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Joan Claybrook, President

CHRONOLOGY OF EVENTS

June 20, 2003

Summary of Basis for Public Citizen's Complaint

A Special Committee of the Board of Directors of Westar Energy, the largest electric utility in Kansas, in May 2003 released internal documents of prior Westar management uncovered in investigations of fraud and other offenses. These documents include Exhibits 236 and 237, internal memoranda and emails describing a program for campaign contributions, allegedly requested by specific Members of Congress to be made by Westar executives to Members of Congress or to their designees, in order for Westar to obtain an exemption from regulation by the Securities and Exchange Commission (SEC) under the Investment Company Act, a statute for the protection of stock purchasers.

According to press reports in September 2002, the exemption sought by Westar was critical for it and its executives to allow then CEO David Wittig and vice president Douglas Lake to split up the company in a deal that would garner Wittig as much as \$15 million and Lake as much as \$12 million. [Washington Post, 6/7/03] The exemption was also critical to split Westar's regulated utility from the rest of its businesses to enable Westar to transfer more than \$3 billion in debt to the utility company. The utility could then try to pass those costs to its customers through utility rate hikes. [AP Newswire 6/6/03, Yost]. For this reason, the Kansas Corporation Commission, in addition to the Securities and Exchange Commission, had opposed the exemption (see below).

The campaign contributions requested in the communications were in fact made by the indicated Westar executives to those recipients named in the communications, according to Federal Election Commission and IRS filings. The requested Westar exemption was in fact inserted into the House comprehensive energy bill during conference committee by one of the Members of Congress discussed in the communications. In addition, seven other representatives, including some of those mentioned in the communications, gave their proxy votes to defeat a motion to delete the Westar exemption.

Public Citizen believes that these facts, as laid out in detail below, constitute a *prima facie* case of possible violations of the bribery statutes, more than sufficient to warrant further investigation by the Department of Justice and requests such investigations.

Westar Released Memos and Emails

5/17/02 Doug Lawrence, Westar vice president for public affairs, sends memo to at least 12 top Westar executives outlining a plan for Westar and its executives to contribute nearly

Ralph Nader, Founder

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\$56,500 to House Majority Leader, Tom DeLay, and several different competitive congressional campaigns. In the memo, Lawrence outlines “the total budget for our Washington efforts regarding the Federal Energy Bill and its impact on our financial restructuring plan...[the] budget allocation [is] according to current needs as recommended by our Washington Lobbyist.” The memo lays out the dollar amounts for each executive listed and the campaigns to which they should contribute. The memo is attached and can be found at www.citizen.org/cmep or at www.westarenergy.com as Exhibit 236 to the Special Committee Report.

The memo outlines a plan to give “\$31,500 in hard money (individual).” From May 31, 2002 through July 31, 2002, thirteen Westar executives and three employees of Governmental Strategies (the Virginia-based lobbying firm hired by Westar) donated \$24,050 to DeLay, Tauzin, Rep. John Shimkus, Rep. Anne Northup, Rep. Sam Graves, Rep. Shelly Moore Capito and Tom Young (see Appendix).

The memo also suggests that \$25,000 in “soft money” contributions should be given by Westar in support of its exemption. In May, 2002, Texans for a Republican Majority, an IRS Section 527 group controlled by Rep. DeLay, received a \$25,000 corporate contribution from Westar Energy. In total, Westar, its executives and three of its lobbyists contributed \$49,050 between May 31 and July 31.

5/20/02

Westar Executive Douglas T. Lake sends email to Lawrence asking: “who is Shimkus, who is Young. Delay [sic] is from TX what is our connection?... I am confused.”

Lawrence replies by email to Doug Lake. The email details how targeting Representatives Tom DeLay, Billy Tauzin, Joe Barton and their allies will help Westar “get a seat at the table” in their efforts to win a grandfathered exemption from the Investment Company Act enforced by the Securities and Exchange Commission for Westar as an exempt PUHCA company, in order to help Westar’s restructuring efforts. The requested exemption is referred to as the “PUHCA grandfathering clause” although, as explained below, it was an exemption for a utility company that is currently exempt under PUHCA from the Investment Company Act, a statute designed to protect the national public interest and the interests of individual stockholders from unscrupulous investment companies. “PUHCA” is the Public Utility Holding Company Act of 1935” that regulates utility parent companies, and is also enforced by the SEC. The emails are included in the Appendix, and can be found at www.citizen.org/cmep and at www.westarenergy.com as Exhibit 237 to the Special Committee Report:

*“Right now, we are working on getting our grandfather provision on PUHCA repeal into the senate version of the energy bill. It requires working with the Conference committee to achieve. **We have a plan for participation to get a seat at the table, which as been approved by David [Wittig, Westar CEO]** the total of the package will be \$31,500 in hard money (individual), and \$25,000 in soft money (corporate). Right now, we have \$11,500 in immediate needs for a group of candidates associated with Tom Delay [sic], Billy Tauzin, Joe Barton and Senator Richard Shelby. Delay [sic] is the House Majority Leader. His agreement is necessary before the House Conferees can push the language we have in place in the House bill. Shimkus is a close associate of Billy Tauzin and Joe Barton, who are key House Conferees on our legislation. **They have made this request in lieu of***

contributions made to their own campaigns. Tom Young is Senator Shelby's Chief of staff who is running for the House in Alabama. Shelby is a member of the Senate Energy Committee and the Banking Committee?and is the lead republican on all Senate PUHCA related matters. He is our anchor on the Senate side. He's made a substantial request of us for supporting Young's campaign. These seem disconnected, but ultimately the plan is directed at getting a strong position at the table on both the Senate and House Side [sic].” [emphasis added]

Fund-raising events hosted by Tauzin and Barton on behalf of Shimkus, Northup, Graves and Capito confirm that the Representatives receiving money from Westar executives were close associates of Tauzin and Barton.

Background: Rep. Barton's Bill

- 3/1/01 Governmental Strategies, a Virginia-based lobbying firm, registers as a lobbyist for Westar Energy. Among the lobbyists working the account are William Kenworthy, Richard Bornemann and Timothy Smith. [Governmental Strategies filing with the U.S. Senate Office of Public Records.]
- 8/2/01 The House passes H.R. 4, a comprehensive energy bill, which does not include *either* language on grandfather exemptions for utility holding companies from the Investment Company Act *or* language providing special exemptions for Westar Energy. H.R. 4 also does not include language on electricity deregulation. [See Thomas website]
- 10/17/01 Governmental Strategies lobbyist Richard Bornemann gives \$1,000 to campaign of Representative Joe Barton (R-Texas) [Federal Election Commission (FEC) database], the Chairman of the Subcommittee on Energy and Air Quality, who was drafting an electricity deregulation bill.
- 12/5/01 Barton introduces his electricity deregulation bill, H.R. 3406, including Section 125 that would grandfather all affiliates of utilities then subject to the Public Utility Holding Company Act (PUHCA) from being regulated under the Investment Company Act if PUHCA were repealed as H.R. 3406 also proposes. [Thomas.website.] (Utility affiliates have an automatic exemption from the Investment Company Act as long as they are subject to PUHCA.) [Investment Company Act of 1940, Section 3(c)(8).]
- 1/30/02 Reps. Dingell/Markey write to SEC Chairman Harvey Pitt (cc:d to Representatives Tauzin, Barton and Boucher) asking whether the SEC believed that the exemption for PUHCA utility affiliates from the Investment Company Act as provided by Section 125 of H.R. 3406 would be in the public interest. [Rep. Markey's website]
- 2/13/02 SEC Chairman Harvey Pitt forwards to Reps. Dingell and Markey a memorandum written by SEC staff (Division of Investment Management) opposing Section 125 of H.R. 3406 as being ill-advised in that it would create a large group of unregulated investment companies. [Rep. Markey's website] SEC Commissioner Hunt testifies before Barton's subcommittee and addresses the SEC's opposition to a special exemption for utility affiliates from the Investment Company Act. [Subcommittee website, testimony at note 7.]

Rep. Barton replies on the record to Rep. Markey's attack on the exemption provision: "That particular provision in the bill was put in for a company or companies in the midwest, and it has nothing to do with Mr. Green's company, and we have already told at the staff level that due to the concerns of Mr. Dingell and yourself, that we will be very willing to clarify the specific language in it, and if it is controversial, we will take it out in its entirety...." [Subcommittee on Energy and Air Quality website, hearing transcript, p. 141, 2/13/02.]

- 4/02 Richard Bornemann with Governmental Strategies, which Westar paid \$60,000 in 2002 to lobby Congress [Senate Office of Public Records], begins on behalf of Westar to obtain fundraiser schedules for Tauzin and Barton. The fundraisers are all organized and coordinated by Virginia-based Epiphany Productions, www.epiphanyproductions.com, which lists Senator Shelby and Reps. Tauzin, Barton, DeLay, Northup, Oxley, Shimkus, Gillmor, Alabama Republican House primary candidate Tom Young, and the National Republican Congressional Committee as clients. [EP, Washington Post, 6/10/03 story by Juliet Eilperin].
- 4/23/02 Tauzin & Barton stage their first of eight "Tex-Cajun cookout" fund-raisers for fellow House Republicans, this one for Rep. John Shimkus (R-IL) at noon at the Capitol Hill offices of the American Trucking Association. [Epiphany Productions (EP)] In less than a month on 5/15/02, Shimkus receives a \$1,000 check from Douglas T. Lake. [FEC records]
- 4/24/02 Tauzin and Barton co-host a fundraiser for Rep. Sam Graves (R-MO) at lunchtime at the Capitol Hill offices of Jack Fields' 21st Century Group. [EP] Two months later on 6/28/02, Rep. Graves receives a \$1,000 check from Westar CEO David Wittig [FEC]
- 4/25/02 **The Senate passes its version of an energy bill triggering a House-Senate energy conference committee in order to work out the differences between the two bills. Neither bill contains a provision grandfathering PUHCA affiliates in general or Westar only from regulation under the Investment Company Act. [Thomas]**
- 5/14/02 Tauzin and Barton co-host a fundraiser for Rep. Anne Northup (R-KY) at noon at the Capitol Hill offices of the American Trucking Association. [EP] Less than one month later, on 6/10/02, Northup's campaign received two checks, one from Westar CEO David Wittig (\$500) and one from Westar's General Counsel Larry D. Irick (\$350). [FEC]
- 5/15/02 Tauzin and Barton co-host a fundraiser for Rep. Shelly Moore Capito (R-WV) at noon at the Capitol Hill offices of the American Trucking Association. On June 25, Robert Mitchell Delk, Freddie Mac's chief Washington lobbyist and Republican activist who hosted many of the Epiphany Production fundraisers in 2002, hosted another fundraiser for Capito at the DC restaurant Galileo (Rep. Michael Oxley was listed as a "Special Guest."). [EP] Five days after this second Capito fundraiser, two Westar executives (Richard Dixon and Peggy Loyd) deliver a total of \$1,000 to Capito's campaign. [FEC]
- 5/02 Westar delivers \$25,000 to DeLay's fund-raising organization, Texans for a Republican Majority [IRS Form 8872 filing by Texans for a Republican Majority PAC] (after Doug Lawrence writes "Corporate Soft Money: \$25,000" in one of his May 2002 memos.)

- 5/31/02 Seven Westar executives and three of their DC lobbyists contribute a total of \$15,000 to Sen. Richard Shelby's former chief-of-staff Tom Young, who is running for Congress in the Republican primary in Alabama. All 10 contributions are made on May 31, 2002. [Young goes on to lose the primary in June]. [FEC]
- 6/5/02 Tauzin and Barton co-host a fundraiser for Rep. Rob Simmons (R-CT) at noon in the Capitol Hill offices of the American Trucking Association. [EP] In October 2002, two Westar executives (Douglas Lawrence and Leroy Wages) each make \$500 contributions to Simmons' campaign. [FEC]
- 6/02 Westar lobbyist Richard Bornemann attends a Tauzin fundraiser in Louisiana. Tauzin spokesperson, Ken Johnson, says that Tauzin recognized Bornemann and ordered his staff to throw him out. Johnson said the lawmaker had barred Bornemann from his office years earlier after the lobbyist misled Tauzin on a railroad matter. [Washington Post 6/10/03, Eilperin]. Bornemann, however, in what the AP called a "public spat," claimed that he had not made the initial contact, but was simply responding to faxed invitations from the organizers of the eight Tauzin-Barton fund-raising events, while Johnson said that Bornemann had called and asked for the list. Bornemann replied that he was "shocked, hurt and surprised" by the criticism from Tauzin's office. [Associated Press Newswires, 6/10/03, Yost.].
- 7/9/02 Tauzin and Barton co-host a fundraiser for Rep. Tom Latham (R-IA) at noon in the Capitol Hill offices of Jack Fields' 21st Century Group. [EP] On October 29, 2002, two Westar executives (General Counsel Larry Irick and Bruce Akin) each give \$500 to Latham's campaign. [FEC]
- 7/10/02 Tauzin and Barton co-host a fundraiser for Rep. Robin Hayes (R-NC) at noon in the Capitol Hill offices of Jack Fields' 21st Century Group. [EP] In late October 2002, two Westar executives (Caroline Williams and Peggy Loyd) each contribute \$500 to Hayes' campaign. [FEC]
- 7/24/02 Marianne K. Smythe, a partner with the DC law firm Wilmer, Cutler & Pickering, registers as a lobbyist for Westar Energy to advocate an "exemption from [the] Investment Company Act for [a] Single Company," thereby documenting Westar's corporate interest in obtaining this exemption. [Senate Office of Public Records.]
- 7/24/02 Barton holds a dinner fundraiser for his Texas Freedom Fund PAC on Capitol Hill. [EP] Three Westar executives eventually give a total of \$4,000 to Barton and his PAC. [FEC]
- 7/24/02 Barton meets with Westar officials as arranged by Westar lobbyist Borneman**
[Washington Post, 6/10/02.]
- 7/31/02 Tauzin hosts his own lunchtime fundraiser at the Capitol Hill Club. [EP] That same day, four Westar executives deliver checks totaling \$2,800 to Tauzin's Bayou Leader PAC. [FEC]
- 9/16/02 Tauzin "and the Energy and Commerce Committee Members" host an evening fundraiser for the National Republican Congressional Committee (NRCC) at The Galleria at

Lafayette Center. [EP] One month later, on October 23, 2002, three Westar executives gave a total of \$1,150 to the NRCC. [FEC]

- 9/18/02** **Barton inserts Westar grandfather provision in energy conference bill.** [Washington Post, p. A 2, 6/7/03.]
- 9/19/02** **Barton defeats Rep. Markey motion to strike Westar provision from energy conference bill; wins on party line vote, 8 to 6. Barton votes for himself and votes proxies for Reps. Barton, Tauzin, DeLay, Michael Bilirakis, Richard Burr, Paul Gillmor, Cliff Stearns and Fred Upton to preserve the Westar exemption.** According to conference transcript, Barton said: “This really is a policy decision here that the committee, the conference needs to make... This particular provision benefits one company. That company is...Western Resources in Topeka, Kansas.” Western Resources is the former name of Westar. (emphasis supplied). [Washington Post 6/10/03, Eilperin.]
- 9/19/02 Robert Mitchell Delk, Freddie Mac’s chief Washington lobbyist, hosted a dinner fundraiser for Rep. Michael Oxley at the upscale DC restaurant Galileo. [EF] One month later, three Westar executives contributed a total of \$2,000 to Oxley and his Leadership PAC 2002. [FEC]
- 9/27/02 Westar Energy publicly announces for the first time that the company was in serious trouble when it acknowledged that it had been served with a federal grand jury subpoena by the U.S. Attorney’s Office in Kansas for various counts of fraud. [SEC 8-K filing.]
- 9/27/02 Kansas Corporation Commission Chair John Wine writes to Rep. Markey (cc:d to Kansas Senators, Congressmen) to object to Westar Energy proposal to seek an exemption from the ICA in conference committee on H.R. 4. [Markey website]
- 9/30/02 Rep. Markey sends letter to Rep. Tauzin and Sen. Bingaman of conference committee suggesting that the committee should rethink the insertion of the Westar exemption, which they call an “Enron-like loophole,” in light of the announced investigations of Westar for fraud, money laundering, etc. [AP Newswire, 6/6/03, Yost; Markey website]
- 10/02 House Republicans withdraw their support of the Westar exemption in light of the investigations of the company. [AP Newswire, 6/6/03, Yost]
- 11/22/02 David Wittig resigns as CEO of Westar after being indicted. [Westar 14(a) filing at SEC]
- 12/6/02 Westar executive vice president Douglas T. Lake is placed on unpaid leave. [Westar 14(a) filing at SEC]
- 2/7/03 Westar CFO Paul R. Geist resigns. [Westar 14(a) SEC filing]
- 5/03 A Special Committee of Westar’s Board of Directors releases hundreds of internal communications implicating most of its former top executives in various illegal and unethical behavior. (See emails listed on first page.) [Westar 14(a) SEC filing]