



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MAY 12 2005

VIA FACSIMILE to (816) 221-0786 and U.S.Mail

Timothy W. Jenkins
Paul L. Knight
O'Connor & Hannan
1666 K Street
Washington, DC 20008

RE: MUR 5573
In the Matter of Westar Energy, Inc.

Dear Messrs. Jenkins and Knight:

On May 10, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of violations of 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter as it pertains to Westar Energy, Inc.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the effective date of the conciliation agreement. If you have any questions, please contact me at (202) 694-1548.

Sincerely,

A handwritten signature in cursive script that reads "Elena Paoli".

Elena Paoli
Attorney

Enclosure

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5573
Westar Energy, Inc.)

CONCILIATION AGREEMENT

This matter was initiated by a sua sponte submission filed with the Federal Election Commission (“the Commission”) by Westar Energy, Inc., formerly known as Western Resources, Inc. In the submission, Westar voluntarily disclosed that certain former officers might have caused Westar to facilitate federal political contributions to several political committees.

Based on the facts voluntarily disclosed by Westar and other available information, the Commission found reason to believe that Westar Energy, Inc., (“Respondent”) violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f) of the Federal Election Campaign Act of 1971, as amended (“the Act”).¹

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

¹ The facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107-155, 116 Stat. 81 (2002). Unless specifically stated to the contrary, all citations to FECA, codified at 2 U.S.C. §§ 431 *et seq.*, the Commission’s implementing regulations and all statements of applicable law herein, refer to FECA and the Commission’s regulations as they existed prior to the effective date of BCRA.

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IV. The pertinent facts in this matter are as follows:

1. Westar Energy, Inc., (hereinafter "Westar") is an electric utility company incorporated in Kansas and headquartered in Topeka, Kansas. David Wittig was the Vice President of Corporate Strategy at Westar from 1995 to 1998 and its President and CEO from 1998 through November 7, 2002.² Douglas Lake was Westar's Vice President for Corporate Strategy from 1998 through December 6, 2002.³ Douglass Lawrence was Westar's Vice President of Government Affairs from late 2001 through 2002. Carl Koupal was employed at Westar from March 16, 1992 through October 31, 2001, and served as Chief Administrative Officer at the times relevant herein.

2. Governmental Strategies, Inc. (hereinafter "GSI"), is a lobbying and consulting firm incorporated in Virginia with its principal place of business in Oakton, Virginia. GSI has worked as one of Westar's lobbyists since March 1, 2000. Richard Bornemann, a lobbyist affiliated with GSI, provided lobbying and consulting services to Westar during relevant times herein.

3. Corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). In addition, section 441b(a) prohibits any officer or director of any corporation from consenting to any contribution or expenditure by the corporation.

4. Corporations (including officers, directors or other representatives acting as agents for the corporation) also are prohibited from facilitating the making of contributions. 11 C.F.R. § 114.2(f).

² Westar suspended Wittig on November 7, 2002, and Wittig resigned on November 22, 2002

³ Westar placed Lake on leave-without-pay status on December 6, 2002 and fired him on June 6, 2003.

5. Facilitation includes, inter alia, directing staff to plan, organize, or carry out a fundraising project as part of their work responsibilities and using corporate resources and providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes or other similar items. 11 C.F.R. § 114.2(f)(2)(ii).

6. Corporations also are prohibited from acting as conduits for contributions earmarked to candidates or their authorized committees. *See* 11 C.F.R. § 110.6(b)(2)(ii).

7. Between September 2000 and December 2002, Westar engaged on two separate occasions in the practice of facilitating corporate contributions to candidates for federal office. On September 20, 2000, Carl Koupal sent an email to Douglas Lake listing four federal candidate committees in the Kansas delegation – Jim Ryun for Congress, Dennis Moore for Congress, Tiahrt for Congress and Moran for Kansas – to whom six Westar executives were asked to make contributions pursuant to a schedule created by Wittig and Koupal. Koupal's email to Lake said, "Please return these checks and we'll deliver them together."

8. As a result of the September 2000 solicitation, on October 16, 2000, four Westar executives and/or their spouses contributed \$4,250 via personal checks to Jim Ryun for Congress. On October 24, 2000, four Westar executives contributed \$2,750 via personal checks to Dennis Moore for Congress. On October 27, 2000, four Westar executives contributed \$2,500 via personal checks to Tiahrt for Congress. On November 4, 2000, five Westar executives and/or their spouses contributed \$1,500 via personal checks to Moran for Kansas.

9. From October 16, 2000, to November 4, 2000, Westar executives contributed an additional \$2,500 to Jim Ryun for Congress pursuant to the September 2000 solicitation. In total, the September 2000 solicitation resulted in \$13,500 in political contributions to federal candidate committees from Westar executives.

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10. Koupal, acting for and on behalf of Westar, collected and forwarded these contributions to the recipient committees.

11. In late 2001, Congress considered a major Energy Deregulation Bill. Westar was interested in getting an exemption inserted into the Bill that would have grandfathered existing law that was targeted for repeal.

12. In an April 23, 2002, memorandum to Douglass Lawrence titled "Federal Elections Participation," Bornemann outlined a proposal "to develop a significant and positive profile for the Company's federal presence." In the memorandum, he recommended that Westar employees contribute specific amounts to certain federal political committees. Most of the suggested contribution recipients were either members of or had ties to leaders of the Senate and House energy committees. In total, Bornemann recommended that Westar employees contribute \$31,500 in federal funds. Bornemann also recommended that Westar contribute \$25,000 in nonfederal funds.

13. Using the Bornemann memorandum as a guide, Wittig created a contributions schedule that called for 13 Westar executives, including himself, to make specific contributions to specific candidates. The suggested contribution amounts were based on the executive's pay grade, with higher-salaried executives requested to contribute proportionally more than lower-salaried executives. Wittig's memorandum detailing the contributions schedule was circulated to the various executives.

14. Thereafter, Lawrence communicated via email, internal mail and orally with the solicited executives to let them know to whom they should write contribution checks and the specific amounts to contribute within the monetary framework set by Wittig. In one inter-office memorandum, Lawrence said that the plan "summarizes the total budget for our Washington efforts regarding the Federal Energy Bill and its impact on our financial

restructuring plan.” In another communication, he said, “we are working on getting our grandfather provision on PUHCA repeal into the senate version of the energy bill.”

15. Lawrence, acting for and on behalf of Westar, (and/or his assistant at his direction), at least through October 18, 2002, collected the checks and forwarded them to the recipient committees, sometimes directly and other times through Bornemann who then would deliver them to the recipient committees in person or send them in the mail. After October 18, 2002, on occasion, Westar executives sent their contributions directly to candidate committees by Federal Express or U.S. mail at Westar’s expense.

16. Westar executives and the spouses of two of the executives made the following contributions from May 31, 2002, through December 19, 2002, which were either collected and forwarded to candidates by Lawrence and/or Bornemann, or sent by the executives by Federal Express or U.S. mail at Westar’s expense:

DATE OF CONTRIBUTION	AMOUNT	RECIPIENT COMMITTEE
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$ 300	Tom Young for Congress
05/31/02	\$ 300	Tom Young for Congress
05/31/02	\$1,000	Tom Young for Congress
05/31/02	\$ 400	Tom Young for Congress
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/06/02	\$1,000	Tom DeLay Congressional Committee
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/06/02	\$ 200	Tom DeLay Congressional Committee
06/06/02	\$ 300	Tom DeLay Congressional Committee
06/10/02	\$ 500	Northup for Congress

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06/10/02	\$ 350	Northup for Congress
06/20/02	\$1,000	Volunteers for Shimkus
06/28/02	\$1,000	Graves for Congress
06/30/02	\$ 350	Shelley Moore Capito for Congress
06/30/02	\$ 650	Shelley Moore Capito for Congress
07/31/02	\$1,000	Bayou Leader PAC
07/31/02	\$ 300	Bayou Leader PAC
07/31/02	\$1,000	Bayou Leader PAC
07/31/02	\$ 500	Bayou Leader PAC
10/18/02	\$1,000	Next Century Fund
10/23/02	\$ 500	NRCCC
10/23/02	\$ 425	NRCCC
10/23/02	\$ 225	NRCCC
10/25/02	\$ 500	Simmons for Congress
10/28/02	\$1,000	Oxley for Congress
10/28/02	\$ 500	Texas Freedom Fund
10/28/02	\$ 500	Texas Freedom Fund
10/28/02	\$ 500	Hayes for Congress
10/29/02	\$ 500	Hayes for Congress
10/29/02	\$ 325	Leadership PAC
10/29/02	\$ 675	Leadership PAC
10/29/02	\$ 500	Latham for Congress
10/29/02	\$ 250	Latham for Congress
10/29/02	\$ 250	Latham for Congress
10/30/02	\$ 500	Simmons for Congress
10/31/02	\$1,000	The Congressman Joe Barton Committee
11/03/02	\$1,000	Team Sununu
11/04/02	\$1,000	Team Sununu
11/05/02	\$1,000	The Congressman Joe Barton Committee
12/19/02	\$1,000	Texas Freedom Fund

17. The contributions facilitated by Respondent total forty thousand, four hundred dollars (\$40,400) between September 2000 and December 2002.

18. The two highest-ranking officers responsible for the activities in question were either terminated by Westar or chose to resign in late 2002. Since that time, Westar has represented that it has affirmatively taken several steps to avoid any future violations of federal

election law, including prohibiting any future federal or state corporate contributions and retaining election law counsel to conduct an internal review of all policies and procedures and approve all future federal election activity. The Commission acknowledges and has taken into consideration the remedial steps that Westar has undertaken to prevent any reoccurrence of the conduct described herein.

V. Respondent Westar Energy, Inc., acting by and through corporate officers who consented to the use of corporate personnel and resources in collecting and delivering earmarked contributions to federal political committees, facilitated the making of prohibited corporate contributions in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) and participated in improper conduit activity in violation of 11 C.F.R. § 110.6(b)(2)(ii).

VI. Westar Energy, Inc., will pay a civil penalty to the Federal Election Commission in the amount of twenty thousand dollars (\$20,000), pursuant to 2 U.S.C. § 437g(a)(5)(B).

VII. Respondent will cease and desist from any further violation of 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f).

VIII. Further, Respondent waives its rights to a refund of any political contribution from the recipient committees. In addition, Westar will notify the recipient committees and request that they disgorge the prohibited contributions referenced in this agreement to the U.S. Treasury.

IX. Respondent agrees that the Commission's acceptance of this agreement is conditioned on the truthfulness and completeness of information provided to the Commission. Respondent further agrees that if it falsely states or fails to disclose material information concerning the nature of the solicitations, including but not limited to information about the facilitating the making of the contributions or the use of coercion in the making of contributions, such false statement or omission shall constitute a violation by Respondent of this agreement.

X. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XI. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

XII. Respondent shall have no more than thirty days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement.

XIII. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton, General Counsel

BY: *Rhonda J. Vosting*
Rhonda J. Vosting
Associate General Counsel

5/12/08
Date

FOR THE RESPONDENT:

BY: *Larry B. Erick*
Larry B. Erick, v.p. and
Westar Energy, Inc. *General Counsel*

2-22-05
Date

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