

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

---

**DIRECT TESTIMONY OF**

**DARRIN R. IVES**

**ON BEHALF OF  
WESTAR ENERGY, INC. AND KANSAS GAS AND ELECTRIC COMPANY**

---

**IN THE MATTER OF THE JOINT APPLICATION OF  
WESTAR ENERGY, INC. AND KANSAS GAS AND ELECTRIC COMPANY FOR  
RECOVERY OF CERTAIN COSTS THROUGH THEIR RECA**

**DOCKET NO. 19-WSEE-\_\_-TAR**

1 **I. INTRODUCTION**

2 **Q: Please state your name and business address.**

3 A: My name is Darrin R. Ives. My business address is 1200 Main Street, Kansas City,  
4 Missouri 64105.

5 **Q: By whom and in what capacity are you employed?**

6 A: I serve as Vice President – Regulatory Affairs for all of Evergy, Inc.’s utility subsidiaries,  
7 including Westar Energy, Inc. and Kansas Gas and Electric Company (together as  
8 “Westar”).

9 **Q: What are your responsibilities?**

10 A: My responsibilities include oversight of the company’s Regulatory Affairs Department, as  
11 well as all aspects of regulatory activities including cost of service, rate design, revenue  
12 requirements, regulatory reporting and tariff administration.

1 **Q: Please describe your education, experience and employment history.**

2 A: I graduated from Kansas State University in 1992 with a Bachelor of Science in Business  
3 Administration with majors in Accounting and Marketing. I received my Master of  
4 Business Administration degree from the University of Missouri-Kansas City in 2001. I  
5 am a Certified Public Accountant. From 1992 to 1996, I performed audit services for the  
6 public accounting firm Coopers & Lybrand L.L.P. I was first employed by KCP&L in  
7 1996 and held positions of progressive responsibility in Accounting Services and was  
8 named Assistant Controller in 2007. I served as Assistant Controller until I was named  
9 Senior Director – Regulatory Affairs in April 2011. I became Vice President – Regulatory  
10 Affairs in August 2013. With the closing of the merger between Westar and Great Plains  
11 Energy, Inc. (Great Plains) to create Evergy, I assumed my current role as Vice President  
12 – Regulatory Affairs for all of Evergy’s utility subsidiaries.

13 **Q: Have you previously testified in a proceeding before the Kansas Corporation**  
14 **Commission (“Commission” or “KCC”) or before any other utility regulatory**  
15 **agency?**

16 A: Yes, I have testified a number of times before the KCC and the Missouri Public Service  
17 Commission. I have also provided written testimony before the Federal Energy Regulatory  
18 Commission and have testified before legislative committees in Missouri.

19 **Q: What is the purpose of your testimony?**

20 A: The purpose of my testimony is to provide background information regarding the 8%  
21 interest in Jeffrey Energy Center (“JEC”) at issue in the docket and the regulatory  
22 proceedings leading up to Westar’s Joint Application in this docket. I will also provide an  
23 overview of Westar’s settlement agreement with Midwest Power Company (“MWP”) that

1 will result in Westar’s ownership of the 8% interest in JEC in August 2019. I will explain  
2 the benefits of the settlement, including a financial evaluation of the terms, and I will  
3 provide a summary of Westar’s requests for ratemaking treatment in this docket.

4 **II. BACKGROUND**

5 **Q: Please explain the historical ownership of the 8% interest of JEC at issue in this**  
6 **docket.**

7 A: In 1991, a trust took ownership of the 8% interest in JEC, with MWP’s predecessor as the  
8 beneficiary of the trust, as a result of a sale/leaseback transaction executed by UtiliCorp,  
9 and then leased the interest back to UtiliCorp at that time. UtiliCorp later changed its name  
10 to Aquila and, subsequently, in 2007, Westar assumed the lease from Aquila. The lease  
11 agreement between Westar and MWP was set to expire on January 3, 2019. Westar was  
12 selling the entire output from the 8% interest to Mid-Kansas Electric Company (“MKEC”)  
13 under a participation power agreement (“PPA”) that also expired on January 3, 2019.

14 **Q: Please provide background regarding the MWP Certificate Docket.**

15 A: In 1991, when the Commission approved the sale/leaseback transaction that resulted in the  
16 Trust’s ownership of the 8% interest in JEC, the Commission found the sale/leaseback  
17 arrangement was purely a financing arrangement and did not result in the owner trustee or  
18 owner participant (beneficiary of the Trust) becoming public utilities. However, as of  
19 January 4, 2019, after the lease was set to expire, MWP was to become a public utility  
20 under K.S.A. 66-104, subject to the Commission’s jurisdiction. This change necessitated  
21 MWP’s filing of an application for a certificate of convenience and necessity in Docket  
22 No. 19-MPCE-064-COC (the “MWP Certificate Docket”).

1 Westar intervened in the MWP Certificate Docket because, as a co-owner of JEC  
2 and as the lessor of MWP's 8% interest in JEC, Westar had a substantial interest in the  
3 outcome of that proceeding. Westar, as the operator of JEC, incurs all of the operating and  
4 maintenance expense and all of the capital costs necessary to keep the plant operating.  
5 Westar then bills the co-owners for their share of the costs, which prior to January 4, 2019,  
6 the day after the lease was set to expire, was just KCP&L Greater Missouri Operations  
7 Company ("GMO"; with an 8% ownership share; Westar at that time leased an 8% interest  
8 from the Trust in addition to its 84% ownership share) and, after January 4th, was GMO  
9 and would have been the Trust on behalf of MWP. As a result, Westar, on behalf of itself  
10 and its customers, had a significant interest in ensuring that Midwest Power had the ability  
11 and intent to cover the financial obligations associated with its ownership of 8% of JEC  
12 after the expiration of the lease.

13 In the MWP Certificate Docket, Staff and Westar filed testimony discussing their  
14 concerns about MWP's ability to meet the financial component of the Commission's  
15 standard for reviewing certificate applications and recommending that a parental guaranty  
16 be required. MWP filed responsive testimony suggesting that it should not be required to  
17 provide a parental guaranty. The parties made it clear that, if no settlement between MWP  
18 and Westar was reached, they expected their dispute to result in expensive and time-  
19 consuming litigation.

20 **Q: What is the current status of the MWP Certificate Docket?**

21 A: An evidentiary hearing was held in the MWP Certificate Docket and the parties submitted  
22 briefs in support of their respective positions, with the matter currently pending before the  
23 Commission to issue an order. On January 30, 2019, Staff, Westar, and MWP jointly filed

1 a motion for extension of the 180-day procedural schedule and for a stay of the procedural  
2 schedule in the MWP Certificate Docket, asking the Commission to extend the 180-day  
3 statutory period for 30 days and to delay issuing its order in the docket pending resolution  
4 through a potential settlement between MWP and Westar.

5 **Q: Was the ratemaking treatment for costs related to the 8% interest in JEC addressed**  
6 **in Westar’s most recent general rate case?**

7 A: Yes. Westar’s most recent general rate case, Docket No. 18-WSEE-328-RTS (“Westar  
8 GRC Docket”), addressed, among other items, ratemaking treatment related to costs  
9 associated with the 8% interest in JEC held by MWP. Prior to the rate change that occurred  
10 as a result of the Westar GRC Docket, Westar’s rates included both the lease expense and  
11 other non-fuel operations and maintenance (“NFOM”) expense associated with the 8%  
12 interest in JEC being leased from MWP, and a credit for the revenue Westar was receiving  
13 from MKEC under the PPA as an offset to those costs.

14 Because Westar is the operator of JEC and pays the upfront cost for O&M work  
15 done at the plant and then has to bill the co-owners for their share of the expenses and  
16 because it is not possible for Westar to simply operate and maintain its share of the plant  
17 as opposed to the plant as a whole, Westar initially proposed in the Westar GRC Docket to  
18 leave the lease expense and other NFOM expenses associated with the 8% interest in JEC  
19 leased from MWP in base rates and then credit customers through the RECA for any  
20 amount of that expense ultimately recovered from MWP. Westar also proposed to remove  
21 the credit related to the MKEC PPA from base rates because the PPA was going to expire  
22 on January 3, 2019.

1 Staff and other intervenors raised concerns in testimony regarding Westar's  
2 proposal to leave the NFOM associated with the 8% interest in JEC leased from MWP in  
3 rates going forward and also argued that the expense associated with the lease payment to  
4 MWP should be removed from base rates since the lease was expiring on January 3, 2019.

5 Ultimately, the majority of the parties in the Westar GRC Docket reached a  
6 comprehensive settlement in the docket ("Westar Rate Case S&A") and that settlement  
7 resolved the issues related to ratemaking treatment for the 8% interest in JEC.

8 **Q: What were the terms of the Westar Rate Case S&A related to the 8% interest?**

9 A: The parties agreed to the following with respect to ratemaking treatment for the costs  
10 related to the 8% interest in JEC owned by MWP and the revenue from the MKEC PPA:

11 **E. Mid-Kansas Electric Company Wholesale Agreement**  
12 **Revenue**

13 25. The Parties agree that the revenue credit associated with the  
14 Mid-Kansas Electric Company (MKEC) wholesale agreement will  
15 remain in base rates.

16 26. The Parties also agree that Westar's Retail Energy Cost  
17 Adjustment (RECA) will be amended consistent with the language  
18 proposed by Staff witness Grady on pages 36-37 of his direct  
19 testimony to allow the lost revenue from the expiration of the  
20 MKEC contract to flow through the RECA. Westar agrees to  
21 withdraw its request to amend the RECA to allow changes in  
22 revenue from additional wholesale contracts to flow through the  
23 RECA. The Parties agree that the lost revenue from the expiration  
24 of the MKEC contract will be reflected in the Annual Cost  
25 Adjustment (ACA) true-up process following the January 3, 2019  
26 expiration. At the time of Westar's next rate case, Westar will  
27 remove the collection of MKEC lost revenue credits from the RECA  
28 and adjust base rates accordingly. Any unrecovered revenue credit  
29 shortfall will be recovered through the ACA process.

30 **F. 8% of JEC Lease Payment and O&M**

31 27. The Parties agree that the \$8.3 million of lease payment expense  
32 associated with Westar's lease of the 8% interest of Jeffrey Energy

1 Center (JEC) that is currently owned by Midwest Power Company  
2 will be removed from base rates and that such removal is reflected  
3 in the revenue requirement decrease agreed to by the Parties and  
4 stated above. In addition, the Parties agree that the 8% portion of the  
5 non-fuel operating and maintenance (NFOM) expense related to the  
6 portion of JEC currently owned by Midwest Power Company that is  
7 approximately \$6.9 million will be removed from base rates and that  
8 such removal is reflected in the revenue requirement decrease  
9 agreed to by the Parties and stated above.

10 28. In the event that Westar enters into a new lease for this 8% share  
11 of JEC, or purchases the 8% portion of JEC outright, the Parties  
12 agree that Westar will be permitted to file a request to include these  
13 expenses (lease expenses and NFOM) through the RECA. Any  
14 additional wholesale sales that are directly attributable to this lease  
15 extension or purchase shall also be included in the RECA in the  
16 event that the Commission approves this request. Westar shall be  
17 allowed to utilize a regulatory asset to defer actual lease expense  
18 and/or NFOM associated with the 8% portion of JEC in the event  
19 that a new lease or purchase agreement is reached. In the filing  
20 before the Commission, Westar shall have the burden of showing  
21 that the new lease or purchase agreement is a prudent decision for  
22 its retail customers.

23 29. In the event that the Commission approves Westar's filing, it  
24 may also include the amortization of the regulatory asset into the  
25 RECA. In the event that the Commission denies Westar's filing,  
26 Westar shall not be allowed to recover the regulatory asset  
27 containing deferred lease and NFOM expenses, and Westar shall be  
28 allowed to retain any wholesale sales that are directly attributable to  
29 the 8% portion of JEC for which the Commission denies Westar  
30 recovery of the incurred cost of owning or leasing and operating the  
31 8% portion of JEC. In the event that Westar ends up negotiating a  
32 zero-cost transfer of ownership (defined as \$0 or \$1), Westar is  
33 automatically entitled to begin recovering actual NFOM expenses  
34 and fuel expenses associated with the 8% ownership of JEC without  
35 prior Commission approval.

36 30. The Parties agree that Westar shall also be allowed to defer any  
37 of the 8% of NFOM or capital costs it is unable to recover from  
38 Midwest Power Company (or any other third-party owner) as a  
39 regulatory asset. Specifically, Westar shall be entitled to begin  
40 accruing unrecovered costs to the regulatory asset when Midwest  
41 Power Company (or any other third-party owner) is more than 60  
42 days late in making a payment. If Midwest Power Company (or the  
43 other third-party owner) ultimately makes payment, the regulatory

1 asset will be reduced for such payment. At the time of Westar's next  
2 general rate case, Westar may request recovery of the balance of  
3 unrecovered costs that have been deferred in the regulatory asset  
4 upon a showing that Westar made reasonable efforts to recover the  
5 costs from Midwest Power Company, or any other third-party  
6 owner.

7 31. Nothing in this settlement is intended to prejudge Westar's claim  
8 for recovery of the unrecovered NFOM and capital costs deferred in  
9 the regulatory asset; recoverability will be determined by the  
10 Commission at the time that Westar makes its request for recovery  
11 of the regulatory asset. Staff, CURB, and other intervenors  
12 specifically reserve their right to make any argument with regard to  
13 recovery of the regulatory asset, including the right to argue that  
14 none of the regulatory asset should be recovered from customers.

15 32. Additionally, Staff and CURB agree that in the event Westar is  
16 unable to recover any of the NFOM or capital costs for which  
17 Midwest Power Company, or any third-party owner is responsible  
18 after the expiration of the lease for the 8% portion of JEC, Staff and  
19 CURB will consider taking steps to encourage the Commission to  
20 exercise its jurisdiction over Midwest Power Company (or any other  
21 third-party owner) and enforce the party's payment obligations.<sup>1</sup>

22 **Q: Earlier, you indicated that Westar and MWP anticipated litigation regarding cost**  
23 **responsibility for the 8% interest in JEC. Have Westar and MWP now resolved their**  
24 **dispute?**

25 A: Yes. Subsequent to the evidentiary hearing and submission of briefs in the MWP  
26 Certificate Docket, Westar and MWP held meetings to discuss a possible resolution of their  
27 dispute. Ultimately, Westar determined that there was value in obtaining ownership of the  
28 8% interest from MWP. Westar's acquisition of that interest will consolidate ownership  
29 of JEC under the same parent company because the remaining 8% continues to be held by  
30 GMO, which is a sister company of Westar's under Evergy, Inc. It will also eliminate  
31 potential discord attendant to joint ownership of JEC with MWP, a financial institution co-

---

<sup>1</sup> Non-Unanimous Stipulation and Agreement, Docket No. 18-WSEE-328-RTS, ¶¶ 25-32.



1 owner with no prior utility experience and expressed determination to not pay the cost  
2 related to its 8% share of the capital and NFOM costs. Westar also determined that there  
3 was value in eliminating the risk of extended, time-consuming, and expensive litigation  
4 and eliminating the potential of an adverse outcome in litigation. Additionally, resolution  
5 of the dispute with MWP allows the Commission and other parties to not be further  
6 burdened by likely contentious oversight and regulation of an unwilling out-of-state owner  
7 of 8% of the JEC. The settlement also allows Westar to return the 8% of JEC to operation  
8 and allows that share of the JEC output to be contributed to the SPP market.

9 In light of these considerations, Westar agreed to a settlement with MWP that will  
10 ultimately result in the transfer of ownership of the 8% interest in JEC from MWP to  
11 Westar.

12 **Q: What are the terms of the settlement between Westar and MWP?**

13 A: The details of the settlement are included in the Settlement Agreement that was executed  
14 by Westar and MWP and that is attached hereto as Attachment A and are also summarized  
15 as follows:

- 16 • Westar and MWP entered into a seven-month lease, leasing the 8%  
17 of JEC owned by MWP to Westar.
  - 18 ○ The lease payment is \$690,000 per month, which represents  
19 the average lease payment amount under the previous lease  
20 between Westar and MWP.
  - 21 ○ The seven-month lease period is retroactive to January 4,  
22 2019 so that there is no effective transfer of control of the  
23 8% interest to MWP.
  - 24 ○ The seven-month period will be utilized to ensure that all due  
25 diligence and contractual work related to Westar's purchase  
26 of the 8% interest is completed.

- 1           •       At the end of the seven-month lease, MWP will transfer its 8%  
2                   interest in JEC to Westar upon Westar's payment of \$3.7 million.

3   **Q:    What is the current status of the various agreements necessary to effectuate the**  
4           **settlement?**

5   A:    The Settlement Agreement (Attachment A) that will result in the transfer of ownership of  
6           the 8% interest in JEC to Westar on August 4, 2019 was executed on February 8, 2019.  
7           Westar and MWP also initiated two short-term lease extensions (attached hereto as  
8           Attachments B and C) in order to immediately get the 8% interest of JEC back in service  
9           and then, on February 8, 2019, executed the lease agreement for the remainder of the seven-  
10          month lease term (attached hereto as Attachment D). In order to finalize the transaction,  
11          during the seven-month lease period, Westar and MWP will prepare additional documents  
12          including the Bill of Sale, mortgage releases, and the UCC termination statements, that will  
13          be executed in connection with the conveyance of the interest.

14   **III.   BENEFITS OF SETTLEMENT AND FINANCIAL ANALYSIS OF ITS TERMS.**

15   **Q:    Please summarize the benefits that will result from the settlement with MWP.**

16   A:    By structuring the settlement with the lease extension and then Westar's purchase of the  
17          8% interest, Westar was able to execute the initial lease extension agreement quickly,  
18          which allowed Westar to immediately place the 8% of JEC that had been de-rated and not  
19          available to offer in to the SPP market to serve customers since January 4, 2019, back in  
20          service and begin bidding that share of the energy from JEC into the SPP market. The  
21          structure of the settlement with the seven-month lease extension, and then a purchase of  
22          the interest from MWP by Westar for \$3.7 million at the conclusion of the lease allows  
23          Westar immediate access to the energy and capacity associated with the 8% interest. The

1 settlement also avoids Westar and our customers' exposure to significant ongoing  
2 expenses, discussed below, as well as providing intangible benefits to numerous parties as  
3 discussed below.

4 **Q: What ongoing expenses does the settlement allow Westar to avoid?**

5 A: Westar has been incurring NFOM costs associated with the 8% interest since expiration of  
6 the lease on January 4, 2019, because the de-rate of the unit has little or no impact on the  
7 amount of operating and maintenance costs for the plant and Westar must continue  
8 operating the plant as a whole for the benefit of its customers. Additionally, Westar has  
9 continued to incur expenses for purchasing coal for the 8% portion of JEC because it is not  
10 prudent for Westar to adjust its coal deliveries on a short-term basis to reflect the de-rate  
11 of the plant. However, because of the de-rate, the amount of energy being bid into the SPP  
12 market has been decreased by 8% and Westar and our customers are not receiving revenue  
13 from that portion of the plant.

14 MWP made it clear in the MWP Certificate Docket that it had no intent whatsoever  
15 to pay Westar for MWP's share of expenses at JEC. In order to move forward with  
16 litigation to remove MWP as an owner under the JEC Ownership Agreement, Westar  
17 would have had to incur, at a minimum, six months of unpaid expenses. Then, Westar  
18 would have continued to incur unpaid expenses during the litigation process, which could  
19 have lasted multiple years.

20 Westar would have incurred significant legal expenses to pursue removal of MWP  
21 as an owner and defend against any legal claims brought by MWP against Westar. Also,  
22 there would have been a risk of an unfavorable outcome in litigation where Westar could  
23 have been left with unpaid expenses indefinitely.

1 **Q: Have you conducted an analysis to determine if the payment of \$690,000 per month**  
2 **in lease expense for seven months is reasonable?**

3 A: Yes. Significant value is created for customers by placing the 8% of JEC back into service  
4 quickly through the use of the seven-month lease extension. Westar will sell the energy  
5 produced from the 8% interest into the SPP market and customers will benefit from any  
6 revenue Westar receives from SPP for those sales, which will flow through the RECA  
7 automatically if this Application to recover related expenses through the RECA is  
8 approved. Because Westar would have been incurring very close to the same level of  
9 operating and fuel expense to run the plant regardless of whether it leases/owns the 8% or  
10 not – given MWP’s insistence that it would not be paying its share of those costs if it  
11 remained an owner and the minimum timeframe of six months it would have taken to even  
12 start the process to remove MWP as an owner – any revenue received during the seven-  
13 month lease period in excess of the lease payments will be a net benefit to customers. In  
14 2019, the monthly revenue from energy sales into the SPP market from the 8% share of  
15 JEC is expected to be approximately \$1.4 million per month. This expected revenue easily  
16 justifies the \$690,000 per month lease expense Westar will incur under the seven-month  
17 lease extension, with a net monthly benefit to customers of more than \$700,000.

18 **Q: Have you conducted an analysis to determine if the \$3.7 million purchase price for**  
19 **the 8% interest in JEC is reasonable?**

20 A: Yes, we determined that the acquisition by Westar of MWP’s 8% interest of JEC will  
21 provide Westar and its customers with access to 174 MW of additional capacity and the  
22 associated energy at a reasonable price. We confirmed the reasonableness of the \$3.7  
23 million purchase price in two different ways. First, the MWP share of incurred capital and

1 NFOM cost was expected to be almost \$7.8 million in 2019 alone. Given that the terms of  
2 the JEC Ownership Agreement require that foreclosure for non-payment cannot begin until  
3 after six months of non-payment, and the likelihood of litigation, it is reasonable to assume  
4 a minimum of twelve months and more likely 24 to 30 months to resolve the matter. The  
5 result would be likely nonpayment balances somewhere between \$17 million and \$21  
6 million, or multiples more than the \$3.7 million purchase price.

7 Second, customers received substantial benefits as a result of Westar's assumption  
8 of the lease of the 8% interest in JEC in 2007 and Westar's sale of the power from that 8%  
9 interest to MKEC through a PPA. In order to determine the benefit that customers have  
10 received since 2007, we looked at the benefit that Westar's retail customers received in  
11 rates from the revenue from the MKEC contract and compared that to the expense included  
12 in rates associated with the lease payment. Specifically, we first included the benefit to  
13 retail customers of the \$3.5 million consent fee that was paid to Westar by Aquila when  
14 the lease was acquired. The benefit of this consent fee alone, before consideration of the  
15 other significant benefits received by customers, is almost equal to the price Westar will  
16 pay to acquire ownership of the 8% interest. Next, to determine the potential benefit to  
17 customers from Westar's sale of power to MKEC under the original transfer agreement  
18 and a formula rate contract filed with FERC, we:

- 19 1) included the Base Charge paid monthly by MKEC which was specified in  
20 the transfer agreement;
- 21 2) included the payment from MKEC for the FERC formula rate contract as  
22 it was recorded on the Westar books; and
- 23 3) included the true-up payment from MKEC for the formula rate contract as  
24 it was recorded on the Westar books.

1 Then, to determine the potential cost to customers of holding the JEC 8% Lease, we:

- 2 1) included the O&M and Taxes Other than Income expenses for 8% of the  
3 plant as recorded on the Westar books;
- 4 2) calculated a return on net capital expenditures and a working capital  
5 allowance at the pre-tax WACC in effect at the time based on rate case  
6 outcomes; and
- 7 3) determined the actual depreciation expense recorded on Westar's books  
8 for the leasehold improvements.

9 Finally, we included all rate case adjustments regarding the leasing of the assets by Westar  
10 and selling the power to MKEC. These included:

- 11 1) amortizing the original consent fee that was part of the transfer agreement  
12 and applying the retail rate of return to the related cost free capital;
- 13 2) annualizing the base charge paid by MKEC;
- 14 3) annualizing the lease payment in the initial year and removing the lease  
15 payment from the revenue requirement in the 2018 rate case; and
- 16 4) removing non-fuel O&M from the 2018 rate case.

17 After all these components were calculated on an annual basis, the timing of Westar's  
18 general rate case test years and implementation dates were applied to determine the total  
19 benefits to retail customers. Based on this analysis, we determined that the net benefit to  
20 retail customers from Westar's assumption of the lease was approximately \*\* [REDACTED]  
21 [REDACTED] \*\* since 2007.

22 Given the structure of the transaction of the initial sale/leaseback and Westar's  
23 assumption of the lease, incurrence of the \$3.7 million purchase price to bring the  
24 transaction to a close in a manner that best serves the public interest, including an end to  
25 any potential litigation with MWP and clarity for Westar and GMO as the owners of the

1 plant going forward, is reasonable given this significant level of benefits that customers  
2 have already received.

3 **Q: Are there intangible benefits for Westar and its customers that result from the**  
4 **settlement?**

5 A: Yes, there is intangible value in consolidating ownership of JEC under one parent  
6 company, Evergy, Inc., which would result from Westar's acquisition of the 8% interest of  
7 MWP, a financial institution with no prior utility operating experience. Those benefits are  
8 related to the Commission not having to regulate a reluctant utility operating in the state  
9 such as MWP, Westar not having to jointly own the largest power plant in the state with a  
10 reluctant partner in MWP, and similar savings for CURB and other typical participants in  
11 Kansas regulatory proceedings.

12 **IV. WESTAR'S REQUEST FOR RECOVERY OF COSTS THROUGH RECA.**  
13

14 **A: Are there costs Westar is incurring related to the 8% interest in JEC that are not**  
15 **currently included in rates?**

16 A: Yes. During the seven-month lease extension period, beginning on January 4, 2019,  
17 through August 4, 2019, Westar has and will continue to incur NFOM expenses related to  
18 the 8% interest of JEC being leased and \$690,000 per month in lease expense. Those costs  
19 are currently being deferred but are not currently being recovered from customers pursuant  
20 to the Settlement Agreement in the Westar GRC Docket.

21 Additionally, at the conclusion of the seven-month lease, when ownership of the  
22 8% interest in JEC is transferred to Westar, Westar will incur capital costs of \$3.7 million  
23 to purchase the ownership interest. Westar will also continue to incur NFOM expenses  
24 related to that 8% interest, but as the owner of the interest going forward instead of as the

1 lessee. Those costs are not currently being recovered from customers pursuant to the  
2 Settlement Agreement in the Westar GRC Docket.

3 **Q: How does the Westar Rate Case S&A address these costs?**

4 A: Paragraphs 28 and 29 of the Westar Rate Case S&A provide that “in the event that a new  
5 lease or purchase agreement is reached,” Westar can “utilize a regulatory asset to defer  
6 actual lease expense and/or NFOM associated with the 8% portion of JEC” and file an  
7 application requesting recovery of the deferred amount and the ongoing lease and NFOM  
8 expense through the RECA.

9 **Q: What is Westar’s request related to the lease expense and NFOM expense incurred  
10 during the seven-month lease?**

11 A: Pursuant to paragraphs 28 and 29 of the Rate Case S&A, Westar began deferring the lease  
12 expense and NFOM expense associated with the 8% interest in JEC being leased from  
13 MWP that were incurred after the effective date of the lease extension and will continue  
14 deferring those amounts through the date the Commission issues its order in this docket.  
15 Westar requests authority from the Commission to recover that deferred amount through  
16 the RECA. Westar also requests authority from the Commission to begin recovering the  
17 lease expense and NFOM expense associated with the 8% interest in JEC being leased from  
18 MWP that is incurred after the Commission’s order in this docket through the RECA.

19 **Q: Can you estimate the total amount of lease expense and NFOM that will be incurred  
20 during the seven-month lease?**

21 A: The total amount of lease expense that will be incurred during the seven-month lease period  
22 and recovered through the RECA will be \$4.83 million. We estimate that the total amount  
23 of NFOM expense related to the 8% interest in JEC being leased that would be recovered



1 through the RECA will be approximately \$3.03 million during the seven-month term of  
2 the lease.

3 **Q: What is Westar's request related to the NFOM it will incur after the purchase of the**  
4 **8% interest in JEC is completed?**

5 A: Westar requests authority pursuant to paragraph 28 of the Rate Case S&A to recover the  
6 NFOM expenses associated with the 8% interest in JEC it is purchasing from MWP  
7 through the RECA. In the event the purchase is completed prior to the Commission's order  
8 in this docket, pursuant to paragraphs 28 and 29 of the Westar Rate Case S&A, Westar will  
9 defer any NFOM expense associated with the 8% interest being purchased incurred  
10 between the date of the closing of the transaction and the date of the Commission order in  
11 this docket and Westar also requests authority to recover that deferred amount through the  
12 RECA.

13 **Q: Can you estimate the amount of NFOM expense Westar will incur going forward**  
14 **related to the 8% interest in JEC?**

15 A: We estimate that the NFOM associated with the 8% interest of JEC will be approximately  
16 \$435,000 per month going forward.

17 **Q: Why is approval of Westar's cost recovery request reasonable?**

18 A: It is reasonable for Westar to recover the lease expense associated with the seven-month  
19 lease extension and the NFOM incurred during the term of the lease and after Westar's  
20 purchase of the 8% interest in JEC from customers through the RECA because Westar's  
21 decision to enter the settlement agreement with MWP to obtain access to the 8% interest  
22 in JEC through the lease extension and purchase of the interest, as well as eliminate the  
23 potential for expensive and time-consuming litigation, was reasonable and in the best

1 interests of Westar’s customers. As discussed above, the seven-month lease extension  
2 provides Westar and our customers with immediate access to the capacity and energy from  
3 the 8% interest and the ability to earn revenue from that interest by making sales into the  
4 SPP market. The purchase price and future NFOM expense are easily justified by the  
5 tremendous benefits customers have received from Westar’s assumption of the lease and  
6 sale of power to MKEC through the PPA. As a result, it is reasonable and appropriate for  
7 Westar to recover the lease expense and NFOM expense from customers, as was  
8 contemplated in the Westar Rate Case S&A.

9 **Q: Have you provided a revised RECA tariff reflecting the changes necessary to the tariff**  
10 **to allow the recovery requested in this Application?**

11 A: Yes. A redlined and clean version of Westar’s RECA tariff including the changes  
12 requested in this Application are attached to the Application.

13 **Q: What is Westar’s request with respect to the timing of the Commission’s order in this**  
14 **docket?**

15 A: Westar requests that the Commission issue its order in this docket within 60 days of this  
16 application. We request this expedited treatment because allowing Westar to begin  
17 recovering lease expense and NFOM expense through the RECA will result in less of a  
18 deferral balance and will smooth recovery of those expenses over time, rather than  
19 recovering a larger deferred amount all at one time. It will also match the timing of the  
20 recovery of expenses with the timing that customers are receiving benefits from gaining  
21 access to additional capacity and energy from JEC. Westar has discussed this request for  
22 expedited treatment with Staff and Staff indicated that pending their review of the final

1           Application and testimony in support filed in this docket, they did not have a concern with  
2           the requested timing.

3   **Q:   Thank you.**

**CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE**

This Confidential Settlement Agreement and Release (the “Settlement Agreement”) is made and entered into as of February 8, 2019 (the “Effective Date”) by and among Wilmington Trust Company (“WTC”), not in its individual capacity, but solely as owner trustee under the Trust Agreement (the “Owner Trustee”), Midwest Power Company (“Midwest”), KeyCorp (“KeyCorp”), Westar Energy, Inc. (“Westar”) and Evergy, Inc. (“Evergy”). The Owner Trustee, Midwest, KeyCorp, Westar, and Evergy are each a “Party” and collectively referred to as the “Parties.”

WHEREAS, the Jeffrey Energy Center (“JEC”) consists of three electric-generating plants located in Kansas;

WHEREAS, pursuant to the terms of a Trust Agreement, dated as of August 15, 1991, (the “Trust Agreement”), with Midwest (as successor to Financial Leasing Corporation), the Owner Trustee agreed to hold an 8% undivided ownership interest in the JEC (“8% Undivided Interest”) in trust for the benefit of an entity known as Financial Leasing Corporation;

WHEREAS, the rights and obligations of Westar and the Owner Trustee with respect to their interests in the JEC are defined in, *inter alia*, (i) an Operating Agreement, as amended and effective as of June 1, 1978, (ii) a Participation Agreement (the “Participation Agreement”), effective as of August 15, 1991, (iii) a Site and Support Assets Lease, effective as of August 15, 1991, (iv) a Lease Agreement (the “Lease”), as amended and effective as of August 15, 1991, (v) an Agreement for the Construction and Ownership of Jeffrey Energy Center, as amended and effective as of January 13, 1975, (vi) the Operative Documents (as defined in the Participation Agreement, and all agreements referred to in clauses (i) – (vi) of this recital shall be collectively referred to as the “Governing Agreements”);

WHEREAS, as of September 30, 2007, Midwest obtained ownership of the 8% Undivided Interest and became the beneficiary of the Trust administered by the Owner Trustee;

WHEREAS, as of the Effective Date, Westar, together with its affiliates, owns 92% of the JEC and the Owner Trustee holds the 8% Undivided Interest in trust;

WHEREAS, pursuant to the terms of the Lease, the Owner Trustee leased the 8% Undivided Interest to Westar for a term concluding on January 3, 2019;

WHEREAS, on June 4, 2018, Westar merged with a subsidiary of Evergy, and Westar now exists as an operating subsidiary of Evergy;

WHEREAS, during the term of the Lease, the Owner Trustee and Midwest alleged that Westar, as lessee under the Lease and operator of the JEC, breached the terms of, *inter alia*, the Lease thereby causing an Event of Default (as defined in the Lease);

WHEREAS, Westar and Evergy dispute the allegations of the Owner Trustee and Midwest, and maintain that no breach or Event of Default occurred with respect to the Lease or any of the Governing Agreements; and

WHEREAS, to effectuate a complete settlement of the claims between and among the Parties without conceding disputed issues of liability that may or may not arise by operation of law, all Parties desire to avoid the uncertainty, burden and expense of litigation and any appeals, and to settle, compromise, and amicably resolve all disputes between them on the terms and

conditions set forth herein, and to release and obtain releases from each other as to any and all potential claims;

WHEREAS, in order to effect the settlement contemplated hereby, Westar and the Owner Trustee entered into the Second Amendment to the Lease effective January 4, 2019 (as modified or amended, the "Second Amendment"), in order to extend the term of the Lease to February 8, 2019, and concurrently herewith Westar and the Owner Trustee have entered into the Third Amendment to the Lease effective as of February 8, 2019 (the "Third Amendment" and, together with the Second Amendment, the "Lease Amendments"), pursuant to which the term of the Lease shall be extended to August 4, 2019 and further provides for the purchase by Westar of the 8% Undivided Interest pursuant to the terms provided in the Lease, as so amended;

NOW, THEREFORE, in consideration of the promises, covenants and releases herein, which the Parties mutually agree are adequate and sufficient to support all of the obligations recited herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. For purposes hereof, capitalized terms used herein without definition shall have the meanings assigned to them in the Participation Agreement.

2. **Lease Extension; Purchase of the 8% Undivided Interest.** Westar and the Owner Trustee have entered into the Lease Amendments pursuant to which (a) the term of the Lease shall be extended to August 4, 2019, (b) Westar shall make monthly rent payments during such extension period as provided therein, and (c) upon the expiration of the Lease as extended, pursuant to the terms of the Third Amendment, Westar shall purchase from the Owner Trustee for a purchase price of three million seven hundred thousand dollars (\$3,700,000) (the "Purchase Price") the 8% Undivided Interest and all of the Owner Trustee's right, title and interest in, to and under the agreements specified therein.

3. **Cooperation; Further Assurances; Costs.**

(a) The Parties agree to reasonably cooperate in connection with obtaining all state and federal approvals, if any, and other determinations reasonably requested by any Party, including all approvals and determinations by the Kansas Corporation Commission (the "KCC") or the staff thereof, in respect of the recovery through rates by Westar of the payment of Rent during the Temporary Extension Term (as defined in the Third Amendment) and the Purchase Price and any approvals or determinations that are necessary or appropriate to effectuate the transactions contemplated by this Settlement Agreement and the Lease Amendments, including with respect to the transfer of the 8% Undivided Interest to Westar. Each Party shall promptly provide any information as may be reasonably requested by any Party in order to enable such Party to comply with its obligations under this paragraph 3(a).

(b) The Parties further agree to execute, deliver and acknowledge (where necessary) all such further instruments, agreements and documents, and take such further actions and give such further assurances, as may be reasonably required to effectively evidence the transactions contemplated hereby and to further carry out the intent and purposes of this Settlement Agreement and the Lease Amendments.

(c) Notwithstanding anything to the contrary in this Settlement Agreement or the Operative Documents, each Party shall bear its own fees, costs and expenses relating to entering

into, performing and consummating the transactions contemplated by this Settlement Agreement and the Lease Amendments and the cooperation and further assurances contemplated under this paragraph 3, including but not limited to the fees, costs and expenses of its legal counsel; provided however that Midwest shall be responsible for the fees, costs and expenses of the Owner Trustee hereunder.

4. **Releases.**

(a) The Trust and the Owner Trustee, for themselves and for all persons claiming by or through or under the Trust, including Midwest, and for all persons the Owner Trustee is empowered by the Trust Agreement to bind by its good faith actions, and for its and their attorneys, representatives, agents and beneficiaries, and each and all of their present and former officers, directors, employees, affiliates, subsidiaries, parents, divisions, managing directors, associates, successors, assigns, representatives, agents, and attorneys (collectively, the “Trust Parties”), upon satisfaction of the conditions precedent in paragraph 4(g) below, releases and forever discharges Westar, Evergy and each and all of their present and former officers, directors, employees, affiliates, subsidiaries, parents, divisions, managing directors, associates, successors, assigns, representatives, agents, and attorneys (collectively, the “Westar Released Parties”) from any and all demands, disputes, controversies, suits, actions, causes of action, claims, promises, agreements, attorneys’ fees assessments, debts, sums of money, damages, judgments, obligations and liabilities whatsoever, upon any legal or equitable theory, whether known or unknown, against each and all of the Westar Released Parties, in connection with the JEC, the 8% Undivided Interest, or the Governing Agreements, which each or any Trust Party now has or ever had from the beginning of the world to the Effective Date and with respect to claims arising in the future based in whole or in part upon facts that exist or existed on the Effective Date, by reason of any manner, cause or thing whatsoever. Nothing contained herein releases or discharges any of the Westar Released Parties’ obligations under the Settlement Agreement.

(b) Each of the Westar Released Parties, upon satisfaction of the conditions precedent in paragraph 4(g) below, releases and forever discharges the Trust Parties from any and all demands, disputes, controversies, suits, actions, causes of action, claims, promises, agreements, attorneys’ fees assessments, debts, sums of money, damages, judgments, obligations and liabilities whatsoever, upon any legal or equitable theory, whether known or unknown, against the Trust Parties, in connection with the JEC, the 8% Undivided Interest, or the Governing Agreements, which each or any of the Westar Released Parties now has or ever had from the beginning of the world to the Effective Date and with respect to claims arising in the future based in whole or in part upon facts that exist or existed on the Effective Date, by reason of any manner, cause or thing whatsoever. Nothing contained herein releases or discharges any of the Trust Parties’ obligations under this Settlement Agreement.

(c) Midwest and KeyCorp and each and all of their present and former officers, directors, employees, affiliates, subsidiaries, parents, divisions, managing directors, associates, successors, assigns, representatives, agents, and attorneys (collectively, the “Midwest Parties”), upon satisfaction of the conditions precedent in paragraph 4(g) below, releases and forever discharges the Westar Released Parties from any and all demands, disputes, controversies, suits, actions, causes of action, claims, promises, agreements, attorneys’ fees assessments, debts, sums

of money, damages, judgments, obligations and liabilities whatsoever, upon any legal or equitable theory, whether known or unknown, against the Westar Released Parties, in connection with the JEC, the 8% Undivided Interest, or the Governing Agreements, which each or any of the Midwest Parties now has or ever had from the beginning of the world to the Effective Date and with respect to claims arising in the future based in whole or in part upon facts that exist or existed on the Effective Date, by reason of any manner, cause or thing whatsoever. Nothing contained herein releases or discharges any of the Westar Released Parties' obligations under this Settlement Agreement.

(d) Each of the Westar Released Parties, upon satisfaction of the conditions precedent in paragraph 4(g) below, releases and forever discharges the Midwest Parties from any and all demands, disputes, controversies, suits, actions, causes of action, claims, promises, agreements, attorneys' fees assessments, debts, sums of money, damages, judgments, obligations and liabilities whatsoever, upon any legal or equitable theory, whether known or unknown, against the Midwest Parties, in connection with the JEC, the 8% Undivided Interest, or the Governing Agreements, which each or any of the Westar Released Parties now has or ever had from the beginning of the world to the Effective Date and with respect to claims arising in the future based in whole or in part upon facts that exist or existed on the Effective Date, by reason of any manner, cause or thing whatsoever. Nothing contained herein releases or discharges any of the Midwest Parties' obligations under this Settlement Agreement.

(e) Upon satisfaction of the conditions precedent in paragraph 4(g) below, (i) the Lease, the Site and Support Assets Lease, the Support Facilities Agreement and any other agreement between the Owner Trustee and Westar (other than this Settlement Agreement) shall terminate in their entirety and be of no further force or effect whatsoever pursuant to Section 6.4 of the Lease, as amended by the Third Amendment, and (ii) any agreement between Midwest and Westar in connection with the Undivided Interest (other than this Settlement Agreement) shall terminate in its entirety and be of no further force or effect whatsoever. For the avoidance of doubt, each of the Westar Released Parties, the Midwest Parties, and the Trust Parties agrees that each of the other parties shall have no further obligations to each other under any of the Governing Agreements (other than, as between the Owner Trustee and Midwest only, the Trust Agreement) following the termination described in this paragraph 4(e).

(f) Nothing contained herein shall be construed to benefit any persons or entities not specified in the releases and termination set forth in paragraphs 4(a)-(e) above. The Parties do not release or discharge, and expressly reserve, all claims which they have ever had from the beginning of time, or which they now have or may in the future have, against any person or entity who is not specified in the releases and termination set forth in paragraphs 4(a)-(e) above.

(g) Prior to the effectiveness of the releases and termination set forth in paragraphs 4(a)-(e) above, the following events must occur:

(i) The term of the Temporary Lease Extension entered into concurrently with this Settlement Agreement has expired, and Westar has satisfied in all material respects its obligations under the Third Amendment;

(ii) Westar has remitted the Purchase Price to the Owner Trustee on or before August 4, 2019 (as required pursuant to Sections 6.1(d) and 6.2(e) of the Lease, as amended by the Third Amendment); and

(iii) The Owner Trustee has conveyed all of its right, title and interest in and to the 8% Undivided Interest to Westar free and clear of all Liens arising out of any act of the Owner Trustee or Midwest, other than Permitted Liens, and has delivered, or caused to be delivered, to Westar those items set forth in Section 6.8 of the Lease, as amended by the Third Amendment.

For the avoidance of doubt, the satisfaction of each of the requirements described in paragraph 4(g)(i), 4(g)(ii) and 4(g)(iii) above is a condition precedent absolute to the effectiveness of the releases and termination set forth in paragraph 4(a)-(e) above.

(h) Having been fully advised by their respective counsel, it is the intention of the Parties that, notwithstanding the possibility that they or their counsel may discover or gain a more complete, different or contrary understanding of the facts, events or law which, if presently known or fully understood, would have affected the foregoing releases, this Settlement Agreement shall be deemed to have fully, finally and forever settled any and all claims encompassed by the releases set forth herein, without regard to the subsequent discovery or existence of different, contrary or additional facts, events or law.

(i) With respect to the releases set forth herein, the Parties expressly waive any and all rights or benefits they may now have, or in the future may have, under any law of any state or territory of the United States or any foreign country, or any principle of common law, relating to the releases of unknown claims.

5. **Recording of the Lease Amendments.** Westar and the Owner Trustee agree that Westar shall, within a reasonable time after the Effective Date, properly record or file for record the Lease Amendments in all public offices in which such recording or filing is reasonably necessary to protect the right, title and interest of the Owner Trustee under the Lease, and Westar and the Owner Trustee agree that, notwithstanding anything to the contrary in Section 9.2.3 of the Participation Agreement, as between Westar and the Owner Trustee, an opinion of counsel shall not be required with respect to the recording of the Lease Amendments, and that Westar shall not be required to deliver an annual opinion of counsel on April 1, 2019, or otherwise.

6. **Confidentiality.** Except as otherwise described herein, the terms of this Settlement Agreement are agreed to be confidential between the Parties and shall not be divulged to third parties. Notwithstanding the above, each of the Parties may disclose the terms of this Settlement Agreement if required to do so by a court or regulatory body of competent jurisdiction, or by a duly authorized arbitrator or mediator of any future dispute, or if disclosure is necessary to enforce the Settlement Agreement, provided that the disclosing party requires that reasonable confidentiality measures be taken regarding the disclosed information. Notwithstanding the foregoing, the Parties agree and acknowledge that Westar shall be permitted to share this Settlement Agreement and the Lease Amendments with the KCC and the KCC staff in connection with any Westar rate case or other regulatory proceeding involving the treatment or recovery of the payments, costs or expenses relating to or arising from or under this Settlement



Agreement or the Lease Amendments or the transactions contemplated thereby. The Parties may, if necessary, disclose the terms of this Settlement Agreement and the Lease Amendments to their present and future attorneys, accountants, agents, employees, managers and their insurers, provided that such attorney, accountant, agent, employee, manager, or insurer is made aware that the information is confidential and agrees to make no further disclosure.

7. **No Admission of Liability.** The Parties acknowledge that this Settlement Agreement is not intended and shall not be construed as an admission of liability or wrongdoing whatsoever by any Party against any other Party.

8. **Advice of Counsel.** Each Party acknowledges that it has consulted with its counsel prior to signing this Settlement Agreement. Each Party acknowledges that it has read this Settlement Agreement before signing. The Parties acknowledge that they fully understand the contents of this Settlement Agreement and the releases contained herein.

9. **Governing Law.** This Settlement Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

10. **Enforcement of Settlement Obligations.** The Parties consent to personal jurisdiction and venue in the United States District Court for the Southern District of New York for purposes of any litigation relating to or arising out of this Settlement Agreement, and waive their rights to seek to transfer venue from that court.

11. **Notices.** All notices, requests, demands or other communications required or permitted to be given to the Parties hereto in connection with this Settlement Agreement shall be in writing and sent by facsimile or email and either overnight express courier service or personal delivery to the appropriate Party at the facsimile number or email address and physical address set forth below or to such substitute facsimile numbers, email addresses or physical addresses as may be designated by the respective Parties by written notice:

If to the Owner Trustee, to:

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, DE 19890  
Attn: Corporate Trust Administration  
Email: [rhines@wilmingtontrust.com](mailto:rhines@wilmingtontrust.com)  
Fax: (302) 636-4140

If to Midwest, to:

Midwest Power Company  
c/o Key Equipment Finance  
66 South Pearl Street, 5th Floor

Albany, NY 12207  
Attn: Leveraged Lease Administrator  
Email: [ann.breska@key.com](mailto:ann.breska@key.com)  
Fax: (216) 370-4061

If to Westar, to:

Westar Energy, Inc.  
Attn: Heather Humphrey  
1200 Main Street  
Kansas City, MO 64105  
Email: [heather.humphrey@kcpl.com](mailto:heather.humphrey@kcpl.com)  
Fax: (816) 556-2787

If to Evergy, to:

Evergy, Inc.  
Attn: Heather Humphrey  
1200 Main Street  
Kansas City, MO 64105  
Email: [heather.humphrey@kcpl.com](mailto:heather.humphrey@kcpl.com)  
Fax: (816) 556-2787

12. **Entire Agreement.** This Settlement Agreement represents the entire agreement among the Parties with respect to the subject matter hereof.
13. **Amendment.** This Settlement Agreement may not be modified, altered or amended except by written instrument duly executed by all Parties.
14. **Rights and Obligations.** Each of the Parties' rights and obligations in this Settlement Agreement is several and not joint.
15. **Waiver.** The waiver or failure of any Party to exercise in any respect any right provided for in this Settlement Agreement shall not be deemed a waiver of any further right under this Settlement Agreement.
16. **Headings.** Headings in this Settlement Agreement are for convenience only and shall not be used to interpret or construe provisions.
17. **Counterpart Execution.** This Settlement Agreement may be executed simultaneously or in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. True and correct copies of signed counterparts may be used in place of the originals for any purpose, and electronic signatures will have the same binding force and effect as original signatures.

18. **Authority to Enter Into Agreement.** Each Party represents and warrants that it is authorized to enter into this Settlement Agreement, that each signatory acting on its behalf is duly authorized to do so and bind its respective Party to the terms and conditions herein, and that in doing so it is not in violation of the terms and conditions of any contract or other agreement to which it may be a party, and that any required corporate resolution or other procedural condition to the acceptance and authorization to enter this Settlement Agreement has or will be obtained as the case may be.


19. **No Construction Against Drafter.** Because each Party has participated in drafting, reviewing, and editing the language of the Settlement Agreement, no presumption for or against any Party arising out of drafting all or any part of this contract shall be applied in any action whatsoever.

20. **Limitation on Owner Trustee Liability.** It is expressly understood and agreed by the Parties that (a) this document is executed and delivered by WTC, not individually or personally, but solely as Owner Trustee, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Owner Trustee and the Trust is made and intended not as personal representations, undertakings and agreements by WTC but is made and intended for the purpose for binding only the Owner Trustee, (c) nothing herein contained shall be construed as creating any liability on WTC, individually or personally, to perform any covenant either expressed or implied contained herein of the Owner Trustee, all such liability, if any, being expressly waived by the Parties hereto and by any person claiming by, through or under the Parties hereto, (d) WTC has made no investigation as to the accuracy or completeness of any representations or warranties made by the Owner Trustee in this Settlement Agreement and (e) under no circumstances shall WTC be personally liable for the payment of any indebtedness or expenses of the Owner Trustee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Owner Trustee under this Settlement Agreement or any other related documents.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Settlement Agreement as of the date first above written.

**Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee**

By:   
Name:  
Title: Robert P. Hines Jr.  
Vice President

**Midwest Power Company**

By: \_\_\_\_\_  
Name: Adam Warner  
Title: President

**KeyCorp**

By: \_\_\_\_\_  
Name: Andrew J. Paine  
Title: Co-Head Corporate Bank

**Westar Energy, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Evergy, Inc.**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Settlement Agreement as of the date first above written.


**Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee**

By: \_\_\_\_\_

Name:

Title:

**Midwest Power Company**

By:  \_\_\_\_\_

Name: Adam Warner

Title: President

**KeyCorp**

By: \_\_\_\_\_

Name: Andrew J. Paine

Title: Co-Head Corporate Bank

**Westar Energy, Inc.**

By: \_\_\_\_\_

Name:

Title:

**Evergy, Inc.**

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Settlement Agreement as of the date first above written.

**Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee**

By: \_\_\_\_\_

Name:

Title:

**Midwest Power Company**

By: \_\_\_\_\_

Name: Adam Warner

Title: President

**KeyCorp**

By:  \_\_\_\_\_

Name: Andrew J. Paine

Title: Co-Head Corporate Bank

**Westar Energy, Inc.**

By: \_\_\_\_\_

Name:

Title:

**Evergy, Inc.**

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Settlement Agreement as of the date first above written.

**Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee**

By: \_\_\_\_\_  
Name:  
Title:


**Midwest Power Company**

By: \_\_\_\_\_  
Name:  
Title:

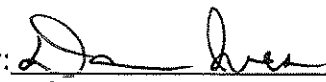
**KeyCorp**

By: \_\_\_\_\_  
Name:  
Title:

**Westar Energy, Inc.**

By:   
Name: *Darrin Ives*  
Title: *VP-Regulatory Affairs*

**Evergy, Inc.**

By:   
Name: *Darrin Ives*  
Title: *VP-Regulatory Affairs*

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (the “Second Amendment”), to be effective as of January 4, 2019, is made between Wilmington Trust Company (“WTC”), a Delaware banking corporation, not in its individual capacity but solely as Owner Trustee under the Trust Agreement, as Lessor, and Westar Energy, Inc. (“Westar”), a Kansas corporation, as Lessee. WTC and Westar shall collectively be referred to as the “Parties.”

WHEREAS, UtiliCorp United Inc. as the original Lessee, Lessor, and United Missouri Bank, N.A., not in its individual capacity, but solely as Indenture Trustee, and the Participants entered into a Participation Agreement dated as of August 15, 1991 (the “Participation Agreement”);

WHEREAS, in order to consummate the transactions contemplated by the Participation Agreement, Lessor and Lessee entered into the original Lease, which was subsequently amended by the First Amendment to Lease Agreement, dated as of February 1, 1992 and a letter amendment dated May 3, 1996 (the “Lease”);

WHEREAS, pursuant to Section 2.2 of the Jeffrey Energy Center Consent and Agreement dated February 2007, between Westar and Aquila, Inc. (formerly known as UtiliCorp United Inc.), Westar assumed the rights and obligations of Aquila, Inc. under the Lease and other related agreements;

WHEREAS, the Lease provided for an original expiration date of January 3, 2019; and

WHEREAS, Lessor and Lessee desire to amend the Lease to extend the term of the Lease for the period commencing on January 4, 2019 and ending on February 4, 2019 in order for Lessee and Midwest Power Company, an Ohio corporation, as Owner Participant, to complete the documentation of a settlement in principle reached between Lessee and Owner Participant relating to certain disputes between Lessee and Owner Participant under the Lease;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereto agree to amend the Lease as follows:

1. For purposes hereof, capitalized terms used herein without definition shall have the meanings assigned to them in the Participation Agreement.
2. Section 2 of the Lease is amended and restated as follows:

Section 2. LEASE OF UNDIVIDED INTEREST: SUBLEASE OF SUPPORT ASSETS INTEREST AND SITE INTEREST.

Lessor hereby leases to Lessee the Undivided Interest and subleases to Lessee the Support Assets Interest and the Site Interest, in each case, for the Fixed Lease Term and for the period commencing on January 4, 2019 and ending on February 4, 2019 (the “Temporary Extension Term”) upon the terms and conditions set forth in this Lease. Lessee hereby leases from Lessor the Undivided



Interest, and subleases from Lessor the Support Assets Interest and the Site Interest, in each case, for the Fixed Lease Term and the Temporary Extension Term.

3. Section 3 of the Lease shall be amended by inserting the following as a new Section 3.9:

3.9 Temporary Extension Term Rent. During the Temporary Extension Term, Lessee shall pay to Lessor rent in installments of \$690,000 per month in arrears within ten (10) days after the end of the previous monthly period ending on the fourth (4<sup>th</sup>) day of the calendar month.

4. In the case of any conflict between the Project Documents and the Second Amendment, this Second Amendment shall control.

5. This Second Amendment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which when taken together shall constitute a single instrument. Delivery of an executed counterpart of a signature page to this Second Amendment by facsimile or other electronic transmission (i.e. a “PDF” or “TIF”) shall be effective as delivery of a manually executed counterpart hereof.

6. This Second Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

*[Signature page to follow]*

IN WITNESS WHEREOF, the undersigned have caused this Second Amendment to be executed as of the date first written above.

WESTAR ENERGY, INC.,

By: \_\_\_\_\_

Name: Greg Greenwood

Title: Executive Vice President,  
Strategy and Chief Administrative Officer

WILMINGTON TRUST COMPANY,

By: \_\_\_\_\_

Name:

Title:

Acknowledged and Agreed:

MIDWEST POWER COMPANY

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, the undersigned have caused this Second Amendment to be executed as of the date first written above.

WESTAR ENERGY, INC.,

By: \_\_\_\_\_

Name:

Title:

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee

By: \_\_\_\_\_

Name:

Title:

Acknowledged and Agreed:

MIDWEST POWER COMPANY

By: Amy Paine

Name: Amy Paine

Title: Senior Vice President

IN WITNESS WHEREOF, the undersigned have caused this Second Amendment to be executed as of the date first written above.

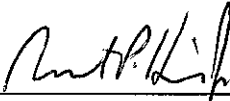
WESTAR ENERGY, INC.,

By: \_\_\_\_\_

Name:

Title:

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee

By:  \_\_\_\_\_

Name: Robert P. Hines Jr.

Title: Vice President

Acknowledged and Agreed:

MIDWEST POWER COMPANY

By: \_\_\_\_\_

Name:

Title:

*Public Version*

Westar Energy, Inc.  
Attn: Heather Humphrey  
1200 Main Street  
Kansas City, MO 64105  
Email: heather.humphrey@kcpl.com  
Fax: (816) 556-2787

February 4, 2019

Ladies and Gentleman,

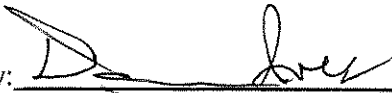
Reference is made to that certain Lease Agreement, dated as of August 15, 1991 (as amended, restated, supplemented, assigned or otherwise modified from time to time, the "Lease") between Wilmington Trust Company, a Delaware trust company, not in its individual capacity but solely as Owner Trustee under the Trust Agreement, as Lessor ("Lessor"), and Westar Energy, Inc. a Kansas corporation, as Lessee ("Lessee"). Unless otherwise defined or provided herein, capitalized terms used herein have the meanings attributed thereto in (or by reference in) the Lease.

Lessee hereby requests that, effective as of the date hereof, the Temporary Extension Term is extended to end on February 8, 2019. By its signature below Lessor hereby agrees to such requested extension of the Temporary Extension Term. The parties agree and acknowledge that during the Temporary Extension Term, as extended herein, Lessee shall pay to Lessor rent in accordance with the terms of the Lease prorated for any partial month.

[Signature page follows]

Sincerely yours,

WESTAR ENERGY, INC.,

By:   
Name: Darrian Ives  
Title: VP, Regulatory Affairs

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Agreed:

MIDWEST POWER COMPANY


By: \_\_\_\_\_  
Name:  
Title:

Sincerely yours,

WESTAR ENERGY, INC.,

By: \_\_\_\_\_  
Name:  
Title:

WILMINGTON TRUST COMPANY, not in its individual  
capacity, but solely as Owner Trustee

By:  \_\_\_\_\_  
Name: Robert P. Hines Jr.  
Title: Vice President

Acknowledged and Agreed:

MIDWEST POWER COMPANY

By: \_\_\_\_\_  
Name:  
Title:

Sincerely yours,

WESTAR ENERGY, INC.,

By: \_\_\_\_\_  
Name:  
Title:

WILMINGTON TRUST COMPANY, not in its individual  
capacity, but solely as Owner Trustee

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Agreed:

MIDWEST POWER COMPANY

By: Amy Paine  
Name: Amy Paine  
Title: SVP



THIRD AMENDMENT TO LEASE AGREEMENT

THIS THIRD AMENDMENT TO LEASE AGREEMENT (the “Third Amendment”), to be effective as of February 8, 2019, is made between Wilmington Trust Company (“WTC”), a Delaware trust company, not in its individual capacity but solely as Owner Trustee under the Trust Agreement, as Lessor, and Westar Energy, Inc. (“Westar”), a Kansas corporation, as Lessee. WTC and Westar shall collectively be referred to as the “Parties.”

WHEREAS, UtiliCorp United Inc., as the original Lessee, Lessor, and United Missouri Bank, N.A., not in its individual capacity, but solely as Indenture Trustee, and the Participants entered into a Participation Agreement dated as of August 15, 1991 (the “Participation Agreement”);

WHEREAS, in order to consummate the transactions contemplated by the Participation Agreement, Lessor and Lessee entered into the original Lease, which was subsequently amended by the First Amendment to Lease Agreement, dated as of February 1, 1992 and a letter amendment dated May 3, 1996 (the “Lease”);

WHEREAS, pursuant to Section 2.2 of the Jeffrey Energy Center Consent and Agreement dated February 2007, between Westar and Aquila, Inc. (formerly known as UtiliCorp United Inc.), Westar assumed the rights and obligations of Aquila, Inc. under the Lease and other related agreements;

WHEREAS, the Lease provided for an original expiration date of January 3, 2019;

WHEREAS, Lessor and Lessee amended the Lease pursuant to the Second Amendment to the Lease (as modified or amended, the “Second Amendment”) to extend the term of the Lease to February 8, 2019;

WHEREAS, Lessor and Lessee desire to further amend the Lease to extend the term of the Lease for a period ending on August 4, 2019; and

WHEREAS, concurrently herewith, Lessor, Lessee and certain other parties are entering into a Confidential Settlement Agreement and Release (the “Settlement Agreement”);

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereto agree to amend the Lease as follows:

1. For purposes hereof, capitalized terms used herein without definition shall have the meanings assigned to them in the Participation Agreement.
2. For purposes hereof, the term “Rent” shall include rent payable during the Temporary Extension Term pursuant to Section 3.9 of the Lease.
3. Section 2 of the Lease shall be amended by replacing “February 8, 2019” with “August 4, 2019.”

4. Section 3.9 of the Lease shall be amended by replacing the period at the end thereof with a semicolon, and inserting the following:

“provided that the last Rent payment shall be due and payable on the last day of the Temporary Extension Term. Such amounts shall be payable in accordance with the provisions of Section 3.6(a) (without giving effect to the *proviso* thereof).”

5. Section 6.1 of the Lease shall be amended by inserting the following immediately prior to the colon that immediately precedes Section 6.1(a):

“, as well as all of Lessor’s right, title and interest in, to and under the Undivided Interest, the Ownership Agreement, the Operating Agreement, the Centel Assignment, the Consent and Assumption Agreement and the APA Assignment”

6. Section 6.1 of the Lease shall be amended by replacing the period at the end of clause (c) thereof, with “; or” and adding the following new clause (d):

“(d) on the last day of the Temporary Extension Term, at a purchase price equal to three million seven hundred thousand dollars (\$3,700,000) (the “Purchase Price”).”

7. Section 6.2(c) of the Lease shall be replaced with the following:

“(c) With respect to the purchase of the Undivided Interest by Lessee pursuant to the provisions of subsection 6.1, Lessee shall pay, in addition to, and simultaneously with the payment of, the Purchase Price all other Rent due and unpaid on the date of purchase. Except as otherwise expressly provided herein, each of Lessor and Lessee shall bear and pay its own fees, costs and expenses relating to or arising from entering into, performing and consummating the transactions contemplated by the Second Amendment, the Third Amendment and the transfer of the Undivided Interest and related interests of Lessor pursuant to Section 6.1 hereof, including the fees and expenses of such party’s legal counsel.”

8. Section 6.2 of the Lease shall be amended by inserting the following as a new clause (e):

“(e) Notwithstanding anything to the contrary in this Lease (including but not limited to Sections 5.4(c) and 6.2(d)), Lessee shall not have an option to deliver an Option Notice, Renewal Notice or Purchase Notice, but instead shall be obligated to and shall acquire the Undivided Interest on the last day of the Temporary Extension Term pursuant to Section 6.1(d).”

9. Section 6 of the Lease shall be amended by inserting the following as new Sections 6.4, 6.5, 6.6, 6.7 and 6.8:

“6.4 Termination of Certain Agreements. Effective upon the transfer of the Undivided Interest and related interests of Lessor pursuant to Section 6.1, the Lease, the Site and Support Assets Lease, the Support Facilities Agreement and any other agreement between Lessor and Lessee in connection with the Undivided Interest (other than the Settlement Agreement) shall terminate in their entirety and be of no further force or effect whatsoever.

6.5 Cooperation. Lessor and Lessee each agree to reasonably cooperate in connection with obtaining all state and federal approvals, if any, and other determinations reasonably requested by either party, including all approvals and determinations of the Kansas Corporation Commission or the staff thereof, in respect of the recovery through rates by Lessee of the Rent payable during the Temporary Extension Term and the Purchase Price and any approvals or determinations that are necessary or appropriate to effectuate the transactions contemplated hereby, including with respect to the transfer of the 8% Undivided Interest to Lessee. Each party shall promptly provide any information as may be reasonably requested by the other party in order to enable it to comply with its obligations of this Section 6.5.

6.6 Further Assurances. Lessor and Lessee each agree to execute, deliver and acknowledge (where necessary) all such further instruments, agreements and documents, and take such further actions and give such further assurances, as may be reasonably required to effectively evidence the transactions contemplated hereby and to further carry out the intent and purposes of the Third Amendment.

6.7 Transfer Taxes. All state and local transfer, sales, filing, recordation, use, stamp, registration or other similar taxes resulting from the payment made by Lessee to Lessor pursuant to Section 6.1 (“Transfer Taxes”), if any, shall be borne fifty percent (50%) by Lessor and fifty percent (50%) by Lessee. Lessor and Lessee shall cooperate in the preparation and filing of such tax returns and use reasonable efforts to mitigate, reduce or eliminate any Transfer Taxes. Lessor and Lessee shall reimburse one another, as applicable, for its share of any Transfer Taxes paid by the other Party.

6.8 Effectiveness. Concurrently with the transfer contemplated by Section 6.1, Lessor shall have conveyed all of its right, title and interest in and to the 8% Undivided Interest to Lessee free and clear of all Liens resulting from acts of the Lessor and Midwest Power Company, other than Permitted Liens, and shall have delivered, or caused to be delivered, to Lessee (A) payoff or release letters (or such other instruments reasonably satisfactory to Lessee) evidencing the full payment and satisfaction of the Secured Indebtedness and the Notes and release thereof; (B) documentation, in form and substance reasonably satisfactory to Lessee evidencing that the lien and security interest of the Indenture and all other estate and rights granted by the Indenture have terminated and that all of the property rights and interests included in the Indenture Estate have been released to the Lessor as provided in Section 4.2 of the Indenture; and (C) documentation in form and substance reasonably satisfactory to Lessee evidencing the satisfaction and discharge of the Mortgage and the lien and security interest created thereby.”

10. Section 13.4 of the Lease shall be amended by adding “and the Temporary Extension Term” after “Lease Term” as it appears therein.

11. Section 16.1 of the Lease shall be amended by deleting “or” after the semi-colon after the end of clause (g), replacing the period at the end of clause (h) with “; or” and inserting the following as a new clause (i):

“Notwithstanding anything to contrary in this Lease (including but not limited to Sections 12.2 and 12.3, the other provisions of Section 16.1 as well as Sections 16.2 and 16.3), upon the occurrence of an Event of Default, Major Event of Default, Event of Loss or Regulatory Event of Default during the Temporary Extension Period, Lessee may satisfy its liability to Lessor in regard to any obligation to pay Stipulated Loss Value, by paying, within 5 days of such occurrence, in immediately available funds, the sum of (i) any unpaid Rent through such date and due for the remainder of the Temporary Extension Period and (ii) the Purchase Price and any references in this Lease to “Stipulated Loss Value” shall refer to and equal such sum and such payment shall be in lieu of any requirements to pay unpaid Rent upon the occurrence of any such event.”

12. The Lease shall be amended by deleting Schedule 4 thereof and replacing it with a new Schedule 4 attached hereto as Exhibit A.

13. In the case of any conflict between the Project Documents and the Third Amendment, this Third Amendment shall control.

14. This Third Amendment may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which when taken together shall constitute a single instrument. Delivery of an executed counterpart of a signature page to this Third Amendment by facsimile or other electronic transmission (i.e. a “PDF” or “TIF”) shall be effective as delivery of a manually executed counterpart hereof.

15. This Third Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

16. It is expressly understood and agreed by the Parties that (a) this document is executed and delivered by WTC, not individually or personally, but solely as Owner Trustee, in the exercise of the powers and authority conferred and vested in it, (b) each of the representations, undertakings and agreements herein made on the part of the Owner Trustee and the Trust is made and intended not as personal representations, undertakings and agreements by WTC but is made and intended for the purpose for binding only the Owner Trustee, (c) nothing herein contained shall be construed as creating any liability on WTC, individually or personally, to perform any covenant either expressed or implied contained herein of the Owner Trustee, all such liability, if any, being expressly waived by the Parties hereto and by any person claiming by, through or under the Parties hereto, (d) WTC has made no investigation as to the accuracy or completeness of any representations or warranties made by the Owner Trustee in this Third Amendment and (e) under no circumstances shall WTC be personally liable for the payment of any indebtedness or expenses of the Owner Trustee or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Owner Trustee under this Third Amendment or any other related documents.

*[Signature page to follow]*

IN WITNESS WHEREOF, the undersigned have caused this Third Amendment to be executed as of the date first written above.

WESTAR ENERGY, INC.,

By: 

Name: Darrin Ives

Title: VP - Regulatory Affairs

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee

By: \_\_\_\_\_

Name:

Title:

Acknowledged and Agreed:

MIDWEST POWER COMPANY

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, the undersigned have caused this Third Amendment to be executed as of the date first written above.


WESTAR ENERGY, INC.,

By: \_\_\_\_\_

Name:

Title:

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee

By:  \_\_\_\_\_

Name: Robert P. Hines Jr.

Title: Vice President

Acknowledged and Agreed:

MIDWEST POWER COMPANY

By: \_\_\_\_\_

Name: Adam Warner

Title: President

IN WITNESS WHEREOF, the undersigned have caused this Third Amendment to be executed as of the date first written above.

WESTAR ENERGY, INC.,

By: \_\_\_\_\_

Name:

Title:

WILMINGTON TRUST COMPANY, not in its individual capacity, but solely as Owner Trustee

By: \_\_\_\_\_

Name:

Title:

Acknowledged and Agreed:

MIDWEST POWER COMPANY

By:  \_\_\_\_\_

Name: Adam Warner

Title: President

**Exhibit A**

**Schedule 4**

**Address:**

Robert Hines  
Wilmington Trust, National Association  
1100 North Market Street, Wilmington, DE 19890  
Direct Phone (302) 636-6197 | Fax (302) 636-4141  
rhines@wilmingtontrust.com

**Wire Instructions:**

Wilmington Trust Company  
ABA #: 031 100 092  
Account: 029197-000 / Westar – Jeffrey Energy  
Attention: Robert Hines