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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

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

Date of Report (Date of earliest event reported) April 2, 2010 (April 2, 2010)

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**WESTAR ENERGY, INC.**

(Exact name of registrant as specified in its charter)

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**KANSAS**  
(State or other jurisdiction of  
incorporation or organization)

**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 since last report)

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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-12 under the Exchange Act (17 CFR 240.14a-12)
  - 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 April 2, 2010, 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 BNYCMI, 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. 333-165889).

The Agreement is filed as Exhibit 1.3 to the Registration Statement, 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 April 2, 2010, 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).

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**Item 9.01. Financial Statements and Exhibits.**

- Exhibit 5.1 Opinion of Larry D. Irick regarding the legality of the common stock.
- Exhibit 10.1 Sales Agency Financing Agreement with BNY Mellon Capital Markets, LLC and The Bank of New York Mellon (filed as Exhibit 1.3 to the Form S-3 filed on April 2, 2010)
- Exhibit 10.1 Master Confirmation for Forward Stock Sale Transactions, dated April 2, 2010, between Westar Energy, Inc. and The Bank of New York Mellon
- Exhibit 23.1 Consent of Larry D. Irick (included in his opinion filed as Exhibit 5.1)

SIGNATURE

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: April 2, 2010

By: /s/ Larry D. Irick

Name: Larry D. Irick

Title: Vice President, General Counsel and Corporate Secretary

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**EXHIBIT INDEX**

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April 2, 2010

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 April 2, 2010 (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 April 2, 2010, 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 April 2, 2010 (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 5.1 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. 333-165889) 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

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

April 2, 2010

## 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 April 2, 2010, 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.

- 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.
- 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.

**SETTLEMENT TERMS:**

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; *provided* 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

SUSPENSION OF CASH OR NET SHARE SETTLEMENT:

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.

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.

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 its 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 Party A otherwise determines in its reasonable, good faith opinion based on the advice of outside counsel that any Shares to be delivered to Party A by Party B may not be freely returned by Party A to securities lenders as described in clause (h) of “Covenants of Party B” above in this Section 3, then the Calculation Agent may, in consultation with Party B, make adjustments to the terms of such Transaction to preserve the economic intent of the parties, including adjustments to the Forward Price for such Transaction to reflect any lack of liquidity in restricted Shares, and the parties shall work together in good faith to effect settlement for such Transaction in a commercially reasonable manner and in compliance with applicable law and regulations.

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 guarantee 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 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  
Facsimile No.: 212-495-1015

And with a copy to:

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: Richard Mahoney  
Telephone No.: 212-804-2137  
Facsimile No.: 212-495-1017

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  
Facsimile No.: 212-635-1958

And with a copy to:

Address: Dewey & LeBoeuf LLP  
1301 Avenue of the Americas  
New York, New York 10019  
Attention: Peter K. O'Brien  
Facsimile No.: 212-259-6333

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  
Facsimile 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  
Facsimile No.: 650-752-3601

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.



## 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 April 2, 2010 (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:	[ ]
[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:	[ ]
Initial Forward Price:	USD[ ]

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 USD0.00 per Share.

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