COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATIONS OF BIG RIVERS ELECTRIC CORPORATION FOR: (1) APPROVAL OF WHOLESALE TARIFF ADDITIONS FOR BIG RIVERS ELECTRIC CORPORATION, (2) APPROVAL OF TRANSACTIONS, (3) APPROVAL TO ISSUE EVIDENCES OF INDEBTEDNESS, AND (4) APPROVAL OF AMENDMENTS TO CONTRACTS; AND OF E.ON U.S., LLC, WESTERN KENTUCKY ENERGY CORP. AND LG&E ENERGY MARKETING, INC. FOR APPROVAL OF TRANSACTIONS	))))))))))))	CASE NO. 2007-00455

O R D E R

On October 9, 2008, Big Rivers Electric Corporation ("Big Rivers"), E.ON U.S. LLC ("E.ON"), Western Kentucky Energy Corp. ("WKEC"), and LG&E Energy Marketing, Inc. ("LEM") filed a joint amended application requesting approval of the early termination of a 1998 lease under which generating plants owned or controlled by Big Rivers have been operated by WKEC. (E.ON, WKEC, and LEM are referred to collectively as "E.ON Entities," while Big Rivers and the E.ON Entities are referred to collectively as "Applicants.") Approval is also requested for dozens of transaction documents, tariffs, and financing arrangements necessary to implement the early termination of the lease, which is referred to as the "Unwind Transaction."

PARTIES

Big Rivers is a rural electric cooperative corporation organized pursuant to KRS Chapter 279. Big Rivers owns electric generation and transmission facilities and purchases, transmits, and sells electricity at wholesale, and it is a utility subject to the Commission's jurisdiction under KRS Chapter 278. Big Rivers exists for the principal purpose of providing the wholesale electricity requirements of its three member distribution cooperatives, Jackson Purchase Energy Corporation ("Jackson Purchase"), Kenergy Corp. ("Kenergy"), and Meade County Rural Electric Cooperative Corporation ("Meade County"). Big Rivers is owned by these three member cooperatives and they in turn provide retail electric service to approximately 110,000 customers located in 22 western Kentucky counties.

E.ON is a U.S.-based holding company whose subsidiaries include WKEC and LEM. WKEC is engaged in the business of leasing and operating electric generation assets owned or leased by Big Rivers or the city of Henderson, Kentucky, while LEM is currently engaged in the business of purchasing and selling electric power in wholesale markets, including the power produced by WKEC. None of these E.ON Entities are utilities subject to the Commission's jurisdiction under KRS Chapter 278.

In addition to the Applicants, intervention was requested by and granted to the following parties: Alcan Primary Products Corporation ("Alcan"); Century Aluminum of Kentucky General Partnership ("Century"); the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"); City of Henderson Utility Commission d/b/a Henderson Municipal Power and Light ("HMPL"); Kentucky

Industrial Utility Customers, Inc. ("KIUC"); International Brotherhood of Electrical Workers ("IBEW"); Jackson Purchase; Kenergy; and Meade County.

Alcan, which is located in Sebree, Kentucky, and Century, which is located in Hawesville, Kentucky, both operate aluminum smelters and are the largest electric customers on the Big Rivers system. Due to the nature of the aluminum smelting process, they operate 24 hours a day, 7 days a week, at a 98-percent load factor. Alcan's load is approximately 368 MW, while Century's load is approximately 482 MW. Alcan and Century are both retail customers of Kenergy and they are referred to collectively as the "Smelters."

HMPL is an electric utility owned by the city of Henderson, Kentucky. HMPL owns generation, transmission, and distribution facilities and also provides broadband service. IBEW is the bargaining representative for the union employees at the Big Rivers-owned generating plants.

PROCEDURAL HISTORY

The Applicants filed their initial joint application on December 28, 2007, and the Commission held informal conferences on January 10, 2008 and January 22, 2008. By Order dated January 22, 2008, a procedural schedule was established for the further processing of this case. The schedule provided for discovery on the joint application, Intervenor testimony, discovery on Intervenor testimony, rebuttal testimony, a hearing, and an opportunity for the parties to file post-hearing briefs.

Additional informal conferences were held at the Commission's offices on February 19, 2008; March 24, 2008; May 9, 2008; May 15, 2008; June 19, 2008; June

26, 2008; October 20, 2008; and November 25, 2008. A public hearing was held on December 2 and 3, 2008, and briefs were filed on or before December 31, 2008.[1]

During the course of this proceeding, Big Rivers filed numerous motions requesting authority to amend its application. All of those motions have been granted except the one filed on November 25, 2008. That motion, which seeks to provide supplemental and updated information into the record, will be granted.

1998 LEASE AGREEMENT

Big Rivers owns seven coal-fired generating units with a total net capacity of 1,379 MW and one oil/gas-fired combustion turbine with a net capacity of 65 MW. HMPL owns two coal-fired generating units, known as "Station Two," with a net capacity of 310 MW. Since the HMPL units became operational in the 1970s, Big Rivers has operated and maintained them pursuant to a contractual agreement. In general terms, HMPL reserves a quantity of power from Station Two for use on its own system and pays a proportionate share of the costs, while Big Rivers is entitled to the rest of the power and is responsible for the rest of the costs.

In 1998, Big Rivers emerged from a Chapter 11 bankruptcy under the terms of a reorganization plan involving the E.ON Entities. Under that plan, Big Rivers entered into a 25-year lease of its generating facilities (and those it operated under lease from

[1] The AG's brief was titled "Comments."

HMPL) to WKEC.[2] Under the terms of the 1998 lease, WKEC leases and operates Big Rivers' (and HMPL's) generation facilities through 2023, while Big Rivers (and HMPL) retain ownership of their respective generating facilities both during the term of the lease and after its expiration. Since 1998, WKEC has operated and maintained the generating facilities and has been entitled to the power produced by those facilities.

Throughout the lease term, LEM is obligated to supply fixed quantities of power to Big Rivers pursuant to a purchase power agreement. The power supplied by LEM has been sufficient for Big Rivers to meet substantially all of its system requirements. Big Rivers continues to operate its transmission facilities and charges LEM tariffed transmission rates for the delivery of the energy produced by WKEC and consumed by LEM's customers. In addition to purchasing power from LEM, Big Rivers has a long-term agreement to purchase fixed quantities of power from the Southeastern Power Authority ("SEPA").

Under the 1998 lease arrangement, Big Rivers provides power for its three members, excluding Kenergy's requirements to serve the Smelters, through the power purchase agreements with LEM and SEPA. When economically feasible, Big Rivers

[2] Initially, the 1998 lease was conditionally approved in principle by the Commission in Case No. 1997-00204, The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction (Ky. PSC April 30, 1998). Due to numerous revisions of the various documents comprising the lease transaction, a subsequent proceeding was established for a determination of whether material changes had been made to the structure of the transaction. The Commission ultimately and unconditionally approved the 1998 lease in Case No. 1998-00267, The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson (Ky. PSC July 14, 1998).

buys power in wholesale markets to supply its load, and it sells power at a profit into those markets. Even though the Smelters are retail customers of Kenergy, the 1998 lease eliminated Big Rivers and substituted LEM as the wholesale power supplier for the Smelters, with Big Rivers providing the Smelters' supplemental power at market-based rates.

As agreed to by the parties to the 1998 lease, LEM has one contract with Century and one with Alcan to supply power at fixed prices in fixed quantities that provide approximately 70 percent of the Smelters' total loads. The rest of the Smelters' loads are met by power purchased for them by Kenergy on the wholesale market at market-based prices. At times, Big Rivers has been the supplier of this market power. The LEM contract to supply Century expires at the end of 2010 and the contract to supply Alcan expires at the end of 2011. Thereafter, 100 percent of the Smelters' loads will be met by market power purchases.

In addition to leasing its generating units, Big Rivers transferred its responsibility to operate the two HMPL-owned units at Station Two. WKEC ultimately assumed Big Rivers' contractual rights and obligations to perform operation and maintenance service with respect to Station Two. Further, WKEC ultimately assumed Big Rivers' contractual rights and obligations regarding the purchase of power generated from Station Two in excess of the needs of the city of Henderson.

PROPOSED UNWIND TRANSACTION

In early 2003, representatives of E.ON approached Big Rivers to see if it would entertain a proposal to take back operational responsibility for its generating facilities and Station Two, and the corresponding entitlement to all the power generated from those assets, other than the Station Two power reserved by HMPL. Big Rivers viewed this proposal as an opportunity to improve its financial position for the benefit of itself and its members, as a means to obtain financing on more favorable terms, and as a way to better manage its long-term power supply. After analyzing the risks associated with supplying power to the Smelters, including operating and maintaining generation, load concentration, fuel supply, and financial risks, Big Rivers decided to enter into discussions to terminate, or "unwind," the 1998 lease transactions and agreements, with the intent of obtaining significant compensation for assuming those risks.

Big Rivers first negotiated with E.ON and then with the Smelters. In December 2005, Big Rivers, Kenergy, and E.ON announced they had signed a letter of intent to negotiate the Unwind Transaction, and Big Rivers and the Smelters announced agreement on a memorandum of understanding to negotiate a power supply arrangement for the Smelters. On March 26, 2007, Big Rivers and the E.ON Entities executed the Termination Agreement, which established the terms and conditions whereby the 1998 lease transactions and agreements would terminate and unwind.

On December 28, 2007, Big Rivers and the E.ON Entities filed a joint application seeking approval of the Unwind Transaction to position Big Rivers so that it can resume operational control and responsibility of its generating facilities and those at Station Two. More specifically, the application seeks approval of: (1) the Termination Agreement; (2) the transfer of control of Big Rivers' generating units from the E.ON Entities back to Big Rivers; (3) rate and tariff changes; (4) new contracts for service to the Smelters; (5) wholesale power contract extensions; (6) evidences of indebtedness;

and (7) the termination of the pending review of Big Rivers' Integrated Resource Plan ("IRP") and the establishment of November 2010 as the filing date for a new IRP.[3]

The December 28, 2007 application included various documents needed, or descriptions of the documents in process, to accomplish the Unwind Transaction. A financial model to demonstrate the financial feasibility of the Unwind Transaction was also included. The Applicants have submitted multiple amendments to the original application to address a number of significant issues that have developed during the course of this proceeding. One of those issues was a revised forecast of fuel prices which reflected much higher fuel costs through 2013. This necessitated revising the Financial Model to reflect increases in the annual projected fuel costs to be recovered through the Fuel Adjustment Clause ("FAC") component of rates. To offset those higher fuel costs, the E.ON Entities agreed to increase their cash compensation paid at closing for the benefit of both non-Smelter customers and the Smelters.

Another major issue requiring application amendments was the credit downgrading of Ambac Assurance Corporation ("Ambac") to below investment grade. Ambac was providing credit support for the two leveraged leases Big Rivers entered into in 1999 and 2000 with Bank of America ("BoA") and Philip Morris Credit Corporation ("PMCC").[4] Due to the credit downgrade, Big Rivers needed to either provide alternative credit support or terminate the leveraged leases. With financial assistance

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[3] Case No. 2005-00485, The 2005 Integrated Resource Plan of Big Rivers Electric Corporation.

[4] Case No. 1999-00450, Big Rivers Electric Corporation's Application for Approval of a Leveraged Lease of Three Generating Units (Ky. PSC Nov. 24, 1999 and Jan. 28, 2000).

from the E.ON Entities and the Smelters, Big Rivers elected to proceed with the least costly option, which was to buy out both of the leveraged leases. These buy-outs also necessitated revisions to the Financial Model to reflect the need to increase rates to recover the costs of the two buy-outs.

On October 9, 2008, the Applicants filed substantial amendments to the application, including revised transaction documents, a revised financial model, and revised testimony.

UNWIND FINANCIAL MODEL

Big Rivers submitted a financial model to support the reasonableness of the Unwind Transaction. The Unwind Financial Model projects Big Rivers' financial performance through 2023, assuming the Unwind Transaction closes. The model projects annual financial statements, including an income statement, cash flows, and a balance sheet, as well as schedules of projected energy sales, energy production and related costs, fixed costs, capital expenditures and depreciation, taxes, and projected debt service. The Unwind Financial Model also presents detailed projections of wholesale rates to be paid annually by Big Rivers' three member cooperatives and by the Smelters.[5] The Unwind Financial Model has been modified several times to reflect changes as the Unwind Transaction has evolved since the initial application was filed on December 28, 2007.

IMPACT OF BOA AND PMCC BUY-OUTS

As previously discussed, Big Rivers elected to buy out the leveraged leases with BoA and PMCC as the least costly solution to the loss of requisite credit support for

[5] Direct testimony of Robert S. Mudge, December 28, 2007, Exhibit 9, at 4-5.

those leases. The buy-outs were necessitated solely by the credit crisis, not by the Unwind Transaction. However, they have a significant financial impact on Big Rivers.

The cost to terminate the BoA lease was approximately $6 million, with the buy-out supported by a Cost Share Agreement among Big Rivers, the E.ON Entities, and the Smelters. Under that agreement, the E.ON Entities advanced the full cost of the buy-out. Upon closing the Unwind Transaction, the E.ON Entities will receive a reimbursement of $1 million from Big Rivers and $1 million from the Smelters collectively.[6]

The cost to terminate the PMCC lease was almost $122 million. Big Rivers gave PMCC $109 million in cash and an unsecured note for $12.38 million. The note bears interest at 8.5 percent and is payable upon closing the Unwind Transaction or December 15, 2009, whichever occurs first. The E.ON Entities have agreed that, if the Unwind Transaction closes, they will reimburse Big Rivers one-half of the $121.38 million, plus one-half of a $332,868 shortfall payment that had to be made to CoBank ACB ("CoBank") in conjunction with this buy-out. Thus, if the Unwind Transaction closes, the E.ON Entities will reimburse Big Rivers almost $60.9 million in conjunction with the PMCC buy-out.[7]

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[6] Motion to Amend and Supplement Application, June 11, 2008, Exhibit 5.

[7] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, at 10.

FINANCIAL CONSIDERATION TO BIG RIVERS FROM E.ON ENTITIES

Big Rivers has calculated that the Unwind Transaction will result in its receipt of the following cash and non-cash benefits from the E.ON Entities:[8]

	$ Millions
Cash	387.7
Waiver of Residual Value Payment	141.4
LG&E Rental Income Advance	11.2
Fuel Inventory & Other	51.0
Settlement Promissory Note	15.7
Coleman Scrubber	98.5
SO_2 Allowance & Other	2.0
Leveraged Leases	65.0
Expense Unamortized Marketing Payment	(15.1)
Assurances Agreement Payment	(1.5)
Total	$755.9

The $387.7 million cash payment to Big Rivers will be used for several purposes. Big Rivers will set aside $157 million in an Economic Reserve account to offset future wholesale power cost increases for non-Smelter customers due to increases in fuel, environmental, and other costs. The E.ON Entities' cash payment initially included only $75 million for the Economic Reserve; but, while this case was pending, they agreed to increase that payment by $82 million to offset more recent projections of higher fuel costs.[9] Big Rivers will set aside $35 million as a Transition Reserve to be used as an

[8] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, Exhibit CWB-15.

[9] Second Supplemental Testimony of C. William Blackburn, Exhibit 7, at 3-4.

emergency fund to offset the loss of revenue should one or both Smelters close until alternative buyers are found for the power.[10] Big Rivers will also use funds from the cash termination payment to prepay $140.2 million on its Rural Utilities Service ("RUS") note at the close of the transaction.[11] Big Rivers has also projected that cash termination funds will be used to pay PMCC just over $6 million, which represents one-half of the PMCC loan established with the PMCC buy-out.

The E.ON Entities have agreed to waive the Residual Value Payment for shared incremental and non-incremental capital additions, representing a current value of $141.4 million to Big Rivers.[12] Without this waiver, at the end of the lease Big Rivers would have to pay for its share of certain leasehold improvements constructed by E.ON.[13] Big Rivers estimates that this payment would be approximately $377 million in 2023 at the end of the lease.[14]

Additional non-cash consideration to Big Rivers includes inventories, consisting of fuels, reagents, personal property, and material and supplies, in an amount currently estimated to be $51 million. At closing, the difference between the actual value of the inventories and $55 million will be reflected as an adjustment to the cash

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[10] Direct Testimony of C. William Blackburn, Exhibit 10, at 85.

[11] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, at 12-13.

[12] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, at 47 and Exhibit CWB-15.

[13] Direct Testimony of Michael H. Core, Exhibit 14, at 16.

[14] Transcript of Evidence, December 3, 2008, C. William Blackburn at 140.

consideration.[15] Big Rivers also benefits from a new scrubber, valued at $98.5 million, installed by the E.ON Entities on the Coleman plant.[16]

Significant other non-cash contributions to Big Rivers include: recognition of an LG&E Rental Income Advance of $11.2 million, which represents deferred lease revenue from the E.ON Entities;[17] forgiveness of a Settlement Promissory Note, valued at $15.7 million, owed to the E.ON Entities;[18] and receipt of 14,000 SO_2 allowances with an approximate market value of $2.0 million.[19] Also reflected by Big Rivers, separate and apart from the cash termination payment, is $65 million representing the E.ON Entities' payment of one-half of the costs of the BoA and PMCC buy-outs.[20]

There are also two items identified by Big Rivers which offset the Transaction Benefits: an unamortized $15.1 million marketing payment to the E.ON Entities that was being amortized by Big Rivers over the life of the lease which will now be

[15] Direct Testimony of C. William Blackburn, Exhibit 10, at 13 and 72.

[16] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, Exhibit CWB-15.

[17] Id.

[18] Direct Testimony of Michael H. Core, Exhibit 14 at 16, and Third Supplemental Testimony of C. William Blackburn, Exhibit 78, Exhibit CWB-15.

[19] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, Exhibit CWB-15.

[20] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, at 10.

expensed;[21] and Big Rivers' assumption of an E.ON Entities liability that will require it to make a $1.5 million Assurances Agreement payment to the Smelters.[22]

SMELTER SERVICE AGREEMENTS

The Smelters' existing service agreements were negotiated in conjunction with Big Rivers' bankruptcy reorganization and its 1998 lease transaction with the E.ON Entities. The Smelters receive about 70 percent of their power requirements from LEM at a fixed price of about $25/MWh, with the rest of their power requirements being supplied by market purchases at prices of $50-$60/MWh. This results in the Smelters paying a blended rate of approximately $35/MWh. Once the existing service agreements expire at the end of 2010 for Century and 2011 for Alcan, the Smelters would have to meet all of their power requirements by market purchases.

When the existing service agreements were negotiated in 1998, the Smelters expected that, by now, market purchases of power would be priced at or below their contract prices. However, due to unforeseen increases in fuel prices, higher environmental costs, and changed market parameters following the California power crisis of 2000-2001, market power purchases are now priced significantly higher than the Smelters' contract prices.

The aluminum smelting process is highly energy-intensive, with the cost of electricity comprising approximately one-third of the cost of production for the Smelters. Unlike many other businesses, the Smelters are unable to simply raise their selling

[21] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, at 48 and CWB-15.

[22] Id.

prices to compensate for higher costs of electricity. Aluminum is a commodity traded worldwide at a market price which is based on global supply and demand. Consequently, significant increases in the price of power for the Smelters would render their operations uneconomic and they would be forced to close. Terminating the Smelters' operations would have a devastating negative economic impact in the area served by Big Rivers. The Smelters directly employ 1,400 workers, who earn an average wage of $54,000 annually.[23] The collective wages, salaries, and benefits paid by the Smelters total $115 million annually.[24] In addition to the direct level of employment by the Smelters, there are approximately 2.5 indirect jobs created by each direct job.[25] Thus, if both of the Smelters were to terminate their operations, close to 5,000 jobs could potentially be lost in the western Kentucky region. The economic impact of these job losses would be devastating to the affected employees from lost wages, as well as to the state from lost income and sales taxes, and to county governments and school districts from lost tax revenues.

Although it would not be possible to guarantee the future financial health of the Smelters, providing them with a long-term supply of power priced at below market prices should enable them to maintain their current competitive positions and continue in operation over the long term. It was for this reason that Big Rivers entered into negotiations with the Smelters on new service agreements that will provide them power at competitive prices while providing protections to Big Rivers and its non-Smelter

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[23] Direct Testimony of Paul A. Coomes at 2.

[24] Id.

[25] Id. at 3-4.

customers against the risks inherent in resuming the role of power supplier to the Smelters.

The new service agreements negotiated by Big Rivers and the Smelters provide that Big Rivers will supply 368 MW to Alcan and 482 MW to Century upon payment of the following amounts:

1. A base energy rate of $0.25 per MWh above Big Rivers' wholesale power rate to its members for resale to dedicated delivery point large industrial customers (subject to future adjustment by the Commission) at a 98-percent load factor.

2. An FAC charge.

3. An Environmental Surcharge.

4. A TIER guarantee through 2023, starting at $12.8 million annually in 2009 and increasing to $34.7 million annually in 2021, to ensure that Big Rivers maintains a TIER of 1.24.

5. A non-FAC purchase power adjustment charge.

6. Two annual surcharges consisting of:

    a. Surcharge One – a fixed rate of $0.70 per MWh in 2009-2011, $1.00 per MWh in 2012-2016, and $1.40 per MWh in 2017-2023.

    b. Surcharge Two – a fixed rate of $0.60 per MWh each year, subject to a $200,000 monthly credit for the first 96 months; plus an additional rate of $0.60 per MWh contingent on actual fuel costs exceeding a base line.

The Smelters will also be entitled to an Equity Credit, to be paid by Big Rivers in any year that it earns a TIER in excess of 1.24 and does not elect to make a credit of the excess TIER to all customers.

In recognition of the significantly higher forecast of fuel prices, Big Rivers will make a one-time payment of $7 million to the Smelters, rather than establish an

Economic Reserve account as Big Rivers will do for the non-Smelter customers, in order to moderate the higher fuel costs. Big Rivers has also agreed to make a payment to the Smelters to reflect unanticipated delays in closing the Unwind Transaction. This payment will be based on the higher market power prices the Smelters now pay versus the lower prices to be paid under the new agreements. This payment is estimated to be $2.84 million if the Unwind Transaction closes at the end of March 2009.

The Smelters will also receive substantial compensation from the E.ON Entities. To offset the higher projected fuel costs, the E.ON Entities will deposit $70 million in an escrow account for withdrawal by the Smelters when the FAC exceeds a certain index. The E.ON Entities will deposit another $17.5 million into escrow to offset higher operating costs for the Smelters. The $17.5 million will be dispersed to the Smelters at intervals of 6, 12, and 18 months following the closing of the Unwind Transaction. In addition to these payments, the E.ON Entities have also agreed to make a lump-sum payment to the Smelters upon closing in exchange for their consent to terminate their current power contracts with the E.ON Entities. The amount of this payment has been granted confidential treatment at the request of the E.ON Entities.

These new service agreements also provide the Smelters two levels of load curtailment and a termination of service. The first level of curtailment is for 115 MW, which would essentially cover the power requirements of one potline, and would be allowable for up to 48 months. Under this curtailment, Big Rivers would resell the 115 MW and credit the entire proceeds to the Smelter experiencing the curtailment. The second level of curtailment would be for more than one potline, up to total operations. Under this curtailment, Big Rivers would resell the power not taken by the Smelters and credit the Smelters with the net proceeds but only up to the prices for power under their service agreements. Finally, under a worst-case scenario, the Smelters have the right to permanently close their operations, but only upon one year's advance notice and not before January 1, 2011.

The AG has expressed concern that the Smelters may close down even if the Commission approves the Unwind Transaction.[26] Thus, the AG urges that the Commission "review the proposed transaction with an abundance of caution."[27] The Commission believes that it has proceeded very cautiously and deliberately in this case and has developed an extensive evidentiary record to support the findings and conclusions herein. While the Commission cannot predict the future economic viability of the Smelters, the power prices set forth in the new service agreements should provide a reasonable opportunity for the Smelters to continue operating in Kentucky for the long term and to preserve the jobs and tax base which support the economy of western Kentucky. The Smelters have recently made millions of dollars in new capital investments to improve their production capabilities and efficiencies. While world market prices of aluminum may cause the Smelters to close, these capital investments by the Smelters clearly demonstrate their good faith efforts to maintain their operations in Kentucky for the long term.

UNWIND RATES FOR NON-SMELTER CUSTOMERS

Big Rivers intends to continue to charge its current base rates for wholesale power sold to its three member cooperatives for use by the non-Smelter customers. Big

[26] AG's Comments at 17-20.

[27] Id. at 20.

Rivers is also requesting to establish a number of rate adjustment clauses to track specific expenses or to flow back as credits the reserve fund accounts and the Smelters' surcharge payments. In addition to these adjustment clauses, Big Rivers has proposed numerous other tariff changes to properly reflect its operations after the Unwind Transaction is completed. All of these changes are set forth in an amended tariff filed October 9, 2008. The Commission finds all of these tariff changes to be reasonable. Big Rivers' proposed rate adjustment clauses are discussed below.

Fuel Adjustment Clause

Big Rivers' purchased power costs for its non-Smelter customers are largely fixed under the terms of its 1998 power purchase agreement with LEM. Consequently, Big Rivers eliminated its FAC upon executing the 1998 lease with the E.ON Entities. With a resumption of control and operation of its generating assets, changes in fuel costs will be an important economic consideration. Therefore, Big Rivers proposes to implement an FAC for all its customers to timely track changes in fuel costs consistent with the Commission's FAC regulations.[28]

Environmental Surcharge

Big Rivers is also proposing to implement for all customers an Environmental Surcharge to recover future environmental costs not included in its existing rates. The Environmental Surcharge is based on recovering the costs of three separate environmental programs (SO_2, NOx, and SO_3) included in the Big Rivers Environmental Compliance Plan ("Environmental Compliance Plan").[29] Big Rivers' proposed

[28] Direct Testimony of C. William Blackburn, Exhibit 10 at 90-92.

[29] Id. at 93-94.

Environmental Compliance Plan and Environmental Surcharge Mechanism were previously reviewed and approved by the Commission last year in Case No. 2007-00460, with implementation conditioned upon closing the Unwind Transaction.[30]

Purchased Power Costs

Big Rivers anticipates incurring costs to purchase power on the wholesale market from time to time. Under the Smelter Service Agreements, the Smelters have agreed to pay for their portion of purchased power costs, not recoverable through the FAC, through a Non-FAC Purchased Power Adjustment ("PPA") mechanism. For the non-Smelter customers, Big Rivers is requesting approval to establish two regulatory accounts, a deferred asset and a deferred liability, to account for any charges or credits related to the portion of the costs of purchased power that are not recoverable under the FAC and are attributable to the non-Smelter customers. Through a tariff called the Regulatory Account Charge, the Non-FAC PPA charges and credits applicable to non-Smelter customers will then be amortized over a period of time after review, and subject to approval, in a general rate case.[31]

Economic Reserve

Upon closing the Unwind Transaction, Big Rivers will use $157 million of the cash contribution from the E.ON Entities to fund the non-Smelter Economic Reserve account. These funds will be flowed back to the non-Smelter customers over approximately five years through a new tariff called the Member Rate Stability

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[30] Case No. 2007-00460, The Application of Big Rivers Electric Corporation for Approval of Environmental Compliance Plan and Environmental Surcharge Tariff (Ky. PSC June 25, 2008).

[31] Direct Testimony of C. William Blackburn, Exhibit 10, at 80-84.

Mechanism ("MRSM"). Through use of the MRSM, Big Rivers predicts that it will be able to offset all cost increases for two years and partially offset cost increases for the following three years. While Big Rivers' rates will increase starting in year three due to cost increases tracked by its FAC and Environmental Surcharge, no general rate increase is projected until 2017.[32]

Unwind Surcredit

Big Rivers is requesting to adopt an Unwind Surcredit that will appear as a credit on the bills of non-Smelter customers. This credit will be equal to the surcharges paid annually by the Smelters to offset increases in fuel costs for non-Smelter customers.[33]

TIER Rebate

Big Rivers is proposing to adopt a TIER-related rebate ("TIER Rebate") to annually flow back to non-Smelter customers, as well as the Smelters, earnings in excess of a 1.24 TIER. The rebate will be made only if Big Rivers determines it is appropriate to do so in a particular year and Commission approval is obtained.

RUS DEBT PAYMENTS

Big Rivers plans to prepay \$140.2 million on its RUS note at the close of the transaction utilizing a portion of the cash contribution from the E.ON Entities. Big Rivers will then pay an additional \$60 million to RUS on or before 2012 and an additional \$200 million no later than January 2016.[34]

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[32] October 2008 Unwind Financial Model, Exhibit 79, page 3, line 17 and page 15, lines 13 and 30.

[33] Direct Testimony of C. William Blackburn, Exhibit 10, at 9 and 80.

[34] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, at 12-13.

BENEFITS OF THE UNWIND TRANSACTION

The Unwind Transaction will produce very significant benefits for Big Rivers, the Smelters, and the non-Smelter customers that would not exist with a continuation of the 1998 lease. While the unique benefits to the Smelters are discussed under the heading "Smelter Agreements," the following discussion details the benefits to Big Rivers, its member cooperatives and all customers.

The first of these benefits is the significant financial contribution to be made by the E.ON Entities to Big Rivers, now valued at $755.9 million. Big Rivers' equity will dramatically improve from a negative $139 million (-11 percent) to a positive $372 million (+26 percent).[35] Big Rivers will also have an investment grade credit rating and will be able to access capital markets when necessary to do so, such as to refinance existing high-interest rate pollution control bonds and to fund future upgrades and replacements of existing facilities. Additionally, Big Rivers' lines of credit, now limited to $15 million, will increase to $100 million with the two new credit agreements now being proposed.

A long-term supply of power will be available for the Smelters at prices below those in the market. This should allow the Smelters to maintain their operations in western Kentucky; preserve hundreds of good-paying jobs; and avoid an erosion of the tax base, which would be devastating to area school districts and local and state governments. Further, the Unwind Transaction will remove the E.ON Entities as the generation operator and supplier to Big Rivers. Although this arrangement has worked

[35] Supplemental Direct Testimony of Michael H. Core, Exhibit 102 at 11, and Exhibit MHC-2.

successfully to date, the relatively fixed prices under the power agreements will likely lead to major disputes and possibly litigation regarding cost responsibility for future environmental and other upgrades. In addition, restoring Big Rivers as the generation operator and supplier will allow future decisions to be made solely in its own best interest, with a renewed emphasis on economic development in western Kentucky.

UNWIND IMPACT ON RURAL CUSTOMERS

The Unwind Transaction will cause rates for non-Smelter customers to rise, not immediately but over time, to projected levels that are higher than would exist under a continuation of the 1998 lease. However, Big Rivers indicated that, absent the Unwind, it will need an immediate rate increase of 20 to 25 percent, although not likely on a permanent basis, to reestablish its financial condition as a result of the expenditure of almost $122 million for the PMCC buy-out. In fact, Big Rivers filed on March 2, 2009 an application to increase its rates by $24.9 million, an increase of 21.6 percent.[36]

One of the major concerns expressed by the AG was the increase in rates for the Rural Customers now projected under the Unwind Transaction. (The Rural Customers consist of all customers on Big Rivers' system except the Smelters and the 20 large industrial customers directly served from substations.) The projected rates for the Rural Customers have increased over the past 12 months due substantially to higher forecasts of fuel prices, leading the AG to conclude that "without further mitigation of the

[36] Case No. 2009-00040, Application of Big Rivers Electric Corporation for a General Adjustment in Rates.

unfavorable rate impacts that are projected to occur," he cannot now support the Unwind Transaction.[37]

While the Commission recognizes and appreciates the AG's concerns relating to the projected rate increases for the Rural Customers, those increases must be considered in light of both the benefits to be achieved by the Unwind Transaction and the level to which rates would rise absent the Unwind Transaction. The record shows that with the Unwind Transaction, Big Rivers' wholesale rates for the Rural Customers are projected to increase incrementally each year from their existing level of $37.22/MWh to $48.80/MWh in 2014, representing a weighted average increase of 14.8 percent.[38] Absent the Unwind Transaction, and assuming Big Rivers sells 200 MW to the Smelters at below market rates to help preserve their operations, Rural Customer rates will increase immediately for one year, from $37.22/MWh to $44.36/MWh, then alternately decline and increase almost annually, reaching $45.62/MWh in 2014, representing a weighted average increase of 21.7 percent.[39] Alternatively, absent the Unwind Transaction and with all Big Rivers' excess power sold at market rates, Rural Customer rates will still increase immediately for one year, from $37.22/MWh to $44.36/MWh, then decline and later increase to $40.80/MWh by 2014, representing a weighted average increase of 9.6 percent.[40]

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[37] AG Comments at 28.

[38] Big Rivers Hearing Exhibit #4.

[39] Id.

[40] Id.

The Commission also recognizes that the 1998 lease provides Big Rivers a fixed-price supply of power through 2023 at rates projected to be less than those under the Unwind Transaction. But, at the end of the 1998 lease, Big Rivers would have to pay approximately $377 million to the E.ON Entities for the value of the capital additions to Big Rivers' generating units, a payment that will be eliminated by the Unwind Transaction. The Commission is acutely aware of the current economic and financial crisis now facing our great nation and the people of this Commonwealth. Utility service is a necessity of life, not a luxury, and it needs to be available at the lowest reasonable rates for the Rural Customers of Big Rivers.

Unfortunately, under the Unwind Transaction, a combination of higher fuel costs and exhaustion of the Economic Reserve account in 2013 will result in rate increases for Rural Customers that are simply too high. Thus, Big Rivers' reacquisition of control of its generating units will be consistent with the public interest only if some mitigation is provided to offset the projection of higher rates for the Rural Customers.

Since the Applicants have indicated that time is of the essence in completing the Unwind Transaction, the Commission finds that, rather then delaying this case to allow the Applicants time to fashion a remedy, we will create a reasonable remedy and condition this Order upon the Applicants' acceptance thereof. The E.ON Entities have agreed to reimburse Big Rivers for one-half of the cost of the PMCC buy-out, amounting to approximately $60.9 million.[41] The Commission finds that the E.ON Entities should reimburse Big Rivers 100 percent of that cost, with the additional $60.9 million being held by Big Rivers in a new reserve account to be known as the Rural Economic

[41] Third Supplemental Testimony of C. William Blackburn, Exhibit 78 at 10.

Reserve. This account will be recorded as a regulatory liability and used over 24 months only as a credit against the rates of the Rural Customers upon exhaustion of the Non-Smelter Economic Reserve. This additional $60.9 million should be invested in interest-bearing U.S. Treasury securities, with all interest credited to the Rural Economic Reserve. Big Rivers will need to revise its tariffs to include a new rate mechanism, to be known as the Rural Economic Reserve, to flow back to the Rural Customers the funds in the Rural Economic Reserve Account.

ACCOUNTING TREATMENT

The terms of the Termination Agreement between Big Rivers and E.ON provide for a number of transfers and other issues that require separate accounting considerations.[42] Therefore, Big Rivers is seeking approval for various journal entries and the establishment of certain regulatory accounts.

Big Rivers has proposed specific journal entries to record the assets transferred and the value received from the E.ON Entities, to record Big Rivers' payments to the RUS and the Smelters, to establish deferred liabilities for the Economic Reserve and the Transition Reserve accounts,[43] and to establish both a deferred asset and deferred liability for the non-Smelter, non-FAC PPA.

[42] Direct Testimony of C. William Blackburn, Exhibit 10, at 71.

[43] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, at Exhibit CWB-14.

Big Rivers intends to currently expense all costs of the BoA and PMCC buy-outs on a "netted" basis. Big Rivers will record a net loss of $16.1 million on its books as a result of this proposed accounting treatment.[44]

FINANCING AND LINES OF CREDIT ISSUES

Big Rivers requests approval to issue two unsecured lines of credit with its traditional supplemental lenders, the National Rural Utilities Cooperative Finance Corporation ("CFC") and CoBank. The CFC line of credit will be for up to $50 million with a five-year term and the funds will be used to finance capital expenditures and for general corporate use. CFC will make loans and issue Letters of Credit upon request up to the $50 million limit. The interest rates on funds drawn on this line of credit will be either the London Interbank Offered Rate ("LIBOR") plus an applicable margin tied to Big Rivers' credit rating or the greater of: (1) the prime rate; or (2) the federal funds effective rate plus 50 basis points.[45]

The CoBank line of credit is also for $50 million with a three-year term and will be used for the same purposes. The interest rates on the CoBank funds will be either the LIBOR plus an applicable margin tied to Big Rivers' credit rating or the prime rate published in the *Wall Street Journal*.[46]

Big Rivers proposes to replace its current Third Restated Mortgage and Security Agreement ("Mortgage") with an Indenture between Big Rivers and a trustee to be named later. To accomplish this transaction, Big Rivers requests approval of both the

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[44] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, at 14.

[45] First Amendment and Supplement to Application filed March 31, 2008, at 4-5.

[46] Id. at 5-6.

Indenture and a Termination of Mortgage Agreement. The Indenture is similar to the Mortgage in many ways, but there is no lien or security interest in cash, most contracts, or stock of any subsidiary. The Indenture will also allow Big Rivers to issue debt without requiring the approval of existing senior secured creditors.[47] Thus, the Indenture should benefit Big Rivers by providing greater operating and financial flexibility.

Big Rivers has also requested authority to issue a Pollution Control Bonds Series 2001A Note to refinance an existing note payable to the County of Ohio, Kentucky ("Ohio County"). The note was issued in consideration of Ohio County's issuance of certain pollution control bonds. The terms of the new note are essentially the same as the original note. This refinancing is necessitated by the replacement of the Mortgage securing the current note with the Indenture in connection with the Unwind Transaction.[48]

Authorization has also been requested to issue an Ambac Municipal Bond Insurance Policy Series 1983 Note. This note will also replace an existing note issued and approved in connection with the BoA and PMCC leases for the repayment of any amounts Ambac must pay under its guarantee to repay certain pollution control bonds issued by Ohio County. The terms of the new note are essentially the same as the original note and are necessitated by the substitution of the Indenture for the Mortgage securing the original note.[49]

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[47] Second Amendment and Supplement to Application filed April 11, 2008, at 2-3.

[48] Id. at 7.

[49] Id.

Big Rivers requests authority to issue a Standby Bond Purchase Agreement Note (Series 1983 Bonds) to replace a note payable to Dexia Credit Local ("Dexia"). The note was issued in connection with the BoA and PMCC leases for the repayment of unpaid principal and interest when due on certain pollution control bonds issued by Ohio County and purchased and held by Dexia. The terms of the new note are essentially the same as the original note and are necessitated by the substitution of the Indenture for the Mortgage securing the original note.[50]

Big Rivers requests approval of the issuance of the Termination of the Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement. This agreement is necessary to facilitate the termination and release of the existing Intercreditor Agreement.[51] Big Rivers requests approval to enter into the Creditor, Consent, Termination and Release Agreements under which the principal creditors give the necessary consents to terminate the 1998 lease with the E.ON Entities. This agreement terminates both the Mortgage and the existing Intercreditor Agreement.[52] Finally, Big Rivers requests approval of the two letter agreements in which Big Rivers, the Smelters, and the E.ON Entities agreed to the payment terms of the BoA leveraged lease buy-out. Pursuant to these agreements, Big Rivers and the Smelters will each reimburse the E.ON Entities $1 million when the Unwind Transaction is closed.[53]

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[50] Id. at 8.

[51] Id. at 8-9.

[52] Motion to Amend and Supplement Application, October 9, 2008, Exhibit 96.

[53] Motion to Amend and Supplement Application, October 9, 2008, at 8-9.

In addition to the credit arrangement discussed above, Big Rivers identified a number of financing documents that it does not believe require Commission approval but asks the Commission to approve each document should the Commission disagree. Since these documents are integral parts of the Unwind Transaction, the Commission finds it appropriate to approve these documents, except those that are subject to the supervision and control of the RUS.[54]

DEPRECIATION STUDY

Big Rivers' last depreciation study was performed over ten years ago. Big Rivers indicated that its preference was to resume operation of the generating assets prior to conducting a new depreciation study. The Commission finds this approach to be reasonable. However, Big Rivers' proposal to wait another seven years, until 2016, to file a new depreciation study is not reasonable. Depreciation is an important part of a utility's operation, particularly when the utility is not owned by private investors. Since Big Rivers has committed to filing within three years for a general review of its operations and tariffs, a new depreciation study should be submitted as part of the filing, along with an analysis of the impacts of implementing the results of the depreciation study on Big Rivers' financial operations and its rates.

GENERATING PLANT DUE DILIGENCE

One of the conditions precedent to closing the Unwind Transaction is a determination by Big Rivers that each generating plant is in good condition and state of repair. This determination by Big Rivers is of critical importance for a number of

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[54] The financing documents to be modified between Big Rivers and RUS are an Amended Consolidated Loan Contract; an RUS 2008 Promissory Note, Series A; and an RUS 2008 Promissory Note, Series B.

reasons. First, there are no guarantees provided by the E.ON Entities as to the condition of the generating plants after the Unwind Transaction is completed. Second, the Smelters' need for a highly reliable power supply at a 98-percent load factor leaves little room for meeting load if there are unplanned outages. Third, since Big Rivers' generation is all relatively low-cost, purchasing replacement power in the event of an unplanned outage will likely be very expensive. Fourth, Big Rivers' ability to meet all of its operational and financial projections is tied to its ability to achieve a relatively high level of reliability from its generating units, including the HMPL Station Two.

The components of Big Rivers' due diligence plan include:

1. Inspection of Operation & Maintenance records at each generation plant;
2. Engineering evaluation of the condition of each plant by Big Rivers and Stanley Consultants;
3. Review of WKEC's operating plans; and
4. Physical testing of operating capability of each generating unit, to be conducted prior to closing.

Big Rivers stated that it does not intend to compile a comprehensive due diligence report just prior to closing the Unwind Transaction because of its longstanding, intimate knowledge of the condition of the generating plants. Big Rivers operated all of the plants up until mid-1998, and it is knowledgeable of all the repairs and maintenance performed since that time. Big Rivers has had its own employees at the generating plants weekly to monitor their operations and it also retained a consulting engineer, Stanley Consultants, to provide annual reports of each unit's repair and maintenance record. Since March 2007, Stanley Consultants has also had personnel at the generating plants full-time. The E.ON Entities have provided Big Rivers and Stanley

Consultants unfettered access to plant maintenance records and relevant financial information compiled since the 1998 lease transaction.

Big Rivers was also actively engaged in the approval and financing of several construction enhancements that were planned and completed by the E.ON Entities over the past ten years. Additionally, it appears that, since leasing the generating units, WKEC has used engineering best-practices in an endeavor to maximize unit reliability and productivity. In fact, for the last ten years, the plants have ranked in either the top quartile or second quartile of generating plants for the standard industry performance metrics of equivalent forced outage rates, equivalent availability factor, and net capacity factors.[55]

The Smelters also retained a consulting engineer, Stone & Webster Management Consultants, Inc. ("Stone & Webster"), to perform a due diligence study. Stone & Webster stated that, even though the base load generating units are 23 to 40 years old, they are in good, if not better, shape than comparable units of similar age and size. Stone & Webster concluded that, with proactive scheduled maintenance, the Big Rivers generation fleet can perform on a reliable basis consistent with industry standards and deliver the expected power output.[56]

The AG's post-hearing comments suggest, for the first time, that the Commission consider hiring its own consulting engineer and conducting an on-site inspection of the generating units.[57] Based on the extensive evidentiary record, including three

[55] Transcript of Evidence, December 2, 2008, Robert Berry, at 184-185.

[56] Smelters' Response to AG's Supplemental Data Request, Item 4.

[57] AG's Comments, at 28.

engineering reports, the Commission finds that there is substantial evidence to demonstrate that the generating plants are in reasonable condition for their age and that they can perform reliably, consistent with industry standards. An on-site visit as suggested by the AG, absent engineering testing and instrumented measurement, would reveal no useful information relative to the capacity of the plants to operate reliably in the future. Although a number of generating plant deficiencies have been identified by the existing engineering reports, those deficiencies have not been shown to impact the reliability of the generating plants. In addition, all necessary actions to correct the deficiencies are scheduled to be performed as part of Big Rivers' 2009-2011 Production Work Plan. Thus, the existence of deficiencies at the generating plants is not a basis upon which to deny approval of the Unwind Transaction.

BIG RIVERS STAFFING LEVELS

The IBEW urges the Commission to adopt the AG's recommendation that Big Rivers be required to maintain "the same level of workforce, with comparable if not better skill and expertise, as it currently does, or notify the Commission if [Big Rivers] has concluded it would be imprudent to do so, stating the reason why [Big Rivers] believes it to be imprudent."[58]

In response to this recommendation, Big Rivers has provided a commitment to continue to employ the level of workforce necessary to safely and professionally operate its facilities. Big Rivers criticizes the AG's workforce recommendation, arguing that with such a requirement the Commission would have to exercise its jurisdiction to review the prudence of every workforce reduction but remain indifferent to any staffing-level

[58] Direct Testimony of David Brevitz, at 52.

increases. Big Rivers maintains that the commitment it has provided is consistent with the Commission's jurisdiction and representative of the expectations that the Commission and Big Rivers' customers should have of Big Rivers.

The Commission finds it reasonable in this case, where Big Rivers seeks to reacquire control of assets it previously controlled, to allow Big Rivers the flexibility to determine its future workforce levels, consistent with good utility practice. Big Rivers is organized as a cooperative and is owned by its three member distribution cooperatives that, in turn, are owned by their 110,000 electric customers. There is no reason to believe that Big Rivers will be driven by a profit motive to reduce its workforce below the levels necessary to maintain highly reliable service expected and needed by all of the 110,000 customers it serves.

OPEN ISSUES

HMPL Consent

The AG asserts that there are a number of outstanding conditions that should be brought to a conclusion before the Commission rules on the reasonableness of the Unwind Transaction. One of those conditions is the absence of the requisite consent to the Unwind Transaction by HMPL. Under the terms of the 1998 lease transaction, any termination of the lease requires the affirmative consent of HMPL. Although Big Rivers and the E.ON Entities have been engaged in discussions with HMPL for over three years in an effort to obtain HMPL's consent, no agreement has yet been reached. The AG argues that, until HMPL consents to the Unwind Transaction, the Commission cannot approve the documents that require HMPL's signature because such documents are merely proposals and not yet agreements.

HMPL is a party to this case. It filed responses to requests for information and attended informal conferences and the hearing, but did not file testimony. HMPL claims that its two generating units that comprise the Station Two complex have not been properly operated and maintained by the E.ON Entities under the lease and that the E.ON Entities should be responsible for paying approximately $13.5 million toward the cost of future maintenance and repairs. HMPL bases its claim on the engineering reports from its own consulting engineers, Exothermic Engineering Co., LLC ("Exothermic"), as well as those from Big Rivers' consulting engineers, Stanley Consultants; and the Smelters' consulting engineers, Stone & Webster. HMPL's consultant, Exothermic, performed a condition assessment ("Exothermic Report") dated October 30, 2007. The Exothermic Report consists of "a visual condition assessment as opposed to a technical condition assessment."[59] The Exothermic Report was a visual inspection through photographs of the external condition of the plant and did not include any testing or instrumented measurement.[60] HMPL also asserts that, under the terms of its 1970 Station Two contracts with Big Rivers, the payments HMPL receives for energy and capacity reserved but not taken ("excess energy") are insufficient and need to be increased.

The Applicants acknowledge that the external condition of Station Two needs corrective action, but they assert that there are no known deficiencies that would adversely affect the reliability of those units. Stone & Webster concluded that, although Station Two has been in service for over 30 years, the units, for the most part, have

[59] Exothermic Report at 3.

[60] Id.

been reliable and have experienced the usual maintenance history of other units of this vintage.[61] Stone & Webster further stated that those generators were in good condition during their 2003 and 2004 overhauls and that their next scheduled overhauls will be in 2011 and 2012.

The Applicants have offered a number of financial incentives to HMPL to obtain its consent to the Unwind Transaction. The incentives coming from the E.ON Entities include the payment of $1 million for HMPL's consent, $3 million for future repairs at Station Two, and the reimbursement of HMPL's fees incurred in connection with the Unwind Transaction, up to $1.4 million. Big Rivers has also agreed to increase the payments to HMPL under their 1970 Station Two contracts from $1.50/MWh to $2.50/MWh for the excess energy, even though there is no provision in those agreements for renegotiating that payment. Big Rivers has also committed that it will resubmit for Commission review any agreement entered into with HMPL that would provide a level of compensation from Big Rivers in excess of what it has already offered.

The Commission finds no merit in the AG's argument regarding HMPL. Big Rivers is a jurisdictional utility subject to our regulation. The Unwind Transaction includes changes in rates and the issuance of evidences of indebtedness and other financing documents, all of which are subject to our review and approval. Big Rivers' agreements with HMPL are integral parts of the Unwind Transaction. In connection with the 1998 lease transaction, we reviewed and approved the documents to which Big Rivers and HMPL were parties, including the amendment to the Station Two contracts.

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[61] Stone & Webster Report, filed March 11, 2008, at 5.

Although HMPL has not yet agreed to the current amendments now proposed by Big Rivers, the Commission has reviewed those amendments and finds that they are reasonable. In the event that there are any revisions to those amendments that would increase the amount of compensation to be paid by Big Rivers to HMPL, Big Rivers has committed to resubmit the revisions for our additional review. Under these circumstances, we find no basis to delay or defer a decision on these documents.

The record shows that numerous repairs of an exterior nature are needed to Station Two, including many in the categories of both safety and cosmetic. However, there is no credible evidence that the reliability of those units is presently compromised as a result of inadequate or improper maintenance or repairs. In addition, the uncontradicted evidence of record supports our finding that the compensation to be provided to HMPL by the Applicants is reasonable. This finding is based on the physical condition of Station Two, as well as the fact that, but for the Unwind Transaction, HMPL would have no right to any additional payments from Big Rivers for excess energy. Further, to the extent that HMPL believes that E.ON has not properly maintained Station Two, terminating the E.ON lease now rather than waiting until it expires in 14 years will remove E.ON from the picture and restore operational control of Station Two to Big Rivers.

Big Rivers' Credit Rating

Another of the conditions precedent to closing the Unwind Transaction is that Big Rivers have an investment grade credit rating so that it will be able to issue public debt at reasonable costs in the future.[62] The AG argues that, since Big Rivers is in the

[62] Application filed on December 28, 2007, Exhibit 3, at 64 of 622.

process of obtaining, but has not yet received, a credit rating for its debt, the Commission should defer a decision on the Unwind Transaction until a credit rating is obtained. The Applicants assert that an investment grade credit rating is just one of dozens of conditions precedent to closing the Unwind Transaction; that satisfaction of all such conditions, including approval of the Commission, should be pursued simultaneously; and that any material changes to the terms of the Unwind Transaction (or additional compensation from Big Rivers to HMPL) after the date of approval by the Commission will be resubmitted to the Commission for its review.

The Commission well recognizes that an investment grade credit rating for Big Rivers is a linchpin of the financial model. Absent such a credit rating, neither Big Rivers' proposed financing plans nor the Unwind Transaction will be successful. However, despite the importance of the credit rating to the Unwind Transaction, we find no need to defer our decision in this case until after that credit rating has been issued. The Commission frequently reviews transactions before the requisite approvals from other entities have been obtained and before all conditions precedent have been satisfied. In these situations, if the Commission finds that the transaction should be approved and that there are conditions precedent which are of critical importance, the transaction can be approved with appropriate conditions to insure that the conditions precedent are satisfied.[63] In recognition of both the Applicants' desire to complete the

[63] Case No. 2000-00095, Joint Application of PowerGen plc, LG&E Energy Corp., Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of Merger, Order dated May 15, 2000, and Case No. 2001-00104, Joint Application for Transfer of Louisville Gas and Electric Company and Kentucky Utilities Company in Accordance with E.ON AG's Planned Acquisition of PowerGen plc, Order dated August 6, 2001.

Unwind Transaction as soon as reasonably possible and the Commission's finding that there is no reason to delay its review, the approvals granted by this Order will be conditioned upon Big Rivers receiving the investment grade credit rating as specified in the Transaction Termination Agreement.

ADDITIONAL TRANSACTION CONDITIONS

As of April 3, 2008, the AG recommended approval of the Unwind Transaction, but on a provisional basis and with certain conditions, since there were still unresolved issues, including the consent from HMPL and the credit ratings. The AG enumerated 17 recommended conditions that should be imposed on Big Rivers or other parties if the Commission approves the Unwind Transaction. Subsequently, the AG's position changed. As of November 21, 2008, the AG no longer recommended approval of the Unwind Transaction, but he still recommended consideration of his conditions if the Commission decided to approve the Unwind Transaction.

At an informal conference held at the Commission's offices on June 19, 2008, Big Rivers presented a response to the AG's recommended conditions and to a number of other issues identified through discovery. That response included numerous commitments that were intended to satisfy many of the AG's conditions and the other issues identified.

Based on a review of the AG's recommended conditions and the response thereto, the Commission finds that most of the commitments offered by Big Rivers are, in general, reasonable and should be adopted with some modifications and additions. A list of those revised commitments is attached hereto as Appendix A.

INTEGRATED RESOURCE PLAN

In late 2005, Big Rivers filed an IRP based on the assumption that it would continue to purchase its power supply from the E.ON Entities.[64] Shortly thereafter, Big Rivers requested, and the Commission allowed, that case to be held in abeyance due to Big Rivers' expectation that it would cease purchasing power and regain operating control of its generating units. Big Rivers now requests that case be terminated since the reacquisition of its generation renders the information in that IRP obsolete and it has not yet initiated a new load forecast. Big Rivers commits to filing a new IRP no later than November 2010.

The Commission finds Big Rivers' request to be reasonable. Its new IRP should be filed by November 15, 2010 to allow sufficient time for the preparation of a new load forecast and to properly reflect the reacquisition of generation. However, the Commission believes that certain critical information required to be included in an IRP needs to be filed on an interim basis for review pending the November 15, 2010 filing of a complete new IRP. This information, which needs to be filed by September 15, 2009 and again by March 15, 2010, is set forth in 807 KAR 5:058, Section 8(2). In addition, the assessment of economic opportunities for coordination with other utilities, which is required by Section 8(2)(c), must include, but not be limited to, transmission lines and other infrastructure, as well as generating units. The "other utilities" to be considered in this assessment must include, but not be limited to, Tennessee Valley Authority and E.ON and its subsidiaries. Further, these interim filings must include specific details of

[64] Case No. 2005-00485, The 2005 Integrated Resource Plan of Big Rivers Electric Corporation.

the economic development efforts by Big Rivers to benefit the service area of its three member cooperatives.

OUTSTANDING PETITIONS

Pending before the Commission are a number of petitions filed by Big Rivers requesting confidential protection of information related to a negotiated payment from the E.ON Entities to the Smelters and Big Rivers' lines of credit. Also pending is a Big Rivers petition for rehearing of the Commission's earlier denial of confidentiality of information relating to the lines of credit and the terms of Big Rivers' agreement with BoA regarding the leveraged lease buy-out.

Confidentiality was previously granted by letter dated April 29, 2008 to the details of the E.ON Entities' payment to the Smelters. Therefore, for the reasons set forth in that letter, which is incorporated herein by reference, confidentiality is granted to that portion of Big Rivers' December 12, 2008 petition relating to the E.ON Entities' payment to the Smelters.

With respect to the lines of credit, Big Rivers requests to withhold from public disclosure the details of the terms and conditions of its proposed lines of credit with CFC and CoBank, including the costs and fees to be paid to each lender for each line of credit. Big Rivers maintains that the public disclosure of this information will result in competitive injury by allowing other lenders to know what it is willing to pay for a line of credit. However, Big Rivers acknowledged that its proposed CFC and CoBank lines of credit will be in place for five and three years, respectively, and that, "[t]he market always has an impact on how [lines of credit] are structured."[65] Thus, as market

[65] Transcript of Evidence, December 3, 2008, C. William Blackburn, at 88.

conditions change over time, it is reasonable to expect that the terms for a line of credit will also change. As a public utility, the terms and conditions of its financings should be publicly available except in extraordinary circumstances where there is a clear and strong showing of competitive injury. Big Rivers has not satisfied that burden of proof on this issue. Therefore, the Commission will affirm its earlier decision to deny confidentiality for the terms of Big Rivers' lines of credit. Big Rivers' petition for rehearing is denied, as well as its November 25, 2008 and December 1, 2008 confidentiality petitions, and that portion of its December 12, 2008 confidentiality petition, all relating to its lines of credit.

With respect to the terms of the BoA leveraged lease buy-out, all of the significant terms of that transaction are already publicly available in the record of this case.[66] Therefore, that portion of Big Rivers' petition for rehearing relating to the BoA buy-out is denied.

OBSOLETE COMMITMENTS

The Applicants have also requested to be relieved from certain commitments that were imposed in connection with the Commission's approval of the 1998 lease or were subsequently imposed but are relevant only to that transaction. The commitments which Big Rivers seeks to eliminate arise from the Commission's April 30, 1998 Order in

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[66] Third Supplemental Testimony of C. William Blackburn, Exhibit 78, CWD-9.

Case No. 1997-00204,[67] and July 14, 1998 Order in Case No. 1998-00267,[68] requiring a 50/50 sharing methodology for the reporting and recovery of unforeseen changes in transmission costs due to the Smelters' load, requiring Big Rivers to file annual updates to its 1998 lease transaction financial model, requiring Big Rivers to file a report of its arbitrage sales and other sales, and requiring Big Rivers to file an annual report on its plant maintenance. The E.ON Entities' commitments that are requested to be eliminated were imposed in conjunction with its prior mergers, and include merger commitment nos. 5, 6, and 9 relating to the PowerGen merger case,[69] and merger commitment nos. 40, 41, and 44 in the E.ON merger case.[70] The Commission agrees that these merger commitments will no longer be relevant after the Unwind Transaction is completed. Therefore, these commitments will be eliminated upon closing the Unwind Transaction.

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[67] Case No. 1997-00204, The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two, Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction.

[68] Case No. 1998-00267, The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson.

[69] Case No. 2000-00095, Joint Application of PowerGen plc, LG&E Energy Corp., Louisville Gas and Electric Company and Kentucky Utilities Company, for Approval of Merger (Ky. PSC May 15, 2000).

[70] Case No. 2001-00104, Joint Application for Transfer of Louisville Gas and Electric Company and Kentucky Utilities Company in Accordance with E.ON AG's Planned Acquisition of PowerGen plc (Ky. PSC Aug. 6, 2001).

SUMMARY OF FINDINGS

The Commission finds that the change in control of generating units from the E.ON Entities to Big Rivers is for a proper purpose and is consistent with the public interest, subject to Big Rivers' accepting the commitments set forth in Appendix A and the E.ON Entities accepting the commitment set forth in Appendix B. Within seven days of the date of this Order, the chief executive officers of Big Rivers and of the E.ON Entities should file written notices stating that they either accept and agree to be bound by or reject their respective commitments as set forth in Appendices A and B. The Termination Agreement and all other transaction documents, new power contracts, the rate and tariff changes, and the financing documents, filed in support of the Unwind Transaction and listed in Appendix C, are reasonable and should also be approved subject to the Applicants' acceptance of the commitments.

The Commission further finds that the issuance of the proposed evidences of indebtedness, notes, and Indenture as set out in Big Rivers' application is for lawful objects within the corporate purposes of Big Rivers' utility operations, is necessary and appropriate for and consistent with the proper performance of its service to the public, will not impair its ability to perform that service, is reasonably necessary and appropriate for such purposes, and should therefore be approved.

IT IS THEREFORE ORDERED that:

1. The change in control of generating units from the E.ON Entities to Big Rivers is approved subject to Big Rivers' receipt of an investment grade credit rating and the filing within seven days of the date of this Order of written notices signed by the chief executive officers of Big Rivers and the E.ON Entities that each agrees to accept

and be bound by their respective commitments set forth in Appendices A and B to this Order.

2. All of the documents relating to the Unwind Transaction, as listed in Appendix C hereto, including but not limited to the Termination Agreement, the new power agreements, the financing documents, and the revised tariffs, are approved subject to the filing of the notices of acceptance of commitments referenced in Ordering Paragraph No. 1.

3. In the event that both Big Rivers and the E.ON Entities file a notice of acceptance of commitments as described in Ordering Paragraph No. 1, the Applicants shall, individually or jointly, file with the Commission reports on the status of closing the Unwind Transaction, with the first report due 45 days after the date of this Order and subsequent reports due every 15 days thereafter until the closing takes place.

4. Big Rivers shall, upon closing the Unwind Transaction, establish the journal entries and regulatory accounts, including, but not limited to, the regulatory liability to establish the Rural Economic Reserve, and shall deposit $60.9 million in the Rural Economic Reserve, all in accordance with the findings above.

5. Big Rivers shall, within 20 days of the date of closing the Unwind Transaction, file with the Commission its revised tariff sheets, including, but not limited to, a rate mechanism to implement the Rural Economic Reserve, as approved herein, showing their date of issue and that they were issued by authority of this Order.

6. Big Rivers shall file a new IRP no later than November 15, 2010 and it shall file, on September 15, 2009 and again on March 15, 2010, reports setting forth the

information required by 807 KAR 5:058, Section 8(2), and the details of its economic development activities as more fully described in the findings above.

7. Within 20 days of the date of closing the Unwind Transaction, Case No. 2005-00485, which was established to review Big Rivers' 2005 IRP, shall be terminated.

8. Big Rivers' November 25, 2008 motion to amend, and that portion of its December 12, 2008 confidentiality petition relating to the E.ON Entities' payment to the Smelters, are granted.

9. The Commission's earlier denial of confidentiality to Big Rivers' information related to its lines of credit and the BoA buy-out is affirmed and Big Rivers' rehearing request for reversal of those decisions is denied. Big Rivers' pending confidentiality petitions, filed on November 25, 2008 and December 1, 2008, and that portion of its December 12, 2008 petition, all relating to its lines of credit, are denied.

10. Big Rivers is authorized to issue evidences of indebtedness, issue and sell notes, and enter into the Indenture, all upon the terms set forth in its application.

11. Big Rivers is authorized to use the proceeds arising from the issuance and sale of the subject evidences of indebtedness and notes for only the lawful purposes set forth in its application.

12. Big Rivers shall, within 30 days of the date of each issuance, file with the Commission a statement setting forth the date of issuance and terms of the evidences of indebtedness, notes, and Indenture authorized herein, including the interest rate.

Nothing contained here shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 6th day of March, 2009.

By the Commission

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00455 DATED MARCH 6, 2009

1. Big Rivers commits to use the actual expenses reported by WKEC to calculate the fuel adjustment clause charges and the environmental surcharge for the period until Big Rivers' actual costs are available.

2. Big Rivers commits that the Economic Reserve will be funded at closing of the Unwind Transaction by an amount no less than $157 million.

3. Big Rivers commits to not sell SO_2 allowances in its inventory (excluding the 14,000 SO_2 allowances acquired in conjunction with the Unwind Transaction) unless the sale is cost-effective based on a written policy which reflects short- and long-term allowance needs and prices.

4. Big Rivers will account on its books for emission allowances it acquires in the Unwind Transaction in accordance with the RUS Uniform System of Accounts.

5. Big Rivers commits to not close the Unwind Transaction until the Commission has reviewed and approved any change to the Station Two Contract amendments filed on October 9, 2008, if the change will result in: (a) Big Rivers providing, directly or indirectly, to HMPL, the city of Henderson, or a third party, anything of value that differs in form, substance, or amount from the value to be provided by Big Rivers under the amendments filed on October 9, 2008; or (b) the need to revise the Unwind Financial Model to properly reflect the change to the amendments filed on October 9, 2008.

6. Big Rivers commits to maintaining a sound and constructive relationship with those labor organizations that may represent certain employees of WKEC.

7. Big Rivers commits to bargain in good faith with IBEW during any collective bargaining sessions.

8. Big Rivers commits to continue to employ in the conduct of its business the level of workforce required to safely and professionally operate its facilities.

9. Big Rivers commits to finalize its due diligence on the generating facilities and sites using all resources available to it. Big Rivers also commits to not waive any of its rights under the Termination Agreement, Sections 10.3(dd) or 10.3(ee), to require that the generating facilities be in good condition and that there is a proper demonstration of their capability.

10. Big Rivers commits that, within 24 hours of closing the Unwind Transaction, a written notice will be filed with the Commission setting forth the date of closing.

11. Big Rivers commits to file a report with the Commission within 10 days after the closing of the Unwind Transaction stating that all of the conditions precedent to the closing of the Unwind Transaction have been satisfied or, if any of the conditions have been waived, the terms on which each waiver was granted.

12. Big Rivers commits that, within 3 years of closing the Unwind Transaction, Big Rivers will file with the Commission for a general review of its financial operations and its tariffs. Big Rivers also commits to include with that filing a new depreciation study and an analysis of Big Rivers' financial condition and rates assuming the study's results are implemented.

13. Big Rivers commits that it will file an IRP, in accordance with the Commission's regulations, for the Big Rivers system no later than November 15, 2010.

Big Rivers also commits to file by September 15, 2009 and again by March 15, 2010, the information listed in 807 KAR 5:058, Section 8(2) and the details of economic development activities, all as specified in the IRP section of the attached Order.

14. Big Rivers commits, in connection with the filing of its IRPs, to advise the Commission of any material changes to the RUS's criteria for the financing of both new coal-fired plants, and existing coal-fired plants, on a timely basis. In the event of any such changes, Big Rivers commits to supply a plan for assessing the impact and ramifications, if any, and how Big Rivers will address those changes.

15. Big Rivers commits to filing with the Commission, within 60 days of closing the Unwind Transaction and by April 30 of each year thereafter, through the date on which it files a case for a general adjustment of its rates, and thereafter as may be required by the Commission, the "Big Rivers New Financial Model." The Big Rivers New Financial Model will supplement the Big Rivers monthly filing of its RUS Form 12, its Financial and Statistical Report (Annual Report) and the Big Rivers annual report (containing audited financial statements), all of which are filed with the Commission. The Big Rivers New Financial Model will contain actual financial results for the prior year, the current year's budget, three forecasted years beyond the current year, and an explanation of all assumptions.

16. Big Rivers commits to fund, initiate and maintain a risk management plan and program, which would include the ability to identify and address the impact of contingencies including, but not limited to, fuel prices, cost exposure for environmental remediation programs (both existing and contemplated), and any other material risks pertaining to Big Rivers. Big Rivers commits to have the risk management plan and program in effect no later than 3 months after the date of closing the Unwind Transaction

and to be prepared, in connection with the review of its financial operations in 3 years, and again in its next application for a general adjustment in rates, to respond to questions regarding identified risks and steps taken under its Risk Management program to address or mitigate those risks.

17. Big Rivers commits to provide to the Commission, upon its request and in 3 years in connection with the review of Big Rivers' financial operations, a copy of any reports, recommendations or other documents produced by the Coordinating Committee or either Smelter, and that is provided to the Big Rivers board of directors.

18. Big Rivers commits, in connection with the review of its financial operations in 3 years, to advise the Commission in the event of any material changes in its collective bargaining agreements with labor unions.

19. Big Rivers commits to advise the Commission and the Attorney General's Office of any material changes in the evidences of indebtedness that comprise its financing arrangements, on a timely basis.

20. Big Rivers commits to advise the Commission of any material changes to the smelter-related retail and wholesale contracts, on a timely basis.

21. Big Rivers commits to timely advise the Commission and the Attorney General's Office in the event of any material changes in its agreements with HMPL after the closing of the Unwind Transaction.

22. Big Rivers commits to complete construction of the transmission system additions and improvements for which the Commission issued a Certificate of Public Convenience and Necessity in P.S.C. Case No. 2007-00177, and commits to advise the Commission and the Attorney General's Office on a timely basis of the date those transmission facilities become fully operational and of any material events related to the

Big Rivers transmission system that impact Big Rivers' long-term ability to wheel excess power to its border for sale into other markets.

23. Big Rivers commits that its chief executive officer and relevant members of its senior staff will meet informally with the Commission and the Attorney General's Office at least annually to advise them regarding: (i) general operations and finances of Big Rivers; (ii) transition activities; (iii) regulatory and industry developments that may affect Big Rivers in the future; (iv) the status of Big Rivers' plans for addressing the $200 million reduction in the Maximum Allowed Balance in the RUS 2008 Promissory Note, Series A before the end of 2015; (v) changes in the competitiveness of the Smelters in the world aluminum market of which Big Rivers is aware and which could materially affect the commitment of the Smelters to continue operations; and (vi) the work of the Coordinating Committee.

24. Big Rivers commits that a Rural Economic Reserve account will be established and funded at closing of the Unwind Transaction in an amount no less than $60.9 million to be used exclusively to credit the bills rendered to the Rural Customers over a period of 24 months commencing upon depletion of all funds in the Economic Reserve. All funds in the Rural Economic Reserve shall be invested in interest-bearing United States Treasury notes, with all interest earned credited to the Rural Economic Reserve. Big Rivers commits that no funds in the Rural Economic Reserve escrow account will be spent, pledged, or otherwise used for any purpose other than as credits on the future bills of Rural Customers in accord with the terms of this commitment.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00455 DATED MARCH 6, 2009

The E.On Entities commit to pay to Big Rivers at the time of closing the Unwind Transaction an additional $60.9 million in cash to reimburse Big Rivers for one-half of the cost of the PMCC buy-out that, but for this commitment, would be the responsibility of Big Rivers.

APPENDIX C

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00455 DATED MARCH 6, 2009

AGREEMENTS AND DOCUMENTS TO BE APPROVED

1. Termination Agreement (including all related documents and transactions and termination of all the agreements from the 1998 Transactions as contemplated in the Termination Agreement); Approval of the First Amendment to Transaction Termination Agreement; Approval of Letter Agreement; Approval of Second Amendment to Transaction Termination Agreement; Approval of Third Amendment to Transaction Termination Agreement.

2. Generation Dispatch Support Services Agreement.

3. Information Technology Support Services Agreement.

4. Station Two Agreements and Amendments, including:

   a. Second Amendatory Agreement;

   b. Amendments to 1970 Station Two Power Sales Contract;

   c. Station Two Termination and Release Agreement;

   d. Station Two G&A Allocation Agreement; and

   e. Agreement for Assignment of Responsibility for Complying with Reliability Standards.

5. Alcan Wholesale Agreement, Retail Agreement, Lockbox Agreement, and Guaranty.

6. Century Wholesale Agreement, Retail Agreement, Lockbox Agreement, and Guaranty.

7. Smelter Coordination Agreements.

8. Amendments to Big Rivers' Member Wholesale Power Contracts.

9. All of Big Rivers' Proposed Tariff Revisions, Including the Revised Open Access Transmission Tariff.

10. Revolving Line of Credit Agreement between Big Rivers Electric Corporation and National Rural Utilities Cooperative Finance Corporation.

11. Revolving Credit Agreement by and between Big Rivers Electric Corporation and CoBank ACB, including note by and between Big Rivers Electric Corporation and CoBank ACB.

12. PCB Series 2001A Note from Big Rivers Electric Corporation to the County of Ohio, Kentucky.

13. Ambac Municipal Bond Insurance, Policy Series 1983 Note from Big Rivers Electric Corporation to Ambac Assurance Corporation.

14. Standby Bond Purchase Agreement Note (Series 1983 Bonds), from Big Rivers Electric Corporation to Dexia Credit Local, acting by and through its New York Branch.

15. Termination of Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement among (a) Big Rivers Electric Corporation; (b) LG&E Energy Marketing Inc., and Western Kentucky Energy Corp.; (c) The United States of America, acting through the Administrator of the Rural Utilities Service; (d) Ambac Assurance Corporation; (e) National Rural Utilities Cooperative Finance Corporation; (f) Dexia Credit Local, New York Branch; (g) U.S. Bank Trust National Association, as trustee under the Trust Indenture dated as of August 1, 2001;

(h) PBR-1 Statutory Trust; (i) PBR-2 Statutory Trust; (j) PBR-3 Statutory Trust; (k) FBR-1 Statutory Trust; (l) FBR-2 Statutory Trust; (m) PBR-1 OP Statutory Trust; (n) PBR-2 OP Statutory Trust; (o) PBR-3 OP Statutory Trust; (p) FBR-1 OP Statutory Trust; (q) FBR-2 OP Statutory Trust; (r) Bluegrass Leasing; (s) Bank of America Leasing Corporation; (t) AME Investments, LLC; (u) CoBank, ACB; and (v) Ambac Credit Products, LLC.

16. Termination of Third Restated Mortgage and Security Agreement among (a) Big Rivers Electric Corporation; (b) The United States of America, acting through the Administrator of the Rural Utilities Service; (c) Ambac Assurance Corporation; (d) National Rural Utilities Cooperative Finance Corporation; (e) Dexia Credit Local, New York Branch; (f) U.S. Bank Trust National Association, as trustee under the Trust Indenture dated as of August 1, 2001; (g) PBR-1 Statutory Trust; (h) PBR-2 Statutory Trust; (i) PBR-3 Statutory Trust; (j) FBR-1 Statutory Trust; (k) FBR-2 Statutory Trust; and (l) Ambac Credit Products, LLC.

17. Creditor Consent, Termination and Release Agreement by and among (a) Big Rivers Electric Corporation; (b) E.ON U.S. LLC, LG&E Energy Marketing Inc., and Western Kentucky Energy Corp.; (c) The United States of America, acting through the Administrator of the Rural Utilities Service; (d) Ambac Assurance Corporation; (e) National Rural Utilities Cooperative Finance Corporation; (f) Dexia Credit Local, New York Branch; (g) U.S. Bank Trust National Association, as trustee under the Trust Indenture dated as of August 1, 2001; (h) PBR-1 Statutory Trust; (i) PBR-2 Statutory Trust; (j) PBR-3 Statutory Trust; (k) PBR-1 OP Statutory Trust; (l) PBR-2 OP Statutory Trust; (m) PBR-3 OP Statutory Trust; (n) Bluegrass Leasing; (o) Bank of America

Leasing Corporation; (p) AME Investments, LLC; (q) CoBank, ACB; (r) AME Asset Funding, LLC; and (s) Ambac Credit Products, LLC.

18. Amendment of Operating and Support Agreement (Wilson Operating Agreement).

19. Letter Agreements regarding "Funding of Certain Amounts to be Paid to the Bank of America" and "Payment Regarding the Buy-Out of the Bank of America."

20. Indenture from Big Rivers Electric Corporation, Grantor to **[Name of Trustee].**

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