any dividend, or cause there to be any distribution, on the Common Stock if the ex-dividend date or ex-date, as applicable, for such dividend or distribution will occur during the period from, but excluding, the first Trading Day of any Forward Hedge Selling Period to, and including, the last Trading Day of such Forward Hedge Selling Period.

ARTICLE 5

CONDITIONS TO DELIVERY OF TRANSACTION NOTICES AND TO SETTLEMENT

Section 5.01. Conditions Precedent to the Right of the Company to Deliver a Transaction Notice and the Obligation of BNYMCM or the Forward Seller (as applicable) to Sell Common Shares on behalf of the Company During the Selling Period(s). The right of the Company to deliver a Transaction Notice hereunder is subject to the satisfaction, on the date of delivery of such Transaction Notice, and the obligations of each of BNYMCM to sell Issuance Shares and the Forward Seller to sell, on behalf of the Company, and the Forward Purchaser to borrow the Forward Hedge Shares during the applicable Selling Period is subject to the satisfaction, on the relevant Transaction Date and Settlement Date of each of the following conditions:

(a) **Effective Registration Statement and Authorizations.** No stop order suspending the effectiveness of the Registration Statement or preventing or suspending the use of the Prospectus shall be in effect, and no proceedings for such purpose or pursuant to Section 8A of the Securities Act shall be pending before or threatened by the Commission, and there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business, properties or operations of the Company and its consolidated subsidiaries, taken as a whole, from that set forth in the Prospectus, that, in the judgment of BNYMCM, is material and adverse and that makes it, in the judgment of BNYMCM, impracticable or inadvisable to market the Common Shares on the terms and in the manner contemplated in the Prospectus.

(b) **Accuracy of the Company's Representations and Warranties.** The representations and warranties of the Company contained in Article 3 hereof shall be true and correct as of each such Transaction Date and the related Settlement Date, as the case may be, as though made at such time.

(c) **Performance by the Company.** The Company shall have performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to such date.

(d) **No Injunction.** No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or

governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby that prohibits or directly and materially adversely affects any of the transactions contemplated by this Agreement (or, in the case of a Forward, the applicable Forward Contract), and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by this Agreement (or, in the case of a Forward, the applicable Forward Contract).

(e) No Suspension of Trading In or Delisting of Common Stock; Other Events. The trading of the Common Stock (including without limitation the Common Shares) shall not be suspended by the Commission, the Principal Market or the Financial Industry Regulatory Authority, Inc. and the Common Shares (including without limitation the Issuance Shares) shall have been approved for listing on and shall not have been delisted from the Principal Market. There shall not have occurred (and be continuing in the case of occurrences under clauses (i) and (ii) below) any of the following: (i) trading generally on the Principal Market has been suspended or materially limited, or minimum and maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the Principal Market, the Financial Industry Regulatory Authority, Inc. or any other governmental authority, or a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States; (ii) a general moratorium on commercial banking activities in New York declared by either federal or New York state authorities; or (iii) any material adverse change in the financial markets in the United States or in the international financial markets, any outbreak or escalation of hostilities or other calamity or crisis involving the United States or the declaration by the United States of a national emergency or war or any change or development involving a prospective change in national or international political, financial or economic conditions, if the effect of any such event specified in this clause (iii) in the sole judgment of BNYMCM makes it impracticable or inadvisable to proceed with the sale of Common Shares of the Company.

(f) Comfort Letter. BNYMCM shall have received on or prior to each Transaction Date a letter dated as of or prior to such date (but in no event shall the date of such letter be prior to the filing date of the last periodic report of the Company which contained financial statements that are incorporated by reference into the Registration Statement and the Prospectus) in form and substance reasonably satisfactory to BNYMCM, from Deloitte & Touche LLP, independent registered public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information reviewed by them contained in or incorporated by reference in the Registration Statement and the Prospectus and each other firm of independent registered public accountants, if any, who audited or reviewed financial statements contained in or incorporated by reference in the Registration Statement and the Prospectus, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to such financial statements and financial information.

(g) Trading Cushion. The Selling Period for any previous Transaction Notice shall have expired.

(h) **Maximum Issuance Amount.** In no event may the Company issue a Transaction Notice to sell an Issuance Amount or Forward Hedge Amount, as the case may be, to the extent that (I) the sum of (x) the Sales Price of the requested Issuance Amount or Forward Hedge Amount, as applicable, *plus* (y) the aggregate Sales Price of all Common Shares issued under all previous Issuances and Forwards effected pursuant to this Agreement, would exceed the Maximum Program Amount or (II) the requested Issuance Amount or Forward Hedge Amount, as the case may be, exceeds \$50,000,000, without, in the case of this clause (II), the prior written consent of BNYMCM or the Forward Seller, as the case may be, which may be withheld in BNYMCM's or the Forward Seller's sole discretion, as applicable.

(i) [Reserved.]

(j) **Opinion of General Counsel of the Company.** BNYMCM shall have received on or prior to each Issuance Date, or each Forward Date, as applicable, an opinion of Larry D. Irick, Senior Vice President, General Counsel and Corporate Secretary of the Company (or another lawyer of the Company reasonably satisfactory to BNYMCM), dated as of or prior to such date (but in no event shall the date of such letter be prior to the filing date of the last periodic report (in the case of a Current Report on Form 8-K, where requested by BNYMCM in its reasonable discretion) of the Company incorporated by reference into the Registration Statement) to the effect that:

(i) each of the Company and the Material Subsidiary has been duly incorporated, is validly existing as a corporation in good standing under the laws of the State of Kansas and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification (except where the failure to so qualify would not have a material adverse effect upon the business or financial condition of the Company and its subsidiaries, as a whole);

(ii) the Company has an authorized capitalization as set forth in the Prospectus, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable;

(iii) in the case of an Issuance, the related Issuance Shares have been duly authorized by the Company, and when executed and delivered to BNYMCM or its designee and paid for in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable; in the case of a Forward, the shares of Common Stock issuable upon physical settlement or net share settlement of the applicable Forward Contract have been duly authorized by the Company and when issued and delivered to the Forward Purchaser or its designee and paid for in accordance with the terms of such Forward Contract, will be validly issued, fully paid and non-assessable;

(iv) this Agreement has been duly authorized, executed and delivered by the Company;

(v) except as rights to indemnity and contribution under this Agreement may be limited under applicable law, the execution, delivery and performance of this Agreement (and, in the case of a Forward, the applicable Forward Contract) by the Company and the issuance, offering and sale of the Issuance Shares (or, in the case of a

Forward, the settlement of the applicable Forward Contract) by the Company will not contravene any provision of applicable law of the United States (including laws relating specifically to electric utility companies and the electric utility industry), Kansas, or, to the best knowledge of such counsel, of any other state or jurisdiction of the United States, or the articles of incorporation or by-laws (or similar organizational document) of the Company or, to the best knowledge of such counsel, any material agreement or other material instrument binding upon the Company, and, except for such permits or similar authorizations required under the securities or Blue Sky laws of certain states or foreign jurisdictions (as to which such counsel is not called upon to express any opinion), no consent, approval or authorization of any governmental body or agency of the United States (except with respect to consents, approvals and authorizations relating specifically to the public utility companies or the utilities industry, as to which such counsel is not called upon to express any opinion), Kansas, or, to the best knowledge of such counsel, of any other state or jurisdiction of the United States or of any foreign jurisdiction is required for the performance by the Company of its obligations under this Agreement (and, in the case of a Forward, the applicable Forward Contract) or the issuance, offering and sale of the Issuance Shares by the Company;

(vi) each of the Company and the Material Subsidiary possesses valid franchises, certificates of convenience and authority, licenses and permits authorizing it to carry on the electric utility business in which it is engaged, except in the cases that the failure to possess such franchises, certificates, licenses or permits, individually or in the aggregate, would not be reasonably expected to have a material adverse effect on the Company and its consolidated subsidiaries, taken as a whole, and neither the Company nor the Material Subsidiary has received any notice of proceedings relating to the revocation or modification of any such franchise, certificate of convenience and authority, license or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to have a material adverse effect, except as set forth in or contemplated in the Prospectus;

(vii) the statements (A) in Item 3 of the Company's most recent Annual Report on Form 10-K incorporated by reference in the Prospectus, (B) in Part II, Item 1 under the caption "Legal Proceedings" of the Company's most recent Quarterly Report on Form 10-Q, if any, incorporated by reference in the Prospectus and (C) in the Registration Statement in Item 15, insofar as such statements constitute a summary of the legal matters, documents or proceedings referred to therein, fairly present the information called for with respect to such legal matters, documents and proceedings;

(viii) such counsel does not know of any legal or governmental proceeding pending or threatened (including, without limitation, any proceeding pending before the Kansas Corporation Commission ("KCC") or the Federal Energy Regulatory Commission ("FERC")) to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject which is required to be described in the Registration Statement or the Prospectus and is not so described, or of any contract, other document, public utility law or regulation which is required to be described in the Registration Statement or the Prospectus or to be filed as an exhibit to the Registration Statement which is not described or filed as required;

(ix) the Company has complied with K.S.A. § 66-125 with respect to the issuance of the Issuance Shares (or, in the case of a Forward, the settlement of the applicable Forward Contract) by the Company. No additional consent, approval, authorization, filing with or order of (a) FERC under the Federal Power Act, (b) the KCC or (c) to such counsel's knowledge, any court or governmental agency or body is required in connection with the transactions contemplated herein (and, in the case of a Forward, the applicable Forward Contract), except such as have been obtained under the Securities Act and such as may be required under the blue sky laws of any jurisdiction in connection with the distribution of the Common Shares by BNYMCM, on behalf of the Company, in the manner contemplated herein and in the Prospectus; and

(x) the statements in the Base Prospectus under "Description of Capital Stock—Common Stock," insofar as such statements constitute a summary of the legal matters or documents referred to therein, fairly present the information called for with respect to such legal matters and documents.

Such counsel shall also state that no facts have come to his attention that lead him to believe (1) that the Registration Statement or any amendments thereto (except for the financial statements and other financial or related statistical data included or incorporated by reference therein or omitted therefrom, as to which such counsel is not called upon to express any belief), on the date on which it became effective or the date of filing of the most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (2) that the Prospectus (except for the financial statements and other financial or related statistical data included or incorporated by reference therein or omitted therefrom, as to which such counsel is not called upon to express any belief), at the date it was filed with the Commission pursuant to Rule 424(b) under the Securities Act or as amended or supplemented, if applicable, as of the date of such opinion, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make statements therein, in the light of the circumstances under which they were made, not misleading; or (3) that the documents incorporated by reference in the Registration Statement and the Prospectus (except for the financial statements and other financial or related statistical data included or incorporated by reference therein or omitted therefrom, as to which such counsel is not called upon to express any belief), as of the dates they were filed with the Commission, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

With respect to the preceding paragraph, such counsel may state that his opinion and belief is based upon his participation in the preparation of the Registration Statement, the Prospectus (as amended or supplemented) and the documents incorporated therein by reference and review and discussion of the contents thereof, but is without independent check or verification except as specified.

In expressing his opinion as to questions of the law of jurisdictions other than the State of Kansas and the United States, such counsel may rely to the extent reasonable on such counsel as may be reasonably acceptable to counsel to BNYMCM. In addition, such counsel may reasonably rely as to questions of fact on certificates of responsible officers of the Company.

(k) Opinion of Special Counsel, BNYMCM shall have received on or prior to each Transaction Date an opinion of Davis Polk & Wardwell, LLP, special counsel for the Company, dated as of or prior to such date (but in no event shall the date of such letter be prior to the filing date of the last periodic report (in the case of a Current Report on Form 8-K, where requested by BNYMCM in its reasonable discretion) of the Company which are incorporated by reference into the Registration Statement), to the effect that:

(i) The Company is not, and after giving effect to the issuance and offering and sale of the Issuance Shares and the application of the proceeds thereof as described in the Prospectus will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended;

(ii) except as rights to indemnity and contribution under this Agreement may be limited under applicable law, the execution and delivery by the Company of, and the performance by the Company of its obligations under this Agreement (and, in the case of a Forward, the applicable Forward Contract) and the issuance, offering and sale of the Issuance Shares (and, in the case of a Forward, the applicable Forward Contract), will not contravene any provision of applicable law of the United States (except with respect to laws relating specifically to public utility companies or the utilities industry, as to which such counsel is not called upon to express any opinion) or New York, and, except for such permits or similar authorizations required under the securities or Blue Sky laws of certain states or foreign jurisdictions (as to which such counsel is not called upon to express any opinion), no consent, approval or authorization of any governmental body or agency of the United States (except with respect to consents, approvals and authorizations relating specifically to public utility companies or the utilities industry, as to which such counsel is not called upon to express any opinion) or New York is required for the performance by the Company of its obligations under this Agreement (and, in the case of a Forward, the applicable Forward Contract) and the issuance, offering and sale of the Issuance Shares (and, in the case of a Forward, the applicable Forward Contract); and

(iii) the statements in the Base Prospectus under “Plan of Distribution,” insofar as such statements constitute a summary of the legal matters or documents referred to therein, fairly present the information called for with respect to such legal matters and documents.

Such counsel shall also state that (1) the Registration Statement and the Prospectus (except for financial statements and other financial or related statistical data included or incorporated by reference therein, as to which such counsel is not called upon to express any belief) appear on their face to be appropriately responsive in all material respects to the requirements of the Securities Act and the rules and regulations of the Commission thereunder and (2) no facts have come to the attention of such counsel that lead them to believe that (A) the Registration Statement or any amendment thereto (except for financial statements and other financial or related statistical data included or incorporated by reference therein, as to which such counsel is not called upon to express any belief) on the date on which it became effective or the

date of filing of the most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or (B) the Prospectus (except for financial statements and other financial or related statistical data included or incorporated by reference therein, as to which such counsel is not called upon to express any belief), at the date it was filed with the Commission pursuant to Rule 424(b) under the Securities Act or as amended or supplemented, if applicable, as of the date of such opinion, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make statements therein, in the light of the circumstances under which they are made, not misleading.

With respect to the preceding paragraph, Davis Polk & Wardwell, LLP may state that their belief is based upon their participation in the preparation of the Registration Statement and Prospectus and any amendments or supplements thereto (but not including documents incorporated therein by reference) and review and discussion of the contents thereof (including documents incorporated therein by reference), but is without independent check or verification except as specified. In addition, such counsel may reasonably rely as to questions of fact on certificates of responsible officers of the Company.

(l) **Officers' Certificate.** BNYMCM shall have received, on each Transaction Date and each Settlement Date a certificate, dated as of such date and signed by an authorized officer of the Company, in his capacity as such and not in his individual capacity, to the effect that the representations and warranties of the Company contained herein are true and correct as of such date, and that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder on or prior to such date.

(m) **Other Documents.** Prior to each Transaction Date and each Settlement Date, BNYMCM and its counsel shall have been furnished with such documents as they may reasonably require to pass upon the issuance, offering and sale of the Issuance Shares (or, in the case of a Forward, the sale of the Forward Hedge Shares and the issuance, if any, of any shares of Common Stock upon settlement of the related Forward Contract) as herein contemplated and related proceedings, or in order to evidence the accuracy and completeness of any of the representations or warranties, or the fulfillment of the conditions, herein contained; and all proceedings taken by the Company in connection with such issuance, offering and sale as herein contemplated shall be reasonably satisfactory in form and substance to BNYMCM and its counsel.

Section 5.02. Suspension of Sales. The Company, the Forward Purchaser, BNYMCM or the Forward Seller may, upon notice to the other parties in writing, e-mail or by telephone (confirmed immediately by verifiable facsimile transmission), suspend any sale of Common Shares, and the applicable Selling Period shall immediately terminate; *provided, however,* that such suspension and termination shall not affect or impair either party's obligations with respect to any Common Shares sold hereunder prior to the receipt of such notice (and, in the case of any Forward Hedge Shares, the resulting Forward Contract). The Company agrees that no such notice shall be effective against the Forward Purchaser, BNYMCM or the Forward Seller unless it is made to one of the individuals named on Schedule 1 hereto, as such Schedule may be amended from time to time. Each of the Forward Purchaser, BNYMCM and the Forward Seller agrees that no such notice shall be effective against the Company unless it is made to one of the individuals named on Schedule 1 annexed hereto, as such Schedule may be amended from time to time.

ARTICLE 6
INDEMNIFICATION AND CONTRIBUTION

Section 6.01. Indemnification and Contribution. The Company agrees to indemnify and hold harmless each of the Forward Purchaser, BNYMCM and the Forward Seller, each of its respective officers, directors, employees and agents, and each Person, if any, who controls the Forward Purchaser, BNYMCM or the Forward Seller within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, together with each such Person's respective officers, directors, employees and agents (collectively, the "**Controlling Persons**"), from and against any and all losses, claims, damages or liabilities, and any action or proceeding in respect thereof, to which the Forward Purchaser, BNYMCM or the Forward Seller, as the case may be, and each of its officers, directors, employees and agents, and any such Controlling Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any issuer free writing prospectus that the Company has filed or is required to file under Rule 433(d) under the Securities Act or the Prospectus (as amended or supplemented), or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are made in reliance upon and in conformity with information related to the Forward Purchaser, BNYMCM or the Forward Seller or its plan of distribution furnished in writing to the Company by the Forward Purchaser, BNYMCM or the Forward Seller, as the case may be, expressly for use therein.

Section 6.02. Indemnification by the Forward Purchaser, BNYMCM and the Forward Seller. Each of the Forward Purchaser, BNYMCM and the Forward Seller agrees to indemnify and hold harmless the Company, its officers, directors, employees and agents, and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, together with each such Person's respective officers, directors, employees and agents, from and against any losses, claims, damages or liabilities, and any action or proceeding in respect thereof, to which the Company, its officers, directors, employees or agents, any such controlling Person and any officer, director, employee or agent of such controlling Person may become subject under the Securities Act, the Exchange Act or otherwise, insofar as losses, claims, damages or liabilities (or action or proceeding in respect thereof) arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any issuer free writing prospectus that the Company has filed or is required to file under Rule 433(d) under the Securities Act or the Prospectus (as amended or supplemented), or arise out of, or are based upon, any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in each case to the extent, but only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission was made therein in reliance upon and in conformity with written information related to the Forward Purchaser, BNYMCM or the Forward Seller or its respective plan of distribution furnished to the Company by the Forward Purchaser, BNYMCM or the Forward Seller, as the case may be, expressly for use therein.

Section 6.03. Conduct of Indemnification Proceedings. Promptly after receipt by any Person (an “**Indemnified Party**”) of notice of any claim or the commencement of any action in respect of which indemnity may be sought pursuant to Section 6.01 or Section 6.02, the Indemnified Party shall, if a claim in respect thereof is to be made against the Person against whom such indemnity may be sought (an “**Indemnifying Party**”), notify the Indemnifying Party in writing of the claim or the commencement of such action. In the event an Indemnified Party shall fail to give such notice as provided in this Section 6.03 and the Indemnifying Party to whom notice was not given was unaware of the proceeding to which such notice would have related and was materially prejudiced by the failure to give such notice, the indemnification provided for in Section 6.01 or Section 6.02 shall be reduced to the extent of any actual prejudice resulting from such failure to so notify the Indemnifying Party; *provided*, that the failure to notify the Indemnifying Party shall not relieve it from any liability that it may have to an Indemnified Party otherwise than under Section 6.01 or Section 6.02. If any such claim or action shall be brought against an Indemnified Party, the Indemnifying Party shall be entitled to participate therein, and, to the extent that it wishes, jointly with any other similarly notified Indemnifying Party, to assume the defense thereof with counsel reasonably satisfactory to the Indemnified Party. After notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such claim or action, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation; provided that the Indemnified Party shall have the right to employ separate counsel to represent the Indemnified Party, but the fees and expenses of such counsel shall be for the account of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of such counsel or (ii) such Indemnified Party reasonably concludes that representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interest with the Company, it being understood, however, that the Indemnifying Party shall not, in connection with any one such claim or action or separate but substantially similar or related claims or actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one separate firm of attorneys (together with appropriate local counsel) at any time for all Indemnified Parties or for fees and expenses that are not reasonable. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any claim or pending or threatened proceeding in respect of which the Indemnified Party is or could have been a party and indemnification could have been sought hereunder by such Indemnified Party unless such settlement includes an unconditional release of each such Indemnified Party from all losses, claims, damages or liabilities arising out of such claim or proceeding and such settlement does not admit or constitute an admission of fault, guilt, failure to act or culpability on the part of any such Indemnified Party. Whether or not the defense of any claim or action is assumed by an Indemnifying Party, such Indemnifying Party will not be subject to any liability for any settlement made without its prior written consent, which consent will not be unreasonably withheld.

Section 6.04. Contribution. If for any reason the indemnification provided for in this Article 6 is unavailable to the Indemnified Parties in respect of any losses, claims, damages or liabilities referred to herein, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities as among the Company, BNYMCM, the Forward Seller and the Forward Purchaser in such proportion as is appropriate to reflect the relative benefits received by each of the Company, BNYMCM, the Forward Seller and the Forward Purchaser from the offering of the Common Shares to which such losses, claims, damages or liabilities relate. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each Indemnifying Party shall contribute to such amount paid or payable by such Indemnified Party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the each of the Company, BNYMCM, the Forward Seller and the Forward Purchaser in connection with such statements or omissions, as well as any other relevant equitable considerations. The relative benefits received by each of the Company, BNYMCM, the Forward Seller and the Forward Purchaser shall be equal to the sum, for each Transaction under this Agreement, of (a) in the case of Company (x) the Actual Sold Forward Amount for each Forward under this Agreement, multiplied by the Forward Hedge Price for such Forward, and (y) the Actual Sold Issuance Amount for each Issuance under this Agreement, multiplied by the Issuance Price for such Issuance, (b) in the case of BNYMCM, the Actual Sold Issuance Amount for each Issuance under this Agreement, multiplied by the Issuance Selling Commission for such Issuance, (c) in the case of the Forward Seller, the Actual Sold Forward Amount for each Forward under this Agreement, multiplied by the Forward Hedge Selling Commission for such Forward and (d) in the case of the Forward Purchaser, the net Spread (as such term is defined in the Master Forward Confirmation and net of any related stock borrow costs actually incurred) by such Forward Purchaser for all Forward Contracts executed in connection with this Agreement. The relative fault of each of the Company, BNYMCM, the Forward Seller and the Forward Purchaser shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by each such party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

Each of the Company, BNYMCM, the Forward Seller and the Forward Purchaser agrees that it would not be just and equitable if contribution pursuant to this Section 6.04 were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any reasonable legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6.04, (i) neither BNYMCM nor the Forward Seller shall in any event be required to contribute any amount in excess of the aggregate Issuance Selling Commissions or the aggregate Forward Hedge Selling Commissions, as the case may be, received by it under this Agreement and (ii) the Forward Purchaser shall in no event be required to contribute any amount in excess of the net Spread for all Forward Contracts entered into pursuant to this Agreement. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person

who was not guilty of such fraudulent misrepresentation. For purposes of this Section 6.04 each officer, director, employee and agent of the Forward Purchaser, BNYMCM or the Forward Seller, and each Controlling Person of each, shall have the same rights to contribution as the Forward Purchaser, BNYMCM or the Forward Seller, as the case may be, and each director of the Company, each officer of the Company who signed the Registration Statement, and each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company. The obligations of the Company, BNYMCM, the Forward Seller and the Forward Purchaser under this Article 6 shall be in addition to any liability that each may otherwise have.

ARTICLE 7 TERMINATION

Section 7.01. *Term.* Subject to the provisions of this Article 7, the term of this Agreement shall run until the end of the Commitment Period.

Section 7.02. *Termination by BNYMCM.* BNYMCM may terminate the right of the Company to effect any Issuances or Forwards under this Agreement upon one (1) Trading Day's notice if any of the following events shall occur:

- (a) The Company or the Material Subsidiary shall make an assignment for the benefit of creditors, or apply for or consent to the appointment of a receiver or trustee for it or for all or substantially all of its property or business; or such a receiver or trustee shall otherwise be appointed;
- (b) Bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors shall be instituted by or against the Company or the Material Subsidiary;
- (c) The Company shall fail to maintain the listing of the Common Stock on the Principal Market;
- (d) Since the later of the date on which the Registration Statement has become effective and the date of filing of the most recent Annual Report on Form 10-K, there shall have occurred any event, development or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Company and its subsidiaries, taken as a whole; or
- (e) BNYMCM shall have given thirty (30) days' notice of its election to terminate this Agreement, in its sole discretion, at any time.

Section 7.03. *Termination by the Company.* The Company shall have the right, by giving thirty (30) days' notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time. After delivery of such notice, the Company shall no longer have any right to deliver any Transaction Notices hereunder.

Section 7.04. Liability; Provisions that Survive Termination. If this Agreement is terminated pursuant to this Article 7, such termination shall be without liability of any party to any other party except as provided in Section 9.02 and for the Company's, BNYMCM's and the Forward Seller's respective obligations in respect of all prior Transaction Notices, and provided further that in any case the provisions of Article 6, Article 8 and Article 9 shall survive termination of this Agreement without limitation.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES TO SURVIVE DELIVERY

All representations and warranties of the Company herein or in certificates delivered pursuant hereto shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of BNYMCM, the Forward Seller or the Forward Purchaser or any of the respective officers, directors, employees and agents and any Controlling Persons, (ii) delivery and acceptance of the Common Shares and payment therefor, (iii) the settlement of any Forward Contract or (iv) any termination of this Agreement.

ARTICLE 9 MISCELLANEOUS

Section 9.01. Press Releases and Disclosure. The Company may issue a press release describing the material terms of the transactions contemplated hereby as soon as practicable following the date hereof, and may file with the Commission a Current Report on Form 8-K describing the material terms of the transactions contemplated hereby, and the Company shall consult with BNYMCM prior to making such disclosures, and the parties shall use all reasonable efforts, acting in good faith, to agree upon a text for such disclosures that is reasonably satisfactory to all parties. No party hereto shall issue thereafter any press release or like public statement (including, without limitation, any disclosure required in reports filed with the Commission pursuant to the Exchange Act) related to this Agreement or any of the transactions contemplated hereby without the prior written approval of the other party hereto, except as may be necessary or appropriate in the opinion of the party seeking to make disclosure to comply with the requirements of applicable law or stock exchange rules. If any such press release or like public statement is so required, the party making such disclosure shall consult with the other party prior to making such disclosure, and the parties shall use all reasonable efforts, acting in good faith, to agree upon a text for such disclosure that is reasonably satisfactory to all parties.

Section 9.02. Expenses. The Company covenants and agrees with BNYMCM, the Forward Seller and the Forward Purchaser that the Company shall pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the preparation, printing and filing of the Registration Statement, the Prospectus and any SAFE Supplement and all other amendments and supplements thereto and the mailing and delivering of copies thereof to BNYMCM, the Forward Seller and the Principal Market; (ii) the reasonable documented out-of-pocket expenses of BNYMCM, the Forward Seller and the Forward Purchaser, including the reasonable fees, disbursements and expenses of counsel for BNYMCM, the Forward Seller and the Forward Purchaser (including in connection with the qualification of the Common Shares for offering and sale under state securities laws as

provided in Section 4.02 hereof and in connection with preparing any blue sky survey), in connection with this Agreement and the Registration Statement and any Issuances or Forwards hereunder and ongoing services in connection with the transactions contemplated hereunder which fees, disbursements and expenses shall not exceed \$90,000 in the aggregate; (iii) the cost (other than those expenses described in clause (ii) above) of printing, preparing or reproducing this Agreement and any other documents in connection with the offering, purchase, sale and delivery of the Common Shares; (iv) all filing fees and expenses (other than those expenses described in clause (ii) above) in connection with the qualification of the Common Shares for offering and sale under state securities laws as provided in Section 4.02 hereof; (v) the cost of preparing the Issuance Shares; (vi) the fees and expenses of any transfer agent of the Company; (vii) the cost of providing any CUSIP or other identification numbers for the Issuance Shares; (viii) the fees and expenses incurred in connection with the listing or qualification of the Issuance Shares on the Principal Markets and any filing fees incident to any required review by the Financial Industry Regulatory Authority, Inc. of the terms of the sale of the Common Shares in connection with this Agreement and the Registration Statement (including the reasonable fees, disbursements and expenses of counsel for BNYMCM), and (ix) all other costs and expenses incident to the performance of the Company's obligations hereunder that are not otherwise specifically provided for in this Section 9.02.

Section 9.03. Notices. All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder or that are given with respect to this Agreement shall be in writing and shall be personally served or deposited in the mail, registered or certified, return receipt requested, postage prepaid or delivered by reputable air courier service with charges prepaid, or transmitted by hand delivery, telegram, telex or facsimile, addressed as set forth below, or to such other address as such party shall have specified most recently by written notice: (i) if to the Company to: Westar Energy, Inc., 818 South Kansas Avenue, Topeka, Kansas 66612, Attention: General Counsel, with a copy (which shall not constitute notice) to: Davis Polk & Wardwell, LLP, 1600 El Camino Real, Menlo Park, CA 94025 Attention: Daniel G. Kelly, Jr.; Fax No. 650-752-3601; (ii) if to BNYMCM to: BNY Mellon Capital Markets, LLC, 32 Old Slip (16th Floor), New York, New York 10286, Attention: Dan de Menocal, Facsimile No.: 212-804-5057, with a copy (which shall not constitute notice) to: Hunton & Williams LLP, 200 Park Avenue, New York, New York 10166, Attention: Peter K. O'Brien; Fax No. 212.309.1864; and (iii) if to the Forward Purchaser to: The Bank of New York Mellon, One Wall St., New York, New York 10286, Attention: Vijay Suchdev, Facsimile No.: 212-635-6536. Except as set forth in Section 5.02, notice shall be deemed given on the date of service or transmission if personally served or transmitted by telegram, telex or confirmed facsimile. Notice otherwise sent as provided herein shall be deemed given on the third business day following the date mailed or on the next business day following delivery of such notice to a reputable air courier service for next day delivery.

Section 9.04. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, understandings, negotiations and discussions between the parties, whether oral or written, with respect to the subject matter hereof.

Section 9.05. Amendment and Waiver. This Agreement may not be amended, modified, supplemented, restated or waived except by a writing executed by the party against which such amendment, modification, supplement, restatement or waiver is sought to be enforced. Waivers may be made in advance or after the right waived has arisen or the breach or default waived has occurred. Any waiver may be conditional. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof nor of any other agreement or provision herein contained. No waiver or extension of time for performance of any obligations or acts shall be deemed a waiver or extension of the time for performance of any other obligations or acts.

Section 9.06. No Assignment; No Third Party Beneficiaries. This Agreement and the rights, duties and obligations hereunder may not be assigned or delegated by the Company, BNYMCM, the Forward Seller or the Forward Purchaser. Any purported assignment or delegation of rights, duties or obligations hereunder shall be void and of no effect. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and their respective successors and, to the extent provided in Article 6, the controlling persons, officers, directors, employees and agents referred to in Article 6. This Agreement is not intended to confer any rights or benefits on any Persons other than as set forth in Article 6 or elsewhere in this Agreement.

Section 9.07. Severability. This Agreement shall be deemed severable, and the invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

Section 9.08. Further Assurances. Each party hereto, upon the request of any other party hereto, shall do all such further acts and execute, acknowledge and deliver all such further instruments and documents as may be necessary or desirable to carry out the transactions contemplated by this Agreement.

Section 9.09. Titles and Headings. Titles, captions and headings of the sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

Section 9.10. Governing Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY, INTERPRETED UNDER AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WITHIN THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF. Any action, suit or proceeding to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal court located in the Southern District of the State of New York or any New York state court located in the Borough of Manhattan, and the Company agrees to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) and each party waives (to the full extent permitted by law) any objection it may have to the laying of venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding has been brought in an inconvenient forum.

Section 9.11. *Waiver of Jury Trial.* Each of the Company, BNYMCM, the Forward Seller and the Forward Purchaser hereby irrevocably waives any right it may have to a trial by jury in respect of any claim based upon or arising out of this Agreement or any transaction contemplated hereby.

Section 9.12. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile transmission.

Section 9.13. *Adjustments for Stock Splits, Etc.* The parties acknowledge and agree that share related numbers contained in this Agreement (including the minimum Floor Price) shall be equitably adjusted to reflect stock splits, stock dividends, reverse stock splits, combinations and similar events.

Section 9.14. *No Fiduciary Duty.* The Company acknowledges and agrees that each of the Forward Purchaser, BNYMCM and the Forward Seller is acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the offering of Common Shares contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or (except as expressly provided herein) an agent of, the Company or any other person and will not claim that the Forward Purchaser, BNYMCM or the Forward Seller is acting in such capacity in connection with the transactions contemplated hereby. Additionally, neither the Forward Purchaser, BNYMCM nor the Forward Seller is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction with respect to the transactions contemplated hereby. The Company shall consult with its own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated hereby, and neither the Forward Purchaser, BNYMCM nor the Forward Seller shall have responsibility or liability to the Company with respect thereto. Any review by the Forward Purchaser, BNYMCM or the Forward Seller of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Forward Purchaser, BNYMCM or the Forward Seller, as the case may be, and shall not be on behalf of the Company.

Section 9.15. *Termination of Prior Agreement.* The Company and BNYMCM acknowledge and agree that, pursuant to Sections 7.02(e) and 7.03 of the Prior Agreement, the Prior Agreement shall be terminated and have no further force or effect as of the date hereof and each of the Company and BNYMCM hereby waive the requirement pursuant to such Sections that notice of termination be given at least 30 days prior to the effectiveness of such termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

WESTAR ENERGY, INC.

By: /s/ Anthony D. Somma

Name: Anthony D. Somma

Title: Senior Vice President, Chief Financial Officer & Treasurer

BNY MELLON CAPITAL MARKETS, LLC, as agent for the Company and as Forward Seller

By: /s/ Daniel C. de Menocal, Jr.

Name: Daniel C. de Menocal, Jr.

Title: Managing Director

THE BANK OF NEW YORK MELLON, as Forward Purchaser

By: /a/ James McAuliffe

Name: James McAuliffe

Title: Managing Director

EXHIBIT A

TRANSACTION NOTICE

, 201

BNY Mellon Capital Markets, LLC
32 Old Slip, (16th Floor)
New York, NY 10286

[The Bank of New York Mellon
32 Old Slip, (15th Floor)
New York, New York 10286]¹

Attn: Dan de Menocal

Reference is made to the Sales Agency Financing Agreement (the “**Sales Agency and Financing Agreement**”) among WESTAR ENERGY, INC. (the “**Company**”), BNY MELLON CAPITAL MARKETS, LLC (in its capacity as agent for the Company in connection with the offering and sale of any Issuance Shares thereunder, “**BNYMCM**” and in its capacity as agent for the Forward Purchaser in connection with the offering and sale of any Forward Hedge Shares thereunder, the “**Forward Seller**”) and THE BANK OF NEW YORK MELLON, as counterparty under any Forward Contract, (the “**Forward Purchaser**”). Capitalized terms used in this Transaction Notice without definition shall have the respective definitions ascribed to them in the Sales Agency Financing Agreement. This Transaction Notice relates to [an “Issuance”]² [a “Forward”].³ The Company confirms that all conditions to the delivery of this Transaction Notice are satisfied as of the date hereof.

Effective Date of Delivery of Transaction Notice (determined pursuant to Section 2.03(b) of the Sales Agency Financing Agreement): _____

Number of Days in [Issuance]⁴ [Forward]⁵ Selling Period: _____

First Date of [Issuance]⁶ [Forward]⁷ Selling Period: _____

¹ Insert for Transaction Notice that relates to a “Forward.”

² Insert for a Transaction Notice that relates to an “Issuance.”

³ Insert for a Transaction Notice that relates to a “Forward.”

⁴ Insert for a Transaction Notice that relates to an “Issuance.”

⁵ Insert for a Transaction Notice that relates to a “Forward.”

⁶ Insert for a Transaction Notice that relates to an “Issuance.”

Last Date of [Issuance]⁸ [Forward Hedge]⁹ Selling Period: _____

[Issuance]¹⁰ [Forward]¹¹ Amount: \$ _____

Forward Price Reduction Dates

[Trade Date:]
[]
[]
[]
[Maturity Date:]
[Thereafter:]

Forward Price Reduction Amounts

USD []
USD []

Term: Months]¹²

Floor Price (Adjustable by Company during the [Issuance]¹³ [Forward]¹⁴ Selling Period, and in no event less than \$5.00 without the prior written consent of BNYMCM, which consent may be withheld in BNYMCM's sole discretion): \$ per share

Comments: _____

WESTAR ENERGY, INC.

By: _____
Name:
Title: Authorized Signatory

(continued...)

⁷ Insert for a Transaction Notice that relates to a "Forward."

⁸ Insert for a Transaction Notice that relates to an "Issuance."

⁹ Insert for a Transaction Notice that relates to a "Forward."

¹⁰ Insert for a Transaction Notice that relates to an "Issuance."

¹¹ Insert for a Transaction Notice that relates to a "Forward."

¹² Insert for a Transaction Notice that relates to a "Forward."

¹³ Insert for a Transaction Notice that relates to an "Issuance."

¹⁴ Insert for a Transaction Notice that relates to a "Forward."

SCHEDULE 1

BNYMCM, the Forward Seller or the Forward Purchaser

Daniel C. de Menocal, Jr., Managing Director, Facsimile No.: 212-804-5057
Art Condodina, Managing Director, Facsimile No.: 212-804-1015
Harold J. Skirlis, Managing Director, Facsimile No.: 212-804-5057

The Company

Anthony D. Somma, Senior Vice President, Chief Financial Officer and Treasurer, Facsimile No. 785-575-1774
Mark A. Ruelle, Director, President and Chief Executive Officer, Facsimile No. 785-575-8061

Larry D. Irick, Vice President, General Counsel and Corporate Secretary,
Facsimile No. 785-575-8136

**UNDERWRITING AGREEMENT
(First Mortgage Bonds)**

March 21, 2013

Westar Energy, Inc.
818 South Kansas Avenue
Topeka, Kansas 66612

Ladies and Gentlemen:

We (the “**Managers**”) are acting on behalf of the underwriter or underwriters (including ourselves) named below (such underwriter or underwriters being herein called the “**Underwriters**”), and we understand that Westar Energy, Inc., a Kansas corporation (the “**Company**”), proposes to issue and sell \$250,000,000 aggregate principal amount of its First Mortgage Bonds, 4.10% Series Due 2043 (the “**Offered Securities**”). The Offered Securities are to be to be issued under and secured by the Mortgage and Deed of Trust, dated July 1, 1939, between the Company and The Bank of New York Mellon Trust Company, N.A., as successor to Harris Trust and Savings Bank, as trustee (the “**Trustee**”), as amended and supplemented by forty-three indentures supplemental thereto in addition to the Forty-Second Supplemental (Reopening) Indenture (such Mortgage and Deed of Trust, as heretofore amended and supplemented, the “**Mortgage**”) and as to be amended and supplemented by an additional supplemental indenture thereto, to be dated as of March 28, 2013 (the “**Forty-Third Supplemental Indenture**”) (the Mortgage, as amended and supplemented, the “**Amended Mortgage**”).

Subject to the terms and conditions and in reliance upon the representations and warranties, terms and conditions set forth or incorporated by reference herein, the Company hereby agrees to sell and each of the Underwriters agrees to purchase from the Company, severally and not jointly, the aggregate principal amount of the Offered Securities set forth below opposite their names at a purchase price of 98.748% of the principal amount thereof, plus accrued interest, if any, from March 28, 2013 to the date of payment and delivery (the “**Purchase Price**”).

<u>Underwriter</u>	Principal Amount of Offered Securities to Be Purchased
BNY Mellon Capital Markets, LLC	\$ 62,500,000
Deutsche Bank Securities Inc.	\$ 62,500,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	\$ 62,500,000
UBS Securities LLC	\$ 17,500,000
Barclays Capital Inc.	\$ 12,917,000
Wells Fargo Securities, LLC	\$ 12,917,000
U.S. Bancorp Investments, Inc.	\$ 12,916,000
Samuel A. Ramirez & Company, Inc.	\$ 6,250,000
Total	\$ 250,000,000

For purposes of the Underwriting Agreement, Applicable Time means 1:40 p.m. (New York time) on the date hereof.

The Underwriters will pay for the Offered Securities upon delivery thereof at the offices of Davis Polk & Wardwell LLP, 1600 El Camino Real, Menlo Park, California at 10:00 a.m. (New York time) on March 28, 2013, or at such other time, not later than 1:00 p.m. (New York time) on March 28, 2013 as shall be designated in writing by the Underwriters and the Company. The time and date of such payment and delivery are hereinafter referred to as the "**Closing Date**."

The Offered Securities shall have the terms set forth in the Prospectus dated March 20, 2013 and the Prospectus Supplement dated March 21, 2013, including the following:

Terms of Offered Securities

Maturity Date: April 1, 2043

Interest Rate: 4.10%

Redemption Provisions: Prior to October 1, 2042, the Company may, at its option, redeem the Offered Securities at any time in whole, or from time to time in part, at a redemption price equal to the greater of (a) 100% of the principal amount of the Offered Securities to be redeemed, plus accrued and unpaid interest on those Offered Securities to the redemption date, or (b) as determined by the quotation agent, the sum of the present values of the remaining scheduled payments of principal and interest on the Offered Securities to be redeemed (not including any portion of payments of interest accrued as of the redemption date) discounted to the redemption date on a semi-annual basis at an adjusted treasury rate plus 15 basis points, plus accrued and unpaid interest on those Offered Securities to the redemption date.

On or after October 1, 2042, the Company may, at its option, redeem the Offered Securities at any time in whole, or from time to time in part, at a redemption price equal to 100% of the principal amount of the Offered Securities to be redeemed, plus accrued and unpaid interest on those Offered Securities to the redemption date.

Interest Payment Dates: April 1 and October 1, commencing October 1, 2013 (Interest accrues from March 28, 2013)

Form and Denomination: Global, \$2,000 minimum denomination and multiples of \$1,000 in excess thereof

Ranking: Senior Secured

Other Terms: As set forth in the Prospectus Supplement

Capitalized terms used above and not defined herein shall have the meanings set forth in the Prospectus and Prospectus Supplement referred to above.

All communications hereunder shall be in writing and effective only upon receipt and (a) if to the Underwriters, shall be delivered, mailed or sent via facsimile in care of BNY Mellon Capital Markets, LLC, 32 Old Slip, 16th Floor, New York, New York 10286, facsimile number (212) 804-5057, Attention: Debt Capital Markets; Deutsche Bank Securities Inc., 60 Wall Street,

New York, New York 10005, facsimile number (212) 797-2202, Attention: Debt Capital Markets Syndicate, with a copy at the same address to: General Counsel, 36th Floor, facsimile number (212) 797-4561; and Merrill Lynch, Pierce, Fenner & Smith Incorporated, 50 Rockefeller Plaza, NY1-050-12-01, New York, New York 10020, facsimile number (646) 855-5958, Attention: High Grade Debt Capital Markets Transaction Management/Legal, or (b) if to the Company, shall be delivered, mailed or sent via facsimile to 818 South Kansas Avenue, Topeka, Kansas 66612, facsimile number 785-575-8136, Attention: General Counsel.

The Company acknowledges and agrees that the Underwriters are each acting solely in the capacity of an arm's length contractual counterparty to the Company with respect to the offering of Offered Securities contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person and will not claim that the Underwriters are acting in such capacity in connection with the offering of the Offered Securities contemplated hereby. Additionally, none of the Underwriters is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction with respect to the offering of Offered Securities contemplated hereby. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to the Company with respect thereto. Any review by the Underwriters of the Company, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Company.

Except as set forth herein, all provisions contained in the document entitled Westar Energy, Inc. Underwriting Agreement Standard Provisions (Debt Securities, First Mortgage Bonds, Warrants, Purchase Contracts and Units) dated March 21, 2013, (the "**Standard Provisions**"), a copy of which is attached hereto, are herein incorporated by reference in their entirety and shall be deemed to be a part of this Agreement to the same extent as if such provisions had been set forth in full herein, except that (i) if any term defined in such document is otherwise defined herein, the definition set forth herein shall control, (ii) all references in such document to a type of security that is not an Offered Security shall not be deemed to be a part of this Agreement and (iii) all references in such document to a type of agreement that has not been entered into in connection with the transactions contemplated hereby shall not be deemed to be a part of this Agreement.

Please confirm your agreement by having an authorized officer sign a copy of this Agreement in the space set forth below.

Very truly yours,

BNY MELLON CAPITAL MARKETS, LLC
DEUTSCHE BANK SECURITIES INC.
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

On behalf of themselves and the other Underwriters named herein

By BNY MELLON CAPITAL MARKETS, LLC

By: /s/ Dan Kilinger
Name: Dan Kilinger
Title: M.D.

By DEUTSCHE BANK SECURITIES INC.

By: /s/ Virginia Cosenza
Name: Virginia Cosenza
Title: Vice President

By: /s/ Jack McCabe
Name: Jack McCabe
Title: Director

By MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: /s/ Gavin H. Wolfe
Name: Gavin H. Wolfe
Title: Managing Director

Accepted:

WESTAR ENERGY, INC.

By: /s/ Anthony D. Somma
Name: Anthony D. Somma
Title: Chief Financial Officer and Treasurer

[Signature Page to Underwriting Agreement]

TIME OF SALE PROSPECTUS

1. Base Prospectus dated March 20, 2013 relating to the Offered Securities and included in the Registration Statement (File No. 333-187398)
2. The preliminary prospectus supplement dated March 21, 2013 relating to the Offered Securities
3. Final term sheet containing the final terms of the Offered Securities and filed with the Commission under Rule 433, in a form approved by the Managers

WESTSTAR ENERGY, INC.

UNDERWRITING AGREEMENT

STANDARD PROVISIONS

(DEBT SECURITIES, FIRST MORTGAGE BONDS, WARRANTS, PURCHASE CONTRACTS AND UNITS)

March 21, 2013

From time to time, Westar Energy, Inc., a Kansas corporation (the “**Company**”), may enter into one or more underwriting agreements that provide for the sale of designated securities to the several underwriters named therein. The standard provisions set forth herein may be incorporated by reference in any such underwriting agreement (an “**Underwriting Agreement**”). The Underwriting Agreement, including the provisions incorporated therein by reference, is herein referred to as this Agreement. Terms defined in the Underwriting Agreement are used herein as therein defined.

The Company proposes to issue from time to time (a) its senior debt securities (“**Senior Debt Securities**”), (b) its subordinated debt securities (“**Subordinated Debt Securities**” and with the Senior Debt Securities, the “**Debt Securities**”), (c) its First Mortgage Bonds (“**First Mortgage Bonds**”), (d) warrants (“**Warrants**”) and (e) purchase contracts (“**Purchase Contracts**”) requiring the holders thereof to purchase or sell (i) securities of an entity unaffiliated with the Company, a basket of such securities, an index or indices of such securities or any combination of the above, (ii) currencies or composite currencies or (iii) commodities. Debt Securities, Purchase Contracts and Warrants or any combination thereof may be offered in the form of Units (“**Units**”). As used herein, the term “**Debt Securities**” includes Purchase Contracts.

The Company has filed with the Securities and Exchange Commission (the “**Commission**”) a registration statement including a prospectus relating to the Debt Securities, First Mortgage Bonds, Warrants, Purchase Contracts and Units (collectively, the “**Securities**”) and has filed with, or transmitted for filing to, or shall promptly after the date of the Underwriting Agreement file with or transmit for filing to, the Commission a prospectus supplement (the “**Prospectus Supplement**”) pursuant to Rule 424 under the Securities Act of 1933, as amended (the “**Securities Act**”), specifically relating to the Securities offered pursuant to this Agreement (the “**Offered Securities**”). The term “**Registration Statement**” means the registration statement as amended to the date of the Underwriting Agreement including any additional registration statement filed by the Company pursuant to Rule 462(b). The term “**Base Prospectus**” means the prospectus included in the Registration Statement. The term “**Prospectus**” means the Base Prospectus together with the Prospectus Supplement. The term “**preliminary prospectus**” means a preliminary prospectus supplement specifically relating to the Offered Securities, together with the Base Prospectus. The term “**free writing prospectus**” has the meaning set forth in Rule 405 under the Securities Act. The term “**issuer free writing prospectus**” has the meaning set forth in Rule 433 under the Securities Act. The term “**Time of Sale Prospectus**” means the Base Prospectus and preliminary prospectus, if any, together with any additional documents or other information identified in Schedule I to the Underwriting Agreement. As used herein, the terms “Base Prospectus,” “Prospectus”, “preliminary prospectus” and “Time of Sale Prospectus” shall include in each case the documents, if any, incorporated by reference therein. As used herein, the term “**Applicable Time**” means the time and date set forth in the Underwriting Agreement or such other time as agreed in writing by the Company and the Managers. The terms “**supplement**,” “**amendment**” and “**amend**” as used herein shall include all documents deemed to be incorporated by reference in the Prospectus that are filed subsequent to the date of the Base Prospectus by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).

1. *Representations and Warranties.* The Company represents and warrants to each of the Underwriters as of the date of the Underwriting Agreement that:

(i) The Registration Statement is an “automatic shelf registration statement” as defined in Rule 405 under the Securities Act and has become effective; the Company has not received any notice from the Commission objecting to the use of the automatic shelf registration form; no stop order suspending the effectiveness of the Registration Statement is in effect and no proceedings for such purpose are pending before or threatened by the Commission; the Company is a “well-known seasoned issuer” as defined in Rule 405 under the Securities Act and otherwise meets the requirements for the use of the Registration Statement form.

(ii) Each document filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Time of Sale Prospectus or the Prospectus complied or will comply when so filed in all material respects with the Exchange Act and the rules and regulations of the Commission thereunder.

(iii) Each of the Registration Statement, the Time of Sale Prospectus and the Prospectus comply in all material respects with the Securities Act and the rules and regulations of the Commission. (A) Each part of the Registration Statement, when such part became effective, did not contain, and each such part, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (B) the Time of Sale Prospectus as of the Applicable Time did not contain or as amended or supplemented, if applicable, as of the Closing Date, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (C) the Prospectus as of its date does not contain, or as amended or supplemented, if applicable, as of the Closing Date will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The foregoing representations and warranties in this Section I (iii) do not apply to (A) that part of the Registration Statement which shall constitute the Statement of Eligibility of the Trustee on Form T-1 (the “**Form T-1**”) or (B) statements or omissions in the Registration Statement, the Time of Sale Prospectus or the Prospectus or any amendment or supplement thereto based upon information furnished to the Company in writing by any Underwriter through the Managers expressly for use therein.

(iv) The Company has been duly incorporated, and is validly existing, as a corporation in good standing under the laws of the State of Kansas.

(v) The Offered Securities have been duly authorized by the Company and, when executed and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, will be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, reorganization, insolvency and similar laws affecting creditors’ rights generally, concepts of reasonableness and equitable principles of general applicability, and will be entitled to the benefits of the Amended Mortgage (as defined herein).

(vi) The Company has an authorized and outstanding capitalization as set forth in the Time of Sale Prospectus and the Prospectus.

(vii) The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. The Company has not made, used, prepared, authorized, approved or referred to any offer relating to the Offered Securities that would constitute a free writing prospectus other than (a) any written communications furnished in advance to the Managers, to which the Managers shall have the right to reasonably object in writing; (b) an electronic road show, if any, furnished to the Managers before first use; or (c) free writing prospectuses identified on Schedule I to the Underwriting Agreement relating to the Offered Securities, including any term sheet as may be set forth in Schedule II to the Underwriting Agreement relating to the Offered Securities. Any such free writing prospectus as of its issue date complied in all material respects with the requirements of the Securities Act and the rules and regulations thereunder and was filed with the Commission in accordance with the Securities Act (to the extent required pursuant to Rule 433(d) thereunder).

(viii) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Senior Debt Indenture, the Subordinated Debt Indenture, the Amended Mortgage (as defined herein), the Offered Securities, any Warrants, any Purchase Contracts and any Units will not contravene any provision of applicable law or the articles of incorporation or by-laws of the Company or any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its consolidated subsidiaries, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any of its consolidated subsidiaries, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under this Agreement, the Senior Debt Indenture, the Subordinated Debt Indenture, the Amended Mortgage, the Offered Securities, except such as may be required by the securities or blue sky laws of the various states in connection with the offer and sale of the Offered Securities.

(ix) Neither the Company nor any of its subsidiaries is (a) in violation of its articles of incorporation or by-laws (or similar organizational documents), (b) in default in the performance or observance of any obligation, covenant or condition contained in any contract or (c) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except in the case of clause (b) or (c), to the extent such violation or default would not have a material adverse effect.

(x) There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus (exclusive of any amendments or supplements thereto effected subsequent to the date of this Agreement).

(xi) There are no legal or governmental proceedings pending or threatened to which the Company or any of its consolidated subsidiaries is a party or to which any of the properties of the Company or any of its consolidated subsidiaries is subject that are required to be described in the Registration Statement, the Time of Sale Prospectus or Prospectus and are not so described or any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement, the Time of Sale Prospectus or Prospectus or to be filed or incorporated by reference as exhibits to the Registration Statement that are not described, filed or incorporated as required.

(xii) Each of the Company and its consolidated subsidiaries has all necessary consents, authorizations, approvals, orders, certificates, licenses and permits of and from, and has made all declarations and filings with, all federal, state, local and other governmental authorities, all self-regulatory organizations and all courts and other tribunals, to own, lease, license and use its properties and assets and to conduct its business in the manner described in the Time of Sale Prospectus, except to the extent that the failure to obtain or file would not have a material adverse effect on the Company and its consolidated subsidiaries, taken as a whole.

(xiii) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(xiv) The Company and its subsidiaries maintain "disclosure controls and procedures" (as such term is defined in Rule 13a-15(e) under the Exchange Act); such disclosure controls and procedures are effective.

(xv) The consolidated historical financial statements and schedules of the Company and its consolidated subsidiaries included in the Registration Statement, the Time of Sale Prospectus and the Prospectus present fairly in all material respects the financial condition, results of operations and cash flows of the Company as of the dates and for the periods indicated, comply as to form with the applicable accounting requirements of the Securities Act and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as otherwise noted therein). The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement, the Prospectus and the Time of Sale Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(xvi) Except as set forth in or contemplated in the Time of Sale Prospectus and the Prospectus (exclusive of any amendment or supplement thereto), the Company and the Principal Subsidiary have not received written notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except where such liability would not, individually or in the aggregate, have a material adverse effect on the Company and its consolidated subsidiaries, taken as a whole.

(xvii) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with the applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the “**Money Laundering Laws**”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(xviii) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Company will not directly or indirectly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

2. Public Offering. The Company is advised by the Managers that the Underwriters propose to make a public offering of their respective portions of the Offered Securities as soon after this Agreement has been entered into as in the Managers’ judgment is advisable. The terms of the public offering of the Offered Securities are set forth in the Time of Sale Prospectus and the Prospectus.

3. Purchase and Delivery. Except as otherwise provided in this Section 3 or in the Underwriting Agreement, payment for the Offered Securities shall be made to the Company in Federal or other funds immediately available in New York City at the time and place set forth in the Underwriting Agreement, upon delivery to the Managers for the respective accounts of the several Underwriters of the Offered Securities registered in such names and in such denominations as the Managers shall request in writing not less than one full business day prior to the date of delivery, with any transfer taxes payable in connection with the transfer of the Offered Securities to the Underwriters duly paid.

4. Conditions to Closing. Unless waived by the Managers, the several obligations of the Underwriters hereunder are subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the date of the Underwriting Agreement and the Closing Date (as if made on the Closing Date) and the performance by the Company of all the obligations to be performed by it under this Agreement on or prior to the Closing Date and the satisfaction of the following conditions:

(a) Subsequent to the Applicable Time and prior to the Closing Date, there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded the Company or any of the securities of the Company by any “nationally recognized statistical rating organization,” as such term is defined in Section 3(a)(62) of the Exchange Act.

(b) No stop order suspending the effectiveness of the Registration Statement shall be in effect, and no proceedings for such purpose shall be pending before or threatened by the Commission, and there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business, properties or operations of the Company and its consolidated subsidiaries, taken as a whole, from that set forth in the Time of Sale Prospectus, that, in the judgment of the Managers, is material and adverse and that makes it, in the judgment of the Managers, impracticable or inadvisable to market or deliver the Offered Securities on the terms and in the manner contemplated in the Time of Sale Prospectus; and the Managers shall have received, on the Closing Date, a certificate, dated the Closing Date and signed by either the chief executive officer or chief financial officer of the Company, to the foregoing effect. Such certificate will also provide that the representations and warranties of the Company contained herein are true and correct as of the Closing Date and that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date. The officer making such certificate may rely upon the best of his knowledge as to proceedings threatened.

(c) The Managers shall have received on the Closing Date an opinion of Larry D. Irick, Senior Vice President, General Counsel and Corporate Secretary of the Company (or another lawyer of the Company reasonably satisfactory to the Underwriters), dated the Closing Date, addressed to the Managers to the effect (as applicable) that:

(i) each of the Company and Kansas Gas and Electric Company (the “**Principal Subsidiary**”) has been duly incorporated, is validly existing as a corporation in good standing under the laws of the State of Kansas and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification (except where the failure to so qualify would not have a material adverse effect upon the business or financial condition of the Company and its subsidiaries, as a whole);

(ii) all of the issued shares of capital stock of the Principal Subsidiary have been duly and validly authorized and issued, are fully paid and non-assessable, and (except for directors’ qualifying shares and except as otherwise set forth in the Time of Sale Prospectus and the Prospectus) are owned directly and indirectly by the Company, free and clear of all liens, encumbrances, equities or claims (such counsel being entitled to rely in respect of the opinion in this clause upon opinions of local counsel and in respect of matters of fact upon certificates of officers of the Company or its subsidiaries, provided that such counsel shall state that he believes that both the Managers and he are justified in relying upon such opinions and certificates);

(iii) the Company has an authorized capitalization as set forth in the Time of Sale Prospectus and the Prospectus, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable;

(iv) each of the indenture dated as of August 1, 1998 (the “**Senior Indenture**”) between the Company and Deutsche Bank Trust Company Americas, as successor to Bankers Trust Company, as trustee (the “**Senior Debt Trustee**”), the indenture to be dated as of a date indicated in a relevant prospectus supplement (the “**Subordinated Indenture**”) between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**Subordinated Debt Trustee**”), the Mortgage and Deed of Trust, dated July 1, 1939, between the Company and The Bank of New York Mellon Trust Company, N.A., as successor to Harris Trust and Savings Bank, as trustee (the “**Mortgage Bond Trustee**”), as amended and supplemented by forty-two supplemental indentures supplemental thereto, in addition to the forty-second supplemental (reopening) indenture, (such Mortgage and Deed of Trust, as heretofore amended and supplemented, the “**Mortgage**”) and as to be amended and supplemented by the supplemental indenture, to be dated as of a date indicated in a relevant prospectus supplement (the “**Supplemental Indenture**”) (the Mortgage, as so amended and supplemented by such supplemental indentures, the “**Amended Mortgage**”), has been duly authorized, executed and delivered by the Company;

(v) assuming the due authorization, execution and delivery by the other parties thereto, the Amended Mortgage constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency and similar laws affecting creditors’ rights generally, concepts of reasonableness and equitable principles of general applicability;

(vi) the Amended Mortgage has been duly recorded and filed in each place in which such recording or filing is required to protect and preserve the lien of the Amended Mortgage, and all taxes and recording or filing fees required to be paid in connection with the execution, recording or filing of the Amended Mortgage have been duly paid;

(vii) the Company has good and sufficient title to, or a satisfactory easement in, all the real property, and has good and sufficient title to all the personal property described in the Amended Mortgage as owned by it and subject to the lien of the Amended Mortgage, except any which may have been released from the lien thereof pursuant to the provisions thereof, subject only to (a) minor leases and liens of judgments not prior to the lien of the Amended Mortgage, which, in such counsel’s opinion, do not interfere with the Company’s business, (b) minor defects, irregularities and deficiencies in titles of properties and rights-of-way which, in such counsel’s opinion, do not materially impair the use of such property and rights of-way for the purposes for which they are held by the Company, and (c) other permitted liens as defined in the Amended

Mortgage; subject to the qualifications set forth in this Section 4(c)(vii), the Amended Mortgage constitutes a valid, direct first mortgage lien upon said properties and upon all franchises owned by the Company, which properties and franchises include all the physical properties and franchises of the Company (other than classes of property expressly excepted in the Amended Mortgage); all physical properties and franchises (other than classes of property expressly excepted in the Amended Mortgage as aforesaid) thereafter acquired by the Company will, upon such acquisition, become subject to the lien thereof, subject, however, to liens permitted thereby and to any liens existing or placed upon such properties at the time of the acquisition thereof by the Company and except as described in the Time of Sale Prospectus and the Prospectus; and the descriptions of all such properties and assets contained in the granting clauses of the Amended Mortgage are correct and adequate for the purposes of the Amended Mortgage;

(viii) the Warrant Agreement, if any, has been duly authorized, executed and delivered by the Company;

(ix) the Unit Agreement, if any, has been duly authorized, executed and delivered by the Company;

(x) the Offered Securities have been duly authorized, executed, and delivered by the Company;

(xi) when the Offered Securities have been duly executed and authenticated in accordance with the provisions of the relevant Senior Indenture, Subordinated Indenture or Amended Mortgage, the Offered Securities will be valid and binding obligations of the Company, enforceable against them in accordance with their terms, subject to applicable bankruptcy, reorganization, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, and will be entitled to the benefits of the relevant Senior Indenture, Subordinated Indenture or Amended Mortgage and to the lien of the Amended Mortgage;

(xii) this Agreement has been duly authorized, executed and delivered by the Company;

(xiii) except as rights to indemnity and contribution under this Agreement may be limited under applicable law, the execution and delivery by the Company of, and the performance by the Company of its obligations under this Agreement, the Senior Indenture, the Subordinated Indenture, the Amended Mortgage, the Offered Securities, the Warrant Agreement and the Unit Agreement will not contravene any provision of the laws of the State of Kansas or any federal law of the United States of America (including laws relating specifically to electric utility companies and the electric utility industry) that in such counsel's experience is normally applicable to general business corporations in relation to transactions of the topic contemplated by this Agreement, or, to the best knowledge of such counsel, of any other state or jurisdiction of the United States, or the articles of incorporation or by-laws (or similar organizational document) of the Company or, to the best knowledge of such counsel, any material agreement or other material instrument binding upon the Company, the Senior Indenture, the Subordinated Indenture, the Amended Mortgage, the Offered Securities, the Warrant Agreement and the Unit Agreement, provided that such counsel need not express an opinion as to federal or state securities or Blue Sky laws, and no consent, approval or authorization of any governmental body or agency under the laws of the State of Kansas or any federal law of the United States of America (except with respect to consents, approvals and authorizations relating specifically to the public utility companies or the utilities industry, as to which such counsel is not called upon to express any opinion) that in such counsel's experience is normally applicable to general business corporations in relation to transactions of the topic contemplated by this Agreement, or, to the best knowledge of such counsel, of any other state or jurisdiction of the United States of America or of any foreign jurisdiction is required for the performance by the Company of its obligations under this Agreement, the Senior Indenture, the Subordinated Indenture, the Amended Mortgage, the Offered Securities, the Warrant Agreement, and the Unit Agreement provided that such counsel need not express an opinion as to federal or state securities or Blue Sky laws;

(xiv) each of the Company and the Principal Subsidiary possesses valid franchises, certificates of convenience and authority, licenses and permits authorizing it to carry on the electric utility business in which it is engaged, except in the cases that the failure to possess such franchises, certificates, licenses or permits, individually or in the aggregate, would not be reasonably expected to have a material adverse effect on the Company and its consolidated subsidiaries, taken as a whole, and neither the Company nor the Principal Subsidiary has received any notice of proceedings relating to the revocation or modification of any such franchise, certificate of convenience and authority, license or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to have a material adverse effect, except as set forth in or contemplated in the Time of Sale Prospectus and the Prospectus;

(xv) the statements (A) in Item 3 of the Company's most recent Annual Report on Form 10-K incorporated by reference in the Time of Sale Prospectus and the Prospectus, (B) in Part II, Item 1 under the caption "Legal Proceedings" of the Company's most recent Quarterly Report on Form 10-Q incorporated by reference in the Time of Sale Prospectus and (C) in the Registration Statement in Item 15, insofar as such statements constitute a summary of the legal matters, documents or proceedings referred to therein, fairly present the information called for with respect to such legal matters, documents and proceedings;

(xvi) such counsel does not know of any legal or governmental proceeding pending or threatened (including, without limitation, proceeding pending before the State Corporation Commission of the State of Kansas ("KCC") or Federal Regulatory Energy Commission ("FERC")) to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject which is required to be described in the Registration Statement, the Time of Sale Prospectus or the Prospectus and is not so described, or of any contract, other document, public utility law or regulation which is required to be described in the Registration Statement, the Time of Sale Prospectus or Prospectus or to be filed as an exhibit to the Registration Statement which is not described or filed as required;

(xvii) the securities into which the Offered Securities are convertible, initially reserved for issuance upon conversion of the Offered Company Securities (the "**Underlying Securities**"), have been duly authorized and reserved for issuance;

(xiii) when the Underlying Securities are issued upon conversion of the Offered Company Securities in accordance with the terms of the Offered Company Securities, such Underlying Securities will be validly issued, fully paid and non-assessable and will not be subject to any preemptive or other right to subscribe for or purchase such Underlying Securities;

(xix) the Company has complied with K.S.A. 9 66- 125 with respect to the issuance of the Offered Securities. No additional consent, approval, authorization, filing with or order of (a) FERC under the Federal Power Act, (b) the KCC or (c) to the knowledge of the Company, any court or governmental agency or body is required in connection with the transactions contemplated herein, except such as have been obtained under the Securities Act and the Trust Indenture Act of 1939 (the "**Trust Indenture Act**") and such as may be required under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Underwriters in the manner contemplated herein and in the Time of Sale Prospectus; and

(xx) The statements in the prospectus supplement contained in the Time of Sale Prospectus and the Prospectus under "Description of First Mortgage Bonds," "Description of Senior Notes" or "Description of Subordinated Indebtedness" and in the Base Prospectus under the caption "Description of Debt Securities" as they relate to the Amended Mortgage, the Senior Debt Indenture, the Subordinated Debt Indenture and the Offered Securities, insofar as such statements constitute a summary of the legal matters or documents referred to therein, fairly present the information called for with respect to such legal matters and documents.

Such counsel shall also state that nothing has come to his attention that causes him to believe (1) that the Registration Statement or any amendments thereto, on the date on which it became effective or the date of filing of the most recent subsequent Annual Report on Form 10-K, contained an untrue statement of a material fact or omitted to state a

material fact required to be stated therein or necessary to make the statements therein not misleading; (2) that the Time of Sale Prospectus (except for the financial statements and other financial or statistical data derived therefrom that are included or incorporated by reference therein or omitted therefrom, as to which such counsel is not called upon to express any belief), at the Applicable Time or as amended or supplemented, if applicable, as of the Closing Date, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; (3) that the Prospectus (except for the financial statements and other financial or statistical data derived therefrom that are included or incorporated by reference therein or omitted therefrom, as to which such counsel is not called upon to express any belief), at its date or as amended or supplemented, if applicable, at the Closing Date, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make statements therein, in the light of the circumstances under which they were made, not misleading; or (4) that the documents incorporated by reference in the Prospectus (except for the financial statements and other financial or statistical data derived therefrom that are included or incorporated by reference therein or omitted therefrom, as to which such counsel is not called upon to express any belief), as of the dates they were filed with the Commission, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

With respect to the preceding paragraph, such counsel may state that he has not been called upon to pass upon, and that he expresses no view regarding, the financial statements or financial schedules or statistical data derived therefrom or other accounting or financial data included in the Registration Statement, the Time of Sale Prospectus or the Prospectus, or the Statement of Eligibility of the Trustee on Form T-1, and that his opinion and belief is based upon his participation in the preparation of the Registration Statement, Time of Sale Prospectus, Prospectus (as amended or supplemented) and the documents incorporated therein by reference and review and discussion of the contents thereof, but is without independent check or verification except as specified.

In expressing his opinion as to questions of the law of jurisdictions other than the State of Kansas and the United States, such counsel may rely to the extent reasonable on such counsel as may be reasonably acceptable to counsel to the Underwriters. In addition, such counsel may reasonably rely as to questions of fact on certificates of responsible officers of the Company.

(d) The Managers shall have received on the Closing Date an opinion of Davis Polk & Wardwell LLP, special counsel for the Company, dated the Closing Date, to the effect that:

(i) The Company is not, and after giving effect to the offering and sale of the Offered Securities and the application of the proceeds thereof as described in the Time of Sale Prospectus and the Prospectus will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended;

(ii) assuming the due authorization, execution and delivery by all parties thereto, the Senior Indenture or Subordinated Indenture, as applicable, is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability;

(iii) assuming the due authorization, execution and delivery by all parties thereto, the Warrant Agreement, if any, is a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability;

(iv) assuming the due authorization, execution and delivery by all parties thereto, the Unit Agreement, if any, is a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability;

(v) except as rights to indemnity and contribution under this Agreement may be limited under applicable law, the execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Senior Indenture, the Subordinated Indenture, the Amended Mortgage, the Offered Securities, the Warrant Agreement and the Unit Agreement will not contravene any provision of the laws of the State of New York or any federal law of the United States of America (except with respect to laws relating specifically to public utility companies or the utilities industry, as to which

such counsel is not called upon to express any opinion) that in such counsel's experience is normally applicable to general business corporations in relation to transactions of the type contemplated by this Agreement, the Senior Indenture, the Subordinated Indenture, the Amended Mortgage, the Offered Securities, the Warrant Agreement and the Unit Agreement, provided that such counsel need not express an opinion as to federal or state securities or Blue Sky laws,

(vi) no consent, approval, authorization, or order of, or qualification with, any governmental body or agency under the laws of the State of New York or any federal law of the United States of America (except with respect to consents, approvals and authorizations relating specifically to public utility companies or the utilities industry, as to which such counsel is not called upon to express any opinion) that in such counsel's experience is normally applicable to general business corporations in relation to transactions of the type contemplated by this Agreement, the Senior Indenture, the Subordinated Indenture, the Amended Mortgage, the Offered Securities, the Warrant Agreement and the Unit Agreement is required for the execution, delivery and performance by the Company of its obligations under this Agreement, the Senior Indenture, the Subordinated Indenture, the Amended Mortgage, the Offered Securities, the Warrant Agreement and the Unit Agreement, except such as may be required under federal or state securities or Blue Sky laws as to which such counsel need not express any opinion; and

Such counsel shall state that it has considered the statements included in the Time of Sale Prospectus and the Prospectus under the caption "Underwriting" and in the Base Prospectus under the caption "Plan of Distribution" insofar as they summarize provisions of this Agreement, the Senior Indenture, the Subordinated Indenture and the Offered Securities. In such counsel's opinion, such statements fairly summarize these provisions in all material respects. The statements included in the Prospectus under the caption "Certain U.S. Federal Income Tax Considerations," insofar as they purport to describe provisions of U.S. federal income tax laws or legal conclusions with respect thereto, fairly and accurately summarize the matters referred to therein in all material respects.

In addition, such counsel shall confirm that it has examined evidence that the Senior Indenture, Subordinated Indenture and Amended Mortgage (as applicable) qualified under the Trust Indenture Act. Such counsel shall also state (i) that the Registration Statement and the Prospectus appear on their face to be appropriately responsive in all material respects to the requirements of the Securities Act and the rules and regulations of the Commission thereunder and (ii) that nothing has come to the attention of such counsel that causes them to believe that, insofar as relevant to the offering of the Offered Securities, (A) on the date of this Agreement, the Registration Statement contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (B) at the Applicable Time, the Time of Sale Prospectus contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; or (C) the Prospectus as of its date or as amended or supplemented, if applicable, at the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make statements therein, in the light of the circumstances under which they were made, not misleading.

With respect to the preceding paragraph, Davis Polk & Wardwell LLP may state that the primary purpose of its professional engagement is not to establish or confirm factual matters or financial, accounting or quantitative information and that they are not passing upon, and do not assume any responsibility for, the accuracy, completeness or fairness of the statements contained in the Registration Statement, the Time of Sale Prospectus or the Prospectus, or the Statement of Eligibility of the Trustee on Form T-1, and they have not themselves checked the accuracy, completeness or fairness of, or otherwise verified, the information furnished in such documents (except to the extent expressly set forth in their opinion letter), and that their opinion and belief is based upon their participation in the preparation of the Registration Statement, Time of Sale Prospectus and Prospectus and any amendments or supplements thereto (but not including documents incorporated therein by reference) and review and discussion of the contents thereof (including documents incorporated therein by reference), but is without independent check or verification except as specified. Such counsel shall not be required to express a view as to the conveyance of the Time of Sale Prospectus or the information contained therein to investors.

(e) The Managers shall have received on the Closing Date an opinion of Hunton & Williams LLP, counsel for the Underwriters, dated the Closing Date, covering the matters requested by and in form and substance reasonably satisfactory to the Managers.

(f) The Managers shall have received at the Applicable Time a letter dated such date and on the Closing Date a letter dated such date, in each case in form and substance satisfactory to the Managers, from Deloitte & Touche LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial

statements and certain financial information reviewed by them contained in or incorporated by reference in the Registration Statement, the Time of Sale Prospectus and the Prospectus and each other firm of independent accountants, if any, who audited or reviewed financial statements contained in or incorporated by reference in the Registration Statement, the Time of Sale Prospectus and the Prospectus, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to such financial statements and financial information.

(g) The Managers shall have received on the date hereof or on the Closing Date, as applicable, such additional documents as the Managers shall have reasonably requested to confirm compliance with the conditions to Closing listed herein.

5. Covenants of the Company. In further consideration of the agreements of the Underwriters herein contained, the Company covenants as follows:

(a) To furnish to the Managers, without charge, a copy of the Registration Statement and two signed copies of any post-effective amendment thereto specifically relating to the Offered Securities (including exhibits thereto and documents incorporated therein by reference) and, during the period mentioned in paragraph (f) below, as many copies of the Time of Sale Prospectus, the Prospectus, any documents incorporated therein by reference and any supplements and amendments thereto as the Managers may reasonably request.

(b) Before amending or supplementing the Registration Statement, the Time of Sale Prospectus or the Prospectus, to furnish the Managers with a copy of each such proposed amendment or supplement, and not to make such amendment or supplement that the Managers shall have reasonably objected to in writing.

(c) Before filing, using or referring to any free writing prospectus relating to the Offered Securities, to furnish the Managers a copy of each such free writing prospectus, and not to file, use or refer to any such free writing prospectus that the Managers shall have reasonably objected to in writing.

(d) Not to take any action that would result in an Underwriter being required to file with the Commission pursuant to Rule 433(d) under the Securities Act a free writing prospectus prepared by or on behalf of the Underwriter that the Underwriter otherwise would not have been required to file thereunder.

(e) If the Time of Sale Prospectus is being used to solicit offers to buy the Offered Securities at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur as a result of which it is necessary to amend or supplement the Time of Sale Prospectus in order to make the statements therein, in the light of the circumstances existing at the time, not misleading, or if any event shall occur as a result of which any free writing prospectus included as part of the Time of Sale Prospectus conflicts with the information contained in the Registration Statement then on file, the Company shall forthwith (1) promptly notify the Managers of such event in writing and (2) prepare and furnish, at its expense, to the Underwriters and to the dealers (whose names and addresses the Managers will furnish to the Company), either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not, in the light of the circumstances existing at the time, be misleading or so that any free writing prospectus which is included as part of the Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the Registration Statement.

(f) If, during such period after the first date of the public offering of the Offered Securities during which in the opinion of counsel to the Managers the Prospectus (or in lieu thereof the notice referred to in Rule 173(a) under the Securities Act) is required by law to be delivered in connection with sales by an Underwriter or dealer, any event shall occur as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances existing at the time, not misleading, the Company shall (1) notify the Managers of such event and (2) forthwith prepare and furnish, at its expense, to the Underwriters and to the dealers (whose names and addresses the Managers will furnish to the Company) to which Offered Securities may have been sold by the Managers on behalf of the Underwriters and to any other dealers on request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances existing at the time, be misleading.

(g) To endeavor to qualify the Offered Securities for offer and sale under the securities or Blue Sky laws of such U.S. jurisdictions as the Managers shall reasonably request.

(h) To make generally available to the Company's security holders as soon as practicable an earnings statement covering the twelve month period beginning on the first day of the first fiscal quarter commencing after the date hereof, which shall satisfy the provisions of Section 11 (a) of the Securities Act and the rules and regulations of the Commission thereunder (which may be accomplished by making generally available the Company's financial statements in the manner provided for by Rule 158 of the Securities Act).

(i) The Company will not, without the prior consent of the Managers, offer to sell, sell, contract to sell, pledge, or otherwise dispose of any debt securities, (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise)), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, any debt securities issued or guaranteed by the Company (other than the Securities) or publicly announce an intention to effect any such transaction, between the date of the Underwriting Agreement and the Closing Date.

6. Covenants of the Underwriters. In further consideration of the agreements of the Company herein contained, each Underwriter severally covenants as follows:

(a) Subject to Section 6(b), not to take any action that would result in the Company being required to file with the Commission under Rule 433(d) a free writing prospectus prepared by or on behalf of such Underwriter that otherwise would not be required to be filed by the Company thereunder, but for the action of the Underwriter.

(b) Not to use, refer to or distribute any free writing prospectus except:

(i) a free writing prospectus that (a) is not an issuer free writing prospectus and (b) contains only information describing the preliminary terms of the Offered Securities or the offering thereof, which information is limited to the categories of terms referenced on Schedule II to the Underwriting Agreement or otherwise permitted under Rule 134 of the Securities Act;

(ii) a free writing prospectus as shall be agreed in writing with the Company that is not distributed, used or referred to by such Underwriter in a manner reasonably designed to lead to its broad unrestricted dissemination (unless the Company consents in writing to such dissemination); or

(iii) a free writing prospectus identified in Schedule I to the Underwriting Agreement as forming part of the Time of Sale Prospectus (including any customary distribution through the Bloomberg system consisting of the information contained in such free writing prospectus).

7. Indemnification and Contribution. The Company agrees to indemnify and hold harmless each Underwriter, the directors, officers, employees and agents of each Underwriter and each person, if any, who controls each Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities arising out of, based upon or caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus (as amended or supplemented), any issuer free writing prospectus or the Prospectus (as amended or supplemented), arising out of, based upon or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities arise out of, are based upon or are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information furnished to the Company in writing by such Underwriter through the Managers expressly for use therein.

Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, its directors and officers who have signed the Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the foregoing indemnity from the Company to such Underwriter, but only with reference to information relating to such Underwriter furnished to the Company in writing by such Underwriter through the Managers expressly for use in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, any issuer free writing prospectus, the Prospectus or any amendment or supplement thereto.

In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to either of the two preceding paragraphs, such person (hereinafter called the "indemnified party") shall promptly notify the person against whom such indemnity may be sought (hereinafter called the "indemnifying party") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and disbursements of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and, upon advice of counsel the indemnified party concludes that counsel chosen by the indemnifying party to represent the indemnified party would be inappropriate due to actual or potential differing interests between the indemnifying party and indemnified party or (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action. It is understood that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and disbursements of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and disbursements shall be reimbursed as they are incurred. In the case of any such separate firm for the Underwriters and such control persons of the Underwriters, such firm shall be designated in writing by the Managers. In the case of any such separate firm for the Company and such directors, officers and controlling persons of the Company, such firm shall be designated in writing by the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify, to the extent provided in the two immediately preceding paragraphs, the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement (x) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (y) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

If the indemnification provided for in the first or second paragraph of this Section 7 is unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages or liabilities for which indemnification is provided herein, then the indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Offered Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Underwriters shall be deemed to be in the same proportion as the aggregate offering price of Offered Securities bears to the total underwriting discounts and commissions received by the Underwriters in respect thereof, in each case as set forth in the table on the cover page of the Prospectus. The relative fault of the Company and the Underwriters shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or by the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. For purposes of this Section 7, each person who controls an Underwriter within the meaning of either the Securities Act or the Exchange Act and each director, officer, employee and agent of an Underwriter shall have the same rights to contribution as such Underwriter, and each person who controls the Company within the meaning of either the Securities Act or the Exchange Act, each officer of the Company who shall have signed the

Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph and the preceding paragraph. Notwithstanding the provisions of this Section 7, the Underwriters shall not be required to contribute any amount in excess of the amount by which the total price at which the Offered Securities underwritten by them and distributed to the public were offered to the public exceeds the amount of any damages which the Underwriters have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

The indemnity and contribution agreement contained in this Section 7 and the representations and warranties of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Underwriters, any of their respective officers, directors, employees, agents or any person controlling the Underwriters or by or on behalf of the Company, their respective officers or directors or any other person controlling the Company and (iii) acceptance of and payment for any of the Offered Securities.

8. Termination. This Agreement shall be subject to termination in the absolute discretion of the Managers by notice given by the Managers to the Company, if (a) after the Applicable Time and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on or by, as the case may be, the New York Stock Exchange, the American Stock Exchange, or the Financial Industry Regulatory Authority, Inc., (ii) trading of any securities of the Company shall have been suspended on the New York Stock Exchange, (iii) a general moratorium on commercial banking activities in New York shall have been declared by either Federal or New York State authorities, or (iv) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or any change in financial markets or any calamity or crisis that, in the judgment of the Managers, is material and adverse and (b) in the case of any of the events specified in clauses (a)(i) through (iv), such event, singly or together with any other such event, makes it, in the judgment of the Managers, impracticable or inadvisable to market or deliver the Offered Securities on the terms and in the manner contemplated in the Time of Sale Prospectus and the Prospectus (exclusive of any amendment or supplement thereto) and this Agreement.

The Company will pay and bear all costs and expenses incident to the performance of its obligations under this Agreement, including (a) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits), as originally filed and as amended, the preliminary prospectuses, the Time of Sale Prospectus, any free writing prospectus and the Prospectus and any amendments or supplements thereto, and the cost of furnishing copies thereto to the Underwriters, (b) the preparation, printing and distribution of this Agreement, the Senior Indenture, the Subordinated Indenture, the Warrant Agreement, the Unit Agreement, and the Blue Sky Memorandum, (c) the delivery of the Offered Securities to the Underwriters, (d) the reasonable fees and disbursements of the Company's counsel and accountants, (e) the qualification of the Offered Securities under the applicable state securities or Blue Sky laws in accordance with Section 5, including filing fees and reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with any Blue Sky survey and any legal investment survey, (f) all fees payable to the Financial Industry Regulatory Authority, Inc. in connection with the review, if any, of the offering of the Securities, (g) any fees charged by rating agencies for rating the Offered Securities and (h) the fees and expenses of the Trustee, including the fees and disbursements of counsel for the Trustee, in connection with the Senior Indenture, the Subordinated Indenture and the Offered Securities. Except as specifically provided elsewhere herein, the Underwriters will pay all of their own costs and expenses, including without limitation the fees and expenses of their counsel and the expenses of selling presentations.

If this Agreement shall be terminated by the Underwriters because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Underwriters for all out of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by the Underwriters in connection with this Agreement or the offering contemplated hereunder. This provision shall survive the termination or cancellation of this Agreement.

9. Defaulting Underwriters. If on the Closing Date any one or more of the Underwriters shall fail or refuse to purchase Offered Securities that it has or they have agreed to purchase on such date and such failure to purchase shall constitute a default in the performance of its obligations hereunder, and the aggregate amount of Offered Securities which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate amount of the Offered Securities to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the amount of Offered Securities set forth opposite their respective names bears to the aggregate amount of Offered Securities set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as the Managers may specify, to purchase the Offered Securities which such defaulting Underwriter or

Underwriters agreed but failed or refused to purchase on such date; *provided* that in no event shall the amount of Offered Securities that any Underwriter has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 9 by an amount in excess of one-ninth of such amount of Offered Securities without the written consent of such Underwriter. If on the Closing Date any Underwriter or Underwriters shall fail or refuse to purchase Offered Securities and the aggregate amount of Offered Securities with respect to which such default occurs is more than one-tenth of the aggregate amount of Offered Securities to be purchased on such date, and arrangements satisfactory to the Managers and the Company for the purchase of such Offered Securities are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company. In any such case either the Managers or the Company shall have the right to postpone the Closing Date but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement and in the Prospectus or in any other documents or arrangements may be effected. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

10. *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

11. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

12. *Headings.* The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

13. *Successors.* This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 7 hereof, and no other person will have any right or obligation hereunder.

14. *Waiver of Jury Trial.* Each of the parties hereto hereby irrevocably waives its rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement or the transactions contemplated hereunder.

WESTAR ENERGY, INC.

TO

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
as Trustee

(as Successor to
HARRIS TRUST AND SAVINGS BANK)

FORTY-THIRD SUPPLEMENTAL INDENTURE

Dated as of March 28, 2013

First Mortgage Bonds, 4.10% Series due 2043

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APPENDIX A

DESCRIPTION OF PROPERTIES

FORTY-THIRD SUPPLEMENTAL INDENTURE, dated as of the twenty-eighth day of March, Two Thousand and Thirteen, made by and between Westar Energy, Inc., formerly The Kansas Power and Light Company, a corporation organized and existing under the laws of the State of Kansas (hereinafter called the "Company"), party of the first part, and The Bank of New York Mellon Trust Company, N.A., a national banking association whose mailing address is 2 North La Salle Street, Chicago, Illinois 60602 (hereinafter called the "Trustee"), as Trustee (as successor to Harris Trust and Savings Bank), under the Mortgage and Deed of Trust dated July 1, 1939, hereinafter mentioned, party of the second part;

WHEREAS, the Company has heretofore executed and delivered to the Trustee its Mortgage and Deed of Trust dated July 1, 1939 (hereinafter referred to as the "Original Indenture"), to provide for and to secure the issue of First Mortgage Bonds of the Company, issuable in series, and to declare the terms and conditions upon which the Bonds (as defined in the Original Indenture) are to be issued thereunder; and

WHEREAS, the Company has heretofore executed and delivered to the Trustee Forty-Two Supplemental Indentures, in addition to the Forty-Second Supplemental (Reopening) Indenture, supplemental to said Original Indenture, of which Forty-One provided for the issuance thereunder of series of the Company's First Mortgage Bonds, and there is set forth below information with respect to such Supplemental Indentures as have provided for the issuance of Bonds, and the principal amount of Bonds which remain outstanding as of March 28, 2013:

Supplemental Indenture	Date	Series of First Mortgage Bonds Provided For	Principal Amount Issued	Principal Amount Outstanding
Supplemental Indenture	July 1, 1939	3-1/2% Series Due 1969	\$26,500,000	None
Second Supplemental Indenture	April 1, 1949	2-7/8% Series Due 1979	10,000,000	None
Fourth Supplemental Indenture	October 1, 1949	2-3/4% Series Due 1979	6,500,000	None
Fifth Supplemental Indenture	December 1, 1949	2-3/4% Series Due 1984	32,500,000	None
Seventh Supplemental Indenture	December 1, 1951	3-1/4% Series Due 1981	5,250,000	None
Eighth Supplemental Indenture	May 1, 1952	3-1/4% Series Due 1982	4,750,000	None
Ninth Supplemental Indenture	October 1, 1954	3-1/8% Series Due 1984	8,000,000	None
Tenth Supplemental Indenture	September 1, 1961	4-3/4% Series Due 1991	13,000,000	None

Supplemental Indenture	Date	Series of First Mortgage Bonds Provided For	Principal Amount Issued	Principal Amount Outstanding
Eleventh Supplemental Indenture	April 1, 1969	7-5/8% Series Due 1999	19,000,000	None
Twelfth Supplemental Indenture	September 1, 1970	8-3/4% Series Due 2000	20,000,000	None
Thirteenth Supplemental Indenture	February 1, 1975	8-5/8% Series Due 2005	35,000,000	None
Fourteenth Supplemental Indenture	May 1, 1976	8-5/8% Series Due 2006	45,000,000	None
Fifteenth Supplemental Indenture	April 1, 1977	5.90% Pollution Control Series Due 2007	32,000,000	None
Sixteenth Supplemental Indenture	June 1, 1977	8-1/8% Series Due 2007	30,000,000	None
Seventeenth Supplemental Indenture	February 1, 1978	8-3/4% Series Due 2008	35,000,000	None
Eighteenth Supplemental Indenture	January 1, 1979	6-3/4% Pollution Control Series Due 2009	45,000,000	None
Nineteenth Supplemental Indenture	May 1, 1980	8-1/4% Pollution Control Series Due 1983	45,000,000	None
Twentieth Supplemental Indenture	November 1, 1981	16.95% Series Due 1988	25,000,000	None
Twenty-First Supplemental Indenture	April 1, 1982	15% Series Due 1992	60,000,000	None
Twenty-Second Supplemental Indenture	February 1, 1983	9-5/8% Pollution Control Series Due 2013	58,500,000	None
Twenty-Third Supplemental Indenture	July 1, 1986	8-1/4% Series Due 1996	60,000,000	None
Twenty-Fourth Supplemental Indenture	March 1, 1987	8-5/8% Series Due 2020	50,000,000	None
Twenty-Fifth Supplemental Indenture	October 15, 1988	9.35% Series Due 1998	75,000,000	None
Twenty-Sixth Supplemental Indenture	February 15, 1990	8-7/8% Series Due 2000	75,000,000	None
Twenty-Seventh Supplemental Indenture	March 12, 1992	7.46% Demand Series	370,000,000	None
Twenty-Eighth Supplemental Indenture	July 1, 1992	7-1/4% Series Due 1999	125,000,000	None

Supplemental Indenture	Date	Series of First Mortgage Bonds Provided For	Principal Amount Issued	Principal Amount Outstanding
		8-1/2% Series Due 2022	125,000,000	None
Twenty-Ninth Supplemental Indenture	August 20, 1992	7-1/4% Series Due 2002	100,000,000	None
Thirtieth Supplemental Indenture	February 1, 1993	6% Pollution Control Revenue Refunding Series Due 2033	58,500,000	None
Thirty-First Supplemental Indenture	April 15, 1993	7.65% Series Due 2023	100,000,000	None
Thirty-Second Supplemental Indenture	April 15, 1994	7-1/2% Series Pollution Control Revenue Refunding Due 2032	75,500,000	75,500,000
Thirty-Third Supplemental Indenture	August 11, 1997	6-7/8% Convertible Series Due 2004	370,000,000	None
		7-1/8% Convertible Series Due 2009	150,000,000	None
Thirty-Fourth Supplemental Indenture	June 28, 2000	9-1/2% Series Due 2003	397,800,000	None
Thirty-Fifth Supplemental Indenture	May 10, 2002	7-7/8% Series Due 2007	365,000,000	None
Thirty-Sixth Supplemental Indenture	June 1, 2004	5.00% Series Pollution Control Refunding Revenue Due 2033	58,340,000	None
Thirty-Seventh Supplemental Indenture	June 17, 2004	6.00% Series Due 2014	250,000,000	250,000,000
Thirty-Eighth Supplemental Indenture	January 18, 2005	5.15% Series Due 2017	125,000,000	125,000,000
		5.95% Series Due 2035	125,000,000	125,000,000
Thirty-Ninth Supplemental Indenture	June 30, 2005	5.10% Series Due 2020	250,000,000	250,000,000
		5.875% Series Due 2036	150,000,000	150,000,000
Fortieth Supplemental Indenture	May 15, 2007	6.10% Series Due 2047	150,000,000	None

Supplemental Indenture	Date	Series of First Mortgage Bonds Provided For	Principal Amount Issued	Principal Amount Outstanding
Forty-First Supplemental Indenture	November 25, 2008	8.625% Series Due 2018	300,000,000	300,000,000
Forty-Second Supplemental Indenture	March 1, 2012	4.125% Series Due 2042	250,000,000	250,000,000
Forty-Second Supplemental (Reopening) Indenture	May 17, 2012	4.125% Series Due 2042	300,000,000	300,000,000

; and

WHEREAS, the Company is entitled at this time to have authenticated and delivered additional bonds, upon compliance with the provisions of Article III of the Original Indenture, as amended; and

WHEREAS, the Company desires by this Forty-Third Supplemental Indenture (hereinafter referred to as this “**Supplemental Indenture**”) to supplement the Original Indenture and to provide for the creation of a new series of bonds under the Original Indenture to be designated “First Mortgage Bonds, 4.10% Series due 2043” (hereinafter called “**Bonds of the 2043 Series**”); and the Original Indenture provides that certain terms and provisions, as determined by the Board of Directors of the Company, of the Bonds of any particular series may be expressed in and provided by the execution of an appropriate supplemental indenture; and

WHEREAS, the Company in the exercise of the powers and authority conferred upon and reserved to it under the provisions of the Original Indenture and indentures supplemental thereto, and pursuant to appropriate resolutions of its Board of Directors, has duly resolved and determined to make, execute and deliver to the Trustee a supplemental indenture in the form hereof for the purposes herein provided; and

WHEREAS, all conditions and requirements necessary to make this Supplemental Indenture a valid, binding and legal instrument have been done, performed and fulfilled, and the execution and delivery hereof have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That, in consideration of the premises and of the mutual covenants herein contained and of the sum of One Dollar duly paid by the Trustee to the Company at or before the time of the execution of these presents, and of other valuable considerations, the receipt whereof is hereby acknowledged, and in order further to secure the payment of the principal of and interest and premium, if any, on all Bonds at any

time issued and outstanding under the Original Indenture as amended by all indentures supplemental thereto (hereinafter sometimes collectively called the "**Indenture**") according to their tenor, purport and effect, and to declare certain terms and conditions upon and subject to which Bonds are to be issued and secured, the Company has executed and delivered this Supplemental Indenture, and by these presents grants, bargains, sells, warrants, aliens, releases, conveys, assigns, transfers, mortgages, pledges, sets over and ratifies and confirms unto The Bank of New York Mellon Trust Company, N.A., as Trustee, and to its successors in trust under the Indenture forever, all and singular the following described properties (in addition to all other properties heretofore specifically subjected to the lien of the Indenture and not heretofore released from the lien thereof), that is to say:

FIRST.

All and singular the rents, real estate, chattels real, easements, servitudes, and leaseholds of the Company, or which, subject to the provisions of Article XII of the Original Indenture, the Company may hereafter acquire, including, among other things, the existing property described in Appendix A hereto under the caption "First," which description is hereby incorporated herein by reference and made a part hereof as if fully set forth herein, together with all improvements of any type located thereon.

Also all power houses, plants, buildings and other structures, dams, dam sites, substations, heating plants, gas works, holders and tanks, compressor stations, gasoline extraction plants, together with all and singular the electric heating, gas and mechanical appliances appurtenant thereto of every nature whatsoever, now owned by the Company or which it may hereafter acquire, including all and singular the machinery, engines, boilers, furnaces, generators, dynamos, turbines and motors, and all and every character of mechanical appliance for generating or producing electricity, steam, water, gas and other agencies for light, heat, cold or power or any other purpose whatsoever.

SECOND.

Also all transmission and distribution systems used for the transmission and distribution of electricity, steam, water, gas and other agencies for light, heat, cold or power, or any other purpose whatever, whether underground or overhead or on the surface or otherwise of the Company, or which, subject to the provisions of Article XII of the Original Indenture, the Company may hereafter acquire, including all poles, posts, wires, cables, conduits, mains, pipes, tubes, drains, furnaces, switchboards, transformers, insulators, meters, lamps, fuses, junction boxes, water pumping stations, regulator stations, town border metering stations and other electric, steam, water and gas fixtures and apparatus.

THIRD.

Also all franchises and all permits, ordinances, easements, privileges and immunities and licenses, all rights to construct, maintain and operate overhead, surface and underground systems for the distribution and transmission of electricity, gas, water or steam for the supply to itself or others of light, heat, cold or power or any other purpose whatsoever, all rights-of-way, all waters, water rights and flowage rights and all grants and consents, now owned by the Company or, subject to the provisions of Article XII of the Original Indenture, which it may hereafter acquire.

Also all inventions, patent rights and licenses of every kind now owned by the Company or, subject to the provisions of Article XII of the Original Indenture, which it may hereafter acquire.

FOURTH.

Also, subject to the provisions of Article XII of the Original Indenture, all other property, real, personal and mixed (except as therein or herein expressly excepted) of every nature and kind and wheresoever situated now or hereafter possessed by or belonging to the Company, or to which it is now, or may at any time hereafter be, in any manner entitled at law or in equity.

FIFTH.

Also any and all property of any kind or description which may from time to time after the date of the Original Indenture by delivery or by writing of any kind be conveyed, mortgaged, pledged, assigned or transferred to the Trustee by the Company or by any person, copartnership or corporation, with the consent of the Company or otherwise, and accepted by the Trustee, to be held as part of the mortgaged property; and the Trustee is hereby authorized to accept and receive any such property and any such conveyance, mortgage, pledge, assignment and transfer, as and for additional security hereunder, and to hold and apply any and all such property subject to and in accordance with the terms and provisions upon which such conveyance, mortgage, pledge, assignment or transfer shall be made.

SIXTH.

Together with all and singular, the tenements, hereditaments and appurtenances belonging or in any wise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders, tolls, rents, revenues, issues, income, products and profits thereof, and all the estate, right, title, interest and claim whatsoever, at law and in equity, which the Company now has or may hereafter acquire in and to the aforesaid property and franchises and every part and parcel thereof.

EXPRESSLY EXCEPTING AND EXCLUDING, HOWEVER, all properties of the character excepted from the lien of the Original Indenture.

TO HAVE AND TO HOLD all said properties, real, personal and mixed, mortgaged, pledged and conveyed by the Company as aforesaid, or intended so to be, unto the Trustee and its successors and assigns forever;

SUBJECT, HOWEVER, to the exceptions and reservations hereinabove referred to, to existing leases other than leases which by their terms are subordinate to the lien of the Indenture, to existing liens upon rights-of-way for transmission or distribution line purposes, as defined in Article I of the Original Indenture; and any extensions thereof, and subject to existing easements for streets, alleys, highways, rights-of-way and railroad purposes over, upon and across certain of the property herein before described and subject also to all the terms, conditions, agreements, covenants, exceptions and reservations expressed or provided in the deeds or other instruments respectively under and by virtue of which the Company acquired the properties hereinabove described and to undetermined liens and charges, if any, incidental to construction or other existing permitted liens as defined in Article I of the Original Indenture;

IN TRUST, NEVERTHELESS, upon the terms and trusts in the Original Indenture, and the indentures supplemental thereto, including this Supplemental Indenture, set forth, for the equal and proportionate benefit and security of all present and future holders of the Bonds and coupons issued and to be issued thereunder, or any of them, without preference of any of said Bonds and coupons of any particular series over the Bonds and coupons of any other series by reason of priority in the time of issue, sale or negotiation thereof, or by reason of the purpose of issue or otherwise howsoever, except as otherwise provided in Section 2 of Article IV of the Original Indenture.

AND IT IS HEREBY COVENANTED, DECLARED AND AGREED, by and between the parties hereto for the benefit of those who shall hold the Bonds and coupons, or any of them, to be issued under the Indenture as follows:

ARTICLE I DESCRIPTION OF BONDS OF THE 2043 SERIES

Section 1. *General Description of Bonds of the 2043 Series.* The Bonds of the 2043 Series to be executed, authenticated and delivered under and secured by the Original Indenture shall be designated as "First Mortgage Bonds, 4.10% Series due 2043" of the Company. The Bonds of the 2043 Series shall be executed, authenticated and delivered in accordance with the provisions of, and shall in all respects be subject to, all of the terms, conditions and covenants of the Indenture and subject to all the terms, conditions and covenants of this Supplemental Indenture.

Bonds of the 2043 Series shall mature on April 1, 2043 and shall bear interest at the rate of four and one-tenth percent (4.10%) per annum payable semi-annually on the first day of April and October in each year, commencing October, 1, 2013. Every Bond of the 2043 Series shall be dated the date of authentication of such Bond except that, notwithstanding the provisions of Section 6 of Article II of the Original Indenture, if any Bond of the 2043 Series shall be authenticated at any time subsequent to the record date (as hereinafter in this Section defined) for any interest payment date but prior to the day following such interest payment date, it shall be dated as of the day following such interest payment date, *provided, however*, if at the time of authentication of any Bond of the 2043 Series interest shall be in default on any Bonds of the 2043 Series, such Bond shall be dated as of the day following the interest payment date to which interest has previously been paid in full or made available for payment in full on outstanding Bonds of the 2043 Series, as the case may be, or, if no interest has been paid or made available for payment, as of the date of initial authentication and delivery of such Bond. Every Bond of the 2043 Series shall bear interest from the April 1 or October 1 immediately preceding the date thereof, unless such Bond shall be dated prior to October 1, 2013, in which case it shall bear interest from March 28, 2013.

The person in whose name any Bond of the 2043 Series is registered at the close of business on any record date with regard to any interest payment date shall be entitled to receive the interest payable thereon on such interest payment date notwithstanding the cancellation of such Bond upon the transfer or exchange thereof subsequent to such record date and prior to the day following such interest payment date, unless the Company shall default in the payment of the interest due on such interest payment date, in which case such defaulted interest shall be paid to the person in whose name such Bond is registered on the date of payment of such defaulted interest. The term "**record date**" as used in this Section with regard to any April 1 and October 1 interest payment date shall mean the close of business on the immediately preceding March 15 and September 15, respectively, or if such day is not a business day, the business day immediately preceding such day. The Bonds of the 2043 Series shall be payable as to principal, premium, if any, and interest, in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts, at the agency of the Company in the City of Chicago, Illinois, or at the option of the holder thereof at the agency of the Company in the Borough of Manhattan, The City of New York, *provided* that at the option of the Company interest may be paid by check mailed to the holder at such holder's registered address.

Section 2. Denominations of Bonds of the 2043 Series and Privilege of Exchange. The Bonds of the 2043 Series shall be registered bonds without coupons of the denominations of \$2,000 and of any multiples of \$1,000, numbered consecutively from R-1. Bonds of the 2043 Series may each be interchanged for other Bonds within the same Series in authorized denominations and in the same aggregate principal amounts, without charge, except for any tax or governmental charge imposed in connection with such interchange.

Section 3. Form of Bonds of the 2043 Series. The Bonds of the 2043 Series, and the Trustee's Certificate with respect thereto, shall be substantially in the following forms, respectively:

[Form of Bond appears on following page]

[FORM OF LEGEND FOR GLOBAL SECURITY]

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITORY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE OR ANY SUPPLEMENT THERETO.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

CUSIP 95709TAJ9

WESTAR ENERGY, INC.

(Incorporated under the laws of the State of Kansas)

FIRST MORTGAGE BOND, 4.10% Series due 2043

DUE APRIL 1, 2043

No. R-	\$
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WESTAR ENERGY, INC., a corporation organized and existing under the laws of the State of Kansas (hereinafter called the "**Company**", which term shall include any successor corporation as defined in the Indenture hereinafter referred to), for value received, hereby promises to pay to CEDE & CO. or registered assigns, on the first day of April 2043, the sum of in any

coin or currency of the United States of America which at the time of payment is legal tender for public and private debts, and to pay interest thereon in like coin or currency from the first day of April and October immediately preceding the date of this Bond, unless such Bond shall be dated prior to October 1, 2013, in which case from March 28, 2013 at the rate of four and one-tenth percent (4.10%) per annum, payable semi-annually, on April 1 and October 1 of each year, commencing October 1, 2013, until maturity, or, if this Bond shall be duly called for redemption or submitted for repurchase, until the redemption date or repurchase date, as the case may be, or, if the Company shall default in the payment of the principal or premium hereof, until the Company's obligation with respect to the payment of such principal or premium shall be discharged as provided in the Indenture hereinafter mentioned. The interest payable on any April 1 or October 1 interest payment date as aforesaid will be paid to the person in whose name this Bond is registered at the close of business on the immediately preceding March 15 and September 15, respectively, or if such day is not a business day, the business day immediately preceding such day (the "**record date**"), unless the Company shall default in the payment of the interest due on such interest payment date, in which case such defaulted interest shall be paid to the person in whose name this Bond is registered on the date of payment of such defaulted interest. Principal of, premium, if any, and interest on, this Bond are payable at the agency of the Company in the City of Chicago, Illinois in immediately available funds, or at the option of the holder thereof at the agency of the Company in the Borough of Manhattan, The City of New York, provided that at the option of the Company interest may be paid by check mailed to the holder at such holder's registered address.

This Bond is one of a duly authorized issue of Bonds of the Company (herein called the "**Bonds**"), in unlimited aggregate principal amount, of the series hereinafter specified, all issued and to be issued under and equally and ratably secured by a Mortgage and Deed of Trust, dated July 1, 1939 (the "**Original Mortgage**"), executed by the Company to The Bank of New York Mellon Trust Company, N.A. (herein called the "**Trustee**"), as Trustee (as successor to Harris Trust and Savings Bank), as amended by indentures supplemental thereto including the Forty-Third indenture supplemental thereto dated as of March 28, 2013 (herein called the "**Supplemental Indenture**"), between the Company and the Trustee (said Original Mortgage, as so amended, being herein called the "**Indenture**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the properties mortgaged and pledged, the nature and extent of the security, the rights of the bearers or registered owners of the Bonds and of the Trustee in respect thereto, and the terms and conditions upon which the Bonds are, and are to be, secured. The Bonds may be issued in series, for various principal sums, may mature at different times, may bear interest at different rates and may otherwise vary as in the Indenture provided. This Bond is one of a series designated as the "First Mortgage Bonds,

4.10% Series due 2043" (herein called "**Bonds of the 2043 Series**") of the Company, issued under and secured by the Indenture executed by the Company to the Trustee. Additional Bonds of the 2043 Series may be issued, at the option of the Company, without the consent of any holder of the Bonds of the 2043 Series, at any time and from time to time in unlimited aggregate principal amount.

To the extent permitted by, and as provided in the Indenture, modifications or alterations of the Indenture or of any indenture supplemental thereto, and of the rights and obligations of the Company and of the holders of the Bonds and coupons, may be made with the consent of the Company by an affirmative vote of not less than 60% in principal amount of the Bonds entitled to vote then outstanding, at a meeting of Bondholders called and held as provided in the Indenture, and by an affirmative vote of not less than 60% in principal amount of the Bonds of any series entitled to vote then outstanding and affected by such modification or alteration, in case one or more but less than all of the series of Bonds then outstanding under the Indenture are so affected. No modification or alteration shall be made which will affect the terms of payment of the principal of or premium, if any, or interest on, this Bond, which are unconditional. The Company has reserved the right to make certain amendments to the Indenture, without any consent or other action by holders of the Bonds of this series (i) to the extent necessary from time to time to qualify the Indenture under the Trust Indenture Act of 1939, (ii) to delete the requirement that the Company meet a net earnings test as a condition to authenticating additional Bonds or merging into another company, (iii) to make certain other amendments which make the provisions for the release of mortgaged property less restrictive and (iv) to make certain other amendments, all as more fully provided in the Indenture and in the Supplemental Indenture. In addition, once all Bonds issued prior to January 1, 1997 are no longer outstanding, the Company will be permitted to issue additional Bonds in an amount equal to 70% of the value of net bondable property additions not subject to an unfunded prior lien, as provided in the Original Mortgage.

This Bond is subject to redemption by the Company on or after October 1, 2042 at any time in whole, or from time to time in part, at a redemption price equal to 100% of the principal amount of the Bond to be redeemed, plus accrued and unpaid interest on the Bond to the redemption date.

This Bond is subject to redemption by the Company prior to October 1, 2042 at any time in whole, or from time to time in part, at a price equal to the greater of: (a) 100% of the principal amount of the Bond to be redeemed, plus accrued and unpaid interest on the Bond to the redemption date, or (b) as determined by the Quotation Agent, the sum of the present values of the remaining scheduled payments of principal and interest on the Bond to be redeemed (not including any portion of payments of interest accrued as of the redemption date) discounted to the redemption date on a semi-annual basis at the Adjusted Treasury Rate plus fifteen (15) basis points, plus accrued and unpaid interest on the Bond to the redemption date, in each of cases (a) and (b) as provided in the Supplemental Indenture.

Such redemption in every case shall be effected upon notice given by: (1) first class mail, postage prepaid, at least thirty days and not more than sixty days prior to the redemption date, to the registered owners of such Bonds at their addresses as the same shall appear on the transfer register of the Company; and (2) stating, among other things, the redemption price and date, in each case, subject to the conditions of and as more fully set forth in the Indenture.

The redemption price will be calculated assuming a 360-day year consisting of twelve 30-day months.

A notice of redemption may provide that the optional redemption described in such notice is conditioned upon the occurrence of certain events before the redemption date. Such notice of conditional redemption will be of no effect unless all such conditions to the redemption have occurred before the redemption date or have been waived by the Company. If any of these events fail to occur and are not waived by the Company, the Company will be under no obligation to redeem the Bonds or pay the holders any redemption proceeds, and the Company's failure to so redeem the Bonds will not be considered a default or event of default under the Indenture. In the event that any of these conditions fail to occur or are not waived by the Company, the Company will promptly notify the Trustee in writing that the conditions precedent to such redemption have failed to occur and the Bonds will not be redeemed.

Unless the Company defaults in payment of the redemption price, on and after the redemption date, interest will cease to accrue on the bonds or portions of the bonds called for redemption.

"Adjusted Treasury Rate" means, with respect to any redemption date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the redemption date.

"Business Day" means any day that is not a day on which banking institutions in New York City are authorized or required by law or regulation to close.

"Comparable Treasury Issue" means the United States Treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the Bonds that would be used, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Bonds.

“Comparable Treasury Price” means, with respect to any redemption date:

- the average of the Reference Treasury Dealer Quotations for that redemption date, after excluding the highest and lowest of the Reference Treasury Dealer Quotations; or
- if the Quotation Agent obtains fewer than four Reference Treasury Dealer Quotations, the average of all Reference Treasury Dealer Quotations so received.

“Quotation Agent” means, as selected by the Company, one of the Reference Treasury Dealers.

“Reference Treasury Dealer” means (1) each of BNY Mellon Capital Markets, LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, and their respective successors, unless any of them ceases to be a primary U.S. Government securities dealer in the United States (a “**Primary Treasury Dealer**”) in which case the Company shall substitute for such Reference Treasury Dealer another Primary Treasury Dealer; and (2) any other Primary Treasury Dealer selected by the Company.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Quotation Agent, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Quotation Agent by that Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding that redemption date.

In case an event of default, as defined in the Indenture, shall occur, the principal of all of the Bonds at any such time outstanding under the Indenture may be declared or may become due and payable, upon the conditions and in the manner and with the effect provided in the Indenture. The Indenture provides that such declaration may in certain events be waived by the holders of a majority in principal amount of the Bonds outstanding.

This Bond is transferable by the registered owner hereof, in person or by duly authorized attorney, on the books of the Company to be kept for that purpose at the agency of the Company in the City of Chicago, Illinois, and at the agency of the Company in the Borough of Manhattan, The City of New York, upon surrender and cancellation of this Bond and on presentation of a duly executed written instrument of transfer, and thereupon a new registered Bond or Bonds of the same series, of the same aggregate principal amount and in authorized denominations will be issued to the transferee or transferees in exchange herefor; and this Bond, with or without others of like form and series, may in like manner be exchanged for one or more new registered Bonds of the same series of other authorized denominations but of the same aggregate principal amount; all upon payment of the charges and subject to the terms and conditions set forth in the Indenture.

The Company or a successor entity may deliver to the Trustee in substitution for any Bonds of the 2043 Series, mortgage bonds or other similar instruments as set forth in the Indenture.

Subject to the preceding sentence, no recourse shall be had for the payment of the principal of or premium, if any, or interest on this Bond, or for any claim based hereon or on the Indenture or any indenture supplemental thereto, against any incorporator, or against any stockholder, director or officer, past, present or future, of the Company, or of any predecessor or successor corporation, as such, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitution, statute or otherwise, of incorporators, stockholders, directors or officers being released by every owner hereof by the acceptance of this Bond and as part of the consideration for the issue hereof, and being likewise released by the terms of the Indenture.

No director, officer, employee or stockholder of the Company will have any liability for any obligations of the Company under the Bonds or Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder by accepting a Bond waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Bonds. The waiver may not be effective to waive liabilities under the federal securities laws. It is the view of the Securities and Exchange Commission that this type of waiver is against public policy.

This Bond shall not be entitled to any benefit under the Indenture or any indenture supplemental thereto, or become valid or obligatory for any purpose, until The Bank of New York Mellon Trust Company, N.A., the Trustee (as successor to Harris Trust and Savings Bank) under the Indenture, or a successor trustee thereto under the Indenture, shall have signed the form of certificate endorsed hereon.

IN WITNESS WHEREOF, WESTAR ENERGY, INC. has caused this Bond to be signed in its name by its Chairman of the Board, President and Chief Executive Officer or a Vice President, manually or by facsimile, and its corporate seal (or a facsimile thereof) to be hereto affixed and attested by its Secretary or an Assistant Secretary, manually or by facsimile.

Dated: March _____, 2013

WESTAR ENERGY, INC.

By _____

Anthony D. Somma
Senior Vice President, Chief
Financial Officer and Treasurer

Attest:

Larry D. Irick
Vice President, General Counsel and
Corporate Secretary

[SIGNATURE PAGE TO GLOBAL NOTE]

TRUSTEE'S CERTIFICATE

This Bond is one of the Bonds, of the series designated herein, described in the within-mentioned Mortgage and Deed of Trust of July 1, 1939 and Supplemental Indenture dated as of March , 2013.

THE BANK OF NEW YORK
MELLON TRUST COMPANY, N.A.
As Trustee

By _____
Authorized Person

[TRUSTEE'S CERTIFICATE TO GLOBAL NOTE]

Section 4. *Execution and Form of Temporary Bonds of the 2043 Series.* Until Bonds of the 2043 Series in definitive form are ready for delivery, the Company may execute, and upon its request in writing the Trustee shall authenticate and deliver, in lieu thereof, Bonds of the 2043 Series in temporary form, as provided in Section 9 of Article II of the Original Indenture.

ARTICLE II ISSUE OF BONDS OF THE 2043 SERIES

Section 1. *Limitation as to Principal Amount of Bonds of the 2043 Series.* The total principal amount of Bonds of the 2043 Series which may be authenticated and delivered hereunder is not limited except as the Original Indenture and this Supplemental Indenture limit the principal amount of Bonds which may be issued thereunder.

Section 2. *Execution and Delivery of Bonds of the 2043 Series.* Bonds of the 2043 Series for the aggregate principal amount of \$250,000,000 may forthwith be executed by the Company and delivered to the Trustee and shall be authenticated by the Trustee and delivered (either before or after the filing or recording hereof) to or upon the order of the Company, upon receipt by the Trustee of the resolutions, certificates, instruments and opinions required by Article III of the Original Indenture.

Section 3. *Additional Bonds of the 2043 Series.* The Bonds of the 2043 Series need not be issued at the same time. Subject to the limitations of the Original Indenture and this Supplemental Indenture with respect to the principal amount of Bonds which may be issued thereunder, the Company may, from time to time, at its option and without the consent of any holder of the Bonds of the 2043 Series, reopen the 2043 Series for issuance of additional Bonds of the 2043 Series (such Bonds, “**Additional Bonds**”); *provided* that if the Additional Bonds are not fungible with the previously issued Bonds of the 2043 Series for United States federal income tax purposes, the Additional Bonds will have a separate CUSIP number, and further *provided* that Additional Bonds shall rank *pari passu* with any outstanding Bonds of the 2043 Series, shall be consolidated with and treated as a single class with the outstanding Bonds of the 2043 Series for all purposes, and shall have terms and conditions identical to those of the other outstanding Bonds of the 2043 Series, except that Additional Bonds may differ with respect to:

- (i) the date of issuance;
- (ii) the amount of interest payable on the first interest payment date therefor;

(iii) the first interest payment date;

(iv) the issue price; and

(v) any adjustments necessary in order to conform to and ensure compliance with the Securities Act of 1933 (or other applicable securities laws), which are not adverse in any material respect to the holder of any outstanding Bonds of the 2043 Series.

Additional Bonds of the 2043 Series executed by the Company and delivered to the Trustee shall be authenticated by the Trustee and delivered (either before or after the filing or recording hereof) to or upon the order of the Company, upon receipt by the Trustee of the resolutions, certificates, instruments and opinions required by Article III of the Original Indenture.

ARTICLE III REDEMPTION AND SUBSTITUTION OF BONDS OF THE 2043 SERIES

Section 1. *Optional Redemption of Bonds of the 2043 Series.*

(1) *Optional Redemption of Bonds of the 2043 Series.* Prior to October 1, 2042, the Company may, at its option, redeem the Bonds of the 2043 Series at any time in whole, or from time to time in part, after giving the required notice under subsection (2) of this Article III, Section 1, at a redemption price equal to the greater of: (a) 100% of the principal amount of the Bonds of the 2043 Series to be redeemed, plus accrued and unpaid interest on Bonds of the 2043 Series to be redeemed to the redemption date or (b) as determined by the Quotation Agent, the sum of the present values of the remaining scheduled payments of principal and interest on the Bonds of the 2043 Series to be redeemed (not including any portion of payments of interest accrued as of the redemption date) discounted to the redemption date on a semi-annual basis at the Adjusted Treasury Rate plus fifteen (15) basis points, plus accrued and unpaid interest on those Bonds of the 2043 Series to be redeemed to the redemption date.

On or after October 1, 2042, the Company may, at its option, redeem the Bonds of the 2043 Series at any time in whole, or from time to time in part, after giving the required notice under subsection (2) of this Article III, Section 1, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued and unpaid interest on the Bonds to the redemption date.

The redemption price will be calculated assuming a 360-day year consisting of twelve 30-day months.

Unless the Company defaults in payment of the redemption price, on and after the redemption date, interest will cease to accrue on the Bonds of the 2043 Series or portions of the Bonds of the 2043 Series called for redemption.

(2) **Notice of Redemption.** Subject to the provisions of Article V of the Original Indenture, in the case of redeeming all or any portion of the Bonds of the 2043 Series, the Company shall cause notice of redemption to be given by (1) first class mail, postage prepaid, at least thirty days and not more than sixty days prior to the date of redemption, to the registered owners of such Bonds of the 2043 Series at their addresses as the same shall appear on the transfer register of the Company; and (2) stating, among other things, the redemption price and date.

Notwithstanding the foregoing, a notice of redemption may provide that the optional redemption described in such notice is conditioned upon the occurrence of certain events before the date of redemption. Such notice of conditional redemption will be of no effect unless all such conditions to the redemption shall have occurred before the redemption date or shall have been waived by the Company. If any of these events fail to occur and are not waived by the Company, the Company will be under no obligation to redeem the Bonds of the 2043 Series or pay the holders thereof any redemption proceeds and the Company's failure to so redeem the Bonds of the 2043 Series will not be considered a default or event of default under the Indenture. In the event that any of these conditions fail to occur or are not waived by the Company, the Company will promptly notify the Trustee in writing that the conditions precedent to such redemption have failed to occur and the Bonds of the 2043 Series will not be redeemed.

"Adjusted Treasury Rate" means, with respect to any redemption date, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the redemption date.

"Business Day" means any day that is not a day on which banking institutions in New York City are authorized or required by law or regulation to close.

"Comparable Treasury Issue" means the United States Treasury security selected by the Quotation Agent as having a maturity comparable to the remaining term of the Bonds that would be used, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of the Bonds.

"Comparable Treasury Price" means, with respect to any redemption date:

- the average of the Reference Treasury Dealer Quotations for that redemption date, after excluding the highest and lowest of the Reference Treasury Dealer Quotations; or
- if the Quotation Agent obtains fewer than four Reference Treasury Dealer Quotations, the average of all Reference Treasury Dealer Quotations so received.

“Quotation Agent” means, as selected by the Company, one of the Reference Treasury Dealers.

“Reference Treasury Dealer” means (1) each of BNY Mellon Capital Markets, LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, and their respective successors, unless any of them ceases to be a primary U.S. Government securities dealer in the United States (a **“Primary Treasury Dealer”**) in which case the Company shall substitute for such Reference Treasury Dealer another Primary Treasury Dealer; and (2) any other Primary Treasury Dealer selected by the Company.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Quotation Agent, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Quotation Agent by that Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding that redemption date.

Section 2. *Substitution of Bonds of the 2043 Series.* The Company may deliver to the Trustee in substitution for any Bonds of the 2043 Series, mortgage bonds or other similar secured instruments of the Company or any successor entity, whether by merger, combination or acquisition of all or substantially all of the assets of the Company, or otherwise, issued under a mortgage and deed of trust or similar instrument of the Company or any successor entity in like principal amount of like term and bearing the same rate of interest and having the same interest payment dates and same redemption provisions as the Bonds of the 2043 Series and which are otherwise substantially similar to the Bonds of the 2043 Series (such substituted bonds hereinafter being referred to in this Article III, Section 2 as the **“2043 Series Substituted Mortgage Bonds”**). The 2043 Series Substituted Mortgage Bonds may only be delivered to the Trustee upon receipt by the Trustee of (i) a letter from Moody’s (as hereinafter defined), dated within ten days prior to the date of delivery of the 2043 Series Substituted Mortgage Bonds, stating that its rating of the 2043 Series Substituted Mortgage Bonds is at least equal to its then current rating on the Bonds of the 2043 Series, (ii) a letter from S&P (as hereinafter defined), dated within ten days prior to the date of delivery of the 2043 Series Substituted Mortgage Bonds, stating that its rating to the 2043 Series Substituted Mortgage Bonds is at least equal to its then

current rating on the Bonds of the 2043 Series, (iii) a letter from Fitch (as hereinafter defined), dated within ten days prior to the date of delivery of the 2043 Series Substituted Mortgage Bonds, stating that its rating to the 2043 Series Substituted Mortgage Bonds is at least equal to its then current rating on the Bonds of the 2043 Series, (iv) an opinion of counsel, which may be counsel to the Company or any successor entity, that such substitution will not result in the recognition of capital gain or loss for U.S. federal income tax purposes to the holders of the Bonds of the 2043 Series, (v) an opinion of counsel which may be counsel to the Company or any successor entity, to the effect that the 2043 Series Substituted Mortgage Bonds shall have been duly and validly authorized, executed, authenticated, and delivered and shall constitute the valid, legally binding and enforceable obligations of the Company or any successor entity enforceable in accordance with their terms, except as limited by bankruptcy, insolvency or other laws affecting the enforcement of mortgagees' and other creditors' rights and shall be entitled to the benefit of the mortgage and deed of trust or other similar instrument pursuant to which they shall have been issued and (vi) such other certificates and documents with respect to the issuance and delivery of the 2043 Series Substituted Mortgage Bonds as may be required by law or as the Trustee may reasonably request.

Fitch means Fitch Ratings, which is part of the Fitch Group, a jointly-owned subsidiary of Fimalac, S.A. and Hearst Corporation, its successors and their assigns, except that if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Company.

Moody's means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Company.

S&P means Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such rating agency shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "S&P" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Company.

ARTICLE IV
ADDITIONAL COVENANTS

The Company hereby covenants, warrants and agrees:

Section 1. *Title to Mortgaged Property.* That the Company is lawfully seized and possessed of all of the mortgaged property described in the granting clauses of this Supplemental Indenture; that it has good, right and lawful authority to mortgage the same as provided in this Supplemental Indenture; and that such mortgaged property is, at the actual date of the initial issue of the Bonds of the 2043 Series and at the date of issuance of any Additional Bonds, as applicable, free and clear of any deed of trust, mortgage, lien, charge or encumbrance thereon or affecting the title thereto prior to the Indenture, except as set forth in the granting clauses of the Original Indenture, the Thirty-Second Supplemental Indenture, the Thirty-Seventh Supplemental Indenture, the Thirty-Eighth Supplemental Indenture, the Thirty-Ninth Supplemental Indenture, the Forty-First Supplemental Indenture, the Forty-Second Supplemental Indenture, the Forty-Second Supplemental (Reopening) Indenture and this Supplemental Indenture.

Section 2. *To Retire Certain Portions of Bonds upon Release of All or Substantially All of the Electric Properties.* So long as any Bonds of any series originally issued prior to January 1, 1997 are outstanding, in the event all or substantially all of the electric properties shall have been released as an entirety from the lien of the Original Indenture, the Company will, at any time or from time to time within six months after the date of such release, retire Bonds outstanding under the Original Indenture in an aggregate principal amount equal to the fair value of the electric properties so released pursuant to Section 3 of Article VII of the Original Indenture, as stated in the engineer's certificate required by Section 3(b) of said Article VII, and the proceeds of the electric properties so released pursuant to Section 5 of said Article VII. Such retirement of Bonds shall be effected in either one or both of the following methods:

(a) By the withdrawal pursuant to Section 2 of Article VIII of the Original Indenture of any moneys deposited with the Trustee pursuant to Sections 3(d), 4(d) and 5 of Article VII of the Original Indenture upon such release; or

(b) By causing the Trustee to purchase or redeem bonds, pursuant to Section 8 of Article VIII of the Original Indenture, out of any moneys deposited with the Trustee pursuant to Sections 3(d), 4(d) and 5 of Article VII of the Original Indenture upon such release.

The Bonds to be so retired pursuant to such Section 3 of Article VII of the Original Indenture shall include a principal amount of Bonds of each Series then outstanding in the same ratio to the aggregate principal amount of all Bonds so retired as the aggregate principal amount of all Bonds of each Series outstanding immediately prior to such release bears to the total principal amount of all Bonds then outstanding.

ARTICLE V
AMENDMENTS AND RESERVATIONS OF RIGHTS TO AMEND THE ORIGINAL INDENTURE

Section 1. So Long as Bonds Issued Prior to January 1, 1997 Remain Outstanding. So long as any of the Bonds of any series originally issued prior to January 1, 1997 shall remain outstanding:

(a) Notwithstanding the provisions of Section 4 of Article III of the Original Indenture, no Bonds shall be authenticated and delivered pursuant to the provisions of Article III of the Original Indenture and issued upon the basis of net bondable value of property additions for an aggregate principal amount in excess of sixty percent (60%) of the net bondable value of property additions not subject to an unfunded prior lien.

For the purposes of Subsections (e) and (f) of the definition of "net bondable value of property additions not subject to an unfunded prior lien," contained in Article I of the Original Indenture, and Subdivisions 8 and 9 of clause (a) of Section 4 of Article III of the Original Indenture, in all computations made with respect to a period subsequent to April 1, 1949, the deductions therein referred to shall in each case be ten-sixths (10/6ths) of the respective amounts mentioned, in lieu of ten-sevenths (10/7ths).

(b) Notwithstanding the provisions of Section 3(a) of Article VIII of the Original Indenture, no moneys received by the Trustee pursuant to Section 5(a) of Article III of the Original Indenture shall be paid over by the Trustee in an amount in excess of sixty percent (60%) of the net bondable value of property additions not subject to an unfunded prior lien, and for the purposes of Section 3 of Article VII of the Original Indenture, the amount of cash required to be deposited by the Company pursuant to Subsection (d) of said Section 3 of Article VII shall not be reduced in an amount in excess of sixty percent (60%) of the net bondable value of property additions not subject to an unfunded prior lien.

(c) For the purposes of clauses (c) and (d) of the definition of "net bondable value of property additions subject to an unfunded prior lien," contained in Article I of the Original Indenture, and Subsection 7 of clause (a) of Section 4 of Article III of the Original Indenture, in all computations made with respect to a period subsequent to April 1, 1949, the deductions therein referred to shall in each case be ten-sixths (10/6ths) of the respective amounts mentioned, in lieu of ten-sevenths (10/7ths).

(d) Subsection (a) of Section 14, clauses (1) and (2) of Subsection (a) of Section 16 of Article IV and clause (1) of Subsection (b) of Section 1 of Article XII of the Original Indenture shall be deemed amended by substituting the words “sixty percent (60%)” for “seventy percent (70%)” where they appear in said provisions of the Original Indenture.

(e) The definition of the term “net earnings available for interest, depreciation and property retirement,” as contained in Article I of the Original Indenture, shall be deemed to mean the net earnings of the Company ascertained as follows:

(i) The total operating revenues of the Company and the net non-operating revenues of the properties of the Company shall be ascertained:

(A) From the total, determined as provided in Subsection (a), there shall be deducted all operating expenses, including all salaries, rentals, insurance, license and franchise fees, expenditures for repairs and maintenance, taxes (other than income, excess profits and other taxes measured by or dependent on net taxable income), depreciation as shown on the books of the Company or an amount equal to the minimum provision for depreciation as hereinafter defined, whichever is greater, but excluding all property retirement appropriations, all interest and sinking fund charges, amortization of stock and debt discount and expense or premium and further excluding any charges to income or otherwise for the amortization of plant or property accounts or of amounts transferred therefrom.

(B) The balance remaining after the deduction of the total amount computed pursuant to Subsection (b) from the total amount computed pursuant to Subsection (a) shall constitute the “net earnings of the Company available for interest,” *provided* that not more than fifteen percent (15%) of the net earnings of the Company available for interest may consist of the aggregate of (1) net non-operating income, (2) net earnings from mortgaged property other than property of the character of property additions and (3) net earnings from property not subject to the lien of this Indenture.

(C) No income received or accrued by the Company from securities and no profits or losses of capital assets shall be included in making the computations aforesaid.

(D) In case the Company shall have acquired any acquired plant or systems or shall have been consolidated or merged with any other corporation, within or after the particular period for which the calculation of net earnings of the Company available for interest, depreciation and property retirement is made, then, in computing the net earnings of the Company available for interest, depreciation and property retirement, there may be included, to the extent they may not have been otherwise included, the net earnings or net losses of such acquired plant or system or of such other corporation, as the case may be, for the whole of such period. The net earnings or net losses of such property additions, or of such other corporation for the period preceding such acquisition or such consolidation or merger, shall be ascertained and computed as provided in the foregoing subsections of this definition as if such acquired plant or system had been owned by the Company during the whole of such period, or as if such other corporation had been consolidated or merged with the Company prior to the first day of such period.

(E) In case the Company shall have obtained the release of any property pursuant to Section 3 of Article VII of the Original Indenture, of a fair value in excess of Five Hundred Thousand Dollars (\$500,000), as shown by the engineer's certificate required by said Section 3, or shall have obtained the release of any property pursuant to Section 5 of Article VII of the Original Indenture, the proceeds of which shall have exceeded Five Hundred Thousand Dollars (\$500,000), within or after the particular period for which the calculation of net earnings of the Company available for interest, depreciation and property retirement is made, then, in computing the net earnings of the Company available for interest, depreciation and property retirement, the net earnings or net losses of such property for the whole of such period shall be excluded to the extent practicable on the basis of actual earnings and expenses of such property or on the basis of such estimates of the earnings and expenses of such property as the signers of an officers' certificate filed with the Trustee pursuant to Section 3(b) of Article III or Section 16 of Article IV of the Original Indenture shall deem proper.

(ii) The term "**minimum charge for depreciation**" as used herein shall mean an amount equal to (A) fifteen percent (15%) of the total operating revenues of the Company after deducting therefrom an amount equal to the aggregate cost to the Company of electric energy, gas and water purchased for resale to others and rentals paid for, or other payments made for the use of, property owned by others and leased to or operated by

the Company, the maintenance of which and depreciation on which are borne by the owners, less (B) an amount equal to the expenditures for maintenance and repairs to the plants and property of the Company and included or reflected in its operating expense accounts.

(iii) The terms "**net earnings available for interest, depreciation and property retirement**" and "**net earnings of another corporation available for interest, depreciation and property retirement**" as contained in Article I of the Original Indenture, when used with respect to any property or with respect to another corporation, shall mean the net earnings of such property or the net earnings of such other corporation, as the case may be, computed in the manner provided in Subsections (a), (b), (c) and (d) hereof.

(f) Notwithstanding the provisions of clauses (1) and (2) of subsection (b) of Article III, and Subsection (b) of Section 14 of Article IV, and Subsection (b) of Section 16 of Article IV and clause (2) of Subsection (b) of Section 1 of Article XII of the Original Indenture, the computation of net earnings required therein shall be made as provided in Subsection (e) of this Section 1, and the net earnings tests required in said mentioned provisions of Articles III, IV and XII of the Original Indenture shall be based on two times the annual interest charges described in such provisions, instead of two and one-half times such charges, but shall not otherwise affect such provisions or relieve from the requirements therein pertaining to ten percent (10%) of the principal amount of Bonds therein described.

Section 2. Facsimile Signatures. All of the Bonds of the 2043 Series and of any series initially issued after the initial issuance of Bonds of the 2043 Series shall, from time to time, be executed on behalf of the Company by its Chairman of the Board, Chief Executive Officer, President or one of its Vice Presidents whose signature, notwithstanding the provisions of Section 12 of Article II of the Original Indenture, may be by facsimile, and its corporate seal (which may be in facsimile) shall be thereunto affixed and attested by its Secretary or one of its Assistant Secretaries whose signature, notwithstanding the provisions of the aforesaid Section 12, may be by facsimile.

In case any of the officers who have signed or sealed any of the Bonds of the 2043 Series or of any series initially issued after the initial issuance of Bonds of the 2043 Series manually or by facsimile shall cease to be such officers of the Company before such Bonds so signed and sealed shall have been actually authenticated by the Trustee or delivered by the Company, such Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who so signed or sealed such Bonds had not ceased to be such officer or officers of the Company; and also any such Bonds may be signed or sealed by manual or facsimile signature on behalf of the Company by such persons as at the actual date of the execution of any of such Bonds shall be the proper officers of the Company, although at the nominal date of any such Bond any such person shall not have been such officer of the Company.

Section 3. Reservation of Right to Amend Article VII. The Company reserves the right subject to appropriate corporate action, but without the consent or other action of holders of bonds of any series created after January 1, 1997, to make such amendments to the Original Indenture, as supplemented, as shall be necessary in order to amend Article VII thereof by adding thereto a Section 8 and a Section 9 to read as follows:

“SECTION 8. Notwithstanding any other provision of this Indenture, unless an event of default shall have happened and be continuing, or shall happen as a result of the making or granting of an application to release mortgaged property permitted by this Section 8, the Trustee shall release from the lien of this Indenture any mortgaged property if the fair value to the Company of all of the property constituting the trust estate (excluding the mortgaged property to be released but including any mortgaged property to be acquired by the Company with the proceeds of, or otherwise in connection with, such release) equals or exceeds an amount equal to 10/7ths of the aggregate principal amount of outstanding Bonds and prior lien bonds outstanding at the time of such release, upon receipt by the Trustee of:

“(a) an officers’ certificate dated the date of such release, requesting such release, describing in reasonable detail the mortgaged property to be released and stating the reason for such release;

“(b) an engineer’s certificate, dated the date of such release, stating (i) that the signer of such engineer’s certificate has examined such officers’ certificate in connection with such release, (ii) the fair value to the Company, in the opinion of the signer of such engineer’s certificate, of (A) all of the property constituting the trust estate, and (B) the mortgaged property to be released, in each case as of a date not more than 90 days prior to the date of such release, and (iii) that in the opinion of such signer, such release will not impair the security under this Indenture in contravention of the provisions hereof;

“(c) in case any bondable property is being acquired by the Company with the proceeds of, or otherwise in connection with, such release, an engineer’s certificate, dated the date of such release, as to the fair value to the Company, as of the date not more

than 90 days prior to the date of such release, of the bondable property being so acquired (and if within six months prior to the date of acquisition by the Company of the bondable property being so acquired, such bondable property has been used or operated by a person or persons other than the Company in a business similar to that in which it has been or is to be used or operated by the Company, and the fair value to the Company of such bondable property, as set forth in such certificate, is not less than \$25,000 and not less than 1% of the aggregate principal amount of Bonds at the time outstanding, such certificate shall be an independent appraiser's certificate);

"(d) an officer's certificate, dated the date of such release, stating the aggregate principal amount of outstanding Bonds and prior lien bonds outstanding at the time of such release, and stating that the fair value to the Company of all of the property constituting the trust estate (excluding the mortgaged property to be released but including any bondable property to be acquired by the Company with the proceeds of, or otherwise in connection with, such release) stated on the independent appraiser's certificate filed pursuant to Section 8(c) equals or exceeds an amount equal to 10/7ths of such aggregate principal amount;

"(e) an officers' certificate, dated the date of such release, stating that, the Company is not, and by the making or granting of the application will not be, in default in the performance of any of the terms and covenants of this Indenture;

"(f) an opinion of counsel, dated the date of such release, as to compliance with conditions precedent.

"SECTION 9. If the Company is unable to obtain, in accordance with any other Section of this Article VII, the release from the lien of this Indenture of any property constituting part of the trust estate, unless an event of default shall have happened and be continuing, or shall happen as a result of the making or granting of an application to release mortgaged property permitted by this Section 9, the Trustee shall release from the lien of this Indenture any mortgaged property if the fair value to the Company thereof, as shown by the engineer's certificate filed pursuant to Section 9(b), is less than 1/2 of 1% of the aggregate principal amount of outstanding Bonds and prior lien bonds outstanding at the time of such release, provided that the aggregate fair value to the Company of all mortgaged property released pursuant to this Section 9, as shown by all engineer's certificates filed pursuant to Section 9(b) in any period of 12 consecutive calendar months which includes the date of such engineer's certificate, shall not exceed 1% of the aggregate principal amount of the outstanding Bonds and prior lien bonds outstanding at the time of such release, upon receipt by the Trustee of:

“(a) an officers’ certificate, dated the date of such release, requesting such release, describing in reasonable detail the mortgaged property to be released and stating the reason for such release;

“(b) an engineer’s certificate, dated the date of such release, stating (A) that the signer of such engineer’s certificate has examined such officers’ certificate in connection with such release, (B) the fair value to the Company, in the opinion of the signer of such engineer’s certificate, of such mortgaged property to be released as of a date not more than 90 days prior to the date of such release, and (C) that in the opinion of such signer such release will not impair the security under this Indenture in contravention of the provisions hereof;

“(c) an officers’ certificate, dated the date of such release, stating the aggregate principal amount of outstanding Bonds and prior lien bonds outstanding at the time of such release, that 1/2 of 1% of such aggregate principal amount does not exceed the fair value to the Company of the mortgaged property for which such release is applied for as shown by the engineer’s certificate referred to in Section 9(b), and that 1% of such aggregate principal amount does not exceed the aggregate fair value to the Company of all mortgaged property released from the lien of this Indenture pursuant to this Section 9 as shown by all engineer’s certificates filed pursuant to Section 9(b) in such period of 12 consecutive calendar months;

“(d) an officers’ certificate, dated the date of such release, stating that, the Company is not, and by the making or granting of the application will not be, in default in the performance of any of the terms and covenants of this Indenture; and

“(e) an opinion of counsel, dated the date of such release, as to compliance with conditions precedent.”

The Company also reserves the right subject to appropriate corporate action, but without the consent or other action of holders of Bonds of any series created after January 1, 1997 to amend, modify or delete any other provision of the Original Indenture, as supplemented, as may be necessary in order to effectuate the intents and purposes contemplated by the foregoing Sections 8 and 9.

Section 4. Reservation of Right to Delete Certain Requirements and Conditions. The Company reserves the right subject to appropriate corporate action, but without the consent or other action of holders of Bonds of any series created after January 1, 1997 to:

- (a) delete as a condition to the authentication of additional Bonds pursuant to Sections 4, 5 or 6 of Article III of the Original Indenture the requirement to file or deposit with the Trustee the officers' certificate described in Section 3(b) of Article III of the Original Indenture;
- (b) delete as a condition to the consolidation or merger of the Company into, or sale by the Company of its property as an entirety or substantially as an entirety to another corporation the requirement set forth in Section 1(b)(2) of Article XII of the Original Indenture;
- (c) delete as a condition to the release of property pursuant to Section 3 of Article VII of the Original Indenture, the requirement to obtain an independent engineer's certificate under the circumstances set forth in Section 3(c) of Article VII; and
- (d) amend, modify or delete any other provision of the Original Indenture, as supplemented, as may be necessary in order to effectuate the intents and purposes contemplated by this Section 4.

Section 5. Issuance of Variable Rate Bonds. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2043 Series, or of any subsequent series of bonds, to clarify the ability of the Company to issue variable rate bonds under the Original Indenture, notwithstanding any provision of the Original Indenture to the contrary. The Company may make such other amendments to the Original Indenture as may be necessary or desirable in the opinion of the Company to effect the foregoing.

Section 6. Substitution of Bonds. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2043 Series, or of any subsequent series of bonds, to amend the Original Indenture as may be necessary in order to permit the Company to deliver to the Trustee in substitution for any bonds issued under the Original Indenture (except Bonds of the 2043 Series, which are subject to Article III, Section 2 hereof), mortgage bonds or other similar instruments of the Company or any successor entity, whether by merger, combination or acquisition of all or substantially all of the assets of the Company, or otherwise, issued under a mortgage and deed of

trust or similar instrument of the Company or any successor entity in like principal amount of like term and bearing the same rate of interest as the original bonds (such substituted bonds hereinafter being referred to as the “**Substituted Mortgage Bonds**”). The Substituted Mortgage Bonds may only be delivered to the Trustee upon receipt by the Trustee of (i) if the original bonds were rated by Moody’s, a letter from Moody’s, dated within ten days prior to the date of delivery of the Substituted Mortgage Bonds, stating that its rating of the Substituted Mortgage Bonds is at least equal to its then current rating on the original bonds, (ii) if the original bonds were rated by S&P, a letter from S&P, dated within ten days prior to the date of delivery of the Substituted Mortgage Bonds, stating that its rating to the Substituted Mortgage Bonds is at least equal to its then current rating on the original bonds, (iii) if the original bonds were rated by Fitch, a letter from Fitch, dated within ten days prior to the date of delivery of the Substituted Mortgage Bonds, stating that its rating to the Substituted Mortgage Bonds is at least equal to its then current rating on the original bonds (iv) an opinion of counsel which may be counsel to the Company or any successor entity, to the effect that the Substituted Mortgage Bonds shall have been duly and validly authorized, executed, authenticated, and delivered and shall constitute the valid, legally binding and enforceable obligations of the Company or any successor entity enforceable in accordance with their terms, except as limited by bankruptcy, insolvency or other laws affecting the enforcement of mortgagees’ and other creditors’ rights and shall be entitled to the benefit of the mortgage and deed of trust or other similar instrument pursuant to which they shall have been issued and (v) such other certificates and documents with respect to the issuance and delivery of the Substituted Mortgage Bonds as may be required by law or as the Trustee may reasonably request. The Company may make such other amendments to the Original Indenture as may be necessary or desirable in the opinion of the Company to effect the foregoing.

Section 7. Addition of a Governing Law Clause. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2043 Series, or of any subsequent series of bonds, to amend the Original Indenture to add the following new section:

“This Indenture shall be deemed to be a contract made under the laws of the State of Kansas and for all purposes shall be construed in accordance with the laws of the State of Kansas, without regard to conflicts of laws principles thereof.”

Section 8. Event of Default for Failure to Pay Final Judgments in Excess of \$100,000. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2043 Series, or of any subsequent series of bonds, to amend the Original Indenture to delete Article IX, Section 1(j). The Company may make such other amendments to the Original Indenture as may be necessary or desirable in the opinion of the Company to effect the foregoing.

Section 9. Net Earnings Test in Connection with Property Acquisitions. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2043 Series, or of any subsequent series of bonds, to amend the Original Indenture to delete Article IV, Section 14(b) and reserves the right to further amend, modify or delete any other provision of the Original Indenture, as supplemented, as may be necessary in order to effectuate the intents and purposes contemplated by this Section 9.

Section 10. Addition of Nuclear Fuel. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2043 Series, or of any subsequent series of bonds, to amend the Original Indenture to (i) add Nuclear Fuel to the definition of “**Property Additions**”; provided that there shall be no restrictions under the Original Indenture on the application of any controls, liens, regulations, easements, restrictions, exceptions or reservations by any governmental authority on the Nuclear Fuel, (ii) to allow the Company to at any time, unless the Company is in default in the payment of the interest on any of the bonds then outstanding or there is an ongoing event of default without any release or consent by, or report to, the Trustee, sell or otherwise dispose of, free from the lien of the Original Indenture, any Nuclear Fuel which shall have become old, inadequate, obsolete, worn out, unfit, unadapted, unserviceable, undesirable or unnecessary for use in the operations of the Company upon the replacement or substitution of such Nuclear Fuel with other Nuclear Fuel of at least equal value and subject to the lien of the Original Indenture and (iii) to further amend, modify or delete any other provision of the Original Indenture, as supplemented, as may be necessary in order to effectuate the intents and purposes contemplated by this Section 10.

The term ‘**Nuclear Fuel**’ shall mean (a) any fuel element, including nuclear fuel and associated means (and any similar or analogous device or substance), whether or not classified as fuel and whether or not chargeable to operating expenses, comprising or intended to comprise, or formerly comprising, the core, or other part, of a nuclear reactor or any similar or analogous device, (b) any fuel element, including nuclear fuel, and associated means (and any similar or analogous device or substance) while in the process of fabrication or preparation and special nuclear or other materials held for use in such fabrication or preparation, (c) any substances or materials formerly comprising such nuclear fuel and associated means (or any similar or analogous device or substance) and which substances or materials are undergoing or have undergone reprocessing and (d) uranium, thorium, plutonium, and any other substance or material from time to time used or selected for use by the Company as fuel material, or as potential fuel material, in a nuclear reactor or any similar or analogous device.

Section 11. *Modernization of the Original Indenture.* The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2043 Series, or of any subsequent series of bonds, to amend the Original Indenture to:

- (i) Eliminate maintenance and improvement fund requirements;
- (ii) Simplify the provisions for release of obsolete property, de minimis property releases and substitution of property and unfunded property;
- (iii) Permit additional terms of bonds or forms of bond in supplemental indentures, including terms for uncertificated and global securities (or definitive securities in lieu thereof) and medium-term notes;
- (iv) Make any changes necessary to conform the Mortgage with the requirements of the Trust Indenture Act;
- (v) Add defeasance provisions providing for covenant and legal defeasance options;
- (vi) Permit the Company to remove the trustee in certain circumstances;
- (vii) Provide for direction to the trustee under the Mortgage to vote pledged prior lien bonds for specified amendments to the prior lien mortgage;
- (viii) Provide broader investment directions to the trustee or permitting the Company to direct investment of money held by the Trustee, so long as there is no event of default under the Mortgage;
- (ix) Amend the definition of “Excepted Property” to exclude property which generally cannot be mortgaged without undue administrative burden (i.e. automobiles), but allowing the Company to subject Excepted Property to the Mortgage;
- (x) Amend the definition of “Bondable Property” to allow all mortgaged property to be bondable; and
- (xi) Update the definition of “Permitted Liens.”

ARTICLE VI
MISCELLANEOUS PROVISIONS

Section 1. Acceptance of Trust. The Trustee accepts the trusts herein declared, provided, created or supplemented and agrees to perform the same upon the terms and conditions herein and in the Original Indenture, as amended, set forth and upon the following terms and conditions.

Section 2. Responsibility and Duty of Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made by the Company solely. In general each and every term and condition contained in Article XIII of the Original Indenture, as amended by the Second Supplemental Indenture, shall apply to and form part of this Supplemental Indenture with the same force and effect as if the same were herein set forth in full with such omissions, variations and insertions, if any, as may be appropriate to make the same conform to the provisions of this Supplemental Indenture.

Section 3. Parties to Include Successors and Assigns. Whenever in this Supplemental Indenture either of the parties hereto is named or referred to, such reference shall, subject to the provisions of Articles XII and XIII of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee, shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

Section 4. Benefits Restricted to Parties and to Holders of Bonds and Coupons. Nothing in this Supplemental Indenture, expressed or implied, is intended or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the holders of the Bonds and coupons outstanding under the Indenture, any right, remedy or claim under or by reason of this Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Supplemental Indenture contained by and on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the holders of the Bonds and of the coupons outstanding under the Indenture.

Section 5. Execution in Counterparts. This Supplemental Indenture may be executed in several counterparts, and all such counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

Section 6. Titles of Articles Not Part of the Forty-Third Supplemental Indenture. The Titles of the several Articles of this Supplemental Indenture shall not be deemed to be any part thereof.

IN WITNESS HEREOF, WESTAR ENERGY, INC., party hereto of the first part, has caused its corporate name to be hereunto affixed, and this instrument to be signed and sealed by its Chairman of the Board, President, Chief Executive Officer or a Vice President, and its corporate seal to be attested by its Secretary or an Assistant Secretary for and in its behalf, and The Bank of New York Mellon Trust Company, N.A., party hereto of the second part, has caused its corporate name to be hereunto affixed, and this instrument to be signed and sealed by its duly authorized officer and its corporate seal to be attested by its duly authorized officer, all as of the day and year first above written. (CORPORATE SEAL)

WESTAR ENERGY, INC.

By: _____

Anthony D. Somma
Senior Vice President, Chief Financial Officer and
Treasurer

ATTEST:

By: _____
Larry D. Irick, Vice President, General Counsel and
Corporate Secretary

Executed, sealed and delivered by WESTAR
ENERGY, INC. in the presence of:

By: _____

By: _____

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee

By: _____, Vice President

ATTEST:

By: _____, Vice President

Executed, sealed and delivered by
THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A. in the presence of:

By: _____

By: _____

STATE OF KANSAS)
: ss.:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, that on this day of March, 2013, before me, the undersigned, a Notary Public within and for the County and State aforesaid, personally came Anthony D. Somma and Larry D. Irick, of Westar Energy, Inc., a corporation duly organized, incorporated and existing under the laws of the State of Kansas, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed as such officers the within instrument of writing, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

Notary Public
My Commission Expires _____

STATE OF ILLINOIS)
 :
COUNTY OF COOK)

BE IT REMEMBERED, that on this day of March, 2013, before me, the undersigned, a Notary Public within and for the County and State aforesaid, personally came and , of The Bank of New York Mellon Trust Company, N.A., a national banking association, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed as such officers the within instrument of writing, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

Notary Public
My Commission Expires _____

STATE OF KANSAS)
: ss.:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, that on this day of March, 2013, before me, the undersigned, a Notary Public within and for the County and State aforesaid, personally came Anthony D. Somma, and Larry D. Irick, of Westar Energy, Inc., a corporation duly organized, incorporated and existing under the laws of the State of Kansas, who are personally known to me to be such officers, being by me respectively duly sworn, did each say that the said Anthony D. Somma is Senior Vice President, Chief Financial Officer and Treasurer and that the said Larry D. Irick is Vice President, General Counsel and Corporate Secretary of said corporation, that the consideration of and for the foregoing instrument was actual and adequate, that the same was made and given in good faith, for the uses and purposes therein set forth and without any intent to hinder, delay, or defraud creditors or purchasers.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

Notary Public
My Commission Expires _____

APPENDIX A

to

FORTY-SECOND SUPPLEMENTAL (REOPENING) INDENTURE

Dated as of March , 2013

Westar Energy, Inc.

to

The Bank of New York Mellon Trust Company, N.A.

(as successor to
Harris Trust and Savings Bank)

DESCRIPTION OF PROPERTIES
LOCATED IN THE STATE OF KANSAS

FIRST

PARCELS OF REAL ESTATE

SHAWNEE COUNTY

800 Kansas Building Site

Tract 1:

Lots 254, 256, 258, 260, 262, and 264 on Kansas Avenue, in the City of Topeka, Shawnee County, Kansas, AND ALSO the West 1/2 of the vacated alley lying East of and adjoining said Lots 254, 256, 258, 260, 262 and 264.

Tract 2:

Lots 103, 105, 107, 109, and 111 on Eighth Avenue East in the City of Topeka, Shawnee County, Kansas, together with the East 1/2 of the vacated alley lying West and adjoining said Lot 103 and the North 1/2 of the vacated alley lying South and adjoining said East 1/2 of vacated alley and South of and adjoining Lots 103, 105 and the West 5 feet of Lot 107 aforesaid.

Tract 3:

The South 1/2 of vacated alley North of and adjoining the East 65 feet of Lot 266 on Kansas Avenue, in the City of Topeka, Shawnee County, Kansas.

Tract 4:

All of Lots 113, 115, 117, 119 on Eighth Avenue East, in the City of Topeka, Shawnee County, Kansas.

The above described tracts together comprising a parcel of land in the City of Topeka, Shawnee County, Kansas, described as follows:

Beginning at the Northwest corner of Lot 254 on Kansas Avenue, in the City of Topeka, Shawnee County, Kansas; thence South along the West line of Lots 254, 256, 258, 260, 262, and 264 on Kansas Avenue, a distance of 150.07 feet, more or less, to the Southwest corner of said Lot 264 on said Kansas Avenue; thence East along the South line of said Lot 264 and the South line of the vacated alley (which is also the North line of Lot 266) a distance of 150.26 feet, more or less, to the Northeast corner of Lot 266 on said Kansas Avenue; thence North along the East line of the vacated alley, a distance of 20 feet to a point on the South line of Lot 107 on Eighth Avenue East; thence East along the South line of Lots 107, 109, 111, 113, 115, 117 and 119, a distance of 170.26 feet, more or less to the Southeast corner of Lot 119 on said Eighth Avenue East; thence North along the East line of said Lot 119 a distance of 130.06 feet, more or less, to the Northeast corner of said Lot 119; thence West along the North line of odd Lots 103 to 119 both inclusive, on Eighth Avenue East, and along the North line of vacated alley, and the North line of Lot 254 on Kansas Avenue (being also the South line of East 8th Street) a distance of 320.57 feet, more or less, to the point of beginning.

ALSO:

Lot 1, Block A, Dalton Subdivision, in the City of Topeka, Shawnee County, Kansas.

Lot 5, Block B, Southall Industrial Subdivision, Shawnee County, Kansas, EXCEPT that part described as follows: Beginning at the Northwest corner of said Lot 5; thence along the North line of Lot 5, North 69 degrees 31 minutes 35 seconds East, 218.00 feet; thence South 18 degrees 56 minutes 06 seconds East, 521.32 feet to the South line of Lot 5; thence along said South line South 60 degrees 04 minutes 57 seconds West, 33.86 feet; thence continuing along said South line along a curve to the left having a radius of 3089.94 feet an arc distance of 166.14 feet to the Southwest corner of Lot 5; thence along the West line of Lot 5, North 21 degrees 14 minutes 46 seconds West, 558.39 feet to the point of beginning.

A tract of land in the Southwest Quarter of Section 24, Township 12 South, Range 14 East of the 6th P.M., in Shawnee County, Kansas, described as follows: Beginning at the Southwest corner of the North Half of the Southwest Quarter; thence North along the West line of said Southwest Quarter, a distance of 400.00 feet; thence East, parallel to the South line of the North Half of said Southwest Quarter, a distance of 653.40 feet; thence South, parallel to the West line of said Southwest Quarter, a distance of 400.0 feet; thence West along the South line of the North Half of said Southwest Quarter, a distance of 653.40 feet to the point of beginning.

The North Half of the Southwest Quarter and the Southeast Quarter of the Southwest Quarter of Section 24, Township 12 South, Range 14 East of the 6th P.M., in Shawnee County, Kansas LESS AND EXCEPT THE FOLLOWING DESCRIBED TRACT OF LAND: Beginning at the Southwest corner of the North Half of the Southwest Quarter; thence North along the West line of said Southwest Quarter, a distance of 400.00 feet; thence East, parallel to the South line of the North Half of said Southwest Quarter, a distance of 653.40 feet; thence South, parallel to the West line of said Southwest Quarter, a distance of 400.0 feet; thence West along the South line of the North Half of said Southwest Quarter, a distance of 653.40 feet to the point of beginning.

Lot A, Block J, Aquarian Acres Subdivision No. 9, City of Topeka, Shawnee County, Kansas.

A parcel of land situated in the Northeast Quarter of Section 26, Township 11South Range 15 East of the 6th P.M., being a portion of that certain tract of land described in Deed recorded February 26, 2009 in Book 4676 Page 107 in the Office of the Register of Deeds in Shawnee County, Kansas, described as follows:

Commencing at the Southeast corner of said Northeast Quarter; thence on an assumed Azimuth of 268 degrees 18 minutes 36 seconds, coincident with the South Line of said Northeast Quarter, a distance of 1294.15 feet; thence on Azimuth 358 degrees 18 minutes 36 seconds, a distance of 755.27 feet to the point of beginning; thence on Azimuth 279 degrees 41minutes 54 seconds, a distance of 350.00 feet; thence on Azimuth 99 degrees 41minutes 54 seconds, a distance of 215.00 feet; thence on Azimuth 99 degrees 41minutes 54 seconds, a distance of 350.00 feet; thence on Azimuth 189 degrees 41minutes 54 seconds a distance of 215.00 feet to the point of beginning.

GEARY COUNTY

Lot Three, Block Two, Replat of Block One, and Lots Two, Three, Four, Five and Twelve, Block Two, Roy Westover Addition No. Two, Junction City, Geary County, Kansas

Lot Two, Block One, Replat of Block One, and Lots Two, Three, Four, Five and Twelve, Block Two, Roy Westover Addition No. Two, to Junction City, Geary County, Kansas

Lot One, Block Eleven, Crest Hill Addition, No. 3, Junction City, Geary County, Kansas

POTTAWATOMIE COUNTY

Lot 6, Farrar Addition, Unit Three, an Addition to the City of Manhattan, Pottawatomie County, Kansas

SEDGWICK COUNTY

Lot 2, Block 1, Midwest Scrap Addition, Park City, Sedgwick County, Kansas

SUMNER COUNTY

A PARCEL OF LAND BEING KNOWN AS THE SOUTHEAST ONE QUARTER OF SECTION 19, TOWNSHIP 31 SOUTH, RANGE 3 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF SUMNER, STATE OF KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 19, TOWNSHIP 31 SOUTH, RANGE 3 WEST OF THE 6TH PRINCIPAL MERIDIAN BEING MONUMENTED ON THE NORTHERLY END BY A 5/8" REBAR WITH NO CAP FOUND AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 19 AND ON THE SOUTHERLY END BY A 4" TRIANGULAR CONCRETE MONUMENT FOUND AT THE SOUTHEAST CORNER OF SAID SECTION 19. SAID LINE BEARS S 01°02' 26" E (GRID BEARINGS), A DISTANCE OF 2654.06 FEET.

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SECTION 19, TOWNSHIP 31 SOUTH, RANGE 3 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE S 89° 39' 31" W, A DISTANCE OF 20.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF NORTH MILAN ROAD (ROAD #46, BOOK B—PAGE 182) AND THE POINT OF BEGINNING; THENCE S 01°02'26" E, ON THE WESTERLY RIGHT OF WAY LINE OF SAID NORTH MILAN ROAD, A

DISTANCE OF 2629.11 TO THE NORTH RIGHT OF WAY LINE OF WEST 50TH AVENUE (ROAD #77, BOOK B- PAGE 258); THENCE S 89°29'25" WON THE NORTHERLY RIGHT OF WAY LINE OF SAID WEST 50TH AVENUE, A DISTANCE OF 2630.11 FEET TO AN AS-FARMED FIELD DIVISION LINE; THENCE N 00°48'41" W ALONG SAID FIELD DIVISION LINE, A DISTANCE OF 2636.73 FEET TO THE NORTHERLY LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 19; THENCE N 89°39'31" E ON THE NORTHERLY LINE OF SAID SOUTHEAST ONE-QUARTER, A DISTANCE OF 2619.65 FEET TO THE WESTERLY RIGHT OF WAY LINE OF NORTH MILAN ROAD (ROAD #46, BOOK B—PAGE 182) AND THE POINT OF BEGINNING. SAID PARCEL CONTAINING A CALCULATED AREA OF 158.651 ACRES OF LAND, MORE OR LESS,

WILSON COUNTY

A portion of Lot Ten (10) of the Fredonia Industrial Park Addition, City of Fredonia, Wilson County, Kansas, being described as follows:

Commencing at the Northeast corner of said Lot 10; thence South 00°40'10" East (Bearings based on the recorded plat of "Fredonia Industrial Park") along the East line of said Lot 10 a distance of 46.12 feet; thence South 89°19'50" West perpendicular to said East line a distance of 32.00 feet to the point of beginning; thence South 00°40'10" East parallel with said East line a distance of 93.70 feet; thence South 89°19'50" West a distance of 146.00 feet; thence North 00°40'10" West a distance of 93.70 feet; thence North 89°19'50" East a distance of 146.00 feet to the point of beginning; containing 13,680.2 square feet or 0.31 acres more or less.

OPINION OF LARRY D. IRICK

March 21, 2013

Westar Energy, Inc.
818 South Kansas Avenue
Topeka, Kansas 66612

Ladies and Gentlemen:

I am the General Counsel of Westar Energy, Inc., a Kansas corporation (the “**Company**”) and in this regard, I have acted as counsel for the Company in connection with the issuance by the Company pursuant to the Underwriting Agreement dated March 21, 2013 (the “**Underwriting Agreement**”), among the Company and BNY Mellon Capital Markets, LLC, Deutsche Bank Securities Inc. and Merrill Lynch, Pierce, Fenner and Smith Incorporated, (the “**Representatives**”) as representatives of the several Underwriters listed therein (the “**Underwriters**”), of \$250,000,000 aggregate principal amount of its First Mortgage Bonds, 4.10% Series due 2043 (the “**Bonds**”). The Bonds are to be issued under and secured by the Mortgage and Deed of Trust, dated July 1, 1939, between the Company and The Bank of New York Mellon Trust Company, N.A., as successor to Harris Trust and Savings Bank, as trustee (the “**Trustee**”), as amended and supplemented by forty-two supplemental indentures supplemental thereto, in addition to the forty-second supplemental (reopening) indenture, and as to be amended and supplemented by a forty-third supplemental indenture thereto, dated as of March 28, 2013 (together, the “**Amended Mortgage**”).

I, as your counsel, have examined originals or copies of such documents, corporate records, certificates of public officials and other instruments, certified or otherwise identified to my satisfaction, as I have deemed necessary or advisable for the purpose of rendering this opinion.

Based upon the foregoing, and subject to the additional assumptions and qualifications set forth below, I advise you that, in my opinion, the Bonds have been duly authorized in accordance with the Amended Mortgage, and, when executed and authenticated in accordance with the provisions of the Amended Mortgage and delivered to and paid for by the Underwriters in accordance with the terms of the Underwriting Agreement, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally, concepts of reasonableness and equitable principles of general applicability.

I am a member of the Bar of the State of Kansas and the foregoing opinion is limited to the laws of the State of Kansas (except state securities or blue sky laws).

I hereby consent to the filing of this opinion as an exhibit to a Current Report on Form 8-K to be filed by the Company on the date hereof and its incorporation by reference into the Company’s registration statement on Form S-3 (File No. 333-187398). In giving this consent, I do not admit that I am in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Larry D. Irick
Larry D. Irick

March 21, 2013

Westar Energy, Inc.
818 South Kansas Avenue
Topeka, Kansas 66612

Ladies and Gentlemen:

I am the General Counsel of Westar Energy, Inc., a Kansas corporation (the “**Company**”), and have acted for the Company in connection with (i) the proposed offering and sale of up to \$500,000,000 aggregate amount of the Company’s common stock (the “**Shares**”) pursuant to the Sales Agency Financing Agreement, dated March 21, 2013 (the “**Agreement**”), between the Company, BNY Mellon Capital Markets, LLC (“**BNYMCM**”) and The Bank of New York Mellon (the “**Forward Purchaser**”) and the Master Confirmation for Forward Stock Sale Transactions, dated March 21, 2013, between the Company and the Forward Purchaser (the “**Forward Agreement**” and together with the Agreement, the “**Transaction Documents**”) and (ii) the filing by the Company of the Prospectus Supplement relating to the proposed offering and sale of the Shares, dated March 21, 2013 (the “**Prospectus Supplement**”), with the SEC pursuant to Rule 424(b) promulgated under the Act.

I have (or an attorney in the Office of the Law Department of the Company reporting to me has) examined the originals, or copies certified to our satisfaction, of such corporate records of the Company, certificates of public officials and of officers of the Company, and agreements, instruments and other documents, as I have deemed necessary or advisable for the purpose of rendering this opinion.

I have assumed the following: (i) the genuineness of all signatures (other than the signatures of the officers of the Company) on all documents examined by me; (ii) the authenticity of all documents submitted to me as originals and the conformity to authentic originals of all documents submitted to me as certified or photostatic copies; (iii) any documents dated prior to the date hereof remain true as of the date hereof; (iv) each certificate of a public official is accurate, complete and authentic and all official public records are accurate and complete; and (v) the legal capacity of all natural persons.

I have also assumed for purposes of my opinion that each Transaction Document has been duly authorized, executed and delivered by all parties thereto other than the Company, and constitutes a legal, valid and binding obligation of each party thereto other than the Company, and that all such other parties have the requisite organizational and legal power to perform their obligations thereunder.

On the basis of the foregoing, I am of the opinion that that (a) the Issuance Shares (as such term is defined in the Agreement), if any, have been duly authorized by the Company and, when issued and sold by the Company and delivered by the Company against receipt of the purchase price therefor, in the manner contemplated by the Agreement, such Issuance Shares will be validly issued, fully paid and non-assessable and (b) the Forward Hedge Shares (as such term is defined in the Forward Agreement), if any, have been duly authorized by the Company and, when borrowed and sold by the Forward Hedge Shares and delivered by the Forward Seller against receipt of the purchase price therefor, in the manner contemplated by the Agreement, such Forward Hedge Shares will be validly issued, fully paid and non-assessable.

I am a member of the Bar of the State of Kansas and the foregoing opinion is limited to the laws of the State of Kansas (except state securities or blue sky laws) and the federal laws of the United States of America.

I hereby consent to the filing of this opinion as Exhibit 5.2 to the Current Report on Form 8-K to be filed by the Company on or about the date hereof, which will be incorporated by reference in the Company's registration statement on Form S-3 (Registration No. 333-187398) and to the reference to me under the caption "Legal matters" in the Prospectus Supplement.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose or relied upon by or furnished to any other person without my prior written consent.

Very truly yours,

/s/ Larry D. Irick

Larry D. Irick
Vice President, General Counsel
and Corporate Secretary
Westar Energy, Inc.

March 21, 2013

Westar Energy, Inc.
818 South Kansas Avenue
Topeka, Kansas 66612

Ladies and Gentlemen:

I am Vice President, General Counsel and Corporate Secretary of Westar Energy, Inc., a Kansas corporation (the “**Company**”), and have acted for the Company in connection with the proposed offering and sale of up to 2,362,951 shares (the “**Shares**”) of common stock of the Company pursuant to the Company’s direct stock purchase plan and (ii) the filing by the Company of the prospectus supplement dated March 21, 2013 relating to the proposed offering and sale of the Shares (the “**Prospectus Supplement**”), with the SEC pursuant to Rule 424(b) promulgated under the Act.

I have examined originals or copies, certified or otherwise identified to my satisfaction, of such documents, corporate records, certificates of public officials and other instruments as I have deemed necessary or advisable for the purpose of rendering this opinion.

I have assumed the following: (i) the genuineness of all signatures (other than the signatures of the officers of the Company) on all documents examined by me; (ii) the authenticity of all documents submitted to me as originals and the conformity to authentic originals of all documents submitted to me as certified or photostatic copies; (iii) any certifications and documents dated prior to the date hereof remain true as of the date hereof; (iv) each certificate of a public official is accurate, complete and authentic and all official public records are accurate and complete and (v) the legal capacity of all natural persons.

On the basis of the foregoing, I am of the opinion that that the Shares have been duly authorized by the Company and, when issued and sold by the Company and delivered by the Company against receipt of the purchase price therefor, in the manner contemplated by the direct stock purchase plan, such Shares were or will be validly issued, fully paid and non-assessable.

I am a member of the Bar of the State of Kansas and the foregoing opinion is limited to the laws of the State of Kansas (except state securities or blue sky laws) and the federal laws of the United States of America.

I hereby consent to the filing of this opinion as Exhibit 5.3 to the Current Report on Form 8-K to be filed by the Company on or about the date hereof, which will be incorporated by reference in the Company's registration statement on Form S-3 (Registration No. 333-187398) and to the reference to me under the caption "Legal Matters" in the Prospectus Supplement.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose or relied upon by or furnished to any other person without my prior written consent.

Very truly yours,

/s/ Larry D. Irick
Larry D. Irick

March 21, 2013

Master Confirmation for Forward Stock Sale Transactions

To: Westar Energy, Inc.
818 South Kansas Avenue,
Topeka, Kansas 66612

From: The Bank of New York Mellon
32 Old Slip
15th Floor
New York, New York 10286
Fax: 212-495-1015

Dear Sir/Madam:

The purpose of this letter agreement (this “**Master Confirmation**”) is to confirm the terms and conditions of the transactions to be entered into from time to time between The Bank of New York Mellon (“**Party A**” or “**BNY**”) and Westar Energy, Inc. (“**Party B**”) in accordance with the terms of the Sales Agency Financing Agreement, dated as of March 21, 2013, among BNY Mellon Capital Markets, LLC, Party A and Party B (the “**Sales Agency Financing Agreement**”) on the Trade Dates specified below (collectively, the “**Transactions**”, and each, a “**Transaction**”). Each Transaction will be evidenced by a supplemental confirmation (each, a “**Supplemental Confirmation**”, and each such Supplemental Confirmation, together with this Master Confirmation, a “**Confirmation**” for purposes of the Agreement specified below) substantially in the form of Exhibit A hereto.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”)) (the “**Equity Definitions**”) are incorporated into each Confirmation. In the event of any inconsistency between the Equity Definitions and any Confirmation, such Confirmation will govern to the extent of such inconsistency. Any reference to a currency shall have the meaning contained in Annex A to the 1998 ISDA FX and Currency Option Definitions, as published by ISDA.

1. Each Confirmation evidences a complete and binding agreement between Party A and Party B as to the terms of the Transaction to which such Confirmation relates. Each Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Party A and Party B had executed an agreement in such form on the date hereof (but without any Schedule except for the election of the laws of the State of New York as the governing law); *provided* that in no event shall Party B be required to pay an additional amount to Party A under Section 2(d)(i)(4) of the Agreement; *provided further* that, prior to any assignment or transfer by Party A any of its rights, or any delegation by Party A any of its duties, under this Master Confirmation and any Supplemental Confirmation relating to a Transaction, in each case, pursuant to the provisions set forth under the heading “Assignment” below, in no event shall Party A be required to pay an additional amount to Party B under Section 2(d)(i)(4) of the Agreement. In the event of any inconsistency between provisions of that Agreement and any Confirmation, such Confirmation will prevail for the purpose of the Transaction to which such Confirmation relates. In the event of any inconsistency between provisions of this Master Confirmation and any Supplemental Confirmation, this Master Confirmation will prevail to the extent of such inconsistency. The parties hereby agree that no Transaction other than the Transactions to which the Confirmations relate shall be governed by the Agreement. For purposes of the Equity Definitions, each Transaction is a Share Forward Transaction.
2. The terms of the particular Transactions to which this Master Confirmation relates are as follows:

GENERAL TERMS:

Seller: Party B

Buyer: Party A

Trade Date:	Subject to the provisions under the heading "Acceleration Events" below, for each Transaction, the last Trading Day (as defined in the Sales Agency Financing Agreement) of the Forward Hedge Selling Period (as defined in the Sales Agency Financing Agreement) for such Transaction, as specified in the Supplemental Confirmation for such Transaction.
Effective Date:	For each Transaction, the date that follows the Trade Date for such Transaction by one Settlement Cycle, as specified in the Supplemental Confirmation for such Transaction.
Base Shares:	For each Transaction, the number of Shares equal to the Actual Sold Forward Amount (as defined in the Sales Agency Financing Agreement) for the Forward Hedge Selling Period for such Transaction, as specified in the Supplemental Confirmation for such Transaction. Immediately after the open of business on each Settlement Date for a Transaction, the number of Base Shares for such Transaction shall be reduced by the number of Settlement Shares for such Settlement Date.
Maturity Date:	For each Transaction, the date that follows the Trade Date for such Transaction by the number of months set forth in the Transaction Notice (as defined in the Sales Agency Financing Agreement) for such Transaction, as specified in the Supplemental Confirmation for such Transaction (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day); <i>provided</i> that if the Maturity Date for any Transaction is a Disrupted Day, then such Maturity Date shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day.
Forward Price:	For each Transaction, on the Effective Date for such Transaction, the Initial Forward Price for such Transaction, and on any other day, the Forward Price for such Transaction as of the immediately preceding calendar day <i>multiplied by</i> the sum of (i) 1 <i>plus</i> (ii) the Daily Rate for such day; <i>provided</i> that, on each Forward Price Reduction Date for such Transaction that occurs on or after the Effective Date for such Transaction, the Forward Price for such Transaction in effect on such date shall be such Forward Price otherwise in effect on such date <i>minus</i> the Forward Price Reduction Amount for such Forward Price Reduction Date.
Initial Forward Price:	For each Transaction, 99% of the USD amount per Share equal to the volume-weighted average of the Sales Prices (as defined in the Sales Agency Financing Agreement) per share of Forward Hedge Shares (as defined in the Sales Agency Financing Agreement) sold on each Trading Day (as defined in the Sales Agency Financing Agreement) of the Forward Hedge Selling Period for such Transaction, as specified in the Supplemental Confirmation for such Transaction; <i>provided</i> that, solely for the purposes of calculating the Initial Forward Price, each such Sales Price (other than the Sales Price for the last day of the relevant Forward Hedge Selling Period) shall be subject to adjustment in the same manner as the Forward Price pursuant to the definition thereof during the period from, but excluding, the date one Settlement Cycle immediately following the Trading Day of the relevant Forward Hedge Selling Period on which the Forward Hedge Shares related to such Sales Price are sold to, and including, the Effective Date of such Transaction. The Initial Forward Price for each Transaction shall be specified in the Supplemental Confirmation for such Transaction.
Daily Rate:	For any day, (i)(A) USD-Federal Funds Rate for such day <i>minus</i> (B) the Spread <i>divided by</i> (ii) 360.

USD-Federal Funds Rate:	For any day, the rate set forth for such day opposite the caption “Federal funds”, as such rate is displayed on the page “FedsOpen <Index> <GO>” on the BLOOMBERG Professional Service, or any successor page; provided that if no rate appears on any day on such page, the rate for the immediately preceding day on which a rate appears shall be used for such day.
Spread:	0.60%
Settlement Commission:	As set forth in Exhibit B hereto.
Forward Price Reduction Date:	For each Transaction, each date set forth under the heading “Forward Price Reduction Date” in the Transaction Notice for such Transaction, as specified in Schedule I to the Supplemental Confirmation for such Transaction.
Forward Price Reduction Amount:	For each Forward Price Reduction Date for any Transaction, the Forward Price Reduction Amount set forth opposite such date on Schedule I to the Supplemental Confirmation for such Transaction.
Shares:	Common stock, \$5.00 par value per share, of Westar Energy, Inc. (the “ Issuer ”) (Exchange identifier: “WR”).
Prepayment:	Not Applicable
Exchange:	New York Stock Exchange, subject to clause (e) under the heading “Acceleration Events” below.
Related Exchange(s):	All Exchanges
Clearance System:	The Depository Trust Company (or its successor)
Calculation Agent:	Party A. Upon execution of this Master Confirmation, Party B hereby requests the Calculation Agent to provide, and the Calculation Agent shall provide, Party B with a schedule of all calculations, adjustments and determinations in reasonable detail and in a timely manner.
Determining Party:	Party A
Exchange Act:	The Securities Exchange Act of 1934, as amended from time to time.
<u>SETTLEMENT TERMS:</u>	
Settlement Date:	With respect to any Transaction, subject to the provisions under “Acceleration Events” and “Termination Settlement” below, any Scheduled Trading Day following the Effective Date for such Transaction and up to, and including, the Maturity Date for such Transaction, as designated by Party B in a written notice (a “ Settlement Notice ”) that satisfies the Settlement Notice Requirements and that (a) if related to any Cash Settlement or Net Share Settlement, is delivered to Party A at least ten Scheduled Trading Days prior to such Settlement Date and (b) if related to Physical Settlement, is delivered at any time before the Maturity Date for such Transaction, and settlement will be completed as promptly as reasonably practicable thereafter; <i>provided</i> that (i) subject to clause (ii) below and after giving effect to any other Settlement occurring on the Maturity Date for such Transaction, the Maturity Date for such Transaction shall be a Settlement Date for such Transaction if the number of Base Shares for such Transaction immediately before the open of business on such Maturity Date is

greater than zero; (ii) if Cash Settlement or Net Share Settlement applies, any Settlement Date for any Transaction shall, if Party A is unable to completely unwind its hedge during the originally scheduled Unwind Period due to (A) an inability to comply with the provisions of Rule 10b-18 under the Exchange Act, (B) the existence of any Suspension Day or Disrupted Day, or (C) the inability of Party A, in its commercially reasonable judgment, to unwind its hedge during the originally scheduled Unwind Period, be deferred until the third Scheduled Trading Day following the date on which Party A is able to completely unwind its hedge (provided that such deferral shall not extend beyond the earlier of (x) the Maturity Date and (y) the 20th Scheduled Trading Day after the Settlement Date designated in the Settlement Notice, and such deferred date shall be a Settlement Date for such Transaction to which (1) Cash Settlement or Net Share Settlement, as applicable, will apply with respect to the portion of the applicable Settlement Shares as to which Party A has unwound its hedge during the Unwind Period (for avoidance of doubt, such portion of such Settlement Shares to be a number of Settlement Shares with respect to which Party A would be deemed, pursuant to the immediately following paragraph, to have completely unwound its hedge), and (2) Physical Settlement will apply with respect to the remainder of such Settlement Shares), and (iii) with respect to any Transaction, no more than six Settlement Dates other than the Maturity Date for such Transaction may be designated by Party B; provided further that if Party A shall fully unwind its hedge by a date that is more than one Settlement Cycle prior to the related Settlement Date specified above, Party A may, by written notice to Party B, specify any Scheduled Trading Day prior to such original Settlement Date as the Settlement Date; provided further that if any Settlement Date specified above is not a Scheduled Trading Day, the Settlement Date shall instead be the next Scheduled Trading Day. Notwithstanding anything herein to the contrary, if any Settlement Date is not a Clearance System Business Day, then such Settlement Date shall instead occur on the next succeeding day that is a Clearance System Business Day.

With respect to any Settlement Date of a Transaction, Party A will be deemed to have completely unwound its hedge upon such time that Party A shall have acquired a number of Shares (i) in the case of Cash Settlement, equal to the number of Settlement Shares for such Settlement Date, and (ii) in the case of Net Share Settlement, for which Party A has paid an aggregate purchase price (inclusive of a per Share commission equal to the Settlement Commission) equal to (1) the product of (A) the number of Settlement Shares for such Settlement Date and (B) the Forward Price for such Transaction as of the first day of the applicable Unwind Period *minus* (2) the product of (A) the Forward Price Reduction Amount for each Forward Price Reduction Date for such Transaction that occurs during such Unwind Period and (B) the number of Settlement Shares with respect to which Party A has not unwound its hedge as of the close of business on such Forward Price Reduction Date.

Settlement Shares:

For any Settlement Date of a Transaction, subject to the provisions under "Acceleration Events" and "Termination Settlement" below, the number of Shares so designated by Party B in the applicable Settlement Notice, *provided* such number of Shares shall not exceed the number of Base Shares for such Transaction immediately before the open of business on such Settlement Date, *less* the number of Shares previously designated as Settlement Shares for such Transaction for which a Settlement Date has not yet occurred; *provided* that, on the Maturity Date for any Transaction, the number of Settlement Shares for such Transaction shall be equal to the number of Base Shares for such Transaction immediately before the open of business on such Maturity Date, *less* the number of Shares previously designated as Settlement Shares for such Transaction for

which a Settlement Date has not yet occurred; provided further that the number of Settlement Shares shall not be less than the lesser of (i) the number of Base Shares for such Transaction immediately before the open of business on such Settlement Date, less the number of Shares previously designated as Settlement Shares for such Transaction for which a Settlement Date has not yet occurred; and (ii) 10,000.

Settlement Method:

Subject to the provisions under “Settlement Date” above and “Acceleration Events” and “Termination Settlement” below, Physical, Cash, or Net Share, at the election of Party B as set forth in a Settlement Notice that satisfies the Settlement Notice Requirements. Party B hereby irrevocably elects Physical Settlement to apply to any Settlement Date for a Transaction that occurs on the Maturity Date for such Transaction pursuant to clause (i) of the first *proviso* opposite the caption “Settlement Date” above. Furthermore, if Party B designates a Settlement Date but fails to elect a Settlement Method for such Settlement Date, Party B shall be deemed to have irrevocably elected for Physical Settlement to apply on such Settlement Date.

Settlement Notice Requirements:

Notwithstanding any other provisions hereof, a Settlement Notice delivered by Party B that specifies Cash Settlement or Net Share Settlement will not be effective to establish a Settlement Date or require Cash Settlement or Net Share Settlement (as applicable) unless Party B delivers to Party A with such Settlement Notice a representation signed by Party B substantially in the following form: “As of the date of this Settlement Notice, Westar Energy, Inc. is not aware of any material nonpublic information concerning itself or the Shares, and is designating the date contained herein as a Settlement Date in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws.”

Unwind Period:

The period from, and including, the first Scheduled Trading Day following the date on which Party B elects Cash Settlement or Net Share Settlement in respect of a Settlement Date through the third Scheduled Trading Day preceding such Settlement Date (it being understood that such Settlement Date may be deferred pursuant to clause (ii) of the first proviso under “Settlement Date” above, thereby lengthening the related Unwind Period).

Unwind Daily Share Amount:

On each Scheduled Trading Day during the Unwind Period relating to a Settlement Date, other than a Suspension Day or a Disrupted Day, Party A will, in accordance with the principles of best execution, use commercially reasonable efforts to purchase a number of Shares equal to the least of (i) 100% of the volume limitation of Rule 10b-18 applicable to Party A (assuming that Rule 10b-18 applied to Party A’s purchases during the Unwind Period as if Party A were Party B) for the Shares on such Scheduled Trading Day, without reference to any block purchases, (ii) 25% of the daily trading volume for the Shares on the Exchange on such Scheduled Trading Day, and (iii) the number of Shares required, pursuant to the second paragraph under “Settlement Date” above, to be purchased by Party A in order to completely unwind its hedge with respect to the Settlement Shares relating to such Settlement Date. In connection with bids and purchases of Shares in connection with any Net Share Settlement or Cash Settlement of any Transaction hereunder, Party A shall conduct its activities, or cause its affiliates to conduct their activities, in a manner consistent with the requirements of the safe harbor provided by Rule 10b-18 under the Exchange Act, as if such provisions were applicable to such purchases. For avoidance of doubt, in no event shall Party A be required to make any such purchases during any Unwind Period (or during overlapping Unwind Periods for one or more Settlement Dates of one or more Transactions) that exceed the volume limitations set forth in Rule 10b-18.

Physical Settlement:	In lieu of the obligations set forth in Section 9.2 of the Equity Definitions, on any Settlement Date in respect of which Physical Settlement applies, Party B shall deliver, through the Clearance System, to Party A a number of Shares equal to the Settlement Shares for such Settlement Date, and Party A shall deliver to Party B, by wire transfer of immediately available funds to an account designated by Party B, an amount in cash equal to the Physical Settlement Amount for such Settlement Date, on a delivery versus payment basis.
Physical Settlement Amount:	With respect to any Transaction, for any Settlement Date in respect of which Physical Settlement applies, an amount in cash equal to the product of the Forward Price for such Transaction on such Settlement Date and the number of Settlement Shares for such Settlement Date.
Cash Settlement:	In lieu of the obligations set forth in Sections 8.4 and 8.5 of the Equity Definitions, on any Settlement Date in respect of which Cash Settlement applies, (i) if the Cash Settlement Amount is a positive number, Party A will pay the Cash Settlement Amount to Party B; and (ii) if the Cash Settlement Amount is a negative number, Party B will pay the absolute value of the Cash Settlement Amount to Party A. Such amounts shall be paid on the Settlement Date by wire transfer of immediately available funds to an account designated by the party to receive such amounts.
Cash Settlement Amount:	With respect to any Transaction, for any Settlement Date for such Transaction in respect of which Cash Settlement applies, an amount determined by the Calculation Agent equal to: (1) the product of (i) (A) the Forward Price for such Transaction as of the first day of the applicable Unwind Period <i>minus</i> (B) the sum of (x) the weighted average price per Share at which Party A purchased Shares during the Unwind Period applicable to Cash Settlement to unwind its hedge in connection with the portion of such Transaction to be settled on such Settlement Date, in compliance with Rule 10b-18 under the Exchange Act as if it applied to Party A during the Unwind Period <i>and</i> (y) a per Share commission equal to the Settlement Commission and (ii) the number of Settlement Shares for such Settlement Date that are subject to Cash Settlement <i>minus</i> (2) the product of (i) the Forward Price Reduction Amount for each Forward Price Reduction Date for such Transaction that occurs during such Unwind Period and (ii) the number of Settlement Shares for such Settlement Date that are subject to Cash Settlement and with respect to which Party A has not unwound its hedge as of such Forward Price Reduction Date.
Net Share Settlement:	On any Settlement Date in respect of which Net Share Settlement applies, if the number of Net Share Settlement Shares is a (i) positive number, Party A shall deliver, through the Clearance System, a number of Shares to Party B equal to the Net Share Settlement Shares, and (ii) negative number, Party B shall deliver, through the Clearance System, a number of Shares to Party A equal to the absolute value of the Net Share Settlement Shares; <i>provided</i> that if Party A determines in its good faith judgment that it would be required to deliver Net Share Settlement Shares to Party B, Party A may elect to deliver a portion of such Net Share Settlement Shares on one or more dates prior to the applicable Settlement Date.
Net Share Settlement Shares:	On any Settlement Date of a Transaction in respect of which Net Share Settlement applies, an amount equal to (A) the number of Shares acquired in the Unwind Period applicable the portion of such Transaction to be settled on such Settlement Date pursuant to Net Share Settlement <i>minus</i> (B) the number of Settlement Shares for such Settlement Date that are subject to Net Share Settlement.

Settlement Currency:	USD
Failure to Deliver:	Not Applicable
<u>SUSPENSION OF CASH OR NET SHARE SETTLEMENT:</u>	
Suspension Day:	Any day on which Party A determines, in good faith and based on the advice of counsel, that it is appropriate with respect to any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Party A generally in connection with its business) for Party A or its affiliates to refrain from engaging in transactions in the Shares. Party A shall notify Party B if it makes a determination that any day in an Unwind Period is a Suspension Day, but such notice need not specify the reason for Party A's determination.

ADJUSTMENTS:

Method of Adjustment:	Calculation Agent Adjustment. Notwithstanding anything in the Equity Definitions to the contrary, for each Transaction, the Calculation Agent may make an adjustment pursuant to Calculation Agent Adjustment to any one or more of the Base Shares for such Transaction, the Forward Price for such Transaction and any other variable relevant to the settlement or payment terms of such Transaction.
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EXTRAORDINARY EVENTS:

Extraordinary Events:	In lieu of the applicable provisions contained in Article 12 of the Equity Definitions, the consequences of any applicable Extraordinary Event shall be as specified in "Acceleration Events" and "Termination Settlement" hereunder.
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ACCOUNT DETAILS:

Payments to Party A:	To be advised under separate cover or telephone, confirmed prior to each Settlement Date.
Payments to Party B:	To be advised under separate cover or telephone, confirmed prior to each Settlement Date.
Delivery of Shares to Party A:	To be advised
Delivery of Shares to Party B:	To be advised

3. Other Provisions:

Conditions to Effectiveness:

The effectiveness of each Supplemental Confirmation on the Effective Date for such Supplemental Confirmation shall be subject to (i) the condition that the representations and warranties of Party B contained in Section 3(a) of the Agreement and in the Sales Agency Financing Agreement, and any certificate delivered pursuant to the Sales Agency Financing Agreement by Party B, be true and correct on such Effective Date as if made as of such Effective Date, (ii) the condition that the representations and warranties of Party A contained in Section 3(a) of the Agreement be true and correct on such Effective

Date as if made as of such Effective Date, (iii) the condition that Party B have delivered to Party A an opinion of counsel (which may include internal counsel to Party B) dated on or prior to the first Trade Date for a Transaction hereunder with respect to matters set forth in Section 3(a)(ii) and Section 3(a)(v) of the Agreement (as if references therein to "this Agreement" were instead references to "this Master Confirmation"), (iv) the condition that Party B have performed all of the obligations required to be performed by it under the Sales Agency Financing Agreement on or prior to such Effective Date, (v) delivery by Party A to Party B of a properly executed Internal Revenue Service Form W-9 or similar documentation establishing an exemption from backup withholding under the Internal Revenue Code of 1986, as amended, and (vi) the satisfaction of all of the conditions set forth in Section 5.01 of the Sales Agency Financing Agreement. For purposes hereof, the representation in Section 3(a)(iv) of the Agreement shall, for avoidance of doubt, extend to this Master Confirmation and each Supplemental Confirmation.

Representations and Warranties of Party B: Party B hereby represents and warrants to Party A (each of such representations to be deemed part of Section 3(a) of the Agreement) as of the date hereof and on the Effective Date of each Transaction, and, in the case of clause (b), on such dates and on each Settlement Date for such Transaction, that:

- (a) The execution, delivery and the performance by Party B of this Master Confirmation or the Supplemental Confirmation for such Transaction (including, without limitation, the issuance and delivery of Shares on any Settlement Date for such Transaction), as the case may be, and compliance by Party B with its obligations under this Master Confirmation or such Supplemental Confirmation, as the case may be, (i) has been duly authorized by all necessary corporate action and does not and will not result in any violation of the provisions of the articles of incorporation or by-laws of Party B or any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government instrumentality or court, domestic or foreign, having jurisdiction over Party B or any of its assets, properties or operations and (ii) will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage or deed of trust or other material agreement or instrument, in each case filed (or incorporated by reference) as an exhibit to Party B's then most recent 10-K or Party B's 8-Ks or 10-Qs filed after the end of the latest fiscal year of Party B covered by such 10-K and on or prior to such date on which Party B makes or is deemed to make these representations and warranties and to which Party B or any of its subsidiaries is a party or by which Party B or any of its subsidiaries or any of their respective properties is bound.
- (b) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the execution, delivery and performance by Party B of this Master Confirmation or the Supplemental Confirmation for such Transaction, as the case may be, and, if applicable, the consummation of such Transaction (including, without limitation, the issuance and delivery of Shares on any Settlement Date for such Transaction) except (i) such as have been obtained under the Securities Act of 1933, as amended (the "**Securities Act**") and (ii) as may be required to be obtained under state securities law.
- (c) Party B is as of the date hereof, and after giving effect to the transactions contemplated hereby and by the relevant Supplemental Confirmation will be, Solvent. As used in this paragraph, the term "**Solvent**" means, with respect to a particular date, that on such date (A) the present fair market value (or present fair saleable value) of the assets of Party B is not less than the total amount required to pay the liabilities of Party B on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured, (B) Party B is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and commitments as they mature and become due in the normal course of business, (C) assuming consummation of the transactions as contemplated by this Master Confirmation, Party B is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature, (D) Party B is not engaged in any business or transaction, and does not propose to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which Party B is engaged and (E) Party B is not a defendant in any civil action that could reasonably be expected to result in a judgment that Party B is or would become unable to satisfy.
- (d) Neither Party B nor any "affiliated purchaser" of Party B (as defined in Rule 10b-18 under the Exchange Act) shall take any action that would cause any purchases of Shares by Party A during any Unwind Period relating to any Cash Settlement or Net Share Settlement of any Transaction not to comply with Rule 10b-18 under the Exchange Act.

- (e) Party B is an “eligible contract participant” (as such term is defined in Section 1a(12) of the Commodity Exchange Act, as amended) and, as of such Effective Date, such Transaction will have been subject to individual negotiation.
- (f) The representations and warranties of Party B contained in the Sales Agency Financing Agreement and any certificate delivered pursuant thereto by Party B shall be true and correct on such Effective Date as if made as of such Effective Date.
- (g) Party B is not and has not been the subject of any civil proceeding of a judicial or administrative body of competent jurisdiction that could reasonably be expected to impair materially Party B’s ability to perform its obligations under this Master Confirmation or the Supplemental Confirmation for such Transaction, as the case may be.

Covenants of Party B: Party B hereby agrees that, so long as either party has or may have any obligation under any Transaction, that:

- (a) Each Share, when issued and delivered in accordance with the terms of such Transaction, will be duly authorized and validly issued, fully paid and nonassessable, and the issuance(s) thereof will not be subject to any preemptive or similar rights.
- (b) Party B has reserved and will keep available, free from preemptive rights, out of its authorized but unissued Shares, solely for the purpose of issuance upon any settlement of such Transaction as herein provided, the full number of Shares as shall then be issuable upon Physical Settlement of such Transaction.
- (c) Prior to any Settlement Date, the Shares to be delivered by Party B (if any) with respect to that Settlement Date shall have been approved for listing or quotation on the Exchange, subject to official notice of issuance.
- (d) Party B agrees not to repurchase any Shares if, immediately following such repurchase, the aggregate Base Shares for all Transactions would be equal to or greater than 15% of the number of then-outstanding Shares.
- (e) Party B will not engage in any “distribution” (as defined in Regulation M under the Exchange Act) other than distributions meeting the requirements of the exceptions set forth in Rule 102(b) or Rule 102(c) of Regulation M under the Exchange Act during any Unwind Period for such Transaction.
- (f) In addition to any other requirements set forth herein, Party B agrees not to elect Cash Settlement or Net Share Settlement in respect of such Transaction if such settlement would result in a violation of the U.S. federal securities laws or any other federal or state law or regulation applicable to Party B. Party B will not directly or indirectly take any action that would cause any purchase of Shares by Party A during any Unwind Period to fail to comply with the requirements of Rule 10b5-1 under the Exchange Act.
- (g) Party B will, by the fifth succeeding Exchange Business Day, notify Party A upon obtaining knowledge of the occurrence of any event that would constitute an Event of Default, a Potential Event of Default or a Potential Adjustment Event.
- (h) The parties acknowledge and agree that any Shares delivered by Party B to Party A on any Settlement Date for such Transaction will be newly issued Shares and, when delivered by Party A (or an affiliate of Party A) to securities lenders from whom Party A (or an affiliate of Party A) borrowed Shares in connection with hedging its exposure to such Transaction, will be freely saleable without further registration or other restrictions under the Securities Act in the hands of those securities lenders, irrespective of whether such stock loan is effected by Party A or an affiliate of Party A so long as it was effected to hedge Party A’s exposure with respect to such Transaction. Accordingly, Party B agrees that the Shares that it delivers to Party A on each Settlement Date for such Transaction shall not bear a restrictive legend and that such Shares will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System.

In addition, Party B covenants to notify Party A in writing (which shall include email) at least ten Exchange Business Days prior to the ex-dividend or ex date, as applicable, of a distribution, issue or dividend to existing holders of the Shares, which ex-dividend date or ex date occurs at any time from, and including, the date hereof and ends on the final Settlement Date under this Master Confirmation.

Covenants and Representation of Party A:

- (a) Party A shall use any Settlement Shares for any Transaction delivered by Party B to Party A to return to securities lenders to close out borrowings created by Party A (or an affiliate of Party A) in connection with its hedging activities related to exposure under such Transaction.
- (b) In connection with bids and purchases of Shares in connection with any Cash Settlement or Net Share Settlement of any Transaction, Party A shall comply, or cause compliance, with the provisions of Rule 10b-18 under the Exchange Act, as if such provisions were applicable to such purchases.
- (c) Party A is an “eligible contract participant” (as such term is defined in Section 1a(12) of the Commodity Exchange Act, as amended) and all Transactions will be subject to individual negotiation.

Acceleration Events: An Acceleration Event shall occur if:

- (a) **Stock Borrow Events.** Notwithstanding anything to the contrary herein, in the Agreement or in the Equity Definitions, if in its commercially reasonable judgment Party A (or its affiliate) is unable to hedge (or maintain a hedge of) Party A's exposure to any Transaction (a “**Stock Borrow Event**”) because (i) of the lack of sufficient Shares being made available for Share borrowing by lenders or (ii) it (or its affiliate) would incur a stock loan cost of more than 60 basis points per annum, Party A shall have the right to designate any Scheduled Trading Day to be a Settlement Date in respect of such Transaction on at least three Scheduled Trading Days' notice, and to select the number of Settlement Shares for such Settlement Date; *provided* that (x) prior to the effectiveness of the designation of a Stock Borrow Event under this paragraph (a), Party B may refer Party A to a lending party reasonably acceptable to Party A that will lend Party A (or its affiliate) Shares within such three Scheduled Trading Day period, on terms reasonably acceptable to Party A and at a stock loan cost of no more than 60 basis points per annum and (y) the number of Settlement Shares for any Settlement Date so designated by Party A shall not exceed the number of Shares as to which such inability to, or cost limitation with respect to, borrow exists; or
- (b) **Dividends and Other Distributions.** Notwithstanding anything to the contrary herein, in the Agreement or in the Equity Definitions, with respect to any Transaction, if on any day Party B declares a distribution, issue or dividend to existing holders of the Shares of (i) any cash dividend to the extent that the aggregate amount of all cash dividends having an ex-dividend date during the period from, and including, any Forward Price Reduction Date for such Transaction to, but excluding, the next subsequent Forward Price Reduction Date for such Transaction (with each of the Trade Date and the Maturity Date for such Transaction being a Forward Price Reduction Date for such Transaction for purposes of this clause (b) only) exceeds, on a per Share basis, the Forward Price Reduction Amount set forth opposite the first date of such period on Schedule I to the Supplemental Confirmation for such Transaction or (ii) share capital or securities of another issuer acquired or owned (directly or indirectly) by Party B as a result of a spin-off or other similar transaction which has a record date on or after the Effective Date for such Transaction and on or prior to the final Settlement Date for such Transaction or (iii) any other type of securities (other than Shares), rights or warrants or other assets, which distribution, issue or dividend has a record date on or after the Effective Date for such Transaction and on or prior to the final Settlement Date for such Transaction, then Party A shall have the right to designate any Scheduled Trading Day to be a Settlement Date for such Transaction for the entire Transaction on at least three Scheduled Trading Day's notice; or
- (c) **ISDA Early Termination Date.** Notwithstanding anything to the contrary herein, in the Agreement or in the Equity Definitions, if Party A has the right to designate an Early Termination Date with respect to any Transaction pursuant to Section 6 of the Agreement, Party A shall have the right to designate any Scheduled Trading Day to be a Settlement Date for such Transaction for the entire Transaction on at least three Scheduled Trading Days' notice; or

- (d) **Board Approval of Merger.** Notwithstanding anything to the contrary herein, in the Agreement or in the Equity Definitions, with respect to any Transaction, if on any day occurring on or after the first Trading Day of the Forward Hedge Selling Period for such Transaction the board of directors of Party B votes to approve, or there is a public announcement by Party B of, in either case any action that, if consummated, would constitute a Merger Event (as defined in the Equity Definitions; *provided* that the language in such definition after the clause “(a “Reverse Merger”)” shall be deleted and replaced with “, in each case if the Merger Date is on or before the Maturity Date for any Transaction under this Master Confirmation”), Party B shall notify Party A of any such vote or announcement within three Scheduled Trading Days (and, in the case of any such vote, Party B also covenants and agrees to publicly announce the occurrence of such vote within three Scheduled Trading Days thereof). Thereafter, Party A shall have the right to designate any Scheduled Trading Day to be a Settlement Date for such Transaction for the entire Transaction on at least three Scheduled Trading Days’ notice and if a Settlement Date so designated by Party A is to occur prior to the date that is one Settlement Cycle after the last day of the Forward Hedge Selling Period relating to such Transaction, then the day immediately following the date Party B so notifies Party A shall, for purposes of such Settlement Date so designated by Party A, be deemed to be the Trade Date for such Transaction; Party B hereby covenants to make a public announcement of each such Merger Event as soon as reasonably practicable; or
- (e) **Other Events.** Notwithstanding anything to the contrary herein, in the Agreement or in the Equity Definitions, with respect to any Transaction, if an Insolvency, an Insolvency Filing, a Nationalization, a Delisting (as provided further in the next sentence) or a Change in Law (other than as specified in clause (Y) of the definition thereof) occurs, Party A shall have the right to designate any Scheduled Trading Day to be a Settlement Date for such Transaction for the entire Transaction on at least three Scheduled Trading Days’ notice and Party A shall be the Determining Party. In addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, NYSE Amex Equities, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange, such exchange shall be deemed to be the Exchange; *provided* that (i) for purposes of determining whether an event has occurred that permits Party A to so designate a Settlement Date pursuant to this clause (e), the first day of the Forward Hedge Selling Period relating to such Transaction shall be deemed to be the Trade Date for such Transaction; and (ii) for purposes of any such Settlement Date so designated by Party A to occur prior to the date that is one Settlement Cycle after the last day of the Forward Hedge Selling Period relating to such Transaction, the day immediately following the date Party A so notifies Party B of such designation shall be deemed to be the Trade Date for such Transaction.

Notwithstanding anything to the contrary herein, in the Agreement or in the Equity Definitions, if Party A designates, pursuant to clause (d) or clause (e) above, a Settlement Date with respect to a Transaction and such Settlement Date is to occur before the date that is one Settlement Cycle after the last day of the Forward Hedge Selling Period for such Transaction, then, for purposes of such Settlement Date, (i) a Supplemental Confirmation relating to such Transaction shall, notwithstanding the provisions under “Conditions to Effectiveness” above, be deemed to be effective; and (ii) the Forward Price shall be deemed to be the Initial Forward Price (calculated assuming that the last Trading Day of such Forward Hedge Selling Period occurs on the date that is deemed, pursuant to clause (d) or clause (e) above, as applicable, to be the Trade Date for such Transaction for purposes of such Settlement Date).

Termination Settlement:

If a Settlement Date with respect to any Transaction is specified following an Acceleration Event with respect to such Transaction (a “**Termination Settlement Date**”), Party B will be deemed to have irrevocably elected that Physical Settlement shall apply to such Transaction with respect to such Termination Settlement Date as set forth above, subject to the provisions described under “Limit on Beneficial Ownership” below. If, upon designation of a Termination Settlement Date by Party A with respect to any Transaction, Party B fails to deliver the Settlement Shares relating to such Termination Settlement Date when due or otherwise fails to perform its obligations in connection therewith, it shall be an Event of Default with respect to Party B and

Section 6 of the Agreement shall apply to such Transaction. If an Acceleration Event occurs during an Unwind Period of any Transaction relating to a number of Settlement Shares of such Transaction to which Cash Settlement or Net Share Settlement applies, then on the Termination Settlement Date of such Transaction relating to such Acceleration Event, notwithstanding any election to the contrary by Party B, Cash Settlement or Net Share Settlement shall apply to the portion of the Settlement Shares relating to such Unwind Period as to which Party A has unwound its hedge (for avoidance of doubt, such portion of such Settlement Shares to be a number of Settlement Shares with respect which Party A would be deemed, pursuant to the second paragraph under "Settlement Date" above, to have completely unwound it hedge) and Physical Settlement shall apply in respect of (x) the remainder (if any) of such Settlement Shares and (y) the Settlement Shares designated by Party A with respect to such Transaction in respect of such Termination Settlement Date. If Party A designates a Termination Settlement Date (other than pursuant to clause (a) under "Acceleration Events" above), then all Settlement Dates theretofore designated by Party B to occur after such Termination Settlement Date shall instead occur on such Termination Settlement Date and shall, except to the extent (and only to the extent) provided in the immediately preceding sentence, be subject to Physical Settlement, notwithstanding any election to the contrary by Party B.

Certain Changes In Law:

Upon the occurrence of any Change In Law specified in clause (Y) of the definition thereof, Party A and Party B agree to negotiate in good faith for at least 30 calendar days to amend this Master Confirmation to take account of the resulting "materially increased cost" as such phrase is used in clause (Y) of the definition of "Change In Law." Such amendment may, if agreed by Party A and Party B, result in a Change In Law specified in clause (Y) of the definition thereof being treated as if it were a Change In Law specified in clause (X) of the definition thereof, as described in clause (e) under the heading "Acceleration Events" above. If, after negotiating in good faith for at least 30 calendar days to so amend this Master Confirmation, Party A and Party B do not agree on such an amendment, the relevant Change In Law specified in clause (Y) of the definition thereof shall be treated as if it were a Change In Law specified in clause (X) of the definition thereof, as described in clause (e) under the heading "Acceleration Events" above.

Rule 10b5-1:

It is the intent of Party A and Party B that the purchase of Shares by Party A during any Unwind Period of any Transaction comply with the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act and that this Master Confirmation and each Supplemental Confirmation be interpreted to comply with the requirements of Rule 10b5-1(c).

Party B acknowledges that, except as otherwise provided herein, (i) during any Unwind Period of any Transaction, Party B does not have, and shall not attempt to exercise, any influence over how, when or whether to effect purchases of Shares by Party A (or its agent or affiliate) in connection with this Master Confirmation or the Supplemental Confirmation for such Transaction and (ii) Party B is entering into the Agreement and this Master Confirmation and will enter into all Supplemental Confirmations in good faith and not as part of a plan or scheme to evade compliance with federal securities laws including, without limitation, Rule 10b-5 under the Exchange Act.

Party B hereby agrees with Party A that during any Unwind Period for any Transaction, Party B shall not communicate, directly or indirectly, any material non-public information (within the meaning of federal securities laws) to any Equity Personnel (as defined below). For the avoidance of doubt and solely by way of illustration, information should be presumed "material" if it relates to such matters as dividend increases or decreases, earnings estimates, changes in previously released earnings estimates, significant expansion or curtailment of operations, a significant increase or decline of orders, significant merger or acquisition proposals or agreements, significant new products or discoveries, extraordinary borrowing, major litigation, liquidity problems, extraordinary management developments, purchase or sale of substantial assets, or other similar information. For purposes of any Transaction, "**Equity Personnel**" means any employee in The Bank of New York Mellon Global Markets Equity Derivatives Trading Desk but does not include Daniel C. de Menocal, Jr.

Interpretive Letter:

The parties intend for this Master Confirmation and each Supplemental Confirmation to constitute a “Contract” as described in the letter dated October 6, 2003 submitted by Robert W. Reeder and Leslie N. Silverman to Paula Dubberly of the staff of the Securities and Exchange Commission (the “Staff”), to which the Staff responded in an interpretive letter dated October 9, 2003.

Restricted Shares:

With respect to any Transaction, if Party B is unable to comply with clause (h) of “Covenants of Party B” above in this Section 3 because of a change in law or a change in interpretation or the policy of the Securities and Exchange Commission or its staff, or BNYM otherwise determines in its reasonable, good faith opinion based on the advice of outside counsel that any Shares to be delivered to BNYM by Party B may not be freely returned by BNYM to securities lenders as described in clause (h) of “Covenants of Party B” above in this Section 3, then delivery of any Shares (the “ Restricted Shares ”) shall be effected as follows:

(i) Delivery of Restricted Shares by Party B to BNYM (or its agent or affiliate) (a “ Private Placement Settlement ”) shall be effected in accordance with customary (for issuers of similar size and in the same industry as Party B) private placement procedures with respect to such Restricted Shares reasonably acceptable to BNYM. On the date of such delivery, Party B shall not have taken, or caused to be taken, any action that would make unavailable either (x) the exemption pursuant to Section 4(2) of the Securities Act for the sale or deemed sale by Party B to BNYM (or any agent or affiliate designated by BNYM) of the Restricted Shares or (y) the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by BNYM (or any such agent or affiliate of BNYM). The Private Placement Settlement of such Restricted Shares shall include customary (for issuers of similar size and in the same industry as Party B) representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to BNYM (and/or any such agent or affiliate of BNYM), due diligence rights (for BNYM or any such agent or affiliate of BNYM or any buyer of the Restricted Shares designated by BNYM or any such agent or affiliate of BNYM), opinions and certificates, and such other documentation as is customary (for issuers of similar size and in the same industry as Party B) for private placement agreements, all reasonably acceptable to BNYM (or any such agent or affiliate of BNYM). In the case of a Private Placement Settlement, BNYM shall, in its good faith discretion, adjust the number of Restricted Shares to be delivered to BNYM hereunder in a commercially reasonable manner to reflect the fact that such Restricted Shares may not be freely returned to securities lenders by BNYM (or its agent or affiliate) and may only be saleable by BNYM (or its agent or affiliate) at a discount to reflect the lack of liquidity in Restricted Shares. Notwithstanding anything in the Agreement, this Master Confirmation, or any Supplemental Confirmation to the contrary, the date of delivery of such Restricted Shares shall be the Scheduled Trading Day following notice by BNYM to Party B of the number of Restricted Shares to be delivered pursuant to this clause (i).

(ii) If Party B delivers any Restricted Shares in respect of the Transaction, Party B agrees that (A) such Shares may be transferred freely among BNYM and its agents and/or affiliates and (B) after the minimum “holding period” within the meaning of Rule 144(d) under the Securities Act has elapsed, Party B shall promptly remove, or cause the transfer agent for the Shares to remove, any legends referring to any transfer restrictions from such Shares upon delivery by BNYM (or such agent or affiliate of BNYM) to Party B or such transfer agent of seller’s and broker’s representation letters customarily delivered by BNYM or its affiliates in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, each without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by BNYM (or such agent or affiliate of BNYM).

Maximum Share Delivery:

Notwithstanding any other provision of this Master Confirmation, in no event will Party B be required to deliver on any Settlement Date of any Transaction, whether pursuant to Physical Settlement, Net Share Settlement, Termination Settlement or otherwise, more than the number of Base Shares of such Transaction to Party A, subject to reduction by the aggregate number of Shares delivered by Party B in respect of such Transaction on all prior Settlement Dates of such Transaction.

Assignment:

Party A may assign or transfer any of its rights or delegate any of its duties under this Master Confirmation and any Supplemental Confirmation relating to a Transaction to any affiliate of Party A without the prior written consent of Party B, so long as the senior unsecured debt rating (“**Credit Rating**”) of such affiliate (or any guarantor of its obligations under such Transaction) is equal to or greater than the Credit Rating of Party A, as specified by Standard and Poor’s Rating Services or Moody’s Investor Service, Inc., at the time of such assignment or transfer. In connection with any assignment or transfer pursuant to the immediately preceding sentence, the guaranteee of any guarantor of the relevant transferee’s obligation shall constitute a Credit Support Document under the Agreement. If Party A so assigns or transfers any of its rights or delegates any of its duties under this Master Confirmation and any Supplemental Confirmation relating to a Transaction, as the case may be, Party A shall give prompt written notice to Party B of such assignment, transfer or delegation, as applicable.

Notwithstanding anything to the contrary herein, in the Agreement or in the Equity Definitions, (i) Party A may designate any of its affiliates to purchase or receive such Shares or otherwise to perform Party A’s obligations in respect of any Transaction and any such designee may assume such obligations, and Party A shall be discharged of its obligations to Party B only to the extent of any such performance; and (ii) to the extent Physical Settlement applies to any portion of a Transaction (or Net Share Settlement applies to any portion of a Transaction and Party B would be obligated to deliver any Shares to Party A in connection therewith), such Transaction shall, effective three Business Days prior to the applicable Settlement Date, be deemed to be automatically assigned by Party A to BNY Mellon Capital Markets, LLC (“**BNYMCM**”) or any of Party A’s other broker-dealer affiliates selected by Party A, and delivery of the Shares shall be made to an account of BNYMCM to be advised.

Indemnity:

Party B agrees to indemnify Party A and its affiliates and their respective directors, officers, agents and controlling parties (Party A and each such affiliate or person being an “**Indemnified Party**”) from and against any and all losses, claims, damages and liabilities, joint or several, incurred by or asserted against such Indemnified Party arising out of, in connection with, or relating to, any breach of any covenant or representation made by Party B in this Master Confirmation, any Supplemental Confirmation or the Agreement (including, without limitation, losses, claims, damages and liabilities incurred by Party A in connection with the failure of a Supplemental Confirmation to become effective pursuant to the provisions set forth under the heading “Conditions to Effectiveness” above on account of any breach of the representations and covenants of Party B set forth thereunder as conditions precedent to such effectiveness). In addition, Party B will reimburse any Indemnified Party for all reasonable expenses (including reasonable legal fees and reasonable expenses) in connection with the investigation of, preparation for, or defense of any pending or threatened claim or any action or proceeding arising therefrom (whether or not such Indemnified Party is a party thereto) at the time, and only to the extent, that the relevant loss, claim, damage, liability or expense is found in a final and nonappealable judgment by a court of competent jurisdiction to have resulted from a breach of a covenant or representation made by Party B in this Master Confirmation, any Supplemental Confirmation or the Agreement. For the avoidance of doubt, Party B will not be liable under this “Indemnity” paragraph to the extent that any loss, claim, damage, liability or expense is found in a final and nonappealable judgment by a court of competent jurisdiction to have resulted from Party A’s gross negligence, fraud, bad faith and/or willful misconduct or a breach of any representation or covenant of Party A contained in this Master Confirmation, any Supplemental Confirmation or the Agreement.

Miscellaneous:

Non-Reliance:

Applicable

Additional Acknowledgements:

Applicable

Agreements and Acknowledgments Regarding

Applicable

Hedging Activities:

Applicable

Without limiting the generality of Sections 13.1 and 13.4 of the Equity Definitions, Party B acknowledges that Party A is not making any representations or warranties with respect to the treatment of any Transaction under any accounting rules, policies, guidelines, principles or statements, including, without limitation, Topic 815 of the FASB Accounting Standards Codification.

4. The Agreement is further supplemented by the following provisions:

Agreement Regarding Set-off and Collateral:

Notwithstanding Section 6(f) or any other provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Party B under this Master Confirmation and any Supplemental Confirmation are not secured by any collateral. Obligations under any Transaction shall not be set off against any other obligations of the parties, whether arising under the Agreement, this Master Confirmation, any Supplemental Confirmation or any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be set off against obligations under such Transaction, whether arising under the Agreement, this Master Confirmation, any Supplemental Confirmation or any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (a) separate amounts shall be calculated as set forth in such Section 6(e) with respect to (i) any Transaction and (ii) all other Transactions, and (b) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Status of Claims in Bankruptcy:

Party A acknowledges and agrees that neither this Master Confirmation nor any Supplemental Confirmation is intended to convey to Party A rights with respect to the transactions contemplated hereby or by any Supplemental Confirmation that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Party B; *provided, however,* that nothing herein or in any Supplemental Confirmation shall limit or shall be deemed to limit Party A's right to pursue remedies in the event of a breach by Party B of its obligations and agreements with respect to this Master Confirmation, any Supplemental Confirmation or the Agreement; and *provided further,* that nothing herein or in any Supplemental Confirmation shall limit or shall be deemed to limit Party A's rights in respect of any transaction other than the Transactions.

Limit on Beneficial Ownership:

With respect to any Transaction, notwithstanding any other provisions in the Agreement, herein or in the Supplemental Confirmation for such Transaction, Party A shall not be entitled to receive Shares or any other class of voting securities of Party B (whether in connection with the purchase of Shares on any Settlement Date for such Transaction or any Termination Settlement Date for such Transaction or otherwise) to the extent (but only to the extent) that such receipt would result in Party A and each person subject to aggregation of Shares or other voting securities with Party A under Section 13 or Section 16 of the Exchange Act and the rules promulgated thereunder (the "**Party A Group**") directly or indirectly beneficially owning (as such term is defined for purposes of Section 13(d) of the Exchange Act) at any time in excess of 4.0% of the outstanding Shares or any other class of voting securities of Party B. Any purported delivery under any Transaction shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the Party A Group directly or indirectly so beneficially owning in excess of 4.0% of the outstanding Shares or any other class of voting securities of Party B. If any delivery owed to Party A under any Transaction is not made, in whole or in part, as a result of this provision, Party B's obligation to make such delivery shall not be extinguished and Party B shall make such delivery as promptly as practicable after, but in no event later than one Clearance System Business Day after, Party A gives notice to Party B that such delivery would not result in

the Party A Group directly or indirectly so beneficially owning in excess of 4.0% of the outstanding Shares or any other class of voting securities of Party B. If Net Share Settlement in respect of any Transaction would result in the Party A Group beneficially owning more than 4.0% of the outstanding Shares in connection with closing out its hedge position, Party A shall be allowed to partially settle such Transaction based on its purchase of that amount of Shares, and then to purchase the amount or amounts of additional Shares necessary to settle the remainder of such Transaction, and to make the associated deliveries at such times as determined by the Calculation Agent.

Severability:

If any term, provision, covenant or condition in this Master Confirmation or any Supplemental Confirmation, or the application thereof to any party or circumstance, shall be held to be invalid or unenforceable in whole or in part for any reason, the remaining terms, provisions, covenants, and conditions hereof or thereof shall continue in full force and effect as if this Master Confirmation and such Supplemental Confirmation had been executed with the invalid or unenforceable provision eliminated, so long as this Master Confirmation and such Supplemental Confirmation as so modified continue to express, without material change, the original intentions of the parties as to the subject matter of this Master Confirmation and such Supplemental Confirmation and the deletion of such portion of this Master Confirmation and such Supplemental Confirmation will not substantially impair the respective benefits or expectations of parties to this Master Confirmation and such Supplemental Confirmation; *provided, however*, that this severability provision shall not be applicable if any provision of Section 2, 5, 6 or 13 of the Agreement (or any definition or provision in Section 14 to the extent that it relates to, or is used in or in connection with any such Section) shall be so held to be invalid or unenforceable.

Miscellaneous:

- (a) Addresses for Notices. For the purpose of Section 12(a) of the Agreement:

Address for notices or communications to Party A:

Address:	The Bank of New York Mellon Global Risk Management Services Global Markets Division 32 Old Slip, 15th Floor New York, New York 10286
Attention:	Art Condodina
Telephone No.:	212-804-4891
Fax No.:	212-495-1015

With respect to any notice sent to Party A under Sections 5, 6 or 13(c) of the Agreement, a copy shall also be sent to:

Address:	The Bank of New York Mellon One Wall Street 13th Floor New York, New York 10286
Attention:	Legal Department (Global Markets)
Telephone No.:	212-635-1095
Fax No.:	212-635-1958

And with a copy to:

Address:	Hunton & Williams LLP 200 Park Avenue New York, New York 10166
Attention:	Peter K. O'Brien
Fax No.:	212.309.1864

Address for notices or communications to Party B:

Address:	Westar Energy, Inc. 818 South Kansas Avenue, Topeka, Kansas 66612
Attention:	General Counsel
Telephone No.:	785-575-1625
Fax No.:	785-575-8136

With a copy to:

Address:	Davis Polk & Wardwell, LLP 1600 El Camino Real Menlo Park, CA 94025
Attention:	Daniel G. Kelly, Jr.
Telephone No.:	650-752-2001
Fax No.:	650-752-3601

Party B payment instructions:

To Be Advised.

- (b) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Master Confirmation, any Supplemental Confirmation or the Agreement. Each party (i) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of such a suit action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Master Confirmation and, from time to time, any Supplemental Confirmation by, among other things, the mutual waivers and certifications in this Section.
- (c) **Binding Contract.** (i) This Master Confirmation, and upon execution of any Supplemental Confirmation, this Master Confirmation together with such Supplemental Confirmation, is a “qualified financial contract,” as such term is defined in Section 5-701(b)(2) of the General Obligations Law of New York (the “**General Obligations Law**”); (ii) such Supplemental Confirmation constitutes a “confirmation in writing sufficient to indicate that a contract has been made between the parties” hereto, as set forth in Section 5-701(b)(3)(b) of the General Obligations Law; and (iii) this Master Confirmation constitutes a prior “written contract” as set forth in Section 5-701(b)(1)(b) of the General Obligations Law, and each party hereto intends and agrees to be bound by this Master Confirmation, and upon execution of such Supplemental Confirmation, this Master Confirmation together with such Supplemental Confirmation. The parties hereto further agree and acknowledge that this Master Confirmation, and upon execution of any Supplemental Confirmation, this Master Confirmation together with such Supplemental Confirmation, constitutes a contract “for the sale or purchase of a security,” as set forth in Section 8-113 of the Uniform Commercial Code of New York.

Please confirm that the foregoing correctly sets forth the terms of our agreement by signing and returning this Master Confirmation.

Yours faithfully,

THE BANK OF NEW YORK MELLON

By: /s/ James McAuliffe

Name: James McAuliffe

Title: Managing Director

Confirmed as of the date first written above:

WESTAR ENERGY, INC.

By: /s/ Anthony D. Somma

Name: Anthony D. Somma

Title: Sr. Vice President

Chief Financial Officer

& Treasurer

Supplemental Confirmation for Forward Stock Sale Transaction

To: Westar Energy, Inc.
818 South Kansas Avenue,
Topeka, Kansas 66612

From: The Bank of New York Mellon
One Wall Street
New York, New York 10286
Fax: 212-635-6536

Dear Sir/Madam:

The Bank of New York Mellon (“**Party A**” or “**BNY**”) and Westar Energy, Inc. (“**Party B**”) are parties to the Master Confirmation for Forward Stock Sale Transactions dated March 21, 2013 (the “**Master Confirmation**”) pursuant to which Party A and Party B have entered into a Transaction with the terms and conditions set forth therein and herein. This Supplemental Confirmation, together with the Master Confirmation, shall constitute a “Confirmation” for purposes of the Agreement. In the event of any inconsistency between the Master Confirmation and this Supplemental Confirmation, the Master Confirmation shall govern to the extent of such inconsistency. Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Master Confirmation.

The terms of the Transaction to which this Supplemental Confirmation relates are as follows:

Trade Date: []

Effective Date: []

Base Shares: [] Shares

Maturity Date: []

[Number of Forward Hedge Shares Sold on 1st Trading Day of the Forward Hedge Selling Period: []

Number of Forward Hedge Shares Sold on 2nd Trading Day of the Forward Hedge Selling Period: []

Number of Forward Hedge Shares Sold on 3rd Trading Day of the Forward Hedge Selling Period: []

Number of Forward Hedge Shares Sold on [20th] Trading Day of the Forward Hedge Selling Period: []]¹

[Aggregate Sales Price of Forward Hedge Shares Sold on 1st Trading Day of the Forward Hedge Selling Period: []

Aggregate Sales Price of Forward Hedge Shares Sold on 2nd Trading Day of the Forward Hedge Selling Period: []

Aggregate Sales Price of Forward Hedge Shares Sold on 3rd Trading Day of the Forward Hedge Selling Period: []

Aggregate Sales Price of Forward Hedge Shares Sold on [20th] Trading Day of the Forward Hedge Selling Period: []]²

Initial Forward Price: USD[]

¹ Number of entries should correspond to the number of Trading Days in the Forward Hedge Selling Period.

² Number of entries should correspond to the number of Trading Days in the Forward Hedge Selling Period.

Please confirm that the foregoing correctly sets forth the terms of our agreement by signing and returning this Supplemental Confirmation.

Yours faithfully,

THE BANK OF NEW YORK MELLON

By: _____

Name:

Title:

Confirmed as of the date first written above:

WESTAR ENERGY, INC.

By: _____
Name:
Title:

The Settlement Commission is equal to USD [] per Share.

<u>Forward Price Reduction Date</u>	<u>Forward Price Reduction Amount³</u>
Trade Date	USD 0.00
[]	USD []
Maturity Date	USD 0.00
Thereafter	USD 0.00

³ This table to be filled out from the corresponding table in the Transaction Notice relating to the applicable Supplemental Confirmation.