Introduced by			Council Bill No	<u>R 148-13</u>			
A RESOLUTION							
!	authorizing agreements with Westar Energy, Inc. for the purchase and receipt of annual and seasonal nitrogen oxide (NO_x) emissions allowances to comply with federal emission regulations.						
BE IT RESOL FOLLOWS:	VED BY THE	COUNCIL OF TI	HE CITY OF COLU	JMBIA, MISSOURI, AS			
Westar Energy emissions allo the agreemen	y, Inc. as it relate wances to comp t shall be substa	es to the purchas bly with federal en	e and receipt of ann nission regulations. h in "Exhibit A" attad	ecute an agreement with ual nitrogen oxide (NO _x) The form and content of ched hereto and made a			
Westar Energ (NO _x) emissio content of the	y, Inc. as it relances allowances agreement sha	ates to the purcha to comply with fe	ase and receipt of sederal emission reg y as set forth in "Ex	ecute an agreement with seasonal nitrogen oxide ulations. The form and hibit B" attached hereto			
ADOPT	ED this	_ day of		, 2013.			
ATTEST:							
City Clerk			Mayor and Presid	ling Officer			
APPROVED A	AS TO FORM:						

City Counselor

Emissions Seller:

Westar Energy, Inc.

818 South Kansas Avenue, Ist Floor

Topeka, KS 66612

Attn: John P. Olsen

Tel. 785-575-8078

Fax. 785-575-1940

Emissions Buyer:

City of Columbia, Missouri

701 E. Broadway, 5th Floor

Columbia, MO 65201

Attn: Christian Johanningmeier

Tel. 573-874-6236

Fax 573-874-1583

EMISSIONS ALLOWANCE AGREEMENT

This Emission Allowance Agreement, by and between Westar Energy, Inc., a Kansas company (hereinafter "Seller"), and the City of Columbia, Missouri (hereinafter "Buyer"), establishes the terms and conditions for the sale/purchase of Allowances (the "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

Article 1 Transaction

- 1.1 Transaction: Seller agrees to sell and deliver and Buyer agrees to purchase and take receipt of Allowances as further set forth herein:
- 1.2 Trade Date:
- 1.3 Commodity: CAIR NO_X Annual Allowances
- 1.4 Vintage Year: 2012 71

2011 - 76

2010 - 82

2009 - 90

- 1.5 Delivery Date: 08/01/2013
- 1.6 Total Contract Quantity: 319 Allowances
- 1.7 Contract: \$42.00 / Allowance
- 1.8 Total Price: \$13,398.00
- 1.9 Buyer's Allowance Management System Account:

ATS Account#
AAR ID#
AAR Phone#
AAR Fax#

City of Columbia 002123FACLTY 573-874-6236 573-874-1583

Rep. Name Christian Johanningmeier

Article 2 Definitions

- 2.1 "Administrator" means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative.
- 2.2 "Allowance" means a CAIR NO_X Annual Allowance, as indicated in Article 1.3 above.
- 2.3 "Allowance Management System" means the system by which the Administrator records allocations, deductions, and transfers of Allowances under each Transport Rule Trading Program.
- 2.4 "Allowance Management System Account" means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, holding, transfer, or deduction of Allowances.
- 2.5 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.
- 2.6 "Clean Air Act" means the statutes codified as 42 U.S.C. 7401 et seq., any amendments thereto and any regulations promulgated thereunder.
- 2.7 "Confidential Information" To the extent allowed by law, "Confidential Information" means all oral and written information exchanged between Seller and Buyer with respect to the pricing of the sale of Allowances under this Agreement. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on a nonconfidential basis prior to this Agreement; (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not known by such Party to be subject to any prohibition against disclosing the information to such Party; and (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business, provided that the Party required to disclose Confidential Information shall provide reasonable advance written notice (to the extent not prohibited by applicable law) to the other Party so as to permit such Party to avoid or minimize disclosure by protective order, agreement, or otherwise; and (e) any information that is considered an open record pursuant to the Missouri Sunshine Law, as set forth in Chapter 610 of the Revised Statutes of Missouri.
- 2.8 "EPA" means the United States Environmental Protection Agency or any successor agency with similar jurisdiction.
- 2.9 "Interest Rate" means a rate equal to two percent (2%) over the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under

- "Consumer Money Rates"; provided however, such rate shall never exceed the maximum lawful rate permitted by applicable law.
- 2.10 "Option" means a Transaction which gives Buyer the right, but not the obligation unless exercised, to purchase or sell, as the case may be, one or more Allowances pursuant to the terms of the Call Option or the Put Option, as the case may be.
- 2.11 "Transaction" means a specific sale, purchase, or exchange of Allowances
- 2.12 "CAIR NO_λ allowance" means a limited authorization issued by a permitting authority or the Administrator under subpart EE of this part or § 97.188, or under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NOX Program. An authorization to emit nitrogen oxides that is not issued under subpart EE of this part, § 97.188, or provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter shall not be a CAIR NOX allowance.
- 2.13 "CAIR NO_X Annual Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and §§ 51.123(p) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.
- 2.14 "Vintage Year" means the first calendar year during which the Allowances may be used by an emitter of NO_X to comply with the Clean Air Act.

Article 3 Purchase of Allowances

- 3.1 <u>Transfer.</u> Promptly upon execution of this Agreement by the Parties, but no later than three (3) Business Days after execution, Seller shall submit to Buyer (or directly to EPA if an appropriate authorized account representative signature is on file with the EPA) a complete, accurate and properly executed Allowance transfer in a format prescribed by the Administrator ("ATF") or electronically transfer the Allowances from Seller's account in the Allowance Management System to Buyer's account, unless it is an Option, then by no later than three (3) Business Days after such Option has been exercised.
- 3.2 <u>Payment.</u> Seller will forward an invoice to Buyer detailing the amount owed and payment instructions. Within three (3) Business Days after the later of (i) the day upon which Buyer receives written or electronic notification by the EPA that such Allowances have been transferred from Seller to Buyer or (ii) receipt of Seller's invoice, Buyer shall pay Seller for the Allowances.
- Non-Recordation. In the event the EPA does not record, in whole or in part, the allowance transfer request submitted in accordance with Section 3.1 of this Agreement, the Parties shall attempt in good faith to correct the reasons for such non-recordation and, if such reasons for non-recordation may be corrected, the Parties shall resubmit to the EPA a revised ATF within five (5) Business Days after receiving the EPA's notice of non-recordation. In the event the Parties are unable to remedy the reasons for the non-recordation, Seller shall refund to Buyer the purchase price of the NOx Allowances that were not recorded and title for the non-recorded NOx

- Allowances shall transfer from Buyer to Seller upon receipt by Buyer of the refund of the purchase price of the non-recorded NOx Allowances.
- 3.4 <u>Errors.</u> In the event the EPA erroneously records allowance transfer information submitted under this Agreement, the Parties shall submit a claim of error notification in accordance with applicable law.
- 3.5 <u>Funds.</u> All funds to be paid directly to Seller under this Agreement shall be rendered in the form of immediately available funds (U.S. Dollars) by electronic transfer or in such other form as reasonably requested by Seller.
 - Seller shall provide to Buyer in writing the Bank Name, Bank Account Number, and American Banking Association Number.
- 3.6 <u>Taxes.</u> Each Party shall be responsible for any taxes or other fees (including without limitation any fees of any broker retained by it) associated with its respective purchase and sale of the Allowances hereunder.
- 3.7 <u>Disputed Invoices.</u> If Buyer in good faith disputes the correctness of an invoice, Buyer shall pay the undisputed amount when due and submit to Seller a written statement detailing the items disputed and the reasons therefore. Seller shall only deliver the number of Allowances that have been paid for by Buyer. The Parties shall attempt in good faith to resolve the dispute promptly through negotiation between executives who have authority to settle the controversy. All negotiations pursuant to this clause shall be confidential and treated as compromise and settlement negotiations for purposes of state or federal Rules of Evidence. If it is determined that Buyer owes all or a portion of the disputed amount, Buyer shall pay Seller that amount within three (3) Business Days of such determination, along with interest accrued at the Interest Rate from and including the original payment due date to but excluding the date the payment is made. Seller will deliver any remaining Allowances within three (3) Business Days of receipt of payment.

Article 4 Representations and Warranties

- 4.1 <u>Mutual Representations and Warranties.</u> Each Party represents and warrants that on and as of the date hereof and the date of transfer of the allowances hereunder:
 - (a) Such Party is validly existing and in good standing under the laws of the jurisdiction of its organization. Such Party is not the subject of bankruptcy, receivership or other insolvency proceedings, nor has it made a general assignment for the benefit of creditors, commenced any proceeding for liquidation, reorganization or other relief with respect to itself or its debts, or admitted its inability to meet its obligations as they become due.
 - (b) Such Party (i) has the power and authority to execute and deliver this Agreement and any other documentation relating hereto and to perform its obligations hereunder and (ii) has taken all necessary action to authorize such execution, delivery and performance.
 - (c) This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to bankruptcy, reorganization, and similar laws affecting creditors' rights generally and to general principals of equity (regardless whether considered in a proceeding in equity or at law).

(d) Such Party shall be solely responsible for any investment banker, broker, finder or intermediary (if any) who was engaged by such Party and is entitled to any fee or commission in connection with the Transactions contemplated hereby.

Article 5 Limitation of Liability

- 5.1 FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES OR DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, IN TORT, CONTRACT, OR OTHERWISE.
- 5.2 This Article 5 survives expiration or termination of this Agreement.

Article 6 Events of Default; Remedies

- 6.1 Event of Default. "Event of Default" shall mean, with respect to a Party (the "Affected Party"):
 - (a) the failure by the Affected Party to make, when due, any payment, if such failure is not remedied within three (3) Business Days after written notice of such failure is given to the Affected Party; or
 - (b) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made and not cured within three (3) Business Days after receipt of written notice from the non-Affected Party; or
 - (c) the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this paragraph as a separate Event of Default), and such failure is not cured within five business days after written notice thereof to the Affected Party; or
 - (d) The Affected Party shall:
 - (i) make an assignment or any general arrangement for the benefit of creditors;
 - (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for 30 days after filing;
 - (iii) otherwise become bankrupt or insolvent (however evidenced); or
 - (iv) be unable to pay its debts as they fall due; or

- (e) Subject to Section 8.1 below, the failure by Seller to deliver to Buyer or the failure of Buyer to accept the delivery of the Allowances as provided herein; or
- (f) The failure of a Party to provide adequate assurance pursuant to Section 6.7.
- Remedies. If an Event of Default occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (a) upon two (2) Business Days' written notice to the Affected Party terminate this Agreement, (b) withhold any payments due or Allowances to be delivered to the extent of its damages pursuant to this Article 6, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement; provided, upon the occurrence of any Event of Default listed in clause (d) of the definition of "Event of Default" above as it may apply to any Party, this Agreement shall automatically terminate, without notice.
- Buver's Liability. In the event Buyer causes an Event of Default and Seller elects to terminate this Agreement, Buyer shall be obligated to pay Seller termination damages equal to the positive difference, if any, between (i) the aggregate price set forth in this Agreement for all remaining Allowances to be delivered under this Agreement minus (ii) the aggregate market price for equivalent Allowances (equivalent with respect to amount, vintage year and delivery dates) as of the date such Allowances were to be delivered by Seller to Buyer, to be determined based on the average Allowance prices quoted by two leading, independent dealers, brokers or any other industry participant selected by Seller; plus (c) interest at the Interest Rate from the due date or the termination date, whichever is earlier, until paid, and all reasonable collection costs, including, without limitation, reasonable attorneys' and brokers fees.
- Seller's Liability. In the event Seller causes an Event of Default and Buyer elects to terminate this Agreement, Seller shall pay Buyer termination damages equal to the sum of (a) the positive difference, if any, between (i) the aggregate market price for equivalent Allowances (equivalent with respect to amount, vintage year and delivery dates) as of the date such Allowances were to be delivered by Seller to Buyer, to be determined based on the average Allowance prices quoted by two leading independent dealers, brokers or any other industry participant selected by Buyer; minus (ii) the aggregate price set forth in this Agreement for all such remaining Allowances; minus (b) the price for any Allowances delivered to Buyer for which Seller has not been paid; plus (c) interest at the Interest Rate from the due date or the termination date, whichever is earlier, until paid, and all reasonable collection costs, including, without limitation, reasonable attorneys' and brokers fees.
- 6.5 Past Due Amounts. All overdue payments shall bear interest from, and including the due date to, but excluding, the date of payment at the Interest Rate.
- 6.6 <u>Exclusive Remedies</u>. The remedies set forth in this Article 6 are the sole and exclusive remedies for an Event of Default, and each Party's liability shall be limited as set forth in this Article. All other remedies or damages at law or equity are hereby waived.

Article 7 Miscellaneous

7.1 This Agreement is not assignable by either Party without the prior written approval of the non-assigning Party. Any assignment without the written approval of the non-assigning Party is voidable by the non-assigning Party.

- 7.2 This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successors in interest.
- 7.3 This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 7.4 If any article, phrase, provision or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, phrase, provision, or portion so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.
- 7.5 All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States registered or certified mail, postage prepaid, return receipt requested ("Mailed"), or hand-delivered, or sent by facsimile transmission with the original document Mailed to confirm or by recognized overnight courier service, addressed as follows:

To Seller:

Westar Energy, Inc. 818 South Kansas Avenue Topeka, KS 66612 Attn: John P. Olsen Phone No.: 785-575-8078

Phone No.: 785-575-8078 Fax No.: 785-575-1940 To Buyer:

City of Columbia, Missouri P.O. Box 6015 Columbia, Missouri 65205-6015 Attn: Christian Johanningmeier

Phone No: 573-874-6236 Fax No: 573-874-1583

or such other and different addresses as may be designated in writing by the Parties and delivered pursuant to this Paragraph 7.5.

- 7.6 This Agreement completely and fully supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 7.7 Governing Law and Venue. This contract shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
- 7.8 No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.
- 7.9 This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

7.10 The Article and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

7.11 HOLD HARMLESS AGREEMENT.

- (a) To the fullest extent not prohibited by law, Seller shall indemnify and hold harmless the City of Columbia, its directors, officers, agents and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, to the extent caused by any negligent act or failure to act, or willful misconduct the negligence of Seller, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Seller or a subcontractor for part of the services), of anyone directly or indirectly employed by Seller or by any subcontractor, or of anyone for whose acts the Seller or its subcontractor may be liable, in connection with providing these services except as provided in this Agreement. This provision does not, however, require Seller to indemnify, hold harmless or defend the City of Columbia from its own negligence, except as set out herein.
- (b) NO WAIVER OF SOVEREIGN IMMUNITY. Nothing contained herein shall be deemed a waiver of City's sovereign immunity.
- (c) SURVIVAL. The Parties agree that obligations under section 7.11 shall survive the completion or termination of this Agreement.
- 7.12 The Parties agree that the transaction subject to this Agreement for the sale and purchase of Allowances shall constitute "forward contracts," and that the Parties shall constitute "forward contract merchants," within the meaning of the United States Bankruptcy Code.
- 7.13 Employment of Unauthorized Aliens Prohibited. Seller agrees to comply with Missouri State Statute section 285.530 in that Seller shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this contract the Seller shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. The Seller shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Seller shall require each subcontractor to affirmatively state in its contract with Seller that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the state of Missouri. Seller shall also require each subcontractor to provide seller with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.
- 7.14 <u>General Laws.</u> Seller shall comply with all federal, state, and local Laws, statutes, ordinances, and rules and regulations.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized officers or individuals, as of the day and year first above written.

WESTAR ENERGY, INC.

		By: John P. Olsen Title: Executive Director, Bulk Power Marketing
		Date: 7/24/13
		CITY OF COLUMBIA, MISSOURI
		By: Mike Matthes, City Manager
ATTEST:		Date:
Sheela Amin, City Cl		
Nancy Thompson, Ci CERTIFICATION:	I, hereby certify which it is to be	that this contract is within the purpose of the appropriation to charged, Account Number, and unencumbered balance to the credit of such appropriation herefor.
		John Blattel, Director of Finance

Emissions Seller:

Westar Energy, Inc.

818 South Kansas Avenue, 1st Floor

Topeka, KS 66612

Attn: John P. Olsen

Tel. 785-575-8090

Fax. 785-575-1940

Emissions Buyer:

City of Columbia, Missouri

701 E. Broadway, 5th Floor

Columbia, MO 65201

Attn: Christian Johanningmeier

Tel. 573-874-6236

Fax 573-874-1583

EMISSIONS ALLOWANCE AGREEMENT

This Emission Allowance Agreement, by and between Westar Energy, Inc., a Kansas company (hereinafter "Seller"), and the City of Columbia, Missouri (hereinafter "Buyer"), establishes the terms and conditions for the sale/purchase of Allowances (the "Agreement"). Seller and Buyer can be individually referred to as a "Party" or collectively as "Parties."

Article 1 Transaction

- 1.1 Transaction: Seller agrees to sell and deliver and Buyer agrees to purchase and take receipt of Allowances as further set forth herein:
- 1.2 Trade Date:
- 1.3 Commodity: CAIR NO_x Ozone Seasonal Allowance
- 1.4 Vintage Year: 2012 49

2011 - 109

2010 - 62

- 1.5 Delivery Date: 08/01/2013
- 1.6 Total Contract Quantity: 220 Allowances
- 1.7 Contract: \$20.00 / Allowance
- 1.8 Total Price: \$4,400.00

1.9 Buyer's Allowance Management System Account:

ATS Account# City of Columbia

AAR ID# 002123FACLTY

AAR Phone# 573-874-6236

AAR Fax# 573-874-1583

Rep. Name Christian Johanningmeier

Article 2 Definitions

- 2.1 "Administrator" means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative.
- 2.2 "Allowance" means a CAIR NO_x Ozone Seasonal Allowance, as indicated in Article 1.3 above.
- 2.3 "Allowance Management System" means the system by which the Administrator records allocations, deductions, and transfers of Allowances under each Transport Rule Trading Program.
- 2.4 "Allowance Management System Account" means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, holding, transfer, or deduction of Allowances.
- 2.5 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.
- 2.6 "Clean Air Act" means the statutes codified as 42 U.S.C. 7401 et seq., any amendments thereto and any regulations promulgated thereunder.
- "Confidential Information" To the extent allowed by law, "Confidential Information" means all 2.7 oral and written information exchanged between Seller and Buyer with respect to the pricing of the sale of Allowances under this Agreement. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on a nonconfidential basis prior to this Agreement; (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not known by such Party to be subject to any prohibition against disclosing the information to such Party; and (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business, provided that the Party required to disclose Confidential Information shall provide reasonable advance written notice (to the extent not prohibited by applicable law) to the other Party so as to permit such Party to avoid or minimize disclosure by protective order, agreement, or otherwise; and (e) any information that is considered an open record pursuant to the Missouri Sunshine Law, as set forth in Chapter 610 of the Revised Statutes of Missouri.
- 2.8 "EPA" means the United States Environmental Protection Agency or any successor agency with similar jurisdiction.

- 2.9 "Interest Rate" means a rate equal to two percent (2%) over the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Consumer Money Rates"; provided however, such rate shall never exceed the maximum lawful rate permitted by applicable law.
- 2.10 "Option" means a Transaction which gives Buyer the right, but not the obligation unless exercised, to purchase or sell, as the case may be, one or more Allowances pursuant to the terms of the Call Option or the Put Option, as the case may be.
- 2.11 "Transaction" means a specific sale, purchase, or exchange of Allowances
- 2.12 "CAIR NO_x allowance" means a limited authorization issued by a permitting authority or the Administrator under subpart EE of this part or § 97.188, or under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NOX Program. An authorization to emit nitrogen oxides that is not issued under subpart EE of this part, § 97.188, or provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter shall not be a CAIR NOX allowance.
- 2.13 "CAIR NO_X Ozone Season Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and §§ 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AAAA through IIII of part 96 and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.
- 2.14 "Vintage Year" means the first calendar year during which the Allowances may be used by an emitter of NO_x to comply with the Clean Air Act.

Article 3 Purchase of Allowances

- 3.1 <u>Transfer.</u> Promptly upon execution of this Agreement by the Parties, but no later than three (3) Business Days after execution, Seller shall submit to Buyer (or directly to EPA if an appropriate authorized account representative signature is on file with the EPA) a complete, accurate and properly executed Allowance transfer in a format prescribed by the Administrator ("ATF") or electronically transfer the Allowances from Seller's account in the Allowance Management System to Buyer's account, unless it is an Option, then by no later than three (3) Business Days after such Option has been exercised.
- 3.2 <u>Payment.</u> Seller will forward an invoice to Buyer detailing the amount owed and payment instructions. Within three (3) Business Days after the later of (i) the day upon which Buyer receives written or electronic notification by the EPA that such Allowances have been transferred from Seller to Buyer or (ii) receipt of Seller's invoice, Buyer shall pay Seller for the Allowances.
- Non-Recordation. In the event the EPA does not record, in whole or in part, the allowance transfer request submitted in accordance with Section 3.1 of this Agreement, the Parties shall attempt in good faith to correct the reasons for such non-recordation and, if such reasons for non-recordation may be corrected, the Parties shall resubmit to the EPA a revised ATF within five (5) Business Days after receiving the EPA's notice of non-recordation. In the event the Parties are

unable to remedy the reasons for the non-recordation, Seller shall refund to Buyer the purchase price of the NOx Allowances that were not recorded and title for the non-recorded NOx Allowances shall transfer from Buyer to Seller upon receipt by Buyer of the refund of the purchase price of the non-recorded NOx Allowances.

- 3.4 <u>Errors.</u> In the event the EPA erroneously records allowance transfer information submitted under this Agreement, the Parties shall submit a claim of error notification in accordance with applicable law.
- 3.5 <u>Funds.</u> All funds to be paid directly to Seller under this Agreement shall be rendered in the form of immediately available funds (U.S. Dollars) by electronic transfer or in such other form as reasonably requested by Seller. Seller shall provide to Buyer in writing the Bank Name, Bank Account Number, and American Banking Association Number.
- 3.6 <u>Taxes.</u> Each Party shall be responsible for any taxes or other fees (including without limitation any fees of any broker retained by it) associated with its respective purchase and sale of the Allowances hereunder.
- 3.7 <u>Disputed Invoices.</u> If Buyer in good faith disputes the correctness of an invoice, Buyer shall pay the undisputed amount when due and submit to Seller a written statement detailing the items disputed and the reasons therefore. Seller shall only deliver the number of Allowances that have been paid for by Buyer. The Parties shall attempt in good faith to resolve the dispute promptly through negotiation between executives who have authority to settle the controversy. All negotiations pursuant to this clause shall be confidential and treated as compromise and settlement negotiations for purposes of state or federal Rules of Evidence. If it is determined that Buyer owes all or a portion of the disputed amount, Buyer shall pay Seller that amount within three (3) Business Days of such determination, along with interest accrued at the Interest Rate from and including the original payment due date to but excluding the date the payment is made. Seller will deliver any remaining Allowances within three (3) Business Days of receipt of payment.

Article 4 Representations and Warranties

- 4.1 <u>Mutual Representations and Warranties.</u> Each Party represents and warrants that on and as of the date hereof and the date of transfer of the allowances hereunder:
 - (a) Such Party is validly existing and in good standing under the laws of the jurisdiction of its organization. Such Party is not the subject of bankruptcy, receivership or other insolvency proceedings, nor has it made a general assignment for the benefit of creditors, commenced any proceeding for liquidation, reorganization or other relief with respect to itself or its debts, or admitted its inability to meet its obligations as they become due.
 - (b) Such Party (i) has the power and authority to execute and deliver this Agreement and any other documentation relating hereto and to perform its obligations hereunder and (ii) has taken all necessary action to authorize such execution, delivery and performance.
 - (c) This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to bankruptcy, reorganization, and similar laws affecting creditors' rights generally and to general principals of equity (regardless whether considered in a proceeding in equity or at law).

(d) Such Party shall be solely responsible for any investment banker, broker, finder or intermediary (if any) who was engaged by such Party and is entitled to any fee or commission in connection with the Transactions contemplated hereby.

Article 5 Limitation of Liability

- 5.1 FOR BREACH OF ANY PROVISION OF THIS AGREEMENT, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES OR DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, IN TORT, CONTRACT, OR OTHERWISE.
- 5.2 This Article 5 survives expiration or termination of this Agreement.

Article 6 Events of Default; Remedies

- 6.1 Event of Default. "Event of Default" shall mean, with respect to a Party (the "Affected Party"):
 - (a) the failure by the Affected Party to make, when due, any payment, if such failure is not remedied within three (3) Business Days after written notice of such failure is given to the Affected Party; or
 - (b) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when made and not cured within three (3) Business Days after receipt of written notice from the non-Affected Party; or
 - the failure by the Affected Party to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this paragraph as a separate Event of Default), and such failure is not cured within five business days after written notice thereof to the Affected Party; or
 - (d) The Affected Party shall:
 - (i) make an assignment or any general arrangement for the benefit of creditors;
 - (ii) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for 30 days after filing;
 - (iii) otherwise become bankrupt or insolvent (however evidenced); or
 - (iv) be unable to pay its debts as they fall due; or

- (e) Subject to Section 8.1 below, the failure by Seller to deliver to Buyer or the failure of Buyer to accept the delivery of the Allowances as provided herein; or
- (f) The failure of a Party to provide adequate assurance pursuant to Section 6.7.
- Remedies. If an Event of Default occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (a) upon two (2) Business Days' written notice to the Affected Party terminate this Agreement, (b) withhold any payments due or Allowances to be delivered to the extent of its damages pursuant to this Article 6, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement; provided, upon the occurrence of any Event of Default listed in clause (d) of the definition of "Event of Default" above as it may apply to any Party, this Agreement shall automatically terminate, without notice.
- Buyer's Liability. In the event Buyer causes an Event of Default and Seller elects to terminate this Agreement, Buyer shall be obligated to pay Seller termination damages equal to the positive difference, if any, between (i) the aggregate price set forth in this Agreement for all remaining Allowances to be delivered under this Agreement minus (ii) the aggregate market price for equivalent Allowances (equivalent with respect to amount, vintage year and delivery dates) as of the date such Allowances were to be delivered by Seller to Buyer, to be determined based on the average Allowance prices quoted by two leading, independent dealers, brokers or any other industry participant selected by Seller; plus (c) interest at the Interest Rate from the due date or the termination date, whichever is earlier, until paid, and all reasonable collection costs, including, without limitation, reasonable attorneys' and brokers fees.
- Seller's Liability. In the event Seller causes an Event of Default and Buyer elects to terminate this Agreement, Seller shall pay Buyer termination damages equal to the sum of (a) the positive difference, if any, between (i) the aggregate market price for equivalent Allowances (equivalent with respect to amount, vintage year and delivery dates) as of the date such Allowances were to be delivered by Seller to Buyer, to be determined based on the average Allowance prices quoted by two leading independent dealers, brokers or any other industry participant selected by Buyer; minus (ii) the aggregate price set forth in this Agreement for all such remaining Allowances; minus (b) the price for any Allowances delivered to Buyer for which Seller has not been paid; plus (c) interest at the Interest Rate from the due date or the termination date, whichever is earlier, until paid, and all reasonable collection costs, including, without limitation, reasonable attorneys' and brokers fees.
- 6.5 Past Due Amounts. All overdue payments shall bear interest from, and including the due date to, but excluding, the date of payment at the Interest Rate.
- 6.6 <u>Exclusive Remedies</u>. The remedies set forth in this Article 6 are the sole and exclusive remedies for an Event of Default, and each Party's liability shall be limited as set forth in this Article. All other remedies or damages at law or equity are hereby waived.

Article 7 Miscellaneous

7.1 This Agreement is not assignable by either Party without the prior written approval of the non-assigning Party. Any assignment without the written approval of the non-assigning Party is voidable by the non-assigning Party.

- 7.2 This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successors in interest.
- 7.3 This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 7.4 If any article, phrase, provision or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, phrase, provision, or portion so adjudged will be deemed separate, distinct and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purposes of this Agreement and the benefits to the Parties are not substantially impaired.
- 7.5 All notices, certificates, or other communications hereunder shall be in writing. All written notices are deemed sufficiently given when mailed by United States registered or certified mail, postage prepaid, return receipt requested ("Mailed"), or hand-delivered, or sent by facsimile transmission with the original document Mailed to confirm or by recognized overnight courier service, addressed as follows:

To Seller:

Westar Energy, Inc. 818 South Kansas Avenue Topeka, KS 66612 Attn: John P. Olsen

Phone No.: 785-575-8078 Fax No.: 785-575-1940 To Buyer:

City of Columbia, Missouri P.O. Box 6015 Columbia, Missouri 65205-6015 Attn: Christian Johanningmeier

Phone No: 573-874-6236 Fax No: 573-874-1583

or such other and different addresses as may be designated in writing by the Parties and delivered pursuant to this Paragraph 7.5.

- 7.6 This Agreement completely and fully supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 7.7 Governing Law and Venue. This contract shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
- 7.8 No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions herein are breached and thereafter waived by a Party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.
- 7.9 This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party.

7.10 The Article and paragraph titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain, or affect any provision thereof.

7.11 HOLD HARMLESS AGREEMENT.

- (a) To the fullest extent not prohibited by law, Seller shall indemnify and hold harmless the City of Columbia, its directors, officers, agents and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, to the extent caused by any negligent act or failure to act, or willful misconduct the negligence of Seller, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Seller or a subcontractor for part of the services), of anyone directly or indirectly employed by Seller or by any subcontractor, or of anyone for whose acts the Seller or its subcontractor may be liable, in connection with providing these services except as provided in this Agreement. This provision does not, however, require Seller to indemnify, hold harmless or defend the City of Columbia from its own negligence, except as set out herein.
- (b) NO WAIVER OF SOVEREIGN IMMUNITY. Nothing contained herein shall be deemed a waiver of City's sovereign immunity.
- (c) SURVIVAL. The Parties agree that obligations under section 7.11 shall survive the completion or termination of this Agreement.
- 7.12 The Parties agree that the transaction subject to this Agreement for the sale and purchase of Allowances shall constitute "forward contracts," and that the Parties shall constitute "forward contract merchants," within the meaning of the United States Bankruptcy Code.
- 7.13 Employment of Unauthorized Aliens Prohibited. Seller agrees to comply with Missouri State Statute section 285.530 in that Seller shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this contract the Seller shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. The Seller shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Seller shall require each subcontractor to affirmatively state in its contract with Seller that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the state of Missouri. Seller shall also require each subcontractor to provide seller with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.
- 7.14 General Laws. Seller shall comply with all federal, state, and local Laws, statutes, ordinances, and rules and regulations.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement, signed by their duly authorized officers or individuals, as of the day and year first above written.

		WEST	AK ENERGY, INC.
		By: Name: Title: Date:	John P. Olsen Executive Director, Bulk Power Marketing 7 24 13
		CITY	OF COLUMBIA, MISSOURI
		Ву:	Mike Matthes, City Manager
ATTEST:		Date:	
Sheela Amin, City Cle	erk		
APPROVED AS TO I	FORM:		
Nancy Thompson, Cit	ty Counselor		
CERTIFICATION:	which it is to be char	ged, Accentumber	tract is within the purpose of the appropriation to count Number, and red balance to the credit of such appropriation
			John Blattel, Director of Finance



Source: Water & Light

To: City Council

From: City Manager and Staff

Council Meeting Date: Aug 5, 2013

Re: Contracts for the purchase of emissions allowances

EXECUTIVE SUMMARY:

Staff has prepared for Council consideration a resolution to authorize agreements for compliance with Federal emission regulations. Water & Light's Municipal Power Plant and Columbia Energy Center are affected by the Acid Rain Program (ARP) and Clean Air Interstate Rule (CAIR) cap and trade programs administered by the Environmental Protection Agency (EPA).

Agenda Item No:

DISCUSSION:

Water & Light's Municipal Power Plant and Columbia Energy Center are affected facilities under the ARP and CAIR programs administered by EPA. The ARP is to achieve reductions in the emissions of sulfur dioxide (SO2) while the CAIR regulates the emissions of nitrogen oxides (NOx). Both systems use a cap and trade program to achieve emissions reductions. The CAIR program segregates NOx into two types: one for total annual NOx emitted and the other for the May through September ozone season.

For the current year, Water & Light has sufficient SO2 allowance to cover its needs under ARP. However, Water & Light will be short on both annual NOx and seasonal NOx. A request for bids was issued for the required emissions allowances and Westar Energy was identified has having the necessary allowances available. Two contracts have been developed for the allowance transfer transactions: one for the annual NOx and the other for the seasonal NOx.

FISCAL IMPACT:

Water & Light will purchase 319 annual NOx allowances for \$42 per allowance, and 220 seasonal NOx allowances for \$20 per allowance, for a total transaction of \$17,798. Previously budgeted funds will be used, so no appropriation is required.

VISION IMPACT:

http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php

9.1 Goal: Columbia and its neighboring communities will be a place where the air, water, land, and natural aesthetic qualities of our environment shall be protected by a combination of conservation strategies including, but not limited to, regulations and ordinances, conservation incentives, education programs, and smart growth planning.

SUGGESTED COUNCIL ACTIONS:

Staff recommends City Council authorizes staff to execute the contracts for the purchase of CAIR allowances.

FISCAL and VISION NOTES:								
City Fiscal Impact Enter all that apply		Program impact		Mandates				
City's current net FY cost	\$17,798.00	New Program/ Agency?		Federal or State mandated?	Yes			
Amount of funds already appropriated	\$17,798.00	Duplicates/Expands an existing program?		Vision Implementation impact				
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?		Enter all that apply: Refer to Web site				
Estimated 2 year net costs:		Resources Required		Vision Impact?	Yes			
One Time	\$17,798.00	Requires add'I FTE Personnel?		Primary Vision, Strategy and/or Goal Item #	9.1			
Operating/ Ongoing	\$0.00	Requires add'l facilities?		Secondary Vision, Strategy and/or Goal Item #				
		Requires add'l capital equipment?		Fiscal year implementation Task #				