

**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
**THE SECURITIES ACT OF 1933**

**WESTAR ENERGY, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Kansas**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**48-0290150**  
(I.R.S. Employer  
Identification Number)

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

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Larry D. Irick  
Vice President, General Counsel and  
Corporate Secretary  
Westar Energy, Inc.  
818 South Kansas Avenue  
Topeka, Kansas 66612  
(785) 575-6300

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

*Copy to:*  
Daniel G. Kelly, Jr.  
Davis Polk & Wardwell  
1600 El Camino Real  
Menlo Park, California 94025  
(650) 752-2000

**Approximate date of commencement of proposed sale to the public:** From time to time after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  \_\_\_\_\_

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Unit(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Debt Securities	—	—	—	—
First Mortgage Bonds	\$ 600,000,000	100%	\$ 600,000,000	\$ 70,620
Common Stock, \$5.00 par value	5,075,000 shares	\$ 23.18	\$ 117,638,500	\$ 13,847

- In addition to the registered securities, this Registration Statement covers such indeterminate number of shares of Common Stock of the Registrant as shall be issuable or deliverable upon conversion of any Debt Securities registered hereby which are convertible into or exchangeable for such Common Stock.
- Estimated solely for the purpose of calculating the registration fee. Common Stock calculation based on the average of the high and low trading prices on June 9, 2005. Excludes \$400,000,000 principal amount of unsold debt securities previously registered pursuant to Registration Statement No. 333-59673 and 1,925,000 unsold shares of common stock previously registered pursuant to Registration Statement No. 333-113415, which debt securities and shares are covered by the prospectus included in this Registration Statement.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Pursuant to Rule 429 of the General Rules and Regulations under the Securities Act of 1933, the prospectus included as part of this Registration Statement constitutes a combined prospectus and will be used in connection with the offer and sale of (i) \$400,000,000 aggregate principal amount of unsold debt securities previously registered pursuant to Registration Statement No. 333-59673 for which filing fees of \$118,000 were previously paid and (ii) 1,925,000 unsold shares of common stock previously registered pursuant to Registration Statement No. 333-113415 for which filing fees of \$4,914 were previously paid.

**The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED JUNE 15, 2005**

Prospectus

**WESTAR ENERGY, INC.**  
**\$400,000,000 Debt Securities**  
**\$600,000,000 First Mortgage Bonds**  
**7,000,000 Shares Common Stock (\$5.00 par value)**

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We may offer and issue debt securities, first mortgage bonds and shares of our common stock from time to time in one or more offerings. This prospectus describes the general terms of these securities and the general manner in which we will offer them. We will provide the specific terms of these securities in supplements to this prospectus. The prospectus supplements will also describe the specific manner in which we will offer these securities and may also supplement, update or amend information contained in this document. You should read this prospectus and the applicable prospectus supplement before you invest.

We may offer these securities in amounts, at prices and on terms determined at the time of offering. We may sell the securities directly to you, through agents we select, or through underwriters and dealers we select. If we use agents, underwriters or dealers to sell these securities, we will name them and describe their compensation in a prospectus supplement.

Our common stock is listed on the New York Stock Exchange under the symbol "WR". We have not yet determined whether the other securities that may be offered by this prospectus will be listed on any exchange, inter-dealer quotation system or over-the-counter market. If we decide to seek the listing of any such securities upon issuance, the prospectus supplement relating to those securities will disclose the exchange, quotation system or market on which the securities will be listed.

**Investing in our securities involves risk. See Risk Factors beginning on page 4 of this prospectus.**

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

## [Table of Contents](#)

You should rely only on the information contained in or incorporated by reference in this prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front of this prospectus.

### TABLE OF CONTENTS

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	<b>Page</b>
<a href="#">Prospectus Summary</a>	1
<a href="#">Disclosure About Forward-Looking Statements</a>	2
<a href="#">Risk Factors</a>	4
<a href="#">Use of Proceeds</a>	7
<a href="#">Ratio Of Earnings To Fixed Charges</a>	7
<a href="#">Dividend Policy</a>	8
<a href="#">Description of Capital Stock</a>	9
<a href="#">Certain Provisions of Westar Energy's Articles and By-laws</a>	11
<a href="#">Description of Debt Securities</a>	11
<a href="#">Description of First Mortgage Bonds</a>	15
<a href="#">Global Securities</a>	19
<a href="#">Plan of Distribution</a>	20
<a href="#">Legal Matters</a>	22
<a href="#">Experts</a>	22
<a href="#">About This Prospectus</a>	22
<a href="#">Where You Can Find More Information</a>	22

## Prospectus Summary

*This summary highlights information contained elsewhere in this prospectus and may not contain all of the information that may be important to you. For a more complete understanding of this offering, we encourage you to read this entire document and the documents we refer you to. You should read the following summary together with the more detailed information and financial statements and the notes to those statements appearing elsewhere in this prospectus. Unless the context otherwise requires, all references in this prospectus to “the company,” “we,” “us,” “our” or similar words are to Westar Energy, Inc., not Westar Energy, Inc. together with its subsidiaries.*

### **The Company**

Westar Energy, Inc., a Kansas corporation incorporated in 1924, is the largest electric utility in Kansas. We, together with our wholly owned subsidiary, Kansas Gas and Electric Company (KGE), provide electric generation, transmission and distribution services to approximately 655,000 customers in Kansas. We provide these services in central and northeastern Kansas, including the cities of Topeka, Lawrence, Manhattan, Salina and Hutchinson. KGE provides these services in south-central and southeastern Kansas, including the city of Wichita. Both we and KGE conduct business using the name Westar Energy.

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

Our principal executive offices are located at 818 South Kansas Avenue, Topeka, Kansas 66612. Our telephone number is (785) 575-6300. Our website address is [www.wr.com](http://www.wr.com). Information contained in our website is not part of this prospectus.

### Disclosure About Forward-Looking Statements

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

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

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

- electric utility deregulation or re-regulation,
- regulated and competitive markets,
- ongoing municipal, state and federal activities,
- economic and capital market conditions,
- changes in accounting requirements and other accounting matters,
- changing weather,
- the outcome of the pending rate review filed with the Kansas Corporation Commission on May 2, 2005,
- rates, cost recoveries and other regulatory matters,
- the impact of changes and downturns in the energy industry and the market for trading wholesale electricity,
- the outcome of the notice of violation received January 22, 2004 from the Environmental Protection Agency and other environmental matters,
- political, legislative, judicial and regulatory developments,
- the impact of the purported employee class action lawsuits filed against us,
- the impact of our potential liability to David C. Wittig and Douglas T. Lake for unpaid compensation and benefits and the impact of claims they have made against us related to the termination of their employment and the publication of the report of the special committee of the board of directors,
- the impact of changes in interest rates,

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## Table of Contents

- changes in, and the discount rate assumptions used for, pension and other post-retirement and post-employment benefit liability calculations, as well as actual and assumed investment returns on pension plan assets,
- the impact of changing interest rates and other assumptions on our decommissioning liability for Wolf Creek Generating Station,
- regulatory requirements for utility service reliability,
- homeland security considerations,
- coal, natural gas oil and wholesale electricity prices,
- availability and timely provision of rail transportation for our coal supply, and
- other circumstances affecting anticipated operations, sales and costs.

These lists are not all-inclusive because it is not possible to predict all factors. All forward-looking statements are qualified by the risks described in the documents incorporated by reference into this prospectus and any supplement to this prospectus. In addition, investors should consider the other information contained in or incorporated by reference into this prospectus and any prospectus supplement. Any forward-looking statement speaks only as of the date such statement was made, and we are not obligated to update any forward-looking statement to reflect events or circumstances after the date on which such statement was made except as required by applicable laws or regulations.

## **Risk Factors**

*You should carefully consider the risks described below, in the applicable prospectus supplement and in the documents incorporated by reference into this prospectus, before investing in our securities. The risks and uncertainties described below are not the only ones we face. Like other companies in our industry, our consolidated financial results will be impacted by weather, the economy of our service territory and the performance of our customers. Our common stock price and creditworthiness will be affected by national and international macroeconomic trends, general market conditions and the expectations of the investment community, all of which are largely beyond our control. In addition, the following statements highlight risk factors that may affect our consolidated financial condition and results of operations. These are not intended to be an exhaustive discussion of all such risks, and the statements below must be read together with factors discussed elsewhere in this document, in the applicable prospectus supplement, and in the documents incorporated by reference into this prospectus.*

### **Our Revenues Depend Upon Rates Determined by the Kansas Corporation Commission**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

**Use of Proceeds**

Unless otherwise indicated in a prospectus supplement, the net proceeds from the sale of the securities will be used for general corporate purposes, primarily to fund our operations, to acquire capital equipment and repay debt.

**Ratio Of Earnings To Fixed Charges**

The table below sets forth our ratios of earnings to fixed charges for the periods indicated.

For the Three Months Ended		For the Fiscal Years Ended December 31,				
March 31, 2005	March 31, 2004	2004	2003	2002	2001	2000
1.47	1.20	1.62	1.81	1.23	1.12	1.90

Earnings consist of earnings from continuing operations, fixed charges and distributed income of equity investees. Fixed charges consist of all interest on indebtedness, amortization of debt discount and expense and the portion of rental expense that represents an interest factor. Earnings from continuing operations consists of income from continuing operations before income taxes, cumulative effects of accounting changes and preferred dividends adjusted for undistributed earnings from equity investees.

### **Dividend Policy**

Holders of our common stock are entitled to dividends when and as declared by our board of directors. However, prior to the payment of common dividends, dividends must first be paid to the holders of preferred stock based on the fixed dividend rate for each series.

Quarterly dividends on common stock and preferred stock normally are paid on or about the first business day of January, April, July and October to shareholders of record as of or about the ninth day of the preceding month. Our board of directors reviews our common stock dividend policy from time to time. Among the factors the board of directors considers in determining our dividend policy are earnings, cash flows, capitalization ratios, regulation, competition and financial loan covenants. On May 20, 2005, we declared a second-quarter 2005 dividend of \$0.23 per share, payable July 1, 2005. We established our dividend at this level in the fourth quarter of 2004.

On November 23, 2004, our board of directors affirmed its goal of achieving a dividend payout level of approximately 60% to 75% of on-going earnings. The board plans to review the dividend again in early 2006.

Our Restated Articles of Incorporation, as amended (the Articles), restrict the payment of dividends or the making of other distributions on our common stock while any preferred shares remain outstanding unless certain capitalization ratios and other conditions are met. See "Description of Capital Stock".

## Description of Capital Stock

Our authorized capital stock under the Articles consists of: 150,000,000 shares of common stock, \$5.00 par value, 6,000,000 shares of preferred stock, no par value, 600,000 shares of preferred stock, \$100.00 par value, and 4,000,000 shares of preference stock, no par value. The following description is a brief summary of certain provisions relating to our capital stock contained in the Articles and does not purport to be complete. This description is qualified in its entirety by reference to the Articles.

### Common Stock

Our authorized common stock consists of 150,000,000 shares, \$5.00 par value, of which 86,631,482 shares were issued and outstanding as of June 9, 2005. The issued and outstanding shares of common stock are, and any shares of common stock issued will be, fully paid and non-assessable. Holders of our common stock are entitled to one vote for each share held of record on all matters submitted to a vote of the stockholders. As of June 9, 2005, there were 29,000 holders of record of our common stock. The Articles do not provide for preemptive or other subscription rights of the holders of common stock. We are the transfer agent and registrar for our common stock.

The provisions of the Articles contain restrictions on the payment of dividends or the making of other distributions on our common stock while any preferred stock remains outstanding unless certain capitalization ratios and other conditions are met. At June 15, 2005, the redemption price for all outstanding preferred stock was approximately \$22.6 million. If the ratio of the capital represented by our preference stock and common stock (together, Subordinated Stock) (including premiums on capital stock) and our surplus accounts, to our total capital and our surplus accounts at the end of the second month immediately preceding the date of the proposed payment of dividends, adjusted to reflect the proposed payment (Capitalization Ratio), will be less than 20%, then the payment of the dividends on Subordinated Stock shall not exceed 50% of net income available for dividends for the 12-month period ending with and including the second calendar month immediately preceding the date of the proposed payment. If the Capitalization Ratio is 20% or more but less than 25%, then the payment of dividends on the Subordinated Stock, including the proposed payment, then the payments shall not exceed 75% of its net income available for dividends for such 12-month period. The Capitalization Ratio is calculated using our unconsolidated balance sheets. Except to the extent permitted above, no payment or other distribution may be made that would reduce the Capitalization Ratio to less than 25%. At June 15, 2005, our Capitalization Ratio exceeded 25%.

### Preferred Stock

We are authorized to issue 6,600,000 shares of preferred stock, which may be issued from time to time in one or more series, each such series to have such distinctive designation or title as may be fixed by our board of directors prior to the issuance of any shares thereof. Each series may differ from each other series already outstanding as may be declared from time to time by our board of directors in the following respects: (i) the rate of dividend; (ii) the amount per share, if any, which the preferred stock shall be entitled to receive upon the redemption of such shares, our liquidation, the distribution or sale of assets or our dissolution or winding up; (iii) terms and conditions of conversion, if any; and (iv) terms of sinking fund, redemption or purchase account, if any. As of June 9, 2005, we had three series of \$100.00 par value preferred stock outstanding, the 4 1/2 % Series (121,613 shares outstanding), the 4 1/4 % Series (54,970 shares outstanding) and the 5% Series (37,780 shares outstanding), and no shares of no par value preferred stock were outstanding. Dividends on the preferred stock are cumulative and payable quarterly. Each series of preferred stock is redeemable at any time, in whole or in part, at the redemption price for such series, plus accrued and unpaid dividends.

The preferred stock has special voting rights which are triggered when dividends on the stock are in default in an amount equal to four or more quarterly dividends, whether or not consecutive. If dividends are not paid for four or more dividend periods on all series of preferred stock then outstanding, the holders of the preferred stock are entitled to elect the smallest number of directors necessary to constitute a majority of the full board of directors until such unpaid dividends shall be paid.

## [Table of Contents](#)

We may not, without the consent of the holders of at least two-thirds of the preferred stock then outstanding, voting as a class, (i) define or specify preferences, qualifications, limitations or other rights for authorized but unissued shares of preferred stock superior to those of outstanding shares of such stock (except for differences described in items (i) through (iv) in the first paragraph under the caption "Preferred Stock") or amend, alter, change or repeal any of the express terms or provisions of the then outstanding preferred stock in a manner substantially prejudicial to the holders thereof, or (ii) issue or sell any preferred stock or any class of stock ranking prior to or on a parity with the preferred stock other than in exchange for or for the purpose of effecting the retirement of not less than a like number of shares of preferred stock or shares of stock ranking prior to or on a parity therewith or securities convertible into not less than a like number of such shares unless (a) aggregate capital applicable to common stock and preference stock plus surplus equals the involuntary liquidation preference of all preferred stock and any such other stock ranking prior thereto or on a parity therewith and (b) our net earnings (as defined in the Articles) for a period of 12 consecutive calendar months within the 15 calendar months preceding the date of issuance, available for the payment of dividends, shall be at least two times the annual dividend requirements on the preferred stock and on any such other stock ranking prior thereto or on a parity therewith after giving effect to the proposed issuance, and the net earnings (as defined in the Articles), for the same period, available for payment of interest shall be at least one and one-half times the sum of annual interest requirements and dividend requirements on preferred stock and such other stock ranking prior thereto or on a parity therewith after giving effect to the proposed issuance.

The Articles also provide that without the consent of the holders of at least a majority of the preferred stock then outstanding, voting as a class, or if more than one-third shall vote negatively, we shall not: (i) merge or consolidate with or into any other corporation; (ii) sell, lease or exchange all or substantially all of our property or assets unless the fair value of our net assets after completion of such transaction shall at least equal the liquidation value of all outstanding shares of preferred stock; or (iii) reacquire or pay any dividends or make any other distribution upon shares of the preference stock or the common stock or any other class of our stock over which the preferred stock has preference with respect to the payment of dividends or the distribution of assets, unless after any such action the sum of (a) the capital represented by our outstanding preference stock, common stock or other stock over which the preferred stock has preference, (b) our earned surplus, and (c) our capital surplus, in each case on an unconsolidated basis, shall not be less than the sum of \$10,500,000 plus an amount equal to twice the annual dividend requirement on all outstanding shares of the preferred stock and on any such other stock ranking prior thereto or on a parity therewith.

### **Preference Stock**

We are authorized to issue 4,000,000 shares of preference stock, which may be issued from time to time in one or more series, each such series to have such distinctive designation or title as may be fixed by the board of directors prior to the issuance of any shares thereof. Each series may differ from each other series already outstanding, as may be declared from time to time by the board of directors, in the following respects: (i) the rate of dividend; (ii) whether shares of preference stock are subject to redemption, and if so, the amount or amounts per share which the shares of such series would be entitled to receive in case of redemption; (iii) the amounts payable in the case of our liquidation, the distribution or sale of our assets or our dissolution or winding up; (iv) terms and conditions of conversion, if any; (v) terms of sinking fund, redemption or purchase account, if any; and (vi) any designations, preferences and relative participating, optional or other special rights and qualifications, limitations or restrictions thereof. There are currently no shares of our preference stock outstanding.

### **Certain Provisions of Westar Energy's Articles and By-laws**

Article XVII of the Articles requires the affirmative vote of the holders of not less than 80% of the outstanding shares of common and preferred stock entitled to vote and the affirmative vote of the holders of not less than a majority of the outstanding shares of stock entitled to vote held by any stockholders other than any stockholder, together with its affiliates and associates, which becomes the beneficial owner of 10% or more of the outstanding shares entitled to vote (an Interested Stockholder), to approve or authorize certain "business combinations" (including any merger, consolidation, self-dealing transaction, recapitalization or reclassification or issuance of stock) with an Interested Stockholder. This Article does not apply to any business combination with an Interested Stockholder (i) that has been approved by a majority of the directors of the company who were members of our board of directors immediately prior to the time an Interested Stockholder involved in a business combination became an Interested Stockholder, or (ii) in which the cash or fair market value of the consideration offered in such Business Combination is not less than the highest price per share paid by the Interested Stockholder in acquiring any of its holdings of each class of our capital stock.

The Articles and By-laws, as amended (the By-laws) provide for a classified board of directors consisting of not less than seven nor more than fifteen directors. The directors are divided into three classes as nearly equal in number as may be, and directors are elected to serve a term of three years. Under the By-laws, directors may be removed only for cause as set forth therein. Provisions in the By-laws relating to the classified board of directors and removal of directors may only be amended, altered or repealed by the affirmative vote of at least 80% of the outstanding shares entitled to vote in any election.

### **Description of Debt Securities**

This prospectus describes certain general terms and provisions of our debt securities. The debt securities will be issued under an indenture, which we refer to as the "indenture", dated August 1, 1998 between us and Deutsche Bank Trust Company Americas, formerly known as Bankers Trust Company, as trustee (the trustee). The indenture does not limit the amount of debt securities that can be issued thereunder and provides that the debt securities may be issued from time to time in one or more series pursuant to the terms of one or more securities resolutions or supplemental indentures creating such series.

We have summarized below the material provisions of the indenture and the debt securities or indicated which material provisions will be described in the related prospectus supplement. These descriptions are only summaries, and you should refer to the indenture itself which describes completely the terms and definitions summarized below and contains additional information about the debt securities.

### **Terms**

When we offer to sell a particular series of debt securities, we will describe the specific terms of the securities in a prospectus supplement. The prospectus supplement will set forth the following terms, as applicable, of the debt securities offered thereby: (1) the designation, aggregate principal amount, currency or composite currency and denominations; (2) the price at which such debt securities will be issued and, if an index formula or other method is used, the method for determining amounts of principal or interest; (3) the maturity date and other dates, if any, on which principal will be payable; (4) the interest rate (which may be fixed or variable), if any; (5) the date or dates from which interest will accrue and on which interest will be payable, and the record dates for the payment of interest; (6) the manner of paying principal and interest; (7) the place or places where principal and interest will be payable; (8) the terms of any mandatory or optional redemption by the company or any third party including any sinking fund; (9) the terms of any conversion or exchange; (10) the terms of any redemption at the option of holders or put by the holders; (11) any tax indemnity provisions; (12) if the debt securities provide that payments of principal or interest may be made in a currency other than that in which debt securities are denominated, the manner for determining such payments; (13) the portion of principal

## [Table of Contents](#)

payable upon acceleration of a Discounted Debt Security (as defined below); (14) whether and upon what terms debt securities may be defeased; (15) any events of default or covenants in addition to or in lieu of those set forth in the indenture; (16) provisions for electronic issuance of debt securities or for debt securities in uncertificated form; and (17) any additional provisions or other special terms not inconsistent with the provisions of the indenture, including any terms that may be required or advisable under United States or other applicable laws or regulations, or advisable in connection with the marketing of the debt securities.

Debt securities of any series may be issued as registered debt securities, bearer debt securities or uncertificated debt securities, and in such denominations as specified in the terms of the series.

In connection with its original issuance, no bearer security will be offered, sold or delivered to any location in the United States, and a bearer security in definitive form may be delivered in connection with its original issuance only upon presentation of a certificate in a form prescribed by the company to comply with United States laws and regulations.

Registration of transfer of registered debt securities may be requested upon surrender thereof at any agency of the company maintained for that purpose and upon fulfillment of all other requirements of the agent.

Securities may be issued under the indenture as Discounted Debt Securities to be offered and sold at a substantial discount from the principal amount thereof. Special United States federal income tax and other considerations applicable thereto will be described in the prospectus supplement relating to such Discounted Debt Securities. "Discounted Debt Security" means a security where the amount of principal due upon acceleration is less than the stated principal amount.

### **Ranking**

The debt securities will be unsecured and will rank on a parity with all of our existing and future unsecured senior debt. The debt securities will be senior to any existing and future indebtedness which by its terms is made subordinate to the debt securities.

We only have a stockholder's claim on the assets of our subsidiaries. This stockholder's claim is junior to the claims that creditors of our subsidiaries have against our subsidiaries. Holders of our debt securities are our creditors and not creditors of any of our subsidiaries. As a result, all the existing and future liabilities of our subsidiaries, including any claims of their creditors, are effectively senior to the debt securities with respect to the assets of our subsidiaries.

The debt securities are our obligations exclusively. To the extent that our ability to service our debt, including the debt securities, may be dependent upon the earnings of our subsidiaries, our ability to do so will be dependent on the ability of our subsidiaries to distribute those earnings to us as dividends, loans or other payments.

The debt securities are unsecured obligations. Our secured debt is effectively senior to the debt securities to the extent of the value of the assets securing such secured debt. Substantially all of our utility assets are subject to liens under the mortgage pursuant to which we have issued our first mortgage bonds.

### **Certain Covenants**

Any covenants which may apply to a particular series of debt securities will be described in the prospectus supplement relating thereto.

### **Successor Obligor**

The indenture provides that, unless otherwise specified in the securities resolution or supplemental indenture establishing a series of debt securities, the company shall not consolidate with or merge into, or transfer all or

## [Table of Contents](#)

substantially all of its assets to, any person in any transaction in which the company is not the survivor, unless: (1) the person is organized under the laws of the United States or a State thereof or is organized under the laws of a foreign jurisdiction and consents to the jurisdiction of the courts of the United States or a State thereof; (2) the person assumes by supplemental indenture all the obligations of the company under the indenture, the debt securities and any coupons; (3) all required approvals of any regulatory body having jurisdiction over the transaction shall have been obtained; and (4) immediately after the transaction no Default (as defined) exists. The successor shall be substituted for the company, and thereafter all obligations of the company under the indenture, the debt securities and any coupons shall terminate.

### **Exchange of debt securities**

Registered debt securities may be exchanged for an equal aggregate principal amount of registered debt securities of the same series and date of maturity in such authorized denominations as may be requested upon surrender of the registered debt securities at an agency of the company maintained for such purpose and upon fulfillment of all other requirements of such agent.

### **Default and Remedies**

Unless the securities resolution or supplemental indenture establishing the series otherwise provides (in which event the prospectus supplement will so state), an “Event of Default” with respect to a series of debt securities will occur if:

- (1) the company defaults in any payment of interest on any debt securities of such series when the same becomes due and payable and the default continues for a period of 60 days;
- (2) the company defaults in the payment of the principal and premium, if any, of any debt securities of such series when the same becomes due and payable at maturity or upon redemption, acceleration or otherwise and such default shall continue for five or more days;
- (3) the company defaults in the payment or satisfaction of any sinking fund obligation with respect to any debt securities of such series as required by the securities resolution or supplemental indenture establishing such series and the default continues for a period of 60 days;
- (4) the company defaults in the performance of any of its other agreements applicable to the series and the default continues for 90 days after the notice specified below;
- (5) the company pursuant to or within the meaning of any Bankruptcy Law:
  - (A) commences a voluntary case,
  - (B) consents to the entry of an order for relief against it in an involuntary case,
  - (C) consents to the appointment of a custodian for it or for all or substantially all of its property, or
  - (D) makes a general assignment for the benefit of its creditors;
- (6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (A) is for relief against the company in an involuntary case,
  - (B) appoints a Custodian for the company or for all or substantially all of its property, or
  - (C) orders the liquidation of the company, and the order or decree remains unstayed and in effect for 60 days; or
- (7) there occurs any other Event of Default provided for in such series.

The term “Bankruptcy Law” means Title 11, U.S. Code or any similar Federal or State law for the relief of debtors. The term “Custodian” means any receiver, trustee, assignee, liquidator or a similar official under any Bankruptcy Law.



## Table of Contents

“Default” means any event which is, or after notice or passage of time would be, an Event of Default. A Default under subparagraph (4) above is not an Event of Default until the trustee or the holders of at least 33 1/3% in principal amount of the series notify the company of the Default and the company does not cure the Default within the time specified after receipt of the notice.

The trustee may require indemnity satisfactory to it before it enforces the indenture or the debt securities of the series. Subject to certain limitations, holders of a majority in principal amount of the debt securities of the series may direct the trustee in its exercise of any trust or power with respect to such series. Except in the case of Default in payment on a series, the trustee may withhold from securityholders of such series notice of any continuing Default if the trustee determines that withholding notice is in the interest of such Securityholders. The company is required to furnish the trustee annually a brief certificate as to the company’s compliance with all conditions and covenants under the indenture.

The failure to redeem any debt securities subject to a Conditional Redemption (as defined in the indenture) is not an Event of Default if any event on which such redemption is so conditioned does not occur and is not waived before the scheduled redemption date.

The indenture does not have a cross-default provision. Thus, a default by the company on any other debt, including any other series of debt securities, would not constitute an Event of Default.

### **Amendments and Waivers**

The indenture and the debt securities or any coupons of the series may be amended, and any default may be waived as follows:

Unless the securities resolution or supplemental indenture otherwise provides (in which event the applicable prospectus supplement will so state), the debt securities and the Indenture may be amended with the consent of the holders of a majority in principal amount of the debt securities of all series affected voting as one class. Unless the securities resolution or supplemental indenture otherwise provides (in which event the applicable prospectus supplement will so state), a Default on a particular series may be waived with the consent of the holders of a majority in principal amount of the debt securities of the series. However, without the consent of each securityholder affected, no amendment or waiver may (1) reduce the amount of debt securities whose holders must consent to an amendment or waiver, (2) reduce the interest on or change the time for payment of interest on any debt security, (3) change the fixed maturity of any debt security, (4) reduce the principal of any non-Discounted Debt Security or reduce the amount of the principal of any Discounted Debt Security that would be due on acceleration thereof, (5) change the currency in which the principal or interest on a debt security is payable, (6) make any change that materially adversely affects the right to convert any debt security, or (7) waive any Default in payment of interest on or principal of a debt security.

Without the consent of any securityholder, the indenture or the debt securities may be amended: to cure any ambiguity, omission, defect or inconsistency; to provide for assumption of company obligations to securityholders in the event of a merger or consolidation requiring such assumption; to provide that specific provisions of the indenture shall not apply to a series of debt securities not previously issued; to create a series and establish its terms; to provide for a separate trustee for one or more series; or to make any change that does not materially adversely affect the rights of any securityholder.

### **Legal Defeasance and Covenant Defeasance**

Debt securities of a series may be defeased in accordance with their terms and, unless the securities resolution or supplemental indenture establishing the terms of the series otherwise provides, as set forth below. The company at any time may terminate as to a series all of its obligations (except for certain obligations, including obligations with respect to the defeasance trust and obligations to register the transfer or exchange of a

## [Table of Contents](#)

debt security, to replace destroyed, lost or stolen debt securities and coupons and to maintain paying agencies in respect of the debt securities) with respect to the debt securities of the series and any related coupons and the indenture (legal defeasance). The company at any time may terminate as to a series its obligations with respect to any restrictive covenants which may be applicable to a particular series (covenant defeasance).

The company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. If the company exercises its legal defeasance option, a series may not be accelerated because of an Event of Default. If the company exercises its covenant defeasance option, a series may not be accelerated by reference to any covenant which may be applicable to a series.

To exercise either defeasance option as to a series, the company must (i) irrevocably deposit in trust (the defeasance trust) with the trustee (or another trustee) money or U.S. Government Obligations, deliver a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due on the deposited U.S. Government Obligations, without reinvestment, plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay the principal and interest when due on all debt securities of such series to maturity or redemption, as the case may be, and (ii) comply with certain other conditions. In particular, the company must obtain an opinion of tax counsel that the defeasance will not result in recognition of any gain or loss to holders for Federal income tax purposes.

“U.S. Government Obligations” means direct obligations of the United States or any agency or instrumentality of the United States, the payment of which is unconditionally guaranteed by the United States, which, in either case, have the full faith and credit of the United States pledged for payment and which are not callable at the issuer’s option, or certificates representing an ownership interest in such obligations.

### **Regarding the Trustee**

Unless otherwise indicated in a prospectus supplement, the indenture trustee will also act as transfer agent and paying agent with respect to the debt securities. The company may remove the indenture trustee with or without cause if the company so notifies the indenture trustee three months in advance and if no Default occurs during the three-month period. The indenture trustee provides services for the company as a depository of funds, registrar, trustee and similar services.

### **Description of First Mortgage Bonds**

The first mortgage bonds will be issued under and secured by the Mortgage and Deed of Trust, dated July 1, 1939, between us and BNY Midwest Trust Company, as successor to Harris Trust and Savings Bank, as trustee (the trustee), as supplemented and amended by supplemental indentures. The original mortgage, as so supplemented and amended, we will refer to as the mortgage. All the first mortgage bonds issued or issuable under the mortgage are referred to as the “bonds.” We have summarized below the material provisions of the mortgage and the bonds or indicated which material provisions will be described in the related prospectus supplement. These descriptions are only summaries, and you should refer to the mortgage itself which describes completely the terms and definitions summarized below and contains additional information about the bonds.

### **Issuance of Additional Bonds**

The bonds, when issued may rank equally with the bonds of other series then outstanding, and may be issued having dates, maturities, interest rates, redemption prices and other terms as may be determined by our board of directors. Additional bonds may be issued under the mortgage in principal amounts not exceeding the sum of:

- (1) 60% (so long as any bonds issued prior to January 1, 1997 remain outstanding, and thereafter 70%) of the net bondable value of property additions not subject to an unfunded prior lien;

## Table of Contents

(2) the principal amount of bonds retired or to be retired (except out of trust monies); and

(3) the amount of cash deposited with the trustee for such purpose, which may thereafter be withdrawn upon the same basis that additional bonds are issuable under (1) or (2) above.

Additional bonds may not be issued on the basis of property additions subject to an unfunded prior lien.

In addition to the restrictions discussed above, so long as any bonds issued prior to January 1, 1997 remain outstanding, additional bonds may not be issued unless our unconsolidated net earnings available for interest, depreciation and property retirements for a period of any 12 consecutive months during the period of 15 calendar months immediately preceding the first day of the month in which the application for authentication and delivery of additional bonds is made shall have been not less than the greater of two times the annual interest charges on, and 10% of the principal amount of, all bonds then outstanding, all additional bonds then applied for, all outstanding prior lien bonds and all prior lien bonds, if any, then being applied for.

The net earnings test referred to in the previous paragraph need not be satisfied to issue additional bonds:

- on the basis of property additions subject to an unfunded prior lien which simultaneously will become a funded prior lien, if application for the issuance of the additional bonds is made at any time after a date two years prior to the date of the maturity of the bonds secured by the prior lien, and
- on the basis of the payment at maturity of bonds heretofore issued by us, or the redemption, conversion or purchase of bonds, after a date two years prior to the date on which those bonds mature.

We have reserved the right to amend the mortgage to eliminate the foregoing requirement. See “—Modification of the Mortgage.”

### **Release and Substitution of Property**

The mortgage provides that, subject to various limitations, property may be released from the lien thereof on the basis of cash deposited with the trustee, bonds or purchase money obligations delivered to the trustee, prior lien bonds delivered to the trustee, or unfunded net property additions certified to the trustee. The mortgage also permits the withdrawal of cash against the certification to the trustee of gross property additions at 100%, or the net bondable value of property additions at 60% (so long as any bonds issued prior to January 1, 1997 remain outstanding, and thereafter 70%), or the deposit with the trustee of bonds we have acquired. The mortgage contains special provisions with respect to the release of all or substantially all of our gas and electric properties. We have reserved the right to amend the mortgage to change the release and substitution provisions. See “—Modification of the Mortgage.”

### **Priority and Security**

The bonds when issued, will be secured, equally and ratably with all of the bonds now outstanding or hereafter issued under the mortgage, by the lien on substantially all of our fixed property and franchises purported to be conveyed by the mortgage including after-acquired property of the character intended to be mortgaged property, subject to the exceptions referred to below, to certain minor leases and easements, permitted liens, exceptions and reservations in the instruments by which we acquired title to our property and the prior lien of the trustee for compensation, expenses and liability.

Excepted from the lien of the mortgage are:

- cash and accounts receivable;
- contracts or operating agreements;
- securities not pledged under the mortgage;

## Table of Contents

- electric energy, gas, water, materials and supplies held for consumption in operation or held in advance of use for fixed capital purposes; and
- merchandise, appliances and supplies held for resale or lease to customers.

There is further expressly excepted any property of any other corporation, all the securities of which may be owned or later acquired by us. The lien of the mortgage does not apply to property of KGE so long as KGE remains our wholly owned subsidiary, to the stock of KGE owned by us or to the stock of any of our other subsidiaries. The mortgage permits our consolidation or merger with, or the conveyance of all or substantially all of our property to, any other corporation; provided, that the successor corporation assumes the due and punctual payment of the principal and interest on the bonds of all series then outstanding under the mortgage and assumes the due and punctual performance of all the covenants and conditions of the mortgage.

### **Ranking**

We only have a stockholder's claim on the assets of our subsidiaries. This stockholder's claim is junior to the claims that creditors of our subsidiaries have against our subsidiaries. Holders of our bonds are our creditors and not creditors of any of our subsidiaries. As a result, all the existing and future liabilities of our subsidiaries, including any claims of their creditors, are effectively senior to the bonds with respect to the assets of our subsidiaries.

The bonds are our obligations exclusively. To the extent that our ability to service our debt, including the bonds, may be dependent upon the earnings of our subsidiaries, our ability to do so will be dependent on the ability of our subsidiaries to distribute those earnings to us as dividends, loans or other payments.

### **Modification of the Mortgage**

The mortgage may be modified or altered, subject to our rights and obligations and the rights of holders of bonds, by the written consent of the holders of at least 60% in principal amount of all of the bonds outstanding thereunder, and, if the rights of one or more, but less than all, series of bonds then outstanding are to be affected by action taken pursuant to such consent, then also by consent of the holders of at least 60% in principal amount of each series of bonds so affected. No modification or alteration may be made which will permit the extension of the time or times of payment of the principal of, and premium, if any, or interest (including additional interest) on any bond or a reduction in the rate of interest thereon, or otherwise affect the terms of payment of the principal of, and premium, if any, or interest (including additional interest) on any bond or a reduction in the rate of interest thereon or reduce the percentages required for the taking of any action thereunder. Bonds owned by us or any affiliated corporation are excluded for the purpose of any vote, determination of a quorum or consent.

The mortgage also provides that without the consent of any holder of any bond issued thereunder, the right of such holder to receive payment of the principal of, and premium, if any, or interest (including additional interest) on, on or after the respective due dates expressed in such bond, or to institute suit for the enforcement of any payment on or after such respective due dates shall not be impaired or affected.

We have reserved the right, subject to appropriate corporate action, but without the consent or other action of holders of bonds of any series created after January 1, 1997, to make amendments to the mortgage to permit, unless an event of default shall have happened and be continuing, or shall happen as a result of making or granting an application:

1. the release from the lien of the mortgage of any mortgaged property if the fair value of all of the property constituting the trust estate (excluding the mortgaged property to be released but including any mortgaged property to be acquired by us with the proceeds of, or otherwise in connection with, such release) equals or exceeds an amount equal to 10/7ths of the aggregate principal amount of outstanding bonds and any prior lien bonds outstanding at the time of such release;

## Table of Contents

2. in the event we are unable to obtain a release of property as described in clause (1), the release from the lien of the mortgage of any property constituting part of the trust estate if the fair value thereof is less than 1/2 of 1% of the aggregate principal amount of bonds and prior lien bonds outstanding at the time of such release; provided, that the property released pursuant to this clause (2) in any period of 12 consecutive calendar months shall not exceed 1% of such bonds and prior lien bonds;

3. the deletion of the net earnings test for the issuance of additional bonds or merging into another company;

4. the deletion of a financial test to be met by another corporation in the event of our consolidation or merger into or our sale of our property as an entirety or substantially as an entirety to such other corporation; and

5. the deletion of the requirement to obtain an independent engineer's certificate in connection with certain releases of property from the lien of the mortgage.

We have also reserved the right, subject to appropriate corporate action, but without the consent or other action of holders of bonds of any series created on or after June 1, 2004, to:

1. Amend the mortgage to allow us or any successor entity to issue substitute bonds (or similar instruments) for any outstanding bonds, provided that such substitute bonds (or similar instruments) carry ratings equal to or better than the then current ratings of the bonds which are being replaced and that certain other conditions are satisfied. The mortgage and deed of trust under which any such substitute bonds (or similar instruments) may be issued may contain terms and conditions different from the mortgage;

2. Eliminate as an event of default the failure to discharge or stay within 30 days a final judgment against us for the payment of money in excess of \$100,000;

3. Eliminate the net earnings test in connection with certain acquisitions of property;

4. Add nuclear fuel to the definition of property additions;

5. Make certain amendments to modernize and clarify the terms of the mortgage. These amendments will not adversely affect the rights of holders of bonds and may include the following provisions, among others: (i) simplification of the trustee provisions, (ii) the addition of a governing law clause, (iii) the addition of defeasance provisions for future issuances of bonds, (iv) elimination of maintenance and improvement fund requirements for future issuances of bonds (which requirements will instead be added to specific series of bonds), (v) simplification of the release provisions for obsolete property, *de minimis* property releases and substitution of property and unfunded property, (vi) the ability to issue global or uncertificated securities, (vii) clarification of our ability to issue variable rate bonds under the mortgage and (viii) amendment of the definitions of excepted property and permitted liens.

## **Events of Default**

An event of default under the mortgage includes:

- default in the payment of the principal of any bond when the same shall become due and payable, whether at maturity or otherwise;
- default continuing for 30 days in the payment of any installment of interest on any bond or in the payment or satisfaction of any sinking fund obligation;
- default in performance or observance of any other covenant, agreement or condition in the mortgage continuing for a period of 60 days after written notice to us thereof by the trustee or by the holders of not less than 15% of the aggregate principal amount of all bonds then outstanding;
- failure to discharge or stay within 30 days a final judgment against us for the payment of money in excess of \$100,000; and
- certain events in bankruptcy, insolvency or reorganization.

## [Table of Contents](#)

The trustee is required, within 90 days after the occurrence thereof, to give to the holders of the bonds notice of all defaults known to the trustee unless such defaults shall have been cured before the giving of such notice; provided, however, that except in the case of default in the payment of the principal of, and premium, if any, or interest (including additional interest) on any of the bonds, or in the payment or satisfaction of any sinking or purchase fund installment, the trustee shall be protected in withholding notice if and so long as the trustee in good faith determines that the withholding of notice is in the interests of the holders of the bonds. The trustee is under no obligation to defend or initiate any action under the mortgage which would result in the incurring of non-reimbursable expenses unless one or more of the holders of any of the outstanding bonds furnishes the trustee with reasonable indemnity against such expenses. In the event of a default, the trustee is not required to act unless requested to act by holders of at least 25% in aggregate principal amount of the bonds then outstanding. In addition, a majority of the holders of the bonds have the right to direct all proceedings under the mortgage provided the trustee is indemnified to its satisfaction.

### **Global Securities**

We may issue the debt securities and bonds of any series in the form of one or more fully registered global securities that will be deposited with a depository or with a nominee for a depository identified in the prospectus supplement relating to such series and registered in the name of the depository or its nominee. In that case, one or more global securities will be issued in a denomination or aggregate denominations equal to the portion of the aggregate principal or face amount of outstanding registered securities of the series to be represented by such global securities. Unless and until the depository exchanges a global security in whole for securities in definitive registered form, the global security may not be transferred except as a whole by the depository to a nominee of the depository or by a nominee of the depository to the depository or another nominee of the depository or by the depository or any of its nominees to a successor of the depository or a nominee of such successor.

If not described below, any specific terms of the depository arrangement with respect to any portion of a series of securities to be represented by a global security will be described in the prospectus supplement relating to such series. We anticipate that the following provisions will apply to all depository arrangements.

Ownership of beneficial interests in a global security will be limited to persons that have accounts with the depository for such global security (“participants”) or persons that may hold interests through participants. Upon the issuance of a global security, the depository for such global security will credit, on its book-entry registration and transfer system, the participants’ accounts with the respective principal or face amounts of the securities represented by such global security beneficially owned by such participants. The accounts to be credited shall be designated by any dealers, underwriters or agents participating in the distribution of such securities. Ownership of beneficial interests in such global security will be shown on, and the transfer of such ownership interests will be effected only through, records maintained by the depository for such global security (with respect to interests of participants) and on the records of participants (with respect to interests of persons holding through participants). The laws of some states may require that certain purchasers of securities take physical delivery of such securities in definitive form. Such limits and such laws may impair the ability to own, transfer or pledge beneficial interests in global securities. So long as the depository for a global security, or its nominee, is the registered owner of such global security, such depository or such nominee, as the case may be, will be considered the sole owner or holder of the debt securities represented by such global security for all purposes under the indentures or a supplemental indenture under the mortgage. Except as set forth below, owners of beneficial interests in a global security will not be entitled to have the securities represented by such global security registered in their names, will not receive or be entitled to receive physical delivery of such securities in definitive form and will not be considered the owners or holders thereof under the indentures or a supplemental indenture under the mortgage. Accordingly, each person owning a beneficial interest in a global security must rely on the procedures of the depository for such global security and, if such person is not a participant, on the procedures of the participant through which such person owns its interest, to exercise any rights of a holder under either indenture. We understand that under existing industry practices, if we request any action of holders or if an

## [Table of Contents](#)

owner of a beneficial interest in a global security desires to give or take any action which a holder is entitled to give or take under either the indenture or a supplemental indenture under the mortgage, the depository for such global security would authorize the participants holding the relevant beneficial interests to give or take such action, and such participants would authorize beneficial owners owning through such participants to give or take such action or would otherwise act upon the instructions of beneficial owners holding through them.

Principal, premium, if any, and interest payments on debt securities or bonds represented by a global security registered in the name of a depository or its nominee will be made to such depository or its nominee, as the case may be, as the registered owner of such global security. We and the trustees or any of our or their agents will not have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in such global security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

We expect that the depository for any debt securities or bonds represented by a global security, upon receipt of any payment of principal, premium, interest or other distribution of underlying securities or commodities to holders in respect of such global security, will immediately credit participants' accounts in amounts proportionate to their respective beneficial interests in such global security as shown on the records of such depository. We also expect that payments by participants to owners of beneficial interests in such global security held through such participants will be governed by standing customer instructions and customary practices, as is now the case with the securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such participants.

If the depository for any debt securities or bonds represented by a global security is at any time unwilling or unable to continue as depository or ceases to be a clearing agency registered under the Securities Exchange Act of 1934, and we do not appoint a successor depository registered as a clearing agency under the Exchange Act within 90 days, we will issue such debt securities or bonds in definitive form in exchange for such global security. In addition, we may at any time and in our sole discretion determine not to have any of the debt securities or bonds of a series represented by one or more global securities and, in such event, will issue debt securities or bonds of such series in definitive form in exchange for all of the global security or securities representing such debt securities or bonds. Any debt securities or bonds issued in definitive form in exchange for a global security will be registered in such name or names as the depository shall instruct the relevant trustee. We expect that such instructions will be based upon directions received by the depository from participants with respect to ownership of beneficial interests in such global security.

### **Plan of Distribution**

We may sell the securities being offered hereby in four ways:

- directly to purchasers;
- through agents;
- through underwriters; and
- through dealers.

We may directly solicit offers to purchase securities, or we may designate agents to solicit such offers. We will, in the prospectus supplement relating to such offering, name any agent that could be viewed as an underwriter under the Securities Act of 1933 and describe any commissions we must pay. Any such agent will be acting on a best efforts basis for the period of its appointment or, if indicated in the applicable prospectus supplement, on a firm commitment basis. Agents, dealers and underwriters may be customers of, engage in transactions with, or perform services for us in the ordinary course of business.

## [Table of Contents](#)

If any underwriters or agents are utilized in the sale of the securities in respect of which this prospectus is delivered, we will enter into an underwriting agreement or other agreement with them at the time of sale to them, and we will set forth in the prospectus supplement relating to such offering their names and the terms of our agreement with them.

If a dealer is utilized in the sale of the securities in respect of which the prospectus is delivered, we will sell such securities to the dealer, as principal. The dealer may then resell such securities to the public at varying prices to be determined by such dealer at the time of resale.

Remarketing firms, agents, underwriters and dealers may be entitled under agreements which they may enter into with us to indemnification by us against certain civil liabilities, including liabilities under the Securities Act of 1933, and may be customers of, engage in transactions with or perform services for us in the ordinary course of business.

In order to facilitate the offering of the securities, any underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities or any other securities the prices of which may be used to determine payments on such securities. Specifically, any underwriters may overallocate in connection with the offering, creating a short position for their own accounts. In addition, to cover overallocations or to stabilize the price of the securities or of any such other securities, the underwriters may bid for, and purchase, the securities or any such other securities in the open market. Finally, in any offering of the securities through a syndicate of underwriters, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the securities above independent market levels. Any such underwriters are not required to engage in these activities, and may end any of these activities at any time.



### **Legal Matters**

As to matters governed by Kansas Law, Larry D. Irick, Vice President, General Counsel and Corporate Secretary of Westar Energy and, as to matters governed by New York law, Davis Polk & Wardwell will pass upon the validity of the securities to be offered by this prospectus. Mr. Irick is a Westar Energy stockholder and holder of restricted share units.

### **Experts**

The financial statements and the related financial statement schedule incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K have been audited by Deloitte & Touche LLP, independent registered public accounting firm, as stated in their report, which is incorporated by reference herein, and have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

### **About This Prospectus**

This prospectus is part of one or more registration statements that we filed with the Securities and Exchange Commission utilizing a shelf registration process. Under this process, we may, from time to time, sell the debt securities, bonds and common stock described in this prospectus in one or more offerings with a total offering price not to exceed \$400,000,000 in the case of our debt securities, \$600,000,000 in the case of our bonds and no more than 7,000,000 shares of our common stock.

### **Where You Can Find More Information**

We are a reporting company and file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission, or SEC. You may read and copy any document we file with the SEC at its public reference facility at 450 Fifth Street, N.W., Washington, D.C. 20549. You can request copies of these documents by writing to the SEC and paying a fee for the copying costs. Please call the SEC at 1-800-SEC-0330 for further information regarding its public facilities. Our SEC filings, including the complete registration statement of which this prospectus is a part and all of the exhibits to it are also available to the public from the SEC's website at <http://www.sec.gov>.

The SEC allows us to "incorporate by reference" the information we file with it, which means that we can disclose important information to you by referring you to those previously filed documents. The information incorporated by reference in this prospectus is considered to be part of this prospectus, and the information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings made with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, until we sell all of the securities we are offering. Any statement contained in a previously filed document incorporated by reference into this prospectus is deemed to be modified or superceded for purposes of this prospectus to the extent that a statement contained in this prospectus, or in a subsequently filed document also incorporated by reference in this prospectus, modifies or supercedes that statement:

- (a) Our Annual Report on Form 10-K for the year ended December 31, 2004;
- (b) Our Quarterly Report on Form 10-Q for the three months ended March 31, 2005; and
- (c) Our Current Reports on Form 8-K filed on January 12, 2005, January 18, 2005, March 17, 2005 and April 15, 2005.

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[Table of Contents](#)

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address:

Westar Energy, Inc.  
818 South Kansas Avenue  
Topeka, Kansas 66612  
Attn: Investor Relations  
(785) 575-1898

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION**

The following table sets forth the costs and expenses payable by the Registrant in connection with the sale of the securities being registered hereby. All amounts are estimates except the registration fee.

	<b>Amount to be Paid</b>
Registration fee	\$ 84,467
Printing and engraving	50,000
Legal fees and expenses	75,000
Trustee fees and expenses	100,000
Accounting fees and expenses	10,000
Miscellaneous	10,000
<b>TOTAL</b>	<b>\$ 329,467</b>

**Item 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Article XVIII of the Articles provides that a director shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for paying a dividend or approving a stock repurchase in violation of the Kansas General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. This provision is specifically authorized by Section 17-6002(b)(8) of the Kansas General Corporation Law.

Section 17-6305 of the Kansas General Corporation Law (the "Indemnification Statute") provides for indemnification by a corporation of its corporate officers, directors, employees and agents. The Indemnification Statute provides that a corporation may indemnify such persons who have been, are, or may become a party to an action, suit or proceeding due to his or her status as a director, officer, employee or agent of the corporation. Further, the Indemnification Statute grants authority to a corporation to implement its own broader indemnification policy. Article XVIII of the Articles requires us to indemnify our directors and officers to the fullest extent provided by Kansas law. Further, as is provided for in Article XVIII, we entered into indemnification agreements with our directors, which provide indemnification broader than that available under Article XVIII and the Indemnification Statute.

We maintain standard policies of insurance under which coverage is provided (a) to our directors and officers against loss arising from claims made by reason of breach of duty or other wrongful act, and (b) to us with respect to payments which may be made by us to such officers and directors pursuant to the above indemnification provision or otherwise as a matter of law.

The proposed forms of Purchase Agreement incorporated by reference as Exhibits 1.1.(a), (b) and (c) to this Registration Statement provide for indemnification of our directors and officers by the purchasers against certain liabilities.

## Table of Contents

### Item 16. EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibits</u>
1.1(a)	Form of Purchase Agreement (filed as Exhibit 1 to Registration Statement, SEC File No. 333-02023)
1.1(b)	Form of Purchase Agreement (Debt Securities) (filed as Exhibit 1 to Registration Statement, SEC File No. 333-59673)
1.1(c)	Form of Purchase Agreement (First Mortgage Bonds) (filed as Exhibit 1 to Registration Statement, SEC File No. 333-35872)
3(a)	By-laws of the Registrant, as amended March 16, 2000 (filed as Exhibit 3(a) to December 31, 1999 Form 10-K)
3(b)	Restated Articles of Incorporation of the Registrant, as amended through May 25, 1988 (filed as Exhibit 4 to Registration Statement, SEC File No. 33-23022)
3(c)	Certificate of Amendment to Restated Articles of Incorporation of the Registrant (filed as Exhibit 3(g) to December 1998 Form 10-K)
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3(k)	Certificate of Amendment to Restated Articles of Incorporation of the Registrant (filed as Exhibit 3(l) to the December 31, 2002 Form 10-K)
3(l)	Certificate of Amendment to Restated Articles of Incorporation of the Registrant (filed as Exhibit 3(m) to the December 31, 2002 Form 10-K)
3(m)	Certificate of Amendment to Restated Articles of Incorporation of the Registrant dated May 19, 2005
4.1	Mortgage and Deed of Trust dated July 1, 1939 between the Registrant and Harris Trust and Savings Bank (filed as Exhibit 4(a) to Registration Statement No. 33-21739)
4.1.1	First and Second Supplemental Indentures dated July 1, 1939 and April 1, 1949, respectively (filed as Exhibit 4(b) to Registration Statement No. 33-21739)
4.1.2	Sixth Supplemental Indenture dated October 4, 1951 (filed as Exhibit 4(b) to Registration Statement No. 33-21739)
4.1.3	Fourteenth Supplemental Indenture dated May 1, 1976 (filed as Exhibit 4(b) to Registration Statement No. 33-21739)

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4.1.6	Thirtieth Supplemental Indenture dated February 1, 1993 (filed as Exhibit 4(q) to the December 1992 Form 10-K)
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4.1.13	Thirty-Eighth Supplemental Indenture dated January 18, 2005 (filed as Exhibit 4.3 to the January 18, 2005 Form 8-K)
4.1.14	Form of Supplemental Indenture for New Mortgage Bonds (filed as Exhibit 4.2 to Registration Statement No. 333-35872)
4.2	Debt Securities Indenture dated August 1, 1998 between the Registrant and Deutsche Bank Trust Company Americas, as trustee (filed as Exhibit 4.1 to the June 30, 1998 Form 10-Q)
4.2(a)	Form of Note (included in Exhibit 4.2)
4.2.1	Securities Resolution No. 2 dated as of May 10, 2002 under Debt Securities Indenture (filed as Exhibit 4.2 to the March 31, 2002 Form 10-Q)
5.1	Opinion of Larry D. Irick, General Counsel of the Registrant
5.2	Opinion of Davis Polk & Wardwell
12	Computation of Ratio of Earnings to Fixed Charges
23.1	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm
23.2	Consent of Larry D. Irick (included in exhibit 5.1)
23.3	Consent of Davis Polk & Wardwell (included in exhibit 5.1)
24.1	Power of Attorney (filed herewith on the signature page of the Registration Statement)
25.1	Statement of Eligibility on Form T-1 of Deutsche Bank Trust Company Americas, as successor to Bankers Trust Company, as trustee under Debt Securities Indenture
25.2	Statement of Eligibility on Form T-1 of BNY Midwest Trust Company, as successor to Harris Trust and Savings Bank, as trustee under Mortgage and Deed of Trust

**Item 17. UNDERTAKINGS**

(1) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 15, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(2) The undersigned Registrant hereby undertakes:

(a) That for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the bona fide offering thereof.

(b) That for purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of the registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of the registration statement as of the time it was declared effective.

(c) That for the purposes of determining any liability under the Securities Act, each post effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

Provided, however that paragraphs (1)(i) and (ii) do not apply if the information required to be included in a post-effective amendment by these paragraphs is contained in periodic reports filed with the SEC by the Company pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Topeka, state of Kansas, on June 15, 2005.

WESTAR ENERGY, INC.

By:                 /s/ JAMES S. HAINES, JR.                  
**James S. Haines, Jr.**  
**Director, Chief Executive Officer and President**

**POWER OF ATTORNEY**

We the undersigned directors and officers of Westar Energy, Inc. do hereby constitute and appoint Larry D. Irick and Mark A. Ruelle, or either of them, our true and lawful attorneys and agents, to do any and all such acts and things in our name and on our behalf in our capacities as directors and officers and to execute any and all instruments for us and in our names in the capacities indicated below, which said attorneys and agents, or either of them, may deem necessary or advisable to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with the Registration Statement, including specifically, but without limitation, power and authority to sign for us or in any of our names and in the capacities indicated below any and all amendments (including post effective amendments) to this Registration Statement, or any related Registration Statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended; and we do hereby ratify and confirm all that the said attorneys and agents, or either of them, shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ JAMES S. HAINES, JR.</u> James S. Haines, Jr.	Director, Chief Executive Officer and President (Principal Executive Officer)	June 15, 2005
<u>/s/ MARK A. RUELE</u> Mark A. Ruelle	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	June 15, 2005
<u>/s/ CHARLES Q. CHANDLER IV</u> Charles Q. Chandler IV	Chairman of the Board	June 15, 2005
<u>/s/ MOLLIE H. CARTER</u> Mollie H. Carter	Director	June 15, 2005
<u>/s/ R. A. EDWARDS III</u> R. A. Edwards III	Director	June 15, 2005
<u>/s/ B. ANTHONY ISAAC</u> B. Anthony Isaac	Director	June 15, 2005

[Table of Contents](#)

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<hr/> <p>/s/ ARTHUR B. KRAUSE</p> <hr/> <p><b>Arthur B. Krause</b></p>	Director	June 15, 2005
<hr/> <p>/s/ MICHAEL F. MORRISSEY</p> <hr/> <p><b>Michael F. Morrissey</b></p>	Director	June 15, 2005
<hr/> <p>/s/ JOHN C. NETTELS, JR.</p> <hr/> <p><b>John C. Nettels, Jr.</b></p>	Director	June 15, 2005
<hr/> <p>/s/ JERRY B. FARLEY</p> <hr/> <p><b>Jerry B. Farley</b></p>	Director	June 15, 2005
<hr/> <p>/s/ SANDRA A.J. LAWRENCE</p> <hr/> <p><b>Sandra A.J. Lawrence</b></p>	Director	June 15, 2005



**EXHIBIT INDEX**

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KANSAS SECRETARY OF STATE  
Domestic For Profit Corporation Certificate of Amendment

1. Name of the corporation:

Westar Energy, Inc.

2. The articles of incorporation are amended as follows:

Article XII shall be amended to read in its entirety as follows: (see attachment)

The amendment was duly adopted in accordance with the provisions of K.S.A. 17-6602.

I declare under the penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct.

Executed on the 19<sup>th</sup> of May, 2005

/s/ Larry D. Irick

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Authorized Officer

## Article XII

Meetings of stockholders may be held within or without the State of Kansas. The books of the Corporation may be kept within or (subject to the applicable provisions of the laws of the State of Kansas) outside the State of Kansas at such place or places as may be from time-to-time designated by the Board.

Subject to the rights of holders of Preferred Stock in accordance with Section A of Article IV, only persons who are nominated in accordance with the procedures set forth in this paragraph shall be eligible to be nominated as directors at any meeting of the stockholders of the Corporation. At any meeting of the stockholders of the Corporation, nominations of persons for election to the Board of Directors may be made (1) by or at the direction of the Board of Directors or (2) by any stockholder of the Corporation who is a holder of record at the time of giving the notice provided for in this paragraph, who shall be entitled to vote at the meeting, and who complies with the notice procedures set forth in this paragraph. For a nomination to be properly brought before a stockholders' meeting by a stockholder, timely written notice shall be made to the Corporate Secretary of the Corporation. The stockholder's notice shall be delivered to, or mailed and received at, the principal office of the Corporation no less than 60 days nor more than 90 days prior to the meeting; provided, however, in the event that less than 45 days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be received not later than the close of business on the tenth day following the day on which the notice of the date of the meeting was mailed or the public disclosure was made; provided further however, notice by the stockholder to be timely must be received in any event not later than the close of business on the seventh day preceding the day on which the meeting is to be held. The stockholder's notice shall set forth (1) as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required by applicable law (including the person's written consent to being named as a nominee and to serving as a director if elected), and (2) (a) the name and address, as they appear on the Corporation's books, of the stockholder, (b) a representation that the stockholder is a holder of record of the stock entitled to vote at the meeting on the date of the notice and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice, and (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder. The stockholder shall also comply with all applicable requirements of the Securities and Exchange Act of 1934, as amended (the "1934 Act") and the rules and regulations thereunder with respect to the matters set forth in this paragraph. If the chairman of the meeting shall determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by this paragraph, the nomination shall not be accepted.

At any meeting of the stockholders of the Corporation, only such business shall be conducted as shall have been brought before the meeting (1) by or at the direction of the Board of Directors or (2) by any stockholder of the Corporation who is a holder of record at the time of giving the notice provided for in this paragraph, who shall be entitled to vote at the meeting, and who complies with the notice procedures set forth in this paragraph. For business to be properly brought before a stockholders' meeting by a stockholder, timely written notice shall be made to the Corporate Secretary of the Corporation. The stockholder's notice shall be delivered to, or mailed and received at, the principal office of the Corporation not less than 60 days nor more than 90 days prior to the meeting; provided, however, in the event that less than 45 days notice

or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholders to be timely must be received not later than the close of business on the tenth day following the day on which the notice of the date of the meeting was mailed or the public disclosure was made; provided further however, notice by the stockholder to be timely must be received in any event not later than the close of business on the seventh day preceding the day on which the meeting is to be held. The stockholder's notice shall set forth (1) a brief description of the business desired to be brought before the meeting and the reasons for considering the business, and (2) (a) the name and address, as they appear on the Corporation's books, of the stockholder, (b) a representation that the stockholder is a holder of record of the stock entitled to vote at the meeting on the date of the notice and intends to appear in person or by proxy at the meeting to present the business specified in the notice, and (c) any material interest of the stockholder in the proposed business. The stockholder shall also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this paragraph. If the chairman of the meeting shall determine and declare at the meeting that the proposed business was not brought before the meeting in accordance with the procedures by this paragraph, the business shall not be considered.

The notice procedures set forth in this Article XII do not change or limit any procedures the Corporation may require in accordance with applicable law with respect to the inclusion of matters in the Corporation's proxy statement.

## [LETTERHEAD OF WESTAR ENERGY, INC.]

June 15, 2005

Westar Energy, Inc.  
818 South Kansas Avenue  
Topeka, Kansas 66612

Ladies and Gentlemen:

I am Vice President, General Counsel and Corporate Secretary of Westar Energy, Inc., a Kansas corporation (the "Company"), and have acted for the Company in connection with the Company's Registration Statement on Form S-3 (the "Registration Statement") filed on the date hereof with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, for the registration of the sale by the Company from time to time of up to (i) \$400,000,000 aggregate principal amount of unsold debt securities previously registered pursuant to Registration Statement No. 333-59673 (the "Debt Securities"), (ii) 7,000,000 shares of common stock, \$5.00 par value (including 1,925,000 unsold shares of which were previously registered pursuant to Registration Statement No. 333-113415) (the "Common Stock"), and (iii) \$600,000,000 aggregate principal amount of first mortgage bonds (the "First Mortgage Bonds"). The Debt Securities, Common Stock and First Mortgage Bonds are herein collectively referred to as the "Securities". The Debt Securities and the First Mortgage Bonds may be convertible and/or exchangeable for Securities or other securities. The Debt Securities are to be issued pursuant to an Indenture dated August 1, 1998, among the Company and Deutsche Bank Trust Company Americas, as Trustee. The First Mortgage Bonds are to be issued pursuant to a mortgage and deed of trust dated July 1, 1939, between the Company and BNY Midwest Trust Company, as Trustee, as heretofore supplemented (the "Mortgage") and as to be further supplemented by one or more supplemental indentures in the form incorporated as an exhibit to the Registration Statement (the "Supplemental Indenture").

I have examined originals or copies, certified or otherwise identified to my satisfaction, of such documents, corporate records, certificates of public officials and other instruments as I have deemed necessary or advisable for the purpose of rendering this opinion.

On the basis of the foregoing, I am of the opinion that:

1. The Mortgage has been duly authorized executed and delivered and is a valid instrument legally binding on the Company.

2. Upon (a) authorization of the issue and sale of the First Mortgage Bonds by regulatory commissions having jurisdiction, (b) the Registration Statement becoming effective under the Securities Act of 1933, (c) the authorization of the Supplemental Indenture and the issuance, sale and delivery of the First Mortgage Bonds by the Board of Directors of the Company and the execution of the Supplemental Indenture by the Company and the Trustee thereunder, acting by their proper officers, respectively, the delivery thereof and the filing for record of the Supplemental Indenture, and (d) the execution of the First Mortgage Bonds by the proper officers of the Company and the authentication thereof by the Trustee in accordance with the provisions of the Mortgage and full payment therefor, the Supplemental Indenture will be a valid instrument legally binding upon the Company and the First Mortgage Bonds will be duly authorized and issued, will constitute the legal, valid and binding obligations of the Company, enforceable in accordance with their terms and will be entitled to the lien of and the benefits provided by the Mortgage and the indentures supplemental thereto, including the Supplemental Indenture (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights generally from time to time in effect and to equitable principles of general applicability).

3. When the specific terms of any offering or offerings of Common Stock have been duly established by the Board of Directors of the Company and in accordance with provisions of any applicable underwriting agreement so as not to violate any applicable law or agreement or instrument then binding on the Company, and shares of the Common Stock have been issued and sold against payment therefor in accordance with the applicable underwriting or other agreement or upon exchange in accordance with the terms of any Debt Security that has been duly authorized, issued, paid for and delivered, such shares will be validly issued, fully paid and non-assessable.

In connection with my opinions expressed above, I have assumed that, at or prior to the time of the delivery of any such Security, (i) the Board of Directors shall have duly established the terms of such Security, (ii) the Registration Statement shall have been declared effective and such effectiveness shall not have been terminated or rescinded and (iii) there shall not have occurred any change in law affecting the validity or enforceability of such Security. I have also assumed that none of the terms of any Security to be established subsequent to the date hereof, nor the issuance and delivery of such Security, nor the compliance by the Company with the terms of such Security will violate any applicable law or will result in a violation of any provision of any instrument or agreement then binding upon the Company, or any restriction imposed by any court or governmental body having jurisdiction over the Company.

I am a member of the Bar of the state of Kansas and the foregoing opinion is limited to the laws of the state of Kansas and the federal laws of the United States of America.

I hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In addition, I consent to the reference to me under the caption "Legal Matters" in the prospectus.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose or relied upon by or furnished to any other person without my prior written consent.

Very truly yours,

/s/ Larry D. Irick

Larry D. Irick



## [DAVIS POLK &amp; WARDWELL LETTERHEAD]

June 15, 2005

Westar Energy, Inc.  
818 South Kansas Avenue  
Topeka, Kansas 66612

Ladies and Gentlemen:

We have acted as your counsel in connection with the Registration Statement on Form S-3 (the "Registration Statement") of Westar Energy, Inc. a Kansas corporation (the "Company") filed on the date hereof with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, for the registration of the sale by the Company from time to time of up to (i) \$400,000,000 aggregate principal amount of unsold debt securities, previously registered pursuant to Registration Statement No. 333-59673 (the "Debt Securities"), (ii) 7,000,000 shares of common stock, \$5.00 par value (including 1,925,000 unsold shares of which were previously registered pursuant to Registration Statement No. 333-113415) (the "Common Stock"), and (iii) \$600,000,000 aggregate principal amount of mortgage bonds (the "Mortgage Bonds"). The Debt Securities, Common Stock and Mortgage Bonds are herein collectively referred to as the "Securities". The Debt Securities and the Mortgage Bonds may be convertible and/or exchangeable for Securities or other securities. The Debt Securities are to be issued pursuant to an Indenture (the "Indenture") dated August 1, 1998, between the Company and Deutsche Bank Trust Company Americas, as Trustee, in the form incorporated as an exhibit to the Registration Statement. The Mortgage Bonds are to be issued pursuant to a mortgage and deed of trust between the Company and BNY Midwest Trust Company, as Trustee dated July 1, 1939.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or advisable for the purpose of rendering this opinion.

On the basis of the foregoing, we are of the opinion that:

1. The Indenture has been duly authorized executed and delivered and is a valid instrument legally binding on the Company.
2. Upon (a) authorization of the issue and sale of the Debt Securities by regulatory commissions having jurisdiction, (b) the Registration Statement becoming effective under the Securities Act of 1933, (c) the authorization by

securities resolution or otherwise of the specific terms of a particular Debt Security and the execution, authentication, issuance, sale and delivery of such Debt Security in accordance with the provisions of the Indenture and applicable underwriting or other purchase agreement or upon exchange or conversion in accordance with the terms of any other Security, such Debt Security will constitute a legal, valid and binding obligation of the Company, enforceable in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights generally from time to time in effect and to equitable principles of general applicability).

In connection with the opinions expressed above, we have assumed that, at or prior to the time of the delivery of any such Security, (i) the Board of Directors shall have duly established the terms of such Security, (ii) the Registration Statement shall have been declared effective and such effectiveness shall not have been terminated or rescinded and (iii) there shall not have occurred any change in law affecting the validity or enforceability of such Security. We have also assumed that none of the terms of any Security to be established subsequent to the date hereof, nor the issuance and delivery of such Security, nor the compliance by the Company with the terms of such Security will violate any applicable law or will result in a violation of any provision of any instrument or agreement then binding upon the Company, or any restriction imposed by any court or governmental body having jurisdiction over the Company.

We are members of the Bar of the state of New York and the foregoing opinion is limited to the laws of the state of New York and the federal laws of the United States of America.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In addition, we consent to the reference to us under the caption "Legal Matters" in the prospectus.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose or relied upon by or furnished to any other person without our prior written consent.

Very truly yours,

/s/ Davis Polk & Wardwell

**WESTAR ENERGY, INC.**  
**Computations of Ratio of Earnings to Fixed Charges and**  
**Computations of Ratio of Earnings to Combined Fixed Charges**  
**and Preferred Dividend Requirements**  
**(Dollars in Thousands)**

	Three Months Ended March 31,		Year Ended December 31,				
	2005	2004	2004	2003	2002	2001	2000
Earnings from continuing operations	\$23,183	\$12,488	\$133,542	\$244,542	\$68,245	\$34,710	\$275,874
<b>Fixed Charges:</b>							
Interest expense	30,523	43,991	143,953	225,901	237,418	224,777	235,341
Interest on corporate-owned life insurance borrowings	13,126	13,541	50,429	52,839	52,768	50,409	45,634
Interest applicable to rentals	5,188	5,380	21,377	23,084	24,647	30,377	29,377
<b>Total Fixed Charges</b>	<b>48,837</b>	<b>62,912</b>	<b>215,759</b>	<b>301,824</b>	<b>314,833</b>	<b>305,563</b>	<b>310,352</b>
Distributed income of equity investees	—	—	—	—	2,916	2,769	2,686
<b>Preferred Dividend Requirements:</b>							
Preferred dividends(b)	242	242	970	968	399	895	1,129
Income tax required	117	103	324	485	(52)	(403)	522
<b>Total Preferred Dividend Requirements</b>	<b>359</b>	<b>345</b>	<b>1,294</b>	<b>1,453</b>	<b>347</b>	<b>492</b>	<b>1,651</b>
<b>Total Fixed Charges and Preferred Dividend Requirements</b>	<b>49,196</b>	<b>63,257</b>	<b>217,053</b>	<b>303,277</b>	<b>315,180</b>	<b>306,055</b>	<b>312,003</b>
Earnings(c)	\$72,020	\$75,400	\$349,301	\$546,366	\$385,994	\$343,042	\$588,912
Ratio of Earnings to Fixed Charges	1.47	1.20	1.62	1.81	1.23	1.12	1.90
Ratio of Earnings to Combined Fixed Charges and Preferred Dividend Requirements	1.46	1.19	1.61	1.80	1.22	1.12	1.89

- (a) Earnings from continuing operations consist of income from continuing operations before income taxes, cumulative effects of accounting changes and preferred dividends adjusted for undistributed earnings from equity investees.
- (b) Preferred dividend requirements consist of an amount equal to the pre-tax earnings that would be required to meet dividend requirements on preferred stock.
- (c) Earnings are deemed to consist of earnings from continuing operations, fixed charges and distributed income of equity investees. Fixed charges consist of all interest on indebtedness, amortization of debt discount and expense, and the portion of rental expense that represents an interest factor.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-3 of our reports dated March 11, 2005, relating to the consolidated financial statements and consolidated financial statement schedule of Westar Energy, Inc. (which report expresses an unqualified opinion and includes explanatory paragraphs related to the adoption of new accounting pronouncements in 2003 and 2002), and management's report on the effectiveness of internal control over financial reporting appearing in the Annual Report on Form 10-K of Westar Energy, Inc. for the year ended December 31, 2004 and to the reference to us under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ DELOITTE & TOUCHE LLP

Kansas City, Missouri  
June 15, 2005

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

**FORM T-1**

STATEMENT OF ELIGIBILITY UNDER THE TRUST INDENTURE ACT OF 1939 OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)

**DEUTSCHE BANK TRUST COMPANY AMERICAS  
(formerly BANKERS TRUST COMPANY)**  
(Exact name of trustee as specified in its charter)

**NEW YORK**  
(Jurisdiction of Incorporation or organization if not a U.S. national bank)

**13-4941247**  
(I.R.S. Employer Identification no.)

**60 WALL STREET  
NEW YORK, NEW YORK**  
(Address of principal executive offices)

**10005**  
(Zip Code)

**Deutsche Bank Trust Company Americas  
Attention: Will Christoph  
Legal Department  
60 Wall Street, 36<sup>th</sup> Floor  
New York, New York 10005  
(212) 250-0378**

(Name, address and telephone number of agent for service)

**WESTAR ENGERGY, INC.**

(Exact name of Registrant as specified in its charter)

**Kansas**  
(State or other jurisdiction of incorporation or organization)

**48-0290150**  
(IRS Employer Identification No.)

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

(Address, including Zip Code and Telephone Number, including Area Code, of Registrant's Principal Executive Offices)

**Larry D. Irick  
Vice President, General Counsel and Corporate Secretary  
Westar Energy, Inc.  
818 South Kansas Avenue  
Topeka, Kansas 66612  
Telephone: (785) 575-6300**

(Name, Address, including Zip Code and Telephone Number, including Area Code, of Agent For Service)

**Copies To:  
Daniel G. Kelly, Jr.  
Davis Polk & Wardwell  
1600 El Camino Real  
Menlo Park, California 94025  
(650) 752-2000**

**First Mortgage Bonds**  
(Title of the Indenture securities)

**Item 1. General Information.**

Furnish the following information as to the trustee.

(a) Name and address of each examining or supervising authority to which it is subject.

Name

Address

Federal Reserve Bank (2nd District)  
Federal Deposit Insurance Corporation  
New York State Banking Department

New York, NY  
Washington, D.C.  
Albany, NY

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

**Item 2. Affiliations with Obligor.**

If the obligor is an affiliate of the Trustee, describe each such affiliation.

None.

**Item 3. -15. Not Applicable**

**Item 16. List of Exhibits.**

**Exhibit 1** - Restated Organization Certificate of Bankers Trust Company dated August 6, 1998, Certificate of Amendment of the Organization Certificate of Bankers Trust Company dated September 25, 1998, Certificate of Amendment of the Organization Certificate of Bankers Trust Company dated December 16, 1998, and Certificate of Amendment of the Organization Certificate of Bankers Trust Company dated February 22, 2002, copies attached.

**Exhibit 2** - Certificate of Authority to commence business - Incorporated herein by reference to Exhibit 2 filed with Form T-1 Statement, Registration No. 33-21047.

**Exhibit 3** - Authorization of the Trustee to exercise corporate trust powers - Incorporated herein by reference to Exhibit 2 filed with Form T-1 Statement, Registration No. 33-21047.

**Exhibit 4** - Existing By-Laws of Bankers Trust Company, as amended on April 15, 2002. Copy attached.

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**Exhibit 5** - Not applicable.

**Exhibit 6** - Consent of Bankers Trust Company required by Section 321(b) of the Act. - Incorporated herein by reference to Exhibit 4 filed with Form T-1 Statement, Registration No. 22-18864.

**Exhibit 7** - The latest report of condition of Deutsche Bank Trust Company Americas dated as of March 31, 2005. Copy attached.

**Exhibit 8** - Not Applicable.

**Exhibit 9** - Not Applicable.

**SIGNATURE**

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Deutsche Bank Trust Company Americas, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on this 14<sup>th</sup> day of June, 2005

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: /s/ Susan Johnson

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Susan Johnson  
Vice President



State of New York,  
Banking Department

I, **MANUEL KURSKY**, Deputy Superintendent of Banks of the State of New York, **DO HEREBY APPROVE** the annexed Certificate entitled **“CERTIFICATE OF AMENDMENT OF THE ORGANIZATION CERTIFICATE OF BANKERS TRUST COMPANY Under Section 8005 of the Banking Law,”** dated September 16, 1998, providing for an increase in authorized capital stock from \$3,001,666,670 consisting of 200,166,667 shares with a par value of \$10 each designated as Common Stock and 1,000 shares with a par value of \$1,000,000 each designated as Series Preferred Stock to \$3,501,666,670 consisting of 200,166,667 shares with a par value of \$10 each designated as Common Stock and 1,500 shares with a par value of \$1,000,000 each designated as Series Preferred Stock.

**Witness**, my hand and official seal of the Banking Department at the City of New York, this **25th** day of **September** in the Year of our Lord one thousand nine hundred and **ninety-eight**.

Manuel Kursky

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*Deputy Superintendent of Banks*

RESTATED  
ORGANIZATION  
CERTIFICATE  
OF  
BANKERS TRUST COMPANY

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Under Section 8007  
Of the Banking Law

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Bankers Trust Company  
1301 6<sup>th</sup> Avenue, 8<sup>th</sup> Floor  
New York, N.Y. 10019

Counterpart Filed in the Office of the Superintendent of Banks, State of New York, August 31, 1998

RESTATED ORGANIZATION CERTIFICATE  
OF  
BANKERS TRUST  
Under Section 8007 of the Banking Law

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We, James T. Byrne, Jr. and Lea Lahtinen, being respectively a Managing Director and an Assistant Secretary and a Vice President and an Assistant Secretary of BANKERS TRUST COMPANY, do hereby certify:

1. The name of the corporation is Bankers Trust Company.
2. The organization certificate of the corporation was filed by the Superintendent of Banks of the State of New York on March 5, 1903.
3. The text of the organization certificate, as amended heretofore, is hereby restated without further amendment or change to read as herein-set forth in full, to wit:

“Certificate of Organization  
of  
Bankers Trust Company

Know All Men By These Presents That we, the undersigned, James A. Blair, James G. Cannon, E. C. Converse, Henry P. Davison, Granville W. Garth, A. Barton Hepburn, Will Logan, Gates W. McGarrah, George W. Perkins, William H. Porter, John F. Thompson, Albert H. Wiggan, Samuel Woolverton and Edward F. C. Young, all being persons of full age and citizens of the United States, and a majority of us being residents of the State of New York, desiring to form a corporation to be known as a Trust Company, do hereby associate ourselves together for that purpose under and pursuant to the laws of the State of New York, and for such purpose we do hereby, under our respective hands and seals, execute and duly acknowledge this Organization Certificate in duplicate, and hereby specifically state as follows, to wit:

- I. The name by which the said corporation shall be known is Bankers Trust Company.
- II. The place where its business is to be transacted is the City of New York, in the State of New York.

III. Capital Stock: The amount of capital stock which the corporation is hereafter to have is Three Billion One Million, Six Hundred Sixty-Six Thousand, Six Hundred Seventy Dollars (\$3,001,666,670), divided into Two Hundred Million, One Hundred Sixty-Six Thousand, Six Hundred Sixty-Seven (200,166,667) shares with a par value of \$10 each designated as Common Stock and 1,000 shares with a par value of One Million Dollars (\$1,000,000) each designated as Series Preferred Stock.

(a) *Common Stock*

1. Dividends: Subject to all of the rights of the Series Preferred Stock, dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the corporation legally available for the payment of dividends.
2. Voting Rights: Except as otherwise expressly provided with respect to the Series Preferred Stock or with respect to any series of the Series Preferred Stock, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes, each holder of the Common Stock being entitled to one vote for each share thereof held.

3. Liquidation: Upon any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary, and after the holders of the Series Preferred Stock of each series shall have been paid in full the amounts to which they respectively shall be entitled, or a sum sufficient for the payment in full set aside, the remaining net assets of the corporation shall be distributed pro rata to the holders of the Common Stock in accordance with their respective rights and interests, to the exclusion of the holders of the Series Preferred Stock.

4. Preemptive Rights: No holder of Common Stock of the corporation shall be entitled, as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of stock of any class or series whatsoever, any rights or options to purchase stock of any class or series whatsoever, or any securities convertible into, exchangeable for or carrying rights or options to purchase stock of any class or series whatsoever, whether now or hereafter authorized, and whether issued for cash or other consideration, or by way of dividend or other distribution.

*(b) Series Preferred Stock*

1. Board Authority: The Series Preferred Stock may be issued from time to time by the Board of Directors as herein provided in one or more series. The designations, relative rights, preferences and limitations of the Series Preferred Stock, and particularly of the shares of each series thereof, may, to the extent permitted by law, be similar to or may differ from those of any other series. The Board of Directors of the corporation is hereby expressly granted authority, subject to the provisions of this Article III, to issue from time to time Series Preferred Stock in one or more series and to fix from time to time before issuance thereof, by filing a certificate pursuant to the Banking Law, the number of shares in each such series of such class and all designations, relative rights (including the right, to the extent permitted by law, to convert into shares of any class or into shares of any series of any class), preferences and limitations of the shares in each such series, including, but without limiting the generality of the foregoing, the following:

(i) The number of shares to constitute such series (which number may at any time, or from time to time, be increased or decreased by the Board of Directors, notwithstanding that shares of the series may be outstanding at the time of such increase or decrease, unless the Board of Directors shall have otherwise provided in creating such series) and the distinctive designation thereof;

(ii) The dividend rate on the shares of such series, whether or not dividends on the shares of such series shall be cumulative, and the date or dates, if any, from which dividends thereon shall be cumulative;

(iii) Whether or not the share of such series shall be redeemable, and, if redeemable, the date or dates upon or after which they shall be redeemable, the amount or amounts per share (which shall be, in the case of each share, not less than its preference upon involuntary liquidation, plus an amount equal to all dividends thereon accrued and unpaid, whether or not earned or declared) payable thereon in the case of the redemption thereof, which amount may vary at different redemption dates or otherwise as permitted by law;

(iv) The right, if any, of holders of shares of such series to convert the same into, or exchange the same for, Common Stock or other stock as permitted by law, and the terms and conditions of such conversion or exchange, as well as provisions for adjustment of the conversion rate in such events as the Board of Directors shall determine;

(v) The amount per share payable on the shares of such series upon the voluntary and involuntary liquidation, dissolution or winding up of the corporation;

(vi) Whether the holders of shares of such series shall have voting power, full or limited, in addition to the voting powers provided by law and, in case additional voting powers are accorded, to fix the extent thereof; and

(vii) Generally to fix the other rights and privileges and any qualifications, limitations or restrictions of such rights and privileges of such series, provided, however, that no such rights, privileges,

qualifications, limitations or restrictions shall be in conflict with the organization certificate of the corporation or with the resolution or resolutions adopted by the Board of Directors providing for the issue of any series of which there are shares outstanding.

All shares of Series Preferred Stock of the same series shall be identical in all respects, except that shares of any one series issued at different times may differ as to dates, if any, from which dividends thereon may accumulate. All shares of Series Preferred Stock of all series shall be of equal rank and shall be identical in all respects except that to the extent not otherwise limited in this Article III any series may differ from any other series with respect to any one or more of the designations, relative rights, preferences and limitations described or referred to in subparagraphs (I) to (vii) inclusive above.

2. Dividends: Dividends on the outstanding Series Preferred Stock of each series shall be declared and paid or set apart for payment before any dividends shall be declared and paid or set apart for payment on the Common Stock with respect to the same quarterly dividend period. Dividends on any shares of Series Preferred Stock shall be cumulative only if and to the extent set forth in a certificate filed pursuant to law. After dividends on all shares of Series Preferred Stock (including cumulative dividends if and to the extent any such shares shall be entitled thereto) shall have been declared and paid or set apart for payment with respect to any quarterly dividend period, then and not otherwise so long as any shares of Series Preferred Stock shall remain outstanding, dividends may be declared and paid or set apart for payment with respect to the same quarterly dividend period on the Common Stock out the assets or funds of the corporation legally available therefor.

All Shares of Series Preferred Stock of all series shall be of equal rank, preference and priority as to dividends irrespective of whether or not the rates of dividends to which the same shall be entitled shall be the same and when the stated dividends are not paid in full, the shares of all series of the Series Preferred Stock shall share ratably in the payment thereof in accordance with the sums which would be payable on such shares if all dividends were paid in full, provided, however, that any two or more series of the Series Preferred Stock may differ from each other as to the existence and extent of the right to cumulative dividends, as aforesaid.

3. Voting Rights: Except as otherwise specifically provided in the certificate filed pursuant to law with respect to any series of the Series Preferred Stock, or as otherwise provided by law, the Series Preferred Stock shall not have any right to vote for the election of directors or for any other purpose and the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes.

4. Liquidation: In the event of any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary, each series of Series Preferred Stock shall have preference and priority over the Common Stock for payment of the amount to which each outstanding series of Series Preferred Stock shall be entitled in accordance with the provisions thereof and each holder of Series Preferred Stock shall be entitled to be paid in full such amount, or have a sum sufficient for the payment in full set aside, before any payments shall be made to the holders of the Common Stock. If, upon liquidation, dissolution or winding up of the corporation, the assets of the corporation or proceeds thereof, distributable among the holders of the shares of all series of the Series Preferred Stock shall be insufficient to pay in full the preferential amount aforesaid, then such assets, or the proceeds thereof, shall be distributed among such holders ratably in accordance with the respective amounts which would be payable if all amounts payable thereon were paid in full. After the payment to the holders of Series Preferred Stock of all such amounts to which they are entitled, as above provided, the remaining assets and funds of the corporation shall be divided and paid to the holders of the Common Stock.

5. Redemption: In the event that the Series Preferred Stock of any series shall be made redeemable as provided in clause (iii) of paragraph 1 of section (b) of this Article III, the corporation, at the option of the Board of Directors, may redeem at any time or times, and from time to time, all or any part of any one or more series of Series Preferred Stock outstanding by paying for each share the then applicable redemption price fixed by the Board of Directors as provided herein, plus an amount equal to accrued and unpaid dividends to the date fixed for redemption, upon such notice and terms as may be specifically provided in the certificate filed pursuant to law with respect to the series.

6. Preemptive Rights: No holder of Series Preferred Stock of the corporation shall be entitled, as such, as a matter or right, to subscribe for or purchase any part of any new or additional issue of stock of any class or series whatsoever, any rights or options to purchase stock of any class or series whatsoever, or any securities convertible into, exchangeable for or carrying rights or options to purchase stock of any class or series whatsoever, whether now or hereafter authorized, and whether issued for cash or other consideration, or by way of dividend.

(c) *Provisions relating to Floating Rate Non-Cumulative Preferred Stock, Series A. (Liquidation value \$1,000,000 per share.)*

1. Designation: The distinctive designation of the series established hereby shall be "Floating Rate Non-Cumulative Preferred Stock, Series A" (hereinafter called "Series A Preferred Stock").

2. Number: The number of shares of Series A Preferred Stock shall initially be 250 shares. Shares of Series A Preferred Stock redeemed, purchased or otherwise acquired by the corporation shall be cancelled and shall revert to authorized but unissued Series Preferred Stock undesignated as to series.

3. Dividends:

(a) Dividend Payments Dates. Holders of the Series A Preferred Stock shall be entitled to receive non-cumulative cash dividends when, as and if declared by the Board of Directors of the corporation, out of funds legally available therefor, from the date of original issuance of such shares (the "Issue Date") and such dividends will be payable on March 28, June 28, September 28 and December 28 of each year ("Dividend Payment Date") commencing September 28, 1990, at a rate per annum as determined in paragraph 3(b) below. The period beginning on the Issue Date and ending on the day preceding the first Dividend Payment Date and each successive period beginning on a Dividend Payment Date and ending on the date preceding the next succeeding Dividend Payment Date is herein called a "Dividend Period". If any Dividend Payment Date shall be, in The City of New York, a Sunday or a legal holiday or a day on which banking institutions are authorized by law to close, then payment will be postponed to the next succeeding business day with the same force and effect as if made on the Dividend Payment Date, and no interest shall accrue for such Dividend Period after such Dividend Payment Date.

(b) Dividend Rate. The dividend rate from time to time payable in respect of Series A Preferred Stock (the "Dividend Rate") shall be determined on the basis of the following provisions:

(i) On the Dividend Determination Date, LIBOR will be determined on the basis of the offered rates for deposits in U.S. dollars having a maturity of three months commencing on the second London Business Day immediately following such Dividend Determination Date, as such rates appear on the Reuters Screen LIBO Page as of 11:00 A.M. London time, on such Dividend Determination Date. If at least two such offered rates appear on the Reuters Screen LIBO Page, LIBOR in respect of such Dividend Determination Dates will be the arithmetic mean (rounded to the nearest one-hundredth of a percent, with five one-thousandths of a percent rounded upwards) of such offered rates. If fewer than those offered rates appear, LIBOR in respect of such Dividend Determination Date will be determined as described in paragraph (ii) below.

(ii) On any Dividend Determination Date on which fewer than those offered rates for the applicable maturity appear on the Reuters Screen LIBO Page as specified in paragraph (i) above, LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars having a maturity of three months commencing on the second London Business Day immediately following such Dividend Determination Date and in a principal amount of not less than \$1,000,000 that is representative of a single transaction in such market at such time are offered by three major banks in the London interbank market selected by the corporation at approximately 11:00 A.M., London time, on such Dividend Determination Date to prime banks in the London market. The corporation will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, LIBOR in respect of such Dividend Determination Date will be the arithmetic mean (rounded to the nearest one-hundredth of a percent, with five one-thousandths of a percent rounded upwards) of such quotations. If fewer than two quotations are provided, LIBOR in respect of such Dividend Determination Date will be the arithmetic mean (rounded to the nearest one-hundredth of a percent, with five one-thousandths of a percent rounded upwards) of the rates quoted by three major banks in New York City selected by the corporation at approximately 11:00 A.M., New York City time, on such Dividend Determination Date for loans in U.S. dollars to leading European banks having a maturity of three months commencing on the second London Business Day immediately following such Dividend Determination Date and in a principal amount of not less than \$1,000,000 that is representative of a single transaction in such market at such time; provided, however, that if the banks selected as aforesaid by the corporation are not quoting as aforementioned in this sentence, then, with respect to such Dividend Period, LIBOR for the preceding Dividend Period will be continued as LIBOR for such Dividend Period.

(ii) The Dividend Rate for any Dividend Period shall be equal to the lower of 18% or 50 basis points above LIBOR for such Dividend Period as LIBOR is determined by sections (I) or (ii) above.

As used above, the term "Dividend Determination Date" shall mean, with respect to any Dividend Period, the second London Business Day prior to the commencement of such Dividend Period; and the term "London Business Day" shall mean any day that is not a Saturday or Sunday and that, in New York City, is not a day on which banking institutions generally are authorized or required by law or executive order to close and that is a day on which dealings in deposits in U.S. dollars are transacted in the London interbank market.

4. Voting Rights: The holders of the Series A Preferred Stock shall have the voting power and rights set forth in this paragraph 4 and shall have no other voting power or rights except as otherwise may from time to time be required by law.

So long as any shares of Series A Preferred Stock remain outstanding, the corporation shall not, without the affirmative vote or consent of the holders of at least a majority of the votes of the Series Preferred Stock entitled to vote outstanding at the time, given in person or by proxy, either in writing or by resolution adopted at a meeting at which the holders of Series A Preferred Stock (alone or together with the holders of one or more other series of Series Preferred Stock at the time outstanding and entitled to vote) vote separately as a class, alter the provisions of the Series Preferred Stock so as to materially adversely affect its rights; provided, however, that in the event any such materially adverse alteration affects the rights of only the Series A Preferred Stock, then the alteration may be effected with the vote or consent of at least a majority of the votes of the Series A Preferred Stock; provided, further, that an increase in the amount of the authorized Series Preferred Stock and/or the creation and/or issuance of other series of Series Preferred Stock in accordance with the organization certificate shall not be, nor be deemed to be, materially adverse alterations. In connection with the exercise of the voting rights contained in the preceding sentence, holders of all series of Series Preferred Stock which are granted such voting rights (of which the Series A Preferred Stock is the initial series) shall vote as a class (except as specifically provided otherwise) and each holder of Series A Preferred Stock shall have one vote for each share of stock held and each other series shall have such number of votes, if any, for each share of stock held as may be granted to them.

The foregoing voting provisions will not apply if, in connection with the matters specified, provision is made for the redemption or retirement of all outstanding Series A Preferred Stock.

5. Liquidation: Subject to the provisions of section (b) of this Article III, upon any liquidation, dissolution or winding up of the corporation, whether voluntary or involuntary, the holders of the Series A Preferred Stock shall have preference and priority over the Common Stock for payment out of the assets of the corporation or proceeds thereof, whether from capital or surplus, of \$1,000,000 per share (the "liquidation value") together with the amount of all dividends accrued and unpaid thereon, and after such payment the holders of Series A Preferred Stock shall be entitled to no other payments.

6. Redemption: Subject to the provisions of section (b) of this Article III, Series A Preferred Stock may be redeemed, at the option of the corporation in whole or part, at any time or from time to time at a redemption price of \$1,000,000 per share, in each case plus accrued and unpaid dividends to the date of redemption.

At the option of the corporation, shares of Series A Preferred Stock redeemed or otherwise acquired may be restored to the status of authorized but unissued shares of Series Preferred Stock.

In the case of any redemption, the corporation shall give notice of such redemption to the holders of the Series A Preferred Stock to be redeemed in the following manner: a notice specifying the shares to be redeemed and the time and place of redemption (and, if less than the total outstanding shares are to be redeemed, specifying the certificate numbers and number of shares to be redeemed) shall be mailed by first class mail, addressed to the holders of record of the Series A Preferred Stock to be redeemed at their respective addresses as the same shall appear upon the books of the corporation, not more than sixty (60) days and not less than thirty (30) days previous to the date fixed for redemption. In the event such notice is not given to any shareholder such failure to give notice shall not affect the notice given to other shareholders. If less than the whole amount of outstanding Series A

Preferred Stock is to be redeemed, the shares to be redeemed shall be selected by lot or pro rata in any manner determined by resolution of the Board of Directors to be fair and proper. From and after the date fixed in any such notice as the date of redemption (unless default shall be made by the corporation in providing moneys at the time and place of redemption for the payment of the redemption price) all dividends upon the Series A Preferred Stock so called for redemption shall cease to accrue, and all rights of the holders of said Series A Preferred Stock as stockholders in the corporation, except the right to receive the redemption price (without interest) upon surrender of the certificate representing the Series A Preferred Stock so called for redemption, duly endorsed for transfer, if required, shall cease and terminate. The corporation's obligation to provide moneys in accordance with the preceding sentence shall be deemed fulfilled if, on or before the redemption date, the corporation shall deposit with a bank or trust company (which may be an affiliate of the corporation) having an office in the Borough of Manhattan, City of New York, having a capital and surplus of at least \$5,000,000 funds necessary for such redemption, in trust with irrevocable instructions that such funds be applied to the redemption of the shares of Series A Preferred Stock so called for redemption. Any interest accrued on such funds shall be paid to the corporation from time to time. Any funds so deposited and unclaimed at the end of two (2) years from such redemption date shall be released or repaid to the corporation, after which the holders of such shares of Series A Preferred Stock so called for redemption shall look only to the corporation for payment of the redemption price.

IV. The name, residence and post office address of each member of the corporation are as follows:

<u>Name</u>	<u>Residence</u>	<u>Post Office Address</u>
James A. Blair	9 West 50 <sup>th</sup> Street, Manhattan, New York City	33 Wall Street, Manhattan, New York City
James G. Cannon	72 East 54 <sup>th</sup> Street, Manhattan New York City	14 Nassau Street, Manhattan, New York City
E. C. Converse	3 East 78 <sup>th</sup> Street, Manhattan, New York City	139 Broadway, Manhattan, New York City
Henry P. Davison	Englewood, New Jersey	2 Wall Street, Manhattan, New York City
Granville W. Garth	160 West 57 <sup>th</sup> Street, Manhattan, New York City	33 Wall Street Manhattan, New York City
A. Barton Hepburn	205 West 57 <sup>th</sup> Street Manhattan, New York City	83 Cedar Street Manhattan, New York City
William Logan	Montclair, New Jersey	13 Nassau Street Manhattan, New York City
George W. Perkins	Riverdale, New York	23 Wall Street, Manhattan, New York City
William H. Porter	56 East 67 <sup>th</sup> Street Manhattan, New York City	270 Broadway, Manhattan, New York City
John F. Thompson	Newark, New Jersey	143 Liberty Street, Manhattan, New York City
Albert H. Wiggin	42 West 49 <sup>th</sup> Street, Manhattan, New York City	214 Broadway, Manhattan, New York City
Samuel Woolverton	Mount Vernon, New York	34 Wall Street, Manhattan, New York City
Edward F.C. Young	85 Glenwood Avenue, Jersey City, New Jersey	1 Exchange Place, Jersey City, New Jersey



V. The existence of the corporation shall be perpetual.

VI. The subscribers, the members of the said corporation, do, and each for himself does, hereby declare that he will accept the responsibilities and faithfully discharge the duties of a director therein, if elected to act as such, when authorized accordance with the provisions of the Banking Law of the State of New York.

VII. The number of directors of the corporation shall not be less than 10 nor more than 25.”

4. The foregoing restatement of the organization certificate was authorized by the Board of Directors of the corporation at a meeting held on July 21, 1998.

IN WITNESS WHEREOF, we have made and subscribed this certificate this 6<sup>th</sup> day of August, 1998.

IN WITNESS WHEREOF, we have made and subscribed this certificate this 6th day of August, 1998.

James T. Byrne, Jr.

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James T. Byrne, Jr.  
*Managing Director and Secretary*

Lea Lahtinen

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Lea Lahtinen  
*Vice President and Assistant Secretary*

Lea Lahtinen

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Lea Lahtinen

State of New York            )  
  ) ss.:  
County of New York         )

Lea Lahtinen, being duly sworn, deposes and says that she is a Vice President and an Assistant Secretary of Bankers Trust Company, the corporation described in the foregoing certificate; that she has read the foregoing certificate and knows the contents thereof, and that the statements herein contained are true.

Lea Lahtinen

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Lea Lahtinen

Sworn to before me this  
6th day of August, 1998.

Sandra L. West

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Notary Public

SANDRA L. WEST  
Notary Public State of New York  
No. 31-4942101  
Qualified in New York County  
Commission Expires September 19, 1998

State of New York,  
Banking Department

I, **MANUEL KURSKY**, Deputy Superintendent of Banks of the State of New York, **DO HEREBY APPROVE** the annexed Certificate entitled **“RESTATED ORGANIZATION CERTIFICATE OF BANKERS TRUST COMPANY Under Section 8007 of the Banking Law,”** dated August 6, 1998, providing for the restatement of the Organization Certificate and all amendments into a single certificate.

**Witness**, my hand and official seal of the Banking Department at the City of New York, this **31st** day of **August** in the Year of our Lord one thousand nine hundred and **ninety-eight**.

Manuel Kursky

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**Deputy Superintendent of Banks**

CERTIFICATE OF AMENDMENT  
OF THE  
ORGANIZATION CERTIFICATE  
OF BANKERS TRUST  
Under Section 8005 of the Banking Law

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We, James T. Byrne, Jr. and Lea Lahtinen, being respectively a Managing Director and Secretary and a Vice President and an Assistant Secretary of Bankers Trust Company, do hereby certify:

1. The name of the corporation is Bankers Trust Company.
2. The organization certificate of said corporation was filed by the Superintendent of Banks on the 5th of March, 1903.
3. The organization certificate as heretofore amended is hereby amended to increase the aggregate number of shares which the corporation shall have authority to issue and to increase the amount of its authorized capital stock in conformity therewith.

4. Article III of the organization certificate with reference to the authorized capital stock, the number of shares into which the capital stock shall be divided, the par value of the shares and the capital stock outstanding, which reads as follows:

“III. The amount of capital stock which the corporation is hereafter to have is Three Billion, One Million, Six Hundred Sixty-Six Thousand, Six Hundred Seventy Dollars (\$3,001,666,670), divided into Two Hundred Million, One Hundred Sixty-Six Thousand, Six Hundred Sixty-Seven (200,166,667) shares with a par value of \$10 each designated as Common Stock and 1000 shares with a par value of One Million Dollars (\$1,000,000) each designated as Series Preferred Stock.”

is hereby amended to read as follows:

“III. The amount of capital stock which the corporation is hereafter to have is Three Billion, Five Hundred One Million, Six Hundred Sixty-Six Thousand, Six Hundred Seventy Dollars (\$3,501,666,670), divided into Two Hundred Million, One Hundred Sixty-Six Thousand, Six Hundred Sixty-Seven (200,166,667) shares with a par value of \$10 each designated as Common Stock and 1500 shares with a par value of One Million Dollars (\$1,000,000) each designated as Series Preferred Stock.”

5. The foregoing amendment of the organization certificate was authorized by unanimous written consent signed by the holder of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, we have made and subscribed this certificate this 25th day of September, 1998

James T. Byrne, Jr.

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James T. Byrne, Jr.  
Managing Director and Secretary

Lea Lahtinen

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Lea Lahtinen  
Vice President and Assistant Secretary

State of New York            )  
  ) ss.:  
County of New York         )

Lea Lahtinen, being fully sworn, deposes and says that she is a Vice President and an Assistant Secretary of Bankers Trust Company, the corporation described in the foregoing certificate; that she has read the foregoing certificate and knows the contents thereof, and that the statements herein contained are true.

Lea Lahtinen

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Lea Lahtinen

Sworn to before me this 25<sup>th</sup> day  
of September, 1998

Sandra L. West

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Notary Public

SANDRA L. WEST  
Notary Public State of New York  
No. 31-4942101  
Qualified in New York County  
Commission Expires September 19, 2000

State of New York,  
Banking Department

I, P. VINCENT CONLON, Deputy Superintendent of Banks of the State of New York, **DO HEREBY APPROVE** the annexed Certificate entitled “**CERTIFICATE OF AMENDMENT OF THE ORGANIZATION CERTIFICATE OF BANKERS TRUST COMPANY Under Section 8005 of the Banking Law,**” dated December 16, 1998, providing for an increase in authorized capital stock from \$3,501,666,670 consisting of 200,166,667 shares with a par value of \$10 each designated as Common Stock and 1,500 shares with a par value of \$1,000,000 each designated as Series Preferred Stock to \$3,627,308,670 consisting of 212,730,867 shares with a par value of \$10 each designated as Common Stock and 1,500 shares with a par value of \$1,000,000 each designated as Series Preferred Stock.

**Witness**, my hand and official seal of the Banking Department at the City of New York, this **18th** day of **December** in the Year of our Lord one thousand nine hundred and **ninety-eight**.

P. Vincent Conlon

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*Deputy Superintendent of Banks*

CERTIFICATE OF AMENDMENT  
OF THE  
ORGANIZATION CERTIFICATE  
OF BANKERS TRUST  
Under Section 8005 of the Banking Law

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We, James T. Byrne, Jr. and Lea Lahtinen, being respectively a Managing Director and Secretary and a Vice President and an Assistant Secretary of Bankers Trust Company, do hereby certify:

1. The name of the corporation is Bankers Trust Company.

2. The organization certificate of said corporation was filed by the Superintendent of Banks on the 5th of March, 1903.

3. The organization certificate as heretofore amended is hereby amended to increase the aggregate number of shares which the corporation shall have authority to issue and to increase the amount of its authorized capital stock in conformity therewith.

4. Article III of the organization certificate with reference to the authorized capital stock, the number of shares into which the capital stock shall be divided, the par value of the shares and the capital stock outstanding, which reads as follows:

“III. The amount of capital stock which the corporation is hereafter to have is Three Billion, Five Hundred One Million, Six Hundred Sixty-Six Thousand, Six Hundred Seventy Dollars (\$3,501,666,670), divided into Two Hundred Million, One Hundred Sixty-Six Thousand, Six Hundred Sixty-Seven (200,166,667) shares with a par value of \$10 each designated as Common Stock and 1500 shares with a par value of One Million Dollars (\$1,000,000) each designated as Series Preferred Stock.”

is hereby amended to read as follows:

“III. The amount of capital stock which the corporation is hereafter to have is Three Billion, Six Hundred Twenty-Seven Million, Three Hundred Eight Thousand, Six Hundred Seventy Dollars (\$3,627,308,670), divided into Two Hundred Twelve Million, Seven Hundred Thirty Thousand, Eight Hundred Sixty- Seven (212,730,867) shares with a par value of \$10 each designated as Common Stock and 1500 shares with a par value of One Million Dollars (\$1,000,000) each designated as Series Preferred Stock.”

5. The foregoing amendment of the organization certificate was authorized by unanimous written consent signed by the holder of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, we have made and subscribed this certificate this 16th day of December, 1998

James T. Byrne, Jr.

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James T. Byrne, Jr.  
Managing Director and Secretary

Lea Lahtinen

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Lea Lahtinen  
Vice President and Assistant Secretary

State of New York            )  
  ) ss:  
County of New York         )

Lea Lahtinen, being fully sworn, deposes and says that she is a Vice President and an Assistant Secretary of Bankers Trust Company, the corporation described in the foregoing certificate; that she has read the foregoing certificate and knows the contents thereof, and that the statements herein contained are true.

Lea Lahtinen

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Lea Lahtinen

Sworn to before me this 16<sup>th</sup> day  
of December, 1998

Sandra L. West

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Notary Public

SANDRA L. WEST  
Notary Public State of New York  
No. 31-4942101  
Qualified in New York County  
Commission Expires September 19, 2000



BANKERS TRUST COMPANY  
ASSISTANT SECRETARY'S CERTIFICATE

I, Lea Lahtinen, Vice President and Assistant Secretary of Bankers Trust Company, a corporation duly organized and existing under the laws of the State of New York, the United States of America, do hereby certify that attached copy of the Certificate of Amendment of the Organization Certificate of Bankers Trust Company, dated February 27, 2002, providing for a change of name of Bankers Trust Company to Deutsche Bank Trust Company Americas and approved by the New York State Banking Department on March 14, 2002 to effective on April 15, 2002, is a true and correct copy of the original Certificate of Amendment of the Organization Certificate of Bankers Trust Company on file in the Banking Department, State of New York.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of Bankers Trust Company this 4th day of April, 2002.

[SEAL]

/s/ Lea Lahtinen

\_\_\_\_\_  
Lea Lahtinen, Vice President and Assistant Secretary  
Bankers Trust Company

State of New York        )  
                                  ) ss.:  
County of New York     )

On the 4th day of April in the year 2002 before me, the undersigned, a Notary Public in and for said state, personally appeared Lea Lahtinen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

/s/ Sonja K. Olsen

\_\_\_\_\_  
Notary Public

SONJA K. OLSEN  
Notary Public, State of New York  
No. 01OL4974457  
Qualified in New York County  
Commission Expires November 13, 2002

State of New York,  
Banking Department

I, P. VINCENT CONLON, Deputy Superintendent of Banks of the State of New York, DO HEREBY APPROVE the annexed Certificate entitled "CERTIFICATE OF AMENDMENT OF THE ORGANIZATION CERTIFICATE OF BANKERS TRUST COMPANY under Section 8005 of the Banking Law" dated February 27, 2002, providing for a change of name of BANKERS TRUST COMPANY to DEUTSCHE BANK TRUST COMPANY AMERICAS.

Witness, my hand and official seal of the Banking Department at the City of New York, this 14th day of March two thousand and two.

/s/ P. Vincent Conlon

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Deputy Superintendent of Banks

CERTIFICATE OF AMENDMENT  
OF THE  
ORGANIZATION CERTIFICATE  
OF  
BANKERS TRUST COMPANY  
Under Section 8005 of the Banking Law

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We, James T. Byrne Jr., and Lea Lahtinen, being respectively the Secretary, and Vice President and an Assistant Secretary of Bankers Trust Company, do hereby certify:

1. The name of corporation is Bankers Trust Company.
2. The organization certificate of said corporation was filed by the Superintendent of Banks on the 5th day of March, 1903.
3. Pursuant to Section 8005 of the Banking Law, attached hereto as Exhibit A is a certificate issued by the State of New York, Banking Department listing all of the amendments to the Organization Certificate of Bankers Trust Company since its organization that have been filed in the Office of the Superintendent of Banks.
4. The organization certificate as heretofore amended is hereby amended to change the name of Bankers Trust Company to Deutsche Bank Trust Company Americas to be effective on April 15, 2002.
5. The first paragraph number 1 of the organization of Bankers Trust Company with the reference to the name of the Bankers Trust Company, which reads as follows:

“1. The name of the corporation is Bankers Trust Company.”

is hereby amended to read as follows effective on April 15, 2002:

“1. The name of the corporation is Deutsche Bank Trust Company Americas.”

6. The foregoing amendment of the organization certificate was authorized by unanimous written consent signed by the holder of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, we have made and subscribed this certificate this 27th day of February, 2002.

/s/ James T. Byrne Jr.

\_\_\_\_\_  
James T. Byrne Jr.  
Secretary

/s/ Lea Lahtinen

\_\_\_\_\_  
Lea Lahtinen  
Vice President and Assistant Secretary

State of New York        )  
                                  ) ss.:  
County of New York     )

Lea Lahtinen, being duly sworn, deposes and says that she is a Vice President and an Assistant Secretary of Bankers Trust Company, the corporation described in the foregoing certificate; that she has read the foregoing certificate and knows the contents thereof, and that the statements therein contained are true.

/s/ Lea Lahtinen

\_\_\_\_\_  
Lea Lahtinen

Sworn to before me this 27th day  
of February, 2002

/s/ Sandra L. West

\_\_\_\_\_  
Notary Public

SANDRA L. WEST  
Notary Public, State of New York  
No. 01WE4942401  
Qualified in New York County  
Commission Expires September 19, 2002

State of New York  
Banking Department

I, P. VINCENT CONLON, Deputy Superintendent of Banks of the State of New York, DO HEREBY CERTIFY:

THAT, the records in the Office of the Superintendent of Banks indicate that BANKERS TRUST COMPANY is a corporation duly organized and existing under the laws of the State of New York as a trust company, pursuant to Article III of the Banking Law; and

THAT, the Organization Certificate of BANKERS TRUST COMPANY was filed in the Office of the Superintendent of Banks on March 5, 1903, and such corporation was authorized to commence business on March 24, 1903; and

THAT, the following amendments to its Organization Certificate have been filed in the Office of the Superintendent of Banks as of the dates specified:

Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on January 14, 1905

Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on August 4, 1909

Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on February 1, 1911

Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on June 17, 1911

Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on August 8, 1911

Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on August 8, 1911

Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on March 21, 1912

Certificate of Amendment of Certificate of Incorporation providing for a decrease in number of directors - - filed on January 15, 1915  
Certificate of Amendment of Certificate of Incorporation providing for a decrease in number of directors - filed on December 18, 1916  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on April 20, 1917  
Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on April 20, 1917  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on December 28, 1918  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on December 4, 1919  
Certificate of Amendment of Certificate of Incorporation providing for an increase in number of directors - filed on January 15, 1926  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on June 12, 1928  
Certificate of Amendment of Certificate of Incorporation providing for a change in shares - filed on April 4, 1929  
Certificate of Amendment of Certificate of Incorporation providing for a minimum and maximum number of directors - filed on January 11, 1934  
Certificate of Extension to perpetual - filed on January 13, 1941  
Certificate of Amendment of Certificate of Incorporation providing for a minimum and maximum number of directors - filed on January 13, 1941  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on December 11, 1944  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed January 30, 1953  
Restated Certificate of Incorporation - filed November 6, 1953

Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on April 8, 1955  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on February 1, 1960  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on July 14, 1960  
Certificate of Amendment of Certificate of Incorporation providing for a change in shares - filed on September 30, 1960  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on January 26, 1962  
Certificate of Amendment of Certificate of Incorporation providing for a change in shares - filed on September 9, 1963  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on February 7, 1964  
Certificate of Amendment of Certificate of Incorporation providing for an increase in capital stock - filed on February 24, 1965  
Certificate of Amendment of the Organization Certificate providing for a decrease in capital stock - filed January 24, 1967  
Restated Organization Certificate - filed June 1, 1971  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed October 29, 1976  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 22, 1977  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed August 5, 1980  
Restated Organization Certificate - filed July 1, 1982  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 27, 1984

Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed September 18, 1986  
Certificate of Amendment of the Organization Certificate providing for a minimum and maximum number of directors - filed January 22, 1990  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed June 28, 1990  
Restated Organization Certificate - filed August 20, 1990  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed June 26, 1992  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed March 28, 1994  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed June 23, 1995  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 27, 1995  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed March 21, 1996  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 27, 1996  
Certificate of Amendment to the Organization Certificate providing for an increase in capital stock - filed June 27, 1997  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed September 26, 1997  
Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 29, 1997



Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed March 26, 1998

Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed June 23, 1998

Restated Organization Certificate - filed August 31, 1998

Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed September 25, 1998

Certificate of Amendment of the Organization Certificate providing for an increase in capital stock - filed December 18, 1998; and

Certificate of Amendment of the Organization Certificate providing for a change in the number of directors - filed September 3, 1999; and

THAT, no amendments to its Restated Organization Certificate have been filed in the Office of the Superintendent of Banks except those set forth above; and attached hereto; and

I DO FURTHER CERTIFY THAT, BANKERS TRUST COMPANY is validly existing as a banking organization with its principal office and place of business located at 130 Liberty Street, New York, New York.

WITNESS, my hand and official seal of the Banking Department at the City of New York this 16th day of October in the Year Two Thousand and One.

/s/ P. Vincent Conlon

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Deputy Superintendent of Banks

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DEUTSCHE BANK TRUST COMPANY AMERICAS

BY-LAWS

**APRIL 15, 2002**

**Deutsche Bank Trust Company Americas**

**New York**

-6-

**BY-LAWS**  
**of**  
**Deutsche Bank Trust Company Americas**

**ARTICLE I**  
*MEETINGS OF STOCKHOLDERS*

SECTION 1. The annual meeting of the stockholders of this Company shall be held at the office of the Company in the Borough of Manhattan, City of New York, in January of each year, for the election of directors and such other business as may properly come before said meeting.

SECTION 2. Special meetings of stockholders other than those regulated by statute may be called at any time by a majority of the directors. It shall be the duty of the Chairman of the Board, the Chief Executive Officer, the President or any Co-President to call such meetings whenever requested in writing to do so by stockholders owning a majority of the capital stock.

SECTION 3. At all meetings of stockholders, there shall be present, either in person or by proxy, stockholders owning a majority of the capital stock of the Company, in order to constitute a quorum, except at special elections of directors, as provided by law, but less than a quorum shall have power to adjourn any meeting.

SECTION 4. The Chairman of the Board or, in his absence, the Chief Executive Officer or, in his absence, the President or any Co-President or, in their absence, the senior officer present, shall preside at meetings of the stockholders and shall direct the proceedings and the order of business. The Secretary shall act as secretary of such meetings and record the proceedings.

**ARTICLE II**  
*DIRECTORS*

SECTION 1. The affairs of the Company shall be managed and its corporate powers exercised by a Board of Directors consisting of such number of directors, but not less than seven nor more than fifteen, as may from time to time be fixed by resolution adopted by a majority of the directors then in office, or by the stockholders. In the event of any increase in the number of directors, additional directors may be elected within the limitations so fixed, either by the stockholders or within the limitations imposed by law, by a majority of directors then in office. One-third of the number of directors, as fixed from time to time, shall constitute a quorum. Any one or more members of the Board of Directors or any Committee thereof may participate in a meeting of the Board of Directors or Committee thereof by means of a conference telephone, video conference or similar communications equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

All directors hereafter elected shall hold office until the next annual meeting of the stockholders and until their successors are elected and have qualified.

No Officer-Director who shall have attained age 65, or earlier relinquishes his responsibilities and title, shall be eligible to serve as a director.

SECTION 2. Vacancies not exceeding one-third of the whole number of the Board of Directors may be filled by the affirmative vote of a majority of the directors then in office, and the directors so elected shall hold office for the balance of the unexpired term.

SECTION 3. The Chairman of the Board shall preside at meetings of the Board of Directors. In his absence, the Chief Executive Officer or, in his absence the President or any Co-President or, in their absence such other director as the Board of Directors from time to time may designate shall preside at such meetings.

SECTION 4. The Board of Directors may adopt such Rules and Regulations for the conduct of its meetings and the management of the affairs of the Company as it may deem proper, not inconsistent with the laws of the State of New York, or these By-Laws, and all officers and employees shall strictly adhere to, and be bound by, such Rules and Regulations.

SECTION 5. Regular meetings of the Board of Directors shall be held from time to time provided, however, that the Board of Directors shall hold a regular meeting not less than six times a year, provided that during any three consecutive calendar months the Board of Directors shall meet at least once, and its Executive Committee shall not be required to meet at least once in each thirty day period during which the Board of Directors does not meet. Special meetings of the Board of Directors may be called upon at least two day's notice whenever it may be deemed proper by the Chairman of the Board or, the Chief Executive Officer or, the President or any Co-President or, in their absence, by such other director as the Board of Directors may have designated pursuant to Section 3 of this Article, and shall be called upon like notice whenever any three of the directors so request in writing.

SECTION 6. The compensation of directors as such or as members of committees shall be fixed from time to time by resolution of the Board of Directors.

### **ARTICLE III**

#### *COMMITTEES*

SECTION 1. There shall be an Executive Committee of the Board consisting of not less than five directors who shall be appointed annually by the Board of Directors. The Chairman of the Board shall preside at meetings of the Executive Committee. In his absence, the Chief Executive Officer or, in his absence, the President or any Co-President or, in their absence, such other member of the Committee as the Committee from time to time may designate shall preside at such meetings.

The Executive Committee shall possess and exercise to the extent permitted by law all of the powers of the Board of Directors, except when the latter is in session, and shall keep minutes of its proceedings, which shall be presented to the Board of Directors at its next subsequent meeting. All acts done and powers and authority conferred by the Executive Committee from time to time shall be and be deemed to be, and may be certified as being, the act and under the authority of the Board of Directors.

A majority of the Committee shall constitute a quorum, but the Committee may act only by the concurrent vote of not less than one-third of its members, at least one of who must be a director other than an officer. Any one or more directors, even though not members of the Executive Committee, may attend any meeting of the Committee, and the member or members of the Committee present, even though less than a quorum, may designate any one or more of such directors as a substitute or substitutes for any absent member or members of the Committee, and each such substitute or substitutes shall be counted for quorum, voting, and all other purposes as a member or members of the Committee.

SECTION 2. There shall be an Audit Committee appointed annually by resolution adopted by a majority of the entire Board of Directors which shall consist of such number of directors, who are not also officers of the Company, as may from time to time be fixed by resolution adopted by the Board of Directors. The Chairman shall be designated by the Board of Directors, who shall also from time to time fix a quorum for meetings of the Committee. Such Committee shall conduct the annual directors' examinations of the Company as required by the New York State Banking Law; shall review the reports of all examinations made of the Company by public authorities and report thereon to the Board of Directors; and shall report to the Board of Directors such other matters as it deems advisable with respect to the Company, its various departments and the conduct of its operations.

In the performance of its duties, the Audit Committee may employ or retain, from time to time, expert assistants, independent of the officers or personnel of the Company, to make studies of the Company's assets and liabilities as the Committee may request and to make an examination of the accounting and auditing methods of the Company and its system of internal protective controls to the extent considered necessary or advisable in order to determine that the operations of the Company, including its fiduciary departments, are being audited by the General Auditor in such a manner as to provide prudent and adequate protection. The Committee also may direct the General Auditor to make such investigation as it deems necessary or advisable with respect to the Company, its various departments and the conduct of its operations. The Committee shall hold regular quarterly meetings and during the intervals thereof shall meet at other times on call of the Chairman.

SECTION 3. The Board of Directors shall have the power to appoint any other Committees as may seem necessary, and from time to time to suspend or continue the powers and duties of such Committees. Each Committee appointed pursuant to this Article shall serve at the pleasure of the Board of Directors.

## ARTICLE IV

### OFFICERS

SECTION 1. The Board of Directors shall elect from among their number a Chairman of the Board and a Chief Executive Officer; and shall also elect a President, or two or more Co-Presidents, and may also elect, one or more Vice Chairmen, one or more Executive Vice Presidents, one or more Managing Directors, one or more Senior Vice Presidents, one or more Directors, one or more Vice Presidents, one or more General Managers, a Secretary, a Controller, a Treasurer, a General Counsel, a General Auditor, a General Credit Auditor, who need not be directors. The officers of the corporation may also include such other officers or assistant officers as shall from time to time be elected or appointed by the Board. The Chairman of the Board or the Chief Executive Officer or, in their absence, the President or any Co-President, or any Vice Chairman, may from time to time appoint assistant officers. All officers elected or appointed by the Board of Directors shall hold their respective offices during the pleasure of the Board of Directors, and all assistant officers shall hold office at the pleasure of the Board or the Chairman of the Board or the Chief Executive Officer or, in their absence, the President, or any Co-President or any Vice Chairman. The Board of Directors may require any and all officers and employees to give security for the faithful performance of their duties.

SECTION 2. The Board of Directors shall designate the Chief Executive Officer of the Company who may also hold the additional title of Chairman of the Board, or President, or any Co-President, and such person shall have, subject to the supervision and direction of the Board of Directors or the Executive Committee, all of the powers vested in such Chief Executive Officer by law or by these By-Laws, or which usually attach or pertain to such office. The other officers shall have, subject to the supervision and direction of the Board of Directors or the Executive Committee or the Chairman of the Board or, the Chief Executive Officer, the powers vested by law or by these By-Laws in them as holders of their respective offices and, in addition, shall perform such other duties as shall be assigned to them by the Board of Directors or the Executive Committee or the Chairman of the Board or the Chief Executive Officer.

The General Auditor shall be responsible, through the Audit Committee, to the Board of Directors for the determination of the program of the internal audit function and the evaluation of the adequacy of the system of internal controls. Subject to the Board of Directors, the General Auditor shall have and may exercise all the powers and shall perform all the duties usual to such office and shall have such other powers as may be prescribed or assigned to him from time to time by the Board of Directors or vested in him by law or by these By-Laws. He shall perform such other duties and shall make such investigations, examinations and reports as may be prescribed or required by the Audit Committee. The General Auditor shall have unrestricted access to all records and premises of the Company and shall delegate such authority to his subordinates. He shall have the duty to report to the Audit Committee on all matters concerning the internal audit program and the adequacy of the system of internal controls of the Company which he deems advisable or which the Audit Committee may request. Additionally, the General Auditor shall have the duty of reporting independently of all officers of the Company to the Audit Committee at least quarterly on any matters concerning the internal audit program and the adequacy of the system of internal controls of the Company that should be brought to the attention of the directors except those matters responsibility for which has been vested in the General Credit Auditor.

Should the General Auditor deem any matter to be of special immediate importance, he shall report thereon forthwith to the Audit Committee. The General Auditor shall report to the Chief Financial Officer only for administrative purposes.

The General Credit Auditor shall be responsible to the Chief Executive Officer and, through the Audit Committee, to the Board of Directors for the systems of internal credit audit, shall perform such other duties as the Chief Executive Officer may prescribe, and shall make such examinations and reports as may be required by the Audit Committee. The General Credit Auditor shall have unrestricted access to all records and may delegate such authority to subordinates.

SECTION 3. The compensation of all officers shall be fixed under such plan or plans of position evaluation and salary administration as shall be approved from time to time by resolution of the Board of Directors.

SECTION 4. The Board of Directors, the Executive Committee, the Chairman of the Board, the Chief Executive Officer or any person authorized for this purpose by the Chief Executive Officer, shall appoint or engage all other employees and agents and fix their compensation. The employment of all such employees and agents shall continue during the pleasure of the Board of Directors or the Executive Committee or the Chairman of the Board or the Chief Executive Officer or any such authorized person; and the Board of Directors, the Executive Committee, the Chairman of the Board, the Chief Executive Officer or any such authorized person may discharge any such employees and agents at will.

## **ARTICLE V**

### *INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS*

SECTION 1. The Company shall, to the fullest extent permitted by Section 7018 of the New York Banking Law, indemnify any person who is or was made, or threatened to be made, a party to an action or proceeding, whether civil or criminal, whether involving any actual or alleged breach of duty, neglect or error, any accountability, or any actual or alleged misstatement, misleading statement or other act or omission and whether brought or threatened in any court or administrative or legislative body or agency, including an action by or in the right of the Company to procure a judgment in its favor and an action by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the Company is servicing or served in any capacity at the request of the Company by reason of the fact that he, his testator or intestate, is or was a director or officer of the Company, or is serving or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement, and costs, charges and expenses, including attorneys' fees, or any appeal therein; provided, however, that no indemnification shall be provided to any such person if a judgment or other final adjudication adverse to the director or officer establishes that (i) his acts were committed in bad faith or were the result of active and deliberate dishonesty and, in either case, were material to the cause of action so adjudicated, or (ii) he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

SECTION 2. The Company may indemnify any other person to whom the Company is permitted to provide indemnification or the advancement of expenses by applicable law, whether pursuant to

rights granted pursuant to, or provided by, the New York Banking Law or other rights created by (i) a resolution of stockholders, (ii) a resolution of directors, or (iii) an agreement providing for such indemnification, it being expressly intended that these By-Laws authorize the creation of other rights in any such manner.

SECTION 3. The Company shall, from time to time, reimburse or advance to any person referred to in Section 1 the funds necessary for payment of expenses, including attorneys' fees, incurred in connection with any action or proceeding referred to in Section 1, upon receipt of a written undertaking by or on behalf of such person to repay such amount(s) if a judgment or other final adjudication adverse to the director or officer establishes that (i) his acts were committed in bad faith or were the result of active and deliberate dishonesty and, in either case, were material to the cause of action so adjudicated, or (ii) he personally gained in fact a financial profit or other advantage to which he was not legally entitled.

SECTION 4. Any director or officer of the Company serving (i) another corporation, of which a majority of the shares entitled to vote in the election of its directors is held by the Company, or (ii) any employee benefit plan of the Company or any corporation referred to in clause (i) in any capacity shall be deemed to be doing so at the request of the Company. In all other cases, the provisions of this Article V will apply (i) only if the person serving another corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise so served at the specific request of the Company, evidenced by a written communication signed by the Chairman of the Board, the Chief Executive Officer, the President or any Co-President, and (ii) only if and to the extent that, after making such efforts as the Chairman of the Board, the Chief Executive Officer, the President or any Co-President shall deem adequate in the circumstances, such person shall be unable to obtain indemnification from such other enterprise or its insurer.

SECTION 5. Any person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this Article V may elect to have the right to indemnification (or advancement of expenses) interpreted on the basis of the applicable law in effect at the time of occurrence of the event or events giving rise to the action or proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time indemnification is sought.

SECTION 6. The right to be indemnified or to the reimbursement or advancement of expense pursuant to this Article V (i) is a contract right pursuant to which the person entitled thereto may bring suit as if the provisions hereof were set forth in a separate written contract between the Company and the director or officer, (ii) is intended to be retroactive and shall be available with respect to events occurring prior to the adoption hereof, and (iii) shall continue to exist after the rescission or restrictive modification hereof with respect to events occurring prior thereto.

SECTION 7. If a request to be indemnified or for the reimbursement or advancement of expenses pursuant hereto is not paid in full by the Company within thirty days after a written claim has been received by the Company, the claimant may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled also to be paid the expenses of prosecuting such claim. Neither the failure of the Company (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of or



reimbursement or advancement of expenses to the claimant is proper in the circumstance, nor an actual determination by the Company (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the action or create a presumption that the claimant is not so entitled.

SECTION 8. A person who has been successful, on the merits or otherwise, in the defense of a civil or criminal action or proceeding of the character described in Section 1 shall be entitled to indemnification only as provided in Sections 1 and 3, notwithstanding any provision of the New York Banking Law to the contrary.

#### **ARTICLE VI**

##### *SEAL*

SECTION 1. The Board of Directors shall provide a seal for the Company, the counterpart dies of which shall be in the charge of the Secretary of the Company and such officers as the Chairman of the Board, the Chief Executive Officer or the Secretary may from time to time direct in writing, to be affixed to certificates of stock and other documents in accordance with the directions of the Board of Directors or the Executive Committee.

SECTION 2. The Board of Directors may provide, in proper cases on a specified occasion and for a specified transaction or transactions, for the use of a printed or engraved facsimile seal of the Company.

#### **ARTICLE VII**

##### *CAPITAL STOCK*

SECTION 1. Registration of transfer of shares shall only be made upon the books of the Company by the registered holder in person, or by power of attorney, duly executed, witnessed and filed with the Secretary or other proper officer of the Company, on the surrender of the certificate or certificates of such shares properly assigned for transfer.

#### **ARTICLE VIII**

##### *CONSTRUCTION*

SECTION 1. The masculine gender, when appearing in these By-Laws, shall be deemed to include the feminine gender.

**ARTICLE IX**  
*AMENDMENTS*

SECTION 1. These By-Laws may be altered, amended or added to by the Board of Directors at any meeting, or by the stockholders at any annual or special meeting, provided notice thereof has been given.

I, Susan Johnson, Vice President, of Deutsche Bank Trust Company Americas, New York, New York, hereby certify that the foregoing is a complete, true and correct copy of the By-Laws of Deutsche Bank Trust Company Americas, and that the same are in full force and effect at this date.

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Vice President

DATED AS OF: June 14, 2005

Legal Title of Bank

**NEW YORK**

City

**NY** **10005-2858**

State Zip Code

FDIC Certificate Number: 00623

**Consolidated Report of Condition for Insured Commercial and State-Chartered Savings Banks for March 31, 2005**

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding as of the last business day of the quarter.

**Schedule RC—Balance Sheet**

	<u>Dollar Amounts in Thousands</u>	<u>RCFD</u>	<u>Bil   Mil   Thou</u>
<b>ASSETS</b>			
1. Cash and balances due from depository institutions (from Schedule RC-A):			
a. Noninterest-bearing balances and currency and coin (1)		0081	2,564,000 1.a
b. Interest-bearing balances (2)		0071	139,000 1.b
2. Securities:			
a. Held-to-maturity securities (from Schedule RC-B, column A)		1754	0 2.a
b. Available-for-sale securities (from Schedule RC-B, column D)		1773	1,563,000 2.b
3. Federal funds sold and securities purchased under agreements to resell:			
a. Federal funds sold in domestic offices		RCON B987	393,000 3.a
b. Securities purchased under agreements to resell (3)		RCFD B989	11,344,000 3.b
4. Loans and lease financing receivables (from Schedule RC-C):			
a. Loans and leases held for sale		5369	0 4.a
b. Loans and leases, net of unearned income	8528	9,523,000	4.b
c. LESS: Allowance for loan and lease losses	3123	182,000	4.c
d. Loans and leases, net of unearned income and allowance (item 4.b minus 4.c)		B529	<b>9,341,000</b> 4.d
5. Trading assets (from Schedule RC-D)		3545	4,322,000 5
6. Premises and fixed assets (including capitalized leases)		2145	207,000 6
7. Other real estate owned (from Schedule RC-M)		2150	5,000 7
8. Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M)		2130	8,000 8
9. Customers' liability to this bank on acceptances outstanding		2155	0 9
10. Intangible assets:			
a. Goodwill		3163	0 10.a
b. Other intangible assets (from Schedule RC-M)		426	33,000 10.b
11. Other assets (from Schedule RC-F)		2160	5,315,000 11
12. Total assets (sum of items 1 through 11)		2170	<b>35,234,000</b> 12

(1) Includes cash items in process of collection and unposted debits.

(2) Includes time certificates of deposit not held for trading.

(3) Includes all securities resale agreements in domestic and foreign offices, regardless of maturity.

Legal Title of Bank

FDIC Certificate Number: 00623

Schedule RC—Continued

	<u>Dollar Amounts in Thousands</u>		<u>Bil   Mil   Thou</u>	
<b>LIABILITIES</b>				
13. Deposits:				
a. In domestic offices (sum of totals of columns A and C from Schedule RC-E, part I)			RCON 2200	9,526,000 13.a
(1) Noninterest-bearing (1)	6631	3,764,000		13.a.1
(2) Interest-bearing	6636	5,762,000		13.a.2
b. In foreign offices, Edge and Agreement subsidiaries, and IBFs (from Schedule RC-E, part II)			RCFN 2200	7,172,000 13.b
(1) Noninterest-bearing	6631	2,207,000		13.b.1
(2) Interest-bearing	6636	4,965,000		13.b.2
14. Federal funds purchased and securities sold under agreements to repurchase:				
a. Federal funds purchased in domestic offices (2)			RCON B993	6,155,000 14.a
b. Securities sold under agreements to repurchase (3)			RCFD B995	349,000 14.b
15. Trading liabilities (from Schedule RC-D)			3548	552,000 15
16. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) (from Schedule RC-M)			3190	286,000 16
17. Not applicable				
18. Bank's liability on acceptances executed and outstanding			2920	0 18
19. Subordinated notes and debentures(4)			3200	8,000 19
20. Other liabilities (from Schedule RC-G)			2930	3,134,000 20
21. Total liabilities (sum of items 13 through 20)			2948	<b>27,182,000</b> 21
22. Minority interest in consolidated subsidiaries			3000	417,000 22
<b>EQUITY CAPITAL</b>				
23. Perpetual preferred stock and related surplus			3838	1,500,000 23
24. Common stock			3230	2,127,000 24
25. Surplus (exclude all surplus related to preferred stock)			3839	584,000 25
26. a. Retained earnings			3632	3,389,000 26.a
b. Accumulated other comprehensive income (5)			B530	35,000 26.b
27. Other equity capital components (6)			A130	0 27
28. Total equity capital (sum of items 23 through 27)			3210	<b>7,635,000</b> 28
29. Total liabilities, minority interest, and equity capital (sum of items 21, 22, and 28)			3300	<b>35,234,000</b> 29

Memorandum

To be reported only with the March Report of Condition.

	<u>RCFD</u>	<u>Number</u>	
1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 2004	6724	1	M.1
1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank			
2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)			
3 = Attestation on bank management's assertion on the effectiveness of the bank's internal control over financial reporting by a certified public accounting firm			
4 = Directors' examination of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm (may be required by state chartering authority)			
5 = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)			
6 = Review of the bank's financial statements by external auditors			
7 = Compilation of the bank's financial statements by external auditors			
8 = Other audit procedures (excluding tax preparation work)			
9 = No external audit work			

- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
- (2) Report overnight Federal Home Loan Bank advances in Schedule RC, item 16, "other borrowed money."
- (3) Includes all securities repurchase agreements in domestic and foreign offices, regardless of maturity.
- (4) Includes limited-life preferred stock and related surplus.
- (5) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
- (6) Includes treasury stock and unearned Employee Stock Ownership Plan shares.



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FORM T-1

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE  
ELIGIBILITY OF A TRUSTEE PURSUANT TO  
SECTION 305(b)(2)

\_\_\_\_\_  
BNY MIDWEST TRUST COMPANY  
(formerly known as CTC Illinois Trust Company)  
(Exact name of trustee as specified in its charter)

Illinois  
(State of incorporation  
if not a U.S. national bank)

36-3800435  
(I.R.S. employer  
identification no.)

2 North LaSalle Street  
Suite 1020  
Chicago, Illinois  
(Address of principal executive offices)

60602  
(Zip code)

\_\_\_\_\_  
WESTAR ENERGY, INC.  
(Exact name of obligor as specified in its charter)

Kansas  
(State or other jurisdiction of  
incorporation or organization)

48-0290150  
(I.R.S. employer  
identification no.)

818 South Kansas Avenue  
Topeka, Kansas  
(Address of principal executive offices)

66612  
(Zip code)

\_\_\_\_\_  
First Mortgage Bonds  
(Title of the indenture securities)

=====

**1. General information. Furnish the following information as to the Trustee:**

**(a) Name and address of each examining or supervising authority to which it is subject.**

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Name	Address
Office of Banks & Trust Companies of the State of Illinois	500 E. Monroe Street Springfield, Illinois 62701-1532
Federal Reserve Bank of Chicago	230 S. LaSalle Street Chicago, Illinois 60603

**(b) Whether it is authorized to exercise corporate trust powers.**

Yes.

**2. Affiliations with Obligor.**

**If the obligor is an affiliate of the trustee, describe each such affiliation.**

None.

**16. List of Exhibits.**

**Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).**

1. A copy of Articles of Incorporation of BNY Midwest Trust Company (formerly CTC Illinois Trust Company, formerly Continental Trust Company) as now in effect. (Exhibit 1 to Form T-1 filed with the Registration Statement No. 333-47688.)
- 2,3. A copy of the Certificate of Authority of the Trustee as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 2 to Form T-1 filed with the Registration Statement No. 333-47688.)
4. A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 filed with the Registration Statement No. 333-47688.)
6. The consent of the Trustee required by Section 321(b) of the Act. (Exhibit 6 to Form T-1 filed with the Registration Statement No. 333-47688.)

7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.



SIGNATURE

Pursuant to the requirements of the Act, the Trustee, BNY Midwest Trust Company, a corporation organized and existing under the laws of the State of Illinois, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of Chicago, and State of Illinois, on the 9th day of June, 2005.

BNY Midwest Trust Company

By: /S/ R. ELLWANGER  
Name: R. ELLWANGER  
Title: ASSISTANT VICE PRESIDENT

**OFFICE OF BANKS AND REAL ESTATE**  
*Bureau of Banks and Trust Companies*  
**CONSOLIDATED REPORT OF CONDITION**  
**OF**

**BNY Midwest Trust Company**  
**2 North LaSalle Street**  
**Suite 1020**  
**Chicago, Illinois 60602**

Including the institution's domestic and foreign subsidiaries completed as of the close of business on March 31, 2005, submitted in response to the call of the Office of Banks and Real Estate of the State of Illinois.

	<u>ASSETS</u>	<u>Thousands of Dollars</u>
		(000)
1.	Cash and Due from Depository Institution	52,714
2.	U.S. Treasury Securities	-0-
3.	Obligations of States and Political Subdivisions	-0-
4.	Other Bonds, Notes and Debentures	-0-
5.	Corporate Stock	-0-
6.	Trust Company Premises, Furniture, Fixtures and Other Assets Representing Trust Company Premises	546
7.	Accounts Receivable	3,353
8.	Goodwill	86,813
9.	Intangibles	-0-
10.	Other Assets	1,013
	(Itemize amounts greater than 15% of Line 10)	
	Income Taxes Receivable	955
11.	<b>TOTAL ASSETS</b>	<b>144,439</b>

OFFICE OF BANKS AND REAL ESTATE  
Bureau of Banks and Trust Companies

CONSOLIDATED REPORT OF CONDITION  
OF

BNY Midwest Trust Company  
2 North LaSalle Street  
Suite 1020  
Chicago, Illinois 60602

LIABILITIES

Thousands of Dollars

12.	Accounts Payable		32
13.	Taxes Payable		0
14.	Other Liabilities for Borrowed Money		25,425
15.	Other Liabilities (Itemize amounts greater than 15% of Line 14)		
	Reserve for Taxes	13,902	
			14,175
16.	<b>TOTAL LIABILITIES</b>		<b>39,632</b>

EQUITY CAPITAL

17.	Preferred Stock		- 0 -
18.	Common Stock		2,000
19.	Surplus		67,130
20.	Reserve for Operating Expenses		- 0 -
21.	Retained Earnings (Loss)		35,677
22.	<b>TOTAL EQUITY CAPITAL</b>		<b>104,807</b>
23.	<b>TOTAL LIABILITIES AND EQUITY CAPITAL</b>		<b>144,439</b>

I, Robert L. DePaola, Vice President

(Name and Title of Officer Authorized to Sign Report)

of BNY Midwest Trust Company certify that the information contained in this statement is accurate to the best of my knowledge and belief. I understand that submission of false information with the intention to deceive the Commissioner or his Administrative officers is a felony.

/s/ Robert L. DePaola

(Signature of Officer Authorized to Sign Report)