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

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**FORM 10-Q**

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**QUARTERLY REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended March 31, 2005

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 1-3523

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**WESTAR ENERGY, INC.**

(Exact name of registrant as specified in its charter)

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Kansas

48-0290150

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(State or other jurisdiction of incorporation or organization)

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(I.R.S. Employer Identification No.)

**818 South Kansas Avenue  
Topeka, Kansas 66612  
(785) 575-6300**

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(Address, including Zip Code and telephone number, including area code, of registrant's principal executive offices)

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

**Common Stock, par value \$5.00 per share**

**86,620,112 shares**

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(Class)

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(Outstanding at May 2, 2005)

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## FORWARD-LOOKING STATEMENTS

Certain matters discussed in this Form 10-Q are “forward-looking statements.” The Private Securities Litigation Reform Act of 1995 has established that these statements qualify for safe harbors from liability. Forward-looking statements may include words like we “believe,” “anticipate,” “target,” “expect,” “pro forma,” “estimate,” “intend” and words of similar meaning. Forward-looking statements describe our future plans, objectives, expectations or goals. Such statements address future events and conditions concerning:

- capital expenditures,
- earnings,
- liquidity and capital resources,
- litigation,
- accounting matters,
- possible corporate restructurings, acquisitions and dispositions,
- compliance with debt and other restrictive covenants,
- interest rates and dividends,
- environmental matters,
- nuclear operations, and
- the overall economy of our service area.

What happens in each case could vary materially from what we expect because of such things as:

- electric utility deregulation or re-regulation,
- regulated and competitive markets,
- ongoing municipal, state and federal activities,
- economic and capital market conditions,
- changes in accounting requirements and other accounting matters,
- changing weather,
- the outcome of the pending rate review filed with the Kansas Corporation Commission on May 2, 2005,
- rates, cost recoveries and other regulatory matters,
- the impact of changes and downturns in the energy industry and the market for trading wholesale electricity,
- the outcome of the notice of violation received on January 22, 2004 from the Environmental Protection Agency and other environmental matters,
- political, legislative, judicial and regulatory developments,
- the impact of the purported employee class action lawsuits filed against us,
- the impact of our potential liability to David C. Wittig and Douglas T. Lake for unpaid compensation and benefits and the impact of claims they have made against us related to the termination of their employment and the publication of the report of the special committee of the board of directors,
- the impact of changes in interest rates,
- changes in, and the discount rate assumptions used for, pension and other post-retirement and post-employment benefit liability calculations, as well as actual and assumed investment returns on pension plan assets,
- the impact of changing interest rates and other assumptions on our decommissioning liability for Wolf Creek Generating Station,
- regulatory requirements for utility service reliability,
- homeland security considerations,
- coal, natural gas, oil and wholesale electricity prices,
- availability and timely provision of rail transportation for our coal supply, and
- other circumstances affecting anticipated operations, sales and costs.

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These lists are not all-inclusive because it is not possible to predict all factors. This report should be read in its entirety and in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2004. No one section of this report deals with all aspects of the subject matter and additional information on some matters that could impact our operations and financial results may be included in our Annual Report on Form 10-K for the year ended December 31, 2004. Any forward-looking statement speaks only as of the date such statement was made, and we do not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement was made except as required by applicable laws or regulations.

[Table of Contents](#)**PART I. Financial Information**  
**ITEM 1. CONDENSED FINANCIAL STATEMENTS****WESTAR ENERGY, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**(Dollars in Thousands)**  
**(Unaudited)**

	March 31, 2005	December 31, 2004
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 25,804	\$ 24,611
Restricted cash	9,604	12,279
Accounts receivable, net	50,917	92,532
Inventories and supplies	118,841	124,563
Energy marketing contracts	21,583	23,155
Tax receivable	119,639	90,845
Deferred tax assets	9,869	7,218
Prepaid expenses	19,555	29,179
Other	41,090	11,558
	<hr/>	<hr/>
Total Current Assets	416,902	415,940
	<hr/>	<hr/>
PROPERTY, PLANT AND EQUIPMENT, NET	3,914,659	3,910,987
	<hr/>	<hr/>
<b>OTHER ASSETS:</b>		
Restricted cash	26,823	27,408
Regulatory assets	505,080	442,944
Nuclear decommissioning trust	90,312	91,095
Energy marketing contracts	11,619	4,904
Other	191,458	192,433
	<hr/>	<hr/>
Total Other Assets	825,292	758,784
	<hr/>	<hr/>
<b>TOTAL ASSETS</b>	<b>\$5,156,853</b>	<b>\$5,085,711</b>
	<hr/>	<hr/>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Current maturities of long-term debt	\$ 165,000	\$ 65,000
Accounts payable	110,301	105,593
Accrued taxes	120,024	97,874
Energy marketing contracts	21,266	20,431
Accrued interest	27,725	30,506
Other	121,212	99,170
	<hr/>	<hr/>
Total Current Liabilities	565,528	418,574
	<hr/>	<hr/>
<b>LONG-TERM LIABILITIES:</b>		
Long-term debt, net	1,528,511	1,639,901
Deferred income taxes	966,465	927,087
Unamortized investment tax credits	67,676	68,957
Deferred gain from sale-leaseback	136,024	138,981
Accrued employee benefits	119,354	120,152
Asset retirement obligation	88,852	87,118
Nuclear decommissioning	90,312	91,095
Energy marketing contracts	442	1,547
Other	183,714	182,977
	<hr/>	<hr/>
Total Long-Term Liabilities	3,181,350	3,257,815
	<hr/>	<hr/>
<b>COMMITMENTS AND CONTINGENCIES (see Notes 7 and 10)</b>		
<b>SHAREHOLDERS' EQUITY:</b>		
Cumulative preferred stock, par value \$100 per share; authorized 600,000 shares; issued and outstanding 214,363 shares	21,436	21,436
Common stock, par value \$5 per share; authorized 150,000,000 shares; issued 86,405,590 shares and 86,029,721 shares, respectively	432,028	430,149
Paid-in capital	916,773	912,932
Unearned compensation	(10,928)	(10,361)
Retained earnings	50,553	55,053
Accumulated other comprehensive income, net	113	113
	<hr/>	<hr/>
Total Shareholders' Equity	1,409,975	1,409,322

TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY

\$5,156,853

\$5,085,711

The accompanying notes are an integral part of these condensed consolidated financial statements.

**WESTAR ENERGY, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(Dollars in Thousands, Except Per Share Amounts)  
(Unaudited)

	Three Months Ended March 31,	
	2005	2004
SALES	\$ 336,502	\$ 340,263
OPERATING EXPENSES:		
Fuel and purchased power	91,797	101,762
Operating and maintenance	106,211	98,958
Depreciation and amortization	42,305	41,927
Selling, general and administrative	41,261	40,967
Total Operating Expenses	281,574	283,614
INCOME FROM OPERATIONS	54,928	56,649
OTHER INCOME (EXPENSE):		
Investment earnings	2,224	3,030
Loss on extinguishment of debt	—	(154)
Other income	676	677
Other expense	(4,807)	(4,253)
Total Other Expense	(1,907)	(700)
Interest expense	29,864	43,425
INCOME FROM CONTINUING OPERATIONS BEFORE INCOME TAXES	23,157	12,524
Income tax expense	7,542	3,733
INCOME FROM CONTINUING OPERATIONS	15,615	8,791
Results of discontinued operations, net of tax	—	6,888
NET INCOME	15,615	15,679
Preferred dividends	242	242
EARNINGS AVAILABLE FOR COMMON STOCK	\$ 15,373	\$ 15,437
BASIC AND DILUTED EARNINGS PER AVERAGE COMMON SHARE OUTSTANDING (see Note 2):		
Basic earnings available from continuing operations	\$ 0.18	\$ 0.12
Results of discontinued operations, net of tax	—	0.09
Basic earnings available	\$ 0.18	\$ 0.21
Diluted earnings available from continuing operations	\$ 0.18	\$ 0.12
Results of discontinued operations, net of tax	—	0.09
Diluted earnings available	\$ 0.18	\$ 0.21
Average equivalent common shares outstanding	86,569,149	73,609,221
DIVIDENDS DECLARED PER COMMON SHARE	\$ 0.23	\$ 0.19

The accompanying notes are an integral part of these condensed consolidated financial statements.

**WESTAR ENERGY, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Dollars in Thousands)  
(Unaudited)

	Three Months Ended March 31,	
	2005	2004
<b>CASH FLOWS FROM (USED IN) OPERATING ACTIVITIES:</b>		
Net income	\$ 15,615	\$ 15,679
Adjustments to reconcile net income to net cash provided by operating activities:		
Discontinued operations, net of tax	—	(6,888)
Depreciation and amortization	42,305	41,927
Amortization of nuclear fuel	3,292	3,493
Amortization of deferred gain from sale-leaseback	(2,957)	(2,957)
Amortization of prepaid corporate-owned life insurance	4,872	4,451
Non-cash stock compensation	812	2,247
Net changes in energy marketing assets and liabilities	(5,413)	3,535
Loss on extinguishment of debt	—	154
Accrued liability to certain former officers	470	5,579
Net deferred taxes and credits	37,269	(851)
Changes in working capital items, net of acquisitions and dispositions:		
Restricted cash	3,265	(2,614)
Accounts receivable, net	41,615	16,471
Inventories and supplies	5,721	7,459
Prepaid expenses and other	26	1,398
Accounts payable	4,585	(488)
Accrued taxes	(6,644)	23,214
Other current liabilities	(7,102)	3,691
Changes in other, assets	(26,365)	3,355
Changes in other, liabilities	(1,139)	(4,074)
	<u>110,227</u>	<u>114,781</u>
<b>CASH FLOWS FROM (USED IN) INVESTING ACTIVITIES:</b>		
Additions to property, plant and equipment	(44,589)	(44,544)
Removal, dismantlement and salvage of property, plant and equipment	(4,260)	(2,278)
Proceeds from sale of Protection One, Inc.	—	122,170
Proceeds from sale of plant and property	—	7,098
Repayment of officer loans	—	2
	<u>(48,849)</u>	<u>82,448</u>
<b>CASH FLOWS FROM (USED IN) FINANCING ACTIVITIES:</b>		
Short-term debt, net	—	(1,000)
Proceeds from long-term debt	246,616	—
Retirements of long-term debt	(290,998)	(122,130)
Repayment of capital leases	(1,244)	(1,238)
Borrowings against cash surrender value of corporate-owned life insurance	873	939
Repayment of borrowings against cash surrender value of corporate-owned life insurance	(728)	(74)
Issuance of common stock, net	3,834	212,609
Cash dividends paid	(18,538)	(12,748)
Reissuance of treasury stock	—	1,927
	<u>(60,185)</u>	<u>78,285</u>
Net cash from discontinued operations	—	197
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<u>1,193</u>	<u>275,711</u>
<b>CASH AND CASH EQUIVALENTS:</b>		
Beginning of period	24,611	79,559
End of period	<u>\$ 25,804</u>	<u>\$ 355,270</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

**WESTAR ENERGY, INC.**

**CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)**

**1. DESCRIPTION OF BUSINESS**

We are the largest electric utility in Kansas. Unless the context otherwise indicates, all references in this quarterly report on Form 10-Q to “the company,” “we,” “us,” “our” and similar words are to Westar Energy, Inc. and its consolidated subsidiaries. The term “Westar Energy” refers to Westar Energy, Inc., a Kansas corporation incorporated in 1924, alone and not together with its consolidated subsidiaries. We provide electric generation, transmission and distribution services to approximately 655,000 customers in Kansas. Westar Energy provides these services in central and northeastern Kansas, including the cities of Topeka, Lawrence, Manhattan, Salina and Hutchinson. Kansas Gas and Electric Company (KGE), Westar Energy’s wholly owned subsidiary, provides these services in south-central and southeastern Kansas, including the city of Wichita. Both Westar Energy and KGE conduct business using the name Westar Energy.

KGE owns a 47% interest in the Wolf Creek Generating Station (Wolf Creek), a nuclear power plant located near Burlington, Kansas, and a 47% interest in Wolf Creek Nuclear Operating Corporation (WCNOC), the operating company for Wolf Creek.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Principles of Consolidation**

We prepare our condensed consolidated financial statements in accordance with generally accepted accounting principles (GAAP) for the United States of America for interim financial information and in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, certain information and footnote disclosures normally included in financial statements presented in accordance with GAAP have been condensed or omitted. The accompanying condensed consolidated financial statements and notes should be read in conjunction with the consolidated financial statements and notes included in our Annual Report on Form 10-K for the year ended December 31, 2004 (2004 Form 10-K).

**Use of Management’s Estimates**

When we prepare our consolidated financial statements, we are required to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities at the date of our consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. We evaluate our estimates on an on-going basis, including those related to bad debts, inventories, valuation of commodity contracts, depreciation, unbilled revenue, investments, valuation of our energy marketing portfolio, intangible assets, income taxes, pension and other post-retirement and post-employment benefits, our asset retirement obligations including decommissioning of Wolf Creek, environmental issues, contingencies and litigation. Actual results may differ from those estimates under different assumptions or conditions. The results of operations for the three months ended March 31, 2005 are not necessarily indicative of the results to be expected for the full year.

**Dilutive Shares**

Basic earnings per share applicable to equivalent common stock are based on the weighted average number of common shares outstanding and shares issuable in connection with vested restricted share units (RSUs) during the period reported. Diluted earnings per share include the effects of potential issuances of common shares resulting from the assumed vesting of all outstanding RSUs and the exercise of all outstanding stock options issued pursuant to the terms of our stock-based compensation plans and the additional issuance of shares under the employee stock purchase plan (ESPP). We discontinued the ESPP effective January 1, 2005. The dilutive effect of shares issuable under the ESPP and our stock-based compensation plans is computed using the treasury stock method.

The following table reconciles the weighted average number of equivalent common shares outstanding used to compute basic and diluted earnings per share.

	Three Months Ended March 31,	
	2005	2004
<b>DENOMINATOR FOR BASIC AND DILUTED</b>		
<b>EARNINGS PER SHARE:</b>		
Denominator for basic earnings per share — weighted average equivalent shares	86,569,149	73,609,221
Effect of dilutive securities:		
Employee stock purchase plan shares	—	455
Employee stock options	1,710	2,080
Restricted share units	702,973	853,154
Denominator for diluted earnings per share — weighted average shares	87,273,832	74,464,910
Potentially dilutive shares not included in the denominator since they are antidilutive	215,965	217,375

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### Stock Based Compensation

For purposes of the pro forma disclosures required by Statement of Financial Accounting Standards (SFAS) No. 148, “Accounting for Stock Based Compensation—Transition and Disclosure,” the estimated fair value of stock options is amortized to expense over the relevant vesting period. Information related to the pro forma impact on our consolidated earnings and earnings per share follows:

	Three Months Ended March 31,	
	2005	2004
	(Dollars in Thousands, Except per Share Amounts)	
Earnings available for common stock, as reported	\$ 15,373	\$ 15,437
Add: Effect of stock-based compensation included in earnings available for common stock, as reported, net of related tax effects	(15)	291
Deduct: Total stock option expense determined under fair value method for all awards, net of related tax effects	3	179
Earnings available for common stock, pro forma	\$ 15,355	\$ 15,549
Weighted average shares used for dilution	87,273,832	74,464,910
Earnings per share:		
Basic – as reported	\$ 0.18	\$ 0.21
Basic – pro forma	\$ 0.18	\$ 0.21
Diluted – as reported	\$ 0.18	\$ 0.21
Diluted – pro forma	\$ 0.18	\$ 0.21

### New Accounting Pronouncements

**Share-Based Payment:** In December 2004, the Financial Accounting Standards Board (FASB) issued SFAS No. 123R, “Share-Based Payment: An Amendment of FASB Statements No. 123 and 95.” SFAS No. 123R requires companies to recognize as compensation expense the grant-date fair value of stock options and other equity-based compensation issued to employees. We will implement the provisions of the statement effective January 1, 2006.

We currently use RSUs for stock-based awards granted to employees. In addition, we have eliminated our employee stock purchase plan and all outstanding options have vested. Given the characteristics of our stock-based compensation program, we do not expect the adoption of SFAS No. 123R to materially impact our consolidated results of operations.

**Accounting for Conditional Asset Retirement Obligations:** In March 2005, FASB issued Interpretation No. (FIN) 47, “Accounting for Conditional Asset Retirement Obligations.” FIN 47 clarifies that the term “conditional asset retirement obligation” as used in SFAS No. 143, “Accounting for Asset Retirement Obligations,” refers to a legal obligation to perform an asset retirement activity in which the timing or method of settlement are conditional on a future event. An entity is required to recognize a liability for the fair value of a conditional asset retirement obligation if the fair value of the liability can be reasonably estimated. Uncertainty about the timing or method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. FIN 47 also clarifies when an entity would have sufficient information to reasonably estimate the fair value of an asset retirement obligation. FIN 47 is effective for the year ended December 31, 2005. We are currently evaluating what impact FIN 47 will likely have on our consolidated results of operations.

**Supplemental Cash Flow Information**

	Three Months Ended March 31,	
	2005	2004
	(In Thousands)	
<b>CASH PAID FOR:</b>		
Interest on financing activities, net of amount capitalized	\$28,596	\$24,370
<b>NON-CASH FINANCING TRANSACTIONS:</b>		
Common stock subscriptions	—	31,385
Issuance of common stock for reinvested dividends and RSUs	3,696	3,577
Assets acquired through capital leases	401	587

**Reclassifications**

We have reclassified certain prior year amounts to conform with classifications used in the current-year presentation as necessary for a fair presentation of the financial statements.

**3. RATE MATTERS AND REGULATION****Retail Rate Review**

In accordance with a Kansas Corporation Commission (KCC) order, we filed an application with the KCC on May 2, 2005, to propose an \$84.1 million increase in our retail electric rates. We anticipate that our rates will change in January 2006. Key components of the filing are as follows:

- Implementation of a fuel and purchased power adjustment clause
- Sharing of market-based wholesale margins between customers and shareholders
- Recovering transmission costs through a separate Federal Energy Regulatory Commission (FERC) transmission delivery charge
- Adoption of a tariff to provide more timely recovery of investments and expenditures associated with adding and operating pollution control equipment at our power plants
- Recovery of approximately \$49.0 million of deferred maintenance costs associated with restoring the service to our customers stemming from damage to our lines and equipment in the ice storms that occurred in 2002 and 2005
- Increasing depreciation expense by approximately \$29.0 million
- A proposal that would establish customer service targets and the potential for rebates to customers based on our financial and customer service performance

We can provide no assurance that the KCC will approve our application as filed.

**FERC Proceedings**

On May 2, 2005, we filed an application with FERC to change our transmission rates. The application proposes a formula transmission rate that provides for annual adjustments to reflect changes in our transmission costs. This is consistent with our proposal submitted to the KCC on May 2, 2005 to separately charge retail customers for transmission service. We expect the transmission rate to become effective no later than December 2005. We can provide no assurance that FERC will approve our application as filed.

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On March 23, 2005, FERC instituted a proceeding concerning the reasonableness of our market-based rates in our electrical control area and the Midwest Energy, Inc. and West Plains Energy electrical control areas. On April 21, 2005, we provided FERC with certain information it requested to complete its analysis. A FERC decision, expected by mid-2005, could affect how we price future wholesale power sales to wholesale customers in our control area and to Midwest Energy and West Plains Energy. We do not expect the outcome of this matter to significantly impact our consolidated results of operations.

### **Service Reliability Standards**

On February 10, 2004, the North American Electric Reliability Council (NERC) issued reliability improvement initiatives stemming from an investigation of the August 14, 2003 blackout in portions of the northeastern United States. In February 2005, NERC approved reliability standards, which went into effect on April 1, 2005. We have not had to make any significant expenditures to be in compliance with these standards.

### **4. DISCONTINUED OPERATIONS — SALE OF PROTECTION ONE, INC.**

On February 17, 2004, we closed the sale of our interest in Protection One, Inc. to subsidiaries of Quadrangle Capital Partners LP and Quadrangle Master Funding Ltd. (together, Quadrangle). At closing, we received proceeds of \$122.2 million. Pursuant to the terms of a November 12, 2004 settlement, Quadrangle paid us \$32.5 million in cash as additional consideration, and we settled tax sharing-related obligations to Protection One by tendering \$27.1 million in Protection One 7<sup>3</sup>/<sub>8</sub>% senior notes, including accrued interest, and paying \$45.9 million in cash. Our net cash payment under the settlement agreement was \$13.4 million. Results of discontinued operations for the three months ended March 31, 2004 are presented in the table below.

	<b>(In Thousands, Except Per Share Amounts)</b>
Sales	\$ 22,466
Costs and expenses	19,937
	<hr/>
Earnings from discontinued operations before income taxes	2,529
Estimated gain on disposal	4,115
Income tax benefit	(244)
	<hr/>
Results of discontinued operations	\$ 6,888
	<hr/>
Basic and diluted results of discontinued operations per share	\$ 0.09
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### **5. ACCOUNTS RECEIVABLE SALES PROGRAM**

WR Receivables Corporation, a wholly owned subsidiary, has an agreement with a financial institution whereby WR Receivables can sell an interest of up to \$125.0 million in a designated pool of our qualified accounts receivable. The agreement expires in July 2005 and, subject to the mutual agreement of the parties, is renewable on an annual basis. We expect to renew the agreement on substantially similar terms.

The receivables sold by WR Receivables to the financial institution are not reflected in the accounts receivable balance in the accompanying consolidated balance sheets. The amounts sold to the financial institution were \$95.0 million at March 31, 2005 and \$80.0 million at December 31, 2004. We record this activity on the consolidated statements of cash flows in the "accounts receivable, net" line of cash flows from operating activities.

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We service, administer and collect the receivables on behalf of the financial institution. Administrative expenses, which represent the loss on the sale, paid to the financial institution associated with the sale of these receivables were \$0.7 million for the three months ended March 31, 2005 and \$0.5 million for the same period of 2004. We include these expenses in other expense on our consolidated statements of income.

We record receivables transferred to WR Receivables at book value, net of allowance for bad debts. This approximates fair value due to the short-term nature of the receivable. We include the transferred accounts receivable in accounts receivable, net, on our consolidated balance sheets. The interests that we hold are presented in the table below.

	March 31, 2005	December 31, 2004
	(In Thousands)	
Accounts receivable retained by WR Receivables, net	\$47,522	\$ 81,842
Accounts receivables reserved for financial institution, net	2,837	10,023
<b>Transferred receivables, net</b>	<b>\$ 50,359</b>	<b>\$ 91,865</b>

## 6. INCOME TAXES AND TAXES OTHER THAN INCOME TAXES

We recorded income tax expense of approximately \$7.5 million for the three months ended March 31, 2005 as compared to \$3.7 million for the same period of 2004.

As of March 31, 2005 and December 31, 2004, we had recorded reserves for uncertain tax positions of \$50.3 million and \$49.7 million, respectively. Tax reserves are established for tax deductions or income positions taken in prior income tax returns that we believe were treated properly on the tax returns but may be challenged if such tax returns are audited. The tax returns containing these tax reporting positions are currently under audit or will likely be audited. The timing of the resolution of these audits is uncertain. If the positions taken on the tax returns are ultimately sustained, we will reverse these tax provisions to income. If the positions taken on the tax returns are not ultimately sustained, we may be required to make cash payments for taxes and interest. The reserves are determined based on our best estimate of probable assessments by the Internal Revenue Service or other taxing authorities and are adjusted, from time to time, based on changing facts and circumstances.

As of March 31, 2005 and December 31, 2004, we also had a tax reserve of \$6.6 million, or \$4.3 million after-tax, for probable assessments of taxes other than income taxes. During the three months ended March 31, 2005, we resolved certain state tax audit issues involving sales and property tax assessments by various state and local taxing authorities. These settlements resulted in the reversal of certain tax reserves for taxes other than income taxes, which was fully offset by additional accruals related to other probable assessments for taxes other than income taxes.

## 7. COMMITMENTS AND CONTINGENCIES

### Environmental Matters

Our activities are subject to environmental regulation by federal, state, and local governmental authorities. These regulations generally involve the use of water, discharges of effluents into the water, emissions into the air, the handling, storage and use of hazardous substances, and waste handling, remediation and disposal, among others. Congress or the state of Kansas may enact legislation and the Environmental Protection Agency (EPA) or the state of Kansas may propose new regulations or change existing regulations that could require us to reduce emissions. Such action could require us to install costly equipment, increase our operating expense and reduce production from our plants.

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Uncertain legislative and regulatory outcomes result in a wide range of potential expenditures. Currently, we have identified the potential for up to \$660 million of expenditures for environmental projects over approximately ten years. In addition to the capital investment, were we to install such equipment, we anticipate that we would incur a significant annual expense to operate and maintain the equipment and the operation of the equipment would reduce net production from our plants.

The degree to which we will need to reduce emissions and the timing of when such emissions control equipment may be required is uncertain. Both the timing and the nature of required investments depend on specific outcomes that result from interpretation of regulations, new regulations, legislation, and the resolution of the New Source Review described below. Although we expect to recover such costs through our rates, we can provide no assurance that we would be able to fully and timely recover all or any increased costs relating to environmental compliance. If we were unable to recover these associated costs, we could have a material and adverse effect on our consolidated financial condition or results of operations.

### **EPA New Source Review**

The EPA is conducting investigations nationwide to determine whether modifications at coal-fired power plants are subject to New Source Review requirements or New Source Performance Standards under Section 114(a) of the Clean Air Act (Section 114). These investigations focus on whether projects at coal-fired plants were routine maintenance or whether the projects were substantial modifications that could have reasonably been expected to result in a significant net increase in emissions. The Clean Air Act requires companies to obtain permits and, if necessary, install control equipment to remove emissions when making a major modification or a change in operation if either is expected to cause a significant net increase in emissions.

The EPA requested information from us under Section 114 regarding projects and maintenance activities that have been conducted since 1980 at the three coal-fired plants we operate. On January 22, 2004, the EPA notified us that certain projects completed at Jeffrey Energy Center violated pre-construction permitting requirements of the Clean Air Act.

We are in discussions with the EPA concerning this matter in an attempt to reach a settlement. We expect that any settlement with the EPA could require us to update or install emissions controls at Jeffrey Energy Center over an agreed upon number of years. Additionally, we might be required to update or install emissions controls at our other coal-fired plants, pay fines or penalties, or take other remedial action. Together, these costs could be material. The EPA has informed us that it has referred this matter to the Department of Justice (DOJ) for it to consider whether to pursue an enforcement action in federal district court. We believe that costs related to updating or installing emissions controls would qualify for recovery through rates. If we were to reach a settlement with the EPA, we may be assessed a penalty. The penalty could be material and may not be recovered in rates.

### **8. ICE STORM**

On January 4 and 5, 2005, substantially all of our service territory experienced a severe ice storm. The storm interrupted electric service in a large portion of our service territory and damaged a significant portion of our electric distribution system. On March 22, 2005, we received an accounting authority order from the KCC that allows us to accumulate and defer for recovery the maintenance costs related to system restoration, as well as accumulate and record a carrying charge on the deferred balance. As of March 31, 2005, we have recorded \$29.7 million as a regulatory asset related to these costs. Recovery of these costs is to be considered as part of our rate review as discussed in Note 3, "Rate Matters and Regulation."

## **9. DEBT**

On January 18, 2005, Westar Energy sold \$250.0 million aggregate principal amount of Westar Energy first mortgage bonds, consisting of \$125.0 million 5.15% bonds maturing in 2017 and \$125.0 million 5.95% bonds maturing in 2035. On February 17, 2005, we used the net proceeds from the offering, together with cash on hand, additional funds raised through the accounts receivable conduit facility and borrowings under Westar Energy's revolving credit facility, to redeem the remaining \$260.0 million aggregate principal amount of Westar Energy 9.75% senior notes due 2007. Together with accrued interest and a premium equal to approximately 12% of the outstanding senior notes, we paid \$298.5 million to redeem the Westar Energy 9.75% senior notes due 2007. All borrowings under Westar Energy's revolving credit facility used for the redemption of the 9.75% senior notes were repaid prior to March 31, 2005.

On May 6, 2005, Westar Energy amended and restated its revolving credit facility dated March 12, 2004 to extend the term and reduce borrowing costs. The amended and restated revolving credit facility matures on May 6, 2010. The facility allows us to borrow up to an aggregate of \$350.0 million, including letters of credit up to a maximum aggregate amount of \$100.0 million. So long as there is no default or event of default under the revolving credit facility, Westar Energy may elect to increase the aggregate amount of borrowings under this facility to \$500 million by increasing the commitment of one or more lenders who have agreed to such increase, or by adding one or more new lenders with the consent of the Administrative Agent and letter of credit issuing bank, which will not be unreasonably withheld. All borrowings under the revolving credit facility are secured by KGE first mortgage bonds.

## **10. LEGAL PROCEEDINGS**

We and certain of our present and former officers and directors are defendants in a consolidated purported class action lawsuit in United States District Court in Topeka, Kansas, "In Re Westar Energy, Inc. Securities Litigation," Master File No. 5:03-CV-4003 and related cases. Plaintiffs filed a Consolidated Amended Complaint on July 15, 2003. In early April 2005, we reached an agreement in principle with the plaintiffs to settle this lawsuit for \$30.0 million. We will pay \$1.25 million of the settlement and our insurance carriers will pay \$28.75 million of the settlement, which includes the payments by our insurance carrier related to the settlement of the shareholder derivative lawsuit described below, less legal fees for the plaintiffs' counsel in that matter. The settlement is subject to the execution of definitive documents and approval by the court. These financial statements reflect this settlement. The lawsuit is brought on behalf of purchasers of our common stock between March 29, 2000, the date we announced our intention to separate our electric utility operations from our unregulated businesses, and November 8, 2002, the date the KCC issued an order prohibiting the separation. The lawsuit alleges that we violated federal securities laws by making material misrepresentations or omitting material facts concerning the purpose and benefits of the previously proposed separation of our electric utility operations from our unregulated businesses, the compensation of our senior management and the independence and functioning of our board of directors and that as a result we artificially inflated the price of our common stock.

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We and certain of our present and former officers and employees are defendants in a consolidated purported class action lawsuit filed in United States District Court in Topeka, Kansas, “In Re Westar Energy ERISA Litigation, Master File No. 03-4032-JAR.” Plaintiffs filed a Consolidated Amended complaint on October 20, 2003. The lawsuit is brought on behalf of participants in, and beneficiaries of, our Employees’ 401(k) Savings Plan between July 1, 1998 and January 1, 2003. The lawsuit alleges violations of the Employee Retirement Income Security Act arising from the conduct of certain present and former officers and employees who served or are serving as fiduciaries for the plan. The conduct is related to alleged securities law violations related to the previously proposed separation of our electric utility operations from our unregulated businesses, our rate cases filed with the KCC in 2000, the compensation of and benefits provided to our senior management, energy marketing transactions with Cleco Corporation and the first and second quarter 2002 restatements of our consolidated financial statements related to the revised goodwill impairment charge and the mark-to-market charge on our putable/callable notes. On August 26, 2004, the court issued an order granting a joint motion of all parties requesting a stay of the lawsuit until December 7, 2004, pending efforts to settle the lawsuit through mediation. The court also denied without prejudice motions to dismiss the lawsuit filed by us and other defendants. The court stated its intention to set aside the order upon notice by any party that mediation efforts were unsuccessful, in which case the court would address the motions to dismiss the lawsuit. On February 8, 2005, the court held a conference at which the parties notified the court that efforts to settle the lawsuit through mediation had not been successful. The court then issued an order renewing the previously filed motions to dismiss and issued a scheduling order addressing the scope and timing of discovery in the lawsuit. We intend to vigorously defend against this action. We are unable to predict the ultimate impact of this matter on our consolidated financial position, results of operations and cash flows.

Certain present and former members of our board of directors and officers are defendants in a shareholder derivative complaint filed April 18, 2003, “Mark Epstein vs David C. Wittig, Douglas T. Lake, Charles Q. Chandler IV, Frank J. Becker, Gene A. Budig, John C. Nettels, Jr., Roy A. Edwards, John C. Dicus, Carl M. Koupal, Jr., Larry D. Irick and Cleco Corporation, defendants, and Westar Energy, Inc., nominal defendant, Case No. 03-4081-JAR.” Plaintiffs filed an amended shareholder derivative complaint on July 30, 2003. In early April 2005, a special litigation committee of our board of directors approved an agreement in principle to settle this lawsuit for \$12.5 million to be paid to us by our insurance carriers. This recovery, less estimated attorney’s fees of \$2.5 million, will be used to fund a portion of the \$30.0 million settlement of the securities class action lawsuit as described above. The settlement is subject to the execution of definitive documents and approval by the court. Among other things, the lawsuit claims that the defendants (i) breached fiduciary duties owed to us because of the actions and omissions described in the report of the special committee of our board of directors, (ii) caused or permitted our assets to be wasted on perquisites for certain insiders and (iii) caused or permitted our May 6, 2002 proxy statement to be issued with materially false and misleading statements.

On June 13, 2003, we filed a demand for arbitration with the American Arbitration Association asserting claims against David C. Wittig, our former president, chief executive officer and chairman, and Douglas T. Lake, our former executive vice president, chief strategic officer and member of the board, arising out of their previous employment with us. Mr. Wittig and Mr. Lake have filed counterclaims against us in the arbitration alleging substantial damages related to the termination of their employment and the publication of the report of the special committee of our board of directors. We intend to vigorously defend against these claims. The arbitration has been stayed pending the completion of a trial for Mr. Wittig and Mr. Lake on criminal charges in U.S. District Court in the District of Kansas. We are unable to predict the ultimate impact of this matter on our consolidated financial position, results of operations and cash flows.

We and our subsidiaries are involved in various other legal, environmental and regulatory proceedings. We believe that adequate provisions have been made and accordingly believe that the ultimate disposition of such matters will not have a material adverse effect on our consolidated financial position or results of operations.

See also Note 11, “Ongoing Investigations – Department of Labor Investigation” and Note 12, “Potential Liabilities to David C. Wittig and Douglas T. Lake” for additional discussion of other legal matters.

**11. ONGOING INVESTIGATIONS – Department of Labor Investigation**

On February 1, 2005, we received a subpoena from the Department of Labor seeking documents related to our Employees' 401(k) Savings Plan and our defined pension benefit plan. At this time, we do not know the specific purpose of the investigation, and we are unable to predict the ultimate outcome of the investigation or its impact on us. See Note 10, "Legal Proceedings," for discussion of a class action lawsuit brought on behalf of participants in our Employee's 401(k) Savings Plan.

**12. POTENTIAL LIABILITIES TO DAVID C. WITTIG AND DOUGLAS T. LAKE**

During the three months ended March 31, 2005, we increased the amount of our accrued liability for potential obligations to Mr. Wittig and Mr. Lake by \$0.5 million to \$58.3 million from \$57.8 million at December 31, 2004. The increase in the amount of the liability was for potential benefits due under an executive salary continuation plan and RSUs. In addition, we have accrued \$2.7 million for legal fees and expenses incurred by Mr. Wittig and Mr. Lake. As discussed above in Note 10, "Legal Proceedings," we have filed a demand for arbitration with the American Arbitration Association seeking to avoid payment of compensation and other benefits Mr. Wittig and Mr. Lake claim to be owed to them, including RSUs and other compensation and benefits, as a result of their prior employment with us.

We will likely incur substantial additional expenses for legal fees and expenses incurred by Mr. Wittig and Mr. Lake related to the arbitration proceeding discussed above, the defense of the criminal charges filed by the United States Attorney's Office in Topeka, Kansas, against Mr. Wittig and Mr. Lake, and the legal proceedings described in Note 10, "Legal Proceedings," above. We are unable to estimate the amount of the additional legal fees and expenses that will be incurred by Mr. Wittig and Mr. Lake for which we may be ultimately responsible.

**13. INTERIM PENSION AND POST-RETIREMENT BENEFIT DISCLOSURE**

The following table summarizes the net periodic costs for our pension and post-retirement benefit plans.

Three Months Ended March 31,	Pension Benefits		Post-retirement Benefits	
	2005	2004	2005	2004
	(In Thousands)			
<b>Components of Net Periodic Cost (Benefit):</b>				
Service cost	\$ 1,630	\$ 1,509	\$ 563	\$ 368
Interest cost	7,174	7,021	1,861	1,868
Expected return on plan assets	(9,056)	(9,644)	(645)	(533)
<b>Amortization of:</b>				
Transition obligation, net	—	—	983	983
Prior service costs	691	688	(117)	(117)
Loss, net	1,367	601	530	481
<b>Net periodic cost</b>	<b>\$ 1,806</b>	<b>\$ 175</b>	<b>\$ 3,175</b>	<b>\$ 3,050</b>

**14. WCNOG INTERIM PENSION AND POST-RETIREMENT BENEFIT DISCLOSURE**

As a co-owner of WCNOG, we are indirectly responsible for 47% of the liabilities and expenses associated with the WCNOG pension and post-retirement plans. We accrue our 47% of the WCNOG cost of pension and post-retirement benefits during the years an employee provides service. The following table summarizes the net periodic costs for our 47% share of the WCNOG pension and post-retirement benefit plans.

<u>Three Months Ended March 31,</u>	<u>Pension Benefits</u>		<u>Post-retirement Benefits</u>	
	<u>2005</u>	<u>2004</u>	<u>2005</u>	<u>2004</u>
	(In Thousands)			
Components of Net Periodic Cost (Benefit):				
Service cost	\$ 713	\$ 620	\$ 59	\$ 62
Interest cost	943	795	96	87
Expected return on plan assets	(788)	(670)	—	—
Amortization of:				
Transition obligation, net	14	14	15	15
Prior service costs	8	7	—	—
Loss, net	339	195	42	36
Net periodic cost	<u>\$1,229</u>	<u>\$ 961</u>	<u>\$ 212</u>	<u>\$ 200</u>

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### INTRODUCTION

We are the largest electric utility in Kansas. We produce, transmit and sell electricity at retail in Kansas and at wholesale in a multi-state region in the central United States under the regulation of the KCC and FERC.

The following management's discussion and analysis reflects several significant events that affected our consolidated results of operations over the course of the three months ended March 31, 2005. We experienced an ice storm in our service territory in January 2005 causing us to incur approximately \$40.0 million in costs to restore our system. As of March 31, 2005, we have recorded \$29.7 million as a regulatory asset related to the associated maintenance costs. Also in January 2005, we redeemed \$260.0 million of 9.75% debt due in 2007 and issued \$125.0 million of 5.15% Westar Energy first mortgage bonds due in 2017 and \$125.0 million of 5.95% Westar Energy first mortgage bonds due in 2035. In March, we recorded a non-cash \$12.3 million mark-to-market gain on fuel supply contracts that more than offset higher fuel costs incurred during the three months ended March 31, 2005.

As you read Management's Discussion and Analysis, please refer to our condensed consolidated financial statements and the accompanying notes, which contain our operating results.

### CRITICAL ACCOUNTING ESTIMATES

Our discussion and analysis of financial conditions and results of operations are based on our condensed consolidated financial statements, which have been prepared in conformity with GAAP. Note 2 of the Notes to Consolidated Financial Statements, "Summary of Significant Accounting Policies," contains a summary of our significant accounting policies, many of which require the use of estimates and assumptions by management. The policies highlighted in our 2004 Form 10-K have an impact on our reported results that may be material due to the levels of judgment and subjectivity necessary to account for uncertain matters or susceptibility of matters subject to change.

From December 31, 2004 through March 31, 2005, we have not experienced any significant changes in our critical accounting estimates. For additional information, see our 2004 Form 10-K.

### OPERATING RESULTS

We evaluate operating results based on basic earnings per share. We have various classifications of sales, defined as follows:

**Retail:** Sales of energy to residential, commercial and industrial customers.

**Other retail:** Sales of energy for lighting public streets and highways, net of revenues reserved for rebates.

**Tariff-based wholesale:** Sales of energy to electric cooperatives, municipalities and other electric utilities, the rate for which is generally based on cost as prescribed by FERC tariffs. Also includes changes in valuations of contracts that have yet to settle.

**Market-based wholesale:** Sales of energy to other wholesale customers, the rate for which is based on prevailing market rates as allowed by our FERC approved market-based tariff. Also includes changes in valuations of contracts that have yet to settle.

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**Energy marketing:** Includes: (1) market-based energy transactions unrelated to our generation or the needs of our regulated customers; (2) financially settled products and physical transactions sourced outside our control area; and (3) changes in valuations for contracts that have yet to settle that may not be recorded either in cost of fuel or tariff- or market-based wholesale revenues.

**Transmission:** Reflects transmission revenues received, including those based on a tariff with the Southwest Power Pool (SPP).

**Other:** Miscellaneous electric revenues including ancillary service revenues and rent from electric property leased to others.

Regulated electric utility sales are significantly impacted by, among other factors, rate regulation, customer conservation efforts, wholesale demand, the overall economy of our service area, the weather and competitive forces. Our wholesale sales are impacted by, among other factors, demand, cost of fuel and purchased power, price volatility and available generation capacity.

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**Three Months Ended March 31, 2005 Compared to Three Months Ended March 31, 2004:** Below we discuss our operating results for the three months ended March 31, 2005 as compared to the results for the three months ended March 31, 2004. Changes in results of operations are as follows:

	Three Months Ended March 31,			
	2005	2004	Change	% Change
(In Thousands, Except Per Share Amounts)				
<b>SALES:</b>				
Residential	\$ 93,682	\$ 94,445	\$ (763)	(0.8)
Commercial	84,960	83,694	1,266	1.5
Industrial	55,767	56,719	(952)	(1.7)
Other retail	188	(39)	227	582.1
<b>Total Retail Sales</b>	<b>234,597</b>	<b>234,819</b>	<b>(222)</b>	<b>(0.1)</b>
Tariff-based wholesale	35,965	32,516	3,449	10.6
Market-based wholesale	41,722	41,178	544	1.3
Energy marketing	(95)	6,487	(6,582)	(101.5)
Transmission (a)	19,559	19,665	(106)	(0.5)
Other	4,754	5,598	(844)	(15.1)
<b>Total Sales</b>	<b>336,502</b>	<b>340,263</b>	<b>(3,761)</b>	<b>(1.1)</b>
<b>OPERATING EXPENSES:</b>				
Fuel used for generation	80,053	85,478	(5,425)	(6.3)
Purchased power	11,744	16,284	(4,540)	(27.9)
Operating and maintenance	106,211	98,958	7,253	7.3
Depreciation and amortization	42,305	41,927	378	0.9
Selling, general and administrative	41,261	40,967	294	0.7
<b>Total Operating Expenses</b>	<b>281,574</b>	<b>283,614</b>	<b>(2,040)</b>	<b>(0.7)</b>
<b>INCOME FROM OPERATIONS</b>	<b>54,928</b>	<b>56,649</b>	<b>(1,721)</b>	<b>(3.0)</b>
<b>OTHER INCOME (EXPENSE):</b>				
Investment earnings	2,224	3,030	(806)	(26.6)
Loss on extinguishment of debt	—	(154)	154	100.0
Other income	676	677	(1)	(0.1)
Other expense	(4,807)	(4,253)	(554)	(13.0)
<b>Total Other Expense</b>	<b>(1,907)</b>	<b>(700)</b>	<b>(1,207)</b>	<b>(172.4)</b>
<b>Interest expense</b>	<b>29,864</b>	<b>43,425</b>	<b>(13,561)</b>	<b>(31.2)</b>
<b>INCOME FROM CONTINUING OPERATIONS BEFORE INCOME TAXES</b>	<b>23,157</b>	<b>12,524</b>	<b>10,633</b>	<b>84.9</b>
Income tax expense	7,542	3,733	3,809	102.0
<b>INCOME FROM CONTINUING OPERATIONS</b>	<b>15,615</b>	<b>8,791</b>	<b>6,824</b>	<b>77.6</b>
Results of discontinued operations, net of tax	—	6,888	(6,888)	(100.0)
<b>NET INCOME</b>	<b>15,615</b>	<b>15,679</b>	<b>(64)</b>	<b>(0.4)</b>
Preferred dividends	242	242	—	—
<b>EARNINGS AVAILABLE FOR COMMON STOCK</b>	<b>\$ 15,373</b>	<b>\$ 15,437</b>	<b>\$ (64)</b>	<b>(0.4)</b>
<b>BASIC EARNINGS PER SHARE</b>	<b>\$ 0.18</b>	<b>\$ 0.21</b>	<b>\$ (0.03)</b>	<b>(14.3)</b>

(a) **Transmission:** Includes an SPP network transmission tariff. For the three months ended March 31, 2005 and 2004, our transmission costs were approximately \$16.6 million. This amount, less approximately \$1.1 million that was retained by the SPP as administration cost, was returned to us as revenues.

The following table reflects changes in electric sales volumes, as measured by thousands of megawatt hours (MWh) of electricity. No sales volumes are shown for energy marketing, transmission or other. Energy marketing activities are unrelated to electricity we generate.

	Three Months Ended March 31,			
	2005	2004	Change	% Change
(Thousands of MWh)				
Residential	1,357	1,381	(24)	(1.7)
Commercial	1,524	1,517	7	0.5
Industrial	1,267	1,300	(33)	(2.5)
Other retail	26	26	—	—

Total Retail	4,174	4,224	(50)	(1.2)
Tariff-based wholesale	1,253	1,068	185	17.3
Market-based wholesale	1,024	1,272	(248)	(19.5)
Total	6,451	6,564	(113)	(1.7)

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Tariff-based wholesale sales increased due primarily to the increase in MWh of electricity sold. We had more energy available during the three months ended March 31, 2005 than we did during the same period of 2004 because of unplanned outages and reduced operating capability experienced at various times throughout the three months ended March 31, 2004 at Jeffrey Energy Center.

The decrease in energy marketing was due primarily to having a net loss position in 2005 as compared with a net gain position in 2004 in the settlement and the fair value of positions receiving mark-to-market accounting treatment. Partially offsetting the net loss position in 2005 was a \$1.3 million gain recorded on the sale of emissions allowances.

Fuel expense decreased due primarily to the recognition of a \$12.3 million mark-to-market gain on fuel contracts, primarily associated with the coal supply contract for our Lawrence and Tecumseh Energy Centers. This gain was partially offset by an increase in fuel expense related to actual fuel used for generation, which increased by \$6.9 million. We used approximately 1% more fuel, primarily coal, at an approximate 9% higher average cost. Lawrence Energy Center and LaCygne Generating Station experienced planned outages in 2005 and Wolf Creek experienced an unplanned outage that, together, caused us to rely on our other higher-priced generating units. At various times during the three months ended March 31, 2004, Jeffrey Energy Center experienced unplanned outages or reduced operating capability, which caused us to decrease our fuel burned and increase our purchased power. Also contributing to the higher average cost of fuel was an increase in coal transportation costs, which accounted for approximately 30% of the higher average cost.

Purchased power expense decreased due primarily to the decline in volumes purchased during the three months ended March 31, 2005 as compared with the same period of 2004 for the reasons discussed in the above paragraph.

Operating and maintenance expense increased due primarily to an increase in maintenance expenses for planned outages at LaCygne Generating Station and Lawrence Energy Center. The increase in plant maintenance expense was partially offset by a decline in the maintenance expense at Jeffrey Energy Center, which was higher in 2004 due to the unplanned outage work at that plant. The remainder of the increase was caused primarily by increased maintenance of our distribution system, primarily related to higher tree trimming expense, and an increase in taxes other than income tax.

Investment earnings declined due primarily to lower dividend income from our investment in Guardian International, Inc. preferred stock. In the three months ended March 31, 2004, we received a \$1.4 million dividend payment on our Guardian Series C and Series E preferred stock. On July 9, 2004, Guardian redeemed its Series C preferred stock held of record by us. In the three months ended March 31, 2005, we received \$0.1 million for the first quarter dividend payment on the Guardian Series E preferred stock.

Interest expense decreased during the three months ended March 31, 2005 due to lower debt balances and lower interest rates due to the refinancing activities as discussed in detail in "Liquidity and Capital Resources" in our 2004 Form 10-K.

The increase in income tax expense reflects the increase in income from continuing operations before income taxes.

## LIQUIDITY AND CAPITAL RESOURCES

### Overview

We believe we will have sufficient cash to fund future operations, debt maturities and the payment of dividends from a combination of cash on hand, cash flows from operations and available borrowing capacity. Our available sources of funds include cash, Westar Energy's revolving credit facility, our accounts receivable conduit facility and access to capital markets. At March 31, 2005, we had cash and cash equivalents of \$25.8 million and \$281.4 million available under Westar Energy's revolving credit facility. Uncertainties affecting our ability to meet these cash requirements include, among others, factors affecting sales described in "Operating Results" above, economic conditions, regulatory actions, conditions in the capital markets and compliance with environmental regulations.

At March 31, 2005, our total outstanding long-term debt, net of current maturities, was approximately \$1.5 billion compared with a balance of approximately \$1.6 billion at December 31, 2004. At March 31, 2005, our current maturities of long-term debt were \$165.0 million compared with \$65.0 million at December 31, 2004, reflecting the classification of \$100.0 million of KGE 6.2% first mortgage bonds due January 2006 in our current maturities.

### Capital Resources

We had \$25.8 million in unrestricted cash and cash equivalents at March 31, 2005. We consider cash equivalents to be highly liquid investments with maturities of three months or less at the time they are purchased.

At March 31, 2005, we also had \$9.6 million of restricted cash classified as a current asset and \$26.8 million of restricted cash classified as a long-term asset. The following table details our restricted cash at March 31, 2005:

	<u>Restricted Cash Current Portion</u>	<u>Restricted Cash Long-term Portion</u>
	(In Thousands)	
Prepaid capacity and transmission agreement	\$ 2,297	\$ 25,391
Cash held in escrow as required by surety bonds and various other deposits	7,307	1,432
<b>Total</b>	<b>\$ 9,604</b>	<b>\$ 26,823</b>

### Debt Financings

On May 6, 2005, Westar Energy amended and restated its revolving credit facility dated March 12, 2004 to extend the term and reduce borrowing costs. The amended and restated revolving credit facility matures on May 6, 2010. The facility allows us to borrow up to an aggregate of \$350.0 million, including letters of credit up to a maximum aggregate amount of \$100.0 million. So long as there is no default or event of default under the revolving credit facility, Westar Energy may elect to increase the aggregate amount of borrowings under this facility to \$500 million by increasing the commitment of one or more lenders who have agreed to such increase, or by adding one or more new lenders with the consent of the Administrative Agent and letter of credit issuing bank, which will not be unreasonably withheld. All borrowings under the revolving credit facility are secured by KGE first mortgage bonds.

A default by Westar Energy or any of its significant subsidiaries under other indebtedness totaling more than \$25 million is a default under this facility. Westar Energy is required to maintain a consolidated indebtedness to consolidated capitalization ratio not greater than 0.65 to 1.0 at all times. Available liquidity under the facility is not impacted by a decline in Westar Energy's credit ratings. Also, the facility does not contain a material adverse effect clause requiring Westar Energy to represent, prior to each borrowing, that no event resulting in a material adverse effect has occurred.

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On January 18, 2005, Westar Energy sold \$250.0 million aggregate principal amount of Westar Energy first mortgage bonds, consisting of \$125.0 million 5.15% bonds maturing in 2017 and \$125.0 million 5.95% bonds maturing in 2035. On February 17, 2005, we used the net proceeds from the offering, together with cash on hand, additional funds raised through the accounts receivable conduit facility and borrowings under Westar Energy's revolving credit facility, to redeem the remaining \$260.0 million aggregate principal amount of Westar Energy 9.75% senior notes due 2007. Together with accrued interest and a premium equal to approximately 12% of the outstanding senior notes, we paid \$298.5 million to redeem the Westar Energy 9.75% senior notes due 2007. All borrowings under Westar Energy's revolving credit facility used for the redemption of the 9.75% senior notes were repaid prior to March 31, 2005.

### **Cash Flows From Operating Activities**

Cash flows from operating activities decreased \$4.6 million to \$110.2 million for the three months ended March 31, 2005 from \$114.8 million for the same period of 2004. During the three months ended March 31, 2005, we used approximately \$18.0 million for system restoration costs related to the ice storm that affected our service territory in January 2005 and we received approximately \$15.0 million from the sale of accounts receivable.

### **Cash Flows From (Used In) Investing Activities**

In general, cash used for investing purposes relates to the growth of the operations of our electric utility business and the replacement of utility property. The utility business is capital intensive and requires significant ongoing investment in plant. We spent \$48.8 million in the three months ended March 31, 2005 and \$46.8 million in the same period of 2004 on net additions to utility property, plant and equipment. We received proceeds from the sale of Protection One of \$122.2 million in the three months ended March 31, 2004.

### **Cash Flows From (Used In) Financing Activities**

We used \$60.2 million of cash for financing activities in the three months ended March 31, 2005 as compared with cash from financing activities of \$78.3 million in the same period of 2004. In the three months ended March 31, 2005, we received cash primarily from the issuance of long-term debt, and we used cash primarily to retire long-term debt and pay dividends. In the three months ended March 31, 2004, we received cash primarily for the issuance of common stock and we used cash primarily to retire long-term debt and pay dividends. In the fourth quarter of 2004, we increased our quarterly dividend to \$0.23 per share from \$0.19 per share. The increase in the dividends paid in the three months ended March 31, 2005 is due primarily to the change in the quarterly dividend rate.

### **OFF-BALANCE SHEET ARRANGEMENTS**

From December 31, 2004 through March 31, 2005, there have been no material changes in our off-balance sheet arrangements. For additional information, see our 2004 Form 10-K.

### **CONTRACTUAL OBLIGATIONS AND COMMERCIAL COMMITMENTS**

From December 31, 2004 through March 31, 2005, there have been no material changes outside the ordinary course of business in our contractual obligations and commercial commitments. For additional information, see our 2004 Form 10-K.

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### OTHER INFORMATION

#### Payment of Rebates

On July 21, 2003, we entered into a Stipulation and Agreement (Stipulation) with the KCC staff and other intervenors in the docket considering the Debt Reduction Plan. The KCC issued an order approving the Stipulation on July 25, 2003. The principal terms of the Stipulation included a requirement for us to pay customer rebates of \$10.5 million on May 1, 2005 and \$10.0 million on January 1, 2006. We will rebate \$10.5 million to customers in May 2005 and \$10 million in January 2006. The first rebate will appear as credits on customers' billing statements in May and June of 2005.

#### Fair Value of Energy Marketing Contracts

At March 31, 2005, we recognized a \$12.3 million gain in the market value of fuel contracts, primarily associated with the coal supply contract for our Lawrence and Tecumseh Energy Centers. Based on the terms of this contract, changes in the fair value of this contract are marked to market through earnings in accordance with the requirements of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended by SFAS Nos. 137, 138 and 149 (collectively SFAS No. 133). Given the volatility in the coal market and the length of the contract term, we anticipate that we will continue to experience volatility in the market value of this contract.

The tables below show the fair value of energy marketing and fuel contracts, including the coal contract described in the preceding paragraph, that were outstanding at March 31, 2005, their sources and maturity periods:

	Fair Value of Contracts
	(In Thousands)
Net fair value of contracts outstanding at the beginning of the period	\$ 6,080
Contracts outstanding at the beginning of the period that were realized or otherwise settled during the period	(1,633)
Changes in fair value of contracts outstanding at the beginning and end of the period	7,516
Changes in fair value of new contracts entered into during the period	(469)
Fair value of contracts outstanding at the end of the period	\$ 11,494

The sources of the fair values related to these contracts are summarized in the following table:

Sources of Fair Value	Fair Value of Contracts at End of Period			
	Total Fair Value	Maturity Less Than 1 Year	Maturity 1-3 Years	Maturity 4-5 Years
		(In Thousands)		
Prices actively quoted (futures)	\$ 264	\$ 264	\$ —	\$ —
Prices provided by other external sources (swaps and forwards)	3,622	(2,268)	3,899	1,991
Prices based on the Black Option Pricing model (options and other) (a)	7,608	2,321	2,318	2,969
Total fair value of contracts outstanding	\$ 11,494	\$ 317	\$ 6,217	\$ 4,960

(a) The Black Option Pricing model is a variant of the Black-Scholes Option Pricing model.

#### New Accounting Pronouncements

**Share-Based Payment:** In December 2004, the FASB issued SFAS No. 123R that requires companies to recognize as compensation expense the grant-date fair value of stock options and other equity-based compensation issued to employees. We will implement the provisions of the statement effective January 1, 2006.

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We currently use RSUs for stock-based awards granted to employees. In addition, we have eliminated our employee stock purchase plan and all outstanding options have vested. Given the characteristics of our stock-based compensation program, we do not expect the adoption of SFAS No. 123R to materially impact our consolidated results of operations.

**Accounting for Conditional Asset Retirement Obligations:** In March 2005, FASB issued FIN 47, "Accounting for Conditional Asset Retirement Obligations." FIN 47 clarifies that the term "conditional asset retirement obligation" as used in SFAS No. 143, refers to a legal obligation to perform an asset retirement activity in which the timing or method of settlement are conditional on a future event. An entity is required to recognize a liability for the fair value of a conditional asset retirement obligation if the fair value of the liability can be reasonably estimated. Uncertainty about the timing or method of settlement of a conditional asset retirement obligation should be factored into the measurement of the liability when sufficient information exists. FIN 47 also clarifies when an entity would have sufficient information to reasonably estimate the fair value of an asset retirement obligation. FIN 47 is effective for the year ended December 31, 2005. We are currently evaluating what impact FIN 47 will likely have on our consolidated results of operations.

## **RISK FACTORS**

Like other companies in our industry, our consolidated financial results will be impacted by weather, the economy of our service territory and the performance of our customers. Our common stock price and creditworthiness will be affected by national and international macroeconomic trends, general market conditions and the expectations of the investment community, all of which are largely beyond our control. In addition, the following statements highlight risk factors that may affect our consolidated financial condition and results of operations. These are not intended to be an exhaustive discussion of all such risks, and the statements below must be read together with factors discussed elsewhere in this document and in our other filings with the Securities and Exchange Commission.

### **Our Revenues Depend Upon Rates Determined by the KCC**

The KCC regulates many aspects of our business and operations, including the retail rates that we may charge customers for electric service. Retail rates are set by the KCC using a cost-of-service approach that takes into account historical operating expenses, fixed obligations and recovery of capital investments, including potentially stranded obligations. Using this approach, the KCC sets rates at a level calculated to recover such costs, adjusted to reflect some known and measurable changes, and a permitted return on investment. Other parties to a rate review or the KCC staff may contend that our current or proposed rates are excessive. In July 2003, the KCC approved a stipulation and agreement that required us to file for a review of our rates by May 2, 2005. Accordingly, on May 2, 2005, we filed a request for an increase in rates of \$84.1 million. We expect new rates to be effective in January 2006. The rates permitted by the KCC in the rate review will determine our revenues for the succeeding periods and may have a material impact on our consolidated earnings, cash flows and financial position, as well as our ability to maintain our common stock dividend at current levels or to increase our dividend in the future. We are unable to predict the outcome of the rate review.

### **Some of Our Costs May not be Fully Recovered in Retail Rates**

Once established by the KCC, our rates remain fixed until changed in a subsequent rate review, or except to the extent the KCC permits us to modify our tariffs using interim adjustment clauses. We may elect to file a rate review to request a change in our rates or intervening parties may request that the KCC review our rates for possible adjustment, subject to any limitations that may have been ordered by the KCC. Earnings could be reduced to the extent that increases in our operating costs increase more than our revenues during the period between opportunities we have to change our rates, which may occur because of maintenance and repair of plants, fuel and purchased power expenses, employee or labor costs, inflation or other factors.

### **Equipment Failures and Other External Factors Can Adversely Affect Our Results**

The generation and transmission of electricity requires the use of expensive and complicated equipment. While we have a maintenance program in place, generating plants are subject to unplanned outages because of equipment failure. In these events, we must either produce replacement power from more expensive units or purchase power from others at unpredictable and potentially higher cost in order to supply our customers and perform our contractual agreements. This can increase our costs and our profits. In addition, decisions or mistakes by other utilities may adversely affect our ability to use transmission lines to deliver or import power, thus subjecting us to unexpected expenses or to the cost and uncertainty of public policy initiatives. These factors, as well as weather, interest rates, economic conditions, fuel availability and prices, price volatility of fuel and other commodities and transportation availability and costs are largely beyond our control, but may have a material adverse effect on our consolidated earnings, cash flows and financial position. We engage in energy marketing transactions to reduce risk from market fluctuations, enhance system reliability and increase profits. The events mentioned above could reduce our ability to participate in energy marketing opportunities, which could reduce our profits.

### **We May Have Material Financial Exposure Under the Clean Air Act and Other Environmental Regulations**

On January 22, 2004, the EPA notified us that certain projects completed at Jeffrey Energy Center violated pre-construction permitting requirements under the Clean Air Act. This notification was delivered as part of an investigation by the EPA regarding maintenance activities that have been conducted since 1980 at Jeffrey Energy Center. The EPA has informed us that it has referred this matter to the DOJ for it to consider whether to pursue an enforcement action in federal district court. The remedy for a violation could include fines and penalties and an order to install new emission control systems, the associated cost of which could be material.

Our activities are subject to environmental regulation by federal, state, and local governmental authorities. These regulations generally involve the use of water, discharges of effluents into the water, emissions into the air, the handling, storage and use of hazardous substances, and waste handling, remediation and disposal, among others. Congress or the state of Kansas may enact legislation and the EPA or the state of Kansas may propose new regulations or change existing regulations that could require us to reduce emissions. Such action could require us to install costly equipment, increase our operating expense and reduce production from our plants.

The degree to which we will need to reduce emissions and the timing of when such emissions control equipment may be required is uncertain. Both the timing and the nature of required investments depend on specific outcomes that result from interpretation of regulations, new regulations, legislation, and the resolution of the New Source Review described below. Although we expect to recover such costs through our rates, we can provide no assurance that we would be able to fully and timely recover all or any increased costs relating to environmental compliance. If we were unable to recover these associated costs, we could have a material and adverse effect on our consolidated financial condition or results of operations.

### **Competitive Pressures from Electric Industry Deregulation Could Adversely Affect Our Revenues and Reported Earnings**

We currently apply the accounting principles of SFAS No. 71, "Accounting for the Effects of Certain Types of Regulation," to our regulated business and at March 31, 2005 and December 31, 2004 had recorded \$470.1 million and \$413.7 million, respectively, of regulatory assets, net of regulatory liabilities. In the event that we determined that we could no longer apply the principles of SFAS No. 71, either as a result of the establishment of retail competition in Kansas or an expectation that permitted rates would not allow us to recover these costs, we would be required to record a charge against income in the amount of the remaining unamortized net regulatory assets.

### **We Face Financial Risks From Our Ownership Interest in the Wolf Creek Nuclear Facility**

Risks of substantial liability arise from the ownership and operation of nuclear facilities, including, among others, potential structural problems at a nuclear facility, the storage, handling and disposal of radioactive materials, limitations on the amounts and types of insurance coverage commercially available, uncertainties with respect to the cost and technological aspects of nuclear decommissioning at the end of their useful lives and costs or measures associated with public safety. In the event of an extended or unscheduled outage at Wolf Creek, we would be required to generate power from more expensive units, purchase power in the open market to replace the power normally produced at Wolf Creek and we would have less power available for sale by us in the wholesale markets. Such purchases would subject us to the risk of increased energy prices and, depending on the length and cost of the outage and the level of market prices, could adversely affect our cash flow. If we were not permitted by the KCC to recover these costs, such events could have an adverse impact on our consolidated financial condition.

**We May Face Liability In Ongoing Lawsuits and Investigations**

We and certain of our former and present directors and officers are defendants in civil litigation alleging violations of the securities laws. In addition, we continue to cooperate in investigations by a federal grand jury, the SEC and the DOJ into events that occurred at our company during the years prior to 2003. Our former president, chief executive officer and chairman and our former executive vice president and chief strategic officer have asserted significant claims against us in connection with the termination of their employment and the publication of the report of the special committee of our board of directors. An adverse result in any of these matters could result in damages, fines or penalties in amounts that could be material and adversely affect our consolidated results and financial condition. Management believes that it is not currently possible to estimate the potential impact of the ultimate resolution of these matters.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to market risk, including market changes, changes in commodity prices, equity instrument investment prices and interest rates. From December 31, 2004 to March 31, 2005, there have been no significant changes in our exposure to market risk. For additional information, see our 2004 Form 10-K, "Item 7A. Quantitative and Qualitative Disclosures About Market Risk."

**ITEM 4. CONTROLS AND PROCEDURES**

Under the supervision and with the participation of management, including our chief executive officer and our chief financial officer, we have evaluated the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rule 13a-15(e) of the Securities Exchange Act of 1934. These controls and procedures are designed to ensure that material information relating to the company and our subsidiaries is communicated to the chief executive officer and the chief financial officer. Based on that evaluation, our chief executive officer and our chief financial officer concluded that, as of March 31, 2005, our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms.

There were no changes in our internal controls over financial reporting during the three months ended March 31, 2005 that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

**Part II. Other Information**

**ITEM 1. LEGAL PROCEEDINGS**

On September 21, 2004, a grand jury in Travis County, Texas, indicted us on charges that a \$25,000 contribution by us in May 2002 to a Texas political action committee violated Texas election laws. We believe the indictment is without any merit, and we intend to vigorously defend against the charges. If convicted, the court could impose a fine of up to \$20,000 or, in certain circumstances, in an amount not to exceed twice the amount caused to be lost by the commission of the felony. As a result of the indictment, the federal government could suspend our status as a government contractor. Upon a conviction, the federal government could bar us from acting as a government contractor. We are taking action to ensure that neither of these events occurs, but we do not know whether we will be successful. We are unable to predict the ultimate impact suspension or loss of our status as a government contractor would have on our consolidated financial position, results of operations and cash flows.

Information on other legal proceedings is set forth in Notes 10, 11 and 12 of the Notes to Consolidated Financial Statements, “Legal Proceedings,” “Ongoing Investigations – Department of Labor Investigation” and “Potential Liabilities to David C. Wittig and Douglas T. Lake,” respectively, which are incorporated herein by reference.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

None

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None

**ITEM 5. OTHER INFORMATION**

None

**ITEM 6. EXHIBITS**

- 4 Forty-Fourth Supplemental Indenture dated May 6, 2005 between Kansas Gas and Electric Company and BNY Midwest Trust Company, as Trustee
- 10 Amended and Restated Credit Agreement dated as of May 6, 2005 among Westar Energy, Inc., the several banks and other financial institutions or entities from time to time parties to the Agreement, JPMorgan Chase Bank, N.A., as administrative agent, The Bank of New York, as syndication agent, and Citibank, N.A., Union Bank of California, N.A., and Wachovia Bank, National Association, as documentation agents
- 31(a) Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 certifying the quarterly report provided for the period ended March 31, 2005
- 31(b) Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 certifying the quarterly report provided for the period ended March 31, 2005
- 32 Certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 certifying the quarterly report provided for the quarter ended March 31, 2005 (furnished and not to be considered filed as part of the Form 10-Q)



KANSAS GAS AND ELECTRIC COMPANY

TO

BNY MIDWEST TRUST COMPANY  
(successor to Harris Trust and Savings Bank)

and

JUDITH L. BARTOLINI  
(successor to W. A. Spooner, Henry A. Theis, Oliver R. Brooks,  
Wesley L. Baker, Edwin F. McMichael and R. Amundsen)

as Trustees under Kansas Gas and Electric Company's  
Mortgage and Deed of Trust, Dated as of April 1, 1940

**FORTY- FOURTH SUPPLEMENTAL INDENTURE**

Providing, among other things, for

First Mortgage Bonds, 4.6% Series Due 2010

**Dated as of May 6, 2005**

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## FORTY-FOURTH SUPPLEMENTAL INDENTURE

INDENTURE, dated as of May 6, 2005, between KANSAS GAS AND ELECTRIC COMPANY, a corporation of the State of Kansas (formerly named KCA Corporation and successor by merger to Kansas Gas and Electric Company, a corporation of the State of Kansas, hereinafter sometimes called the "Company-Kansas"), whose post office address is 120 East First Street, Wichita, Kansas 67202 (hereinafter sometimes called the "Company"), and BNY Midwest Trust Company, a corporation of the State of Illinois, whose post office address is 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602 (successor to Harris Trust and Savings Bank (the "Corporate Trustee")), and JUDITH L. BARTOLINI (successor to W.A. Spooner, Henry A. Theis, Oliver R. Brooks, Wesley L. Baker, Edwin F. McMichael and R. Amundsen, and being hereinafter sometimes called the "Individual Trustee"), whose post office address is 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602 (the Corporate Trustee and the Individual Trustee being hereinafter together sometimes called the "Trustees"), as Trustees under the Mortgage and Deed of Trust, dated as of April 1, 1940 (hereinafter called the "Mortgage"), which Mortgage was executed and delivered by Kansas Gas and Electric Company, a corporation of the State of West Virginia to which the Company-Kansas was successor by merger (hereinafter sometimes called the "Company-West Virginia"), to secure the payment of bonds issued or to be issued under and in accordance with the provisions of the Mortgage, reference to which Mortgage is hereby made, this Indenture (hereinafter sometimes called the "Forty-fourth Supplemental Indenture") being supplemental thereto;

WHEREAS, the Company-West Virginia caused the Mortgage to be filed for record as a mortgage of real property and as a chattel mortgage in the offices of the Registers of Deeds in various counties in the State of Kansas, and on April 25, 1940 paid to the Register of Deeds of Sedgwick County, Kansas, that being the County in which the Mortgage was first filed for record, the sum of \$40,000 in payment of the Kansas mortgage registration tax as provided by Section 79-3101 *et seq.*, General Statutes of Kansas 1935; and

WHEREAS, by the Mortgage, the Company-West Virginia covenanted that it would execute and deliver such supplemental indenture or indentures and such further instruments and do such further acts as might be necessary or proper to carry out more effectually the purposes of the Mortgage and to make subject to the lien of the Mortgage any property thereafter acquired, intended to be subject to the lien thereof; and

WHEREAS, an instrument, dated May 31, 1949, was executed by the Company-West Virginia appointing Oliver R. Brooks as Individual Trustee in succession to said Henry A. Theis, resigned, under the Mortgage, and by Oliver R. Brooks accepting the appointment as Individual Trustee under the Mortgage in succession to said Henry A. Theis, which instrument was filed for record in the offices of the Registers of Deeds in various counties in the State of Kansas; and

WHEREAS, an instrument, dated March 3, 1958, was executed by the Company-West Virginia appointing Wesley L. Baker as Individual Trustee in succession to said Oliver R. Brooks, resigned, under the Mortgage, and by Wesley L. Baker accepting the appointment as Individual Trustee under the Mortgage in succession to said Oliver R. Brooks, which instrument was filed for record in the offices of the Registers of Deeds in various counties in the State of Kansas; and

WHEREAS, an instrument, dated November 20, 1969, was executed by the Company-West Virginia appointing Edwin F. McMichael as Individual Trustee in succession to said Wesley L. Baker, resigned, under the Mortgage, and by Edwin F. McMichael accepting the appointment as Individual Trustee under the Mortgage in succession to said Wesley L. Baker, which instrument was filed for record in the offices of the Registers of Deeds in various counties in the State of Kansas; and

WHEREAS, by the Twenty-seventh Supplemental Indenture mentioned below, the Company-Kansas, among other things, appointed R. Amundsen as Individual Trustee in succession to said Edwin F. McMichael, resigned, under the Mortgage, and by R. Amundsen accepting the appointment as Individual Trustee under the Mortgage in succession to said Edwin F. McMichael; and

WHEREAS, by the Thirty-second Supplemental Indenture mentioned below, the Company-Kansas, among other things, appointed W. A. Spooner as Individual Trustee in succession to said R. Amundsen, resigned, under the Mortgage, and by W. A. Spooner accepting the appointment as Individual Trustee under the Mortgage in succession to said R. Amundsen; and

WHEREAS, by the Fortieth Supplemental Indenture mentioned below, the Company-Kansas, among other things, appointed Judith L. Bartolini as Individual Trustee in succession to said W.A. Spooner resigned, under the Mortgage, and by Judith L. Bartolini accepting the appointment as Individual Trustee under the Mortgage in succession to said W.A. Spooner; and

WHEREAS, the Company-West Virginia executed and delivered to the Trustees a First Supplemental Indenture, dated as of June 1, 1942 (which supplemental indenture is hereinafter sometimes called the "First Supplemental Indenture"); and

WHEREAS, the Company-West Virginia caused the First Supplemental Indenture to be filed for record as a mortgage of real property and as a chattel mortgage in the offices of the Registers of Deeds in various counties in the State of Kansas, but paid no mortgage registration tax in connection with the recordation of the First Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-West Virginia executed and delivered to the Trustees the following supplemental indentures:

<u>Designation</u>	<u>Dated as of</u>
Second Supplemental Indenture	March 1, 1948
Third Supplemental Indenture	December 1, 1949
Fourth Supplemental Indenture	June 1, 1952
Fifth Supplemental Indenture	October 1, 1953
Sixth Supplemental Indenture	March 1, 1955
Seventh Supplemental Indenture	February 1, 1956
Eighth Supplemental Indenture	January 1, 1961

Ninth Supplemental Indenture	May 1, 1966
Tenth Supplemental Indenture	March 1, 1970
Eleventh Supplemental Indenture	May 1, 1971
Twelfth Supplemental Indenture	March 1, 1972

which supplemental indentures are hereinafter sometimes called the Second through Twelfth Supplemental Indentures, respectively; and

WHEREAS, the Company-West Virginia caused the Second through Eighth Supplemental Indentures to be filed for record as a mortgage of real property and as a chattel mortgage in the offices of the Registers of Deeds in various counties in the State of Kansas, and caused the Ninth through Twelfth Supplemental Indentures to be filed for record as a mortgage of real property in the offices of the Registers of Deeds in various counties in the State of Kansas and as a chattel mortgage in the Office of the Secretary of State of Kansas, and on the following dates paid to the Register of Deeds of Sedgwick County, Kansas, that being the County in which the Second through Twelfth Supplemental Indentures were first filed for record as a mortgage of real property, the following amounts:

<u>Date</u>	<u>Amount</u>
March 30, 1948	\$12,500
December 7, 1949	7,500
June 17, 1952	30,000
October 21, 1953	25,000
March 22, 1955	25,000
March 5, 1956	17,500
January 24, 1961	17,500
May 17, 1966	40,000
March 10, 1970	87,500
May 19, 1971	87,500
March 23, 1972	62,500

such amounts being in payment of the Kansas mortgage registration tax as provided by the then currently applicable sections of the statutes of the State of Kansas in effect on those dates; and

WHEREAS, the Company-West Virginia was merged into the Company-Kansas on May 31, 1973; and

WHEREAS, in order to evidence the succession of the Company-Kansas to the Company-West Virginia and the assumption by the Company-Kansas of the covenants and conditions of the Company-West Virginia in the bonds and in the Mortgage contained, and to enable the Company-Kansas to have and exercise the powers and rights of the Company-West Virginia under the Mortgage in accordance with the terms thereof, the Company-Kansas executed and delivered to the Trustees a Thirteenth Supplemental Indenture, dated as of May 31, 1973 (which supplemental indenture is hereinafter sometimes called the "Thirteenth Supplemental Indenture"); and

WHEREAS, the Company-Kansas caused the Thirteenth Supplemental Indenture to be filed for record as a mortgage of real property in the offices of the Registers of Deeds in various counties in the State of Kansas and as a chattel mortgage in the Office of the Secretary of State of Kansas, but paid no mortgage registration tax in connection with the recordation of the Thirteenth Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-Kansas executed and delivered to the Trustees the following supplemental indentures:

<u>Designation</u>	<u>Dated as of</u>
Fourteenth Supplemental Indenture	July 1, 1975
Fifteenth Supplemental Indenture	December 1, 1975
Sixteenth Supplemental Indenture	September 1, 1976
Seventeenth Supplemental Indenture	March 1, 1977
Eighteenth Supplemental Indenture	May 1, 1977
Nineteenth Supplemental Indenture	August 1, 1977
Twentieth Supplemental Indenture	March 15, 1978
Twenty-first Supplemental Indenture	January 1, 1979
Twenty-second Supplemental Indenture	April 1, 1980
Twenty-third Supplemental Indenture	July 1, 1980
Twenty-fourth Supplemental Indenture	August 1, 1980
Twenty-fifth Supplemental Indenture	June 1, 1981
Twenty-sixth Supplemental Indenture	December 1, 1981
Twenty-seventh Supplemental Indenture	May 1, 1982
Twenty-eighth Supplemental Indenture	March 15, 1984
Twenty-ninth Supplemental Indenture	September 1, 1984
Thirtieth Supplemental Indenture	September 1, 1984
Thirty-first Supplemental Indenture	February 1, 1985
Thirty-second Supplemental Indenture	April 15, 1986
Thirty-third Supplemental Indenture	June 1, 1991
Thirty-fourth Supplemental Indenture	March 31, 1992
Thirty-fifth Supplemental Indenture	December 17, 1992
Thirty-sixth Supplemental Indenture	August 12, 1993
Thirty-seventh Supplemental Indenture	January 15, 1994
Thirty-eighth Supplemental Indenture	March 1, 1994
Thirty-ninth Supplemental Indenture	April 15, 1994
Fortieth Supplemental Indenture	June 28, 2000
Forty-first Supplemental Indenture	June 6, 2002
Forty-second Supplemental Indenture	March 12, 2004
Forty-third Supplemental Indenture	June 1, 2004

which supplemental indentures are hereinafter sometimes called the Fourteenth through Forty-third Supplemental Indentures, respectively; and

WHEREAS, the Company-Kansas caused the Fourteenth Supplemental Indenture to be filed for record as a mortgage of real property in the offices of the Registers of Deeds in various counties in the State of Kansas and as a chattel mortgage in the Office of the Secretary of State of Kansas; and

WHEREAS, the Company-Kansas caused the Fifteenth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on December 10, 1975, Film 169, page 363), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on December 10, 1975 and indexed as No. 325,911); and

WHEREAS, the Company-Kansas caused the Sixteenth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on September 29, 1976, Film 21 1, page 363), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on September 29, 1976 and indexed as No. 363,835); and

WHEREAS, the Company-Kansas caused the Seventeenth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on March 16, 1977, Film 234, page 492), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on March 1, 1977 and indexed as No. 384,759); and

WHEREAS, the Company-Kansas caused the Eighteenth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on May 26, 1977, Film 246, page 655), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on May 26, 1977 and indexed as No. 394,573); and

WHEREAS, the Company-Kansas caused the Nineteenth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on August 31, 1977, Film 263, page 882), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on September 1, 1977 and indexed as No. 406,577); and

WHEREAS, the Company-Kansas caused the Twentieth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on March 29, 1978, Film 297, pages 635-656), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on March 30, 1978 and indexed as No. 434,072); and

WHEREAS, the Company-Kansas caused the Twenty-first Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on January 9, 1979, Film 345, page 648), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on January 10, 1979 and indexed as No. 470,851); and

WHEREAS, the Company-Kansas caused the Twenty-second Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on April 2, 1980, Film 413, page 1,468), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on April 3, 1980 and indexed as No. 533,415); and

WHEREAS, the Company-Kansas caused the Twenty-third Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on July 1, 1980, Film 425, page 1,003), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on July 2, 1980 and indexed as No. 546,185); and

WHEREAS, the Company-Kansas caused the Twenty-fourth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on August 28, 1980, Film 435, page 266), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on August 29, 1980 and indexed as No. 554,543); and

WHEREAS, the Company-Kansas caused the Twenty-fifth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on June 30, 1981, Film 483, page 1,512), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on June 30, 1981 and indexed as No. 601,270); and

WHEREAS, the Company-Kansas caused the Twenty-sixth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on December 30, 1981, Film 510, page 300), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on December 31, 1981 and indexed as No. 628,293); and

WHEREAS, the Company-Kansas caused the Twenty-seventh Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on May 6, 1982, Film 526, page 1,141), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on May 7, 1982 and indexed as No. 650,115); and

WHEREAS, the Company-Kansas caused the Twenty-eighth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on March 22, 1984, Film 645, page 1,524), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on March 23, 1984 and indexed as No. 796,449); and

WHEREAS, the Company-Kansas caused the Twenty-ninth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on September 5, 1984, Film 681, page 763), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on September 6, 1984 and indexed as No. 852,425); and

WHEREAS, the Company-Kansas caused the Thirtieth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on September 12, 1984, Film 682, page 1,087), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on September 13, 1984 and indexed as No. 854,284); and

WHEREAS, the Company-Kansas caused the Thirty-third Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on June 18, 1991, Film 1 177, page 0876), and as a security agreement in the Office of Secretary of State of Kansas (filed on June 18, 1991 and indexed as No. 1,693,446); and

WHEREAS, the Company-Kansas caused the Fortieth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on June 28, 2000, Film 2062, page 0053), and as a security agreement in the Office of Secretary of State of Kansas (filed on June 28, 2000, and indexed as No. 3756913); and

WHEREAS, the Company on the following dates paid to the Register of Deeds of Sedgwick County, Kansas, that being the County in which the Fourteenth through Thirtieth Supplemental Indentures, the Thirty-third Supplemental Indenture and the Fortieth Supplemental Indenture were first filed for record as a mortgage of real property, the following amounts:

<u>Date</u>	<u>Amount</u>
July 2, 1975	\$ 100,000
December 10, 1975	48,750
September 29, 1976	62,500
March 16, 1977	62,500
May 26, 1977	25,000
August 31, 1977	6,100
March 29, 1978	62,500
January 9, 1979	36,250
April 2, 1980	67,500
July 1, 1980	37,500
August 28, 1980	63,750
June 30, 1981	75,000
December 30, 1981	62,500
May 6, 1982	100,000
March 22, 1984	93,750
September 5, 1984	75,000
September 12, 1984	50,000
June 18, 1991	334,100
June 28, 2000	1,780,538.50

such amounts being in payment of the Kansas mortgage registration tax as provided by the then currently applicable sections of the statutes of the State of Kansas in effect on those dates; and

WHEREAS, the Company-Kansas caused the Thirty-first Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on February 1, 1985, Film 707, page 378), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on February 4, 1985 and indexed as No. 895,468), but paid no mortgage registration tax in connection with the recordation of the Thirty-first Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-Kansas caused the Thirty-second Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on April 16, 1986, Film 791, page 1,336), and as a chattel mortgage in the Office of the Secretary of State of Kansas (filed on April 17, 1986 and indexed as No. 1,048,212), but paid no mortgage registration tax in connection with the recordation of the Thirty-second Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, in order to evidence the succession of the Company to the Company-Kansas and the assumption by the Company of the covenants and conditions of the Company-Kansas in the bonds and in the Mortgage contained, and to enable the Company to have and exercise the powers and rights of the Company-Kansas under the Mortgage in accordance with the terms thereof, the Company executed and delivered to the Trustees a Thirty-fourth Supplemental Indenture, dated as of March 31, 1992 (which supplemental indenture is hereinafter sometimes called the "Thirty-fourth Supplemental Indenture"); and

WHEREAS, the Company-Kansas caused the Thirty-fourth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on March 31, 1992, Film 1236, page 987), and as a security agreement in the Office of Secretary of State of Kansas (filed on March 31, 1992 and indexed as No. 1,780,893), but paid no mortgage registration tax in connection with the recordation of the Thirty-fourth Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company caused the Thirty-fifth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on December 16, 1992, Film 301, page 0104), and as a security agreement in the Office of Secretary of State of Kansas (filed on December 16, 1992 and indexed as No. 1,861,886), but paid no mortgage registration tax in connection with the recordation of the Thirty-fifth Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-Kansas caused the Thirty-sixth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on August 10, 1993, Film 1364, page 0515), and as a security agreement in the Office of Secretary of State of Kansas (filed on August 11, 1993 and indexed as No. 1,936,501), but paid no mortgage registration tax in connection with the recordation of the Thirty-sixth Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-Kansas caused the Thirty-seventh Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on January 18, 1994, Film 1411, page 0710), and as a security agreement in the Office of Secretary of State of Kansas (filed on January 18, 1994 and indexed as No. 1,985,104), but paid no mortgage registration tax in connection with the recordation of the Thirty-seventh Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-Kansas caused the Thirty-eighth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on February 28, 1994, Film 1422, page 1046), and as a security agreement in the Office of Secretary of State of Kansas (filed on February 28, 1994 and indexed as No. 1,997,743), but paid no mortgage registration tax in connection with the recordation of the Thirty-eighth Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-Kansas caused the Thirty-ninth Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on April 27, 1994, Film 1440, page 855), and as a security agreement in the Office of Secretary of State of Kansas (filed on April 27, 1994 and indexed as No. 1,377,915), but paid no mortgage registration tax in connection with the recordation of the Thirty-ninth Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-Kansas caused the Forty-first Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on June 6, 2002, Film 2460, page 1), and as a security agreement in the office of Secretary of State of Kansas (filed on June 6, 2002, and indexed as No. 5264221), but paid no mortgage registration tax in connection with the recordation of the Forty-first Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-Kansas caused the Forty-second Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on March 12, 2004, Film 2854, page 8731), and as a security agreement in the office of Secretary of State of Kansas (filed on March 12, 2004, and indexed as No. 5760673), but paid no mortgage registration tax in connection with the recordation of the Forty-second Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-Kansas caused the Forty-third Supplemental Indenture to be filed for record as a mortgage of real property in the office of the Register of Deeds of Sedgwick County, Kansas (filed on June 10, 2004, Film and Page 28578510), and as a security agreement in the office of Secretary of State of Kansas (filed on June 10, 2004, and indexed as No. 5820311), but paid no mortgage registration tax in connection with the recordation of the Forty-third Supplemental Indenture, no such tax having been payable in connection with such recordation; and

WHEREAS, the Company-West Virginia, the Company-Kansas or the Company has from time to time caused to be filed in the respective offices of the above-mentioned Registers of Deeds and Secretary of State affidavits executed by the Trustees under the Mortgage, preserving and continuing the lien thereof either as a chattel mortgage in accordance with the provisions of K.S.A. 58-303 (Section 58-303 of the General Statutes of Kansas 1935) or as a security agreement under the provisions of K.S.A. 84-9-401 *et seq.*; and

WHEREAS, in addition to the aforesaid filings for record in the respective offices of the above-mentioned Registers of Deeds, the Company-West Virginia, the Company-Kansas or the Company has filed copies of the Mortgage and the First through Forty-third Supplemental Indentures, certified as true by it, with the Secretary of State of Kansas; and

WHEREAS, the Company-West Virginia, the Company-Kansas or the Company has heretofore issued, in accordance with the provisions of the Mortgage, as heretofore supplemented, the following series of First Mortgage Bonds:

<u>Series</u>	<u>Principal Amount Issued</u>	<u>Principal Amount Outstanding</u>
3 3/8% Series due 1970	\$ 16,000,000	None
3 1/8% Series due 1978	5,000,000	None
2 3/4% Series due 1979	3,000,000	None
3 3/8% Series due 1982	12,000,000	None
3 5/8% Series due 1983	10,000,000	None
3 3/8% Series due 1985	10,000,000	None
3 3/8% Series due 1986	7,000,000	None
4 5/8% Series due 1991	7,000,000	None
5 5/8% Series due 1996	16,000,000	None
8 1/2% Series due 2000	35,000,000	None
8 1/8% Series due 2001	35,000,000	None
7 3/8% Series due 2002	25,000,000	None
9 5/8% Series due 2005	40,000,000	None
6% Series due 1985	7,000,000	None
7 3/4% Series due 2005	12,500,000	None
8 3/8% Series due 2006	25,000,000	None
8 1/2% Series due 2007	25,000,000	None
6% Series due 2007	10,000,000	None
5 7/8% Series due 2007	21,940,000	None
8 7/8% Series due 2008	30,000,000	None
6.80% Series due 2004	14,500,000	None
16 1/4% Series due 1987	30,000,000	None
6 1/2% Series due 1983	15,000,000	None
7 1/4% Series due 1983	25,500,000	None
14 7/8% Series due 1987-1991	30,000,000	None
16% Series due 1996	25,000,000	None
15 3/4% Series due 1989	40,000,000	None
13 1/2% Series due 1989	100,000,000	None
14.05% Series due 1991	30,000,000	None
14 1/8% Series due 1991	20,000,000	None
10 7/8% Series due 1987	30,000,000	None
9 3/4% Series due 2016	50,000,000	None
7.00% Series A due 2031	18,900,000	None
7.00% Series B due 2031	308,600,000	None
7.60% Series due 2003	135,000,000	None
6 1/2% Series due 2005	65,000,000	65,000,000
6.20% Series due 2006	100,000,000	100,000,000

Series	Principal Amount Issued	Principal Amount Outstanding
5.10% Series due 2023	13,982,500	13,487,500
7 1/2% Series A due 2032	14,500,000	14,500,000
7 1/2% Series B due 2027	21,940,000	21,940,000
7 1/2% Series C due 2032	10,000,000	10,000,000
9 1/2% Series due 2003	702,200,000	None
8% Series due 2005	735,000,000	None
3 1/2% Series due in 2007	300,000,000	None*
5.30% Series due 2031	18,900,000	18,900,000
5.30% Series A due 2031	108,600,000	108,600,000
2.65% Series B due 2031	100,000,000	100,000,000
Variable Rate Series C due 2031	100,000,000	100,000,000

\* Upon issuance of the bonds of the 2010 Series pursuant to this Supplemental Indenture, the 3-1/2% First Mortgage Bonds Series due 2007 will be retired and will no longer be outstanding under the Indenture.

hereinafter sometimes called Bonds of the First through Forty-eighth Series; and

WHEREAS, Section 8 of the Mortgage provides that the form of each series of bonds (other than the First Series) issued thereunder and of the coupons to be attached to the coupon bonds of such series shall be established by Resolution of the Board of Directors of the Company and that the form of such series, as established by said Board of Directors, shall specify the descriptive title of the bonds and various other terms thereof, and may also contain such provisions not inconsistent with the provisions of the Mortgage as the Board of Directors may, in its discretion, cause to be inserted therein expressing or referring to the terms and conditions upon which such bonds are to be issued and/or secured under the Mortgage; and

WHEREAS, Section 120 of the Mortgage provides, among other things, that any power, privilege or right expressly or impliedly reserved to or in any way conferred upon the Company by any provision of the Mortgage whether such power, privilege or right is in any way restricted or is unrestricted, may be in whole or in part waived or surrendered or subjected to any restriction if at the time unrestricted or to additional restriction if already restricted, and the Company may enter into any further covenants, limitations or restrictions for the benefit of any one or more series of bonds issued thereunder, or the Company may cure any ambiguity contained therein or in any supplemental indenture, or may establish the terms and provisions of any series of bonds other than said First Series, by an instrument in writing executed and acknowledged by the Company in such manner as would be necessary to entitle a conveyance of real estate to record in all of the states in which any property at the time subject to the lien of the Mortgage shall be situated; and

WHEREAS, the Company now desires to create a new series of bonds; and

WHEREAS, the execution and delivery by the Company of this Forty-fourth Supplemental Indenture, and the terms of the Bonds of the 2010 Series, hereinafter referred to, have been duly authorized by the Board of Directors of the Company by appropriate Resolutions of said Board of Directors;

Now, Therefore, This Indenture Witnesseth:

That Kansas Gas and Electric Company, in consideration of the premises and of One Dollar (\$1) to it duly paid by the Trustees at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and in further evidence of assurance of the estate, title and rights of the Trustees and in order further to secure the payment both of the principal of and interest and premium, if any, on the bonds from time to time issued under the Mortgage, according to their tenor and effect and the performance of all the provisions of the Mortgage (including any instruments supplemental thereto and any modification made as in the Mortgage provided) and of said bonds, hereby grants, bargains, sells, releases, conveys, assigns, transfers, mortgages, pledges, sets over and confirms (subject, however, to Excepted Encumbrances as defined in Section 6 of the Mortgage) unto BNY Midwest Trust Company and to Judith L. Bartolini, as Trustees under the Mortgage, and to their successor or successors in said trust, and to said Trustees and their successors and assigns forever, all property, real, personal and mixed, acquired by the Company after the date of the execution and delivery of the Mortgage, in addition to property covered by the First through the Forty-third Supplemental Indentures (except any herein or in the Mortgage, as heretofore supplemented, expressly excepted), now owned or, subject to the provisions of Section 87 of the Mortgage, hereafter acquired by the Company and wheresoever situated, including (without in anywise limiting or impairing by the enumeration of the same the scope and intent of the foregoing or of any general description contained in this Forty-fourth Supplemental Indenture) all lands, flowage rights, water rights, flumes, raceways, dams, rights of way and roads; all steam and power houses, gas plants, street lighting systems, standards and other equipment incidental thereto, telephone, radio and television systems, air-conditioning systems and equipment incidental thereto, water works, steam heat and hot water plants, lines, service and supply systems, bridges, culverts, tracks, rolling stock, ice or refrigeration plants and equipment, street and interurban railway systems, offices, buildings and other structures and the equipment thereof; all machinery, engines, boilers, dynamos, electric and gas machines, regulators, meters, transformers, generators, motors, electrical, gas and mechanical appliances, conduits, cables, water, steam heat, gas or other pipes, gas mains and pipes, service pipes, fittings, valves and connections, pole and transmission lines, wires, cables, tools, implements, apparatus, furniture, chattels and choses in action; all municipal and other franchises; all lines for the transmission and distribution of electric current, gas, steam heat or water for any purpose, including poles, wires, cables, pipes, conduits, ducts and all apparatus for use in connection therewith; all real estate, lands, easements, servitudes, licenses, permits, franchises, privileges, rights of way and other rights in or relating to real estate or the occupancy of the same and (except as herein or in the Mortgage, as heretofore supplemented, expressly excepted), all the right, title and interest of the Company in and to all other property of any kind or nature appertaining to and/or used and/or occupied and/or enjoyed in connection with any property hereinbefore or in the Mortgage, as heretofore supplemented, described.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders and (subject to the provisions of Section 57 of the Mortgage) the tolls, rents, revenues, issues, earnings, income, product and profits thereof, and all the estate, right, title and interest and claim whatsoever, at law as well as in equity, which the Company now has or may hereafter acquire in and to the aforesaid property and franchises and every part and parcel thereof.

IT IS HEREBY AGREED by the Company that, subject to the provisions of Section 87 of the Mortgage, all the property, rights and franchises acquired by the Company after the date hereof (except any herein or in the Mortgage, as heretofore supplemented, expressly excepted), shall be as fully embraced within the lien hereof and the lien of the Mortgage, as if such property, rights and franchises were now owned by the Company and were specifically described herein and conveyed hereby.

PROVIDED that the following are not and are not intended to be now or hereafter granted, bargained, sold, released, conveyed, assigned, transferred, mortgaged, pledged, set over or confirmed hereunder and are hereby expressly excepted from the lien and operation of this Forty-fourth Supplemental Indenture and from the lien and operation of the Mortgage, viz.: (1) cash, shares of stock and obligations (including bonds, notes and other securities) not hereafter specifically pledged, paid, deposited or delivered under the Mortgage or covenanted so to be; (2) merchandise, equipment, materials or supplies held for the purpose of sale in the usual course of business and fuel, oil and similar materials and supplies consumable in the operation of any properties of the Company; vehicles and automobiles; (3) bills, notes and accounts receivable, and all contracts, leases and operating agreements not specifically pledged under the Mortgage or covenanted so to be; and (4) electric energy, and other materials or products generated, manufactured, produced or purchased by the Company for sale, distribution or use in the ordinary course of its business; provided, however, that the property and rights expressly excepted from the lien and operation of the Mortgage and this Forty-fourth Supplemental Indenture in the above subdivisions (2) and (3) shall (to the extent permitted by law) cease to be so excepted in the event that either or both of the Trustees or a receiver or trustee shall enter upon and take possession of the Mortgaged and Pledged Property in the manner provided in Article XII of the Mortgage by reason of the occurrence of a Default as defined in said Article XII.

THERE is expressly excepted from the lien of the Mortgage and from the lien hereof all property of the Company located in the State of Missouri now owned or hereafter acquired unless such property in the State of Missouri shall be subjected to the lien of the Mortgage by an indenture or indentures supplemental thereto, pursuant to authorization by the Board of Directors of the Company.

TO HAVE AND TO HOLD all such properties, real, personal and mixed, granted, bargained, sold, released, conveyed, assigned, transferred, mortgaged, pledged, set over or confirmed by the Company as aforesaid, or intended so to be, unto the Trustees, their successors and assigns forever.

IN TRUST NEVERTHELESS, for the same purposes and upon the same terms, trusts and conditions and subject to and with the same provisos and covenants as are set forth in the Mortgage, as supplemented, this Forty-fourth Supplemental Indenture being supplemental thereto.

AND IT IS HEREBY COVENANTED by the Company that all the terms, conditions, provisos, covenants and provisions contained in the Mortgage, as supplemented, shall affect and apply to the property hereinbefore described and conveyed and to the estate, rights, obligations and duties of the Company and Trustees and the beneficiaries of the trust with respect to said property, and to the Trustees and their successors as Trustees of said property in the same manner and with the same effect as if the said property had been owned by the Company at the time of the execution of the Mortgage, and had been specifically and at length described in and conveyed to the Trustees by the Mortgage as a part of the property therein stated to be conveyed.

The Company further covenants and agrees to and with the Trustees and their successors in said trust under the Mortgage, as follows:

#### ARTICLE I

##### 2010 SERIES OF BONDS

SECTION 1. (I) There shall be a series of bonds designated 4.6% Series due 2010 (herein sometimes referred to as the "Bonds of the 2010 Series"), each of which shall also bear the descriptive title, First Mortgage Bond, and the form thereof, which is established by Resolution of the Board of Directors of the Company, shall contain suitable provisions with respect to the matters hereinafter in this Article I specified. Bonds of the 2010 Series shall be limited to \$350,000,000 in aggregate principal amount, except as provided in Section 16 of the Mortgage, shall mature on May 6, 2010, and shall be issued as fully registered bonds in denominations of Five Thousand Dollars and in any multiple or multiples of Five Thousand Dollars. Bonds of the 2010 Series shall bear interest at the rate of 4.6% per annum payable (subject to the second paragraph of Section 1(III)) on the interest payment dates for the Loans (as defined below). Every Bond of the 2010 Series shall bear interest from each interest payment date for the Loans next preceding the date thereof, unless no interest has been paid on this Bond in which case from May 6, 2005. The principal of and interest on Bonds of the 2010 Series shall be payable at the office or agency of the Company in the Borough of Manhattan, City of New York, in such coin or currency of the United States of America as at the time of payment is legal tender for public and private debts. Bonds of the 2010 Series shall be dated as in Section 10 of the Mortgage provided.

(II) Bonds of the 2010 Series are redeemable prior to maturity only upon demand therefor by the Collateral Agent. To effect the redemption of Bonds of the 2010 Series, the Collateral Agent shall deliver to the Trustee (and deliver a copy thereof to the Company) a written demand (hereinafter referred to as a "Redemption Demand") for the redemption of Bonds of the 2010 Series, signed by an authorized officer and dated the date of its delivery to the Corporate Trustee, stating (i) that an Event of Default (as defined in the Collateral Agreement and as defined in the Credit Agreement referred to below) has occurred and is continuing, (ii) that there are not sufficient available funds held by the Collateral Agent pursuant to the Collateral Agreement to make all payments required as a result of such Event of Default, (iii) the amount of funds, in addition to available funds held by the Collateral Agent pursuant to the Collateral Agreement, required to make such payments, and (iv) the principal amount of Bonds of the 2010 Series the Collateral Agent demands to have redeemed and the redemption

date therefor which date should be at least thirty-one (31) days after the date of such Redemption Demand (*provided*, such principal amount shall not exceed the amount of funds specified pursuant to the foregoing clause (iii)). The Trustee may conclusively presume the statements contained in the Redemption Demand to be correct. Redemption of Bonds of the 2010 Series shall in all cases be at a price equal to the principal amount of the Bonds to be redeemed together with accrued interest to the redemption date, and such amount shall become and be due and payable on the redemption date.

The Company hereby covenants that if a Redemption Demand shall be delivered to the Corporate Trustee, the Company will deposit, on or before the redemption date, with the Corporate Trustee, in accordance with Article X of the Mortgage, an amount in cash sufficient to redeem the Bonds of the 2010 Series so called for redemption.

(III) All Bonds of the 2010 Series shall be issued and pledged by the Company to the Collateral Agent pursuant to a Collateral and Guarantee Agreement dated as of May 6, 2005 among the Company, Westar Energy, Inc. ("WEI") and JPMorgan Chase Bank, N.A. (in such capacity, the "Collateral Agent") to secure the payment of the principal of, and up to 4.6% per annum of the interest on any of the loans issued pursuant to the \$350,000,000 Amended and Restated Credit Agreement, dated as of May 6, 2005 among WEI, JPMorgan Chase Bank, N.A., as administrative agent, the other agents party thereto, and the lenders party thereto, (the "Credit Agreement" and the loans thereunder are referred to collectively as the "Loans").

The obligation of the Company to make payments with respect to the principal of and interest on Bonds of the 2010 Series (including without limitation upon maturity thereof) shall be fully or partially, as the case may be, satisfied and discharged to the extent that, at the time that any such payment shall be due, the then due principal of and interest on the Loans shall have been fully or partially paid, or there shall be held by the Collateral Agent pursuant to the Collateral Agreement sufficient available funds to fully or partially pay the then due principal of and interest on the Loans. Notwithstanding any other provisions of this Supplemental Indenture or the Mortgage, interest on the Bonds of the 2010 Series shall be deemed fully or partially satisfied and discharged as provided herein even if the interest rate on Bonds of the 2010 Series may be higher or lower than the interest rate on any of the Loans at the time interest on any such Loans is paid. The Corporate Trustee may conclusively presume that the obligation of the Company to make payments with respect to the principal of and interest on Bonds of the 2010 Series shall have been fully satisfied and discharged unless and until the Corporate Trustee shall have received a written notice from the Collateral Agent, signed by an authorized officer, stating (i) that timely payment of the principal of or interest on the Loans required to be made by the Company has not been made, (ii) that there are not sufficient available funds held by the Collateral Agent pursuant to the Collateral Agreement to make such payment and (iii) the amount of funds, in addition to available funds held by the Collateral Agent pursuant to the Collateral Agreement, required to make such payment.

(IV) At the option of the registered owner, any Bonds of the 2010 Series, upon surrender thereof, for cancellation, at the office or agency of the Company in the Borough of Manhattan, City of New York, shall be exchangeable for a like aggregate principal amount of bonds of the same series of other authorized denominations. The Bonds of the 2010 Series may bear such legends as may be necessary to comply with any law or with any rules or regulations made pursuant thereto or with the rules or regulations of any stock exchange or to conform to usage with respect thereto.

(V) Bonds of the 2010 Series shall be transferable upon the surrender thereof, for cancellation together with a written instrument of transfer in form approved by the registrar duly executed by the registered owner or by his duly authorized attorney, at the office or agency of the Company in the Borough of Manhattan, City of New York.

(VI) The Company may deliver to the Trustee in substitution for any Bonds of the 2010 Series, mortgage bonds or other similar instruments of the Company or any successor entity, whether by merger, combination or acquisition of all or substantially all of the assets of the Company, or otherwise, issued under a mortgage and deed of trust or similar instrument of the Company or any successor entity in like principal amount of like term and bearing the same rate of interest as the Bonds of the 2010 Series.

## ARTICLE II

### AMENDMENTS TO THE MORTGAGE AND RESERVATION OF RIGHTS

SECTION 1. The Company reserves the right, subject to appropriate corporate action, but without any consent or other action by holders of Bonds of the 2010 Series, or of any subsequent series of bonds, to make such amendments to the Mortgage, as supplemented, as shall be necessary in order to (A) permit the issuance of additional Prior Lien Bonds other than to the Corporate Trustee (i) in a principal amount not to exceed the principal amount of Bonds which could then be issued on the basis of Property Additions under the Mortgage or (ii) upon the redemption or retirement of Prior Lien Bonds secured by such Prior Lien, (B) to remove the requirement that Prior Lien Bonds be issued to the Corporate Trustee, (C) remove the provisions of Article V which eliminate from the calculation of unfunded net Property Additions available for issuance of Bonds the amount of any Property Additions subject to a Prior Lien if the aggregate amount of Outstanding Prior Lien Bonds is 15% or more of the sum of the Outstanding Bonds and Prior Lien Bonds, and (D) make such other amendments to the Mortgage as may be necessary or desirable in the opinion of the Company to effect the foregoing.

SECTION 2. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2010 Series, or of any subsequent series of bonds, to clarify the ability of the Company to issue variable rate bonds under the Mortgage, notwithstanding any provision of the Mortgage to the contrary. The Company may make such other amendments to the Mortgage as may be necessary or desirable in the opinion of the Company to effect the foregoing.

SECTION 3. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2010 Series, or of any subsequent series of bonds, to amend the Mortgage to eliminate the requirements for the provision by the Company of a Net Earning Certificate by deleting Section 27, Section 28(6) and Section 30(3) and deleting the following language from the end of Section 26: "and, in case the bonds are to be authenticated and delivered under the provisions of the next preceding paragraph of this Section by reason of an increase in the aggregate

principal amount of bonds authenticated and delivered under this Indenture having increased the aggregate principal amount of bonds which may be authenticated and delivered within the limitations prescribed by this Section, a Net Earning Certificate showing the Net Earnings of the Company to be as required by Section 27 hereof.” The Company may make such other amendments to the Mortgage as may be necessary or desirable in the opinion of the Company to effect the foregoing.

SECTION 4. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2010 Series, or of any subsequent series of bonds, to amend the Mortgage as may be necessary in order to permit the Company to deliver to the Trustee in substitution for any bonds issued under the Mortgage, mortgage bonds or other similar instruments of the Company or any successor entity, whether by merger, combination or acquisition of all or substantially all of the assets of the Company, or otherwise, issued under a mortgage and deed of trust or similar instrument of the Company or any successor entity in like principal amount of like term and bearing the same rate of interest as the original bonds.

SECTION 5. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2010 Series, or of any subsequent series of bonds, to amend the Mortgage to add the following new section:

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

SECTION 6. The Company reserves the right, subject to appropriate action, but without any consent or other action by holders of Bonds of the 2010 Series, or of any subsequent series of bonds, to amend the Mortgage to:

- (I) Eliminate maintenance and improvement fund requirements;
- (II) Simplify the provisions for release of obsolete property, de minimis property releases and substitution of property and unfunded property;
- (III) Permit additional terms of bonds or forms of bond in supplemental indentures, including terms for uncertificated and global securities and medium-term notes;
- (IV) Make any changes necessary to conform the Mortgage with the requirements of the Trust Indenture Act;
- (V) Add defeasance provisions providing for covenant and legal defeasance options;
- (VI) Permitting the Company to remove the trustee in certain circumstances;
- (VII) Providing for direction to the trustee under the Mortgage to vote pledged prior lien bonds for specified amendments to the prior lien mortgage;

(VIII) Providing broader investment directions to the trustee or permitting the Company to direct investment of money held by the trustee, so long as there is no event of default under the Mortgage;

(IX) Amending the definition of "Excepted Property" to exclude property which generally cannot be mortgaged without undue administrative burden (i.e., automobiles), but allowing the Company to subject Excepted Property to the Mortgage;

(X) Amending the definition of "Bondable Property" to allow all mortgaged property to be bondable;

(XI) Updating the definition of "Permitted Liens."; and

(XII) Eliminate the requirement to have an individual trustee under the Mortgage.

### ARTICLE III

#### MISCELLANEOUS PROVISIONS

SECTION 1. All Bonds of the 2010 Series acquired by the Company shall forthwith be delivered to the Corporate Trustee for cancellation.

SECTION 2. Subject to the amendments provided for in this Forty-fourth Supplemental Indenture, the terms defined in the Mortgage, as heretofore supplemented, shall, for all purposes of this Forty-fourth Supplemental Indenture, have the meanings specified in the Mortgage, as heretofore supplemented.

SECTION 3. The Trustees hereby accept the trusts herein declared, provided, created or supplemented and agree to perform the same upon the terms and conditions set forth herein and in the Mortgage, as heretofore amended and supplemented, and upon the following terms and conditions:

The Trustees shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Forty-fourth Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made by the Company solely. In general, each and every term and condition contained in Article XVI of the Mortgage, as heretofore amended and supplemented, shall apply to and form part of this Forty-fourth Supplemental Indenture with the same force and effect as if the same were herein set forth in full with such omissions, variations and insertions, if any, as may be appropriate to make the same conform to the provisions of this Forty-fourth Supplemental Indenture.

SECTION 4. Subject to the provisions of Article XV and Article XVI of the Mortgage, as heretofore amended and supplemented, whenever in this Forty-fourth Supplemental Indenture any of the parties hereto is named or referred to, this shall be deemed to include the successors or assigns of such party, and all the covenants and agreements in this Forty fourth Supplemental Indenture contained by or on behalf of the Company or by or on behalf of the Trustees shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

SECTION 5. Nothing in this Forty-fourth Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the holders of the bonds and coupons Outstanding under the Mortgage, any right, remedy or claim under or by reason of this Forty-fourth Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Forty-fourth Supplemental Indenture contained by or on behalf of the Company shall be for the sole and exclusive benefit of the parties hereto, and of the holders of the bonds and of the coupons Outstanding under the Mortgage.

SECTION 6. This Forty-fourth Supplemental Indenture shall be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, KANSAS GAS AND ELECTRIC COMPANY has caused its corporate name to be hereunto affixed, and this instrument to be signed and sealed by Mark A. Ruelle, Vice President and Treasurer, and its corporate seal to be attested by Larry D. Irick, its Secretary for and on its behalf, BNY MIDWEST TRUST COMPANY has caused its corporate name to be hereunto affixed, and this instrument to be signed and sealed by one of its duly authorized officers and its corporate seal to be attested by one of its Assistant Secretaries for and on its behalf, and Judith L. Bartolini has hereunto set her hand and all as of the day and year first above written.

KANSAS GAS AND ELECTRIC COMPANY

By: /s/ Mark A. Ruelle

---

Mark A. Ruelle  
Vice President and Treasurer

[SEAL]

Attest:

/s/ Larry D. Irick

---

Larry D. Irick  
Secretary

Executed, sealed and delivered by  
KANSAS GAS AND ELECTRIC COMPANY,  
in the presence of:

/s/ Peggy S. Wettengel

---

Peggy S. Wettengel

/s/ Patti Beasley

---

Patti Beasley

[SEAL]

By: /s/ D.G. Donovan

\_\_\_\_\_  
Vice President

Attest:

/s/ M. Callahan

\_\_\_\_\_  
Assistant Secretary

/s/ J. Bartolini

\_\_\_\_\_  
(Judith L. Bartolini)

Executed, sealed and delivered by  
BNY MIDWEST TRUST COMPANY  
and JUDITH L. BARTOLINI, in the  
presence of:

/s/ Roxane Ellwanger

\_\_\_\_\_  
/s/ Jo Ann Schalk

\_\_\_\_\_

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

BE IT REMEMBERED, that on this 6<sup>th</sup> day of May, A.D. 2005, before me, the undersigned, a Notary Public within and for the County and State aforesaid, came Mark A. Ruelle, the Vice President and Treasurer of KANSAS GAS AND ELECTRIC COMPANY, a corporation duly organized, incorporated and existing under the laws of the State of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation and that said instrument of writing was so executed by order of the Board of Directors of said corporation.

On this 6<sup>th</sup> day of May, 2005, before me appeared Larry D. Irick, to me personally known, who being by me duly sworn did say that he is the Secretary of KANSAS GAS AND ELECTRIC COMPANY, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Larry D. Irick acknowledged said instrument to be the free act and deed of said corporation.

On the 6<sup>th</sup> day of May in the year 2005, before me personally appeared Mark A. Ruelle to me known, who, being by me duly sworn, did depose and say that he is the Vice President and Treasurer of KANSAS GAS AND ELECTRIC COMPANY; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Mark A. Ruelle acknowledged said instrument to be the free act and of said corporation.

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

/s/ Merilee K. Martin

[SEAL]

NOTARY PUBLIC — STATE OF KANSAS  
MY APPOINTMENT EXPIRES 7/8/2007

STATE OF ILLINOIS            )  
  : ss.:  
COUNTY OF COOK            )

BE IT REMEMBERED, that on this 3<sup>rd</sup> day of May, A.D. 2005, before me, the undersigned, a Notary Public within and for the County and State aforesaid, came D.G. Donovan, a Vice President of BNY Midwest Trust Company, a corporation, duly organized, incorporated and existing under the laws of the State of Illinois, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said corporation and that said instrument of writing was so executed by authority of the Board of Directors of said corporation.

On this 3<sup>rd</sup> day of May, 2005, before me appeared M. Callahan, to me personally known, who being by me duly sworn did say that she is an Assistant Vice President of BNY MIDWEST TRUST COMPANY, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said M. Callahan acknowledged said instrument to be the free act and deed of said corporation.

On the 3<sup>rd</sup> day of May in the year 2005, before me personally came D.G. Donovan, to me known, who, being by me duly sworn, did depose and say that he resides at Arlington Heights, IL; that he is a Vice President of BNY MIDWEST TRUST COMPANY, one of the corporations described in and which executed the above instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

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

/s/ A. Hernandez

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF ILLINOIS  
QUALIFIED IN COOK COUNTY  
COMMISSION EXPIRES 7-8-06

[SEAL]

STATE OF ILLINOIS            )  
  : ss.:  
COUNTY OF COOK            )

On this 3<sup>rd</sup> day of May in the year 2005, before me, the undersigned, a Notary Public in and for the State of Illinois, in the County of Cook, personally appeared and came Judith L. Bartolini, to me known and known to me to be the person described in and who executed the within and foregoing instrument and whose name is subscribed thereto and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year in this certificate first above written.

/s/ T. Mosterd

---

NOTARY PUBLIC, STATE OF ILLINOIS  
QUALIFIED IN COOK COUNTY  
COMMISSION EXPIRES 1/22/09

[SEAL]

AFFIDAVIT

STATE OF KANSAS )

) SS:

COUNTY OF SEDGWICK )

I, Larry D. Irick, being first duly sworn on oath, depose and say:

1. I am the Secretary of Kansas Gas and Electric Company, a corporation duly organized and existing under the laws of the State of Kansas (the "Company"). I am duly authorized to make this affidavit on behalf of the Company.

2. The Company has heretofore executed and delivered to BNY Midwest Trust Company (as successor to Harris Trust and Savings Bank) (the "Corporate Trustee") and Judith L. Bartolini (the "Individual Trustee", together with the Corporate Trustee, the "Trustees"), a Mortgage and Deed of Trust, dated as of April 1, 1940, (hereinafter called the "Indenture"), to secure the Company's First Mortgage Bonds.

3. The Company has heretofore executed and delivered to the Trustees supplemental indentures numbered "First" through "Forty-third," inclusive, (hereinafter called the "Supplemental Indentures"), creating other series of the Company's First Mortgage Bonds.

4. The Indenture and all Supplemental Indentures confirmed unto the Trustees the real property situated in the State of Kansas which is subject to the lien of the Indenture.

5. The Indenture and all Supplemental Indentures were duly received and filed for record in accordance with the laws of the State of Kansas, and the mortgage registration fee thereon provided for was, and has been, paid in full by the Company.

6. Under the Fortieth Supplemental Indenture, the Company duly paid the mortgage registration fee in the amount of \$1,780,538.50, based upon \$684,822,500 of the Company's indebtedness. The Fortieth Supplemental Indenture is found in the Sedgwick County Register of Deeds office at film 2062, page 53.

7. The Company has executed and delivered to the Trustees a new series of First Mortgage Bonds called "4.6% Series Due May 6, 2010" to be issued under and secured by the Indenture, the Supplemental Indentures and a new Supplemental Indenture dated as of May 6, 2005, (hereinafter called the "Forty-fourth Supplemental Indenture").

8. The purpose of the Forty-fourth Supplemental Indenture is to reflect the issuance and pledge of \$350,000,000 principal amount of First Mortgage Bonds.

9. \$350,000,000 of the principal amount of the First Mortgage Bonds issued pursuant to the Forty-fourth Supplemental Indenture tendered for filing constitutes the same principal indebtedness covered or included in the Forty-first Supplemental Indenture with BNY Midwest Trust Company and Judith L. Bartolini, Trustees, the same lender.

10. Under the Forty-fourth Supplemental Indenture the registration fee with respect to all of the indebtedness of \$350,000,000 has been previously paid by the Company in connection with the Forty-first Supplemental Indenture and by virtue thereof is considered by the Company to be the same indebtedness, and thus exempt from the payment of further registration fees pursuant to the provisions of K.S.A. 1990 Supp. 79-3102(d)(3).

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

FURTHER AFFIANT SAITH NAUGHT.

/s/ Larry D. Irick

---

Larry D. Irick, Secretary  
Kansas Gas and Electric Company

Subscribed and sworn to before me this 6th day of May, 2005.

/s/ Patti Beasley

---

Notary Public

[SEAL]

My Commission Expire 11-18-08

AMENDED AND RESTATED CREDIT AGREEMENT

among

WESTAR ENERGY, INC.,  
as Borrower,

The Several Lenders  
from Time to Time Parties Hereto,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent,

THE BANK OF NEW YORK,  
as Syndication Agent,

and

CITIBANK, N.A., UNION BANK OF CALIFORNIA, N.A.

and

WACHOVIA BANK, NATIONAL ASSOCIATION,  
as Documentation Agents

Dated as of May 6, 2005

---

J.P. MORGAN SECURITIES, INC. and BNY CAPITAL MARKETS, INC.,  
as Joint Lead Arrangers and Bookrunners

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**EXHIBITS:**

A	Form of Closing Certificate
B	Form of Assignment and Assumption
C	Form of Exemption Certificate
D	Form of Lender Addendum
E-1	Form of New Lender Supplement
E-2	Form of Increased Revolving Commitment Activation Notice

AMENDED AND RESTATED CREDIT AGREEMENT (as amended, restated or otherwise modified from time to time, this "Agreement"), dated as of May [6], 2005, among WESTAR ENERGY, INC., a Kansas corporation (the "Borrower"), the several banks and other financial institutions or entities from time to time parties to this Agreement (the "Lenders"), JPMORGAN CHASE BANK, N.A., as administrative agent, THE BANK OF NEW YORK, as syndication agent (in such capacity, the "Syndication Agent"), and CITIBANK, N.A., UNION BANK OF CALIFORNIA, N.A. and WACHOVIA BANK, NATIONAL ASSOCIATION,, as documentation agents (in such capacity, the "Documentation Agents").

WHEREAS, the Borrower entered into a Credit Agreement, dated as of March 12, 2004 (as amended, supplemented or otherwise modified from time to time, the "Existing Credit Agreement"), with JPMorgan Chase Bank, as administrative agent, and the several banks and other financial institutions or entities parties thereto as lenders;

WHEREAS, the parties hereto have agreed to amend and restate the Existing Credit Agreement as provided in this Agreement, which Agreement shall become effective upon the satisfaction of the conditions precedent set forth in Section 4.1 hereof; and

WHEREAS, it is the intent of the parties hereto, and the parties hereto agree, that (x) this Agreement shall not constitute a novation of the obligations and liabilities existing under the Existing Credit Agreement or evidence repayment of any of such obligations and liabilities and (y) this Agreement shall amend and restate in its entirety the Existing Credit Agreement;

NOW, THEREFORE, in consideration of the above premises, the parties hereto hereby agree that on the Closing Date (as defined below) the Existing Credit Agreement shall be amended and restated in its entirety as follows:

## SECTION 1. DEFINITIONS

1.1. Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"ABR": for any day, a rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1%. For purposes hereof "Prime Rate" shall mean the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City (the Prime Rate not being intended to be the lowest rate of interest charged by JPMorgan Chase Bank, N.A. in connection with extensions of credit to debtors). Any change in the ABR due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"ABR Loans": Revolving Loans the rate of interest applicable to which is based upon the ABR.

"Accounts Receivable Financing": the WR Receivables Corporation Purchase and Sale Agreement, dated as of July 28, 2000, and the WR Receivables Corporation Purchase Agreement, dated as of July 28, 2000, and any refinancing, refunding, renewal, extension or replacement thereof on substantially similar or otherwise customary terms and conditions, in each case as amended from time to time; provided that (i) any Lien securing the Accounts Receivable Financing does not extend to any additional type of property after the Closing Date, (ii) the amount of capacity available under the

Accounts Receivable Financing does not exceed \$150,000,000 and (iii) the non-recourse nature of the Accounts Receivable Financing is maintained.

“Addendum”: an instrument, substantially in the form of Exhibit D, by which a Lender becomes a party to this Agreement as of the Closing Date.

“Additional Extensions of Credit”: as defined in Section 9.1.

“Administrative Agent”: JPMorgan Chase Bank, N.A., together with its affiliates, as the arranger of the Revolving Commitments and as the administrative agent for the Lenders under this Agreement and the other Loan Documents, together with any of its successors.

“Affiliate”: as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) for purposes of Section 6.5 only, vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Agents”: the collective reference to the Administrative Agent, the Syndication Agent and the Documentation Agents.

“Aggregate Exposure”: with respect to any Lender at any time, an amount equal to the amount of such Lender’s Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender’s Revolving Extensions of Credit then outstanding.

“Aggregate Exposure Percentage”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

“Agreement”: as defined in the preamble hereto.

“Applicable Margin”: The rate per annum set forth under the relevant column heading below based on the applicable Debt Rating:

<u>Level</u>	<u>Debt Rating</u>	<u>Commitment Fee</u>	<u>ABR Loans</u>	<u>Eurodollar Loans/ Letters of Credit</u>
<b>I</b>	<sup>3</sup> A-/A3	0.10%	0%	0.375%
<b>II</b>	BBB+/Baa1	0.125%	0%	0.475%
<b>III</b>	BBB/Baa2	0.15%	0%	0.575%
<b>IV</b>	BBB-/Baa3	0.175%	0%	0.75%
<b>V</b>	BB+/Ba1	0.20%	0%	1.00%
<b>VI</b>	£BB/Ba2	0.225%	.125%	1.125%

; provided that for each Excess Utilization Day, the Applicable Margin (other than the Applicable Margin related to the Commitment Fee) set forth above on such day shall be increased by 0.125%.

As used in this definition, “Debt Rating” means, (A) as of any date of determination prior to the Collateral Release Date, the rating as determined by either S&P or Moody’s (collectively, the “Debt Ratings”) of the higher of (x) KGE’s senior secured non-credit enhanced long-term Indebtedness and (y) Borrower’s senior unsecured non-credit enhanced long-term Indebtedness and (B) as of any date of determination on or after the Collateral Release Date, the rating as determined by either S&P or Moody’s of Borrower’s senior unsecured non-credit enhanced long-term Indebtedness; provided that if a Debt Rating is issued by each of S&P and Moody’s, then the higher of such Debt Ratings shall apply, unless there is a split in Debt Ratings of more than one level, in which case the level that is one level lower than the higher Debt Rating shall apply. If the ratings established or deemed to have been established by Moody’s and S&P for the Debt Ratings shall be changed (other than as a result of a change in the rating system of Moody’s or S&P), such change shall be effective as of the date on which it is first announced by the applicable rating agency. Each change in a Debt Rating shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change. If the rating system of Moody’s or S&P shall change, or if either such rating agency shall cease to be in the business of rating corporate debt obligations, the Borrower and the Lenders shall negotiate in good faith to amend this definition to reflect such changed rating system or the unavailability of ratings from such rating agency and, pending the effectiveness of any such amendment, the Debt Rating shall be determined by reference to the rating most recently in effect prior to such change or cessation.

“Approved Fund”: as defined in Section 9.6(b).

“Application”: an application, in such form as the applicable Issuing Lender may specify from time to time, requesting such Issuing Lender to open a Letter of Credit.

“Assignee”: as defined in Section 9.6(b).

“Assignment and Assumption”: an Assignment and Assumption, substantially in the form of Exhibit B.

“Available Revolving Commitment”: as to any Lender at any time, an amount equal to the excess, if any, of (a) such Lender’s Revolving Commitment then in effect over (b) such Lender’s Revolving Extensions of Credit then outstanding.

“Benefitted Lender”: as defined in Section 9.7(a).

“Board”: the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Borrower”: as defined in the preamble hereto.

“Borrower Indenture”: the Mortgage and Deed of Trust, dated July 1, 1939, between the Borrower and BNY Midwest Trust Company (as successor to Harris Trust and Savings Bank), as Trustee, as amended or supplemented from time to time.

“Borrowing Date”: any Business Day specified by the Borrower as a date on which the Borrower requests the relevant Lenders to make Revolving Loans hereunder.

“Business”: as defined in Section 3.17(b).

“Business Day”: a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close, provided, that with respect to notices

and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, such day is also a day for trading by and between banks in Dollar deposits in the interbank eurodollar market.

“Capital Lease Obligations”: as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“Capital Stock”: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

“Change in Control”: shall be deemed to have occurred if (a) any person or group (within the meaning of Rule 13d-5, as in effect on the date hereof, promulgated by the SEC under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), shall, after the date hereof, acquire beneficial ownership (within the meaning of Rule 13d-3, as in effect on the date hereof, promulgated by the SEC under the Exchange Act), of shares representing more than 20% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Borrower or (b) a majority of the seats (other than vacant seats) on the board of directors of the Borrower shall at any time be occupied by Persons who are not Continuing Directors.

“Closing Date”: the date on which the conditions precedent set forth in Section 4.1 shall have been satisfied, which date is May [6], 2005.

“Code”: the Internal Revenue Code of 1986, as amended from time to time.

“Collateral”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

“Collateral Agent”: JPMorgan Chase Bank, N.A., in its role as collateral agent under the KGE Collateral Agreement.

“Collateral Release Date”: the date on which the Collateral is released pursuant to Section 22(a) of the KGE Collateral Agreement.

“Commodity Price Protection Agreement”: in respect of a Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in commodity prices.

“Commonly Controlled Entity”: an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group that includes the Borrower and that is treated as a single employer under Section 414 of the Code.

“Conduit Lender”: any special purpose corporation organized and administered by any Lender for the purpose of making Revolving Loans otherwise required to be made by such Lender and designated by such Lender in a written instrument, subject to the consent of the Administrative Agent and the Borrower (which consent shall not be unreasonably withheld); provided, that the designation by any Lender of a Conduit Lender shall not relieve the designating Lender of any of its obligations to fund a

Revolving Loan under this Agreement if, for any reason, its Conduit Lender fails to fund any such Revolving Loan, and the designating Lender (and not the Conduit Lender) shall have the sole right and responsibility to deliver all consents and waivers required or requested under this Agreement with respect to its Conduit Lender, and provided, further, that no Conduit Lender shall (a) be entitled to receive any greater amount pursuant to Section 2.13, 2.14, 2.15 or 9.5 than the designating Lender would have been entitled to receive in respect of the extensions of credit made by such Conduit Lender or (b) be deemed to have any Revolving Commitment.

“Confidential Information Memorandum”: the Confidential Information Memorandum dated April 2005, and furnished to certain Lenders.

“Consolidated Debt to Capital Ratio” shall mean, at any date, the ratio of (i) Consolidated Total Debt to (ii) the sum of Consolidated Total Debt, Consolidated Net Worth and Preferred Stock of the Borrower; provided, that for purposes of this definition Consolidated Net Worth shall not be reduced or increased as a result of the Dispositions permitted by 6.4(e).

“Consolidated Net Worth” shall mean, at any date, on a consolidated basis for the Borrower and its Subsidiaries, the sum of common stock taken at par value, paid in capital and retained earnings at such date, all determined in accordance with GAAP consistently applied.

“Consolidated Total Debt”: at any date, the aggregate principal amount of all Indebtedness of the Borrower and its Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP consistently applied; provided that the Indebtedness, if any, under the lease associated with Unit 2 of the LaCygne Generating Station shall constitute Indebtedness for purposes of calculating Consolidated Total Debt only to the extent that the aggregate amount of such Indebtedness exceeds \$238,000,000.

“Continuing Directors”: members of the board of directors of the Borrower who (i) were directors on the date hereof, (ii) had been directors for at least two years, or (iii) were recommended or elected with the affirmative vote of a majority of the then Continuing Directors at a meeting at which at least 60 percent of the then Continuing Directors were present.

“Contractual Obligation”: as to any Person, any obligation of such Person under any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Default”: any of the events specified in Section 7, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Disposition”: with respect to any property or asset, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof. The terms “Dispose” and “Disposed of” shall have correlative meanings.

“Documentation Agents”: as defined in the preamble hereto.

“Dollars” and “\$”: dollars in lawful currency of the United States.

“Environmental Laws”: any and all foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or

standards of conduct concerning the effect of the environment on human health or the protection of the environment, as now or may at any time hereafter be in effect.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Eurocurrency Reserve Requirements”: for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

“Eurodollar Base Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period appearing on Page 3750 of the Telerate screen as of 11:00 A.M., London time, two Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on Page 3750 of the Telerate screen (or otherwise on such screen), the “Eurodollar Base Rate” shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Administrative Agent or, in the absence of such availability, by reference to the rate at which the Administrative Agent is offered Dollar deposits at or about 11:00 A.M., New York City time, two Business Days prior to the beginning of such Interest Period in the interbank eurodollar market where its eurodollar and foreign currency and exchange operations are then being conducted for delivery on the first day of such Interest Period for the number of days comprised therein.

“Eurodollar Loans”: Revolving Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

“Eurodollar Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined for such day in accordance with the following formula (rounded upward to the nearest 1/100th of 1%):

$$\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirements}}$$

“Eurodollar Tranche”: the collective reference to Eurodollar Loans the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Revolving Loans shall originally have been made on the same day).

“Event of Default”: any of the events specified in Section 7, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Excess Utilization Day”: each day on which the Total Revolving Extensions of Credit on such day exceed 50% of the Total Revolving Commitments on such day.

“Exchange Act Documents”: (a) the annual report of the Borrower on Form 10-K for the fiscal year ended December 31, 2004 and all amendments thereto prior to the Closing Date, (b) the annual report of KGE on Form 10-K for the fiscal year ended December 31, 2004 and all amendments thereto

prior to the Closing Date and (c) the reports of the Borrower on Form 8-K dated March 17, 2005 and April 15, 2005.

“Existing Credit Agreement”: as defined in the preamble hereto.

“Federal Funds Effective Rate”: for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by JPMorgan Chase Bank, N.A. from three federal funds brokers of recognized standing selected by it.

“Fee Payment Date”: (a) the third Business Day following the last day of each March, June, September and December and (b) the last day of the Revolving Commitment Period.

“Financial Officer” of any corporation shall mean the chief financial officer, principal accounting officer or treasurer of such corporation.

“Funding Office”: the office of the Administrative Agent specified in Section 9.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“GAAP”: generally accepted accounting principles in the United States as in effect from time to time, except that for purposes of Section 6.1, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 3.1. In the event that any “Accounting Change” (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrower’s financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower, the Administrative Agent and the Required Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. “Accounting Changes” refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC. Notwithstanding anything in the foregoing paragraph, if any Accounting Change is in effect on the date hereof but has not been reflected in the preparation of the most recent financial statements, GAAP shall be determined in accordance with such Accounting Change.

“Governmental Authority”: any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body (including, without limitation, the KCC), court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Group Members”: the collective reference to the Borrower and its Subsidiaries.

“Guarantee Obligation”: as to any Person (the “guaranteeing person”), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce

the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the “primary obligations”) of any other third Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

“Increased Revolving Commitment Activation Notice”: a notice substantially in the form of Exhibit E-2.

“Increased Revolving Commitment Closing Date”: any Business Day designated as such in an Increased Revolving Commitment Activation Notice.

“Indebtedness”: of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person; provided that if the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property, the amount of such Indebtedness shall not exceed the fair market value of such property, (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of bankers acceptances, letters of credit (other than trade letters of credit and letters of credit with respect to which the obligations of such Person have been cash collateralized), surety bonds or similar arrangements issued or entered into to support Indebtedness, (g) all net payment obligations of such Person in respect of Swap Agreements (provided that such payment obligations shall be disregarded in determining Indebtedness for purposes of calculating the financial covenants contained in Section 6.1), (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, and (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, provided that the amount of such Indebtedness shall not exceed the fair market value of such property. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the

terms of such Indebtedness expressly provide that such Person is not liable therefor. Indebtedness shall not include any obligations under the Accounts Receivable Financing.

“Indentures”: the collective reference to the Borrower Indenture and the KGE Indenture.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insolvent”: pertaining to a condition of Insolvency.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Interest Payment Date”: (a) as to any ABR Loan, the last day of each March, June, September and December to occur while such Revolving Loan is outstanding and the final maturity date of such Revolving Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Revolving Loan, the date of any repayment or prepayment made in respect thereof.

“Interest Period”: as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not later than 11:00 A.M., New York City time, on the date that is three Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period that would extend beyond the Revolving Termination Date;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a payment or prepayment of any Eurodollar Loan during an Interest Period for such Revolving Loan.

“Issuing Lenders”: each of Bank of America, N.A., US Bank National Association, JPMorgan Chase Bank, N.A., or any Affiliate thereof, each in its capacity as issuer of any Letter of Credit, and any other Lender selected by the Borrower to be an Issuing Lender with the consent of the Administrative Agent and such Lender, in such capacity; provided that the number of Issuing Lenders shall not at any time exceed three.

“KCC”: the State Corporation Commission of the State of Kansas.

“KGE”: Kansas Gas and Electric Company, a Kansas corporation and a Subsidiary.

“KGE Collateral Agreement”: the Collateral and Guarantee Agreement, dated as of the Closing Date, made by and between KGE with and in favor of JPMorgan Chase Bank, N.A., as collateral agent, as amended, restated or otherwise modified from time to time.

“KGE Indenture”: the Mortgage and Deed of Trust, dated April 1, 1940, between KGE and BNY Midwest Trust Company, as amended or supplemented from time to time.

“L/C Commitment”: \$100,000,000.

“L/C Obligations”: at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit that have not then been reimbursed pursuant to Section 2.3(i).

“L/C Participants”: the collective reference to all the Lenders other than the Issuing Lenders.

“Lenders”: as defined in the preamble hereto; provided, that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include any Conduit Lender and any New Lender.

“Letters of Credit”: as defined in Section 2.3(a).

“Lien”: any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any Capital Lease Obligation having substantially the same economic effect as any of the foregoing).

“Loan Documents”: this Agreement and the Security Documents.

“Loan Parties”: each Group Member that is a party to a Loan Document.

“Material Adverse Effect”: any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on (a) the business, property, operations, condition (financial or otherwise) or prospects of the Borrower and its Significant Subsidiaries taken as a whole or (b) the validity or enforceability of this Agreement or any of the other Loan Documents or the rights or remedies of the Administrative Agent and the Lenders hereunder or thereunder.

“Materials of Environmental Concern”: any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes,

defined or regulated as such in or under any Environmental Law, including asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

“Moody’s”: Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan”: a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“New Lender”: as defined in Section 2.1(c).

“New Lender Supplement”: as defined in Section 2.1(c).

“Non-Excluded Taxes”: as defined in Section 2.14(a).

“Non-U.S. Lender”: as defined in Section 2.14(d).

“Obligations”: the unpaid principal of and interest on (including interest accruing after the maturity of the Revolving Loans and Reimbursement Obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Revolving Loans and all other obligations and liabilities of the Borrower to the Administrative Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the Administrative Agent or to any Lender that are required to be paid by the Borrower pursuant hereto) or otherwise.

“Other Taxes”: any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant”: as defined in Section 9.6(c).

“PBGC”: the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

“Person”: an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Plan”: at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Pledged Bonds”: as defined in the KGE Collateral Agreement.

“Preferred Stock”: any Capital Stock of a Person, however designated, which entitles the holder thereof to a preference with respect to the payment of dividends, or as to the distribution of assets upon a voluntary or involuntary liquidation or dissolution of such Person, over shares of any other class of Capital Stock issued by such Person.

“Properties”: as defined in Section 3.17(a).

“Register”: as defined in Section 9.6(b).

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Reimbursement Obligation”: the obligation of the Borrower to reimburse the applicable Issuing Lender pursuant to Section 2.3(i) for amounts drawn under Letters of Credit.

“Reorganization”: with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

“Reportable Event”: any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg. § 4043.

“Required Lenders”: at any time, the holders of more than 50% of the Total Revolving Commitments then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

“Requirement of Law”: as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer”: the chief executive officer, president, chief financial officer or treasurer of the Borrower, but in any event, with respect to financial matters, the chief financial officer of the Borrower.

“Restricted Payment”: the declaration or payment of any dividend (other than dividends payable solely in common stock of the Person making such dividend) on, or the making of any payment on account of, or the setting apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Subsidiary, whether now or hereafter outstanding, or the making of any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Subsidiary (other than any distribution of common stock of the Person making such distribution).

“Revolving Commitment”: as to any Lender, the obligation of such Lender to make Revolving Loans and to participate in Letters of Credit in an aggregate principal amount not to exceed the amount set forth under the heading “Revolving Commitment” opposite such Lender’s name on Schedule 1.1A or in the Assignment and Assumption or New Lender Supplement pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The original amount of the Total Revolving Commitments is \$350,000,000.

“Revolving Commitment Period”: the period from and including the Closing Date to the Revolving Termination Date.

“Revolving Extensions of Credit”: as to any Lender at any time, an amount equal to (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding and (b) such Lender’s Revolving Percentage of the L/C Obligations then outstanding.

“Revolving Loans”: as defined in Section 2.1(a).

“Revolving Percentage”: as to any Lender at any time, the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments or, at any time after the Revolving Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender’s Revolving Loans and L/C Obligations then outstanding constitutes of the aggregate principal amount of the Revolving Loans then outstanding, provided, that, in the event that the Revolving Loans are paid in full prior to the reduction to zero of the Total Revolving Extensions of Credit, the Revolving Percentages shall be determined in a manner designed to ensure that the other outstanding Revolving Extensions of Credit shall be held by the Lenders on a comparable basis.

“Revolving Termination Date”: the earlier to occur of (i) the date on which the Revolving Commitments terminate in accordance with the terms of this Agreement and (ii) May [6], 2010.

“S&P”: Standard & Poor’s Ratings Services, a division of the McGraw Hill Companies, Inc. or any successor thereto.

“SEC”: the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

“Security Documents”: the collective reference to the KGE Collateral Agreement and all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the obligations and liabilities of any Loan Party under any Loan Document.

“Significant Subsidiary”: at any time, any Subsidiary which at such time shall be a significant subsidiary of the Borrower within the meaning of Regulation S-X of the SEC as in effect on the date hereof, and, in any event, KGE.

“Single Employer Plan”: any Plan that is covered by Title IV of ERISA, but that is not a Multiemployer Plan.

“Solvent”: when used with respect to any Person, means that, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“Subsidiary”: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Supermajority Lenders”: at any time, the holders of at least 66-2/3% of the Total Revolving Commitments then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

“Swap Agreement”: any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no (a) phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its Subsidiaries or (b) Commodity Price Protection Agreement shall be a “Swap Agreement”.

“Total Revolving Commitments”: at any time, the aggregate amount of the Revolving Commitments then in effect.

“Total Revolving Extensions of Credit”: at any time, the aggregate amount of the Revolving Extensions of Credit of the Lenders outstanding at such time.

“Transferee”: any Assignee or Participant.

“Transactions”: the collective reference to the making of the financing contemplated by this Agreement and the granting of the security interest and the making of the guarantee pursuant to the KGE Collateral Agreement.

“Type”: as to any Revolving Loan, its nature as an ABR Loan or a Eurodollar Loan.

“United States”: the United States of America.

“Westar Industries”: Westar Industries, Inc., a Delaware corporation.

“Wholly Owned Subsidiary”: as to any Person, any other Person all of the Capital Stock of which (other than directors’ qualifying shares required by law) is owned by such Person directly and/or through other Wholly Owned Subsidiaries.

1.2. Other Definitional Provisions. (a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not

defined, shall have the respective meanings given to them under GAAP, (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (iii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings), (iv) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, and (v) references to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time.

(c) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

## SECTION 2. AMOUNT AND TERMS OF REVOLVING COMMITMENTS

2. Revolving Commitments. (a) Subject to the terms and conditions hereof, each Lender severally agrees to make revolving credit loans (“Revolving Loans”) to the Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding which, when added to such Lender’s Revolving Percentage of the L/C Obligations then outstanding, does not exceed the amount of such Lender’s Revolving Commitment. During the Revolving Commitment Period the Borrower may use the Revolving Commitments by borrowing, prepaying the Revolving Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to time be Eurodollar Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.7.

(b) At any time prior to the fourth anniversary of the Closing Date, the Borrower and any one or more Lenders (including any New Lender) may agree that such Lender or Lenders shall make or increase the amount of their Revolving Commitments by executing and delivering to the Administrative Agent an Increased Revolving Commitment Activation Notice specifying the amount of such increase or new Revolving Commitment and the applicable Increased Revolving Commitment Closing Date (which may be no later than the fourth anniversary of the Closing Date). Notwithstanding the foregoing, (i) at no time may the Total Revolving Commitments exceed \$500,000,000, (ii) Revolving Commitments may not be made or increased after the occurrence and during the continuation of a Default or Event of Default, including after giving effect to the incremental Revolving Commitments in question, (iii) any increase effected pursuant to this Section 2.1(b) shall be in a minimum amount of at least \$25,000,000, (iv) no more than two Increased Revolving Commitment Closing Dates may be selected by the Borrower during the term of this Agreement and (v) prior to the Collateral Release Date, no increase of Revolving Commitments pursuant to Section 2.1(b) shall be effective until Section 3(c) of the KGE Collateral Agreement is satisfied. No Lender shall have any obligation to participate in any increase described in this Section 2.1(b) unless it agrees to do so in its sole discretion.

(c) Any additional bank, financial institution or other entity (each, a “New Lender”) that, in the case of an institution that is not an Approved Fund or an affiliate of a then-existing Lender, with the consent of the Administrative Agent and each Issuing Lender (which consent, in each case, shall not be unreasonably withheld), elects to become a “Lender” under this Agreement in connection with an

increase described in Section 2.1(b) shall execute a New Lender Supplement (each, a “New Lender Supplement”), substantially in the form of Exhibit E-1, whereupon such bank, financial institution or other entity shall become a Lender for all purposes and to the same extent as if originally a party hereto and shall be bound by and entitled to the benefits of this Agreement.

(d) On each Increased Revolving Commitment Closing Date on which there are Revolving Loans outstanding, each Lender (including any New Lender) that has made or increased its Revolving Commitment shall make a Revolving Loan, the proceeds of which will be used to prepay the Revolving Loans of other Lenders, so that, after giving effect thereto, the resulting Revolving Loans outstanding are allocated among the Lenders in accordance with Section 2.12(a) based on the respective Revolving Percentages of the Lenders after giving effect to the increase of Revolving Commitments pursuant to Section 2.1(b) on such Increased Revolving Commitment Closing Date. Any remaining proceeds shall be used in accordance with Section 3.16.

(e) The Borrower shall repay all outstanding Revolving Loans on the Revolving Termination Date.

2.2. Procedure for Revolving Loan Borrowing. The Borrower may borrow under the Revolving Commitments during the Revolving Commitment Period on any Business Day, provided that the Borrower shall give the Administrative Agent irrevocable notice (which notice must be received by the Administrative Agent prior to 11:00 A.M., New York City time, (a) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) on the requested Borrowing Date, in the case of ABR Loans) (provided that any such notice of a borrowing of ABR Loans to finance payments required by Section 2.3(i) may be given not later than 11:00 A.M., New York City time, on the date of the proposed borrowing), specifying (i) the Type of Revolving Loans to be borrowed, (ii) the requested Borrowing Date and (iii) the amount of each such Type of Revolving Loan and, in the case of Eurodollar Loans, the respective lengths of the initial Interest Period therefor. Any Revolving Loans made on the Closing Date shall initially be ABR Loans. Each borrowing under the Revolving Commitments shall be in an amount equal to \$1,000,000 or a whole multiple thereof (or, if the then aggregate Available Revolving Commitments are less than \$1,000,000, such lesser amount). Upon receipt of any such notice from the Borrower, the Administrative Agent shall promptly notify each Lender thereof. Each Lender will make the amount of its pro rata share of each borrowing available to the Administrative Agent for the account of the Borrower at the Funding Office prior to 12:00 Noon, New York City time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting the account of the Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent.

2.3. Letters of Credit. (a) Subject to the terms and conditions hereof, each Issuing Lender, in reliance on the agreements of the other Lenders set forth in Section 2.3(f), agrees to issue letters of credit (“Letters of Credit”) for the account of the Borrower on any Business Day during the Revolving Commitment Period in such form as may be approved from time to time by such Issuing Lender; provided that no Issuing Lender shall have any obligation to issue any Letter of Credit if, after giving effect to such issuance, (i) the L/C Obligations would exceed the L/C Commitment or (ii) the aggregate amount of the Available Revolving Commitments would be less than zero. Each Letter of Credit shall (i) be denominated in Dollars and (ii) expire no later than the earlier of (x) the first anniversary of its date of issuance and (y) the date that is five Business Days prior to the Revolving Termination Date, provided that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (y) above). Letters of Credit issued under the Existing Credit Agreement and outstanding on the Closing Date shall continue to constitute Letters of Credit hereunder.

(b) No Issuing Lender shall at any time be obligated to issue any Letter of Credit if such issuance would conflict with, or cause such Issuing Lender or any L/C Participant to exceed any limits imposed by, any applicable Requirement of Law.

(c) The Borrower may from time to time request that an Issuing Lender issue a Letter of Credit by delivering to such Issuing Lender at its address for notices specified herein an Application therefor, completed to the satisfaction of such Issuing Lender, and such other certificates, documents and other papers and information as such Issuing Lender may request. Upon receipt of any Application, such Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall such Issuing Lender be required to issue any Letter of Credit earlier than three Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by such Issuing Lender and the Borrower. Such Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower promptly following the issuance thereof. Such Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (including the amount thereof).

(d) The Borrower will pay a fee on all outstanding Letters of Credit at a per annum rate equal to the Applicable Margin then in effect with respect to Eurodollar Loans, shared ratably among the Lenders and payable quarterly in arrears on each Fee Payment Date after the issuance date. In addition, the Borrower shall pay to each applicable Issuing Lender for its own account a fronting fee (not to exceed 0.125% per annum) for each Letter of Credit requested by the Borrower in such amount and at such times as may be set forth in a separate letter agreement between the Borrower and such Issuing Lender.

(e) In addition to the foregoing fees, the Borrower shall pay or reimburse each Issuing Lender for such normal and customary costs and expenses as are incurred or charged by such Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

(f) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce such Issuing Lender to issue Letters of Credit, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from such Issuing Lender, on the terms and conditions set forth below, for such L/C Participant's own account and risk, an undivided interest equal to such L/C Participant's Revolving Percentage in such Issuing Lender's obligations and rights under and in respect of each Letter of Credit issued by such Issuing Lender and the amount of each draft paid by such Issuing Lender thereunder. Each L/C Participant agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit for which such Issuing Lender is not reimbursed in full by the Borrower in accordance with the terms of this Agreement, such L/C Participant shall pay to such Issuing Lender upon demand at such Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Percentage of the amount of such draft, or any part thereof, that is not so reimbursed, and such amount equal to such L/C Participant's Revolving Percentage of the amount of such draft shall be deemed to be a Revolving Loan for all purposes hereunder. Each L/C Participant's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Participant may have against such Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Section 4, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the

Borrower, any other Loan Party or any other L/C Participant or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(g) If any amount required to be paid by any L/C Participant to any Issuing Lender pursuant to Section 2.3(f) in respect of any unreimbursed portion of any payment made by such Issuing Lender under any Letter of Credit is paid to such Issuing Lender within three Business Days after the date such payment is due, such L/C Participant shall pay to such Issuing Lender on demand an amount equal to the product of (i) such amount, ~~times~~ (ii) the daily average Federal Funds Effective Rate during the period from and including the date such payment is required to the date on which such payment is immediately available to such Issuing Lender, ~~times~~ (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any L/C Participant pursuant to Section 2.3(f) is not made available to the applicable Issuing Lender by such L/C Participant within three Business Days after the date such payment is due, such Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to ABR Loans. A certificate of an Issuing Lender submitted to any L/C Participant with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error.

(h) Whenever, at any time after any Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its pro rata share of such payment in accordance with Section 2.3(f), such Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise, including proceeds of collateral applied thereto by such Issuing Lender), or any payment of interest on account thereof, such Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, however, that in the event that any such payment received by such Issuing Lender shall be required to be returned by the Issuing Lender, such L/C Participant shall return to such Issuing Lender the portion thereof previously distributed by such Issuing Lender to it.

(i) If any draft is paid under any Letter of Credit, the Borrower shall reimburse the applicable Issuing Lender for the amount of (a) the draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by such Issuing Lender in connection with such payment, not later than 12:00 Noon, New York City time, on the Business Day immediately following the day that the Borrower receives notice of such draft, either directly or through the incurrence of a Revolving Loan pursuant to Section 2.3(f). Each such payment shall be made to such Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds. Interest shall be payable on any such amounts from the date on which the relevant draft is paid until payment in full at the rate set forth in Section 2.9(b).

(j) The Borrower's obligations under this Section 2.3 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against any Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with each Issuing Lender that such Issuing Lender shall not be responsible for, and the Borrower's Reimbursement Obligations under Section 2.3(i) shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross

negligence or willful misconduct of such Issuing Lender. The Borrower agrees that any action taken or omitted by an Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct, shall be binding on the Borrower and shall not result in any liability of such Issuing Lender to the Borrower.

(k) If any draft shall be presented for payment under any Letter of Credit, the applicable Issuing Lender shall promptly notify the Borrower of the date and amount thereof. The responsibility of each Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

(l) To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 2.3, the provisions of this Section 2.3 shall apply.

2.4. Commitment Fees, etc. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee for the period from and including the date hereof to the last day of the Revolving Commitment Period, computed at the Applicable Margin on the average daily amount of the Available Revolving Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on each Fee Payment Date, commencing on the first such date to occur after the date hereof.

(b) The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates previously agreed to in writing by the Borrower and the Administrative Agent.

2.5. Termination or Reduction of Revolving Commitments. The Borrower shall have the right, upon not less than three Business Days' notice to the Administrative Agent, to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Revolving Commitments; provided that no such termination or reduction of Revolving Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed the Total Revolving Commitments. Any such reduction shall be in an amount equal to any whole multiple of \$1,000,000. Notwithstanding any such reduction, the amount of the Revolving Commitments may be increased pursuant to Section 2.1(b).

2.6. Optional Prepayments. The Borrower may at any time and from time to time prepay the Revolving Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 11:00 A.M., New York City time, three Business Days prior thereto in the case of Eurodollar Loans, and no later than 11:00 A.M., New York City time, on the Business Day thereof in the case of ABR Loans, which notice shall specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or ABR Loans; provided, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.15. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to such date on the amount prepaid. Partial prepayments of Revolving Loans shall be in an aggregate principal amount of \$1,000,000 or a whole multiple thereof.

2.7. Conversion and Continuation Options. (a) The Borrower may elect from time to time to convert Eurodollar Loans to ABR Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 11:00 A.M., New York City time, on the Business Day of the

proposed conversion, provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert ABR Loans to Eurodollar Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 11:00 A.M., New York City time, on the third Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor), provided that no ABR Loan may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing and the Administrative Agent or the Required Lenders have determined in its or their sole discretion not to permit such conversions. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Revolving Loans, provided that no Eurodollar Loan may be continued as such when any Event of Default has occurred and is continuing and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion not to permit such continuations, and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Revolving Loans shall be automatically converted to ABR Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each relevant Lender thereof.

2.8. Limitations on Eurodollar Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof and (b) no more than 20 Eurodollar Tranches shall be outstanding at any one time.

2.9. Interest Rates and Payment Dates. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such day plus the Applicable Margin.

(b) Each ABR Loan shall bear interest at a rate per annum equal to the ABR plus the Applicable Margin.

(c) (i) If all or a portion of the principal amount of any Revolving Loan or Reimbursement Obligation shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2%, and (ii) if all or a portion of any interest payable on any Revolving Loan or Reimbursement Obligation or any commitment fee or other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to the rate then applicable to ABR Loans plus 2%, in each case, with respect to clauses (i) and (ii) above, from the date of such non-payment until such amount is paid in full (as well after as before judgment).

(d) Interest shall be payable in arrears on each Interest Payment Date, provided that interest accruing pursuant to paragraph (c) of this Section shall be payable from time to time on demand.

2.10. Computation of Interest and Fees. (a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that (i) with respect

to the Commitment Fee and (ii) with respect to ABR Loans the rate of interest on which is calculated on the basis of the Prime Rate, such Commitment Fee or such interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Revolving Loan resulting from a change in the ABR or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the relevant Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 2.9(a).

2.11. Inability to Determine Interest Rate. If prior to the first day of any Interest Period:

(a) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(b) the Administrative Agent shall have received notice from the Required Lenders that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Revolving Loans during such Interest Period,

the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans requested to be made on the first day of such Interest Period shall be made as ABR Loans, (y) any Revolving Loans that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as ABR Loans and (z) any outstanding Eurodollar Loans shall be converted, on the last day of the then-current Interest Period, to ABR Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans shall be made or continued as such, nor shall the Borrower have the right to convert Revolving Loans to Eurodollar Loans.

2.12. Pro Rata Treatment and Payments. (a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Revolving Commitments of the Lenders shall be made pro rata according to the respective Revolving Percentages of the Lenders.

(b) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Loans shall be made pro rata according to the respective outstanding principal amounts of the Revolving Loans then held by the Lenders.

(c) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 12:00 Noon, New York City time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the Funding Office, in Dollars and in immediately available

funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.

(d) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon at a rate equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three Business Days after such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to ABR Loans, on demand, from the Borrower.

(e) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the Lenders their respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

2.13. Requirements of Law. (a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any Application or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes covered by Section 2.14 and changes in the rate of tax on the overall net income of such Lender);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the

account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurodollar Rate; or

(iii) shall impose on such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount that such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or issuing or participating in Letters of Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender on an after-tax basis for such increased cost or reduced amount receivable. Upon any Lender becoming aware that it is entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such corporation on an after-tax basis for such reduction; provided that the Borrower shall not be required to compensate a Lender pursuant to this paragraph for any amounts incurred more than six months prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; and provided further that, if the circumstances giving rise to such claim have a retroactive effect, then such six-month period shall be extended to include the period of such retroactive effect.

(c) A certificate as to any additional amounts payable pursuant to this Section submitted in good faith by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The obligations of the Borrower pursuant to this Section shall survive the termination of this Agreement and the payment of the Revolving Loans and all other amounts payable hereunder.

2.14. Taxes. (a) All payments made by the Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on the Administrative Agent or any Lender as a result of a present or former connection between the Administrative Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") or Other Taxes are required to be withheld from any amounts payable to the Administrative Agent or any Lender

hereunder, the amounts so payable to the Administrative Agent or such Lender shall be increased to the extent necessary to yield to the Administrative Agent or such Lender (after payment of all Non-Excluded Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement, provided, however, that the Borrower shall not be required to increase any such amounts payable to any Lender with respect to any Non-Excluded Taxes (i) that are attributable to such Lender's failure to comply with the requirements of paragraph (d) or (e) of this Section or (ii) that are United States withholding taxes imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement, except to the extent that such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower with respect to such Non-Excluded Taxes pursuant to this paragraph.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Non-Excluded Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Administrative Agent and the Lenders for any incremental taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure, except to the extent such amounts are found by a final and nonappealable decision of a court of competent jurisdiction to have become payable as a result of the gross negligence or willful misconduct of the Administrative Agent or such Lender.

(d) Each Lender (or Transferee) that is not a "U.S. Person" as defined in Section 7701(a)(30) of the Code (a "Non-U.S. Lender") shall deliver to the Borrower and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a statement substantially in the form of Exhibit C and a Form W-8BEN, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation). In addition, each Non-U.S. Lender shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(e) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate,

provided that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender.

(f) The agreements in this Section shall survive the termination of this Agreement and the payment of the Revolving Loans and all other amounts payable hereunder.

2.15. Indemnity. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Revolving Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted in good faith to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Revolving Loans and all other amounts payable hereunder.

2.16. Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.13 or 2.14(a) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Revolving Loans affected by such event with the object of avoiding the consequences of such event; provided, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.13 or 2.14(a).

2.17. Replacement of Lenders. The Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 2.13 or 2.14(a) or (b) defaults in its obligation to make Revolving Loans hereunder, with a replacement financial institution; provided that (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default shall have occurred and be continuing at the time of such replacement, (iii) prior to any such replacement, such Lender shall have taken no action under Section 2.16 so as to eliminate the continued need for payment of amounts owing pursuant to Section 2.13 or 2.14(a), (iv) the replacement financial institution shall purchase, at par, all Revolving Loans and other amounts owing to such replaced Lender on or prior to the date of replacement, (v) the Borrower shall be liable to such replaced Lender under Section 2.15 if any Eurodollar Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (vi) the replacement financial institution, if not already a Lender, shall be reasonably satisfactory to the Administrative Agent, (vii) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 9.6 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein), (viii) until such time as such

replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.13 or 2.14(a), as the case may be, and (ix) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Revolving Loans and issue or participate in the Letters of Credit, the Borrower hereby represents and warrants to the Administrative Agent and each Lender that:

3.1. Financial Condition. The Borrower has heretofore furnished to the Lenders its consolidated balance sheets and statements of income and changes in financial position (or of cash flow, as the case may be) as of and for the fiscal year ended December 31, 2004, audited by and accompanied by the opinion of Deloitte & Touche LLP. Such financial statements present fairly the financial condition and results of operations of the Borrower and its consolidated Subsidiaries, as of such dates and for such periods. Such balance sheets and the notes thereto disclose all material liabilities, direct or contingent, of the Borrower and its consolidated Subsidiaries, as of the dates thereof. Such financial statements were prepared in accordance with GAAP applied on a consistent basis (except as disclosed in the notes thereto). During the period from December 31, 2004 to and including the date hereof, there has been no Disposition by the Borrower or any Significant Subsidiary of any material part of its business or property other than as disclosed in the Exchange Act Documents.

3.2. No Change. Other than as disclosed in the Exchange Act Documents, since December 31, 2004, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

3.3. Existence; Compliance with Law. Each of the Borrower and the Significant Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property and assets and to conduct the business in which it is currently engaged, except to the extent the failure to have such power or authority would not result in a Material Adverse Effect, (c) is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except where the failure so to qualify or be in good standing would not result in a Material Adverse Effect, and (d) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith would not result in a Material Adverse Effect.

3.4. Power; Authorization; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the Transactions, the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, other than (i) consents, authorizations, filings and notices that have been obtained or made and are in full force and effect and (ii) the filings referred to in Section 3.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against

each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.5. No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of the Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law or any Contractual Obligation of any Loan Party and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents). No Requirement of Law or Contractual Obligation applicable to the Borrower or any of its Subsidiaries could reasonably be expected to have a Material Adverse Effect.

3.6. Litigation. Except as set forth in the Exchange Act Documents, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against the Borrower or any Significant Subsidiary or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby, or (b) as to which there is a reasonable possibility of an adverse determination and which, if adversely determined, could, individually or in the aggregate, result in a Material Adverse Effect.

3.7. No Default. No Group Member is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

3.8. Ownership of Property; Liens. Each of the Borrower and any Significant Subsidiary has good title to, or valid leasehold interests in, all its material properties and assets, except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and that would not reasonably be expected to result in a Material Adverse Effect, and none of such property or assets is subject to any Lien except as permitted by Section 6.2.

3.9. Intellectual Property. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) each of the Borrower and the Significant Subsidiaries owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted; (b) no claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property, nor does the Borrower know of any valid basis for any such claim and (c) the use of Intellectual Property by each of the Borrower and the Significant Subsidiaries does not infringe on the rights of any Person in any material respect.

3.10. Taxes. Each of the Borrower and any Significant Subsidiary has filed or caused to be filed all material federal, state and other tax returns that are required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than, in each case, any the amount of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the Borrower or the relevant Significant Subsidiary); no material tax Lien has been filed, and, to the knowledge of the Borrower, no claim is being asserted, with respect to any such tax, fee or other charge.

3.11. Federal Regulations. No part of the proceeds of any Revolving Loans, and no other extensions of credit hereunder, will be used for “buying” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulations of the Board. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

3.12. Labor Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Group Member.

3.13. ERISA. Neither a Reportable Event nor an “accumulated funding deficiency” (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all material respects with the applicable provisions of ERISA and the Code. No termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits by a material amount. Neither the Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a material liability under ERISA, and neither the Borrower nor any Commonly Controlled Entity would become subject to any material liability under ERISA if the Borrower or any such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made. No such Multiemployer Plan is in Reorganization or Insolvent.

3.14. Investment Company Act; Other Regulations. No Loan Party is an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended.

3.15. Subsidiaries. As of the Closing Date, Schedule 3.15 sets forth the name and jurisdiction of incorporation of each Subsidiary with assets of \$25,000,000 or more and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party. KGE has no outstanding rights, warrants, options or convertible or exchangeable securities entitling the holders thereof, conditionally or unconditionally, to purchase, subscribe for or otherwise receive shares of capital stock of KGE.

3.16. Use of Proceeds. The proceeds of the Revolving Loans shall be used for general corporate purposes.

3.17. Environmental Matters. Except as disclosed in the Exchange Act Documents or as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) the facilities and properties owned, leased or operated by the Borrower and the Significant Subsidiaries (the “Properties”) do not contain, and have not previously contained, any

Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or constituted a violation of, or could give rise to liability under, any Environmental Law;

(b) neither the Borrower nor any Significant Subsidiary has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by the Borrower and the Significant Subsidiaries (the "Business"), nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened;

(c) Materials of Environmental Concern have not been transported or disposed of from the Properties in violation of, or in a manner or to a location that could give rise to liability under, any Environmental Law, nor have any Materials of Environmental Concern been generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that could give rise to liability under, any applicable Environmental Law;

(d) no judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened, under any Environmental Law to which the Borrower or any Significant Subsidiary is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business;

(e) there has been no release or threat of release of Materials of Environmental Concern at or from the Properties, or arising from or related to the operations of the Borrower or any Significant Subsidiary in connection with the Properties or otherwise in connection with the Business, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws;

(f) the Properties and all operations at the Properties are in compliance, and have in the last five years been in compliance, with all applicable Environmental Laws, and there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business; and

(g) neither the Borrower nor any Significant Subsidiary has assumed any liability of any other Person under Environmental Laws.

3.18. Accuracy of Information, etc. The statements contained in this Agreement, any other Loan Document, the Confidential Information Memorandum, the Exchange Act Documents or any other document, certificate or statement furnished or made available by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, taken as a whole, as of the date hereof (a) do not contain any untrue statement of a material fact or (b) omit to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements are or were made, in each case where such material misstatement or omission could adversely affect the rights or interests of the Lenders; provided that, with respect to projected and pro forma financial information contained in the materials referenced above, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the

period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There is no fact known to any Loan Party that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents, in the Confidential Information Memorandum, in the Exchange Act Documents or in any other documents, certificates and statements, taken as a whole, furnished to the Administrative Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

3.19. Security Documents. The KGE Collateral Agreement is effective to create in favor of the Collateral Agent thereunder, for the benefit of the Lenders, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Bonds described in the KGE Collateral Agreement, when certificates representing such Pledged Bonds are delivered to the Collateral Agent and the financing statements and other filings specified on Schedule 3.19(a) in appropriate form are filed in the offices specified on Schedule 3.19(a), the KGE Collateral Agreement shall constitute a perfected first-priority Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations (as defined in the KGE Collateral Agreement).

3.20. Solvency. Each Loan Party is, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith will be, Solvent.

#### SECTION 4. CONDITIONS PRECEDENT

4.1. Conditions to Initial Extension of Credit. The agreement of each Lender to make the initial extension of credit requested to be made by it is subject to the satisfaction, prior to or concurrently with the making of such extension of credit on the Closing Date, of the following conditions precedent:

(a) Credit Agreement; KGE Collateral Agreement. (i) The Administrative Agent shall have received this Agreement or, in the case of the Lenders other than JPMorgan Chase Bank, N.A., The Bank of New York, Citibank, N.A., Union Bank of California, N.A. and Wachovia Bank, National Association, an Addendum, executed and delivered by the Administrative Agent, the Borrower and each Person listed on Schedule 1.1A and (ii) the Collateral Agent shall have received the KGE Collateral Agreement, executed and delivered by the Collateral Agent, the Borrower and KGE.

In the event that any one or more Persons listed on Schedule 1.1A have not executed and delivered an Addendum on the date scheduled to be the Closing Date (each such Person being referred to herein as a “Non-Executing Person”), the condition referred to in clause (i) above shall nevertheless be deemed satisfied if on such date the Borrower and the Administrative Agent shall have designated one or more Persons (the “Designated Lenders”) to assume, in the aggregate, all of the Revolving Commitments that would have been held by the Non-Executing Persons (subject to each such Designated Lender’s consent and its execution and delivery of an Addendum). Schedule 1.1A shall automatically be deemed to be amended to reflect the respective Revolving Commitments of the Designated Lenders and the omission of the Non-Executing Persons as Lenders hereunder, and the Administrative Agent shall promptly supply the Lenders with a copy of Schedule 1.1A as so amended.

(b) Financial Statements. The Lenders shall have received audited consolidated financial statements of the Borrower for the 2002, 2003 and 2004 fiscal years, and such financial statements shall not, in the reasonable judgment of the Lenders, reflect any material adverse

change in the consolidated financial condition of the Borrower, as reflected in the financial statements or projections contained in the Confidential Information Memorandum.

(c) Approvals. All governmental and third party approvals, if any, necessary in connection with the Transactions and the continuing operations of the Borrower and its Subsidiaries shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the Transactions.

(d) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Closing Date.

(e) Closing Certificate. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date, substantially in the form of Exhibit A, with appropriate insertions and attachments.

(f) Legal Opinions. The Administrative Agent shall have received the following executed legal opinions:

- (i) the legal opinion of the Vice President, General Counsel and Corporate Secretary of the Borrower; and
- (ii) the legal opinion of Davis Polk & Wardwell.

Each such legal opinion shall cover such other matters incident to the transactions contemplated by this Agreement as the Administrative Agent may reasonably require.

(g) Pledged Bonds. The Collateral Agent under the KGE Collateral Agreement shall have received the certificates representing the Pledged Bonds.

(h) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Lenders, a perfected first-priority Lien on the Collateral described therein, shall be in proper form for filing, registration or recordation.

4.2. Conditions to Each Extension of Credit. The agreement of each Lender to make any extension of credit requested to be made by it on any date (including its initial extension of credit) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents (other than the representations and warranties contained in Sections 3.2 and 3.6, which representations and warranties need only be true and correct on and as of the Closing Date) shall be true and correct in all material respects on and as of such date as if made on and as of such date, except to the extent any such representation and warranty specifically relates to any earlier date, in which case such representation and warranty shall have been true and correct in all material respects on and as of such earlier date.

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extensions of credit requested to be made on such date.

Each borrowing (other than a Revolving Loan deemed to be made pursuant to Section 2.3(f)) by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 4.2 have been satisfied.

4.3. Conditions to Increased Revolving Commitment Closing Date. Prior to the Collateral Release Date, any increase of Revolving Commitments pursuant to Section 2.1(b) shall be subject to the satisfaction of the requirements contained in Section 3(c) of the KGE Collateral Agreement.

4.4. Consequences of Effectiveness.

(a) On the Closing Date, without further action by any of the parties thereto, the Existing Credit Agreement will be automatically amended and restated to read as this Agreement reads.

(b) On and after the Closing Date, the rights and obligations of the parties hereto shall be governed by the provisions hereof. The rights and obligations of the parties with respect to the period before the Closing Date shall continue to be governed by the provisions of the Existing Credit Agreement as in effect before the Closing Date.

## SECTION 5. AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, so long as the Revolving Commitments remain in effect, any Letter of Credit remains outstanding or any Revolving Loan or other amount is owing to any Lender or the Administrative Agent hereunder, it shall and shall cause each of its Significant Subsidiaries to:

5.1. Financial Statements, Reports, etc. In the case of the Borrower, furnish to the Administrative Agent (except, in the case of the financial statements referred to in paragraphs (a) and (b) below, to the extent such financial statements are contained in materials already delivered to the Administrative Agent pursuant to paragraph (d) below) with sufficient copies for each Lender:

(a) within 120 days after the end of each fiscal year, (i) its consolidated balance sheet and related statements of income and changes in financial position (or of cash flow, as appropriate), showing the financial condition of the Borrower and its consolidated Subsidiaries as of the close of such fiscal year and the results of its operations and the operations of such Subsidiaries during such year, all audited by Deloitte & Touche LLP or other independent public accountants of recognized national standing acceptable to the Administrative Agent and accompanied by an opinion of such accountants (which shall not be qualified in any material respect) to the effect that such financial statements fairly present the financial condition and results of operations of the Borrower on a consolidated basis in accordance with generally accepted accounting principles consistently applied, and (ii) a consolidated balance sheet and related statements of income and changes in financial position (or of cash flow, as the case may be) for KGE as of the end of such fiscal year, showing the consolidated financial condition of KGE and its consolidated Subsidiaries as of the close of such fiscal year and the results of its operations and the operations of such Subsidiaries during such year, all certified by a Financial

Officer of the Borrower as fairly presenting the consolidated financial condition and results of operations of KGE in accordance with generally accepted accounting principles consistently applied (except that so long as KGE shall be required to file with the SEC, or shall otherwise prepare, audited financial statements, any such financial statements of KGE shall be audited by Deloitte & Touche LLP or other independent public accountants of recognized national standing acceptable to the Administrative Agent and accompanied by an opinion of such accountants (which shall not be qualified in any material respect) to the effect that such financial statements fairly present the financial condition and results of operations of KGE on a consolidated basis in accordance with generally accepted accounting principles consistently applied);

(b) within 90 days after the end of each of the first three fiscal quarters of each fiscal year, (i) its consolidated balance sheet and related statements of income and changes in financial position, showing the financial condition of the Borrower and its consolidated Subsidiaries as of the close of such fiscal quarter and the results of its operations and the operations of such Subsidiaries during such fiscal quarter and the then elapsed portion of the fiscal year, all certified by one of its Financial Officers as fairly presenting the financial condition and results of operations of the Borrower and its consolidated Subsidiaries in accordance with generally accepted accounting principles consistently applied, subject to normal year-end audit adjustments and (ii) so long as KGE shall be required to file with the SEC, or shall otherwise prepare, such statements, the consolidated balance sheet and related statements of income and changes in financial condition of KGE and its consolidated Subsidiaries as of the close of such fiscal quarter and the results of their operations during such fiscal quarter and the then elapsed portion of the fiscal year, all certified by one of its Financial Officers as fairly presenting the financial condition and results of operations of KGE and its consolidated Subsidiaries in accordance with generally accepted accounting principles consistently applied, subject to normal year-end audit adjustments;

(c) concurrently with any delivery of financial statements under (a) or (b) above, a certificate of a Financial Officer of the Borrower who shall, if applicable, be the Financial Officer opining on or certifying such statements (i) certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (ii) setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the covenants contained in Section 6.1;

(d) promptly after the same become publicly available, copies of all reports on Forms 10-K, 10-Q or 8-K filed by it or by KGE with the SEC; and

(e) promptly from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower or any Significant Subsidiary or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

Any financial statement or report required to be furnished pursuant to Section 5.1(a), 5.1(b) or 5.1(d) shall be deemed to have been furnished on the date on which (A) the Borrower or KGE, as applicable, gives notice to the Administrative Agent (who shall then give notice to the Lenders) that it has filed a form, report or other document with the SEC that contains such financial statement or report required hereunder or (B) the Lenders receive notice that the Administrative Agent has posted such financial statement or report on the Intralinks website on the Internet at [www.intralinks.com](http://www.intralinks.com). Notwithstanding the foregoing, the Borrower shall deliver paper copies of any financial statement referred to in Section 5.1(a) or 5.1(b) to

the Administrative Agent if the Administrative Agent requests the Borrower to furnish such paper copies until written notice to cease delivering such paper copies is given by the Administrative Agent.

5.2. Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group Member.

5.3. Maintenance of Existence; Compliance. (a)(i) Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 6.3, and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (b) comply with all Contractual Obligations and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.4. Maintenance of Property; Insurance. (a) Keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted and (b) maintain with financially sound and reputable insurance companies insurance on all its property in at least such amounts and against at least such risks (and with such risk retention and self-insurance) as are usually insured against in the same general area by companies engaged in the same or a similar business.

5.5. Inspection of Property; Books and Records; Discussions. (a) Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and (b) permit representatives of any Lender to visit and inspect any of its properties and examine and make abstracts from any of its relevant books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Borrower or any Significant Subsidiary with officers and employees of the Borrower or any Significant Subsidiary and with their independent certified public accountants.

5.6. Notices. Promptly give notice to the Administrative Agent and each Lender of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default under any Contractual Obligation of any Group Member or (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding affecting any Group Member (i) in which the amount involved is \$15,000,000 or more and not covered by insurance, (ii) in which injunctive or similar relief is sought and which could reasonably be expected to have a Material Adverse Effect or (iii) which relates to any Loan Document;

(d) the following events, as soon as possible and in any event within 30 days after the Borrower knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of

any other action by the PBGC or the Borrower or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan; and

(e) any other development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 5.6 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the relevant Group Member proposes to take with respect thereto.

5.7. Environmental Laws. (a) Comply in all material respects with, and use commercially reasonable efforts to ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply in all material respects with and maintain, and use commercially reasonable efforts to ensure that all tenants and subtenants obtain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### SECTION 6. NEGATIVE COVENANTS

The Borrower hereby agrees that, so long as the Revolving Commitments remain in effect, any Letter of Credit remains outstanding or any Revolving Loan or other amount is owing to any Lender or the Administrative Agent hereunder, it shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:

6.1. Consolidated Debt to Capital Ratio. Permit the Consolidated Debt to Capital Ratio at any time to be greater than 0.65 to 1.00.

6.2. Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except:

(a) Liens for taxes not yet due or that are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of the Borrower or its Subsidiaries, as the case may be, in conformity with GAAP;

(b) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords', licensors', statutory or other like Liens (or deposits to secure the release thereof) arising in the ordinary course of business that are not overdue for a period of more than 45 days or that are being contested in good faith by appropriate proceedings;

(c) Liens arising out of pledges or deposits in connection with workers' compensation, unemployment insurance and other statutory obligations;

(d) (i) Liens or deposits to secure the performance of bids, letters of credit, contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business and (ii) Liens in favor of the provider of any surety or performance bond or similar arrangement on the underlying contract (and other associated documents and sums due or to become due under the underlying contract) with respect to which such bond was issued or such similar arrangement was made;

(e) easements, rights-of-way, restrictions and other similar encumbrances that, in the aggregate, do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(f) Liens in existence on the date hereof, securing Indebtedness and any refinancings, refundings, renewals or extensions of such Indebtedness, provided that no such Lien is spread to cover any additional property after the Closing Date (other than pursuant to the Indentures and other than repair, renewals, replacements, additions, accessions, improvements and betterments thereto) and that the amount of Indebtedness secured thereby is not increased, except as otherwise permitted by this Agreement;

(g) Liens not otherwise permitted by this Section 6.2 securing Indebtedness (including, without limitation, Capital Lease Obligations) of the Borrower or any Subsidiary to finance the acquisition, construction or improvement of property or assets, in an aggregate principal amount at any one time outstanding not to exceed 10% of Consolidated Net Worth; provided that (i) such Liens shall be created substantially simultaneously with the acquisition of such property or assets and (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and other than any repairs, renewals, replacements, additions, accessions, improvements and betterments thereto, any pledge of any equity interest in any entity formed to hold any such property or asset and any insurance related thereto, any reserve account established in connection with the incurrence of such Indebtedness and the proceeds of any of the foregoing;

(h) Liens created pursuant to the Security Documents;

(i) any interest or title of a lessor under any lease entered into by the Borrower or any Subsidiary in the ordinary course of its business and covering only the assets so leased;

(j) Liens on the assets of Westar Industries or its direct or indirect Subsidiaries;

(k) Liens not otherwise permitted by this Section 6.2 so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed the greater of (i) \$35,000,000 and (ii) 10% of Consolidated Net Worth;

(l) "Excepted Encumbrances", as such term is defined in each Indenture;

(m) Liens securing Indebtedness incurred (or secured by bonds issued) under the Indentures;

(n) any Lien incurred in connection with the Accounts Receivable Financing and other Liens on (including Liens arising out of the sale of) accounts receivable, contracts and/or other property, assets or rights that give rise to accounts receivable of the Borrower or any Subsidiary or similar rights of the Borrower or any Subsidiary to receive cash over a period of

time, any equity interest in any entity formed to hold such property, assets or rights, any reserve account established in connection with such transaction and the proceeds of any of the foregoing;

(o) Liens that do not interfere materially with the use of the property affected in the ordinary conduct of the Borrower's or its Subsidiaries' business and which individually or in the aggregate do not have a Material Adverse Effect;

(p) Liens on cash collateral or cash equivalents provided in lieu of repayment of pollution control bonds until the remarketing of such bonds;

(q) Liens existing on any property at the time of acquisition of such property and not created in anticipation of such acquisition or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary;

(r) Liens arising out of or in connection with court proceedings, provided that (i) the execution or other enforcement of such Liens is effectively stayed or has been appealed and secured, if necessary, by an appeal bond and (ii) the claims secured thereby are being actively contested in good faith by appropriate proceedings or the payment of which is covered in full (subject to customary deductible amounts) by insurance maintained with responsible insurance companies;

(s) bankers' liens and rights of setoff arising by operation of law and contractual rights of setoff;

(t) Liens on cash and cash equivalents securing obligations with respect to contracts for the purchase or sale of any energy-related commodity or interest rate or currency rate management contracts or other derivatives obligations;

(u) Liens incurred in the ordinary course of business for the purpose of securing or collateralizing energy purchases or sales as may be required from time to time by an independent system operator or similar system-governing body in any jurisdiction;

(v) Liens on or over gas, oil, coal, fissionable material, or other fuel or fuel products as security for any obligations incurred by such Person for the sole purpose of financing the acquisition or storage of such fuel or fuel products or, with respect to nuclear fuel, the processing, reprocessing, sorting, storage and disposal thereof; and

(w) Liens on property or assets of a Subsidiary securing obligations owing to the Borrower or any Subsidiary.

6.3. Fundamental Changes. Consummate any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of all or substantially all of its property or business, except that:

(a) any Subsidiary of the Borrower may be merged or consolidated with or into the Borrower or any other Subsidiary of the Borrower (provided that the Borrower or any such other Subsidiary shall be the continuing or surviving corporation);

(b) any Subsidiary of the Borrower may Dispose of any or all of its assets (i) to the Borrower or to any Wholly Owned Subsidiary of the Borrower (upon voluntary liquidation or otherwise) or (ii) pursuant to a Disposition permitted by Section 6.4;

(c) transactions not involving the Borrower or a Significant Subsidiary or any of their respective assets (other than the Capital Stock of the Subsidiary involved in such a transaction) may be consummated; and

(d) transactions involving Westar Industries and its Subsidiaries (subject to compliance with Section 6.4), but not involving the Borrower or any of its Subsidiaries other than Westar Industries and its Subsidiaries, may be consummated.

6.4. Disposition of Property. Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Capital Stock to any Person, except:

(a) the Disposition of obsolete, worn out, surplus, unnecessary or unused property in the ordinary course of business;

(b) the Disposition of inventory in the ordinary course of business;

(c) Dispositions permitted by clause (i) of Section 6.3(b);

(d) the sale or issuance of any Subsidiary's Capital Stock to the Borrower or to a Wholly Owned Subsidiary of the Borrower;

(e) the Disposition (i) of the Capital Stock of Westar Industries and (ii) by Westar Industries of its property;

(f) the Disposition of accounts receivable, including any Disposition of insured receivables to the relevant insurer, as contemplated by the terms of the instruments governing the Accounts Receivable Financing and of accounts receivable, contracts and/or other property, assets or rights that give rise to accounts receivable of the Borrower or any Subsidiary or similar rights of the Borrower or any Subsidiary to receive cash over a period of time, any equity interest in any entity formed to hold such property, assets or rights, any reserve account established in connection therewith and the proceeds of any of the foregoing to third parties on arm's length terms and conditions;

(g) the Disposition of property set forth on Schedule 6.4(g);

(h) the Disposition not otherwise permitted by this Section 6.4 (the "Applicable Disposition") of other property the fair market value of which, when aggregated with the fair market value of all Dispositions of property made since the Closing Date in reliance of this Section 6.4(h), does not exceed 25% of the sum of (i) total assets less goodwill of the Borrower and its consolidated Subsidiaries (calculated without giving effect to (A) Westar Industries and its Subsidiaries, (B) Westar Resources (Bermuda), Ltd. and its Subsidiaries and (C) the Borrower's interest in Guardian International, Inc.) as reflected on the financial statements of the Borrower delivered pursuant to Section 4.1(b) and (ii) any additions to the property, plant and equipment of the Borrower and its consolidated Subsidiaries made after the Closing Date but on or prior to the date of the Applicable Disposition; provided that the fair market value of any Disposition made pursuant to this Section 6.4(h) shall be determined as of the time such Disposition is made;

(i) Dispositions pursuant to Requirements of Law; and

(j) the Disposition of rail cars or other rolling stock, pollution control equipment or other environmental-related property or assets in connection with a sale-leaseback or other transaction that permits the Borrower or its Subsidiaries the continued right to use such property or assets for at least ten years.

6.5. Transactions with Affiliates. Enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than the Borrower) unless such transaction is (x) otherwise permitted under this Agreement and (y) upon terms no less favorable to the Borrower than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate.

6.6. Clauses Restricting Subsidiary Distributions. Enter into or suffer to exist or become effective any contractual restriction on the ability of any Significant Subsidiary of the Borrower to (a) make Restricted Payments in respect of any Capital Stock of such Significant Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any other Subsidiary of the Borrower, (b) make loans or advances to, or other investments in, the Borrower or any other Subsidiary of the Borrower or (c) transfer any of its assets to the Borrower or any other Subsidiary of the Borrower, except for such restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) the terms of the instruments governing the Accounts Receivable Financing, (iii) Requirements of Law, (iv) any restrictions existing on the Closing Date, (v) any restriction relating to Indebtedness of any Subsidiary and existing at the time it became a Subsidiary (so long as not created in anticipation of such Person becoming a Subsidiary), (vi) any restrictions that result from the refinancing of Indebtedness, provided that such restriction is no less favorable to the Lenders than those under the agreement evidencing the Indebtedness so refinanced and (vii) in the case of restrictions on asset transfers, (A) any restrictions relating to Indebtedness that limit the right of the debtor to dispose of any property securing such Indebtedness, (B) any restrictions encumbering property at the time such property was acquired by the Borrower or any Subsidiary, so long as such restriction relates solely to the property so acquired, (C) any restrictions resulting from customary provisions restricting subletting or assignment of leases or customary provisions in other agreements that restrict assignment of such agreements or rights thereunder or (D) any restrictions customarily contained in asset sale agreements limiting the transfer of such property pending the closing of such sale.

6.7. Lines of Business. Enter into any business, either directly or through any Subsidiary, except for those businesses in which the Borrower and its Subsidiaries are engaged on the date of this Agreement or that are reasonably related thereto, except for businesses that, in the aggregate, do not exceed the greater of 10% of the Borrower's assets or revenue, in each case, on a consolidated basis.

6.8. Ownership of KGE. (a) Permit any issued and outstanding Capital Stock of KGE to be owned directly or indirectly, beneficially or of record, by any person other than the Borrower, or (b) permit KGE to issue or have outstanding any rights, warrants, options or convertible or exchangeable securities entitling the holders thereof, conditionally or unconditionally, to purchase, subscribe for or otherwise receive shares of Capital Stock of KGE prior to the termination of the Revolving Commitments and the repayment of all Letters of Credit, Revolving Loans and other amounts owing to any Lender or the Administrative Agent hereunder.

## SECTION 7. EVENTS OF DEFAULT

If any of the following events shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of any Revolving Loan when due in accordance with the terms hereof; or the Borrower shall fail to pay any interest on any Revolving Loan or Reimbursement Obligation, or any other amount payable hereunder or under any other Loan Document, within five days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; or

(c) any Loan Party shall default in the observance or performance of any agreement contained in clause (i) or (ii) of Section 5.3(a) (with respect to the Borrower and KGE only), Section 5.6(a) or Section 6 of this Agreement; or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of 30 days after notice to the Borrower from the Administrative Agent or the Required Lenders; or

(e) the Borrower or any Significant Subsidiary shall (i) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Revolving Loans and any Reimbursement Obligations) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; provided, that a default, event or condition described in clause (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii) and (iii) of this paragraph (e) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate \$25,000,000; or

(f) (i) the Borrower or any Significant Subsidiary shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower or any Significant Subsidiary shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower or any Significant Subsidiary any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains

undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against the Borrower or any Significant Subsidiary any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the Borrower or any Significant Subsidiary shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or any Significant Subsidiary shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of the Borrower or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) the Borrower or any Commonly Controlled Entity shall, or in the reasonable opinion of the Required Lenders is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could, in the sole judgment of the Required Lenders, reasonably be expected to have a Material Adverse Effect; or

(h) one or more judgments or decrees shall be entered against the Borrower or any Significant Subsidiary involving in the aggregate a liability (not paid or to the extent not covered by insurance) of \$25,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof; or

(i) any of the Security Documents shall cease, for any reason, to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) the guarantee contained in Section 2 of the KGE Collateral Agreement shall cease, for any reason, to be in full force and effect or any Loan Party or any Affiliate of any Loan Party shall so assert; or

(k) a Change in Control shall occur;

then, and in any such event, (A) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) above with respect to the Borrower, automatically the Revolving Commitments shall immediately terminate and the Revolving Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the

Administrative Agent shall, by notice to the Borrower declare the Revolving Commitments to be terminated forthwith, whereupon the Revolving Commitments shall immediately terminate; and (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Revolving Loans (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents, including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be due and payable forthwith, whereupon the same shall immediately become due and payable. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other obligations of the Borrower hereunder and under the other Loan Documents. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other obligations of the Borrower hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

## SECTION 8. THE AGENTS

8.1. Appointment. Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent.

8.2. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys in-fact selected by it with reasonable care.

8.3. Exculpatory Provisions. None of the Agents nor any of its respective officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan

Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

8.4. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Revolving Loans.

8.5. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

8.6. Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that none of the Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Revolving Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports

and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

8.7. Indemnification. The Lenders agree to indemnify each Agent in its capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Revolving Commitments shall have terminated and the Revolving Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Revolving Loans) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, the Revolving Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Revolving Loans and all other amounts payable hereunder.

8.8. Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Revolving Loans made or renewed by it and with respect to any Letter of Credit issued or participated in by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

8.9. Successor Administrative Agent. The Administrative Agent may resign as Administrative Agent upon 10 days' notice to the Lenders and the Borrower. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless an Event of Default under Section 7(a) or Section 7(f) with respect to the Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Revolving Loans. If no successor agent has accepted appointment as Administrative Agent by the date that is 10 days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Section 8 shall

inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

8.10. Syndication Agent and Documentation Agents. Neither the Syndication Agent nor any of the Documentation Agents shall have any duties or responsibilities hereunder in its capacity as such.

#### SECTION 9. MISCELLANEOUS

9.1. Amendments and Waivers. Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 9.1 (other than any amendments to the Loan Documents contemplated by Section 3(e) of the KGE Collateral Agreement). The Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (b) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (i) forgive the principal amount or extend the final scheduled date of maturity of any Revolving Loan, forgive any accrued but unpaid interest on any Revolving Loan or Reimbursement Obligation, reduce the stated rate of any interest or fee payable hereunder (except (x) in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Lenders) and (y) that any amendment or modification of defined terms used in the covenants in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (i)) or extend the scheduled date of any payment thereof, increase the amount of the Revolving Commitment of any Lender, or extend the expiration date of any Lender's Revolving Commitment, in each case without the written consent of each Lender directly affected thereby; (ii) eliminate or reduce the voting rights of any Lender under this Section 9.1 without the written consent of such Lender; (iii) reduce any percentage specified in the definition of Required Lenders or Supermajority Lenders, consent to the assignment or transfer by the Borrower or KGE of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral (except pursuant to Section 22 of the KGE Collateral Agreement), or release KGE from its guarantee under the KGE Collateral Agreement (except pursuant to Section 22 of the KGE Collateral Agreement), in each case without the written consent of all Lenders; (iv) amend, modify or waive any provision of Section 8 without the written consent of the Administrative Agent; (v) release any of the Collateral (except pursuant to Section 22 of the KGE Collateral Agreement), amend, modify or waive any provision of Section 6(e) of the KGE Collateral Agreement, increase the amount specified in the definition of "Secured Agreement" in the KGE Collateral Agreement or amend the definition of "Release of Collateral Ratings Level" in the KGE Collateral Agreement, in each case without the written consent of the Supermajority Lenders; (vi) amend, modify or waive any provision of Section 2.12(a) or (b) or Section 9.7(a) without the written consent of each Lender directly affected thereby; or (vii) amend, modify or waive any provision of Section 2.3 without the written consent of each Issuing Lender. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent and all future holders of the Revolving Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of

Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

For the avoidance of doubt, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (a) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof (collectively, the “Additional Extensions of Credit”) to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Loans and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and the Supermajority Lenders.

9.2. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed as follows in the case of the Borrower and the Administrative Agent, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

The Borrower:	818 South Kansas Avenue Topeka, Kansas 66612 Attention: Chief Financial Officer Telecopy: 785-575-8061 Telephone: 785-575-6530
with copy to:	Westar Energy, Inc. 818 South Kansas Avenue Topeka, Kansas 66612 Attention: Vice President, General Counsel and Corporate Secretary Telecopy: 785-575-8061 Telephone: 785-575-1625
The Administrative Agent:	c/o Loan and Agency Services Group 1111 Fannin, Floor 10 Houston, TX 77002 Attention: Michelle Staley Telecopy: 713-750-2366 Telephone: 713-427-6307
with a copy to:	JPMorgan Chase Bank, N.A. 270 Park Avenue New York, New York 10017 Attention: Peter Ling Telecopy: 212-270-3089 Telephone: 212-270-4676

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders shall not be effective until received.

Notices and other communications to the Lenders hereunder may be delivered or furnished by posting to Intralinks; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

9.3. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.4. Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Revolving Loans and other extensions of credit hereunder.

9.5. Payment of Expenses and Taxes. The Borrower agrees (a) to pay or reimburse the Administrative Agent for all its out-of-pocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of counsel to the Administrative Agent and filing and recording fees and expenses, with statements with respect to the foregoing to be submitted to the Borrower prior to the Closing Date (in the case of amounts to be paid on the Closing Date) and from time to time thereafter on a quarterly basis or such other periodic basis as the Administrative Agent shall deem appropriate, (b) to pay or reimburse each Lender and the Administrative Agent for all its costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents, including the fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to each Lender and of counsel to the Administrative Agent, (c) to pay, indemnify, and hold each Lender and the Administrative Agent harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, that may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (d) to pay, indemnify, and hold each Lender and the Administrative Agent and their respective officers, directors, employees, affiliates, agents and controlling persons (each, an "Indemnitee") harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement (and the commitment documentation related thereto), the other Loan Documents and any such other documents, including any of the foregoing relating to the use of proceeds of the Revolving Loans or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of any Group Member or any of the Properties and the reasonable fees and expenses of legal counsel in connection with claims, actions or proceedings by any third party against any Loan Party or any Indemnitee under any Loan Document (all the foregoing in this clause (d), collectively, the "Indemnified Liabilities"), provided, that the Borrower shall have no obligation hereunder to any Indemnitee with respect to Indemnified Liabilities to

the extent such Indemnified Liabilities are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnitee. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. All amounts due under this Section 9.5 shall be payable not later than 10 days after written demand therefor. Statements payable by the Borrower pursuant to this Section 9.5 shall be submitted to the Chief Financial Officer of the Borrower (Telephone No. 785-575-1987) (Telecopy No. 785-575-1936), at the address of the Borrower set forth in Section 9.2, or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Administrative Agent. The agreements in this Section 9.5 shall survive repayment of the Revolving Loans and all other amounts payable hereunder.

9.6. Successors and Assigns; Participations and Assignments. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitments and the Revolving Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default has occurred and is continuing, any other Person; and

(B) the Administrative Agent and each Issuing Lender, provided that no consent of the Administrative Agent or any Issuing Lender shall be required for an assignment to an Assignee that is a Lender, an Affiliate of a Lender or an Approved Fund immediately prior to giving effect to such assignment, except in the case of an assignment of a Revolving Commitment to an Assignee that does not already have a Revolving Commitment.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Revolving Commitments or Revolving Loans, the amount of the Revolving Commitments or Revolving Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that (1) no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire.

For the purposes of this Section 9.6, the term "Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (1) a Lender, (2) an Affiliate of a Lender or (3) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) below, from and after the effective date specified in each Assignment and Assumption the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.13, 2.14, 2.15 and 9.5). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amount of the Revolving Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, each Issuing Lender and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an Assignee, the Assignee's completed administrative questionnaire (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of or notice to the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Revolving Commitments and the Revolving Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, each Issuing Lender and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain

the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 9.1 and (2) directly affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.7(b) as though it were a Lender, provided such Participant shall be subject to Section 9.7(a) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.13 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. Any Participant that is a Non-U.S. Lender shall not be entitled to the benefits of Section 2.14 unless such Participant complies with Section 2.14(d).

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (d) above.

(f) Notwithstanding the foregoing, any Conduit Lender may assign any or all of the Revolving Loans it may have funded hereunder to its designating Lender without the consent of the Borrower or the Administrative Agent and without regard to the limitations set forth in Section 9.6(b). Each of the Borrower, each Lender and the Administrative Agent hereby confirms that it will not institute against a Conduit Lender or join any other Person in instituting against a Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any state bankruptcy or similar law, for one year and one day after the payment in full of the latest maturing commercial paper note issued by such Conduit Lender; provided, however, that each Lender designating any Conduit Lender hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such Conduit Lender during such period of forbearance.

9.7. Adjustments; Set-off. (a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender, if any Lender (a "Benefitted Lender") shall, at any time after the Revolving Loans and other amounts payable hereunder shall immediately become due and payable pursuant to Section 7, receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 7(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefitted Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefitted Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders;

provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefitted Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower, as the case may be. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such setoff and application.

9.8. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

9.9. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.10. Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

**9.11. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

9.12. Submission To Jurisdiction; Waivers. The Borrower hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or

proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address set forth in Section 9.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

9.13. Acknowledgements. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Administrative Agent and Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

9.14. Confidentiality. Each of the Administrative Agent and each Lender agrees to keep confidential all non-public information provided to it by any Loan Party pursuant to this Agreement that is designated by such Loan Party as confidential; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (a) to the Administrative Agent, any other Lender or any affiliate thereof or any Approved Fund, (b) subject to an agreement to comply with the provisions of this Section, to any actual or prospective Transferee or any direct or indirect counterparty to any Swap Agreement (or any professional advisor to such counterparty), (c) to its employees, directors, agents, attorneys, accountants and other professional advisors or those of any of its affiliates or any Approved Fund, (d) upon the request or demand of any Governmental Authority, (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (f) if requested or required to do so in connection with any litigation or similar proceeding, (g) that has been publicly disclosed, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document.

**9.15. WAIVERS OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING**

**RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

9.16. Pledged Bonds and Other Collateral. Any provision in any Loan Document (or any document, certificate or statement furnished or made available in connection therewith) referencing, relating to, or purporting to create, any security interest in or other Lien on the Pledged Bonds or other Collateral shall apply to the extent, and only to the extent, of the right, title and interest, if any, of KGE and/or Westar, as the case may be, in the Pledged Bonds.

9.17. Delivery of Addenda. Each initial Lender (other than JPMorgan Chase Bank, N.A., The Bank of New York, Citibank, N.A., Union Bank of California, N.A. and Wachovia Bank, National Association, shall become a party to this Agreement by delivering to the Administrative Agent an Addendum duly executed by such Lender.





LENDER ADDENDUM

The undersigned Lender (i) agrees to all of the provisions of the Credit Agreement, dated as of May 6, 2005 (as the same may be amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Westar Energy, Inc., a Kansas corporation (the "Borrower"), the several banks and other financial institutions or entities from time to time parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent, The Bank of New York, as syndication agent, and Citibank N.A., Union Bank of California, N.A., and Wachovia Bank, National Association, as documentation agents, and (ii) becomes a party thereto, as a Lender, with obligations applicable to such Lender thereunder, including, without limitation, the obligation to make extensions of credit to the Borrower in an aggregate principal amount not to exceed the amount of its Commitment, as set forth opposite the undersigned Lender's name in Schedule 1.1A to the Credit Agreement, as such amount may be changed from time to time as provided in the Credit Agreement. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

BANK OF AMERICA, N.A.

By: \_\_\_\_\_ /s/ JOHN P. MILLS

Name: **John P. Mills**  
Title: **Vice President**

BARCLAYS BANK PLC

By: \_\_\_\_\_ /s/ SYDNEY G. DENNIS

Name: **Sydney G. Dennis**  
Title: **Director**

BNP PARIBAS

By: \_\_\_\_\_ /s/ FRANCIS J. DELANEY

Name: **Francis J. DeLaney**  
Title: **Managing Director**

By: \_\_\_\_\_ /s/ MARK A. RENAUD

Name: **Mark A. Renaud**  
Title: **Managing Director**





## SCHEDULE 1.1A

## COMMITMENTS

<u>Lender</u>	<u>Revolving Commitment</u>
JPMorgan Chase Bank, N.A.	\$ 31,000,000.00
The Bank of New York	\$ 31,000,000.00
Citibank, N.A.	\$ 25,000,000.00
Union Bank of California, N.A.	\$ 25,000,000.00
Wachovia Bank, National Association	\$ 25,000,000.00
Bank of America, N.A.	\$ 23,000,000.00
Barclays Bank PLC	\$ 23,000,000.00
BNP Paribas	\$ 23,000,000.00
Deutsche Bank AG New York Branch	\$ 23,000,000.00
LaSalle Bank National Association	\$ 23,000,000.00
US Bank National Association	\$ 23,000,000.00
Credit Suisse First Boston, acting through its Cayman Islands Branch	\$ 20,000,000.00
Lehman Commercial Paper Inc.	\$ 20,000,000.00
West LB AG, New York Branch	\$ 15,000,000.00
Commerce Bank, N.A.	\$ 10,000,000.00
UMB Bank, N.A.	\$ 10,000,000.00
<b>TOTAL</b>	<b>\$350,000,000.00</b>

**WESTAR ENERGY, INC.**  
**CHIEF EXECUTIVE OFFICER**  
**CERTIFICATION PURSUANT TO**  
**SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, James S. Haines, Jr., as director, chief executive officer and president of Westar Energy, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended March 31, 2005 of Westar Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the company's internal control over financial reporting that occurred during the company's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect company's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:

May 10, 2005

By:

/s/ James S. Haines, Jr.

James S. Haines, Jr.,  
 Director, Chief Executive Officer and President  
 Westar Energy, Inc.  
 (Principal Executive Officer)

**WESTAR ENERGY, INC.**  
**CHIEF FINANCIAL OFFICER**  
**CERTIFICATION PURSUANT TO**  
**SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark A. Ruelle, as executive vice president and chief financial officer of Westar Energy, Inc., certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended March 31, 2005 of Westar Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the company's internal control over financial reporting that occurred during the company's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect company's ability to record, process, summarize and report financial information; and
  - c. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:

May 10, 2005

By:

/s/ Mark A. Ruelle

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Mark A. Ruelle,  
 Executive Vice President and Chief Financial Officer  
 Westar Energy, Inc.  
 (Principal Accounting Officer)

