

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

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

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

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

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

Magalie R. Salas,
Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02-51-000]

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

Issued: February 21, 2003.

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

Background

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

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

Notice, Interventions and Motions

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

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

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

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

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

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

⁴ See Kansas Commission Notice of Intervention at 2.

⁵ Id. at 3-4.

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

⁷ See Motion to Intervene at 1-2.