

111 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Westar Energy, Inc.

Docket No. IN03-2-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued May 17, 2005)

1. The Commission approves the attached Stipulation and Consent Agreement (“Agreement”) between the Division of Enforcement, Office of Market Oversight and Investigations (“Enforcement”) and Westar Energy, Inc. (“Westar”). This order is in the public interest because it resolves the alleged violations with a settlement that imposes a detailed, three-year plan designed to prevent future violations of the Standards of Conduct, including improper sharing of transmission information and incomplete posting of data on Westar Energy’s OASIS website. We approve the Agreement without modification, as discussed below.
2. The Agreement resolves all issues in a non-public, formal investigation conducted by Enforcement in Docket No. IN03-2-000 under Part 1b of the Commission’s regulations, 18 C.F.R. Part 1b (2004). This investigation concerned alleged violations of certain aspects of the Federal Power Act (FPA), 16 U.S.C. § 792 *et seq.* (2000); the Commission’s then-effective Standards of Conduct for Electric Transmission Providers, 18 C.F.R. section 37.4 (2003); and certain other Commission regulations and policies. Westar neither admits nor denies that its actions violated the FPA or the Commission’s regulations and policies.
3. The facts stipulated in the Agreement concern certain transmission information disclosures by transmission employees of Westar to a business manager operating as a wholesale merchant employee, and certain inadequate postings regarding the business manager’s activities, and other matters, on Westar’s OASIS website. The investigation also examined certain trades with Cleco Corp. whereby Westar served as an intermediary between two Cleco affiliates attempting to evade the Commission’s requirement that interaffiliate trades be approved by the Commission, and pre-arranged, offsetting trades between Westar and a third party and then back to itself. Staff found no actionable violations by Westar resulting from such trades.
4. The Agreement contains a Remedies section consisting of a Compliance Plan

whose components are summarized below:

Westar shall implement a Compliance Plan, incorporated into the Agreement as Appendix A, to ensure that Westar stays in full compliance with Commission rules and regulations. The Compliance Plan shall remain in effect for three years. The Compliance Plan includes detailed procedures whereby Westar agrees to have its Order No. 2004 Chief Compliance Officer (CCO): (1) notify Enforcement of any material violation of Commission rules or regulations; (2) develop and implement FERC regulatory compliance training; (3) ensure that no wholesale merchant personnel have access to non-public transmission information and that transmission and merchant function employees function independently from one another; (4) retain communications and documents and engage in internal audits to assure compliance with Commission rules and regulations, this Agreement, and with Compliance Reports to be submitted annually over the next three years; and (5) ensure that Westar's corporate and employee organization charts are posted on Westar's Intranet and Internet websites accurately in the manner required by 18 C.F.R. Part 358.

5. The Agreement does not address or resolve issues pending in any other docketed matters.

The Commission finds:

The Agreement provides an equitable resolution of this matter and is in the public interest.

The Commission orders:

(A) The attached Stipulation and Consent Agreement is approved in its entirety without modification.

(B) Docket No. IN03-2-000 is terminated, save for determination of compliance with this Settlement Order and Agreement.

(C) The Commission's approval of the attached Stipulation and Consent Agreement does not constitute approval of, or precedent regarding, any principle or issue in any proceeding.

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By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Westar Energy, Inc.

Docket No. IN03-02-000

Stipulation and Consent Agreement

I. INTRODUCTION

The staff of the Division of Enforcement, Office of Market Oversight and Investigations ("Enforcement"), of the Federal Energy Regulatory Commission ("FERC" or "Commission") and Westar Energy, Inc. ("Westar") enter into this Stipulation and Consent Agreement ("Agreement"). This Agreement resolves all matters pertaining to a non-public investigation conducted by Enforcement under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2004), to evaluate compliance with certain aspects of the Federal Power Act ("FPA"), 16 U.S.C. §§ 792 et seq. (2000), and the Commission's regulations, including the Commission's Standards of Conduct,¹ from 1999 to 2003. This Agreement provides for remedial action through a Remedies Section and a Compliance Plan.

¹ *Order No. 2004, Standards of Conduct for Transmission Providers*, added Part 358 to the Commission's regulations revising the Standards of Conduct for both Gas and Electric Transmission Providers, 18 C.F.R. § 358 (2004). *Order No. 2004, Standards of Conduct for Transmission Providers*, 68 FR 69134 (Dec. 11, 2003), III FERC Stats. & Regs. ¶ 31,155 (Nov. 25, 2003), *order on reh'g*, Order 2004-A, 69 FR 23,562 (Apr. 29, 2004), III FERC Stats. & Regs. ¶ 31,161 (April 16, 2004), *order on reh'g*, Order 2004-B, 69 FR 48,371 (Aug. 10, 2004), III FERC Stats. & Regs. ¶ 31,166 (Aug. 2, 2004), *order on reh'g*, Order 2004-C, 70 FR 284 (Jan 4., 2005), III FERC Stats. & Regs. ¶ 31,172 (Dec. 21, 2004), However, the former Standards of Conduct for Electric Transmission Providers, codified at Parts 37.4, 18 C.F.R. § 37.4 (2003), govern all violations described

II. STIPULATION OF FACTS

Westar and Enforcement stipulate to the following:

1. Westar is a public utility providing electric transmission, generation, distribution, and marketing and agency services to retail customers in Central and Eastern Kansas and to wholesale customers. Its holding company and public utility business are contained within the same corporate entity. Westar's Transmission Services ("T.S.") division conducts transmission operations and reliability functions for Westar. In April of 1998, Westar placed all of its transmission facilities under the SPP Open Access Transmission Tariff ("OATT"), thereby reducing the scope of activities conducted by Westar's T.S. division. Subsequently, Westar turned over the selling of non-firm, short-term firm, long-term firm, and network transmission services to SPP. As each function was turned over to SPP, SPP took over the responsibility of receiving all requests for transmission service and evaluating and making the final determination of accepting or refusing the requests. However, Westar's T.S. division continues to operate the system control center.

2. Westar's Generation and Marketing ("G&M") division employees operate the company-owned generation facilities and the company's wholesale merchant

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in this Agreement because all such violations occurred prior to the effective date of Part 358.

function, including sales for resale of electricity. They also sometimes serve as agents arranging for transmission on Westar for third party purchasers of power who needed transmission service from Westar.

3. From March 1999 to August 2002, G&M entered into prearranged, simultaneous, offsetting transactions with certain third parties, in which Westar sold power to a third party and the third party sold the same quantity of power back to Westar at roughly the same price. Westar said that the purpose of these types of transactions was to account for imbalances that would otherwise result in their hourly energy schedules in a manner that avoided Westar selling to itself, which Westar said was prohibited by applicable accounting standards. Westar discontinued this practice in September 2002. The Kansas Corporation Commission, which retained a consultant to investigate these transactions, found no basis for enforcement action. *See KCC Order Adopting Navigant Consulting Report*, Docket No. 01-WSRE-436-RTS (Jan. 7, 2003).

4. During the period of the investigation, Westar classified its C&I Business Operations (“Business Operations”) division as providing neither merchant nor transmission functions, but rather customer support and account management services for Westar’s largest retail and wholesale municipal customers. However, during the period of the investigation, some Business Operations employees also occasionally served as agents to obtain transmission on Westar for wholesale merchant customers purchasing

power. Business Operations also provide power and transmission issues support for, and customer relations services to, retail customers.

5. In 1996, Westar obtained authorization to sell power at market-based rates.² Among Westar's wholesale customers were, and are, municipal customers throughout Kansas who received power and transmission together under bundled contracts entered into prior to the effective date of Order No. 888.³ Employees serving wholesale customers under the grandfathered, bundled contracts are not subject to the Standards of Conduct because they are treated like employees engaged in retail activities. Under Order No. 888, when a utility negotiates to revise, renew, or unbundle any grandfathered, bundled contracts, the contract loses its grandfathered status and subsequent power sales activities under it are treated as wholesale merchant activities.

6. In 2002, Westar began to terminate some of these grandfathered contracts with its wholesale municipal customers. Under the new unbundled contracts, which began to take effect in May 2003, G&M agreed to provide power to the wholesale

² *Western Resources, Inc.*, 83 FERC ¶ 61,110 (1996).

³ *Promoting Wholesale Competition Through Open Access Non-Discrimination Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,036 (Apr. 24, 1996); *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,048 (Mar. 4, 1997); *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997); *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.*, *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted*, 69 U.S.L.W. 3574 (Nos. 00-568 (in part) and 00-809), *cert. denied* (No. 00-800) (U.S. Feb. 26, 2001).

municipal customers and to obtain transmission on behalf of the wholesale municipal customers as an agent for them.

7. Section 37.4(a) of the Standards of Conduct then in effect, 18 C.F.R. § 37.4(a)(2003), required that transmission operations and reliability (“TR/O”) employees and wholesale merchant function (“WMF”) employees function independently of one another. Sections 37.4(b)(3) and (4) of the then-effective Standards of Conduct, 18 C.F.R. § 37.4(b)(3)-(4)(2003), restricted the Transmission Provider from sharing transmission, customer, or market information with the WMF employees off-OASIS. The Commission also discouraged off-OASIS communications on the grounds that they could be used to circumvent the Standards of Conduct.⁴

8. Generally, the Commission has permitted authorized agents, acting on behalf of a customer, to obtain specific transmission-related information for their clients necessary to provide transmission service to them, even if the agents are WMF employees.⁵

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⁴ *Baltimore Gas & Electric Co., et al.*, 89 FERC ¶ 61,013 at 61,054 (1999) (BG&E).

⁵ The ability of electric Transmission Providers to do so was recognized in Order No. 2004. See *Order No. 2004-A*, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004) at P 216 (2004) (“There are circumstances where a customer authorizes the Marketing Affiliate to act as its agent or asset manager regarding transmission transactions on the affiliated Transmission Provider. For example, a municipality may

9. However, a Transmission Provider could only share limited information necessary to respond to the customer's transmission requests provided that the Transmission Provider offered similar information on an equal basis to other customers for their transmission requests and that the Transmission Provider's response to the request did not also convey improper general transmission information.⁶

10. From December 2001 to April 2003, the period immediately prior to the unbundling of some Westar wholesale municipal contracts, Westar's G&M WMF division, as agent for the wholesale municipal customers, provided power and transmission marketing services, and general customer care, to them.

11. On April 1, 2003, Westar changed how the wholesale municipal customers were serviced. A business manager and her supervisor who worked for Business Operations were appointed to serve as agents for approximately 20 wholesale municipal

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authorize a Marketing Affiliate to perform its scheduling or nominations on the Transmission Provider . . .”).

⁶ See *Order No. 497-A*, 54 FR 52781 (1989), *FERC Statutes and Regulations*, Regs. Preambles 1986-1990 ¶ 30,868 at 31,597 (The Commission noted that the limited exception for information concerning specific transportation requests was not intended to swallow the rule and that if the pipeline's response to a routine transportation request included general information, such information must be contemporaneously disclosed to all potential shippers.), *aff'd*, *Tenneco Gas v. FERC*, 969 F.2d 1187, 1198 (D.C. Cir. 1992); see also *Algonquin Gas Transmission Co.*, 58 FERC ¶ 61,140, at 61,441-42 (1992) (approving as consistent with standard (f) a pipeline's proposal to "contemporaneously disclose information provided to an affiliate except where the information is limited to that required to negotiate, perform under, and administer specific contracts with the affiliate for transportation, purchase or sale of gas, where such specific information does not also communicate general information about pipeline sales, marketing or transportation").

customers, making them the initial and sometimes continuing points of contact for both transmission and power sales issues. Most of the wholesale municipal customers were small in size and many preferred having a single point of contact with Westar to increase efficiency in their interaction with Westar. The contracts for these wholesale municipal customers included both bundled, grandfathered and unbundled, wholesale merchant contracts. As agent for the wholesale municipal customers, the business manager, *inter alia*, conveyed the municipal customers requests to, and relayed responses received from, the G&M and T.S. employees and, similarly, relayed information initiated by the G&M and T.S. employees to the wholesale municipal customers. With respect to the G&M function, such information consisted of requests for power and billing for the same, while with respect to the T.S. function, such information concerned issues such as billing, system upgrades, outages, and metering. Prior to receiving their new duties, the business manager and her supervisor had been responsible for servicing only retail customers and were classified as neither TO/R nor WMF.

12. Soon after the two Business Operations employees began servicing the wholesale municipal customers in their new roles, the business manager began acting beyond the scope of her duties by participating in the negotiation of proposed power sales agreements and providing several of the wholesale municipal customers with detailed explanations of customer options under such proposals. However, none of the wholesale

municipal customers the business manager marketed to signed a new power contract with Westar. The wholesale municipal customers instead opted to obtain power from other power suppliers.

13. During this period, the business manager was not listed on Westar's OASIS as a WMF employee even though she was conducting WMF activities.

14. In this investigation, Enforcement Staff reviewed thousands of Westar employee emails and communications for the April 2003 through October 2003 period and determined that in two instances, Westar TO/R employees sent emails to the business manager concerning individual wholesale municipal customer issues that also included information regarding Westar's internal transmission operations. Such information included new TO/R internal procedures for load shedding to be implemented in the future, possible legal issues related to any failure by Westar to maintain voltage, and Westar's purpose in terminating the municipal customers' grandfathered contracts in terms of transmission benefits for Westar. This information was not contemporaneously shared with non-affiliated customers. Enforcement Staff did not find any evidence that Westar received any competitive advantage by having this information shared with the business manager.

15. In June 2003, a Westar employee complained to Westar regulatory staff that the business manager's activities in serving the wholesale municipal customers

possibly violated the Standards of Conduct because of improper sharing of transmission information and mixing of WMF and TO/R functions. Following an internal investigation, Westar determined that beginning July 16, 2003, the business manager and her supervisor would not have any involvement with respect to discussions of pricing and terms and conditions of power sales with the municipalities. In September 2003, Westar management modified the duties of the business manager and her supervisor yet again to include marketing of energy to wholesale customers. They continued to serve as agents for the wholesale municipal customers for transmission and power issues, as they had since April 2003, but from that point forward were identified on the Company's OASIS site as being WMF employees.

16. Relations between various Westar divisions and some of the wholesale municipal customers during this period were strained by some pricing disputes and customer care issues. On October 21, 2003, the business manager sent an email message to TO/R employees regarding a sudden curtailment of transmission service to a wholesale municipal customer for which she served as agent. She wrote that, "The relationship we (the entire company of Westar) have with [the municipal customer] and several other south cities is very fragile right now, so it's more important than ever to work as true partners with these folks whenever possible." This was the only communication of its sort discovered among the thousands of written communications examined by

Enforcement Staff. Enforcement Staff found no evidence that the business manager's email influenced the actions of the TO/R employees.

17. When Enforcement Staff accessed Westar's OASIS in July 2003, it found generally that the information required to be posted was accessible. However, certain information required to be posted, including the Standards of Conduct postings and Westar's Open Access Transmission Tariff, could not be accessed. After Staff notified Westar of the omission, Westar promptly notified the Southwest Power Pool, which manages Westar's OASIS server, and caused the broken hyperlinks to be repaired. Westar said that no customer was denied service because of the broken hyperlink to the OATT.

18. After Westar posted the Standards of Conduct information, Enforcement Staff reviewed Westar's organizational charts and determined that, generally, the information was correctly posted. However, Westar had failed to identify the business manager as a WMF employee during the period when she was participating in wholesale merchant activities, from April through August 2003.

III. ALLEGED VIOLATIONS

A. Enforcement alleges:

1. By sharing transmission system operations information with a WMF employee on two occasions, Westar violated former section 37.4(b)(3)-(4) of the

Standards of Conduct, 18 C.F.R. § 37.4(b)(3)-(4) (2003). Section 37.4(b)(3)(i) provided, in pertinent part, that wholesale merchant function employees “must not have preferential access to any information about the Transmission Provider’s transmission system that is not available to all users on an OASIS.” Section 37.4(b)(4)(i) provided, in pertinent part, that transmission employees “may not disclose to [wholesale merchant function employees] any information concerning the transmission system of the Transmission Provider or the transmission system of another...through non-public communications conducted off the OASIS....” These two instances gave the wholesale merchant function unduly preferential knowledge of, and proximity to, Westar’s transmission system and transmission personnel that other power marketers in the marketplace could not access or replicate. Also, frequent informal communications between the business manager and the transmission function employees created “an institutional off OASIS information track that could be used to subvert the Order No. 889 restrictions on. . . wholesale merchant function preferences.” *See Baltimore Gas & Electric Co., et al.*, 89 FERC ¶ 61,013 at 61,054 (1999).

2. The preferential sharing of information on two occasions violated section 205(b) of the FPA, which prohibits public utilities from engaging in preferential or discriminatory arrangements between persons, localities, and classes of services. Westar

preferentially shared transmission information with its WMF and did not make such information available to other customers, resulting in an undue preference to an affiliate.

3. The business manager's email suggesting that the Transmission Service Function and other parts of the Westar work together as "true partners" to serve wholesale municipal customers reflects that the business manager failed to understand the duty to function independently under former section 37.4(a), 18 C.F.R. § 37.4(a)(2003). As noted, that section required WMF and TO/R employees to function independently of one another, a requirement that is reiterated in section 358.4(a) of the Standards of Conduct released in Order No. 2004.

4. Westar's failure to maintain functional OASIS links to Westar's Standards of Conduct information on the SPP OASIS violated former section 37.4(c), 18 C.F.R. § 37.4(c)(2003), of the Standards of Conduct and Commission rules, see *American Electric Power Service Corporation, et al*, 83 FERC ¶ 61,357 (1998) (AEP III), *order on reh'g*, 84 FERC ¶ 61,256 (1998), which required accurate and accessible OASIS postings for Standards of Conduct written procedures, organization charts, and employee functions. Likewise, Westar's failure to accurately identify the business manager's position on its OASIS organization charts as a WMF member from April through August 2003 violated the requirement to post such information.

5. Westar's failure to post its OATT on the SPP-managed OASIS violated section 37.6(c)(2) of the Commission's regulation, 18 C.F.R. § 37.6(c)(2)(2003).

B. Westar's Position:

1. Westar neither admits nor denies the allegations set forth above.

IV. REMEDIES

For purposes of settling any and all civil and administrative disputes, and in lieu of any other penalty or remedy that the Commission might assess or determine concerning any possible violations of statutes or of Commission orders or regulations arising from all matters included within the scope of the investigations identified in section I of this Agreement:

1. Westar shall implement fully and follow the Compliance Plan attached as Appendix A to this agreement.

a. Westar will conduct new Standards of Conduct training to ensure that employees strictly follow the information disclosure prohibitions under the current Standards of Conduct. Westar will also provide specific training to all agents and customer points of contact, and to transmission employees engaged in system operations or reliability functions, regarding the need for independent functioning between the merchant and transmission

functions, and regarding the duty of agents and points of contact not to request, and transmission employees not to provide, transmission information not necessary to serve the specific transmission request of an agent or point of contact's customers, or preferential access to transmission information or transmission function personnel. Such training shall occur beginning no later than the later of (1) June 1, 2005, or (2) 30 days after FERC approves the training materials, and within each 12-month period thereafter.

- b. Within 30 days after each of the first through third anniversaries of the date on which a Commission order approving this Agreement without modification ("Issuance Date"), Westar shall file with Enforcement a Compliance Report ("Compliance Report") in this docket explaining how, during the previous 12-month period, it implemented the Compliance Plan and ensured continued compliance with the applicable provisions of this Agreement and the Compliance Plan.
- c. Should any audit or reporting activity conducted pursuant to this Agreement or the Compliance Plan indicate that during the period in which the Compliance Plan is in effect, Westar or any affiliate of it

subject to the Compliance Plan engaged in any apparent violation of any rule, regulation, or statutory requirement administered by the Commission, Westar shall describe in the applicable Compliance Report each such violation and any remedy for it Westar implemented after consultation with Enforcement.

2. Westar will put procedures into place to ensure, consistent with the requirements of Orders Nos. 889 and 2004, that all OASIS materials are properly posted and that SPP is notified should hyperlinks maintained by the SPP become inoperable.

3. Failure to comply with any provision of this Part shall violate a final order of the Commission issued pursuant to the FPA and may subject Westar to additional action under the enforcement and penalty provisions of the FPA and the Commission's rules.

V. TERMS

1. Enforcement and Westar state that they enter into this Agreement voluntarily and that, other than the agreements provided herein, no tender, offer, or promise of any kind whatsoever has been made by any party to this Agreement or by any member, officer, agent, or representative thereof, to induce the other party to enter into this Agreement.

2. The Agreement does not address or affect any issues pending in any other docketed matter.

3. By the Agreement, Enforcement and Westar evidence their intention to settle only the matters referred to herein that are within the Commission's jurisdiction and statutory authority to settle.

4. Unless the Commission issues an order approving this Agreement in its entirety without modification or condition, this Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Westar shall be bound by any provision or term of this Agreement, unless they agree otherwise in writing.

5. Upon the issuance of a final Commission order approving this Agreement in its entirety without modification or condition, this Agreement shall resolve as to the Westar, their agents, officers, directors and employees, both past and present, and the Commission shall be forever barred from bringing against the Westar, their agents, officers, directors, or employees, both past and present, any and all administrative or civil claims or matters asserting any and all claims, liabilities, causes of action, demands, rights, alleged entitlements, obligations, known or unknown, asserted or not asserted, vested or unvested, without limitation, arising out of, related to, or connected with the investigation referred to in section I of this Agreement. Upon the issuance of a final Commission order approving this Agreement in its entirety without modification or

condition, the investigation referred to in section I of this Agreement and docketed in this Docket No. IN03-02-000 shall be deemed terminated. This Agreement shall not bar Commission action in the event the Commission determines that Westar has failed to comply with any provision of section IV of this Agreement. This Agreement shall not bar Westar from taking legal or factual positions regarding the allegations in section III.A in any legal proceeding not before the Commission provided that such positions are not inconsistent with this Agreement.

6. The provisions of this Agreement shall apply to Westar and its successors and assigns.

7. The parties agree that a Commission order approving this Agreement in its entirety without modification or condition shall be a final and nonappealable order under section 313 of the FPA, 16 U.S.C. § 8251 (2000). With regard to such order, Westar waives: hearings pursuant to the applicable provisions of the FPA; the filing of proposed findings of fact and conclusions of law; an initial decision by an administrative law judge pursuant to the Commission's Rules of Practice and Procedure; post-hearing procedures pursuant to the Commission's Rules of Practice and Procedure; and judicial review by any court.

8. With respect to the representations of the parties set forth herein, the undersigned representative of each party represents and warrants that he or she has read

them and knows the contents thereof, that all the statements and matters set forth are true and correct to the best of his or her knowledge, information, and belief, and that he or she understands that each party enters into this Agreement in express reliance on those representations.

9. Each of the undersigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, and accepts this Agreement on behalf of that party.

10. This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one agreement.

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Agreed to and accepted this ___th day of April, 2005.

Robert E. Pease,
Deputy Director,
Division of Investigations and Enforcement,
Office of Market Oversight and Investigations

April 4, 2005

By: _____
Peggy S. Loyd
Vice President, Corporate Compliance
and Internal Audit
Westar Energy, Inc.

April 4, 2005

APPENDIX A

COMPLIANCE PLAN FOR WESTAR ENERGY, INC.

This Compliance Plan ("Compliance Plan") responds to specific issues and recommendations arising from a non-public, formal investigation in Docket No. IN03-02-000 conducted by the Federal Energy Regulatory Commission's ("FERC's" or "Commission's") Division of Enforcement, Office of Market Oversight and Investigations ("Enforcement").

Westar Energy, Inc. ("Westar") shall implement this Compliance Plan, including its referenced internal policies and procedures for Westar, to resolve issues that have arisen regarding compliance with the FERC's applicable statutes, rules, and regulations ("FERC Rules").

This Compliance Plan applies to Westar and to any successor companies owned or controlled by Westar. This Compliance Plan shall become effective 30 days after the issuance of the Commission's Order approving the Stipulation and Consent Agreement ("Agreement") without modification ("Issuance Date") and shall remain effective for three years after the Issuance Date. This Compliance Plan is part of the Commission's Order approving the Agreement. Enforcement agrees to promptly review any internal policies and procedures required in this Compliance Plan to be submitted to Enforcement for its prior review and authorization; Enforcement shall not unreasonably withhold approval of such matters submitted for its consideration.

Westar may request that the Commission modify this Compliance Plan during its three-year term. Upon the expiration of the three-year term, all obligations under this Compliance Plan shall cease unless otherwise noted; provided, however, that Westar shall remain responsible for complying with the Federal Power Act and FERC Rules. In addition, nothing in this Compliance Plan relieves Westar from complying with the Federal Power Act and FERC Rules now in effect and as they may be amended.

Although the Compliance Plan covers alleged violations of Order No. 889, codified at 18 C.F.R. § 37.4 (2003), the Compliance Plan is prospective in nature and reflects that the Commission has issued revised Standards of Conduct in Order No. 2004, et. seq., codified at 18 C.F.R. Part 358 (2004).

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For any of the items in this Compliance Plan for which Westar is required to perform a quarterly review or audit and submit the results to Enforcement, Enforcement may reduce, without further Commission action, the frequency of the review or audit requirement from quarterly to semi-annually or to annually at any time following the first year of the Compliance Plan. Enforcement will consider reducing the frequency of required reviews or audits based on whether Westar has successfully implemented the Compliance Plan procedures for the requirements that are the subject of the review or audit.

I. Commitment to FERC Regulatory Compliance

Through implementation of this Compliance Plan, including the internal policies and procedures provided for in this Compliance Plan, Westar commits to establishing and maintaining the regulatory compliance training and regulatory risk control systems specified in this Compliance Plan to facilitate Westar's compliance with applicable FERC Rules concerning Standards of Conduct.

II. Standards of Conduct Chief Compliance Officer (CCO)

A. Westar has designated Peggy Loyd as its Chief Compliance Officer (CCO), as required under section 358.4(e)(6) of the Commission regulations. The CCO will be the contact person for the Commission Staff for Westar's Standards of Conduct compliance issues. The CCO will be responsible for coordinating Westar's implementation of this Compliance Plan during its term. Dennis Reed shall work under the CCO's direction and shall be responsible for day-to-day compliance with the Standards of Conduct, including updating Westar's OASIS. The CCO may also direct others under her supervision to perform any of the activities required under this Compliance Plan. Westar may designate a replacement CCO during the term of this Compliance Plan but will notify Enforcement of the name and contact information for its new CCO within five days of the effective date of the change.

B. The CCO, in addition to the foregoing and in addition to other responsibilities specified in sections III through IX, below, shall be responsible for the following:

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1. Addressing internal and external FERC regulatory compliance issues and coordinating with counsel and with the audit committees of the Board of Directors of Westar and any similar committees of Westar.
2. Maintaining a contemporaneous compliance log reflecting compliance issues and their resolution.
3. Overseeing all Open Access Same-time Information System ("OASIS") compliance postings, pursuant to 18 C.F.R. § 37.6, and monitoring the actions of the Southwest Power Pool ("SPP"), which maintains the OASIS servers, to help ensure active links are kept in place.
4. Maintaining contemporaneous detailed written records documenting the implementation of this Compliance Plan.

III. Implementation

- A. Westar will ensure strict adherence to and compliance with the Commission's Standards of Conduct and this Compliance Plan by adopting a policy requiring full compliance with the Standards of Conduct, all aspects of this Compliance Plan, and the procedures developed to implement this Compliance Plan.
- B. The policy requires the immediate identification and prompt correction of any practices deemed by the CCO to be inconsistent with the Commission's regulations, including the Standards of Conduct, or this Compliance Plan.
- C. If an employee of Westar commits any intentional violation, or a recurring and knowing violation, of the Standards of Conduct, the provisions of this Compliance Plan, or the procedures developed hereunder, such violation will result in appropriate disciplinary action against the employee, up to and including termination of employment, as permitted under governing collective bargaining

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agreements and other relevant contractual agreements. Westar will keep a record of such disciplinary actions involving employees.

- D. Westar will provide a copy of the policies identified in section III (A) to Enforcement, for approval, within 60 days of the Issuance Date. Within 30 days following approval by Enforcement, Westar will provide copies of the policies and procedures to "Transmission Function Employees," "Marketing and Energy Affiliate Employees," "Support Services Personnel," and "Officers and Directors" (collectively, "Transmission, Merchant, Support, Officer Employees" or "TMSOEs"):
1. The term "Marketing and Energy Affiliate Employees" means a) employees who engage in marketing, sales or brokering activities of natural gas or electric energy in interstate commerce as those terms are defined in 18 C.F.R. § 358.3(e); or b) employees of an affiliate of a Transmission Provider, save for exceptions enumerated at 18 C.F.R. § 358.3(d)(6), that: 1) engage in or are involved in transmission transactions in U.S. energy or transmission markets; or 2) manage or control transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or 3) buy, sell, trade or administer natural gas or electric energy in U.S. energy or transmission markets; or 4) engage in financial transactions related to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.
 2. The term "Support Services Personnel" means Westar employees that are shared between Westar's Transmission Provider and Marketing and Energy Affiliates, as provided for in 18 C.F.R. § 358.4(a)(4), including those employees who provide Information Technology (IT), accounting, contract administration, billing, software development, or legal services to support Marketing and Energy Affiliate Employees, as defined in the preceding paragraph, or Transmission Function Employees, as described in the following paragraph.

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3. The term “Transmission Function Employees” means Westar employees, contractors, consultants or agents of a Westar Transmission Provider who conduct transmission system operations or reliability functions, including, but not limited to, those who are engaged in a day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations as described in section 358.3(j) of the Commission’s regulations, but excluding field and maintenance employees that do not have access to transmission or customer information.
4. The term “Officers and Directors” include officers and directors of Westar and any Marketing or Energy Affiliates (as defined in 18 C.F.R. § 358.3(a) and (d) (2004)).
5. Capitalized terms not defined herein shall have the meanings set forth in C.F.R. § 358.3.

- E. The policy also provides for annual audits, as described in section IX.

IV. Hotline

Westar has established, and will maintain, a hotline that allows information and Standards of Conduct concerns to be provided anonymously to the CCO (“CCO Hotline”). This hotline may be accessed by calling a phone number common to other existing or future confidential reporting hotlines established by Westar’s parents or affiliates. Westar will maintain a record of calls made to the CCO Hotline relating to this Compliance Plan, the Standards of Conduct requirements and related regulations, and the CCO will prepare memoranda documenting and explaining how issues raised by such calls were resolved. Westar will provide copies of such memoranda to Enforcement within 10 days of the end of each calendar quarter. Westar may combine this hotline with any other hotline it currently has in place. Westar also shall post on its Intranet FERC's Hotline telephone number.

V. Training

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- A. Under this Compliance Plan, Westar will provide at least yearly training to TMSOEs regarding the Standards of Conduct requirements. Westar shall develop a written policy for FERC regulatory compliance training of TMSOEs that states measurable goals for compliance and specific consequences for non-compliance.

The training policy shall state that Westar commits to reinforce to TMSOEs the importance of full and unequivocal compliance with FERC Rules and to that end shall require annual FERC regulatory compliance training of an introductory, updating, or refresher nature, as appropriate. The policy shall also state appropriate disciplinary measures for employees who violate the policy.

Pursuant to section 358.4(e)(3) of the Commission regulations, Westar has developed written procedures for Standards of Conduct training. Westar will develop written procedures for the additional training identified above. The training procedures will provide for:

1. Notice to all employees that are subject to the training requirement of the schedule for their annual training and information regarding the CCO Hotline.
2. Development of a form for certification of attendance, agenda, outline, and handouts for the training required by this section.
3. Retention by Westar of certifications of attendance, agendas, outlines, handouts, and materials used in the training conducted under this section for a period of five years following the Issuance Date.
4. Posting of training materials on Westar's intranet along with the name of a contact person for questions regarding training. Thus, employees will have constant access to training materials should questions arise. The CCO will encourage employees to review the materials on a regular basis.

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5. Training employees who become subject to the training requirement during the interim period between annual training cycles as a result of commencement of new employment or intra-corporate transfer. Such employees will receive a copy of the Standards of Conduct, Compliance Plan policies and applicable procedures upon beginning to work in a position that requires training and within 30 days thereafter will complete live, taped, or on-line Standards of Conduct training.
 6. Training shall include detailed content on the appropriate roles of transmission agents and Transmission Function Employees in interacting with one another, and regarding the limits of transmission-related information that may be shared by Transmission Function Employees with agents and other third parties. Training of Marketing and Energy Affiliate Employees shall also include detailed content regarding the substance of the Market Behavior Rules described in Docket Nos. EL01-118-000 and 001, Market-Based Rate Tariffs and Authorizations, 105 FERC ¶ 61,218 (November 17, 2003), and the need for Marketing and Energy Affiliate Employees to comply fully with such rules, including the prohibition on practices such as wash trades or sleeves with no legitimate business purpose or that facilitate illegal conduct by others.
 7. Westar shall submit the training policy and its implementing procedures to Enforcement within 45 days of the Issuance Date.
 8. Westar shall notify TMSOEs of the FERC regulatory compliance training policy and procedures within 30 days after Enforcement has approved such policy and procedures.
- B. The CCO shall be responsible for the following:
1. Obtaining, from Westar's Human Resources ("HR") Department(s), a list of all TMSOEs.

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2. Notifying all TMSOEs of the time and place for FERC regulatory compliance training of an introductory, updating, or refresher nature, as appropriate, that shall be held every 12 months beginning no later than the later of (1) June 1, 2005, or (2) 30 days after FERC approves the training materials, and each 12-month period thereafter.
3. Providing an electronic or hard-copy of the written policy and procedures for FERC regulatory compliance training to each TMSOE when the employee is notified of the time and place for such training.
4. Developing electronic procedures for the tracking and verification of attendance and creating material to be used during the FERC regulatory compliance training.
5. Including in the training package information describing a "Hotline" (see section IV, above) through which Westar employees can anonymously report violations, if any, of FERC Rules.
6. Initially, training materials will be submitted 45 days after the Issuance Date for Enforcement's approval, and 30 days prior to commencement of training thereafter.
7. Maintaining all certifications of attendance and materials used in the FERC regulatory compliance training.
8. No later than the end of each year, comparing the certifications of attendance to the list of TMSOEs to determine whether each such employee participated in the FERC regulatory compliance training.
9. Notifying the HR Department(s) of any TMSOEs who did not participate in the FERC regulatory compliance training, so the training for the individual may be rescheduled.

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10. Making recommendations to Westar's HR Department(s) regarding disciplinary measures for employees involved in violations, if any, of FERC Rules.
11. Updating the training materials as warranted based upon modification to the Standards of Conduct or clear Commission precedent and posting of any updated training materials on its intranet.
12. In general, assuring that Westar's training program provides adequate and effective training in the FERC Rules and the importance of compliance with them.

- C. Westar may combine the FERC regulatory compliance training with other types of employee training and may provide training and training materials via e-mail or the Intranet with testing, so as to ensure participation by persons who must receive training.
- D. Pursuant to section 358.4(e)(4) of the Commission regulations, Westar has distributed the written procedures for ensuring compliance with the Standards of Conduct. In addition, consistent with Order No. 2004-A, Westar has provided a copy of its written procedures to the person designated to receive service of such procedures.

VI. Information Sharing Prohibitions

Consistent with 18 C.F.R. § 358.5(a) and (b) (2004), Westar will ensure that Transmission Function Employees adhere to rules governing disclosure of transmission and customer information to Marketing and Energy Affiliate Employees.

- A. Circulation of bulletin regarding off-OASIS Website communications:

Westar shall immediately circulate to TMSOEs a bulletin instructing such persons that:

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1. FERC Order No. 2004, *et. seq.*, the Standards of Conduct, and Westar Transmission Providers' Standards of Conduct Procedures as posted on Westar's OASIS prohibit, except in certain very limited emergency situations, Westar Transmission Function Employees from preferentially providing any transmission information to employees of Marketing Affiliates or Energy Affiliates other than via OASIS communications;
 2. Except as permitted by Order No. 2004, Westar Marketing and Energy Affiliate Employees will not have access to, or attempt to elicit through off-OASIS communications, any off-OASIS transmission information (including information relating to pending transmission requests) from Transmission Function Employees; and
 3. All employees, including Support Services Personnel and Officers and Directors, must comply with a strict "no-conduit" rule prohibiting them from providing or otherwise making available any transmission or transmission customer information to Westar Marketing and Energy Affiliate Employees. Any employee with access to transmission or customer information will be trained regarding the information disclosure prohibitions.
- B. Restriction of access to transmission areas at, and to databases of, Westar Transmission Providers:
1. Westar will restrict and monitor the access of its Marketing and Energy Affiliates Employees to Westar's transmission control room or similar facilities and to databases containing information regarding Westar's transmission system or transmission customers. Westar will also restrict and monitor the access of its Transmission Function Employees to work areas of its Marketing and Energy Affiliates.

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2. With respect to the Transmission Control Room and other transmission areas, Westar shall review facilities procedures to ensure that: (i) during normal business hours, no Westar Marketing and Energy Affiliate employees will have unescorted access to the transmission areas; (ii) during non-business hours, access cards will not enable Westar Marketing and Energy Affiliates Employees to have access to the transmission areas; and (iii) that non-affiliated persons shall be treated in the same manner.
3. Pursuant to section 358.4(e)(3) of the Commission regulations, Westar has developed, implemented and posted, as of September 20, 2004, written procedures regarding access of employees of Westar's Marketing and Energy Affiliates to Westar's transmission areas or databases and regarding access of Westar's Transmission Function Employees to work areas of its Energy Affiliates. Enforcement will review the adequacy of such procedures for purposes of this Compliance Plan within 30 days of the Issuance Date.
4. On a quarterly basis, the CCO will review a sampling of electronic communications between Transmission Function Employees and Marketing and Energy Affiliate Employees. A report summarizing the review shall be submitted to Enforcement within 30 days following the review, including a description of any improper communications and remedial steps taken.

C. Review of certificates of attendance:

Westar shall ensure that, pursuant to Compliance Plan sections V(A) and V(B), Westar's Standards of Conduct procedures have been provided to, and related compliance certificates, have been executed annually by, all TMSOEs, and that these actions have been taken with respect to such newly hired employees within 60 days of their hiring date.

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- D. Posting of improperly disclosed transmission information
 - 1. Westar will develop written procedures for promptly posting any transmission information that is preferentially disclosed to a Marketing or Energy Affiliate. Westar will submit the procedures to Enforcement for approval within 60 days of the Issuance Date. Westar will implement the procedures within 30 days of Enforcement's approval or by such other date set forth in the approved procedures.
 - 2. Westar will develop written procedures for reviewing on a quarterly basis compliance with the requirements governing disclosure of non-public transmission information, including access to transmission areas and databases. Westar will submit such procedures to Enforcement for review and approval within 60 days of the Issuance Date. Westar shall implement the procedures within 30 days of Enforcement approval or by such other date set forth in the approved procedures.

- VII. Affiliate Access to Customer Information
 - A. Westar will grant an affiliate acting as an agent for a Westar customer access to information regarding such customer only upon receiving a designation of the affiliate as an agent for the customer. Upon notification that a designation of agency involving an affiliate of Westar and a Westar customer is terminated or no longer effective, Westar will promptly terminate the affiliate's access to information regarding such customer and notify each party, in writing, accordingly.
 - B. Westar will develop written procedures for reviewing or auditing on a quarterly basis the designations of Westar's affiliates as agents on file and verifying that Westar's affiliates acting as agents are covered by currently valid designations of agency on file with Westar. Westar will submit the procedures to Enforcement for approval within 60 days of the Issuance Date. Westar will implement

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such procedures within 30 days of Enforcement's approval or by such other date set forth in the approved procedures.

VIII. Organization Charts

- A. Westar shall develop a written policy for assuring that Westar's corporate and employee organization charts are posted on Westar's Intranet and Internet websites accurately in the manner required by 18 C.F.R. Part 358. The policy shall contain measurable goals and specific consequences for non-compliance. The policy shall further address periodic monitoring of Westar-related links on the OASIS maintained by the SPP.

The policy shall state that Westar shall require the corporate and employee organization charts on its websites to be updated as required by 18 CFR § 358.4 and other applicable Commission rules.

- B. Westar shall submit the organization charts policy and its implementing procedures to Enforcement within 60 days after the Issuance Date for approval.
- C. The CCO shall be responsible for the following:
1. Requiring notification to the CCO of a change in corporate structure within one business day after the effective date of a change.
 2. Requiring notification to the CCO of a change of employee status within one business day after the effective date of the change.
 3. Changing the Westar website postings within seven business days after a material change in corporate structure or employee status occurs, as required by FERC Rules.
 4. On a quarterly basis, requesting a complete corporate structure listing from Westar's Corporate Secretary.

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5. On a quarterly basis, requesting a complete employee listing from Westar's HR Department(s).
6. On a quarterly basis, confirming that Westar's website's corporate structure and employee postings are accurate by comparing them to the listings obtained from Westar's Corporate Secretary and the Westar's HR Department(s). The CCO shall ensure that such postings accurately reflect its current: (i) organizational structure; (ii) employee names, titles, and functional relationships for both supervisory personnel and reporting line positions; and (iii) job descriptions.
7. Identifying any organizational change website postings that require correction or posting.
8. Submitting, on a quarterly basis, a report to Enforcement describing any problems noted and the corrective actions, if necessary, taken.
9. Maintaining all documents related to the foregoing work.

IX. Auditing

- A. Westar will audit or review on a yearly basis Westar's implementation of, and overall compliance with, this Compliance Plan. Such reviews or audits may be conducted in conjunction with reviews or audits provided for elsewhere in this plan. Westar will develop written procedures for conducting such audits or reviews. Westar will submit these procedures to Enforcement for review and approval within 60 days of the Issuance Date. The procedures will include the audit or review methodologies Westar intends to use. Westar will implement the procedures within 30 days of Enforcement's approval or by such other date set forth in the approved procedures.
- B. Westar will retain, for five years following the Issuance Date, the results of each audit or review conducted and all work papers, notes,

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memos, reports, and any other documents (including any drafts). For each audit or review, Westar will prepare and submit to Enforcement, a memorandum describing the results and any action taken in response to the results of the audit or review within 30 days of the completion of the audit or review.

- C. The CCO is responsible for:
1. Requiring a yearly internal audit of compliance with the Compliance Plan to determine if Westar's employees abided by the Compliance Plan.
 2. Requiring Westar's Internal Audit Department ("IA Department") to submit the risk assessment and audit program to Enforcement for approval prior to the beginning of the audit process.
 3. Requiring the IA Department to maintain complete and accurate records of each audit in accordance with The Institute of Internal Auditors Standards to the extent applicable to the audit contemplated herein.
 4. Reviewing each audit finding, determining which recommendations Westar will implement, and documenting in the audit record why Westar did not implement any recommendations it decided not to implement.
 5. Requiring the IA Department to submit, under oath, all of its findings to the CCO, Enforcement, and Westar's Board of Directors (including an explanation of why Westar did not implement any recommendations it decided not to implement) no later than 90 days after the end of each audit year.
 6. Requiring that Westar complete those actions required by the audit within 30 days after submission of the audit report and maintain all working papers and audit records until the next audit by the Commission.

