

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

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

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

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

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

#### *Information To Be filed in Future Section 204 Applications*

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

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

calculated on both an actual and pro forma basis.

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

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

#### *The Commission orders:*

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

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

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

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

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

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

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

<sup>22</sup> *See* 18 CFR 34.10, 131.43 (2002).

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

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

<sup>25</sup> *See* 18 CFR part 34 (2002).

<sup>26</sup> *Id.* at §§ 34.3 through 34.9.

<sup>27</sup> *See* 16 U.S.C. 824c(b) (2000).