

Case No. 2006-00066  
DORSEY, KING, GRAY, NORMENT & HOPGOOD

ATTORNEYS-AT-LAW

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February 3, 2006

RECEIVED

FEB 06 2006

PUBLIC SERVICE  
COMMISSION

FEDEX

Ms. Elizabeth O'Donnell  
Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

Re: Kenergy Corp.  
TIER 3 Energy for Alcan Primary Products  
Corporation  
Wholesale Supplier: The Cincinnati Gas &  
Electric Company

Dear Ms. O'Donnell:

Kenergy Corp. ("Kenergy") requests the Commission's acceptance of a special retail contract regarding the above.

At the request of Alcan Primary Products Corporation ("Alcan") Kenergy has entered into a wholesale agreement with The Cincinnati Gas & Electric Company for the purchase of a block of 25 MW firm energy for sale to Alcan for the remainder of this year, 2006. Enclosed please find the executed original and one copy of Request for Power, Agreement for Tier 3 Energy, and Consent. These three (3) documents comprise the special retail contract that Kenergy requests the Commission to accept.

This contract will result in a reduction of rates for the customer Alcan because the tariff applicable to the Gibson LMP will be a rate less than what Alcan would otherwise pay, which would be 110% of the market price indexed at Big Rivers LMP. This being the case, Kenergy is requesting that the notice period be shortened so that the contract can be effective immediately upon Commission acceptance, as allowed under KRS 278.180(2).

If the Commission were to determine for any reason that the notice period cannot be shortened as requested above, then we respectfully request that the

Page Two  
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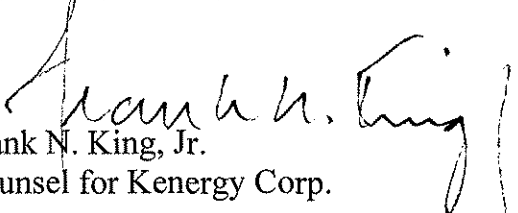
notice period be shortened to 20 days and that the Commission accept the retail contract effective as of 20 days after receipt hereof.

Your assistance in this matter is appreciated.

Very truly yours,

DORSEY, KING, GRAY, NORMENT & HOPGOOD

By

  
Frank N. King, Jr.  
Counsel for Kenergy Corp.

FNKJr/cds  
Encls.

COPY/w/encls. (including remaining transaction documents):

Mr. David Brown  
Mr. David Hamilton  
Mr. Michael Pahutski

REQUEST FOR POWER

Alcan Primary Products Corporation (“Alcan”) hereby requests Kenergy Corp. (“Kenergy”) to purchase the following volumes of Tier 3 Energy from The Cincinnati Gas & Electric Company (“CG&E”) in accordance with the rates, terms and conditions set forth in the Agreement for Tier 3 Energy dated January 30, 2006, between Kenergy and CG&E (the “Tier 3 Agreement”):

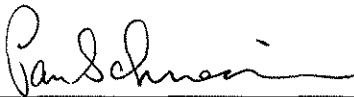
A block of 25 MW of firm Tier 3 Energy as set forth in Article 5 of the Tier 3 Agreement, for delivery February 1, 2006 through December 31, 2006.

In consideration thereof, Alcan agrees to purchase from Kenergy at retail the delivered amounts of such Tier 3 Energy on the same terms and conditions and at the same rates contained in the Tier 3 Agreement plus the applicable distribution fee included in Kenergy’s smelter tariff plus charges for transmission and ancillary services, if any, with respect such Tier 3 Energy.

The terms and conditions of the Agreement for Electric Service between Kenergy and Alcan dated July 15, 1998 (the “Alcan Power Agreement”) are, to the extent applicable, incorporated herein by reference.

This the 30th day of January, 2006.

ALCAN PRIMARY PRODUCTS CORPORATION

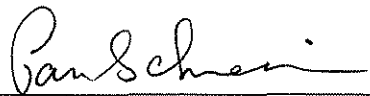
By:   
Pam Schneider  
Treasurer

CONSENT

Alcan Primary Products Corporation ("Alcan") hereby agrees with Kenergy Corp. ("Kenergy") and The Cincinnati Gas & Electric Company ("CG&E") that Alcan has reviewed the Agreement for Tier 3 Energy dated January 30, 2006 ("Agreement") and hereby consents to the execution, delivery and performance of the Agreement by Kenergy and CG&E for all purposes.

Dated: January 30, 2006

ALCAN PRIMARY PRODUCTS CORPORATION

By:   
Pam Schneider  
Treasurer

AGREEMENT FOR TIER 3 ENERGY

BETWEEN

KENERGY CORP.

AND

THE CINCINNATI GAS & ELECTRIC COMPANY

ARTICLE I

PARTIES

The Parties to this Agreement, dated as of this 30th day of January, 2006 are KENERGY CORP., a Kentucky corporation organized under KRS Chapter 279 ("Kenergy") and THE CINCINNATI GAS & ELECTRIC COMPANY, an Ohio corporation ("Supplier" or "CG&E"). Kenergy and Supplier are each referred to individually as a "Party" and collectively as "Parties." It is recognized by the Parties that Alcan Primary Products Corporation ("Alcan") is a third-party beneficiary under this Agreement. Pursuant to the attached Form of Consent, Alcan consents to this Agreement.

ARTICLE II

RECITALS

Section 2.01 Supplier is engaged in the business of selling electric power at wholesale.

Section 2.02 Kenergy is an electric cooperative that provides electric energy at retail to Alcan pursuant to an agreement entitled "Agreement for Electric Service" dated July 15, 1998 in effect between Kenergy Corp. and Alcan Primary Products Corporation (the "Alcan Power Agreement").

Section 2.03 Alcan owns and operates an aluminum reduction plant in Sebree, Henderson County, Kentucky (the “Sebree Facility”).

Section 2.04 Pursuant to Section 9.2 of the Alcan Power Agreement and upon the request of Alcan, Kenergy shall contract with one or more third party suppliers for certain quantities of energy denominated as “Tier 3 Energy” at prices, terms and conditions which respond to Alcan’s requirements.

Section 2.05 Alcan has made a request for Tier 3 Energy, and Kenergy therefore desires to enter into an agreement with Supplier to purchase for resale to Alcan, and Supplier desires to enter into an agreement with Kenergy to sell a 25 MW block of Tier 3 Energy during the Delivery Term as that terms is defined in Section 4.05 of this Agreement

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the Parties agree as follows.

### ARTICLE III

#### DEFINITIONS:

The following terms, when used in this Agreement with initial capitalization, whether in the singular or the plural, shall have the meanings specified:

Section 3.01 Agreement: This Agreement together with any amendments to which the Parties may agree in writing from time to time.

Section 3.02 Alcan: Alcan Primary Products Corporation, a Texas corporation, its successors and assigns.

Section 3.03 A.M.: Means A.M., Central Standard Time or Central Daylight Time, as applicable.

Section 3.04 Backup Supply Agreement: Provisions of the Agreement for Electric Service dated July 15, 1998 by and between Kenergy and LEM (including Schedule A thereto) that provide for the sale and delivery of Tier 3 Back-Up Energy to Kenergy for resale to Alcan.

Section 3.05 Billing Month: Each calendar month during the term of this Agreement in which Tier 3 Energy is provided to Kenergy by Supplier under this Agreement.

Section 3.06 CINERGY.HUB CPN: The Cinergy hub commercial pricing node as further defined by MISO, as amended from time to time.

Section 3.07 Delivery Term: As defined in Section 4.05.

Section 3.08 Effective Date: The date specified in Section 4.01.

Section 3.09 Energy: The flow of electricity denominated in kilowatt-hours or megawatt-hours.

Section 3.10 FERC: The Federal Energy Regulatory Commission or any successor agency.

Section 3.11 Firm L.D: Financially firm Energy with liquidated damages.

Section 3.12 FTR: A financial transmission right as such term is defined by MISO.

Section 3.13 Gibson-1 CPN: The commercial pricing node associated with Unit 1 of PSI Energy, Inc.'s Gibson Electric Generating Station, as further defined by MISO.

Section 3.14 Kenergy: Kenergy Corp., its successors or assigns.

Section 3.15 KPSC: The Kentucky Public Service Commission or any successor agency.

Section 3.16 LEM: LG&E Energy Marketing Inc.

Section 3.17 Level 5 Transmission Loading Relief Event: As defined by the North American Electric Reliability Council, as amended from time to time.

Section 3.18 MISO: The Midwest Independent Transmission System Operator, Inc.

Section 3.19 Mitigation Effective Date: As defined in Section 5.08.

Section 3.20 Mitigation Request: As defined in Section 5.08.

Section 3.21 Monthly Charge: The total charge assessed by Supplier to Kenergy, including the Transmission Charge, in each Billing Month for Tier 3 Energy delivered or made available under this Agreement and computed in accordance with this Agreement.

Section 3.22 Off-Peak Hours: All hours except On-Peak Hours.

Section 3.23 On-Peak Hours: The sixteen hour period beginning at 6:00 A.M. and ending at 10:00 P.M., on Mondays through Fridays of each week, but excluding NERC Holidays.

Section 3.24 Open Access Transmission Tariff. Any transmission tariff approved by FERC following filing by a public utility pursuant to 18 C.F.R. § 35.28(c) or approved by FERC as constituting reciprocal transmission service following a submittal by a non-public utility pursuant to 18 C.F.R. § 35.28(e).

Section 3.25 NERC Holidays: Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and New Year's Day.

Section 3.26 P.M.: Means P.M., Central Standard Time or Central Daylight Time, as applicable.

Section 3.27 Point of Delivery: Supplier's choice of any interface of the Big Rivers Electric Corporation transmission system.



Section 3.28 Prudent Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Section 3.29 Sales Price: means the greater of (a) the price at which Supplier, acting in a commercially reasonable manner, resells the Tier 3 Energy not received by Kenergy pursuant to Section 5.08 hereof, deducting from such proceeds any (i) costs reasonably incurred by Supplier in reselling such Tier 3 Energy and (ii) additional transmission charges, if any, reasonably incurred by Supplier in delivering such Tier 3 Energy to the third party purchasers or (b) the Day-Ahead published market price at the CINERGY.HUB CPN for such Tier 3 Energy; provided, however, in no event shall either such price include any penalties, ratcheted demand or similar charges, nor shall Supplier be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Kenergy's liability. For purposes of this definition, Supplier shall be considered to have resold such Tier 3 Energy to the extent Supplier shall have entered into one or more arrangements in a commercially reasonable manner whereby Supplier repurchases from Kenergy its obligation to sell hereunder and thereafter sells the Tier 3 Energy to another party at the CINERGY.HUB CPN.

Section 3.30 Sebree Facility: The aluminum reduction plant located in Henderson County, Kentucky, and any expansions, additions, improvements and replacements thereof or thereto at the existing site.

Section 3.31 Supplier: The Cincinnati Gas & Electric Company, its successors and assigns.

Section 3.32 Tier 3 Back-Up Energy: Energy taken by Kenergy for resale to Alcan that is more than has been contracted from LEM (as Tier 1 and Tier 2 Energy) and from third party suppliers including Supplier (as Tier 3 Energy) pursuant to the Back-up Supply Agreement.

Section 3.33 Tier 3 Energy: Firm L.D. Energy acquired by Kenergy from Supplier under this Agreement.

Section 3.34 Tier 3 Energy Price: As defined in Section 5.02 or Section 5.03, as applicable.

Section 3.35 Transmission Charge: As defined in Section 5.05.

Section 3.36 Transmission Provider: Big Rivers Electric Corporation, its successors or assigns, in its capacity as provider of transmission and ancillary services.

Section 3.37 Uncontrollable Force: Any cause beyond the control of the Party unable, in whole or in part, to perform its obligations under this Agreement which, despite exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid and which, despite the exercise of due diligence, it has been unable to overcome. Such causes include, but are not limited to: acts of God; strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the Government, whether Federal, State or local, civil or military, civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines,

inability of either Party hereto to obtain necessary materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities, whether Federal, State or local, civil or military, and any other forces which are not reasonably within the control of the Party claiming suspension. A forced outage of a generating unit or units is not an Uncontrollable Force unless it prevents the physical delivery of power to Kenergy for resale to Alcan. Uncontrollable Force shall not include Alcan's inability to economically use the Tier 3 Energy or market conditions relating to Alcan's business or the products produced at the Sebree Facility.

Section 3.38 Working Days: Monday through Friday of each week except NERC holidays.

#### ARTICLE IV

##### EFFECTIVE DATE, INITIAL CONDITIONS AND TERMS

Section 4.01 Term. This Agreement shall become effective on the date it is executed and delivered by the Parties. The term with respect to the delivery and purchase obligations of Tier 3 Energy to be sold and delivered under this Agreement shall be as set forth in Section 4.05. Unless earlier terminated by either Party pursuant to Section 4.04 (failure of KPSC initial approval), Section 7.01 (default) or by mutual agreement of the Parties, this Agreement shall terminate with the expiration of the Delivery Term.

Section 4.02 Regulatory Condition to Purchase and Delivery Obligations. Notwithstanding the Effective Date of this Agreement, the delivery obligations of Supplier and the purchase obligations of Kenergy for all Tier 3 Energy pursuant to this Agreement are subject

to the condition that the KPSC has accepted the rates, terms and conditions of this Agreement as they apply to the sale of Tier 3 Energy from Kenergy to Alcan.

Section 4.03 Notice of Regulatory Condition Satisfaction. As soon as the condition set forth in Section 4.02 has been satisfied, Kenergy shall promptly provide written notice to Alcan and Supplier that the condition has been satisfied. Unless waived by Supplier in writing, the condition contained in Section 4.02 shall not be deemed satisfied until Supplier has received such notice.

Section 4.04 Cooperation. Each Party agrees to use reasonable diligence to satisfy the condition described in Section 4.02. If the condition has not been satisfied by February [28], 2006 either Party may terminate this Agreement upon written notice to the other Party.

Section 4.05 Commencement of Delivery and Purchase Obligations. The delivery obligation of Supplier and the purchase obligation of Kenergy with respect to Tier 3 Energy shall commence at 12:01 AM on the second day after Kenergy provides notice to Supplier and Alcan that the condition set forth in section 4.02 has been satisfied and shall terminate at midnight on December 31, 2006 (the "Delivery Term").

## ARTICLE V

### PURCHASE AND SALE OF TIER 3 ENERGY

Section 5.01 Volume of Tier 3 Energy. During the Delivery Term, Supplier shall sell and deliver to the Point of Delivery and Kenergy shall purchase from Supplier and pay for a block of 25 MW of Tier 3 Energy Firm L.D. around the clock (24 hours x 7 days). Except as provided in Section 5.06, Kenergy shall purchase and accept delivery of the full amount of the Tier 3 Energy made available by Supplier. Except as provided in Section 5.08, if Kenergy or Alcan does not accept delivery of the full amount of such Tier 3 Energy, the Monthly Charge shall include the amount that would have been due, determined under Section 5.02 or Section 5.03, as applicable, had the full amount of such Tier 3 Energy been accepted, plus any charges or penalties assessed to the Supplier that directly relate to Kenergy's and/or Alcan's failure to accept delivery.

Section 5.02 Tier 3 Energy Price: Subject to the provisions of Section 5.03, all Tier 3 Energy made available to Kenergy pursuant to this Agreement will be priced hourly at the Day Ahead Gibson-1 CPN price as reported by MISO plus \$6.00/MWh. If during the Term of this Agreement, MISO ceases reporting these prices, then the Parties shall agree on a replacement index price which shall, as closely as possible, replicate the price for energy at the CINERGY.HUB CPN. If the Parties are not able to agree on a replacement index price within thirty (30) days of the date that MISO ceases reporting the Day Ahead Gibson-1 CPN price, this agreement shall terminate without further action by the Parties.

Section 5.03 Right to Convert to Fixed Price Contract. During the term of this Agreement Kenergy shall have the right to request of and to receive promptly from Supplier the offer price of some or all of the Tier 3 Energy for the balance of the Delivery Term if converted

to a fixed price block of Tier 3 Energy Firm L.D. to be delivered in On-Peak Hours and a fixed price block of Tier 3 Energy Firm L.D. to be delivered in Off-Peak Hours,; provided that Kenergy shall make no more than two requests per week. On the day the offer price is received from Supplier, Kenergy shall have the right to convert some or all the Tier 3 Energy to such fixed price block pricing by giving Supplier verbal confirmation that will specify the requested start date of each such block of Tier 3 Energy. Kenergy recognizes that Supplier's offer price is market dependent and is subject to instantaneous market movements and as such understands that Supplier's offer price is good for execution only while Kenergy is on the phone with Supplier. Supplier shall by fax promptly confirm (the "Confirmation") to Kenergy and Alcan the terms of converting to such On-Peak price and Off-Peak pricing which Confirmation shall be executed by the Parties and incorporated as part of this Agreement as an amendment thereto, provided that the effectiveness of such Confirmation shall be conditioned upon Alcan's consent in writing thereto. The Parties agree to establish a mutually acceptable protocol with Alcan to ensure that communication of the offer price and Kenergy's response is effective to carry out the intent of this Section 5.03. The fixed price block pricing shall be bundled to include the \$6.00 adder, transmission (other than congestion charges, if any) and ancillary services. In the event Kenergy converts less than 25 MW to fixed price block pricing, the balance of the Tier 3 Energy shall continue to be priced pursuant to Section 5.02.

Section 5.04 Financial Transmission Rights. During the term of this Agreement, Kenergy shall have the right to direct Supplier to use reasonable commercial efforts to purchase FTRs on behalf of Kenergy in an amount that will provide a congestion hedge for transporting on the MISO transmission system in the following month up to 25 MW from the Gibson-1 CPN to the interface of the Big Rivers Electric Corporation; provided, however, that Kenergy shall make

no more than two requests for FTRs per month during the term of this Agreement and such requests must be consistent with the MISO FTR auction schedules. CG&E will cooperate with Kenergy and Alcan regarding the assessment of the possible costs and risks associated with each such FTR path. In exercising such right Kenergy will specify in its written direction the requested start date and the specified bid price, volume and other required bidding specifications; provided that such terms must be in compliance with the MISO rules and protocols applicable at the time of the request. If so directed by Kenergy, Supplier shall participate in the applicable FTR auction using the Kenergy specified bid price, volume and bidding specifications. Supplier will notify Kenergy as soon as practicable the result of the FTR auctions relative to Kenergy's requested FTRs. Upon confirmation of the purchase of FTRs from MISO by Supplier for the benefit of Kenergy, the FTR Confirmation will be executed by the Parties and incorporated as part of this Agreement as an amendment thereto.

Section 5.05 Transmission and Ancillary Services and Costs. Subject to Section 5.07, Supplier will undertake to secure from MISO an appropriate amount of firm transmission service during the Delivery Term to enable Supplier to deliver the Tier 3 Energy to the Point of Delivery. Kenergy acknowledges that Supplier will incur charges each month from the MISO, which may include, but are not limited to, charges for the firm transmission reservations, ancillary services, congestion, administration, transmission losses, revenue sufficiency guaranty, and other delivery-related charges (hereinafter collectively "Transmission Charge") to deliver the Tier 3 Energy to the Point of Delivery. Such Transmission Charge shall be the responsibility of Kenergy and will appear as a separate line item on the monthly invoice issued by Supplier. The Transmission Charge incurred each month by the Supplier to deliver the Tier 3 Energy to the Point of Delivery shall be based upon the current applicable tariff and protocols of the MISO as

are in effect from time to time. Supplier shall use commercially reasonable efforts to take such actions to minimize the congestion charge component of the Transmission Charge.

Kenergy shall be responsible for procuring from the Transmission Provider the necessary transmission service and paying for all transmission charges to transport the Tier 3 Energy from the Point of Delivery to the Sebree Facility.

Section 5.06 Kenergy Option to Purchase Tier 3 Back-Up Energy. To the extent that Kenergy and Supplier agree that it is economically prudent, with respect to each Party, for Kenergy to purchase Tier 3 Back-up Energy from LEM under the Backup Supply Agreement, Supplier shall be permitted to waive, in whole or in part, Kenergy's obligation to purchase Tier 3 Energy from Supplier in which case Kenergy shall purchase Tier 3 Back-Up Energy from LEM; provided that (i) Kenergy shall pay to Supplier \$6/MWh for each MWh of Tier 3 Back-up Energy that Kenergy so purchases from LEM pursuant to this Section 5.06 and (ii) Kenergy shall pay to Supplier an amount equivalent to the applicable transmission reservation charge component of the Transmission Charge for such Tier 3 Energy not purchased from Supplier unless Supplier, in its sole judgment, has sufficient time to resell or redirect such transmission and such redirection or resale is accomplished prior to the applicable MISO scheduling deadlines, in which case Kenergy shall be excused from paying the recovered cost associated with the resale of such transmission reservation charges to Supplier.

Section 5.07 Service Obligation. Unless otherwise excused pursuant to Article XI, in the event that Supplier fails to deliver the Tier 3 Energy to the Point of Delivery in accordance with the terms of this Agreement, Supplier will be liable for 100% of the costs (including transmission and ancillary services) incurred by Kenergy in obtaining replacement Tier 3 Energy in a commercially reasonable manner to replace the energy not delivered, less the amount as



determined under Section 5.02 or Section 5.03, as applicable, that Kenergy would have owed to Supplier had Supplier fulfilled its obligation to deliver hereunder. Supplier acknowledges that Kenergy's purchase of Tier 3 Back-up Energy from LEM shall be deemed as acting in a commercially reasonable manner. Notwithstanding any provision to the contrary herein, Supplier shall bear no liability to Kenergy for failure to deliver Tier 3 Energy where such failure is caused by issuance of a Level 5 Transmission Loading Relief Event by MISO that negates Supplier's ability to deliver Tier 3 Energy to Kenergy. In the event Supplier delivers Tier 3 Energy to the Point of Delivery and Kenergy is unable to accept, receive or take away such Tier 3 Energy due to curtailment of transmission service by the Transmission Provider, Supplier shall have met its delivery obligations under this Agreement.

Section 5.08 Kenergy Request for Mitigation. Supplier and Kenergy acknowledge that unforeseen conditions could make Kenergy's purchase of Tier 3 Energy for the benefit of Alcan hereunder uneconomic to Alcan. If such unforeseen conditions occur during the Delivery Term of this Agreement, as determined by Kenergy and Alcan, Kenergy may notify Supplier to use reasonable commercial efforts to promptly mitigate Kenergy's obligation to take and pay for all or a portion of the Tier 3 Energy hereunder ("Mitigation Notice") by reselling such Tier 3 Energy. Kenergy's Mitigation Notice shall state the date on which such mitigation should be initiated ("Mitigation Effective Date"), which shall be no later than ten (10) days after Supplier's receipt of such Mitigation Notification. On and after the Mitigation Effective Date, Kenergy shall continue to pay to Supplier each month: i) if the Tier 3 Energy has not been converted pursuant to Section 5.03, the \$6/MWh adder and the applicable transmission reservation charge component of the Transmission Charge (unless Supplier, in its sole judgment, has sufficient time to resell or redirect such transmission and such redirection or resale is accomplished prior to the

applicable MISO scheduling deadlines, in which case Kenergy shall be excused from paying the recovered cost associated with the resale of such transmission reservation charges to Supplier or (ii) if and to the extent the Tier 3 Energy has been converted pursuant to Section 5.03, the positive difference if any between the Sales Price and the Tier 3 Energy Price, as determined under Section 5.03, less \$6.00/MWh.

## ARTICLE VI

### BILLING

Section 6.01 Monthly Billing. Supplier shall bill Kenergy on a monthly basis for the Monthly Charge based on the Tier 3 Energy provided or made available under this Agreement during the most recently ended Billing Month. Supplier shall issue its bill as soon after the Billing Month's end as detailed information is available. Supplier shall be entitled to make adjustments to the Transmission Charges consistent with the MISO settlement process. Kenergy shall pay Supplier the Monthly Charge in immediately available funds on or before the first Working Day after the 25th of the month in which the bill is issued. To facilitate satisfaction of Kenergy's obligation to Supplier, Kenergy hereby assigns to Supplier all of its rights to collect and enforce collection of amounts due from Alcan with respect to the Tier 3 Energy and related Transmission Charges sold by Supplier under this Agreement. Supplier releases Kenergy from further liability under this Agreement for amounts subject to such assignment to Supplier, provided that such release does not relieve Kenergy of its other liabilities under this Agreement. Kenergy agrees to cooperate with and assist Supplier with respect to any collections of amounts due from Alcan to Kenergy which are assigned to Supplier pursuant to this section, provided that

Supplier will reimburse Kenergy for any commercially reasonable expenses Kenergy incurs in providing such cooperation and assistance.

Section 6.02 Late Charge. In the event any bill rendered by Supplier is not paid on the due date, interest will accrue and become payable by Kenergy to Supplier on all unpaid amounts at a rate of 4 percentage points over the then-effective prime commercial lending rate per annum published in the Money Rates section of *The Wall Street Journal* commencing on the first Working Day after the due date. (Should *The Wall Street Journal* discontinue publication of the prime commercial lending rate, the Parties shall agree on a mutually acceptable alternative source for that rate.)

Section 6.03 Disputed Billing. In the event any portion of any bill is disputed by Kenergy, the disputed amount shall be paid, under protest, when due. If the protested portion of the payment is found to be incorrect, Supplier shall promptly cause to be refunded to Kenergy (or to Alcan on behalf of Kenergy, as applicable) the amount that was not then due and payable, together with interest accrued on each calendar day from the date of payment by Kenergy to the date the refund is made. The same interest rate and computation method provided for in Section 6.02 shall be applied to the determination of interest due to Kenergy on the refund.

Section 6.04 Non-Waiver. No payment made by Kenergy (or Alcan) pursuant to this Article VI shall constitute a waiver of any right of Kenergy (or Alcan) to contest the correctness of any charge or credit.

## ARTICLE VII

### BREACH AND DEFAULT

Section 7.01 Event of Default. The occurrence of any of the following events, unless otherwise excused pursuant to the terms of this Agreement, constitutes a breach by the relevant Party under this Agreement and if not curable or not cured within the applicable cure period (indicated in parenthesis) shall constitute a default:

(a) Failure by a Party to make any payment as and when due hereunder (curable within 3 days following notice of default from the non-defaulting party to the defaulting party and Alcan);

(b) Failure of a Party to perform any material duty imposed on it by this Agreement (curable within 30 days following notice of default from the nondefaulting party to the defaulting party and Alcan);

(c) Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article XII of this Agreement (not curable);

(d) Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency law, or voluntarily taking advantage of any such laws by answer or otherwise or the commencement of involuntary proceedings under any such laws by a Party (curable by withdrawing the petition or dismissing the proceeding within 30 days after filing).

(e) Assignment by a Party for the benefit of creditors, other than as expressly provided herein (not curable);

(f) Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property (curable by discharge of such receiver or trustee within 60 days after appointment).

(g) Failure, inability or refusal of Kenergy to cure a breach or default by Kenergy

under the Alcan Power Agreement which gives rise to a termination of that agreement, or any termination by Kenergy of the Alcan Power Agreement in breach or default thereof (not curable).

Section 7.02 Non-Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein shall not be deemed a waiver of any other term, covenant or condition, nor shall it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

## ARTICLE VIII

### REMEDIES OF THE PARTIES

Section 8.01 Remedies, General: In event of a default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity.

Section 8.02 Remedies Scope: Remedies provided in this Agreement are cumulative, unless specifically designated to be an exclusive remedy. Nothing contained in this Agreement shall be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provisions herein provided that:

(a) Neither Party is entitled to recover from the other Party any consequential, incidental or special damages including without limitation, lost profits; and

(b) Kenergy's sole and exclusive right to damages or other relief for a failure by Supplier to deliver Tier 3 Energy as required by this Agreement shall be as set forth in Section 5.07.

(c) Except as provided in Section 5.08, Supplier's sole and exclusive right to damages if Kenergy commits an event of default shall be equal to the positive difference if any between the Tier 3 Energy Price, as determined under Section 5.02 or Section 5.03, as applicable, and the Sales Price for each megawatt-hour of energy not received as a result of the event of default plus any Transmission Charge not already reimbursed by Kenergy that are incurred by Supplier as a result of the transmission reservations procured in anticipation of the Supplier's delivery obligation hereunder.

## ARTICLE IX

### ADDITIONAL COVENANTS OF THE PARTIES

Section 9.01 General. Kenergy covenants that:

(a) It will not intentionally take any action that would shorten the term of this Agreement or otherwise adversely affect the economic value of this Agreement to Supplier or Alcan.

(b) It will not resell any Tier 3 Energy purchased from Supplier under this Agreement to any user other than Alcan and will require that any Tier 3 Energy that Kenergy purchases from Supplier under this Agreement and resells to Alcan must be consumed by Alcan for its Sebree Facility except as expressly permitted with the written authorization of Supplier; provided, that in the event of an Uncontrollable Force that renders Alcan unable to receive and utilize power purchased by Kenergy from Supplier hereunder, Kenergy may take the action contemplated in Section 5.08 of this Agreement and Section 26.6 of the Alcan Power Agreement.

(c) It will not take any action or support any action by others that in any manner would impede Kenergy's ability to fulfill its obligations to Supplier under this Agreement;

(d) It will not waive compliance by Alcan with any of its obligations under the Alcan Power Agreement or fail to fully enforce the Alcan Power Agreement against Alcan in any manner that would adversely affect Kenergy's ability to fulfill its obligations under this Agreement; and

(e) It will not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Alcan Power Agreement to any party without causing the transferee of the Alcan Power Agreement to assume and agree to perform all of Kenergy's obligations under this Agreement which arise following that assignment or transfer and without complying with Article XII.

Section 9.02 Supplier Audit. Kenergy will permit Supplier to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Kenergy relating to its service to Alcan under the Alcan Power Agreement, including (for example, but not by way of limitation) scheduled usage, meter records and billing records and records related to power supplied hereunder as such records relate to a determination of the amount of Tier 3 Energy supplied by Supplier under this Agreement and delivered to or used by Alcan. Kenergy shall retain all documentation applicable to service to Alcan under the Alcan Power Agreement for a period of three years and consistent with the requirements of Section 25 of the Alcan Power Agreement.

Section 9.03 Kenergy Audit. Supplier will permit Kenergy to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Supplier relating to its service to Kenergy under this Agreement, including (for example, but not by way of limitation) scheduled deliveries, meter records and billing records and records related to payments made by Alcan to Supplier pursuant to the assignment described in Section 6.01 of

this Agreement and such other documents related to payment for and determination of the amount of Tier 3 Energy supplied by Supplier and delivered to Kenergy for resale and delivery to Alcan under this Agreement. Supplier shall retain all documentation applicable to service to Kenergy under this Agreement for a period of three years.

Section 9.04 Assurance. Supplier covenants that it will not take any action or support any action by others that in any manner would impede Supplier's ability to fulfill its obligations to Kenergy under this Agreement and will not intentionally take any action that would diminish or otherwise adversely affect the economic value of this Agreement to Kenergy or Alcan.

## ARTICLE X

### DISPUTE RESOLUTION AND CHOICE OF LAW

Section 10.01 Dispute Resolution. Should any dispute arise between the Parties concerning the terms or conditions of this Agreement, the duties or obligations of the Parties under this Agreement, or the implementation, interpretation or breach of this Agreement, either Party may request in writing a meeting between an authorized representative of each of the Parties to discuss and attempt to reach a resolution of the dispute. Such meeting shall take place within ten (10) days (or such shorter or longer time as agreed upon by the Parties) of the request. Any resolution mutually agreed upon by the Parties shall be reduced to written form and signed by each Party, and thereafter shall be binding upon each Party to this Agreement. Absent such resolution, the Parties shall be entitled to pursue all rights and remedies that they may have at law, in equity or pursuant to this Agreement (subject to the limitations set forth in the Agreement) to resolve that dispute. Notwithstanding the provisions of this Section 10.01, each



Party will at all times be free to seek injunctive relief, where its delay in doing so could result in irreparable injury.

Section 10.02 Controlling Law. This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules.

Section 10.03 Venue. The Parties hereby agree that the Courts of the Commonwealth of Kentucky will have nonexclusive jurisdiction over each and every judicial action brought under this Agreement to enforce this Agreement or for breach of this Agreement, provided that the subject matter of such dispute is not a matter reserved by law to the U.S. federal judicial system, to the FERC or to the KPSC, and provided further that the Parties are not precluded from filing actions in or removing actions to a federal district court under such court's diversity of citizenship jurisdiction. In any such federal district court action, venue shall lie with the U.S. District Court for the Western District of Kentucky. The Parties hereby agree to submit to the jurisdiction of such courts for such purposes. Nothing in this paragraph prohibits a Party from referring to the FERC or to the KPSC any matter properly within its jurisdiction.

## ARTICLE XI

### UNCONTROLLABLE FORCES

Section 11.01 Application. No Party shall be considered to be in breach or default in the performance of any of its obligations under this Agreement when a failure of performance is due to an Uncontrollable Force, except as enumerated in this Article XI. The Party claiming failure or inability to perform shall promptly contact the other Party and provide written notice that an Uncontrollable Force has caused failure of performance. In the event either Party shall be

unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties (other than obligations to make payments then due or becoming due with respect to performance prior to such period), to the extent that they are affected by such Uncontrollable Force, shall be suspended during the continuance of any inability so caused, but for no longer period. A Party shall not be relieved of liability for failing to perform if such failure is due to causes arising out of its own negligence or willful acts or omissions, or to removable or remediable causes which it fails to remove or remedy with reasonable dispatch.

Section 11.02 Obligation to Mitigate. Either Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability with all reasonable dispatch.

Section 11.03 Notification. Kenergy and Supplier agree to notify the other Party and Alcan at the earliest practicable time following (i) the occurrence of any Uncontrollable Force which renders such Party incapable of performing hereunder, or (ii) the time at which such Party has reason to expect that such an Uncontrollable Force is imminent. Kenergy also agrees to so notify Supplier in the event that Kenergy receives notice from Alcan or the Transmission Provider that such entity anticipates that it will be unable to perform its obligations to Kenergy (under any contract or agreement that affects Kenergy's performance under this Agreement) due to an Uncontrollable Force.

Section 11.04 Labor Dispute. Nothing contained herein shall be construed to require a Party to prevent or to settle a labor dispute against its will.

## ARTICLE XII

### SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Party, except that (a) assignment may be made by either Party without the consent of the other Party to such person or entity as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the stock or other ownership interest of such Party, and (b) Supplier may assign or delegate all or any portion of its rights or obligations under this Agreement to any affiliate or entity controlled by Supplier or any successor thereto, without the prior consent of Kenergy. When consent is required, consent shall not be unreasonably withheld, conditioned or delayed. In no event shall either Party assign this Agreement to any third party that does not have adequate financial capacity or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, nor shall either Party assign this Agreement on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties. No permitted assignment or transfer shall change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

### ARTICLE XIII

#### REPRESENTATIONS AND WARRANTIES:

Section 13.01 Kenergy Representations and Warranties. Kenergy hereby represents and warrants to Supplier as follows:

(a) Kenergy is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the term hereof.

(b) The execution, delivery and performance of this Agreement by Kenergy has been duly and effectively authorized by all requisite corporate action.

(c) Kenergy has reserved network transmission service pursuant to Big Rivers' Open Access Transmission Tariff as reasonably required for Kenergy to deliver to Alcan the Tier 3 Energy purchased by Kenergy from Supplier pursuant to this Agreement.

Section 13.02 Supplier Representations and Warranties. Supplier hereby represents and warrants to Kenergy as follows:

(a) Supplier is a corporation duly organized and validly existing and in good standing under the laws of the state of Ohio and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the term hereof.

(b) The execution, delivery and performance of this Agreement by Supplier has been duly and effectively authorized by all requisite corporate action.

(c) Without further investigation, Kenergy can rely upon any written notice from Supplier.

(d) Supplier has secured an appropriate amount of firm transmission service from MISO during the term of this Agreement to enable Supplier to deliver the Tier 3 Energy to the Point of Delivery.

## ARTICLE XIV

### AMENDMENTS

Section 14.01 Writing Required. This Agreement may be amended, revised or modified by, and only by, a written instrument duly executed by both Parties.

Section 14.02 Waiver. The method set forth in Sections 5.02 and 5.03 of this Agreement under which the Monthly Charge is calculated shall not be subject to change through application to the FERC pursuant to the provisions of Section 205 of the Federal Power Act absent the agreement of each of the Parties to this Agreement. Accordingly, neither Party shall petition FERC or any other governmental agency pursuant to the provisions of Section 205 or 206 of the Federal Power Act or any other provision of law to amend Sections 5.02 and 5.03 of this Agreement absent the agreement in writing of the other Party nor shall any Party cooperate with any other person(s), or request or encourage any other person(s) to make such petition; and each Party further agrees to oppose any action to change such rates, including but not limited to pursuing appeals of any order or decision directing such change, and to bear all of its own costs of such opposition including attorneys' fees.

## ARTICLE XV

### GENERAL

Section 15.01 Good Faith Efforts: The Parties agree that each shall in good faith take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement; provided, that no Party shall be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such

consent, agreement or approval shall not be unreasonably withheld, conditioned, or delayed. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, such notice will be given as far in advance as is reasonably practical.

Section 15.02 Information Exchange: The Parties shall cooperate in the exchange of information between themselves in order to further the purposes of this Agreement, to verify compliance with the terms of this Agreement and to keep each other fully informed of facts which could constitute a material change in any of the business or financial relationships contemplated by this Agreement.

Section 15.03 Notices: Except as herein otherwise expressly provided, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or by any qualified and recognized delivery service, or sent by United States mail postage prepaid to the persons specified below unless otherwise provided for in this Agreement.

To Supplier:

The Cincinnati Gas & Electric Company  
Attn: Contract Administration, EA503  
139 East Fourth Street  
Cincinnati, Ohio 45202  
Facsimile: 513-519-5871

To Kenergy:

Kenergy Corp.  
P.O. Box 18  
Henderson, KY 42419-0018  
Attention: Mark A. Bailey, President/CEO  
Facsimile: (270) 826-3999

To Alcan:

Alcan Primary Products Corporation  
Highway 2096, Near Sebree, Ky.  
Henderson, Kentucky 42419-0044  
Attention: Pam Schneider, Treasurer  
Facsimile: (270) 521-7305

Either Party may at any time, by written notice to the other Party, change the designation or address of the person specified to receive notices pursuant to this Agreement.

Section 15.04 Severability: If any clause, sentence, paragraph or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unenforceable or invalid, such judgment shall not affect, impair or invalidate the remainder of this Agreement but shall be confined in its operation to the clause, sentence, paragraph or any part thereof directly involved in the controversy in which the judgment is rendered, unless the loss or failure of such clause, sentence, paragraph or part of this Agreement shall materially adversely affect the benefit of the bargain to be received by either or both of the Parties, in which event the Parties shall promptly meet and use their good faith best efforts to renegotiate this Agreement in such a fashion as will restore the relative rights and benefits of both Parties or, absent such renegotiation, the Party(s) that was so materially adversely affected shall be entitled, in its discretion, to terminate this Agreement.

Section 15.05 Singular and Plural References: Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number and vice versa.

Section 15.06 Survival of remedies. Each provision of this Agreement providing for payment for Tier 3 Energy delivered or made available or related to remedies for default, damage claims, indemnification or payment of other liabilities will survive the termination of this

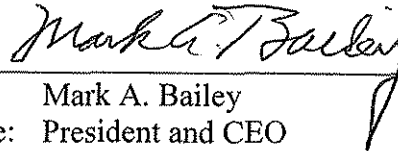
Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

Section 15.07 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter addressed herein.



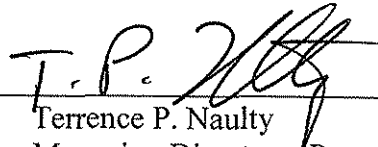
IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.



By: Mark A. Bailey  
Title: President and CEO

THE CINCINNATI GAS & ELECTRIC  
COMPANY



By: Terrence P. Naulty  
Title: Managing Director - Power Origination

*Executing Agent*

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