

**AGREEMENT BETWEEN THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT AND WESTAR ENERGY, INC.**

**BACKGROUND**

1. The parties hereto, the Kansas Department of Health and Environment (KDHE) and Westar Energy, Inc. (Westar) having agreed that entry of this Agreement is in the best interests of the parties, hereby represent and state as follows;
2. Westar operates nine electric generating plants throughout the state of Kansas and represents an extensive portion of the state's electric generation and greenhouse gas emissions (see Appendix A);
3. The Governor of Kansas signed the Midwestern Greenhouse Gas Reduction Accord in November, 2007, thereby making a commitment to reduce greenhouse gas emissions while maintaining a reliable, affordable electricity supply in the state of Kansas.
4. NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained in this Agreement and intending to be legally bound, KDHE and Westar agree as follows:

**JURISDICTION**

5. KDHE is a duly authorized agency of the State of Kansas created by an act of the legislature.
6. The Secretary of KDHE has general jurisdiction over matters involving the environment and the public health and safety of the people of Kansas, K.S.A. 65-101 et seq., including general jurisdiction of matters involving air quality pursuant to the Kansas Air Quality Act, K.S.A. 65-3001 et seq.
7. Westar is a Kansas corporation registered to do business in Kansas in accordance with Kansas laws and is subject to K.S.A. 65-3001 et seq. and the regulations adopted thereunder.
8. The terms of this Agreement shall be construed in accordance with the applicable laws of the state of Kansas and the United States.

**PARTIES BOUND**

9. This Agreement shall apply to and be binding upon the parties, their agents, successors, and assigns and upon all persons, contractors, and consultants acting under or for either the KDHE or Westar or both.
10. The parties agree to undertake all actions required of them by the terms and conditions of this Agreement.
11. Notwithstanding the terms of any contract, Westar is responsible for compliance with this Agreement, and for insuring that its contractors and agents comply with this Agreement.

**LIABILITY**

12. Nothing in this Agreement shall be considered an admission of any fact or acknowledgment of any liability by any party, nor shall anything in this Agreement be considered an admission of

any fact or acknowledgment of any violation of any law, regulation, permit or order. Neither the State of Kansas, nor any agency thereof shall be held out as a party to any contract entered into by Westar in carrying out activities pursuant to this Agreement.

### TERMS OF AGREEMENT

13. Westar agrees to perform a company-wide evaluation of its greenhouse gas emissions and potential emission reduction strategies as follows: prepare a greenhouse gas emissions inventory using the protocols developed by The Climate Registry (TCR) that were in effect on October 29, 2007 at the unit level for electrical generating units listed in Appendix A. This shall include direct emissions of all six internationally recognized greenhouse gases including carbon dioxide, methane, nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>). TCR is a collaboration between states, provinces and tribes aimed at developing and managing a common greenhouse gas emissions reporting system with high integrity that is capable of supporting various greenhouse gas emission reporting and reduction policies for its member states and tribes and reporting entities. Specific information about TCR can be found at [www.theclimateregistry.org](http://www.theclimateregistry.org). The completed inventory for the electrical generating units will be submitted to KDHE by October 1, 2008.
14. Westar agrees to conduct a comprehensive evaluation of net greenhouse gas reduction measures including but not limited to carbon capture and sequestration for the electrical generating units listed in Appendix A, energy efficiency programs, reducing the emissions from the use of SF<sub>6</sub>, and demand-side management programs. Westar further agrees to submit a report (Report) and plan summarizing the results of their actions to comply with the provisions of this Agreement to KDHE for approval by April 1, 2009. The Report will include a summary of the evaluation of the availability and commercial feasibility of any potential methods or mechanisms to achieve net greenhouse gas reduction strategies proposed for implementation, and an Implementation Plan (Plan) with measurable targets and timelines.
15. Westar agrees to participate in the EPA SF<sub>6</sub> Emission Reduction Partnership for Electric Power Systems. Westar further agrees to join The Climate Registry (TCR) by May 1, 2008 and to register all greenhouse gas emissions company-wide with The Climate Registry (TCR) in accordance with the timelines as they are finalized. If TCR's October 29, 2007 general reporting protocols, principles, goals or mission change significantly, either Westar or KDHE can require renegotiation of this requirement of this Agreement.
16. Westar agrees to implement the proposed net greenhouse gas reduction strategies contained in the Plan upon approval by KDHE of said Plan, which will contain measurable targets and timelines. However, implementation of any strategy identified in the Plan is contingent upon approval by the Kansas Corporation Commission of ratemaking treatment which does not result in a disallowance to Westar of \$1 million dollars or more.
17. KDHE and Westar mutually agree that in the event state and/or federal statutes or regulations covering greenhouse gas emission reductions are promulgated that directly overlap or conflict with this Agreement, those portions of this Agreement shall become null and void when the statute or regulation become effective. This Agreement and the commitments that have not been superseded shall remain in full force and effect until the terms of this Agreement are met.

18. KDHE and Westar mutually agree that this Agreement is comprehensive and encompasses all of Westar Energy, Inc.'s facilities. Unless superseded by state or federal statutes or regulations, it is understood that this Agreement will function to address all greenhouse gas issues, irrespective of the terms of individual environmental permits.
19. Westar agrees to submit progress reports outlining greenhouse gas emission reduction activities completed pursuant to this Agreement each year commencing one year after KDHE approval of the Report required in paragraph 16.

### **CONCLUSIONS OF LAW**

20. Westar is a person within the meaning of K.S.A. 65-3002(i).
21. K.S.A. 65-3003 provides that the responsibility for air quality conservation and control of air pollution is hereby placed with the Secretary of KDHE and that the Secretary shall administer this act through the Division of Environment. K.S.A. 65-3005 provides that the Secretary shall have the power to: enter into contracts and agreements with other state agencies or subdivisions, municipalities, the federal government or its agencies, or private entities as is necessary to accomplish the purposes of the Kansas Air Quality Act.

### **BEST PROFESSIONAL JUDGMENT**

22. The requirements of this Agreement represent the best professional judgment of KDHE at this time based on the available information. If circumstances change significantly so that data related to the commitments of this Agreement indicate an imminent threat of danger to the public health or safety or the environment or a significantly different threat other than the issues addressed herein, then KDHE reserves the right to modify dates or requirements herein as it deems reasonably necessary, provided that KDHE gives Westar at least 90 days notice and an opportunity to submit a compliance schedule after the notice period. Westar further reserves the right to appeal any such modifications or additional requirements, in accordance with the section on Dispute Resolution.

### **FORCE MAJEURE, EXCUSABLE DELAY, MODIFICATION**

23. The following shall constitute the governing terms for force majeure, excusable delay, and modification of this Agreement.
  - A. Westar shall perform the requirements under this Agreement within the time limits set forth herein unless the performance is prevented or delayed solely by events that constitute a force majeure. For purposes of this Agreement, a force majeure is defined as any event beyond the control of Westar which could not be overcome by due diligence and which delays or prevents performance by a date required by this Agreement. Such events do not include increased costs of performance or changed economic circumstances except in the case where action related to this Agreement by the Kansas Corporation Commission results in a disallowance to Westar of \$1 million dollars or more. Any delay caused in whole or in part by action or inaction by municipal, state, or federal regulatory authorities or third parties unrelated to Westar shall be considered a force majeure and shall not be deemed a violation of any obligations required by this Agreement.
  - B. Westar shall have the burden of proving all claims of force majeure. Failure to comply by reason of force majeure shall not be construed as a violation of this Agreement.

- C. Westar shall notify KDHE in writing within ten (10) days after becoming aware of an event that Westar knew, or reasonably should have known, constituted force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this section may constitute a waiver of Westar's right to assert a force majeure claim and may be grounds for KDHE, at its sole discretion, to deny Westar an extension of time for performance.
- D. Within ten (10) days of the receipt of written notice from Westar of a force majeure event, KDHE shall notify Westar of the extent to which modifications to this Agreement are necessary. In the event that KDHE and Westar cannot agree that a force majeure event has occurred, or if there is no agreement on the length of the extension, the dispute shall be resolved as set forth in the section on Dispute Resolution.
- E. Any modifications to any provision of this Agreement shall not alter the schedule for performance or completion of other tasks required by this Agreement, unless specifically agreed to by the parties in writing and incorporated into this Agreement.
- F. This Agreement may be amended by mutual agreement of KDHE and Westar. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both parties, and shall be incorporated into this Agreement.

#### **DISPUTE RESOLUTION**

- 24. The parties recognize that a dispute may arise between them regarding implementation of the action to be taken as herein set forth or other terms or provisions of this Agreement.
  - A. If such dispute arises, the parties will endeavor to settle it by informal negotiations between themselves. If the parties cannot resolve the issue informally within a reasonable period of time, either of the parties may notify the other in writing stating its position with regard to the dispute and the reasons therefore. A party receiving such a notice of dispute will respond in writing within thirty (30) days stating its position. The other party shall then have an additional thirty (30) day period or such longer time as the parties agree to respond. If the parties are still unable to reach an agreement, the matter shall be referred to the KDHE Director of Environment, who shall decide the matter and provide a written statement of his final decision, which shall be incorporated into this Agreement subject to judicial review as provided below.
  - B. This dispute resolution procedure shall not preclude any party from having direct recourse to court under the Kansas Judicial Review Act, K.S.A. 77-601 et seq. or other applicable law.

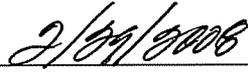
#### **OTHER CLAIMS AND PARTIES**

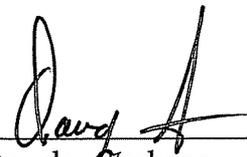
- 25. Nothing in this Agreement shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to this Agreement.

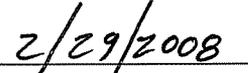
**EFFECTIVE DATE, TERMINATION**

- 26. This Agreement shall become effective when signed by the Secretary of the KDHE.
- 27. This Agreement will be terminated at such time that Westar has demonstrated and provides written notice to the KDHE that it has met all of the conditions of this Agreement. KDHE will provide written notice to Westar of said termination. Such notice shall not be unreasonably withheld.
- 28. The parties hereto have affixed their signatures on the dates inserted below to acknowledge their agreement to this Agreement. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement.

  
\_\_\_\_\_  
Roderick L. Bremby  
Secretary  
Kansas Department of Health and Environment

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Douglas Sterbenz  
Executive Vice President and  
Chief Operating Officer  
Westar Energy, Inc.

  
\_\_\_\_\_  
Date

## Appendix A

### ***Westar Energy's Fossil Fueled Electric Generating Units***

1. Jeffrey Energy Center Units 1, 2, 3
2. Lawrence Energy Center Units 3, 4, 5
3. Tecumseh Energy Center Units 7/9, 8/10, CT1, CT2
4. Abilene Energy Center Unit CT1
5. Murray Gill Energy Center Units 1,2,3,4
6. Gordon Evans Energy Center Units 1, 2, E1CT, E2CT, E3CT
7. Hutchinson Energy Center Units 1, 2, 3, 4, CT1, CT2, CT3, CT4
8. Neosho Energy Center Unit 7
9. Emporia Energy Center Units 1, 2, 3, 4, 5, 6, 7