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VIA E-FILING

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: Westar Energy, Inc., Docket Nos. ER10-2507-_____
Notice of Non-Material Change in Status**

Dear Secretary Bose:

Pursuant to Section 35.42(a)(2) of the Federal Energy Regulatory Commission's ("Commission" or "FERC") regulations,¹ and Order No. 652,² Westar Energy Inc. ("Westar") submits this non-material notice of change in status to inform the Commission of three long-term firm power purchase agreements ("PPAs") pursuant to which Westar purchases approximately 400 MW from the electric-wind generation facilities located within the Southwest Power Pool, Inc. ("SPP") balancing authority area ("BAA"). Westar also informs the Commission of the addition of approximately 29 miles of a 345 kilovolt ("kV") transmission line that was placed in service on December 7, 2016. As explained below, this change in status does not materially change the circumstances relied upon by the Commission in granting Westar market-based rate authority.

I. BACKGROUND

Westar is a Kansas corporation with its principal office located in Topeka, Kansas. It is a public utility primarily engaged in the generation, transmission,

¹ 18 C.F.R. § 35.42(a)(2) (2016).

² *Reporting Requirement of Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs., Regs. Preambles ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

distribution, and sale of electricity.³ Westar, together with its wholly-owned subsidiary, Kansas Gas and Electric Company, has slightly more than 6,000 MW of electric generation capacity, operates and coordinates approximately 35,000 miles of electric distribution and transmission lines, and provides retail and wholesale electric service to approximately 702,000 customers. Westar's retail operations are regulated by the Kansas Corporation Commission and its electric sales at wholesale and transmission services in interstate commerce are regulated by the FERC. Westar's transmission system is located in eastern and central Kansas and is under the functional control of the SPP, which is a Commission-approved regional transmission organization. Westar is authorized to sell energy, capacity and ancillary services at market-based rates.⁴

II. COMMUNICATIONS

All communications and service related to this filing should be directed to the undersigned and the following individual:

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III. NOTICE OF NON-MATERIAL CHANGE IN STATUS

Pursuant to three long-term firm PPAs, Westar purchases: (i) 200 MW of generation capacity from Ninnescah Wind Energy, LLC ("Ninnescah"); (ii) 100 MW of generation capacity from Kingman Wind Energy I, LLC ("Kingman I"); and (iii) 100

³ On July 11, 2016, the Great Plains Energy Incorporated ("Great Plains Energy") and Westar filed a joint application under section 203 of the FPA for the Commission's authorization for the merger and disposition of assets by which Great Plains Energy will acquire Westar. *See* Docket No. EC16-146-000 (Commission review is pending). Consistent with Commission policy, Westar has been treating Great Plains Energy and its energy affiliates as affiliates while the transaction is pending authorization. After the proposed transaction is consummated, Westar and Great Plains Energy will submit a notice of change in status that analyzes the horizontal and vertical market power of the combined company. 18 C.F.R. § 35.42; *see also, e.g., PSEG Lawrenceburg Energy Co.*, 112 FERC ¶ 61,023, at PP 10, 18 (2005) (noting the Commission's practice of analyzing applicants' generation market power on a "stand-alone basis" subject to submission of a revised generation market power analysis to reflect a proposed merger within 30 days after consummation of the merger); *FirstEnergy Generation Corp.*, 94 FERC ¶ 61,177, at 61,612 (2001) (same); *Consol. Edison Energy, Inc.*, 83 FERC ¶ 61,236, at 62,033 (1998) (same); *WKE Station Two, Inc.*, 82 FERC ¶ 61,178, at 61,652 (1998) (same).

⁴ *Westar Energy, Inc.*, Docket Nos. ER14-724-000, *et al.*, unpublished Letter Order (dated Feb. 28, 2014).

MW of generation capacity from Kingman Wind Energy II, LLC (“Kingman II”). Each of these facilities is interconnected to the transmission system owned by Westar and operated by the SPP. The Ninnescah facility reached commercial operation on December 9, 2016, and each of Kingman I and Kingman II (together, “Kingman”) reached commercial operation on December 19, 2016. The Ninnescah PPA is in effect until December 9, 2036, and the Kingman PPAs are in effect until December 19, 2036. As demonstrated below, Westar’s long-term firm purchase of an additional 400 MW does not materially change the circumstances on which the Commission relied to grant Westar market-based rate authority.

As noted above, on December 7, 2016, Westar placed approximately 29 miles of new 345 kV transmission facilities in service. This line connects the Summit substation located southeast of Salina, Kansas to a new substation located southeast of Concordia, Kansas, near the existing Elm Creek substation.

The Commission permits sales of energy and capacity at market-based rates if the seller and its affiliates (i) lack horizontal market power in the relevant geographic market, *i.e.*, they do not have (or have adequately mitigated) market power in generation; and (ii) lack vertical market power in the relevant geographic market, *i.e.*, they do not have (or have adequately mitigated) market power in transmission and cannot erect barriers to entry to competing suppliers through the control of inputs to electric power production.⁵ As discussed below, Westar does not have horizontal or vertical market power in the relevant market.

The Commission reviews horizontal market power by assessing the market power of the seller and any of its affiliates that own or control generation in the relevant market.⁶ The Commission has indicated that the relevant geographic market is the BAA or submarket, as applicable, where the seller’s generation is physically located.⁷ Accordingly, the relevant market for this analysis is the SPP BAA.

Westar continues to lack horizontal market power in the SPP BAA. As noted in Westar’s recently accepted updated market power analysis, Westar easily passed the market screens and does not have horizontal market power in the SPP BAA.⁸ Subsequently, on November 2, 2016, Westar notified the Commission of a net increase in

⁵ See Order No. 697; *see also Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at ¶ 62,060-63 (1994); *Enron Power Enterprise Corp.*, 52 FERC ¶ 61,193, at 61,708 (1990); *FirstEnergy Servs., Inc.*, 94 FERC ¶ 61,052 (2001).

⁶ See Order No. 697 at P 232 n.261; *AEP Power Mktg., Inc.*, 107 FERC ¶ 61,018 at P 73 n.63.

⁷ See Order No. 697 at P 231; *see also AEP Power Mktg., Inc.*, 107 FERC ¶ 61,018 at P 41, *order on reh’g*, 108 FERC ¶ 61,026 at P 31 (2004).

⁸ See *Westar Energy, Inc.*, Docket No. ER10-2507-005, unpublished Letter Order (dated Dec. 31, 2015) (accepting Westar’s updated market power analysis for the SPP region submitted on June 29, 2015).

generation capacity of approximately 52 MW.⁹ This increase in conjunction with the Ninnescah and Kingman PPAs results in a net increase of approximately 452 MW within the SPP BAA for Westar. When viewed in light of the most recent publicly available SPP data, for the study period December 2013 – November 2014, used in the market-based rate applications of Ninnescah and Kingman that have been accepted by the Commission,¹⁰ Westar continues to pass the Pivotal Supplier Analysis and has market shares below 20% in all four seasons within the SPP BAA.¹¹ This is consistent with the study results provided in Westar's most recent triennial filing accepted by the Commission.

Westar's acquisition of additional generation capacity under the Ninnescah and Kingman PPAs also does not raise vertical market power concerns, because none of the Ninnescah and Kingman PPAs confer Westar ownership or control of any additional transmission facilities or inputs to electric power production, including intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, physical coal supply sources, or ownership of or control over who may access transportation of coal supplies.¹² Further, Westar's addition of approximately 29 miles of 345 kV transmission line also does not raise any vertical market power concerns, because Westar's transmission assets are under the functional control of SPP and are subject to the terms and conditions of the SPP Open Access Transmission Tariff. Therefore, none of the Ninnescah PPA, Kingman PPAs, or the addition of the new transmission facilities raises any vertical market power concerns for Westar. Pursuant to 18 C.F.R. § 35.37(e)(4), Westar and its affiliates affirmatively state that they have not erected barriers to entry in the relevant market and that they will not erect barriers to entry in the relevant market.

⁹ *Westar Energy, Inc.*, Notice of Non-Material Change in Status, Docket No. ER10-2507-009 (Nov. 2, 2016); *CleanChoice Energy, Inc.*, Docket Nos. ER16-1993-001 *et al.*, unpublished Letter Order (dated Dec. 21, 2016) (accepting Notice).

¹⁰ *See Ninnescah Wind Energy, LLC*, Application for Market-Based Rates, Docket No. ER16-2241-000 (filed Jul. 19, 2016), *Brady Wind, LLC, et al.*, Docket No. ER16-2190-000, *et al.*, unpublished Letter Order (dated Aug. 30, 2016) (accepting Ninnescah MBR filing); *see also Kingman Wind Energy I, LLC*, Application for Market-Based Rates, Docket No. ER16-2275-000 (filed Jul. 25, 2016) and *Kingman Wind Energy II, LLC*, Application for Market-Based Rates, Docket No. ER16-2276-000 (filed Jul. 25, 2016), *Kingman Wind Energy I, LLC* and *Kingman Wind Energy II, LLC*, Docket Nos. ER16-2275-000 and ER16-2276-000, unpublished Letter Order (dated Sep. 8, 2016) (accepting Kingman MBR filings)

¹¹ Notwithstanding Westar's lack of horizontal market power, Westar commits to comply with all applicable SPP market rules regarding market monitoring and mitigation. The Commission has adopted a rebuttable presumption that existing Commission-approved market monitoring and mitigation rules are sufficient to address any market power concerns. *See* Order No. 697-A at P 21; 18 C.F.R. § 35.37(d).

¹² *See* 18 C.F.R. §§ 35.36(a)(4) and 35.37(e)(1)-(3). Westar also owns and leases rail cars that it uses for coal transportation. However, there is no basis to dispute the Commission's rebuttable presumption that such ownership or lease does not allow a seller to raise entry barriers.

Accordingly, the Ninnescah and Kingman PPAs and the addition of new transmission facilities do not materially change the circumstances relied upon by the Commission in granting Westar market-based rate authority.

IV. CONTENTS OF FILING

In addition to this transmittal letter, this filing consists of the following documents:

- An appendix of Westar and its affiliate's generation and transmission assets in the form required by Section 18 C.F.R. § 35.42(c) (Attachment A).

V. SERVICE

Westar has served this filing on all parties on the official service list maintained by the Commission in the above-referenced docket.

VI. CONCLUSION

For the reasons set forth above, the changes reported herein do not materially change the facts and circumstances that the Commission relied upon in granting market-based rate authority to Westar. Therefore, Westar respectfully requests that the Commission accept for filing this Notice and find that no further inquiry is necessary.

Respectfully submitted,

/s/ Margaret H. Claybour
Margaret H. Claybour

Counsel for Westar Energy, Inc.

Attachment

cc: Official Service List