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December 7, 2006

**FEDEX**

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

**RECEIVED**

**DEC 08 2006**

**PUBLIC SERVICE  
COMMISSION**

Re: Kenergy Corp.  
2007 TIER 3 Energy for Alcan Primary Products  
Corporation  
Wholesale Supplier: Big Rivers  
Electric Corporation

Dear Ms. O'Donnell:

*Case No. 2006-00553*

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

At the request of Alcan Primary Products Corporation ("Alcan") Kenergy has entered into a wholesale agreement with Big Rivers Electric Corporation ("Big Rivers") for the purchase of four (4) blocks of energy to be sold retail to Alcan commencing January 1, 2007. 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.

Additionally, the Commission is requested to issue a separate acceptance letter regarding the Agreement for Tier 3 Energy between Big Rivers and Kenergy, which is the wholesale contract for this transaction.

Page Two  
December 7, 2006

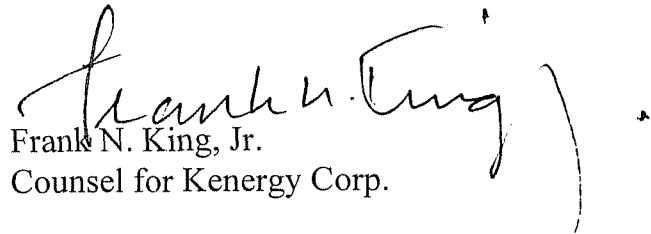
We respectfully request that the notice period be shortened to 20 days and that the Commission accept this contract effective as of January 1, 2007, which is the date the service is to commence.

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. James Miller  
Mr. David Hamilton  
Mr. David Spainhoward

## REQUEST FOR POWER

Alcan Primary Products Corporation (“Alcan”) hereby requests Kenergy Corp. (“Kenergy”) to purchase the following volumes of Tier 3 Energy from Big Rivers Electric Corporation (“Big Rivers”) in accordance with the rates, terms and conditions set forth in the Agreement for Tier 3 Energy dated November 30, 2006, between Kenergy and Big Rivers (the “Tier 3 Agreement”):

Block A Energy - a block of 72 MW of System Firm Tier 3 Energy as set forth in Section 5.01 of the Tier 3 Agreement, for delivery January 1, 2007 through December 31, 2007;

Block B Energy - a block of 34 MW of Tier 3 Energy Firm L.D. as set forth in Section 6.02 of the Tier 3 Agreement, for delivery January 1, 2007 through December 31, 2007;

Block C Energy - a block of 12 MW of Tier 3 Energy Firm L.D. as set forth in Section 7.02 of the Tier 3 Agreement, for delivery January 1, 2007 through December 31, 2007; and


Block D Energy – a block of up to 15 MW of Fully Interruptible Tier 3 Energy as set forth in Section 8.01 of the Tier 3 Agreement, for delivery January 1, 2007 through December 31, 2007

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 November, 2006.

ALCAN PRIMARY PRODUCTS CORPORATION

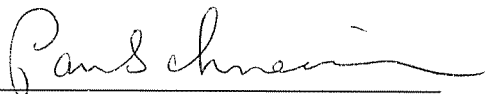
By:   
Pam Schneider  
Treasurer

CONSENT

Alcan Primary Products Corporation (“Alcan”) hereby agrees with Kenergy Corp. (“Kenergy”) and Big Rivers Electric Corporation (“Big Rivers”) that Alcan has reviewed the Agreement for Tier 3 Energy dated November 30, 2006 (“Tier 3 Agreement”) and hereby consents to the execution, delivery and performance of the Tier 3 Agreement by Kenergy and Big Rivers for all purposes.

Dated: November 30, 2006

ALCAN PRIMARY PRODUCTS CORPORATION

By:   
Pam Schneider  
Treasurer

**AGREEMENT FOR TIER 3 ENERGY**

by and between

**KENERGY CORP.**

and

**BIG RIVERS ELECTRIC CORPORATION**

(ALCAN)

**November 30, 2006**

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AGREEMENT FOR TIER 3 ENERGY  
BETWEEN  
KENERGY CORP.  
AND  
BIG RIVERS ELECTRIC CORPORATION  
(ALCAN)

ARTICLE I: PARTIES

The Parties to this Agreement, dated as of this 30th day of November, 2006 are KENERGY CORP., a Kentucky corporation organized under KRS Chapter 279 (“Kenergy”) and BIG RIVERS ELECTRIC CORPORATION, a Kentucky corporation (“Supplier” or “Big Rivers”). 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” between Kenergy and Alcan dated July 15, 1998 (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 that respond to Alcan’s requirements.

Section 2.05 Alcan has made a request for certain volumes of 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 to Kenergy, the following blocks of Tier 3 Energy:

Block A – a block of 72 MW of System Firm Tier 3 Energy for delivery in year 2007, as set forth in Article V of this Agreement (“Block A Energy”);

Block B – a block of 34 MW of Firm L.D. Tier 3 Energy for delivery in year 2007, as set forth in Article VI of this Agreement (“Block B Energy”), such energy being purchased by Big Rivers through Southern Illinois Power Cooperative from certain suppliers in MISO;

Block C – a block of 12 MW of Firm L.D. Tier 3 Energy for delivery in year 2007, as set forth in Article VII of this Agreement (“Block C Energy”), such energy being purchased by Big Rivers from Fortis Energy Marketing & Trading GP; and

Block D – a block of up to 15 MW of fully interruptible Tier 3 Energy subject to scheduling requirements and as otherwise set forth in Article VIII of this Agreement (“Block D Energy”).

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 amendment to which the Parties may agree in writing from time to time and is consented to by Alcan.

- Section 3.02 Alcan: Alcan Primary Products Corporation, a Texas corporation, its successors and assigns.
- Section 3.03 Alcan Power Agreement: as defined in Section 2.02.
- Section 3.04 A.M.: A.M., Central Standard Time or Central Daylight Time, as applicable.
- Section 3.05 Big Rivers: Big Rivers Electric Corporation, its successors and assigns.
- Section 3.06 Big Rivers Resources: The sum of (1) the maximum amount of Energy that Supplier has the contractual right to purchase from WKEC under the PPA, and (2) the amount of Energy that Supplier purchases, at any given time and from time to time in its sole discretion, from SEPA under a contract between Supplier and SEPA (Contract No. 89-00-1501-637), as amended.
- Section 3.07 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 3.08 Block A Base Rate: As defined in Section 5.01.
- Section 3.09 Block A Energy: The 72 MW of System Firm Tier 3 Energy to be delivered, as set forth in Section 5.01, subject to Supplier's right to make Permitted Curtailments.
- Section 3.10 Block A Buy-Through Energy: Block A Energy that Supplier may provide at the Block A Buy-Through Price pursuant to Section 5.05(c) or at the Block A Incremental Price pursuant to Section 5.05(f).
- Section 3.11 Block A Buy-Through Price: The price per megawatt hour that Kenergy may elect to pay to Supplier pursuant to Section 5.05(c), as an alternative to a Permitted Curtailment.

- Section 3.12 Block A Incremental Price: The price per megawatt hour that Kenergy shall pay to Supplier pursuant to Section 5.05(f) for the incremental amount of Block A Buy-Through Energy (in excess of the amount, if any, set forth under a Notice of Curtailment) that was determined after the fact to have existed in any hour.
- Section 3.13 Block A Notice of Curtailment: The notice that Supplier undertakes to send, when feasible, to Kenergy and Alcan pursuant to Section 5.05, defining the volume and duration of any Permitted Curtailment.
- Section 3.14 Block B Base Rate: As defined in Section 6.02.
- Section 3.15 Block B Energy: The 34 MW of Firm L.D. Tier 3 Energy to be delivered, as set forth in Section 6.02 herein.
- Section 3.16 Block B Variable Charge: as defined in Section 6.01.
- Section 3.17 Block C Energy: The 12 MW of Firm L.D. Tier 3 Energy to be delivered, as set forth in Section 7.02 herein.
- Section 3.18 Block C Variable Charge: As defined in Section 7.01(iii).
- Section 3.19 Block D Base Rate: As defined in Section 8.01.
- Section 3.20 Block D Energy: Up to 15 MW of Tier 3 Energy to be delivered, subject to scheduling requirements and Supplier's right of interruption, as set forth in Sections 8.01, 8.02 and 8.03 herein.
- Section 3.21 Block D Buy-Through Energy: Block D Energy that Supplier may be obligated to provide at the Block D Buy-Through Price pursuant to Section 8.03.

- Section 3.22 Block D Buy-Through Price: The price per megawatt hour that Kenergy may elect to pay to Supplier pursuant to Section 8.03, as an alternative to an Interruption.
- Section 3.23 Block D Notice of Interruption: The notice sent by Supplier to Kenergy and Alcan pursuant to Section 8.03, defining the volume and duration of an Interruption.
- Section 3.24 Block D Scheduled Energy: Block D Energy that has been scheduled in accordance with Section 8.02.
- Section 3.25 Century: Century Aluminum of Kentucky General Partnership, its successors and assigns.
- Section 3.26 Century Agreement: The Agreement for Electric Service between Big Rivers and Kenergy dated November 30, 2006, for the benefit of Century and providing for the sale and delivery of certain volumes of Tier 3 Energy in 2007 on substantially the same terms and conditions as are applicable to Block A Energy, Block B Energy, Block C Energy and Block D Energy as set forth in this Agreement.
- Section 3.27 Century Power Agreement: The Agreement for Electric Service between Kenergy and Century dated July 15, 1998, as amended.
- Section 3.28 Delivery Term: As defined in Section 4.05.
- Section 3.29 Effective Date: The date specified in Section 4.01.
- Section 3.30 Energy: The flow of electricity denominated in kilowatt-hours or megawatt-hours.
- Section 3.31 FERC: The Federal Energy Regulatory Commission or any successor agency.



- Section 3.32 Firm L.D.: Financially firm power with liquidated damages.
- Section 3.33 Fortis: Fortis Energy Marketing & Trading GP, its successors and assigns.
- Section 3.34 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 3.35 Interruption: The interruption by Supplier of the delivery of Block D Energy pursuant to the provisions of Section 8.03.
- Section 3.36 Kenergy: Kenergy Corp., its successors or assigns.
- Section 3.37 KPSC: The Kentucky Public Service Commission or any successor agency.
- Section 3.38 Level 5 Transmission Loading Relief Event: As defined by the North American Electric Reliability Council, as amended from time to time and as set forth in Section 7.06.
- Section 3.39 Member Cooperatives: Kenergy Corp., Meade County Rural Electric Cooperative Corporation and Jackson Purchase Electric Corporation.
- Section 3.40 MISO: The Midwest Independent Transmission System Operator, Inc., its successors and assigns.
- Section 3.41 Monthly Charge: The total charge in each Billing Month for Tier 3 Energy delivered or made available under this Agreement (including the charges set forth in Section 9.01) and computed in accordance with this Agreement.
- Section 3.42 NERC Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Section 3.43 Net Resource Deficiency: The circumstances whereby, in any hour of the Delivery Term, the amount of the Big Rivers Resources less Priority System Sales is insufficient, in whole or in part, to satisfy Big Rivers' delivery obligations of Block A Energy to Kenergy for the benefit of both Alcan and Century under this Agreement and the Century Agreement, respectively.

Section 3.44 Off-Peak Hours: All hours except On-Peak Hours.

Section 3.45 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 3.46 Open Access Transmission Tariff (OATT). 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 3.47 P.M.: Means P.M., Central Standard Time or Central Daylight Time, as applicable.

Section 3.48 Permitted Curtailment: The right of Supplier, as set forth in Section 5.03, to curtail, or deem after the fact as curtailed, the delivery of Block A Energy in any hour when a Net Resource Deficiency exists but only to the extent a Net Resource Deficiency exists; provided, however, that Big Rivers may in its sole discretion elect not to implement a Permitted Curtailment during a Net Resource Deficiency.

Section 3.49 Points of Delivery:

- (a) Alcan Point of Delivery – The existing set of meters at the Reid Substation or such other point of delivery to which the parties mutually agree.
- (b) Block B Point of Delivery - any point of connection between the Big Rivers transmission system and an interconnected transmission system.
- (c) Block C Point of Delivery - any point of connection between the Big Rivers transmission system and an interconnected transmission system.

Section 3.50 PPA: The Power Purchase Agreement dated July 15, 1998 between Big Rivers and LG&E Energy Marketing Inc., as amended, subsequently assigned to WKEC by Assignment and Assumption Agreement dated April 30, 2006.

Section 3.51 Priority System Sales: The amount of Energy, in any hour, that Big Rivers sells (a) to its Member Cooperatives (exclusive of sales of Tier 3 Energy to Kenergy under this Agreement and the Century Agreement) and (b) to any other third party purchaser during On-Peak Hours during the months of January, February, March, April, May, September, October, November and December, provided however, that such On-Peak sales under this Section 3.51 may not exceed 51 MW in any hour.

Section 3.52 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 3.53 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 3.54 SEPA: Southeastern Power Administration, a governmental agency, its successors and assigns.

Section 3.55 SIPC: Southern Illinois Power Cooperative, its successors and assigns.

Section 3.56 Supplier: Big Rivers Electric Corporation, its successors and assigns.

Section 3.57 System Energy Loss Factor. The percentage of Energy losses incurred on the transmission system of the Transmission Provider, as determined pursuant to the OATT of the Transmission Provider as currently in effect or as may be modified from time to time.

Section 3.58 System Firm: Block A Energy that Big Rivers is required to sell and deliver in any hour to Kenergy pursuant to this Agreement to the extent that Big Rivers does not implement a Permitted Curtailment.

Section 3.59 Transmission Provider: Big Rivers Electric Corporation, its successors or assigns, in its capacity as provider of transmission and ancillary services within the Big Rivers control area.

Section 3.60 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

## 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 all 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 7.03 (termination provision with respect to Block C only), Section 11.01 (default) or by mutual agreement of the Parties, this Agreement shall terminate with the expiration of the Delivery Term.

Section 4.02 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 Articles V, VI, VII and VIII are subject to the condition that the Parties have received all regulatory and other approvals, permits and consents necessary for the purchase and sale of Tier 3 Energy under this Agreement, and any amendment thereto, and the resale of the Tier 3 Energy by Kenergy to Alcan.

Section 4.03 Notice of 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

December 31, 2006 with respect to either Block A Energy, Block B Energy, Block C Energy or Block D Energy, either Party, upon written notice to the other Party, may terminate that portion of the Agreement relating to such block(s) of Tier 3 Energy.

Section 4.05 Term. The delivery obligation of Supplier and the purchase obligation of Kenergy with respect to Block A Energy, Block B Energy, Block C Energy and Block D Energy shall commence at 12:00 AM on January 1, 2007 and terminate at midnight on December 31, 2007 (the "Delivery Term").

#### ARTICLE V: PURCHASE AND SALE OF BLOCK A ENERGY

Section 5.01 Block A Energy and Rate. During the Delivery Term, Supplier shall sell and deliver to Kenergy at the Alcan Point of Delivery, subject to Permitted Curtailments, and Kenergy shall purchase from Supplier and pay for a block of 72 MW of Energy around the clock (24 hours x 7 days) ("Block A Energy"). The rate for Block A Energy for all hours of delivery shall be \$52.31 per MWh ("Block A Base Rate"). In the event but only in the event Block A Energy is acquired by Supplier from WKEC under the PPA, the Block A Base Rate is bundled to include ancillary services and kilovars of reactive power demand assuming a ninety percent (90%) power factor. Where Block A Energy is acquired by Supplier other than from WKEC under the PPA, charges for ancillary services and reactive power shall be calculated in accordance with Section 9.01.

Section 5.02 Rates Not Subject To Change. Except as set forth in Section 5.05, the rate for Block A Energy is not subject to change over the Delivery Term. Kenergy shall purchase, accept delivery and pay for the full amount of the Block A Energy made available by Supplier. If Kenergy or Alcan does not accept delivery of the full amount of such Energy, the Monthly Charge shall include the amount that would have been due had the full amount of such Energy been accepted.

Section 5.03 Permitted Curtailment. Supplier shall be obligated to sell and deliver Block A Energy on a Firm L.D. basis in every hour during the Delivery Period except to the extent that Big Rivers has implemented a Permitted Curtailment. With respect to any hour when a Net Resource Deficiency is determined to exist or to have existed, Big Rivers may in its sole discretion (i) implement a full or partial Permitted Curtailment of Block A Energy or (ii) decline to implement a Permitted Curtailment. Big Rivers may after the fact determine in good faith that a Net Resource Deficiency existed in a prior hour or hours, and upon such determination, Big Rivers may, in its sole discretion, after the fact implement a Permitted Curtailment of Block A Energy. However, in the event that a Permitted Curtailment is implemented after the fact with respect to any hour or hours, Big Rivers may implement the Permitted Curtailment of Block A Energy only to the extent of the Net Resource Deficiency.

Section 5.04 Allocation of Energy Between Alcan and Century During a Permitted Curtailment. In the event of a Net Resource Deficiency during any hour, then the number of MWh to be delivered by Kenergy to Alcan under this Agreement at the Block A Base Rate shall be reduced based on the number of MWh of Net

Resource Deficiency for that hour, multiplied by a factor the numerator of which is 72 and the denominator of which is 157. In the event the Supplier is able to determine in advance that it will implement a Permitted Curtailment of Block A Energy (but not when such determination is made after the fact), the calculated amount of reduction of Block A Energy to be delivered at the Block A Base Rate shall be rounded up or down to the closest whole MWh.

Section 5.05 Block A Buy-Through Energy. In the event Supplier is able to determine in advance that it will implement a Permitted Curtailment of Block A Energy, Supplier shall initiate the following procedures:

(a) Supplier shall undertake to send a Notice of Curtailment of at least thirty (30) minutes in advance to Kenergy and Alcan.

(b) A Notice of Curtailment may be made orally and followed by immediate confirmation transmitted by facsimile, and shall designate the amount of power to be curtailed and the duration of such curtailment.

(c) In each Notice of Curtailment Supplier may, at its discretion (but without being required), offer an alternative price or prices per megawatt hour ("Block A Buy-Through Price") upon which Supplier would make the curtailed amount of Block A Energy available to Kenergy during the specified hour or hours of curtailment. Kenergy shall have ten (10) minutes from the time it receives verbal Notice of Curtailment to notify Supplier that it accepts the Block A Buy-Through Price for the Block A Energy comprising all or any part of the designated curtailment ("Block A Buy-Through Energy"). Kenergy will follow verbal acceptance of the Block A Buy-Through Price with a facsimile confirmation. The failure of Kenergy to notify Supplier of its acceptance of the Block A Buy-Through Price during this ten-minute period shall constitute a rejection of the Block A Buy-Through Price, and the curtailment shall thereafter be implemented in accordance with the Notice of Curtailment.

(d) Upon Kenergy's acceptance of the Block A Buy-Through Price for the Block A Buy-Through Energy, the obligation of Supplier to provide the Block A Energy in whole or in part, as the case may be, shall be re-established, provided



that Supplier shall charge to Kenergy the Block A Buy-Through Price for such Block A Buy-Through Energy instead of the Block A Base Rate.

(e) During any period of curtailment, Supplier may notify Kenergy and Alcan of its willingness to terminate the curtailment and resume the delivery of Block A Energy under the Block A Base Rate. Upon notification from Supplier terminating the curtailment, Kenergy shall purchase and accept delivery of Block A Energy for resale to Alcan at the start of the hour following such notice. Supplier shall provide Kenergy and Alcan at least ten (10) minutes advance notice of the termination of an curtailment.

(f) In the event that after the fact and for any hour, a Permitted Curtailment is either implemented or is increased from the amount specified in a prior Notice of Curtailment, the incremental amount of Buy-Through Energy (in excess of the amount, if any, set forth under a Notice of Curtailment) so determined shall be priced by Big Rivers to Kenergy at the weighted average cost per MWh ("Block A Incremental Price") that Big Rivers incurred to acquire and supply the incremental amount of Buy-Through Energy sold to Kenergy for resale to both Alcan and Century during that hour.

Section 5.06 Service Obligation. Unless otherwise excused pursuant to Article XV, in the event that Supplier fails to deliver the Block A Energy or Block A Buy-Through Energy, as applicable, to the Alcan Point of Delivery in accordance with the terms of this Agreement, Supplier will be liable for 100% of the costs incurred by Kenergy in obtaining replacement Tier 3 Energy in a commercially reasonable manner, less the amount that Kenergy would have owed to Supplier had Supplier fulfilled its obligation to deliver hereunder.

## ARTICLE VI: PURCHASE AND SALE OF BLOCK B ENERGY

Section 6.01 The MISO Supply. During the Delivery Term, Big Rivers will acquire through SIPC 75 MW of Firm L.D. Energy from certain suppliers within MISO to be delivered to Big Rivers at the Block B Point of Delivery around the clock (24 hours x 7 days) for sale to Kenergy (and for resale by Kenergy to Alcan under the

Alcan Power Agreement and to Century under the Century Power Agreement). Kenergy acknowledges and agrees that the price of the Energy so acquired by Big Rivers will have (i) a fixed energy component, (ii) a fixed transmission component and (iii) a variable component that will include (x) amounts that MISO will charge directly to Big Rivers for certain transmission related services for delivery of the Energy to SIPC (including any MISO adjustments to the above costs, whenever made) and (y) any amounts that Big Rivers may be required to pay to its suppliers in addition to the fixed component, including without limitation, any amount payable upon termination by reason of default of the supply arrangements between Big Rivers and such suppliers (including the suppliers with which Big Rivers has supply arrangements and any other suppliers from which Big Rivers acquires Block B Energy) (the variable component under this (iii) hereafter called the "Block B Variable Charge").

Section 6.02 Block B Energy and Rate. During the Delivery Term, Supplier shall sell and deliver to Kenergy and Kenergy shall purchase from Supplier and pay for a block of 34 MW of Firm L.D Energy around the clock (24 hours x 7 days) at the Block B Point of Delivery ("Block B Energy"). The rate for Block B Energy for all hours of delivery shall be \$49.70 per MWh ("Block B Base Rate") plus the Block B Variable Charge such that the aggregate price under this Section 6.02 shall produce the same amount that Big Rivers is obligated to pay for delivery of the Block B Energy at the Block B Point of Delivery plus \$0.10 per MWh.

Section 6.03 Rates Not Subject To Change. The Block B Base Rate is not subject to change over the Delivery Term. Kenergy shall purchase, accept delivery and pay for the

full amount of Block B Energy made available by Supplier. If Kenergy or Alcan does not accept delivery of the full amount of such Energy, the Monthly Charge shall include the amount that would have been due had the full amount of such Energy been accepted.

Section 6.04 System Losses. The amount of Block B Energy delivered to Kenergy at the Block B Point of Delivery shall be transmitted by Kenergy to the Alcan Point of Delivery, and the amount of such Block B Energy delivered to Alcan shall be reduced by the System Energy Loss Factor.

Section 6.05 Service Obligation. Unless otherwise excused pursuant to Article XV, in the event that Supplier fails to deliver the Block B Energy to Kenergy at the Block B Point of Delivery in accordance with the terms of this Agreement, Supplier will be liable for 100% of the costs incurred by Kenergy in obtaining replacement Tier 3 Energy in a commercially reasonable manner, less the amount that Kenergy would have owed to Supplier had Supplier fulfilled its obligation to deliver hereunder.

Section 6.06 Right to Control. In the event of a termination of supply arrangements by reason of default as referenced in Section 6.01(iii)(y), Kenergy upon payment of the Monthly Charge shall have the right to control the determination of any settlement amounts payable or receivable by Big Rivers, as applicable, and provided further that any settlement amounts receivable by Big Rivers shall inure to the benefit of Kenergy.

## ARTICLE VII: PURCHASE AND SALE OF BLOCK C ENERGY

Section 7.01 The Fortis Supply. During 2007, Big Rivers will acquire from Fortis 25 MW of Firm L.D. Energy, subject to interruption upon a Level 5 Transmission Loading Relief Event, at the Block C Point of Delivery around the clock (24 hours x 7 days) for sale to Kenergy (and for resale by Kenergy to Alcan under the Alcan Power Agreement and to Century under the Century Power Agreement). Kenergy acknowledges and agrees that the price of the Energy to be acquired by Big Rivers will include (i) a variable component for Energy (subject to conversion to a fixed price upon the consent of Big Rivers and Kenergy), (ii) a variable component that will include amounts that Fortis will pay for certain transmission related services, and (iii) a variable component equal to the additional amounts, if any, Big Rivers may be required to pay Fortis and other suppliers including but without limitation amounts payable upon termination by reason of default of the supply arrangements between Big Rivers and Fortis (or any other suppliers from which Big Rivers acquires Block C Energy) (such variable component under this (iii) hereafter called the "Block C Variable Charge").

Section 7.02 Volume of Block C Energy. During the Delivery Term, Supplier shall sell and deliver to Kenergy and Kenergy shall purchase from Supplier and pay for a block of 12 MW of Tier 3 Energy Firm LD around the clock (24 hours x 7 days). If Kenergy 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 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 failure to accept delivery.

Section 7.03 Block C Energy Charge: Subject to conversion to a fixed price upon the consent of Supplier and Kenergy, the price of the Block C Energy shall be in each hour the sum of (i) the Day Ahead Gibson 1 CPN prices as reported by MISO plus \$6.00 per MWh and (ii) all charges levied by MISO to Supplier for transmission and ancillary services, congestion, losses or other transmission related costs (including the costs of purchasing financial transmission rights and including any MISO adjustments to the above costs, whenever made) and (iii) the Block C Variable Charge such that the aggregate price under this Section 7.03 shall produce the same amount that Big Rivers is obligated to pay for delivery of the Block C Energy at the Block C Point of Delivery plus \$0.10 per MWh. If during the term of this Agreement MISO ceases reporting Day Ahead Gibson 1 CPN prices, a replacement index shall be determined by Supplier and Fortis with the consent of Kenergy and Alcan. If Supplier and Fortis are not able to agree on a replacement index within thirty (30) days of the date that MISO ceases reporting the Day Ahead Gibson-1 CPN price, Supplier's delivery obligation with respect to Block C Energy shall terminate without further action by the Parties.

Section 7.04 System Losses. The amount of Block C Energy delivered to Kenergy at the Block C Point of Delivery shall be transmitted by Kenergy to the Alcan Point of Delivery, and the amount of such Block C Energy delivered to Alcan shall be reduced by the System Energy Loss Factor.

Section 7.05 Service Obligation. Subject to the proviso to this Section 7.05 and unless otherwise excused pursuant to Article XV, in the event that Supplier fails to deliver the Energy to Kenergy at the Block C 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, less the purchase price of the Energy as set forth in Section 7.03 (or the fixed price, as applicable) that Kenergy would have owed to Supplier had Supplier fulfilled its obligation to deliver hereunder; provided, however, that notwithstanding any provision to the contrary herein, Supplier shall bear no liability to Kenergy for failure to deliver Block C Energy where such failure is caused by the existence of a Level 5 Transmission Loading Relief Event that negates Supplier's ability to deliver Energy to Kenergy at the Block C Point of Delivery.

Section 7.06 Right to Control. In the event of a termination of the supply arrangement between Supplier and Fortis by reason of default as referenced in Section 7.01(iii), Kenergy upon payment of the Monthly Charge shall have the right to control the determination of any termination amounts payable or receivable by Big Rivers, as applicable, and provided further that any termination amounts receivable by Big Rivers shall inure to the benefit of Kenergy.

#### ARTICLE VIII: PURCHASE AND SALE OF BLOCK D ENERGY

Section 8.01 Block D Energy and Rate. During the Delivery Term , Supplier shall sell and deliver to Kenergy at the Alcan Point of Delivery and Kenergy shall purchase from Supplier and pay for a block of up to 15 MW of Energy around the clock (24 hours x 7 days), subject to scheduling requirements and the Supplier's right to fully interrupt pursuant to the terms and conditions set forth in Section 8.02

("Block D Energy"). The rate for Block D Energy for all hours of delivery shall be \$44.00 per MWh ("Block D Base Rate") unless modified by the Block D Buy-Through Price pursuant to Section 8.03. In the event but only in the event Block D Energy is acquired by Supplier from WKEC under the PPA, the Block D Base Rate is bundled to include ancillary services and kilovars of reactive power demand assuming a ninety percent (90%) power factor. Where Block D Energy is acquired by Supplier other than from WKEC under the PPA, charges for ancillary services and reactive power shall be calculated in accordance with Section 9.01.

Section 8.02 Block D Energy Scheduling. The provision of Block D Energy shall be subject to the following scheduling requirements:

(a) Subject to Supplier's right to interrupt in accordance with Section 8.03, Kenergy may from time to time schedule Block D Energy by no later than 3:00 PM on the second Working Day prior to the day of the scheduled delivery (or such shorter period agreed to by Supplier) in one (1) megawatt increments up to fifteen (15) megawatts at the time(s) and for the duration(s) specified in the schedule;

(b) Supplier shall be under no obligation to accept the schedule submitted by Kenergy and deliver the volume of Tier 3 Energy scheduled by Kenergy but shall be obligated, upon receipt of such schedule, to notify Kenergy and Alcan by 9:00 A.M. of the Working Day prior to the day of delivery of the number of megawatts, if any, Supplier is willing to deliver and the hour and duration when the delivery shall take place (the "Response").

(c) Subject to Supplier's right to interrupt in accordance with Section 8.03, Supplier shall have the obligation to deliver the volume of Block D Energy at the time and for the duration so specified in the Response ("Block D Scheduled Energy").

Section 8.03 Block D Energy Interruption. The delivery of Block D Scheduled Energy may be interrupted by Supplier at any time upon the following terms and conditions:

(a) Supplier, in its sole discretion, may interrupt delivery of all or any portion of the Block D Scheduled Energy in any hour by sending a Notice of Interruption of at least thirty (30) minutes in advance to Kenergy and Alcan in which case

Supplier shall have no obligation to supply the amount of Block D Scheduled Energy designated to be interrupted as set forth in the Notice of Interruption. Supplier's delivery obligation for each hour shall be firm if it does not give timely Notice of Interruption at least thirty (30) minutes in advance.

(b) A Notice of Interruption may be made orally and shall be followed by immediate confirmation transmitted by facsimile, and shall designate the amount of power to be interrupted and the duration of such Interruption.

(c) Supplier is not limited in the number of times it may interrupt the delivery of Block D Scheduled Energy.

(d) In each Notice of Interruption Supplier may at its discretion (but without being required) offer an alternative price or prices per megawatt hour ("Block D Buy-Through Price") upon which Supplier would make the interrupted amount of Block D Scheduled Energy available to Kenergy during the specified hour or hours of Interruption. Kenergy shall have ten (10) minutes from the time it receives verbal Notice of Interruption to notify Supplier that it accepts the Block D Buy-Through Price for the Block D Scheduled Energy comprising all or any part of the designated Interruption ("Block D Buy-Through Energy"). Kenergy will follow verbal acceptance of the Block D Buy-Through Price with a facsimile confirmation. The failure of Kenergy to notify Supplier of its acceptance of the Block D Buy-Through Price during this ten-minute period shall constitute a rejection of the Block D Buy-Through Price, and the Interruption shall thereafter be implemented in accordance with the Notice of Interruption.

(e) Upon Kenergy's acceptance of the Block D Buy-Through Price for the Block D Buy-Through Energy, the obligation of Supplier to provide the Block D Scheduled Energy in whole or in part, as the case may be, shall be re-established, provided that Supplier shall charge to Kenergy the Block D Buy-Through Price for all Block D Buy-Through Energy instead of the Block D Base Rate.

(f) During any period of Interruption, Supplier may notify Kenergy and Alcan of its willingness to terminate the Interruption and resume the delivery of Block D Scheduled Energy under the Block D Base Rate. Upon notification from Supplier terminating the Interruption, Kenergy shall purchase and accept delivery of Block D Scheduled Energy for resale to Alcan at the start of the hour following such notice. Supplier shall provide Kenergy and Alcan at least ten (10) minutes advance notice of the termination of an Interruption.

Section 8.04 Allocation of Block D Scheduled Energy. In the event that the aggregate amount of fully interruptible Tier 3 Energy scheduled by Alcan and Century during any hour exceeds the amount of Block D Energy available from Big Rivers at the



Block D Base Rate during that hour, then the following agreements shall be in effect:

- (a) an equal number of MW of Tier 3 Energy shall be made available at the Block D Base Rate to each of Alcan and Century, provided that the number of MW made available to either Alcan or Century shall be no greater than scheduled by Alcan and Century for that hour;
- (b) any number of MW of Block D Energy available from Big Rivers at the Block D Base Rate in excess of the equal amounts set forth in subsection (a) above shall be available to the smelter submitting the greater schedule for such hour; and
- (c) any number of MW of Block D Energy that Big Rivers does not make available to either Alcan or Century at the Block D Base Rate can be made available by Big Rivers at Block D Buy-Through Prices that may be separately determined for the remaining amount of fully interruptible Block D Energy scheduled by that smelter.

Section 8.05 Service Obligation. Unless otherwise excused pursuant to Article XV or unless service of Block D Scheduled Energy is interrupted pursuant to Section 8.03, in the event that Supplier fails to deliver the Block D Scheduled Energy or Block D Buy-Through Energy to the Alcan Point of Delivery in accordance with the terms of this Agreement, Supplier will be liable for 100% of the costs incurred by Kenergy in obtaining replacement Tier 3 Energy in a commercially reasonable manner, less the amount that Kenergy would have owed to Supplier had Supplier fulfilled its obligation to deliver hereunder.

## ARTICLE IX: ADDITIONAL CHARGES

Section 9.01 Additional Charges. In addition to the rates and charges set forth in (i) Article V for Block A Energy and Block A Buy-Through Energy, (ii) Article VI for Block B Energy, (iii) Article VII for Block C Energy and (iv) Article VIII for Block D Scheduled Energy

and Block D Buy-Through Energy, the Monthly Charge shall include and Kenergy shall pay to the Transmission Provider the following additional charges:

- (a) a separately calculated charge for network transmission services with respect to Block A Energy, Block A Buy-Through Energy, Block B Energy, Block C Energy, Block D Scheduled Energy and Block D Buy-Through Energy, as determined pursuant to the OATT of the Transmission Provider as currently in effect or as may be modified from time to time; and
- (b) a separately calculated charge for ancillary services with respect to Block A Energy (but only to the extent such Energy is not acquired from WKEC under the PPA), Block A Buy-Through Energy, Block B Energy, Block C Energy, Block D Scheduled Energy (but only to the extent that such Energy is not acquired from WKEC under the PPA) and Block D Buy-Through Energy, as determined pursuant to the OATT of the Transmission Provider as currently in effect or as may be modified from time to time; and
- (c) a separately calculated charge for excess reactive power demand, if any. The excess reactive power demand in each month shall be the positive difference, if any, between the metered reactive power demand and the sum of (i) 166,964 kilovars and (ii) the number of kilovars calculated by adding the amount of Block A Energy and Block D Scheduled Energy (to the extent that such energy is acquired from WKEC under the PPA) and multiplying that total amount by 0.4843. The rate for excess reactive power demand shall be \$0.1433 per kilovar per month for up to 10,000 kilovars. If the excess reactive power demand in any month is greater than 10,000 kilovars, the provisions of Section 3.05 of Amendment No. 2 dated November 30, 2000, to the Alcan Power Agreement shall apply.

## ARTICLE X: BILLING

Section 10.01 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. Kenergy shall pay Supplier the Monthly Charge in immediately available funds on or before the first Working Day after the 24th of the month in which the bill is issued (or such earlier date as may be determined by Supplier but only with

respect to the payment for Block B Energy). 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 and ancillary services 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 10.02 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 10.03 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 10.02 shall be applied to the determination of interest due to Kenergy on the refund.

Section 10.04 Non-Waiver. No payment made by Kenergy (or Alcan) pursuant to this Article X shall constitute a waiver of any right of Kenergy (or Alcan) to contest the correctness of any charge or credit.

#### ARTICLE XI: BREACH AND DEFAULT

Section 11.01 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 XVI 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 11.02 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 XII: REMEDIES OF THE PARTIES

Section 12.01 Remedies, General: In the 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 12.02 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 5.06 (Block A Energy), Section 6.05 (Block B Energy), Section 7.05 (Block C Energy) and Section 8.05 (Block D Scheduled Energy).

## ARTICLE XIII: ADDITIONAL COVENANTS OF THE PARTIES

Section 13.01 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 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 XVI.

Section 13.02 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 13.03 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 10.01 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 under this Agreement for resale and delivery to Alcan. Supplier shall retain all documentation applicable to service to Kenergy under this Agreement for a period of three years.

Section 13.04 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.



Section 13.05 Joint Covenant for Benefit of Alcan. Kenergy and Supplier agree that the Century Agreement shall include the same provisions as are set forth in Section 5.04 and Section 8.04 herein.

Section 13.06 Closing of Unwind Transaction. Coincident with closing of the Unwind Transaction prior to December 31, 2007 (“Unwind Transaction Closing Date”), the purchase obligation of Kenergy and the delivery obligation of Big Rivers with respect to all blocks of Tier 3 Energy provided for under this Agreement shall automatically terminate without further action of the Parties as of 11:59 PM of the Unwind Transaction Closing Date; provided, however, that this Agreement shall not terminate but shall remain in effect and Kenergy shall remain responsible for (a) billed and unbilled costs of Block A Energy, Block B Energy, Block C Energy and Block D Energy (including charges set forth in Section 9.01) delivered or made available though the Unwind Transaction Closing Date and (b) net losses, if any, Big Rivers may incur in the resale of Block B Energy and Block C Energy from the Unwind Transaction Closing Date through December 31, 2007 including all charges for transmission services, ancillary services and any other transmission related charges that MISO may levy on Supplier, directly or indirectly, upon the resale to a third party of Block B Energy and Block C Energy.

#### ARTICLE XIV: DISPUTE RESOLUTION AND CHOICE OF LAW

Section 14.01 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 and Alcan 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 consented to by Alcan, 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 14.01, each Party will at all times be free to seek injunctive relief, where its delay in doing so could result in irreparable injury.

Section 14.02 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 14.03 Venue. The Parties hereby agree that the Courts of the Commonwealth of Kentucky will have exclusive 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 XV: UNCONTROLLABLE FORCES

Section 15.01 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 XV. The Party claiming failure or inability to perform shall promptly contact the other Party and Alcan 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 15.02 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 15.03 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 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 15.04 Labor Dispute. Nothing contained herein shall be construed to require a Party to prevent or to settle a labor dispute against its will.

#### ARTICLE XVI: 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 to the Rural Utilities Services (or other mortgagee or other secured party as security for indebtedness incurred 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 and Alcan. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

#### ARTICLE XVII: REPRESENTATIONS AND WARRANTIES:

Section 17.01 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 have been duly and effectively authorized by all requisite corporate action.

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

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

Section 17.02 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 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 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 have been duly and effectively authorized by all requisite corporate action.

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

(d) The PPA is in full force and effect and Supplier has neither received nor submitted a Notice of Default.

(e) The agreements providing for the delivery from MISO to Supplier of 75 MW of Firm L.D. Energy and from Fortis to Supplier of 25 MW of Firm L.D. Energy are all in full force and effect.

#### ARTICLE XVIII: AMENDMENTS

Section 18.01 Writing Required. This Agreement may be amended, revised or modified by, and only by, a written instrument duly executed by both Parties with the written consent of Alcan.

Section 18.02 Waiver. The rates provided for in Sections 5.01, 6.02, 7.03 and 8.01 of this Agreement 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 the rates contained in Sections 5.01, 6.02, 7.03 and 8.01 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. Big Rivers' transmission rates, methodologies and formulae are subject to change, but nothing in this Agreement limits the right of any Party to challenge any aspect of the Transmission Provider's Open Access Transmission Tariff, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service issue presented to FERC.

#### ARTICLE XIX: GENERAL

Section 19.01 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 19.02 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 19.03 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:

Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson, Ky. 42419  
Attn: C. William Blackburn, Vice President, Power Supply  
Facsimile No.: (270) 827-2101

To Kenergy:

Kenergy Corp.  
P.O. Box 18  
6402 Old Corydon Road  
Henderson, KY 42419  
Attention: President/CEO  
Facsimile: (270) 826-3999

To Alcan:

Alcan Primary Products Corporation  
9404 State Road 2096  
Robards, Kentucky 42452-9735  
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 19.04 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.

Section 19.05 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.

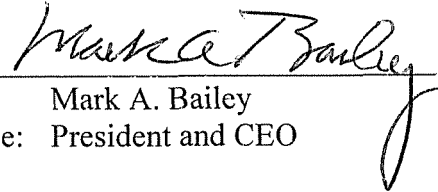
Section 19.06 Survival of Remedies. Each provision of this Agreement providing for payment for Tier 3 Energy delivered or made available or related to remedies for default, damage claims, indemnification or payment of other liabilities will survive the termination of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

Section 19.07 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter addressed herein.

Section 19.08 Patronage-Based Service. The Parties agree that, for purposes of this Agreement, Kenergy is doing business with Supplier on a patronage basis in accordance with the provisions of the Articles of Incorporation and Bylaws of Supplier that may be in effect from time to time.

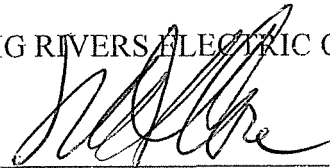
IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.



By: Mark A. Bailey  
Title: President and CEO

BIG RIVERS ELECTRIC CORPORATION



By: Michael H. Core  
Title: President and CEO