Westar Energy, Inc.

Report of
the Special Committee to
the Board of Directors

April 29, 2003

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WESTAR ENERGY, INC.

REPORT OF THE SPECIAL COMMITTEE TO THE BOARD OF DIRECTORS

The Special Committee of the Board of Directors of Westar Energy, Inc., pursuant to the Board's consent resolution dated September 27,2002, respectfully submits the annexed report and recommendations. The annexed report and recommendations were prepared by counsel to the Special Committee in consultation with and at the direction of the Special Committee and reflect the opinions, findings and recommendations of the Special Committee.

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Debcvoisc & Plimpton ("Debevoise") submits this report of its findings and recommendations to the Special Committee of the Board of Directors of Westar Energy, Inc. (the "Company" or "Western") arising out of the Special Committee's investigation pursuant to the mandate of the Board in its resolution dated September 27, 2002.

I.

Introduction

The Special Committee was formed in response to the Company's receipt of grand jury subpoenas on September 17 and 18,2002. Those subpoenas demanded the production of documents and information relating to the Company's aircraft, David C. Wittig (at the time, the Company's chairman, president and chief executive officer), and other general matters relating to the Company.

The Board charged the Special Committee to investigate not only the matters raised in those initial subpoenas, but also any other matter relating to the management of the Company that might arise in the course of the investigation that the Special Committee believed to merit review. Since the formation of the Special Committee, the Company has received additional grand jury subpoenas seeking information relating to a variety of issues, including executive compensation, the Company's proposed merger with Public Service Company of New Mexico ("PNM") and its proposed rights offering for shares of Westar Industries, Inc. In addition, the Securities and Exchange Commission ("SEC") has inquired about the Company's restatement of its financial statements for the first and second quarters of 2002 and certain issues under investigation by the grand jury. In light of the broadened scope of the grand jury's investigation, the inquiries by the SEC, issues raised before the Kansas Corporation Commission (the "KCC") and questions that arose in the course of the Special Committee's investigation, the original scope of the Special Committee's investigation was expanded to include a variety of transactions and events that, in some instances, occurred several years ago.

Debevoise's findings and recommendations are based on an extensive investigation. The Company has fully cooperated with the Special Committee, its counsel and advisors. The Special Committee's counsel and advisors had complete access to records, files and electronic data, and employees were made available for interviews. The Company also directed its outside counsel and advisors to cooperate and to respond to the Special Committee's informational requests. In all, Debevoise lawyers and forensic accountants reviewed hundreds of boxes of documents, computer files and e-mail, and conducted over 200 interviews of present and former directors and officers, employees, outside counsel, investment bankers and advisors.

Our investigation, however, was subject to the limits of time, resources and, most significantly, the Special Committee's lack of subpoena power to compel disclosure of information. In the last regard, we note that although we conducted an initial interview of Mr. Wittig, following his resignation, Mr. Wittig declined to continue to cooperate in the investigation. In addition, despite an express direction from the Company, Arthur Andersen, the Company's former outside auditor, refused to respond to the Special Committee's requests for information or to allow us to interview John Lathrop, the former Arthur Andersen partner who was responsible for audits of the Company.

In the course of our investigation, we were faced with issues that, based on the evidence available to us, did not yield clear answers. In our report, we note those issues and set forth the relevant facts. Finally, the resolution of certain issues turned on our determination of the motives, intentions and credibility of individuals.

Our investigation nonetheless has led to some important conclusions. In our opinion, senior management, particularly Mr. Wittig, at times placed their own interests above the interests of the Company in breach of their fiduciary duties. The corporate airplanes have been a prime target of abuse. Since at least 1998, when the Company acquired its second corporate jet, a number of the Company's senior officers have used the Company's airplanes for extensive personal travel without reimbursing the Company and have instructed the Company's tax department not to impute income as required under the Internal Revenue Code.

We believe the extent to which Mr. Wittig and, to a lesser extent, Douglas T. Lake, an executive vice president currently on unpaid administrative leave, exploited their authority for personal gain increased over time as potential obstacles to their excesses were removed. After the resignation of two directors who had objected to the compensation of Messrs. Wittig and Lake in March and April 2001, and a reorganization of the Company sponsored by Messrs. Wittig and Lake that forced out every other senior officer in October 2001, they assumed greater authority over the Company's decisionmaking and resources, and their abuse of that authority and actions taken in furtherance of their own, rather than the Company's, interests became more pronounced.

For example, in November 2001, Messrs. Wittig and Lake caused the Company to invest $400,000 in QuVIS, a struggling digital compression venture that is well outside the Company's business plan and in which Mr. Wittig and Mr. Lake both had undisclosed financial interests. The Company's investment may be in jeopardy. Also in November 2001, Mr. Wittig misled the Human Resources ("H.R.") Committee of the Board of Directors into awarding senior officers restricted stock units in the Company's investment in Guardian International, Inc. ("Guardian") – without disclosing that Messrs. Wittig and Lake intended to have Protection One, Inc., a home security firm controlled by the Company, acquire Guardian, which would trigger a substantial premium on their interests. In April 2002, Mr. Wittig misled the H.R. Committee to authorize an offer to employees to exchange their unvested restricted Company stock units for either actual shares of Company stock or shares of Guardian stock on the basis that the exchange would reduce the Company's expenses and save $500,000 in cash paid on dividends each year. Mr. Lake, a director, did nothing to correct Mr. Wittig's misstatements to the committee. Messrs. Wittig and Lake did not disclose that only they would qualify for the Guardian shares or that the Guardian stock transferred to Messrs. Wittig and Lake paid more in dividends than the Company would save from the exchange. And, in one of the most egregious instances of abuse of the Company's airplanes, in July 2002, Mr. Wittig used an airplane to take his family on a ten-day vacation in France and Britain, charging the Company with the costs of the air travel as well as the travel expenses of the two pilots.

The misconduct of senior management was facilitated by the absence of what should have been standard policies and procedures on basic matters, including use of the corporate aircraft. Senior management exploited the absence of specific policies. In addition, the Company lacked an effective institutional system of oversight and review of the exercise of authority by senior officers. When we began our inquiry, for example, the Company had been without a general counsel or chief legal officer for over a year. The Company's outside advisors, who were responsible for protecting the interests of the Company, in some instances did not ensure that the Board was effectively advised on matters affecting the interests of senior management.

We have found no evidence that an outside director placed his or her interests over those of the Company or otherwise was complicit in the misconduct of senior management. The directors, in some instances, however, did not effectively exercise oversight responsibility, and too willingly accepted management's recommendations without independent critical assessment. Some directors, for example, were aware that the Company's airplanes were being used for personal travel but said nothing. There were also instances in which some directors certainly should have known that information provided by management was inaccurate but still continued to rely on management's representations without independent verification.

In addition to setting forth our findings and conclusions, we believe it is important to state what we did *not* find. Our investigation did not reveal any evidence of accounting fraud. Over the course of our six-month investigation, we have not discovered any facts which we believe would materially adversely affect the information reflected in the Company's publicly filed financial reports. This conclusion distinguishes the problems at Western that are discussed in this report from those of other companies that have received so much publicity in recent months.

XI.

The Composition of the Board

A. The Lack of Healthy Diversity Among the Directors.

For several years, the Board of the Company has been comprised of dedicated and talented directors, many of whom, like the Company, have roots running deep in Kansas and an abiding interest in the State and the Company's shareholders and customers. For most of the 1990s, the Board included directors with varied backgrounds and some had significant public company experience. In recent years, however, the Board, in appearance if not in function, might have benefited from broader diversity in background and expertise. A number of commentators, and authoritative standard-setting bodies, recognize that boards of large public companies benefit from directors who bring a range of backgrounds and expertise.[132] A diverse board may draw on the varied expertise and

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[132] *See*, *e.g.*, James H. Cheek III, *Preliminary Report of the American Bar Association Task Force on Corporate Responsibility*, reprinted in 54 Mercer L. Rev. 789, 805 (2002) (recommending the institution of procedures for periodic evaluation of "the diversity of experience of individual directors"); John F. Olson, *Recent Developments in Federal Securities Regulation of Corporate Finance: as of September* 20, 2002, 1343 PLI/Corp 215, 293 (2002) (summarizing recommendations of The Business Roundtable's Principles of Corporate Governance (2002) as suggesting that "a substantial majority of directors of the board of a publicly-owned corporation should be independent of management" and that independence should be determined by looking to "the appearance (as well as the fact) of independence" and "personal and other types of relationships – including those with non-profit organizations that receive corporate contributions"); Keith L. Johnson, *Rebuilding Corporate Boards and Refocusing Shareholders for the Post-Enron Era*, 76 St. John's L. Rev. 787, 789-90 (2002) (summarizing the recommendations of The Business Roundtable, the California Public Employees Retirement System, TIAA-CREF, The National Association of Corporate Directors and the Council of Institutional Investors as agreeing that "[a] substantial majority of board members should be independent from

perspectives of its directors. In addition, a board comprised of directors from varied backgrounds may be more likely to engage in robust thought and debate.

A common observation heard in our investigation was that in recent years the Board has seemed disproportionately represented by directors who share common memberships and interests in organizations associated with the University of Kansas ("KU"):

- Frank Becker graduated from the University of Kansas, is chairman of the KU endowment fund and until recently was chair of the finance committee.

- Gene Budig was the chancellor and a professor at KU and was an ex-officio member of KU's endowment fund board.

- John Dicus graduated from KU and is a trustee of the KU endowment fund.

- R. A. Edwards is a KU graduate, a trustee of the KU endowment fund, chair of the KU endowment fund finance committee and on the KU Business School advisory board.

- John Nettels is a KU graduate and was in the same fraternity house with Mr. Wittig at KU, where they were roommates for one year.

- David Wittig is a KU graduate and trustee of the KU endowment fund.

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management" and that "[d]irectors should bring a diversity of relevant skill sets to the board"); Lynne L. Dallas, Socio-Economics *and* Corporate Law *Symposium:* The New Corporate Social Responsibility, 76 Tul. L. Rev. 1363, 1365 (2002) (concluding that "on balance, diverse perspectives on corporate boards of directors are likely to improve the quality of board decision making"); David C. Carp, The New Disclosure & Corporate Governance Regime, 1348 PLI/Corp 863, 889 (2002) (suggesting that an assessment of directors' qualifications should include, "members' qualification as independent, as well as consideration of diversity, age, skills, and experience in the context of the Board").

Evidencing the strength of the KU ties among the Board members is the size of the Company's matching contributions to the KU Endowment Fund. During the period 1999-2001, the fund received matching contributions from the Western Resources Foundation totaling $138,415.00 in 1999, $151,465.00 in 2000 and $289,121.34 in 2001, for a three-year total of $579,001.34. Kansas State University comes the closest with $305,844.89, with other colleges and universities nowhere near these totals. Of the matching contributions donated by the Company's Foundation to the KU Endowment over these years, $104,500 is attributable to John Dicus, $95,500 to Frank Becker, $75,000 to Gene Budig, $48,000.00 to R. A. Edwards, $6,156.26 to Mr. Wittig and $4,544.25 to John Nettels. Moreover, as discussed previously, a small number of personal flights on the Company's airplanes were for travel to KU sporting events and alumni affairs.

We have found no evidence that the integrity of any director was compromised by these common interests. These common interests and experiences among a substantial proportion of the directors, however, may have diminished varied thought, searching scrutiny and critical analyses that could have enhanced Board decision-making. We recommend that the future composition of the Board reflect greater diversity.

B. **Efforts to Stifle Critical Thought.**

Messrs. Wittig and Lake, with advice from Cahill Gordon, and in one instance with the assistance of two outside directors, sought the removal of Ms. Sadaka and Mr. Leonard, the two directors who were critical of the change of control benefits that would have been payable in connection with the PNM merger. Ms. Sadaka and

Mr. Leonard were sophisticated investment fund managers who ironically had been recruited to the Company by Mr. Wittig. Mr. Wittig had been friends with both, and was an investor in Mr. Leonard's fund.

After Ms. Sadaka and Mr. Leonard voiced their objections to the change of control benefits at the November 2000 Board meeting, Mr. Wittig sought to change their minds. At Mr. Wittig's direction, Messrs. Friedman and Gilman circulated the Cahill Gordon chronology of the adoption of the employment agreements to all of the directors. [Exhibit 196.] Mr. Wittig directed Mr. Gilman to call Ms. Sadaka and Mr. Leonard in an effort to address their concerns.

Ms. Sadaka and Mr. Leonard were anxious to discuss their concerns with Mr. Wittig. Ms. Sadaka called Mr. Wittig a few times, and she and Mr. Leonard asked Mr. Wittig to meet in person so that they could have a frank and direct conversation. Mr. Wittig agreed and a meeting was scheduled for January 31, 2001. When Ms. Sadaka and Mr. Leonard arrived, however, they learned to their chagrin that Mr. Wittig had invited Mr. Gilman to attend. At the meeting, Mr. Wittig and Mr. Gilman sought to demonstrate that the employment agreements had been authorized by the Board and were enforceable contracts. According to Ms. Sadaka, she and Mr. Leonard were disappointed, even angry, to have to sit through a lawyer's presentation rather than engage in a meaningful dialogue among principals. Mr. Leonard and Ms. Sadaka did not feel that their concerns were being addressed. Ms. Sadaka said that she asked that independent counsel be retained for the outside directors, but that Mr. Gilman replied that he was the Board's counsel.

Apparently when it appeared that Ms. Sadaka and Mr. Leonard would continue to object to the change of control benefits, Messrs. Wittig and Lake, according to Mr. Lake's notes, agreed on a "strategy [to] get Jane/Owen off board." [Exhibit 197.1 Mr. Lake recalls that Mr. Wittig did not want the two directors, especially Ms. Sadaka, to remain on the Board, but he does not recall what the strategy consisted of. He said it may have involved either Mr. Wittig or one of the other directors speaking with Ms. Sadaka and Mr. Leonard to encourage them to resign.

Messrs. Wittig, Lake and apparently Terrill consulted with Mr. Friedman of Cahill Gordon about removing Ms. Sadaka and Mr. Leonard. In January, Mr. Wittig asked Mr. Friedman whether there was a way to switch Ms. Sadaka from a Class III director whose term would not expire until 2002, with Gene Budig, a Class I1 director whose term would expire in 2001, so that she would have to leave by attrition in 2001. Internal e-mails at Cahill Gordon suggest that they advised that, consistent with the Company's by-laws, the following could be done on a consensual basis: Dr. Budig could resign as a Class II director, creating a vacancy on the Board, whereupon Ms. Sadaka would be appointed to fill his position, and Dr. Budig or anyone else would then be appointed by the Board to fill the vacancy created by Ms. Sadaka. [Exhibit 198.1 We do not know for a fact that this information was conveyed to Mr. Wittig or anyone else at the Company and, in his interview, Mr. Friedman insisted that he advised Mr. Wittig that the classes of the two directors could not be switched.

Mr. Friedman helped draft a script to use in asking Ms. Sadaka and Mr. Leonard to resign from the Board. On January 25, 2001, Mr. Friedman sent Messrs. Wittig, Lake and Terrill a draft of a speech to be delivered to Ms. Sadaka and Mr. Leonard which said:

> Owen and Jane –
>
> It is probably not a good thing for either side to press too much – neither the officers to press their claim that they are not subject to the cap nor certain directors concerned about the contracts who were present during an approval process that extended over a period of time and which included the use of independent consultants who opined on the market nature of the arrangements.
>
> Given the importance of this to both the officers involved and their understandable commitment to make sure that they receive remuneration contractually agreed upon and to which they are entitled, and the existence of an important transaction that is central to the Company and extraordinarily beneficial to it's [sic] shareholders, it is probably in the best interest of both sides to step back, and understand the record and difficulties in pressing claims, again on both sides.
>
> Accordingly, if you – Owen and Jane – are no longer comfortable with agreements previously approved unanimously by the full board of directors including yourselves, then you may want to think about accelerating your resigning from the Board – especially given the new direction of the Company. The Company is now headed in a different direction. The Utility has been successfully contracted for sale, and your departure can be explained in the context of that transaction.
>
> It is important to consider that if you resign, the circumstances surrounding your resignation may have an impact on the pending sale of the Company and perhaps, expose us all to yet another round of litigation. We should be careful about how we proceed, but it appears that a resignation based upon the change in direction coupled with a commitment by the officers to not press their claim

> beyond the cap might be a middle ground that everyone should be able to live with.

[Exhibit 199.1

In our interview, Mr. Friedman said that he had advised Mr. Wittig that Ms. Sadaka and Mr. Leonard should be asked to resign only if there emerged a consensus among the directors in support of their resignation. Mr. Friedman also said that he told Mr. Wittig that someone other than Messrs. Wittig and Lake, *i.e.*, the outside directors, should make the decision whether or not Ms. Sadaka and Mr. Leonard should resign, and Messrs. Wittig and Lake should not be involved in any of those conversations. As far as we were able to determine, Mr. Wittig did not speak to any director, other than Mr. Lake, about his desire to remove Ms. Sadaka and Mr. Leonard from the Board.

In a letter to Mr. Wittig dated March 28,2001, Ms. Sadaka resigned from the Board. She cited a variety of concerns, including the level of executive compensation and benefits and her belief that the Board was not provided with timely and complete information. She asked that her letter be shared with the other directors. We have not found evidence that anyone ever asked Ms. Sadaka to resign, and Ms. Sadaka told us that she resigned of her own accord.

By contrast, Mr. Wittig, along with Mr. Nettels and Mr. Becker, were instrumental in Mr. Leonard's decision to resign from the Board a few weeks after Ms. Sadaka's resignation. On April 24, 2001, the Company established a trading window for directors and officers to buy and sell Company shares. On April 26,2001, Mr. Leonard called the Company's in-house counsel to advise that he intended to sell a substantial number of shares that he held.

On April 26, the day Mr. Wittig was notified of Mr. Leonard's intention, he set in motion a chain of events that led to Mr. Leonard's resignation. Mr. Wittig first asked Mr. Terrill to call Mr. Leonard and to try to put a stop to the sale, but the sale had already gone through and could not be undone.

Mr. Wittig then called Mr. Friedman. Messrs. Friedman and Wittig discussed the impact of a director's sale of stock, and Mr. Friedman said he told Mr. Wittig it was interesting but not dispositive of anything. Mr. Friedman also said that he advised that Mr. Leonard's sale of Company stock would have to be disclosed.[133] Although Mr. Friedman said that he did not think that the disclosure would have any impact on the Company, Mr. Nettels recalls that Mr. Friedman had said that Mr. Leonard's sale might have an adverse impact on investors' perception of the Company.

Mr. Wittig also called Mr. Nettels. According to Mr. Nettels, Mr. Wittig was concerned that Mr. Leonard's sale of shares would be construed by investors as an indication of a lack of confidence in management. Mr. Nettels agreed, and felt that a director should refrain from selling shares as long as he or she is on the Board. Mr. Wittig suggested that Mr. Nettels discuss the matter with Mr. Becker. Mr. Nettels called Mr. Becker, who along with Messrs. Wittig and Nettels comprised the Nominating Committee of the Board. Mr. Becker also felt that Mr. Leonard's decision to sell

[133] His advice was correct.

Company shares reflected a challenge to management. The other directors, notably those with experience with significant corporations, did not share Messrs. Becker and Nettels's views. Messrs. Becker and Nettels, with Mr. Wittig's consent (and likely with his urging) and without consulting their fellow directors beforehand, decided to pay a personal visit to Mr. Leonard to discuss his decision to sell shares.

Messrs. Becker and Nettels flew to New York on the Company's plane to meet with Mr. Leonard. Messrs. Nettels and Becker told Mr. Leonard that they disapproved of his decision to sell shares. Messrs. Nettels and Becker told Mr. Leonard that his decision to sell shares was a vote of no confidence in and an embarrassment to the Company's management. They counseled Mr. Leonard to speak with Mr. Wittig and to resign if necessary. Mr. Leonard told them that he would not resign. Subsequently, however, Mr. Leonard decided to resign and called Mr. Wittig, accusing Mr. Wittig of sending his "two henchmen" to see him. He told Mr. Wittig that he would resign. Mr. Wittig asked Mr. Leonard to send a letter of resignation. Mr. Leonard asked Mr. Wittig to send a form letter, which Mr. Leonard signed and returned. [Exhibit 200.1

Messrs. Wittig and Lake's consideration of ousting Ms. Sadaka and Mr. Leonard from the Board appears to have been motivated solely by the two directors' objections to executive compensation. By nearly all accounts of the witnesses we interviewed, Ms. Sadaka and Mr. Leonard were sophisticated directors who prepared for and were engaged during Board meetings and took their responsibilities seriously.

In testimony before the KCC, when asked about her resignation, however, Mr. Wittig was harshly critical of Ms. Sadaka's preparation and performance as a director. [Exhibit 201.] He testified that if she had not resigned, the Board likely would have removed her. [Exhibit 201.] There is no evidence of which we are aware to support his testimony.[134] We are not aware of any directors, other than Messrs. Wittig and Lake, who had considered seeking her removal.[135] Indeed, other directors generally disapproved of Mr. Wittig's characterization of Ms. Sadaka's performance as a director.[136] After Mr. Wittig's testimony relating to Ms. Sadaka was reported in the press, Mr. Chandler rebuked Mr. Wittig. Mr. Wittig told Mr. Chandler that he had been advised by his counsel to discredit Ms. Sadaka and to describe her in the fashion he did.[137] The Cahill Gordon lawyers flatly contradicted that assertion and told us that they counseled Mr. Wittig not to make any comments about Ms. Sadaka. We credit the Cahill Gordon lawyers' views and recollection on this issue.

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[134] Mr. Wittig also testified that Ms. Sadaka had "the worst attendance record of any of our directors." A review of the minutes of the Board meetings during 1999 and 2000, the two full years on which she served on the Board, reveals this to be a false statement. Ms. Sadaka missed only one meeting in each of those two years – an attendance record comparable to that of the other directors and better than some.

[135] According to Mr. Lake, Ms. Sadaka once said to him that she wished she had paid better attention when she was on the Protection One audit committee.

[136] Mr. Lake, however, told us that he believed Ms. Sadaka was not consistently prepared for meetings.

[137] Ms. Sadaka allowed us to review her files relating to her service as a director. Based on the files we reviewed, including notes and outlines in preparation for board meetings, we believe there is no basis for Mr. Wittig's accusation that Ms. Sadaka was unprepared. Indeed, she seemed studied and prepared for the Board's meeting in Scottsdale in February 2001 – her learning simply led her to doubt the reasonableness of Mr. Wittig's executive compensation.

Messrs. Wittig and Lake had discussed with Mr. Friedman their strategy of removing Mr. Leonard from the Board before he sold shares of Company stock. His sale of Company stock appears to have been an opportune pretext for seeking his resignation. We have not discovered any evidence that Messrs. Nettels and Becker were aware of Messrs. Wittig and Lake's previously discussed strategy of seeking Mr. Leonard's removal or that his sale of Company stock might have been a pretext for seeking his removal. In our interview of him, Mr. Nettels specifically denied ever being aware of such a plan by Mr. Wittig and expressed doubt that other directors would have known of the plan. Messrs. Nettels and Becker's actions appear to have been based on their views of the extent to which a director has a responsibility to support the Company.

The timing of management's efforts to remove Ms. Sadaka and Mr. Leonard also makes clear that the actions were motivated by management's displeasure with their objections to the potential change in control payments. We have not found any evidence to suggest that Messrs. Wittig, Lake or anyone else considered seeking the removal of Ms. Sadaka or Mr. Leonard from the Board before they voiced objections to executive compensation.

Ms. Sadaka's and Mr. Leonard's objections to executive compensation were not a legitimate reason to seek their removal from the Board. The integrity of a public corporation's executive compensation plan depends on vigilant outside directors to consider carefully and weigh the often difficult issues of compensation. The fundamental tenet of independent review of executive compensation is obviously jeopardized by management attempts to stifle or remove critics. The fact that Ms. Sadaka and

Mr. Leonard voiced firm reservations on an issue of obvious personal importance to senior officers in their presence, requested additional information from the Company and met or spoke with Messrs. Wittig, Lake, Friedman and Gilman outside of Board meetings, shows affirmative interest and dedication that contradicts Mr. Wittig's characterization of Ms. Sadaka before the KCC.

We also question Mr. Friedman's role in advising Mr. Wittig on the removal of Ms. Sadaka and Mr. Leonard from the Board. Cahill Gordon was counsel to the Company, and charged with safeguarding the interests of the Company, not the interests of Messrs. Wittig and Lake. We have not found any evidence that Mr. Friedman was aware of any legitimate reason for Messrs. Wittig and Lake to seek Ms. Sadaka’s and Mr. Leonard's removal. In our view, the two directors' refusal over a period of four months to support large compensation payments to senior executives is not a legitimate basis to consider their removal.

XX.

Recommendations

One of the tasks the Special Committee gave us was to assist the Committee in formulating recommendations for improved procedures and other possible measures the Company should consider implementing, based on the results of our investigation and in furtherance of good corporate governance. From the knowledge we have gained from conducting over 200 interviews and reviewing hundreds of boxes of documents and other records, we recommend that the Company consider the following recommendations, some of which were set forth in the body of this report.

A. Corporate Aircraft.

In our discussion of the results of our investigation into the usage of the Company's aircraft, see *supra,* we made a series of detailed recommendations which, for convenience, we repeat in summary fashion below

1. Reimbursement and imputation of income.

- The Company should seek reimbursement (with interest calculated at Kansas's prejudgment interest rate) for personal travel from Messrs. Wittig, Lake, Hayes, Koupal, and Terrill for the past five years. With the assistance of PwC, we reviewed flight logs, pilots' logs, calendars, expense reports and other data to identify personal travel. The value of personal air travel was calculated using the Internal Revenue Service's SIFL rates. We also added certain identified incidental and other travel-related expenses, including pilot expenses and land transportation, to determine the amount of reimbursement due from each individual. A summary of the reimbursements due is at Exhibit 64.

- The Company should also seek reimbursement with interest from the directors for the value of their personal travel during the past five years. A summary of the reimbursements due is at Exhibit 64.

- We recommend that the Company issue amended W-2s to those employees, other than Messrs. Wittig, Lake, Hayes, Terrill and Koupal, for open tax years to reflect the value of their personal travel. A summary of the value of personal travel is at Exhibit 64

- For all future personal travel on the Company's aircraft, the Company should either seek reimbursement from or impute income to the appropriate employee.

2. Corporate tax returns.

- The Company and its outside tax consultants should review the Company's tax returns for all open years and file any amendments that may be required relating to personal usage of the aircraft.

3. Aircraft policy and travel/entertainment policy.

- We understand that the Company has developed and adopted a policy, effective March 24,2003, governing usage of the plane.

- The Company should also develop and implement a policy regarding travel and entertainment expenses generally.

- Compliance with both the aircraft policy and the travel/entertainment policy should be audited annually by internal audit.

4. Aircraft leasing and acquisitions.

- All leases and/or purchases of corporate aircraft should be approved in advance by the Board. A procurement policy should be implemented that sets a threshold for purchases or leases that must receive prior Board consent.

B. Split-Dollar Life Insurance Plans.

We recommend that the Company explore with outside counsel the viability of legal claims against former management aimed at voiding the agreements and recovering the split-dollar payouts.

C. Termination of Messrs. Wittig and Lake's Employment.

As we discussed in Section VIII of this report, we believe that there are reasonable grounds for the Company to determine that the employment of Messrs. Wittig and Lake were terminated, and that their terminations were non-qualifying terminations as that term is defined in their employment agreements.

We also believe that the Company should consider any other rights of recovery it may have against Messrs. Wittig and Lake.

D. Guardian RSUs and Stock.

We recommend that the Company consider exercising all of its rights to withhold any Guardian RSUs and Guardian shares awarded to Messrs. Wittig and Lake and otherwise recover any benefits that accrued to them. The Company should seek to recover the benefits they derived from their misconduct, including any dividends and dividend equivalents paid on the Guardian RSUs.

We also recommend that the Company consider the exercise of any rights it has to recover the Guardian shares and any dividends paid to Messrs. Wittig and Lake as a result of the conversion program in the spring of 2002.

E. QuVIS Investment.

We recommend that the Company consult with counsel about instituting legal proceedings against Messrs. Wittig and Lake to recover the Company's $400,000 investment in QuVIS.

F. Access to Employee Shareholder Voting Records.

We recommend that the Company immediately adopt an express policy prohibiting access to information relating to the shareholder votes cast by individual employees and 401(k) plan participants and that the policy be implemented prior to the upcoming annual meeting.

G. Spending Authority.

During the course of our investigation, we learned that the Company's Schedule of Authorizations has changed many times in recent years, without review and approval by the Board. We recommend that the Company submit to the Board an updated Schedule of Authorizations for its approval and that all future changes to the Schedule, at least with respect to the authority of the Company's senior officers, be submitted to the Board for approval. In connection with its review of the Schedule of Authorizations, we recommend that the Board consider adopting a requirement that it be notified promptly of any expenditures of funds that are likely to exceed a certain dollar threshold, even if the amount is within the officers' authority under the Schedule of Authorizations.

H. Mr. Wittig's Legal Fees.

The Company should seek reimbursement from Mr. Wittig for all legal fees paid to Cahill Gordon in connection with the work the firm performed for Mr. Wittig relating to the grand jury investigation of Mr. Wittig's loan to Mr. Weidner during the period July 16,2002 to September 17,2002.

I. Political Contributions.

The Company should retain counsel competent in election law to advise it on steps to take based on a thorough review of the past activities and to assist the Company in devising a written policy with respect to political contributions. The written policy should be reviewed periodically by such counsel to ensure that it continues to accurately reflect developments in the law.

J. Board of **Directors.**[153]

The following recommendations summarize what we believe to include good corporate governance practices for the Board and its committees. We understand that the Board and its committees have historically followed some of these recommendations and that others already are in the process of being implemented. Nevertheless, for the sake of completeness, we are providing this reasonably comprehensive overview.

1. Board composition and function.

- Diversity of directors should be increased. The Board would benefit from the presence of new directors with a broader range of backgrounds and experiences than the current Board.
- Majority of the Board should be independent. As provided in the NYSE proposed rules (which have not yet been approved by the SEC), a majority of the members of the Board of Directors should be independent.[154]

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[153] A number of the recommendations relating to the Board are required by the Sarbanes-Oxley Act or the New York Stock Exchange's proposed standards. We assume the Company has implemented or is in the process of implementing those that are required by law.

- Determinations of who is independent. In deciding whether a director is independent, the Board should affirmatively determine that the director has no material relationships, directly or indirectly, with the Company (including that neither the director nor any member of his or her immediate family has been employed with the Company or the Company's auditors).[155]

- Executive sessions of outside directors. The independent directors should meet regularly in executive session, without management or interested director participation.[156]

- Communications with directors. The Company should disclose to interested parties (*e.g.*, unhappy shareholders, whistle-blowers) how they may communicate directly with the independent directors.

- Responsibility to be informed. Board members should keep themselves informed regarding Company business between meetings through direct contact with management and/or the Company's advisors. The Secretary of the Company should assist in arranging and facilitating such contacts.

- Access to information. The Board should annually review its access to and review of information from management, and the quality of such information.

- Director orientation. The Company should establish an orientation program for new directors. In addition, the Company should require that directors participate in continuing education forums and programs.

- Corporate governance guidelines. The Board should adopt corporate governance guidelines addressing: director qualification standards; director responsibilities; director access to management and independent advisors; director compensation; policies and principles for CEO

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[154] NYSE Proposed § 303A.1.

[155] NYSE Proposed § 303A.2.

[156] NYSE Proposed § 303A.3.

selection; CEO performance review; CEO succession; and annual evaluation of the Board's (including any committee's) performance.[157]

- Retention of corporate governance expert. The Company should consider retaining an expert in corporate governance matters to advise the Board and its committees on the requirements of Sarbanes-Oxley and the proposed NYSE rules and to recommend policies, organizational structures, and training programs.

2. Board committees generally.

- Committee membership. Only independent directors should be members of the Audit, Nominating, and H.R. committees.[158]

- Committee charters. The Board should adopt a written charter for each committee that specifies the committee's powers and duties, including a description of any powers delegated by the Board to that committee. The Board should review any charters that currently exist, such as the Audit Committee charter, and update them to comply with all legal requirements, including the Sarbanes-Oxley Act and the SEC's implementing regulations.

- Regular committee reports. Committees should report to the full Board on a regular basis.

- Advance information for Board and committees. The Board and committees, to the extent practicable, should be provided with information before meetings with sufficient time to review and reflect on key issues and to request supplemental information as necessary.

3. Audit Committee.

- Additional independence requirement for Audit Committee members. Directors' fees should be the sole compensation an Audit Committee member receives. Members of the Audit Committee should not receive

[157] NYSE Proposed §§ 303A.9; 303A.10.

[158] NYSE Proposed § 303A.6.

any consulting, advising or other compensatory fee from the Company or any of its affiliates.[159]

- Audit Committee financial expert(s). At least one member of the Audit Committee should be a financial expert who (i) understands GAAP and financial statements (including the application of GAAP in accounting for estimates, accruals and reserves), (ii) has experience in evaluating and analyzing financial statements that are comparable in complexity to the Company's financial statements, (iii) understands the Company's internal controls and financial reporting procedures and (iv) understands the Audit Committee's functions as required by the NYSE and the federal securities laws.

- Performance of independent auditors: The Audit Committee should assess, on a regular basis, the performance of the Company's independent auditors.[160]

- Audit Committee to hire and fire auditors. The Audit Committee should have the sole responsibility for hiring and firing the Company's independent auditors. In light of Deloitte's diverse service offerings and its recent decision not to divest its consulting arm, the Audit Committee should exercise vigilance to ensure compliance with the Sarbanes-Oxley Act and the SEC's regulations.[161]

- Audit Committee to pre-approve auditor services. The Audit Committee must pre-approve (with very limited *de minimis* exceptions) all audit services and all permitted non-audit services to be performed by the independent auditors.[162]

- Complaints as to accounting and auditing matters. The Audit Committee should establish an internal mechanism pursuant to which complaints from

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[159] NYSE Proposed § 303A.6; Sarbanes-Oxley Act of 2002 § 301; Exchange Act § 10A(m); Exchange Act, proposed Rule 10A-3(b)(1)(ii)A.

[160] NYSE Proposed § 303A.7(c)(i); Sarbanes-Oxley Act § 301; Exchange Act §10A(m)(2); Exchange Act, proposed Rule 10A-3(b)(2)(i).

[161] NYSE Proposed § 303A.7(b)(ii)(A); Exchange Act, proposed Rule 10A-3(b)(4).

[162] Sarbanes-Oxley, Act § 201 & 202; Exchange Act §§ 10A(h) and (i).

employees as well as complaints from outside persons regarding questionable accounting and auditing matters are evaluated and examined.[163]

4. Nominating Committee.

- Nominating Committee functions. The Nominating Committee should identify qualified candidates for Board membership, recommend Board nominees, recommend governance principles and oversee the evaluation of the Board and management.[164]

K. Human Resources Committee of the Board.

In light of the central role the H.R. Committee played in several of the matters discussed in this report, we believe it is appropriate to make detailed recommendations concerning that Committee.

1. Written H.R. Committee charter.[165]

There should be a written H.R. Committee charter, which should provide, at a minimum:

- Committee member qualifications, and the process for appointment and removal of members. Each member of the Committee should satisfy the director independence requirements of the New York Stock Exchange, the requirements to qualify as "outside directors" under Section 162(m) of the Internal Revenue Code, and the requirements to be "Non-Employee Directors" under Rule 16b-3 as promulgated under Section 16(b) of the Securities Exchange Act of 1934.

- The structure and operations of the Committee, including rules regarding how and when the Committee may act, actions that require approval by

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[163] NYSE Proposed § 303A.7(c)(ii); Sarbanes-Oxley Act § 301; Exchange Act § 10A(m)(4); Exchange Act, proposed Rule 10A-3(b)(3).

[164] NYSE Proposed § 303A.4.

[165] A model form of a committee charter is attached at Exhibit 246.

the Board, its authority to delegate specific responsibilities to a subcommittee of one or more of its members and/or officers of the Company and its ability to engage third party advisors.

- The Committee's duties and responsibilities, as outlined below.

- The duty of the Committee to make periodic reports to the Board and to periodically review the Committee's charter.

2. <u>Duties and responsibilities of H.R. Committee</u>.

At a minimum, the H.R. Committee should have the following duties and responsibilities:

- Establish the Company's general compensation philosophy, and, in consultation with senior management, oversee the development and implementation of compensation programs.

- At least annually, review and approve corporate goals and objectives relevant to the compensation of the Company's chief executive officer and his direct reports, evaluate the performance of the chief executive officer and his direct reports in light of those goals and objectives, report the results of such evaluation to the Board and set the chief executive officer's and his direct reports[7] compensation level based on this evaluation.

- At least annually, review <u>all</u> compensation arrangements with the chief executive officer and the other senior executives of the Company (including the chief executive officer's direct reports), including, without limitation: (<u>i</u>) the annual base salary level; (<u>ii</u>) the short-term incentive opportunity level and plan documents; (<u>iii</u>) the long-term incentive opportunity level and plan documents; (<u>iv</u>) employment agreements, severance arrangements and change-in-control agreements and provisions; and (<u>v</u>) any special or supplemental benefits (including retirement benefits and perquisites). The review should analyze both the terms and conditions of such arrangements and the actual and potential costs to the Company of such arrangements (based, where appropriate, on such assumptions as the Committee shall deem appropriate).

- (<u>i</u>) Approve annual base salary levels, (<u>ii</u>) make recommendations to the Board with respect to newly proposed executive compensation agreements, programs and plans, including incentive compensation plans and equity-based plans, and (<u>iii</u>) oversee the administration of these agreements and plans and discharge any responsibilities imposed on the Committee by any of these plans. In making any recommendation with respect to clause (ii), the Committee should, in particular, evaluate the potential cost to the Company of the proposal and how such proposal benefits the Company and its shareholders.

- Periodically meet in executive session, without management participation.

- Monitor the implementation of any compensatory plan, program or arrangement approved by the Board.

Periodically review the compensation of the Company's directors and make recommendations to the Board with respect to the directors' compensation.

Oversee the Company's regulatory compliance with respect to compensation matters, including the Company's policies on structuring and administering compensation programs to assure that such programs achieve the intended tax and accounting treatment, and complying with the federal securities laws and the rules and regulations of the New York Stock Exchange.

Prepare, with the help of management and such advisors as the Committee considers to be appropriate, an annual report regarding executive compensation for inclusion in the Company's annual proxy statement in accordance with applicable SEC rules and regulations.

Review the meeting minutes and approve such minutes at the next scheduled meeting.

3. Outside advisors.

- The Committee should have the absolute right, in its sole discretion, to select, retain, consult with and terminate compensation consultants, legal counsel and such other third party advisors as it deems necessary or appropriate to assist it in the performance of its duties. It should be generally expected that the Committee will retain independent advisors, at a minimum, with respect to its annual review of the Company's compensation programs generally and specifically with respect to the compensation of the chief executive officer.[166]

4. Written minutes.

- Minutes should be kept of all Committee meetings.

- Minutes should be prepared at the direction of the chairperson of the Committee and reviewed promptly by all members of the Committee.

- Minutes should accurately summarize the matters considered by the Committee, in such detail as appropriate in light of the issue presented and the action, if any, taken. Minutes should describe any matters approved by the Committee and not simply state that the Committee approved a matter "as presented to the meeting."

- All minutes approved and all materials formally presented to the Committee for action should be compiled and retained in one central locale, and such records should be readily available to all members of the Committee upon request. Upon reasonable request, copies of all or any portion of such compilation should be timely provided to directors.

5. Accessibility of executive compensation arrangements.

- All executive compensation arrangements with the chief executive officer and the other senior executives of the Company (including the chief executive officer's direct reports) should be written and must have received the prior approval of the Board or Committee, as described above.

- Copies of all such written arrangements should be properly filed in accordance with the Company's record-keeping policy, and such written arrangements should be readily available to all members of the Committee upon request. Upon reasonable request, copies of all or any such written arrangements should be timely provided to directors.

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[166] A formal review of outside advisors can be expensive if such review is to be meaningful and wasteful if it is not. We therefore do not recommend formal reviews on a regular basis. However, if the Committee or Board has reason to question the performance of the advisor, such a review would be appropriate.

L. Public Disclosures.

The Company should consider forming a disclosure committee with responsibility for considering the materiality of information and determining disclosure obligations on a timely basis. The SEC has suggested that any such committee of a public or reporting company might include the principal accounting officer, the principal internal disclosure lawyer, the principal risk management officer and the chief investor relations officer.

M. Ethics and Compliance Program.

It is apparent to us that the Company's ethics and compliance program needs to be strengthened.

1. The ethics and compliance program should be updated and enhanced, including the incorporation of any changes required by recent laws.

2. Regular ethics and compliance training should be provided to employees.

3. A chief compliance officer should be appointed and he or she should report directly to the Audit Committee of the Board.

N. Internal Audit Function.

Based on our interviews of the internal audit staff and the former heads of internal audit, as well as our review of certain of the audits that were performed, we make the following recommendations.

1. The internal audit department, under the direction of the Audit Committee, should develop a comprehensive annual audit plan that includes certain audits that are done on an annual basis.

2. The head of the internal audit department should be instructed by the Audit Committee to report directly to the Audit Committee on any audits that it believes are necessary where the department is directed by a senior officer, including the Chief Executive Officer, not to perform those audits.

3. The Audit Committee should set out clear performance objectives for the internal audit department. The Audit Committee should formally assess the performance of the internal audit department, on an annual basis, using the performance objectives as the baseline.

4. The Audit Committee should formally review and assess whether internal audit currently has sufficient staffing and funding.

5. The Audit Committee should ensure that the internal audit staff receives regular training.

6. The head of the internal audit department should have a position, with corresponding title, that communicates to the employees the respect of the Company's Board and senior management.

7. While input from the business units is appropriate, the internal department should develop its audit plans independently of those units.

8. The internal audit department should review its audit plans to ensure that there is an adequate focus on financial audits.

9. The head of the internal audit department should report directly to the Audit Committee, rather than to the Chief Financial Officer, as the Company's organizational charts indicate.

O. Accounting Function.

Our investigation of the November 2002 restatement and the inter-company stock and bond transactions has determined that the accounting department made a series of unintentional errors. These errors were a product, in part, of the sophisticated nature of the transactions in question and the application of developing accounting standards. To the extent the Company intends to continue to engage in sophisticated financial transactions in the future, the Company should ensure that its internal accountants have the requisite skill and training needed to minimize the risk of errors.

Respectfully submitted,

Debevoise & Plimpton

Addendum

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May 6, 2003

Board of Directors
Westar Energy, Inc.
818 South Kansas Avenue
Topeka, KS 66612

Report of the Special Committee to the Board of Directors

Dear Gentlemen:

As counsel to the Special Committee, it has come to our attention that the Board of Directors intends to consider at its May 7, 2003 meeting the recommendations set forth in the Report of the Special Committee to the Board of Directors. To assist the Board in its deliberations concerning the recommendations, we thought it important that the directors be reminded that over the past five months, management and the Board have adopted or are in the process of adopting a number of the measures described in the Report as recommendations. It is our understanding that Mr. Haines will be prepared to brief the Board on the status of those efforts at the May 7 meeting.

The Special Committee drafted the recommendations in an effort to provide the Board both with recommendations based on the specific factual findings set forth in the Report and with an outline of good corporate governance practices. Because the Special Committee was formed to investigate issues that arose prior to this year, the Special Committee did not endeavor to evaluate the effectiveness of the reform efforts being undertaken by current management and the Board of Directors. We believe the effectiveness of those efforts should be monitored and evaluated by the Board in the coming months.

Very truly yours,

Bruce E. Yannett

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