

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
10.4 Century Retail Agreement .....	36
10.5 Refund of Income Tax Estimated for Net Proceeds .....	37
10.6 Mitigation of Uncontrollable Force .....	38
ARTICLE 11 UNCONTROLLABLE FORCES .....	38
11.1 Occurrence of an Uncontrollable Force .....	38
11.2 Mitigation.....	38
11.3 Notice of Uncontrollable Force .....	38
11.4 Payment Obligations .....	38
ARTICLE 12 REPRESENTATIONS AND WARRANTIES.....	39
12.1 Representations and Warranties of Big Rivers .....	39
12.2 Representations and Warranties of Kenergy.....	39
ARTICLE 13 ADDITIONAL AGREEMENTS.....	39
13.1 Regulatory Proceedings .....	39
13.2 Audit Rights .....	39
13.3 [Reserved.].....	40
13.4 Patronage Capital .....	40
13.5 [Reserved.].....	40
13.6 Negotiation of Replacement Agreement.....	40
13.7 Entitlement to Large Industrial Rate.....	40
13.8 Unbundling .....	40
13.9 Not Exclusive Service Arrangement.....	41
ARTICLE 14 EVENTS OF DEFAULT; REMEDIES .....	41
14.1 Events of Default .....	41
14.2 Remedies, General .....	42
ARTICLE 15 DISPUTE RESOLUTION .....	42
15.1 Resolution Meetings .....	42
15.2 Right to Pursue Rights and Remedies.....	43
ARTICLE 16 GENERAL PROVISIONS/SUCCESSORS AND ASSIGNS.....	43
16.1 Binding Nature.....	43
16.2 <i>Limitation on Assignment</i> .....	43

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
16.3 Duties .....	43
16.4 Financing Lien .....	43
16.5 Big Rivers Restructuring.....	43
ARTICLE 17 MISCELLANEOUS .....	44
17.1 Governing Law .....	44
17.2 Jurisdiction.....	44
17.3 Waiver.....	44
17.4 Amendments .....	45
17.5 Good Faith Efforts .....	45
17.6 Notices .....	45
17.7 Severability .....	46
17.8 Survival .....	46
17.9 Merger.....	46
17.10 Further Assurances.....	47
17.11 Counterparts.....	47
17.12 Third-Party Beneficiaries.....	47
17.13 Headings .....	47
17.14 No Agency .....	47

## WHOLESALE ELECTRIC SERVICE AGREEMENT (CENTURY)

This WHOLESALE ELECTRIC SERVICE AGREEMENT (CENTURY) (this “Agreement”) is dated as of [\_\_\_\_\_], and made by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric cooperative corporation (“Big Rivers”), and KENERGY CORP., a Kentucky rural electric cooperative corporation (“Kenergy”).

### RECITALS

A. Big Rivers is a generation and transmission cooperative and Kenergy is a member of Big Rivers.

B. Kenergy currently supplies and delivers to Century, the owner and operator of an aluminum reduction plant in Hawesville, Kentucky, electric energy and related services pursuant to an Agreement for Electric Service, dated July 15, 1998, between Green River Electric Corporation, Kenergy’s predecessor-in-interest, and Southwire Company, Century’s predecessor-in-interest (the “Existing Century Agreement”).

C. Kenergy currently purchases electric energy and related services for resale to Century from Western Kentucky Energy Corp., an affiliate of E. ON U.S., LLC, formerly known as LG&E Energy Corp. (together with its affiliates and parent, collectively, “LG&E”), under an Agreement for Electric Service, dated as of July 15, 1998, with Kenergy (the “Kenergy/LG&E Contract”).

D. Kenergy also currently purchases additional electric energy and related services for resale to Century, to serve the energy requirements of Century not provided by LG&E, from third-party energy suppliers, including Big Rivers.

E. The Existing Century Agreement and the Kenergy/LG&E Contract were entered into in connection with the consummation of a series of transactions implementing the First Amended Plan of Reorganization of Big Rivers, as part of which, among other things (i) Big Rivers leased its generating facilities to LG&E, and (ii) Big Rivers entered into a power purchase arrangement with LG&E whereby LG&E supplied Big Rivers with electric energy and related services for resale to its Members.

F. Big Rivers, Kenergy, LG&E, Alcan Primary Products Corporation (“Alcan”), and Century have agreed to enter into a series of transactions referred to herein as the New Transaction and the Unwind Transaction, as defined below.

G. In connection with and as a condition to the Unwind Transaction, Big Rivers has agreed to supply, and Kenergy has agreed to purchase, a certain amount of wholesale electric service for resale to Century on the terms and conditions set forth herein, and Kenergy and Century have agreed to enter into a retail electric service agreement, dated as of the date hereof, with obligations corresponding to those set forth in this Agreement (the “Century Retail Agreement”).

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Capitalized terms when used in this Agreement have the meanings specified herein, including the definitions provided in Article 1, unless stated otherwise or the context requires otherwise.

1.1.1 Accounting Principles: Generally accepted accounting principles consistently applied or, if generally accepted accounting principles in accordance with the uniform system of accounts of an applicable Governmental Authority or RUS are required, the generally accepted accounting principles consistently applied in accordance with such uniform system of accounts, each as in effect from time to time.

1.1.2 Affiliate: With respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person. For avoidance of doubt, no Member is an Affiliate of Big Rivers.

1.1.3 Agreement: As defined in the Preamble.

1.1.4 Alcan: As defined in the Recitals.

1.1.5 Alcan Retail Agreement: The retail electric service agreement, dated as of the date hereof, by and between Kenergy and Alcan.

1.1.6 Alcan Wholesale Agreement: The wholesale electric service agreement, dated as of the date hereof, between Big Rivers and Kenergy for the benefit of Alcan.

1.1.7 Ancillary Services: Those services that are necessary to support the transmission of Energy from resources to loads while maintaining reliable operations of Big Rivers' transmission system, as set forth and described in the OATT.

1.1.8 Applicable Law: All laws, statutes, codes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, issuances, enactments, decisions, authorizations, permits or directives of any Governmental Authority having jurisdiction over the matter in question.

1.1.9 Applicable Percentage: The percentage determined in each Fiscal Year that is the quotient of the Base Demand divided by the sum of the Base Demand and the "Base Demand" as defined in and as then in effect under the Alcan Retail Agreement. If the

Alcan Retail Agreement is terminated or no longer in effect for any reason, Alcan's "Base Demand" shall be deemed to be 368 MW for purposes of calculating the Applicable Percentage.

1.1.10 Avoidable Base Charge: The amount in any Billing Month equal to the sum of:

(a) the product of (i) the sum of the Base Rate, the FAC Factor, the Environmental Surcharge Factor, and the Non-FAC Purchased Power Adjustment Factor, and (ii) the amount of Base Fixed Energy that was made available by Century to Big Rivers for Surplus Sales, regardless of whether Big Rivers was able to sell such Energy as Surplus Sales;

(b) *plus* the product of (i) the sum of the Base Variable Rate, the FAC Factor, the Environmental Surcharge Factor, and the Non-FAC Purchased Power Adjustment Factor, and (ii) the amount of Base Variable Energy that was made available by Century to Big Rivers for Surplus Sales, regardless of whether Big Rivers was able to sell such Energy as Surplus Sales; and

(c) *less* the product of (i) the sum of the Base Variable Rate, the FAC Factor, the Environmental Surcharge Factor, and the Non-FAC Purchased Power Adjustment Factor, and (ii) any Base Fixed Energy or Base Variable Energy made available by Century to Big Rivers for Surplus Sales that was neither metered at the Point of Delivery nor sold by Big Rivers as Surplus Sales.

Sample calculations of the Avoidable Base Charge are set forth in Exhibit A.

1.1.11 Back-Up Energy: For any Hour in a Billing Month, the amount of Energy metered at the Point of Delivery during such Hour, less the sum of (i) the Base Demand per Hour, and (ii) any Supplemental Energy metered at the Point of Delivery during such Hour; *provided*, that the amount of Back-Up Energy may not be less than zero.

1.1.12 Back-Up Energy Charge: As defined in Section 4.4.

1.1.13 Base Curtailed Energy: For any Hour in a Billing Month, the amount of Energy that is either (a) curtailed by Century pursuant to Section 4.13.2, or (b) sold by Big Rivers to one or more Third Parties pursuant to (i) Section 4.13.3 as Economic Sales, (ii) Section 10.1 as Surplus Sales, (iii) Section 10.2 as Undeliverable Energy Sales, or (iv) Section 10.3 as Potline Reduction Sales.

1.1.14 Base Demand: 482 MW, or such other amount of electric demand agreed in accordance with Section 3.1, integrated over an hour.

1.1.15 Base Energy Charge: As defined in Section 4.2.

1.1.16 Base Fixed Energy: For any Billing Month, the product of (a) the Base Demand, (b) the number of Hours in the Billing Month, and (c) 0.98.

1.1.17 Base Hourly Energy: For any Hour in a Billing Month, the amount of Energy equal to the sum of (a) the Energy metered at the Point of Delivery during such Hour

less (i) Supplemental Energy and (ii) “Market Energy” under the Century Retail Agreement purchased by Kenergy from Third Party Suppliers for resale to Century, each as metered at the Point of Delivery, if any, and (b) Base Curtailed Energy; *provided*, that for purposes of calculating Base Hourly Energy, the sum of clauses (a) and (b) above during any Hour shall not exceed the Base Demand per Hour.

1.1.18 Base Monthly Energy: The sum of the Base Hourly Energy for all Hours of a Billing Month.

1.1.19 Base Rate: The rate, expressed in dollars per MWh, resulting from the application of the Large Industrial Rate to a load with a 98% load factor, plus \$0.25 per MWh.

1.1.20 Base Variable Energy: For any Billing Month, Base Monthly Energy less Base Fixed Energy, whether positive or negative.

1.1.21 Base Variable Rate: The Base Variable Rate shall be expressed on a dollars per MWh basis and equal to the sum of (i) the “FAC Base” with respect to Big Rivers’ Tariff, (ii) the “Environmental Surcharge Base” with respect to Big Rivers’ Tariff, and (iii) the “Purchased Power Base” as defined in Appendix A.

1.1.22 Big Rivers: As defined in the Preamble.

1.1.23 Big Rivers’ Tariff: Big Rivers’ Rates, Rules and Administrative Regulations For Furnishing Electric Service, as filed with and approved by the KPSC.

1.1.24 Billing Month: Each calendar month during the Service Period.

1.1.25 Budget: The annual operating and capital budget approved by Big Rivers’ Board of Directors that estimates all revenues and expenditures of Big Rivers for a specified Fiscal Year, as amended and in effect from time to time.

1.1.26 Business Day: Mondays through Fridays of each week except legal holidays established by federal law in the United States of America or state law in the Commonwealth of Kentucky.

1.1.27 Buy-Through Energy: As defined in Section 2.3.2(b).

1.1.28 Buy-Through Energy Charge: As defined in Section 4.3.2.

1.1.29 Century: As defined in the Recitals.

1.1.30 Century Retail Agreement: As defined in the Recitals.

1.1.31 Cut-Off Date: As defined in Section 10.3.6.

1.1.32 Economic Reserve: A reserve established by Big Rivers, which may be held by Big Rivers or another Person, in an initial principal amount equal to the sum of (a)

\$75 million, and (b) such additional amount as Big Rivers may designate on or prior to the consummation of the Unwind Transaction, subject to increases or decreases resulting from earnings or losses thereon or expenditures therefrom. The amount designated by Big Rivers pursuant to clause (b) above may not exceed (i) an amount equal to Big Rivers' cash on hand following the consummation of the Unwind Transaction less \$160 million, and (ii) zero if Big Rivers shall not have prepaid at least \$200 million of obligations owed to RUS debt as part of the Unwind Transaction. No additional principal amounts will be contributed by Big Rivers to the Economic Reserve after the Effective Date.

1.1.33 Economic Sales: As defined in Section 4.13.3.

1.1.34 Effective Date: As defined in Section 6.1.

1.1.35 Electric Services: Electric services including capacity and associated Energy and Transmission Services provided by Big Rivers to Kenergy pursuant to this Agreement for resale to Century.

1.1.36 Energy: The flow of electricity denominated in kWh or MWh.

1.1.37 Environmental Surcharge: As defined in Section 4.8.3.

1.1.38 Environmental Surcharge Factor: With respect to any Billing Month, a monthly environmental surcharge factor that is calculated in accordance with the "Monthly Environmental Surcharge Factor" as defined in Big Rivers' Tariff.

1.1.39 Environmental Surcharge Rider: The Environmental Surcharge Rider to Big Rivers' Tariff.

1.1.40 Equity Development Credit: As defined in Section 4.10.

1.1.41 Event of Default: As defined in Section 14.1.

1.1.42 Excess TIER Amount: The amount of the TIER Adjustment, if negative, with respect to any Fiscal Year.

1.1.43 Excess Reactive Demand Charge: As defined in Section 4.6.

1.1.44 Existing Century Agreement: As defined in the Recitals.

1.1.45 FAC: The Fuel Adjustment Clause Rider to Big Rivers' Tariff.

1.1.46 FAC Charge: As defined in Section 4.8.1.

1.1.47 FAC Factor: With respect to any Billing Month, the "FAC Factor" (expressed on a kWh basis) that is calculated in accordance with the FAC.

1.1.48 FERC: Federal Energy Regulatory Commission.

1.1.49 Firm: An obligation to supply Energy subject only to the occurrence of an Uncontrollable Force.

1.1.50 Fiscal Year: The fiscal year of Big Rivers.

1.1.51 Governmental Authority: Any international, national, federal, state, territorial, local or other government, or any political subdivision thereof, and any governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity having legal jurisdiction over the matter or Person in question, including the KPSC; *provided, however* that the RUS is not a Governmental Authority for purposes of this Agreement.

1.1.52 Hawesville Smelter: The aluminum reduction plant owned and operated by Century and located in Hawesville, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.

1.1.53 Hour or Hourly: A clock hour or per clock hour, respectively.

1.1.54 Imputed Interest: As defined in Section 4.7.5(e).

1.1.55 Interruptible Energy: As defined in Section 2.3.2(a).

1.1.56 Interruptible Energy Charge: As defined in Section 4.3.1.

1.1.57 Interruptible Energy Terms: As defined in Section 2.3.2(a)(i).

1.1.58 Kenergy/LG&E Contract: As defined in the Recitals.

1.1.59 KPSC: Kentucky Public Service Commission.

1.1.60 kW: Kilowatt.

1.1.61 kWh: Kilowatt-hour.

1.1.62 Large Industrial Rate: Big Rivers' Tariff Rate Schedule No. 7 and all applicable rate adjustments thereto but exclusive of (a) the Rebate, (b) the FAC Factor and the Environmental Surcharge Rider, and (c) any roll-in of costs recovered in the regulatory account containing purchased power costs to be recovered by Big Rivers from the Members with for respect to sales to their Non-Smelter Ratepayers. As of the Effective Date, the Large Industrial Rate will consist of separate rate components for demand and Energy consumption. The Large Industrial Rate subsequently may be defined in terms of more than two separate rate components, including, potentially, separate rate components for transmission services. In such event, for purposes of this Agreement the "Large Industrial Rate" shall include all such rate components but excluding in all cases (a) the Rebate and (b) the FAC Factor and the Environmental Surcharge Rider. For the avoidance of doubt, the Large Industrial Rate shall be determined without regard to the effect of the Surcharge, the Economic Reserve or the Transition Reserve.

1.1.63 LG&E: As defined in the Recitals.



1.1.64 Lockbox Agreement: The Security and Lockbox Agreement to be entered into among Century, Kenergy, Big Rivers and a depository bank prior to the Effective Date with respect to the payment of certain amounts due Big Rivers hereunder.

1.1.65 Market Energy: As defined in Section 2.3.2(c).

1.1.66 Market Energy Charge: As defined in Section 4.3.3.

1.1.67 Market Reference Rate: For any Hour, a rate equal to the all-inclusive cost, including transmission and related charges on the transmission system of any Third Party (expressed in dollars per MWh), that Big Rivers estimates, in its sole discretion exercised in good faith, that it would have paid to purchase Energy from a Third Party if there had been no curtailment pursuant Section 4.13.2 during such Hour.

1.1.68 Members: The members of Big Rivers. As of the date hereof, the Members of Big Rivers are Jackson Purchase Energy Corporation, Kenergy, and Meade County Rural Electric Cooperative Corporation.

1.1.69 Model: As defined in Section 1.2(o).

1.1.70 Monthly Charge: As defined in Section 4.1.

1.1.71 MW: Megawatt.

1.1.72 MWh: Megawatt-hour.

1.1.73 Net Margins: Net margins as determined by Accounting Principles. For the avoidance of doubt, Net Margins will include all operating and non-operating margins.

1.1.74 Net Proceeds: The proceeds from the sale of Energy by Big Rivers to Third Parties, net of transaction costs, whenever incurred, and taxes, including Big Rivers' estimated income tax liability on such proceeds without regard to any net operating loss carry-forward of Big Rivers existing on the date of the consummation of the Unwind Transaction, unless and to the extent Big Rivers reasonably determines that such net operating loss carry-forward otherwise would have expired unused.

1.1.75 New Facilities: As defined in Section 4.7.5(e).

1.1.76 New Ratepayer: A Non-Smelter Ratepayer which is (i) interconnected directly with Big Rivers' transmission system, and (ii) first receives electric service at a location served by a meter required for service at such location which meter was installed specifically for new service at such location after the Effective Date.

1.1.77 New Transaction: The transactions by and between or among one or more of Kenergy, Century, Alcan and Big Rivers related to the supply of Electric Services to Kenergy under this Agreement and "Electric Services" as defined in the Alcan Wholesale Agreement and including the Century Retail Agreement, the Alcan Retail Agreement, coordination agreements, lockbox agreements, and all other related agreements.

1.1.78 Non-FAC Purchased Power Adjustment Charge: As defined in Section 4.8.2.

1.1.79 Non-FAC Purchased Power Adjustment Factor: A rate for the recovery of purchased power costs that are not otherwise included in the FAC (expressed in dollars per kWh) that is calculated in accordance with Appendix A.

1.1.80 Non-Smelter Member Rates: Big Rivers' tariff rates applicable to sales of electric services to Members for resale to Non-Smelter Ratepayers and all applicable rate adjustments thereto but exclusive of (i) the Rebate and (ii) the FAC Factor and the Environmental Surcharge Rider. For the avoidance of doubt, the Non-Smelter Member Rates shall be determined without regard to the effect of the Surcharge, the Economic Reserve or the Transition Reserve.

1.1.81 Non-Smelter Ratepayers: Retail ratepayers of the Members other than Century and Alcan.

1.1.82 Notice of Interruption: As defined in Section 2.3.2(a)(iii)(1).

1.1.83 Notice of Termination for Closure: As defined in Section 7.3.1(b).

1.1.84 OATT: Big Rivers' Open Access Transmission Tariff as filed with FERC and found by FERC to constitute a reciprocal open access transmission tariff.

1.1.85 Parties: Big Rivers and Kenergy.

1.1.86 Permitted Interruption: As defined in Section 2.3.2(a)(iii).

1.1.87 Person: Any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited partnership, limited liability company, limited liability partnership, trust, unincorporated organization, RUS or Governmental Authority.

1.1.88 Point of Delivery: The existing set of meters at Big Rivers' Coleman substation or such other point of delivery mutually agreed by the Parties and Century.

1.1.89 Potline Reduction: As defined in Section 10.3.1.

1.1.90 Potline Reduction Sales: As defined in Section 10.3.1.

1.1.91 Potline Reduction Sales Agreement: As defined in Section 10.3.3.

1.1.92 Prime Rate: The then-effective prime commercial lending rate per annum published in the "Money Rates" section of *The Wall Street Journal*. If *The Wall Street Journal* discontinues publication of the prime commercial lending rate, the Parties and Century shall agree on a mutually acceptable alternative source for that rate.

1.1.93 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 any and all acceptable practices, methods, or acts generally accepted.

1.1.94 Rebate: As defined in Section 4.9.

1.1.95 Response: As defined in Section 2.3.2(a)(ii)(2).

1.1.96 Restructuring: The occurrence of any of the following:

(a) the merger, consolidation or other combination of Big Rivers or an Affiliate or a Member with any Person (including acquisition of another utility system) if following such transaction Big Rivers or its successor would have had sales of Energy to all Members or regulated customers on a *pro forma* basis in the prior Fiscal Year in excess of 105% of Big Rivers' actual sales of Energy to the Members for such Fiscal Year;

(b) the acquisition of Big Rivers; or

(c) the admission of a new Member if following such admission Big Rivers would have had sales of Energy to all Members on a *pro forma* basis in the prior Fiscal Year in excess of 105% of Big Rivers' actual sales of Energy to the Members for such Fiscal Year.

1.1.97 Restructuring Amount: As defined in Section 16.5.1.

1.1.98 RUS: United States Department of Agriculture Rural Utilities Service.

1.1.99 Scheduled Interruptible Energy: As defined in Section 2.3.2(a)(ii)(3).

1.1.100 SERC: SERC Reliability Corporation, a regional reliability organization.

1.1.101 Service Period: As defined in Section 2.1.

1.1.102 Smelters: Century and Alcan.

1.1.103 Supplemental Energy: As defined in Section 2.3.2.

1.1.104 Supplemental Energy Charge: As defined in Section 4.3.

1.1.105 Surcharge: As defined in Section 4.11.

1.1.106 Surplus Sales: As defined in Section 10.1.1.

1.1.107 System Emergency: Any cessation of operation or reduction in the provision or delivery of Electric Services by Big Rivers due in whole or in part to: (a) a disconnection of all or a portion of Big Rivers' system from the transmission grid (other than as a direct result of Big Rivers' gross negligence or willful misconduct), (b) a system emergency on the transmission grid of a Third Party, or (c) the occurrence of a condition or situation where the delivery of Energy to a transmission grid with which Big Rivers is directly interconnected or the making available of generation services or Transmission Services which could cause (i) harm to life or limb or imminent serious threat of harm to life or limb, (ii) material damage to Big Rivers' system or any material component thereof or imminent danger of material damage to property, or (iii) other dangerous occurrences that Big Rivers believes, in the exercise of Prudent Utility Practice, should be prevented or curtailed.

1.1.108 System Firm: With respect to any power sales agreement entered into by Big Rivers with respect to Potline Reduction Sales, an obligation to supply Energy from (i) Big Rivers' owned or leased generation facilities, (ii) Big Rivers' contract with the Southeastern Power Authority (Contract No. 89-00-1501-637), and (iii) Big Rivers' Firm power purchase agreements with a term of two years or more which were not entered into for purpose of serving a specific non-Smelter load, in each case subject to the occurrence of an Uncontrollable Force or similar event of force majeure, a System Emergency or Big Rivers' prior satisfaction of the Energy requirements of the Non-Smelter Members, the Smelters and Third Parties under power sales agreements entered into prior to such power sales agreement.

1.1.109 Term: As defined in Section 7.1.

1.1.110 Third Party: A Person other than Kenergy, Century, Big Rivers or Alcan.

1.1.111 Third Party Supplier(s): As defined in Section 2.3.2(c).

1.1.112 TIER: The quotient for a Fiscal Year of (i) Big Rivers' interest expenses plus Net Margins, divided by (ii) Big Rivers' interest expenses; in each case, calculated in accordance with Accounting Principles.

1.1.113 TIER Adjustment: As defined in Section 4.7.5.

1.1.114 TIER Adjustment Charge: As defined in Section 4.7.1.

1.1.115 Transition Reserve: A reserve established by Big Rivers, which may be held by Big Rivers or another Person, in an initial principal amount equal to \$35 million, subject to increases or decreases resulting from earnings or losses thereon or expenditures therefrom. No additional principal amounts will be contributed by Big Rivers to the Transition Reserve after the Effective Date.

1.1.116 Transmission Charge: As defined in Section 4.5.

1.1.117 Transmission Services: Network transmission services as described in the OATT and Ancillary Services. Transmission Services are currently included in the Large Industrial Rate but may be unbundled.

1.1.118 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. Examples of events that may constitute the basis of an event which constitutes an “Uncontrollable Force” include: acts of God; strikes, slowdowns or labor disputes; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of any Governmental Authority; civil or military disturbances; explosions, breakage of or accident to machinery, equipment or transmission lines; inability of a Party to obtain necessary materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of Governmental Authorities, civil or military; transmission constraints or System Emergencies; a forced outage of a generating unit or units preventing the physical delivery of Energy to Kenergy for resale to Century; and any other forces which are not reasonably within the control of the Party claiming suspension. “Uncontrollable Forces” do not include an insufficiency of funds or decline in credit ratings or customary, expected or routine maintenance or repair of plant or equipment. Nothing contained herein shall be construed to obligate a Party to prevent or to settle a labor dispute against its will.

1.1.119 Undeliverable Energy Sales: As defined in Section 10.2.1.

1.1.120 Unwind Transaction: The consummation of the transactions contemplated on date of the “Closing” as defined in and pursuant to the Transaction Termination Agreement among Big Rivers, LG&E Energy Marketing Inc., and Western Kentucky Energy Corp.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement will have the meanings specified in this Article 1 unless the context requires otherwise; (b) the singular will include the plural and vice versa; (c) references to “Recitals,” “Articles,” “Sections,” “Exhibits” or “Schedules” are to the recitals, articles, sections, exhibits or schedules of this Agreement, unless otherwise specified; (d) all references to a particular Person in any capacity will be deemed to refer also to such Person’s authorized agents, permitted successors and assigns in such capacity; (e) the words “herein,” “hereof” and “hereunder” will refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation” and will not be construed to mean that the examples given are an exclusive list of the topics covered; (g) references to this Agreement will include a reference to all exhibits and schedules hereto; (h) references to any agreement, document or instrument will be construed at a particular time to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced as of such time; (i) the masculine will include the feminine and neuter and vice versa; (j) references to any tariff, rate, or order of any Governmental Authority will mean such tariff, rate or order, as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) if any action or obligation is required to be taken or performed on any day which is not a Business Day, such action or obligation must be performed on the next succeeding Business Day; (l) references to an Applicable Law will mean a reference to such Applicable Law as the same may be amended, modified, supplemented or restated and be in effect from time to

time; (m) all accounting terms not defined in this Agreement will be construed in accordance with Accounting Principles; (n) all references to a time of day shall be a reference to the prevailing time in Henderson, Kentucky; and (o) the financial and production cost models prepared by Big Rivers, including models filed with the KPSC, in connection with the application for approval of the Unwind Transaction and the New Transaction (the "Model") have been prepared solely by Big Rivers and shall not be used by the Parties or any Governmental Authority to construe or interpret any provision of this Agreement. The Parties collectively have prepared this Agreement, and none of the provisions hereof will be construed against one Party on the ground that it is the author of this Agreement or any part hereof.

1.3 Calculations and Rounding. In making any mathematical calculation provided for or contemplated by this Agreement, the calculation will be made to six decimal places (rounded up if the numeral in the seventh decimal place is five or higher, and rounded down if the numeral in the seventh decimal place is lower than five).

## ARTICLE 2

### ELECTRIC SERVICES AND RATES

2.1 Service Period Obligations. In accordance with the terms and conditions of this Agreement, Big Rivers will sell and deliver, and Kenergy will purchase, Electric Services for resale to Century for a period beginning at 12:00:01 A.M. on the day next succeeding the Effective Date and continuing until 12:00:00 midnight on December 31, 2023, unless the Parties' respective obligations to supply and purchase Electric Services are earlier terminated pursuant to the terms of this Agreement (the "Service Period").

2.2 Characteristics of Service. Electric service to be supplied by Big Rivers to Kenergy under this Agreement for resale to Century shall be nominally three-phase, sixty cycle at 161,000 volts or as otherwise agreed to by the Parties and Century. The Parties and Century will mutually agree on limits of the regulation of voltage but at no time may such regulation of such limits be inconsistent with standards required by applicable Governmental Authorities or any other organizations that establish reliability and electric operation standards for the region.

2.3 Delivery Obligation. In accordance with this Agreement, during the Service Period, Big Rivers will deliver at the Point of Delivery to Kenergy for resale to Century Base Monthly Energy, Supplemental Energy and Back-Up Energy.

2.3.1 Base Monthly Energy. Kenergy may purchase for resale to Century in each Hour of the Service Period an amount of Energy up to the Base Demand per Hour. For billing purposes, Base Monthly Energy consists of two components: Base Fixed Energy charged at the Base Rate and Base Variable Energy (which may be either a positive or negative amount) charged or credited at the Base Variable Rate.

2.3.2 Supplemental Energy. "Supplemental Energy" shall consist of (i) Interruptible Energy purchased by Kenergy from Big Rivers pursuant to Section 2.3.2(a), (ii) Buy-Through Energy purchased by Kenergy from Big Rivers and, in turn, by Big Rivers from Third Party Suppliers upon the interruption of Interruptible Energy, pursuant to Section

2.3.2(b), and (iii) Market Energy purchased by Kenergy from Big Rivers pursuant to Section 2.3.2(c).

(a) Interruptible Energy. Kenergy may purchase from Big Rivers on a System Firm basis up to 10 MW per Hour of Energy for resale to Century, subject to availability, the scheduling requirements and Big Rivers' right to interrupt the sale and delivery of such Energy, all as set forth in this Section 2.3.2(a) ("Interruptible Energy").

(i) Confirmation. Not less than seven days prior to the beginning of each fiscal quarter of the Service Period (or the Effective Date with respect to the initial fiscal quarter of the Service Period), Big Rivers shall provide to Kenergy and Century a confirmation setting forth the price or prices and other terms and conditions ("Interruptible Energy Terms") under which Interruptible Energy may be available during each Hour of the subject fiscal quarter. If Big Rivers fails to provide a timely confirmation with respect to any fiscal quarter, the Interruptible Energy Terms for the prior fiscal quarter shall remain in effect. Big Rivers and Kenergy shall obtain Century's consent to each confirmation as a condition to Big Rivers' obligation to make Interruptible Energy available to Kenergy for scheduling during each fiscal quarter.

(ii) Scheduling of Interruptible Energy. The provision of Interruptible Energy shall be subject to the following requirements:

(1) At the request of Century, Kenergy shall submit to Big Rivers, no later than 3:00 PM on the second Business Day prior to the day of the scheduled delivery (or such shorter period agreed to by Big Rivers), a schedule for up to 10 MW of Interruptible Energy, in integral multiples of one MW per Hour, for the times and durations specified in the schedule.

(2) Big Rivers shall be under no obligation to accept the schedule submitted by Kenergy or to deliver the Interruptible Energy so scheduled, but shall, upon receipt of such schedule, notify Kenergy and Century by 9:00 AM of the Business Day prior to the day of scheduled delivery of the number of MW, if any, Big Rivers is willing to deliver and the hour and duration when the delivery shall take place (the "Response").

(3) Subject to Big Rivers' rights to interrupt in accordance with Section 2.3.2(a)(iii) below, Big Rivers shall sell and deliver the volume of Interruptible Energy at the time and for the duration specified in the Response (the "Scheduled Interruptible Energy").

(iii) Interruption of Scheduled Interruptible Energy. The sale and delivery of Scheduled Interruptible Energy may be interrupted by Big Rivers at any time (a "Permitted Interruption") upon the following terms and conditions:

(1) Upon a determination by Big Rivers in its sole discretion exercised in good faith that all or any portion of the Scheduled Interruptible Energy will not be available on a System Firm basis, Big Rivers may implement a Permitted Interruption of all or any portion of the Scheduled Interruptible Energy by providing a notice of interruption

("Notice of Interruption") to Kenergy and Century at least 30 minutes in advance of the estimated interruption;

(2) A Notice of Interruption may be made orally but shall be followed by facsimile or other electronic means acceptable to Kenergy and Century; and

(3) Upon an after-the-fact determination by Big Rivers in its sole discretion exercised in good faith that all or any portion of the Scheduled Interruptible Energy was not available on a System Firm basis during a prior hour or hours, and notwithstanding that no Notice of Interruption had been issued, Big Rivers may implement retroactively a Permitted Interruption of Scheduled Interruptible Energy for such prior hour or hours, to the extent that such Scheduled Interruptible Energy was not available on a System Firm Basis.

Upon meeting the conditions required for a Permitted Interruption, Big Rivers shall have no obligation to sell and deliver the amount of Scheduled Interruptible Energy designated to be interrupted in the applicable Notice of Interruption. In connection with a Permitted Interruption, Big Rivers may provide, but shall not be required to provide, an opportunity for Kenergy to acquire Firm Energy, in lieu of the Scheduled Interruptible Energy, for resale to Century pursuant to the terms and conditions of Section 2.3.2(b) below. In the case of a Permitted Interruption that is implemented retroactively, the Energy delivered by Big Rivers shall be deemed to have been delivered as Backup Energy pursuant and subject to Sections 2.3.3 and 4.4.1. Big Rivers shall not be limited in the number of times that it may issue a Notice of Interruption or may implement a Permitted Interruption, or of the amount or duration of any Permitted Interruption.

(iv) Allocation of Permitted Interruptions. If Kenergy has arranged for Scheduled Interruptible Energy during any Hour to Kenergy under this Agreement for resale to Century and to Kenergy under the Alcan Wholesale Agreement for resale to Alcan and Big Rivers determines that it will be unable or was unable during any prior Hour or Hours, to supply the full amount of Scheduled Interruptible Energy to Kenergy for both Century and Alcan, then:

(1) Big Rivers may provide a Notice of Interruption and implement a Permitted Interruption to Kenergy with respect to the Scheduled Interruptible Energy for Century or with respect to "Scheduled Interruptible Energy" as defined in the Alcan Retail Agreement, or any combination thereof; and

(2) Big Rivers may retroactively implement Permitted Interruptions for any Hour to Kenergy for Century and Alcan in equal amounts, taking into consideration any Permitted Interruption to Kenergy that had previously been implemented for the same Hour under clause (A) above.

(v) Termination of Interruptions. During any period of Interruption, Big Rivers may notify Kenergy and Century of its willingness to terminate the Interruption and resume the delivery of Scheduled Interruptible Energy at the Interruptible Energy Terms. Upon notification from Big Rivers terminating the Interruption, Kenergy shall



purchase from Big Rivers and resell and deliver Scheduled Interruptible Energy to Century at the beginning of the next Hour that starts at least 10 minutes following such notice.

(b) Buy-Through Energy. Upon each Notice of Interruption, Big Rivers may in its sole discretion offer to sell to Kenergy Firm Energy purchased from Third Party Suppliers for resale to Century in lieu of the interrupted Scheduled Interruptible Energy ("Buy-Through Energy") and the estimated price or prices during the specified Hour or Hours of Interruption upon which Big Rivers would supply such Energy. Big Rivers shall provide Kenergy and Century not less than ten minutes from the time Century receives verbal Notice of Interruption to notify Big Rivers and Kenergy whether Century agrees to purchase Buy-Through Energy offered to be supplied by Big Rivers to Kenergy for resale to Century. Upon Century's or Kenergy's acceptance of the Buy-Through Energy, the obligation of Big Rivers to provide the Buy-Through Energy shall become a Firm service commitment. The failure of Century or Kenergy to notify Big Rivers of acceptance of the Buy-Through Energy during the period provided shall constitute a rejection of the Buy-Through Energy, and the Interruption shall thereafter be implemented in accordance with the applicable Notice of Interruption and Big Rivers shall not have any obligation to supply Kenergy Buy-Through Energy for resale to Century during such Interruption.

(c) Market Energy. Big Rivers acknowledges and agrees that Kenergy may acquire Supplemental Energy (other than Interruptible Energy or Buy-Through Energy) from either Big Rivers or one or more suppliers other than Big Rivers ("Third Party Suppliers") for resale to Century ("Market Energy"), upon the request of Century specifying (i) the requested amount and duration of such Energy, and (ii) all requested prices and material terms and conditions. The sale of any Market Energy by Big Rivers shall be at the sole discretion of Big Rivers and shall be such terms and conditions as Big Rivers and Kenergy shall agree. Nothing in this Agreement shall be construed to limit the ability of Kenergy to purchase Energy or other electric services from Third Party Suppliers to serve Century.

(i) The Parties acknowledge and agree that (A) Kenergy shall request that Big Rivers provide all Transmission Services necessary to transmit Market Energy requested by Century from a point of interconnection on Big Rivers' transmission system to the Point of Delivery promptly following such request, (B) the amount of Market Energy transmitted from a point of interconnection on Big Rivers' system to the Point of Delivery would be reduced by the applicable system loss factor as provided in the OATT, and (C) Big Rivers shall have no liability to Kenergy for denial of Kenergy's duly submitted request for reservation of Transmission Services.

(ii) If Century is unable to receive and consume Market Energy purchased by Kenergy from Big Rivers or a Third Party Supplier because of an Uncontrollable Force, then upon the request of Kenergy, Big Rivers shall use reasonable commercial efforts to sell such Market Energy to other Third Parties for the duration specified by Century's request. Big Rivers shall apply all revenues derived from such resale as a credit to Kenergy, net of any transmission services charges or related charges or other expenses incurred to make such resale.

2.3.3 Back-Up Energy. Big Rivers shall sell and deliver and Kenergy shall purchase Back-Up Energy for resale to Century at the Point of Delivery through purchases of Energy at the prices and on the terms and conditions set forth in Section 4.4.

2.4 [Reserved]

2.5 Title and Risk of Loss. Title to and risk of loss with respect to Energy provided by Big Rivers to Kenergy for resale to Century pursuant to this Agreement will pass from Big Rivers to and rest in Kenergy when the same is made available by Big Rivers at the Point of Delivery. Until title passes, Big Rivers will be deemed in exclusive control of the Energy and will be responsible for any damage or injury caused thereby. After title passes to Century, Big Rivers acknowledges and agrees that Century will be deemed in exclusive control of the Energy and will be responsible for any damage or injury caused thereby.

2.6 Performance by Kenergy. Big Rivers acknowledges and agrees that, to the extent Century has a corresponding or related obligation to Kenergy under the Century Retail Agreement, Kenergy's performance of an obligation under this Agreement is subject to and conditioned upon Century's performance of such corresponding or related obligation to Kenergy. Big Rivers acknowledges and agrees that Century may enforce an obligation of Big Rivers under this Agreement which corresponds or relates to an obligation of Kenergy to Century under the Century Retail Agreement.

### ARTICLE 3

#### CHANGES IN DEMAND AND SCHEDULING

3.1 Change In Base Demand. Big Rivers acknowledges and agrees that Century may change the Base Demand for any Fiscal Year only with the written consent of Big Rivers and Kenergy.

3.2 Scheduling. Big Rivers acknowledges and agrees that:

(a) Century shall not be required to schedule Base Monthly Energy, Buy-Through Energy or Back-Up Energy but shall use reasonable commercial efforts to inform Big Rivers promptly of any material change in Century's intended usage; and

(b) In accordance with the OATT, Century shall schedule and arrange with Kenergy and Big Rivers no later than 9:00 A.M. on the Business Day immediately preceding the day or days of delivery pursuant to the Century Retail Agreement, or as otherwise mutually agreed by the Parties the delivery of Interruptible Energy and Market Energy.

ARTICLE 4

CHARGES AND CREDITS

4.1 Monthly Charge. Kenegy shall pay Big Rivers the following (the “Monthly Charge”) for the Electric Services provided or made available under this Agreement:

- 4.1.1 the Base Energy Charge calculated pursuant to Section 4.2,
- 4.1.2 plus the Supplemental Energy Charge calculated pursuant to Section 4.3,
- 4.1.3 plus the Back-Up Energy Charge calculated pursuant to Section 4.4,
- 4.1.4 plus the Transmission Charge pursuant to Section 4.5,
- 4.1.5 plus the Excess Reactive Demand Charge calculated pursuant to Section 4.6,
- 4.1.6 plus the TIER Adjustment Charge calculated pursuant to Section 4.7.1,
- 4.1.7 plus the FAC Charge calculated pursuant to Section 4.8,
- 4.1.8 plus the Non-FAC Purchased Power Adjustment Charge calculated pursuant to Section 4.8,
- 4.1.9 plus the Environmental Surcharge calculated pursuant to Section 4.8,
- 4.1.10 plus or minus the monthly amortization of the Restructuring Amount pursuant to Section 16.5.1,
- 4.1.11 less the Rebate calculated pursuant to Section 4.9,
- 4.1.12 less the Equity Development Credit calculated pursuant to Section 4.10,
- 4.1.13 plus the Surcharge calculated pursuant to Section 4.11,
- 4.1.14 [Reserved]
- 4.1.15 less credits calculated pursuant to Section 4.13,
- 4.1.16 plus or minus other amounts pursuant to Section 4.14, and
- 4.1.17 plus taxes pursuant to Section 4.15.

4.2 Base Energy Charge. For any Billing Month, the “Base Energy Charge” shall be the sum of:

- (a) the product of Base Fixed Energy and the Base Rate; and

(b) the product, whether positive or negative, of the Base Variable Energy and the Base Variable Rate.

Sample calculations of the Base Energy Charge at different load factors are set forth in Exhibit A.

4.3 Supplemental Energy Charge. For any Billing Month, the “Supplemental Energy Charge” shall be the sum of the charges, whenever determined, for the Interruptible Energy Charge, the Buy-Through Energy Charge, and the Market Energy Charge as calculated below.

4.3.1 The “Interruptible Energy Charge” shall be the product of (i) the quantity of Interruptible Energy metered at the Point of Delivery during the Billing Month and (ii) the rate or rates for Interruptible Energy with respect to such Billing Month.

4.3.2 The “Buy-Through Energy Charge” shall be the sum of:

(a) the product of (i) the quantity of Buy-Through Energy metered at the Point of Delivery during the Billing Month and (ii) the quotient of (A) the actual rate or rates for such Buy-Through Energy that Big Rivers pays to a Third Party Supplier over (B) 1.00 less the loss factor set forth in the OATT; and

(b) all other charges that Big Rivers may be required to pay in connection with Buy-Through Energy, including (i) any and all separate charges for transmission services and related services, whenever incurred (including financial transmission rights, transmission congestion charges and similar costs or expenses), provided by a Third Party whose transmission system is used to transmit Buy-Through Energy purchased from a Third Party to a point at which Big Rivers’ transmission system is interconnected with such system, and (ii) any amount payable upon termination by reason of default of the supply arrangements between Big Rivers and Third Party Suppliers, net of recoveries by Big Rivers from such suppliers with respect to the supply of Buy-Through Energy to Kenergy for resale to Century.

4.3.3 The “Market Energy Charge” shall be the sum of:

(a) the product of (i) the quantity of Market Energy metered at the Point of Delivery during the Billing Month and (ii) the quotient of (A) the actual rate or rates for such Market Energy agreed to between Big Rivers and Kenergy, over (B) 1.00 less the loss factor set forth in the OATT; and

(b) all other charges that Big Rivers may be required to pay to Third Party Suppliers in connection with Market Energy, including (i) any and all separate charges for transmission services and related services, whenever incurred (including financial transmission rights, transmission congestion charges and similar costs or expenses), provided by a Third Party whose transmission system is used to transmit Market Energy purchased from a Third Party to a point at which Big Rivers’ transmission system is interconnected with such system and (ii) any amount payable upon termination by reason of default of the supply arrangements between Big Rivers and Third Party Suppliers, net of recoveries by Big Rivers from such suppliers with respect to the supply of Market Energy to Kenergy for resale to Century.

4.4 Back-Up Energy Charge. For any Billing Month, the “Back-Up Energy Charge” shall be the sum of the Hourly charges for Back-Up Energy calculated as follows:

4.4.1 The charge for Back-Up Energy supplied in any Hour shall equal the following:

(a) to the extent the Back-Up Energy was supplied from generating facilities owned or controlled by Big Rivers and located within Big Rivers’ transmission control area, the charge shall be the product of (i) the amount of such Back-Up Energy, and (ii) the quotient of (A) a price equal to the greater of (1) the Hourly locational marginal price at Big Rivers’ interface with the Midwest Independent System Operator (or such other pricing reference point that shall be mutually agreed upon by the Parties and Big Rivers), and (2) Big Rivers’ system lambda; divided by (B) 1.00 minus the loss factor set forth in the OATT;

(b) to the extent the Back-Up Energy was not supplied pursuant to Section 4.4.1(a), the charge shall be the product of (i) the amount of such Back-Up Energy, and (ii) the quotient of (A) a price equal to 110% of the highest Hourly all inclusive cost incurred by Big Rivers to acquire any Energy, including such Back-Up Energy, and the separate cost, if any, whenever determined, of transmission services and related services provided by a Third Party whose transmission system is used to transmit Back-Up Energy purchased from a Third Party to a point at which Big Rivers’ transmission system is interconnected with such system and including any imbalance charges or other costs arising from the failure of a Third Party Supplier to deliver Energy that it is obligated to deliver; divided by (B) 1.00 minus the loss factor set forth in the OATT; and

(c) to the extent that the amount of Back-Up Energy required by Kenergy for resale to Century during any hour exceeds the sum of (x) ten MW per Hour, (y) the amount of Back-Up Energy resulting from deemed Interruption of Scheduled Interruptible Energy pursuant to Section 2.3.2(a)(iii), and (z) the amount of Back-Up Energy resulting from the non-delivery of Market Energy purchased by a Third Party Supplier, then the charge for the excess amount of Back-Up Energy shall be the product of (i) the excess amount of Back-Up Energy, and (ii) the greater of (A) \$250 per MWh and (B) the price set forth in Section 4.4.1(b)(ii).

Sample calculations of the Back-Up Energy Charge are set forth in Exhibit A.

4.4.2 If during any Hour Big Rivers provides Back-Up Energy to Kenergy for resale to Century and “Back-Up Energy” (as defined in the Alcan Wholesale Agreement) to Kenergy for resale to Alcan, then the provisions of Section 4.4.1 shall apply to a proportional number of MW of Back-Up Energy for resale to each of Century and Alcan.

4.5 Charge for Transmission Services and Ancillary Services. For any Billing Month, the charge for transmission services and ancillary services (the “Transmission Charge”) shall be the sum of the charges, calculated in accordance with the OATT, for Transmission Services for (a) Base Monthly Energy that are unbundled from the Large Industrial Rate, if any; and (b) Supplemental Energy.

4.6 Excess Reactive Demand Charge. For any Billing Month, the “Excess Reactive Demand Charge”, if any, shall be the product of \$0.1433 and the amount, expressed in kilovars, of the difference, if positive, between:

(a) the maximum metered reactive demand of Century during the Billing Month, and

(b) an amount of kilovars equal to the sum of:

(i) the product of (A) 0.4843, and (B) the maximum hourly demand during a Billing Month, denominated in kilowatts, associated with Base Monthly Energy, Interruptible Energy, Market Energy, “Market Energy” under the Century Retail Agreement that is purchased by Kenergy from Third Party Suppliers for resale to Century, and Back-Up Energy provided by Big Rivers to Kenergy for resale to Century, but less the amount of such Interruptible Energy, Market Energy or Back-Up Energy that was purchased by Big Rivers from Third Parties, and

(ii) 78,005.

4.7 TIER Adjustment Charge.

4.7.1 The “TIER Adjustment Charge” shall be, for any Fiscal Year, the amount that is the product of the Applicable Percentage and the TIER Adjustment if, and only if, such TIER Adjustment is a positive amount; *provided, however*, that in no case will the TIER Adjustment Charge for any Fiscal Year exceed the amount that is the product of the Base Fixed Energy and the maximum additional charge per MWh set forth below for the applicable Fiscal Year:

<u>Fiscal Years</u>	<u>Maximum Additional Charge</u>
2008-2011	\$1.95 per MWh
2012-2014	\$2.95 per MWh
2015-2017	\$3.55 per MWh
2018-2020	\$4.15 per MWh
2021-2023	\$4.75 per MWh

If the TIER Adjustment shall be negative, there will be no TIER Adjustment Charge.

4.7.2 Prior to each Fiscal Year, Big Rivers shall estimate both the TIER Adjustment and, if the TIER Adjustment is positive, the TIER Adjustment Charge based on the Budget for such Fiscal Year. Big Rivers shall collect such estimated amount from Kenergy in equal monthly installments as part of the Monthly Charge for each Billing Month during the applicable Fiscal Year.

4.7.3 Within 45 days following the end of the first, second and third fiscal quarters of each Fiscal Year beginning with the first fiscal quarter after the first anniversary of this Agreement, Big Rivers shall again estimate the TIER Adjustment and the corresponding amount of the TIER Adjustment Charge based on a comparison of the Budget and year-to-date

results of operations, and shall calculate a modified amount to be collected from, or refunded as a credit to, the Monthly Charge to Kenergy with respect to service to Century during the remaining portion of the Fiscal Year, including any amounts necessary to address any estimated under- or over-collection of the TIER Adjustment Charge from Kenergy with respect to service to Century as compared to the Budget during the remainder of the Fiscal Year. Big Rivers shall collect or credit such modified amount from Kenergy pursuant to this Agreement in equal monthly installments as part of the Monthly Charge for the remaining Billing Months of the subject Fiscal Year.

4.7.4 As soon as reasonably practicable but no later than 120 days after the end of each Fiscal Year, Big Rivers shall calculate the TIER Adjustment and TIER Adjustment Charge for such Fiscal Year. The TIER Adjustment Charge for such Fiscal Year shall be compared to the aggregate amounts paid by Kenergy in respect of the estimated TIER Adjustment Charge for such Fiscal Year, and the difference between such amounts shall be included as a charge or credit, as applicable, in the Monthly Charges for the fourth Billing Month of the next Fiscal Year.

4.7.5 The "TIER Adjustment" shall be the amount of incremental revenue, whether positive or negative, calculated with respect to each Fiscal Year after determination of Net Margins for such Fiscal Year (excluding amounts payable by Kenergy with respect to or relating to the revenue that results from the TIER Adjustment Charge and the "TIER Adjustment Charge" as defined in the Alcan Wholesale Agreement), that is necessary for Big Rivers to receive in order to achieve a TIER of 1.24 for such Fiscal Year; *provided, however*, that if the Service Period commences or terminates on a date other than the first or last day of a Fiscal Year and to give effect to Section 4.7.5, the TIER Adjustment will be calculated on an Hourly basis only with respect to the partial period of the first, second or final Fiscal Year of the Service Period, as applicable. The determination of the TIER Adjustment shall be subject to the following:

(a) It shall be assumed that: Big Rivers shall have generated additional revenue from service to the Members for resale to the Non-Smelter Ratepayers as if Big Rivers had increased the Non-Smelter Member Rates by a weighted average of 2.00% in 2010, another 2.50% in 2018 and another 4.00% in 2021 if and to the extent Big Rivers had not prior to or during the year of the calculation increased the Non-Smelter Member Rates by at least such amounts. The revenues from any roll-in of the costs associated with costs recovered under the FAC or the Environmental Surcharge Rider that is incorporated into base rates comprising a portion of the Non-Smelter Member Rates will not constitute an increase in the Non-Smelter Member Rates for purposes of this clause (a), and the revenues attributable to any such roll-in will be excluded in calculating the percentage of any increases in the Non-Smelter Member Rates.

(b) It shall be assumed that: If a Member provides electric service to a New Ratepayer with a Firm demand in excess of 15 MW, such Member shall have paid to Big Rivers for wholesale Energy purchased and resold to the New Ratepayer at a price equal to the greater of: (i) the amount paid for such service and (ii) an amount calculated for the same period equal to (A) a rate, expressed in dollars per MWh, resulting from the application of the Large Industrial Rate to a load with the New Ratepayer's load factor, plus \$0.25 per MWh,

*plus* (B) the sum of the FAC Factor, the Environmental Surcharge Factor, and the Non-FAC Purchased Power Adjustment Factor (each calculated on a per MWh basis), *plus* (C) the Surcharge (the Surcharge being calculated on an amount per MWh based on Base Fixed Energy for such Fiscal Year) set forth in Section 4.11, *plus* (D) amounts corresponding to the amount per MWh paid by Kenergy during the same period for the TIER Adjustment Charge. If a Member provides electric service to a New Ratepayer with a Firm demand of 15 MW or less, such Member shall have paid to Big Rivers for wholesale Energy purchased and resold to the New Ratepayer at a price equal to the sum of: (i) the Large Industrial Rate, and (ii) the sum of the FAC Factor, the Environmental Surcharge Factor, and the Non-FAC Purchased Power Adjustment Factor (each calculated on a per MWh basis). For purpose of this clause (b), the revenues produced by any surcharge with respect to a New Ratepayer similar to the Surcharge or the “Surcharge” under the Alcan Retail Agreement will be assumed to accrue solely to the benefit of the Non-Smelter Ratepayers except to the extent such surcharge is paid by or imputed to a New Ratepayer pursuant to subclause (A) of this clause (b). The assumptions contained in this clause (b) shall not apply with respect to a New Ratepayer that first interconnects with Big Rivers’ transmission system during the last three Fiscal Years of the Service Period or following notice of termination of this Agreement or the Alcan Retail Agreement.

(c) It shall be assumed that: Big Rivers’ interest expense shall have been reduced by the product of (i) Big Rivers’ average effective interest rate for borrowed money for the prior Fiscal Year, and (ii) the aggregate amount of any patronage capital retired by Big Rivers to its Members during the Service Period (other than any distribution from the Economic Reserve or the Transition Reserve or relating to the Surcharge or the “Surcharge” under the Alcan Wholesale Agreement), from and after the date of such retirement.

(d) It shall be assumed that: Interest on construction work-in-progress relating to the construction of new electric generating facilities or transmission facilities shall have been capitalized by Big Rivers if it has the right to elect to do so or it is obligated to capitalize such interest under Accounting Principles unless a Governmental Authority has approved the inclusion of such interest expenses in Big Rivers’ revenue requirements for rate-making purposes or otherwise approved a surcharge for collecting such interest expenses.

(e) If Big Rivers acquires or constructs non-peaking electric generating facilities alone or with others (“New Facilities”), Big Rivers’ interest expenses shall not include the interest imputed on the debt relating to the New Facilities (“Imputed Interest”); *provided, however*, that if a Governmental Authority has approved the inclusion of such generating facilities in Big Rivers’ revenue requirements for rate-making purposes or otherwise approved a surcharge to provide for the recovery of the costs of such New Facilities, then actual interest expense with respect to such New Facilities shall be included in the TIER calculation to the extent recovery is permitted; *provided, further*, that this clause (e) may not cause the TIER Adjustment to become negative. For purposes of determining Imputed Interest, it shall be assumed that the New Facilities were financed 80% with debt and 20% with equity. Imputed Interest shall equal the product of (i) the weighted average interest rate on Big Rivers’ debt for the Fiscal Year, and (ii) the amount of debt equal to 80% of the capital invested in the New Facilities.



(f) It shall be assumed that: The Economic Reserve and the Transition Reserve shall not generate any revenue or tax liability and the application of funds from the Economic Reserve or the Transition Reserve shall not result in any change in the Net Margins of Big Rivers.

(g) It shall be assumed that: Big Rivers shall have made no payment for damages or indemnification to or for the benefit of a Smelter with respect to the provision of Electric Services or “Electric Services” as defined in the Alcan Wholesale Agreement.

(h) It shall be assumed that: Big Rivers shall have paid no criminal penalties with respect to its acts or omissions other than criminal penalties that a Governmental Authority has approved the inclusion of in Big Rivers’ revenue requirements for rate-making purposes or otherwise approved a surcharge for collecting such penalties.

(i) It shall be assumed that: Big Rivers shall have received no proceeds from the sale of Energy to the wholesale market pursuant to Section 4.13.3 or the corresponding section of the Alcan Wholesale Agreement.

(j) It shall be assumed that: Big Rivers shall have incurred no expenses that are impermissible for inclusion in rates of electric generation and transmission cooperative utilities subject to the jurisdiction of the KPSC for rate-making purposes (currently including advertising expenses, branding expenses, charitable contributions and lobbying expenses) or specifically disallowed for rate making purposes by a Governmental Authority; *provided, however*, that denial by a Governmental Authority of expense recovery through the FAC or the Environmental Surcharge Rider shall not constitute an expense that is impermissible for inclusion in rates if the nature of such expense is recoverable in base rates.

(k) It shall be assumed that: There are no revenues and expenses associated with non-regulated businesses of Big Rivers.

(l) It shall be assumed that: No interest is paid pursuant either to Section 5.3 or Section 5.4 or pursuant to the corresponding sections of the Alcan Wholesale Agreement.

(m) It shall be assumed that: No amounts have been or are payable with respect to Excess Reactive Demand Charges or with respect to “Excess Reactive Demand Charges” under the Alcan Wholesale Agreement.

(n) It shall be assumed that: No administrative fee shall have been received by Big Rivers as a result of any Surplus Sales, Undeliverable Energy Sales or Poptline Reduction Sales or sales of Energy pursuant to the corresponding sections of the Alcan Wholesale Agreement.

(o) Additional costs related to a change in Big Rivers’ depreciation rates may not be included in the calculation of the TIER Adjustment unless such change has been approved, consented to or accepted by the KPSC or, if the KPSC no longer has

jurisdiction over Big Rivers, by the RUS or any other Governmental Authority having jurisdiction over such change, if any.

(p) It shall be assumed that: The amortization of any Restructuring Amount is zero.

4.7.6 Any proceeds received by Big Rivers as part of the consummation of the Unwind Transaction shall be disregarded for purposes of computing the TIER Adjustment Charge for the Fiscal Year in which the Unwind Transaction occurs.

#### 4.8 Adjustable Charges.

4.8.1 The “FAC Charge” shall be the product of the FAC Factor (expressed in dollars per MWh) and Base Monthly Energy.

4.8.2 The “Non-FAC Purchased Power Adjustment Charge” shall be the product of the Non-FAC Purchased Power Adjustment Factor (expressed in dollars per MWh) and Base Monthly Energy.

4.8.3 The “Environmental Surcharge” shall be the product of the Monthly Environmental Surcharge Factor (expressed in dollars per MWh) and Base Monthly Energy.

4.9 Rebate. If there is an Excess TIER Amount in any Fiscal Year and Big Rivers elects to implement a rebate to its Members in respect thereof, then no later than the first day of the fifth month of the following Fiscal Year, Big Rivers will credit to Kenergy for further credit to Century an amount (the “Rebate”) equal to the product of:

- (i) the Excess TIER Amount, and
- (ii) a fraction:
  - (1) the numerator of which is the Base Fixed Energy for such Fiscal Year, and
  - (2) the denominator of which is the sum during the applicable Fiscal Year of (A) Big Rivers’ aggregate sales of Energy to Members for resale to Non-Smelter Ratepayers, (B) the Base Fixed Energy, and (C) the aggregate amount of “Base Fixed Energy” as defined in the Alcan Retail Agreement.

4.10 Equity Development Credit. If there is an Excess TIER Amount in any Fiscal Year and Big Rivers does not elect to implement a rebate to its Members, then no later than the first day of the fifth month of the following Fiscal Year, Big Rivers will credit against the next Monthly Charge an amount (the “Equity Development Credit”) equal to the product of:

- (i) the Excess TIER Amount, and
- (ii) a fraction:

(1) the numerator of which is the Base Fixed Energy for such Fiscal Year, and

(2) the denominator of which is the sum during the applicable Fiscal Year of (A) Big Rivers' aggregate sales of Energy to Members for resale to Non-Smelter Ratepayers, (B) the Base Fixed Energy, and (C) the aggregate amount of "Base Fixed Energy" as defined in the Alcan Retail Agreement.

Notwithstanding the above, the Equity Development Credit for any Fiscal Year may not exceed an amount which would cause the charge for Base Fixed Energy (including Energy curtailed pursuant to Section 4.13.2 or sold to Third Parties pursuant to Section 4.13.3 as Economic Sales, Section 10.1 as Surplus Sales, Section 10.2 as Undeliverable Energy Sales or Section 10.3 as Potline Reduction Sales) less the Equity Development Credit for such Fiscal Year on a per MWh basis to be less than (A) the Large Industrial Rate for a customer with a 98% load factor *plus* (B) the sum of the FAC Factor, the Environmental Surcharge Factor and the Non-FAC Purchased Power Adjustment Factor (each calculated on a per MWh basis).

4.11 Surcharge. In addition to any other amounts payable under this Agreement, and not withstanding anything in this Agreement to the contrary, Kenergy shall pay a surcharge (the "Surcharge") equal to the sum of the following:

(a) As applicable:

(i) \$241,472 each Billing Month from the Effective Date through and including December, 2011;

(ii) \$344,960 each Billing Month from January, 2012 through and including December, 2016;

(iii) \$481,188 each Billing Month from January, 2017 through the expiration of the stated Term of this Agreement;

(b) For any Billing Month, the product of (i) Base Fixed Energy and (ii) \$0.60 per MWh; and

(c) For any Billing Month, the product of (i) Base Fixed Energy and (ii) the number of cents per MW per Hour (which number shall not exceed 60 or be less than zero) that Big Rivers' projected annual average costs per MWh for fuel consumed by Big Rivers in its coal-fired generation as set forth in its Budget are greater than the amounts set forth on Schedule 4.11(c), in each case, for that Fiscal Year relating to such Billing Month. Big Rivers shall within 45 days following the end of each fiscal quarter compute its actual costs per MWh for fuel consumed by Big Rivers' coal-fired generation in each Billing Month for such fiscal quarter and shall calculate (on a fiscal-year-to-date basis in a manner consistent with this Section 4.11(c)) an additional amount to be paid by or credited to Kenergy based on such actual costs incurred for fuel consumed compared to the amounts set forth in the Budget for such Billing Months; *provided*, any additional amounts to be paid by or credited to Kenergy shall be applied to amounts due for the remainder of the Fiscal Year under this Section 4.11(c). Within 120 days

of the end of each Fiscal Year, an additional amount shall be credited to Kenergy if necessary so that the total amounts paid pursuant to this Section 4.11(c) for such Fiscal Year shall not exceed an amount equal to the product of Base Fixed Energy for such Fiscal Year and 60 cents per MW per Hour; such amount shall be included as a credit, if applicable, in the Monthly Charges for the fourth Billing Month of the next Fiscal Year.

The obligation of Kenergy to pay the Surcharge will cease to accrue upon the termination of this Agreement. Sample calculations of the Surcharge under Section 4.11(c) are set forth in Exhibit A.

4.12 [Reserved]

4.13 Credits.

4.13.1 Surplus Sales, Undeliverable Energy Sales and Potline Reduction Sales. For any Billing Month, Big Rivers shall credit Kenergy (a) the Net Proceeds of any Surplus Sales pursuant to Section 10.1 to the extent of the Avoidable Base Charge; and (b) the amount of Net Proceeds of any Undeliverable Energy Sales or Potline Reductions Sales to which Kenergy is entitled pursuant to Section 10.2 or Section 10.3, respectively, less \$0.25 per MWh as Big Rivers' administrative fee in each case. Sample calculations of the Net Proceeds from Surplus Sales, Undeliverable Energy Sales and Potline Reduction Sales that would be credited to Kenergy are set forth in Exhibit A.

4.13.2 Curtailement of Purchased Power. For any Billing Month, Big Rivers will credit Kenergy for any Hour during such Billing Month an amount equal to the product of (a) the Market Reference Rate during such Hour, and (b) the amount of Base Demand per Hour curtailed, if any, during such Hour in an amount and for a duration mutually agreed among Big Rivers, Kenergy and Century pursuant to this Section 4.13.2 and the corresponding section of the Alcan Wholesale Agreement. If both Century and Alcan agree to the curtailment of the delivery of Base Demand per Hour pursuant to Section 4.13.2 of the Century Retail Agreement and the corresponding section of the Alcan Retail Agreement, Century and Alcan must notify Big Rivers and Kenergy as to whose curtailment shall take precedence. If Big Rivers is not notified as to whose curtailment shall take precedence, the Smelter whose curtailment is largest shall take precedence, and if the amount of curtailment by each Smelter is the same, then the Smelter whose curtailment notice was received by Big Rivers first shall take precedence. Sample calculations of credit that would be due to Kenergy for curtailment of purchased power are set forth in Exhibit A.

4.13.3 Economic Sales. For any Billing Month, Big Rivers will credit Kenergy 75% of the Net Proceeds that Big Rivers receives in respect of the curtailment of the delivery of Base Demand per Hour in an amount and for a duration mutually agreed among Big Rivers, Kenergy and Century if Big Rivers sells such curtailed Base Demand per Hour to the wholesale Energy market ("Economic Sales"); *provided*, that unless otherwise agreed among Big Rivers, Kenergy and Century, (a) the amount of Base Demand per Hour curtailed by Kenergy on behalf of Century may not exceed 100 MW per Hour, (b) the number of curtailments each year shall be limited to twelve, and (c) each curtailment may not last longer than four Hours, and *provided further*, that Big Rivers shall have no obligation to make Economic Sales until after Big

Rivers first sells all of its own surplus Energy to the wholesale Energy market. If Kenergy on behalf of both Century and Alcan agree to the curtailment of the delivery of Base Demand per Hour pursuant to this Section 4.13.3 and the corresponding section of the Alcan Wholesale Agreement, Century and Alcan must notify Big Rivers and Kenergy as to whose curtailment shall take precedence. If Big Rivers is not notified as to whose curtailment shall take precedence, the Smelter whose curtailment is largest shall take precedence, and if the amount of curtailment by each Smelter is the same, then the Smelter whose curtailment notice was received by Big Rivers first shall take precedence. Sample calculations of the portion of the Net Proceeds from Economic Sales that would be credited to Kenergy are set forth in Exhibit A.

4.14 Other Amounts. For any Billing Month, any amounts payable pursuant to Section 10.1.4, 10.2.3 or 10.3.7 shall be added to or subtracted as applicable from the calculation of the Monthly Charge.

4.15 Taxes. No state or local sales, excise, gross receipts or other taxes are included in the charges and credits set forth in this Article 4. Kenergy shall pay or cause to be paid any such taxes which are now or hereafter become applicable to the sale of Electric Services to Kenergy under this Agreement.

## ARTICLE 5

### BILLING

5.1 Monthly Invoice. Big Rivers shall bill Kenergy on or before the fifth Business Day of each month for the Monthly Charge as calculated pursuant to Article 4 based on the sale of Electric Services during the most recently ended Billing Month plus any other amounts then due and owing pursuant to this Agreement. Kenergy shall pay or cause to be paid to Big Rivers the Monthly Charge and any other amounts due and owing in immediately available funds to an account designated in the Lockbox Agreement on the Business Day following the 24th day of the month following the Billing Month. For the convenience of the Parties, and to facilitate satisfaction of Kenergy's obligation to Big Rivers, Kenergy has assigned to Big Rivers its right to receive payment from Century under the Century Retail Agreement and its rights to collect and enforce collection of such amounts due from Century other than with respect to the "Retail Fee" as defined in the Century Retail Agreement pursuant to the Lockbox Agreement. Big Rivers hereby releases Kenergy from further liability under this Agreement for amounts subject to such assignment to Big Rivers, *provided* that such release does not relieve Kenergy of its other liabilities or responsibilities under this Agreement. Kenergy shall cooperate with and assist Big Rivers with respect to any collections of amounts due from Century to Kenergy which are assigned to Big Rivers; *provided*, that Big Rivers will reimburse Kenergy for any reasonable expenses Kenergy incurs in providing such cooperation or assistance.

5.2 Right to Discontinue Service. If Kenergy (or Century on behalf of Kenergy) fails to pay any monthly invoice rendered by Big Rivers within the time prescribed in Section 5.1, Big Rivers may discontinue delivery of any or all Electric Services hereunder upon 120 Hours prior written notice to Kenergy and Century of its intention to do so. Big Rivers' discontinuance of such service for non-payment will not in any way affect, diminish or limit the obligations of

Kenergy (or Century on behalf of Kenergy) to make all payments required under this Agreement or the Century Retail Agreement, as and when due.

5.3 Default Interest. If any monthly invoice rendered by Big Rivers is not paid on the due date, interest will accrue and become payable by Kenergy to Big Rivers on all unpaid amounts at a rate of four percentage points over the Prime Rate commencing on the first day after the due date.

5.4 Payments Under Protest. If any portion of any monthly statement is disputed by Kenergy (or Century), the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, Big Rivers shall promptly cause to be refunded to Kenergy (or to Century on behalf of Kenergy, as applicable) the amount that was not then due and payable, together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund is made.

5.5 [Reserved.]

5.6 No Waiver. No payment made by Kenergy (or Century on Kenergy's behalf) pursuant to this Article 5 will constitute a waiver of any right of Kenergy (or Century) to contest the correctness of any charge or credit.

5.7 No Payment. In no case shall Big Rivers be obligated to make a payment to Kenergy in connection with the application of a credit to Kenergy's Monthly Charges except to the extent otherwise expressly provided in Section 10.2.1(a) with respect to Undeliverable Energy Sales.

## ARTICLE 6

### EFFECTIVE DATE AND CONDITIONS

6.1 Effective Date. The obligations of the Parties under Article 2, Article 3, Article 4, Article 5, Section 7.3, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 14 and Section 16.5 shall not commence until the Effective Date. The "Effective Date" will occur on the first date each of the conditions set forth in Section 6.2 has been satisfied in full or waived in writing by the Party in whose favor such condition exists (to the extent one or more conditions is subject to being waived).

6.2 Conditions to Occurrence of Effective Date. The following shall be conditions to the occurrence of the Effective Date:

6.2.1 Each of the representations and warranties of the Parties contained in this Agreement and the representations and warranties of Kenergy and Century in the Century Retail Agreement will be true and correct as of the date hereof and the Effective Date (as though such representations and warranties were made at and as of the date hereof and the Effective Date), and each of the Parties shall have received a certificate to such effect from the other Party with respect to the other Party's representations and warranties in this Agreement and Big Rivers shall have received a certificate to such effect from Kenergy and Century in respect of their respective representations and warranties in the Century Retail Agreement.

6.2.2 The Unwind Transaction will have been consummated, including the termination of the agreements set forth on Schedule 6.2.2.

6.2.3 Each of the documents and agreements set forth in Schedule 6.2.3 will have been duly authorized, executed and delivered by the parties thereto, and all conditions precedent to the effectiveness of such agreements will have been satisfied or waived, and shall, if amended after the date hereof and prior to the Effective Date, be acceptable to Century.

6.2.4 [Reserved]

6.2.5 The Century Guarantee will have been duly authorized, executed and delivered by Century Parent and be in full force and effect.

6.2.6 Release documents releasing the liabilities and obligations under the documents listed on Schedule 6.2.2 will have been duly authorized, executed and delivered by Big Rivers, Kenergy, Alcan, LG&E and Century, as applicable.

6.2.7 Each Member will have authorized, executed and delivered an amendment to its wholesale power contract with Big Rivers relating to the supply of electric service to the Member for its requirements (other than in the case of Kenergy, the requirements of Century and Alcan) to extend the term of such contract until a date satisfactory to Big Rivers.

6.2.8 No authorization or approval or other action by, and no notice to or filing or registration with, or license or permit from any Person, including any Governmental Authority, will be necessary prior to start of the Service Period, other than (i) as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time after the Effective Date and which are routine in nature or which cannot be obtained, or are not normally applied for, prior to the time they are required and which Big Rivers has no reason to believe will not be timely obtained and in each case which do not prevent provision of Electric Services as described herein, and (ii) with respect to the approval of the KPSC or FERC, on the Effective Date, such approvals will have been duly given or issued, received and will be in full force and effect and unappealable, and all conditions therein will have been satisfied to the extent required to be satisfied by Kenergy or Big Rivers on or prior to the Effective Date.

6.2.9 The Century Retail Agreement, the Alcan Wholesale Agreement and the Alcan Retail Agreement will have been duly authorized, executed and delivered by the parties thereto and be in full force and effect and all conditions precedent to the effectiveness will have been satisfied or waived other than conditions within the control of Kenergy or conditions that automatically will become effective simultaneously with the Effective Date or the Unwind Transaction.

6.2.10 RUS shall have consented to the Unwind Transaction and the New Transaction and to all arrangements and agreements required to implement the Unwind Transaction and the New Transaction.

6.3 Efforts to Satisfy Conditions to Effective Date. Each of the Parties shall use commercially reasonable efforts and act in good faith to satisfy all of the conditions set forth in Section 6.2 at the earliest practicable date (other than those which the applicable Party agrees to

waive). At such time as Big Rivers or Kenergy believes such conditions have been satisfied, such Party shall notify the other Party in writing. The obligations of the Parties under this Section 6.3 will continue until the earlier of (a) such time as this Agreement terminates pursuant to Section 7.2, and (b) the Effective Date.

## ARTICLE 7

### TERM AND TERMINATION

7.1 Term. Subject to Section 6.1, this Agreement will become binding on the Parties on the date of execution and delivery by the Parties and will remain in full force and effect until December 31, 2023 (the “Term”), unless earlier terminated pursuant to the terms hereof.

7.2 Termination Prior to Effective Date. This Agreement may be terminated without cost or penalty prior to the occurrence of the Effective Date in accordance with this Section 7.2.

7.2.1 Termination for Failure to Satisfy Conditions to Effective Date. Either Party may terminate this Agreement without cost or penalty by providing five Business Days’ prior written notice of termination to the other Party upon the failure of the conditions in Sections 6.2 to be satisfied in full or waived by the Person in whose favor the condition exists on or before [\_\_\_\_], or such later date as the Parties may agree, unless any such condition is satisfied or waived by the applicable Person within such five Business Day period.

7.2.2 Termination In Event Unwind Transaction Will Not Be Consummated. This Agreement may be terminated by either Party at any time prior to the Effective Date upon receipt of notice from LG&E or Big Rivers that either LG&E or Big Rivers does not intend to consummate the Unwind Transaction.

7.2.3 Termination Due to KPSC Modification. If the KPSC issues an order on any of the filings by Big Rivers or other Persons seeking necessary approvals for the Unwind Transaction and the New Transaction that disapproves or changes the pricing or other material terms of this Agreement or the Century Retail Agreement or Big Rivers’ ability to recover costs from the Smelters or the Non-Smelter Ratepayers other than as contemplated in connection with the New Transaction, either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Century no later than three Business Days after the first to occur of the following: (i) the last date on which a petition for re-hearing may be filed if such a petition has not been filed, (ii) the date on which the KPSC issues an order denying the request for re-hearing for any petition for re-hearing that may have been filed during the allowed period and (iii) if a rehearing occurs, following the date on which an order on rehearing is issued.

7.2.4 Termination Pursuant to Century Termination. Either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other following receipt by Kenergy of a notice of termination from Century pursuant to and in accordance with Section 7.2.3 of the Century Retail Agreement.

7.2.5 Effect of Pre-Effective Date Termination. If this Agreement is terminated in accordance with this Section 7.2, Big Rivers and Kenergy acknowledge and agree



that the Existing Century Agreement and the Kenergy/LG&E Contract and all other related documents and agreements will continue in full force and effect as if this Agreement had not been executed and delivered by the Parties.

### 7.3 Termination After the Effective Date.

7.3.1 Termination for Closing of Sebree Smelter. Either Party may terminate this Agreement as of the date Century terminates the Century Retail Agreement pursuant to Section 7.3.1 therein in connection with the termination and cessation of all aluminum smelting operations at the Sebree Smelter.

7.3.2 Termination for Event of Default. This Agreement may be terminated following the occurrence and during the continuation of an Event of Default pursuant to Article 14.

### 7.3.3 Termination Following KPSC Order.

(a) Big Rivers may terminate this Agreement without cost or penalty by providing written notice of termination to Kenergy and Century within three Business Days of the issuance by the KPSC of an order unconditionally or conditionally approving this Agreement and the Century Retail Agreement in connection with the consummation of the Unwind Transaction if Big Rivers determines in its business judgment, exercised in good faith, that the Unwind Transaction is not in Big Rivers' best interests.

## ARTICLE 8

### METERING

8.1 Metering Facilities. Big Rivers will provide or cause to be provided metering facilities at the Point of Delivery which measure Hourly kW, kWh, kilovars, kilovar-hours and voltage fluctuation spectra.

8.2 Reading. Big Rivers will read or cause to be read the meters at the Point of Delivery on the last date of each month (or such other date as may be agreed upon by the Parties).

8.3 Testing. Big Rivers will test, or cause to be tested, the calibration of the meters at the Point of Delivery by comparison of accurate standards at least once every twelve months (or more often if so required by Applicable Law) and will give Kenergy and Century not less than five Business Days' prior notice of such testing. Kenergy and Century will have the right to observe and participate in all meter tests. Meters registering not more than plus or minus 1% inaccurate will be deemed to be accurate (unless Applicable Law establishes a standard more stringent than 1%, in which case, the more stringent standard will apply). The reading of any meter which will have been disclosed by tests to be inaccurate will be corrected for the 60 days before such tests (or for such shorter period if applicable) in accordance with the percentage of inaccuracy found by such tests. If any meter should fail to register for any period, the Parties and Century will make mutually agreed upon estimates for such period from the best information available. If Kenergy or Century requests a special meter test, Big Rivers shall cause such test to

be conducted; *provided, however*, that if any special meter test made at the request of Kenergy or Century discloses that the meters are not more than plus or minus 1% inaccurate, Kenergy or Century, as applicable, shall reimburse Big Rivers for the reasonable cost of such test. In all other respects, meters through which Big Rivers delivers Energy to Kenergy for resale to Century shall be installed, operated, maintained and tested in accordance with all Applicable Law and Prudent Utility Practice.

## ARTICLE 9

### OPERATIONAL MATTERS

9.1 Operations and Operational Responsibility. In carrying out the requirements of this Agreement, each Party will comply with the reliability criteria, standards guidelines and operating procedures of any national electric reliability organization, SERC, Applicable Law and any regional transmission organization (if applicable), and neither Party will be required to take any action in violation of any thereof.

9.1.1 Big Rivers will operate and maintain or cause to be operated and maintained all of the facilities owned by it on the premises of Kenergy or Century.

9.1.2 Kenergy will operate and maintain, or cause to be operated and maintained, all of the facilities and equipment owned by it.

9.2 Installation and Maintenance of Interconnection Equipment. Big Rivers has furnished or installed all of the facilities required for the delivery of Energy to the Point of Delivery, as well as the 161 kilovolt transmission lines required between the Point of Delivery and Century's electrical substation. Big Rivers shall install and maintain, or shall cause to be installed and maintained, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment, necessary to enable Kenergy to deliver Energy to Century at the Point of Delivery. Big Rivers will keep or cause to be kept, all such equipment in good working order, condition and repair (ordinary wear and tear excepted) such that all such equipment is capable of operating, consistent with Prudent Utility Practice, to the extent necessary to assure sufficient capability to take and use the Electric Services to be delivered by Big Rivers to Kenergy as provided for in this Agreement.

9.3 [Reserved.]

9.4 Curtailed by Big Rivers. If Big Rivers determines in accordance with Prudent Utility Practice, or in compliance with any national electric reliability organization, SERC, Applicable Law and other regulation, any applicable regional transmission organization, or other applicable operating criteria or rules, that a System Emergency has occurred or is imminent, and after suspending or reducing deliveries to Persons purchasing interruptible Energy from Big Rivers, Big Rivers may suspend or reduce the delivery of Energy hereunder and may cease to make available in whole or in part the Electric Services, in each case to the extent caused by, or that Big Rivers determines necessary or prudent under the circumstances to prevent or attempt to prevent, or counter or reduce the effects of, such System Emergency. Any curtailment caused by a System Emergency (or for any other reason) that cannot be avoided after the suspension or

reduction of deliveries to Persons purchasing interruptible Energy from Big Rivers will be effected in a non-discriminatory manner consistent with Big Rivers' then-current policies and procedures. Big Rivers shall notify Kenergy and Century as to the occurrence or threatened occurrence of any System Emergency or other event that may require curtailment, its cause and its impact on the delivery of Energy or the provision of Electric Services, as soon as practicable. Big Rivers will not be obligated to supply Electric Services to the extent suspended or curtailed as a result of the System Emergency.

9.5 Ownership and Removal of Equipment. Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed, by either of the Parties hereto (or by Century) on or in the premises of the other Party (or Century) to receive service under this Agreement shall be and remain the property of the Party (or Century) owning and installing such equipment, apparatus, devices or facilities regardless of the mode or manner of annexation or attachment to real property of the other. Upon the termination of this Agreement or any extension thereof, the owner (including, if applicable, Century) of any equipment, apparatus, devices or facilities on the property of a Party shall have the right to enter upon the premises of that Party, and shall, within a reasonable time and at the sole expense of the owner, remove such equipment, apparatus, devices or facilities.

## ARTICLE 10

### COVENANTS

#### 10.1 Surplus Sales.

10.1.1 Big Rivers acknowledges and agrees that Century may request Big Rivers and Kenergy sell Energy which is surplus to Century's needs by delivering prior written notice to Kenergy and Big Rivers (a) identifying the portion of Base Demand per Hour to be sold and the associated times and duration of the requested sales, and (b) agreeing to curtail its demand per Hour so Century's actual demand and the Energy sold pursuant to this Section 10.1 ("Surplus Sales") is not expected to exceed the Base Demand per Hour. Big Rivers shall have no obligation to make Surplus Sales if the portion of Base Demand per Hour Century requests to be sold exceeds the Base Demand per Hour or is less than ten MW or not in integral multiples of one MW. For the avoidance of doubt, Surplus Sales shall not include sales of Economic Sales, Undeliverable Energy Sales or Potline Reduction Sales.

10.1.2 Big Rivers shall use reasonable commercial efforts to make Surplus Sales and, to the extent consistent with notices from Century to Big Rivers, maximize the Net Proceeds thereof. Big Rivers shall have no obligation to use any efforts to make Surplus Sales if Big Rivers, in its sole discretion exercised in good faith, estimates the Net Proceeds therefrom would be less than \$1.00 per MWh in excess of the sum of the Base Variable Rate, the FAC Factor, the Non-FAC Purchased Power Adjustment Factor Factor and the Environmental Surcharge. Big Rivers will not have any obligation to Kenergy to market or resell Energy pursuant to this Section 10.1 (a) until Big Rivers first has sold or elected not to sell all amounts of its own surplus Energy, or (b) if Big Rivers is unable to sell any or all Energy as a result of transmission constraints (whether on or off Big Rivers' transmission system) or other constraints, including constraints imposed by Applicable Law.

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10.2.2 For any applicable Undeliverable Energy Sale, (i) Kenergy shall pay to Big Rivers any excess of Big Rivers' actual income tax liability relating to such Undeliverable Energy Sale over the estimated income tax liability for such Undeliverable Energy Sale that was used for purposes of calculating the Net Proceeds on such Undeliverable Energy Sale, and (ii) Big Rivers shall pay to Kenergy, upon Kenergy's receipt of such payment from Big Rivers, any excess of Big Rivers' estimated income tax liability for such Undeliverable Energy Sale that was used for purposes of calculating the Net Proceeds on such Undeliverable Energy Sale over the actual income tax liability of Big Rivers relating to such Undeliverable Energy Sale.

### 10.3 Potline Reduction Sales.

10.3.1 At the request of Kenergy, Big Rivers shall sell 115 MW (plus or minus 10 MW) per Hour to Third Parties (such sales of Energy are referred to as "Potline Reduction Sales"), such amount subject to Section 10.3.2 below, on either a Firm basis or a System-Firm basis concurrently with delivery of not less than 30 days' prior notice from Century to Kenergy and Big Rivers (which notice Kenergy and Big Rivers shall keep confidential) if (i) Century has ceased or will cease all aluminum smelting operations on one and only one of its potlines at the Hawesville Smelter; (ii) Century is reasonably likely to be able to continue aluminum smelting operations with respect to all of its other potlines at the Hawesville Smelter as a result of the cessation of aluminum smelting operations on the potline referred to in clause (i); (iii) Century in good faith reasonably estimates the duration of such cessation will equal or exceed 12 months; and (iv) no Potline Reduction Sales have been made for a period of twelve consecutive months prior to the date of such notice. Such notice also shall state the requested duration of the sales of Energy and must be accompanied by a certificate of an officer of Century Parent certifying as to the matters set forth in clauses (i), (ii), (iii), and (iv) above.

10.3.2 Century, Kenergy and Big Rivers shall reasonably cooperate on a schedule for the graduated reduction and, in the case of a potline restoration, the graduated increase in the demand effected pursuant to Section 10.3.1 in such amounts and over a period of time as is mutually satisfactory.

10.3.3 Kenergy may not withdraw its request for Potline Reduction Sales to the extent that Big Rivers has a legally binding agreement with a Third Party for Potline Reduction Sales (a "Potline Reduction Sales Agreement"), *provided* that Big Rivers acknowledges and agrees that Century may at any time increase demand pursuant to Section 10.3.2 and assume responsibility for acquiring Market Energy required during the remainder of the Potline Reduction Sales Agreement.

10.3.4 Big Rivers shall use reasonable commercial efforts to make Potline Reduction Sales and, to the extent consistent with notices from Century to Big Rivers, maximize the Net Proceeds thereof. Big Rivers will not have any obligation to market or resell Energy pursuant to this Section 10.3 (i) until Big Rivers first has sold or elected not to sell all amounts of its own surplus Energy available for sale or (ii) to the extent Big Rivers is unable to make Potline Reduction Sales as a result of transmission constraints (whether on or off Big Rivers' transmission system) or other constraints, including constraints imposed by Applicable Law.

10.3.5 Kenergy and Big Rivers shall consult with Century and agree on the Potline Reduction Sales that will be made on a Firm basis or a System Firm basis and the terms of same. To the extent Kenergy request the Potline Reduction Sales be made on a Firm basis, Kenergy agrees that if during the term of such sale or sales Big Rivers is required to purchase replacement Energy or otherwise make payments to meet such Potline Reduction Sales on a Firm basis, Kenergy will reimburse Big Rivers the full cost of such actions and indemnify Big Rivers for any costs, obligations or liabilities incurred by Big Rivers, including liabilities to Third Parties.

10.3.6 All of the Net Proceeds of any Potline Reduction Sales shall be credited against the Monthly Charge from the effective date of the notice pursuant to Section 10.3.1 until the Cut-Off Date or, if such amount is in excess of the Monthly Charge otherwise applicable, such excess shall be paid to Kenergy for payment to Century. The “Cut-Off Date” shall mean the earliest to occur of (a) the first day of the 49th Billing Month after the effective date of the notice given under Section 10.3.1, (b) a date specified in a written notice, if any, by Century to Kenergy and Big Rivers, (c) the earlier of the date (i) one year after the date Century commences smelting operations with respect to one or more pots on the previously suspended potline or (ii) all Potline Reduction Sales Agreements has been terminated or expired after Century commences smelting operations with respect to one or more pots on the previously suspended potline. Sales of Energy after the Cut-Off Date shall be Surplus Sales pursuant to Section 10.1 and not Potline Reduction Sales pursuant to this Section 10.3. Kenergy agrees that it shall not be permitted to extend the term of Potline Reduction Sales beyond forty-eight months, *provided* that nothing in this Section 10.3.6 shall preclude Kenergy from providing a new notice under Section 10.3.1 after aluminum smelting operations at the suspended potline have been restored, subject to Section 10.3.1(iv).

10.3.7 For any Potline Reduction Sale, (i) Kenergy shall pay to Big Rivers any excess of Big Rivers’ actual income tax liability relating to such Potline Reduction Sale over the estimated income tax liability for such Potline Reduction Sale that was used for purposes of calculating the Net Proceeds on such Potline Reduction Sale, and (ii) Big Rivers shall pay to Kenergy any excess of Big Rivers’ estimated income tax liability for such Potline Reduction Sale that was used for purposes of calculating the Net Proceeds on such Potline Reduction Sale over the actual income tax liability of Big Rivers relating to such Potline Reduction Sale.

10.3.8 For the avoidance of doubt, (i) Potline Reduction Sales shall not include Surplus Sales, Economic Sales or Undeliverable Energy Sales; (ii) nothing in this Section 10.3 shall be construed to relieve Century of its obligation with respect to the Base Monthly Charge, the TIER Adjustment or other components of the Monthly Charge payable pursuant to Article 4; and (iii) nothing in this Agreement precludes Undeliverable Energy Sales under Section 10.2 from becoming Potline Reduction Sales if all conditions of Section 10.3 are met.

10.4 Century Retail Agreement. Kenergy covenants that:

10.4.1 it will at all times fully perform and discharge all of its obligations under the Century Retail Agreement, and under any transmission agreement pursuant to which

amounts of Energy are delivered directly or indirectly to Kenergy for sale and transmission to Century;

10.4.2 it will not resell any Electric Services purchased from Big Rivers under this Agreement to any user other than Century, except as expressly permitted in this Agreement or with the prior written consent of Big Rivers, which may be withheld by Big Rivers in its sole discretion, and shall require that any Energy that Kenergy purchases from Big Rivers under this Agreement and resells to Century must be consumed by Century in connection with the operation of its Hawesville Smelter;

10.4.3 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 Big Rivers under this Agreement nor will it amend or modify the Century Retail Agreement, including with respect to (i) the rates, terms and conditions for service; (ii) the "Base Monthly Energy," "Supplemental Energy," or "Market Energy" under the Century Retail Agreement; (iii) Century's payment obligations; or (iv) the term of the Century Retail Agreement without the prior written consent of Big Rivers;

10.4.4 it will not waive compliance by Century with any of its obligations under the Century Retail Agreement or fail to fully enforce the Century Retail Agreement against Century or act in any manner that would adversely affect Kenergy's ability to fulfill its obligations under this Agreement;

10.4.5 it will provide to Big Rivers all notices of default received or sent by Kenergy pursuant to the Century Retail Agreement;

10.4.6 it will not terminate the Century Retail Agreement if the termination would be a breach by Kenergy thereof (including rejection of the agreement in bankruptcy or reorganization proceeding);

10.4.7 it will not terminate the Century Retail Agreement for breach by Century without providing Big Rivers notice of such Century breach and a reasonable opportunity for Big Rivers to cure such Century breach, if it should elect, in its sole discretion, to do so. Big Rivers' opportunity to cure will extend, at a minimum, for a period of not less than ten Business Days after the later of (i) the applicable period of time available for a cure by Century under the Century Retail Agreement, or (ii) notice of the breach by Century is delivered by Kenergy to Big Rivers; and

10.4.8 it will not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Century Retail Agreement to any Person without (i) subject to Section 16.2, first obtaining the written consent of Big Rivers, which consent will not be unreasonably withheld or delayed, and (ii) causing the transferee of the Century Retail Agreement to assume and agree to perform all of Kenergy's obligations under this Agreement which arise following that assignment or transfer.

10.5 Refund of Income Tax Estimated for Net Proceeds. Big Rivers shall return to Kenergy for the benefit of Century any income taxes deducted in calculating the Net Proceeds of a sale of Energy by Big Rivers which Big Rivers ultimately determines are not to be required to

be paid due to the application of a net operating loss carry-forward of Big Rivers that existed on the Effective Date and that otherwise would have expired unused.

10.6 Mitigation of Uncontrollable Force. Kenergy covenants that (a) if there is an Uncontrollable Force that prevents Big Rivers from delivering or Kenergy from receiving any Electric Services as required under this Agreement, Kenergy shall use reasonable commercial efforts to obtain Energy and related services from a Third Party Supplier for sale and delivery to Century as required under the Century Retail Agreement, and (b) Kenergy will take such other actions as are reasonably necessary to avoid a breach or default under the Century Retail Agreement that might, if not cured as required by that agreement, result in Century's invocation of any of the remedies set forth in Article 14 of the Century Retail Agreement.

## ARTICLE 11

### UNCONTROLLABLE FORCES

11.1 Occurrence of an Uncontrollable Force. No Party will be considered to be in breach or default in the performance of any of its obligations under this Agreement if the failure of performance is due to an Uncontrollable Force, except as otherwise provided in this Article 11. If either Party is unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties, to the extent that they are affected by such Uncontrollable Force, will be suspended during the continuance of any inability so caused, but for no longer period. A Party will 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.

11.2 Mitigation. A Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability as promptly as reasonably possible. Nothing contained herein may be construed to require a Party to prevent or to settle a labor dispute against its will.

11.3 Notice of Uncontrollable Force. A Party shall notify the other Party 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 shall notify Big Rivers if it receives notice from Century that Century 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 and Big Rivers is not an additional addressee of such notice.

11.4 Payment Obligations. Notwithstanding anything in this Agreement to the contrary, the occurrence of an Uncontrollable Force shall not relieve Kenergy of its payment obligations under Article 4, including its payment obligations with respect to the Base Energy Charge.



## ARTICLE 12

### REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Big Rivers. Big Rivers hereby represents and warrants to Kenergy as follows:

12.1.1 Big Rivers is an electric generation and transmission cooperative 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.

12.1.2 The execution, delivery and performance of this Agreement by Big Rivers have been duly and effectively authorized by all requisite corporate action.

12.2 Representations and Warranties of Kenergy. Kenergy hereby represents and warrants to Big Rivers as follows:

12.2.1 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 obligation 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.

12.2.2 The execution, delivery and performance of this Agreement by Kenergy have been duly and effectively authorized by all requisite corporate action.

## ARTICLE 13

### ADDITIONAL AGREEMENTS

13.1 Regulatory Proceedings.

13.1.1 *KPSC Jurisdiction.* Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC over Big Rivers, Kenergy or the rates, terms and conditions of Electric Service to Kenergy.

13.1.2 *Notice of Material Filings.* Big Rivers shall provide to Kenergy and Century a copy of any filing with the KPSC or FERC that seeks a change in Big Rivers' tariff, or relief authorized by KRS 278.020, KRS 278.030, KRS 278.212, KRS 278.218, KRS 278.300, KRS 278.183 or 807 KAR 5:056.

13.2 Audit Rights.

13.2.1 Kenergy will permit Big Rivers 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 Century under the Century Retail Agreement, including scheduled usage,

meter records and billing records. Kenergy shall retain all documentation applicable to service to Century under the Century Retail Agreement for a period of three years beyond the date of the service. Nothing in this Section shall obligate Kenergy to disclose attorney-client privileged information.

13.2.2 Big Rivers will permit Kenergy and Century to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Big Rivers relating to its service to Kenergy under this Agreement, including scheduled deliveries, meter records and billing records and records related to payments made by Century to Big Rivers pursuant to the assignment described in Section 5.1 and such other documents related to payment for and determination of the amount of Electric Services supplied by Big Rivers and delivered to Kenergy for resale and delivery to Century and the appropriate classification of such Energy. Big Rivers shall retain all documentation applicable to service to Kenergy under this Agreement for a period of three years.

13.3 [Reserved.]

13.4 Patronage Capital.

13.4.1 Big Rivers shall amend its bylaws to adopt the provisions set forth in Appendix B and agrees not to amend its Bylaws thereafter in a manner that adversely affects the rights of Kenergy, or in turn of Century, to receive patronage capital or other distributions from Big Rivers.

13.4.2 The provisions of this Section 13.4 shall survive the expiration or earlier termination of this Agreement.

13.5 [Reserved.]

13.6 Negotiation of Replacement Agreement. If this Agreement has not been terminated earlier, Big Rivers shall negotiate in good faith with Kenergy and Century, no later than January 1, 2023, concerning rates and terms and conditions for new power supply arrangements following the expiration of this Agreement on December 31, 2023.

13.7 Entitlement to Large Industrial Rate. If this Agreement terminates pursuant to a closure of the Hawesville Smelter as set forth in Section 7.3.1 and Century continues non-smelting operations, Big Rivers acknowledges and agrees that Century will be entitled to be served by Kenergy under the Large Industrial Rate; *provided, however*, the capacity and associated Energy served under the Large Industrial Rate shall not exceed 15 MW.

13.8 Unbundling. Unless required by Applicable Law, Big Rivers will not seek to amend the Large Industrial Rate:

(a) To create unbundled services if unbundling those services alone would result in a more than \$1 million of additional revenue to Big Rivers; and

(b) In a manner which results in categories of OATT costs being charged to Kenergy which Century is responsible for under the Century Retail Agreement and which are utilized by but not charged to the Non-Smelter Ratepayers.

13.9 Not Exclusive Service Arrangement. Nothing in this Agreement may be construed (i) to limit the ability of Kenergy to purchase capacity, Energy or other services from Persons other than Big Rivers to serve Century, or (ii) to amend, waive or otherwise alter the terms of Big Rivers' plan of reorganization, as modified June 1, 1998, or agreements relating thereto regarding the supply obligation of Big Rivers after July 17, 1998, for wholesale power required by Kenergy to provide Electric Service to Century or Alcan.

## ARTICLE 14

### EVENTS OF DEFAULT; REMEDIES

14.1 Events of Default. Each of the following constitutes an "Event of Default" under this Agreement:

14.1.1 Failure by a Party to make any payment in accordance with this Agreement within three Business Days following the non-performing Party's receipt of written notice of the non-performing Party's default in its payment obligation;

14.1.2 Failure of a Party to perform any material duty imposed on it by this Agreement (other than a failure to make a payment when due) within 30 days following the non-performing Party's receipt of written notice of the non-performing Party's breach of its duty hereunder;

14.1.3 Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article 16;

14.1.4 The occurrence and continuance of an "Event of Default" under the Century Retail Agreement;

14.1.5 Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, 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 and such petition has not been withdrawn or dismissed within 60 days after filing;

14.1.6 Assignment by a Party for the benefit of its creditors;

14.1.7 Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within 60 days after appointment; or

14.1.8 Failure, inability or refusal of Kenergy to cure a breach or default by Kenergy under the Century Retail Agreement which gives rise to a termination of the Century

Retail Agreement, or any termination by Kenergy of the Century Retail Agreement in breach or default thereof.

14.2 Remedies, General. Except as otherwise provided in this Agreement, following the occurrence and during the continuance of an Event of 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. Unless otherwise provided herein, remedies provided in this Agreement are cumulative, unless specifically designated to be an exclusive remedy and nothing contained in this Agreement may 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:

14.2.1 UNDER NO CIRCUMSTANCE WILL EITHER PARTY OR ITS RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGER, EMPLOYEES OR AGENTS BE LIABLE HEREUNDER TO THE OTHER PARTY, ITS AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS EMPLOYEES OR AGENTS WHETHER IN TORT, CONTRACT OR OTHERWISE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. EACH PARTY'S LIABILITY HEREUNDER WILL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

14.2.2 Neither Party may terminate this Agreement as a result of an "Event of Default" under the Century Retail Agreement if the actions or omissions of Kenergy caused such "Event of Default"; *provided*, that either Party may terminate this Agreement if the Century Retail Agreement is terminated for any reason.

14.2.3 Unless otherwise provided herein, if a Party is in breach of its obligations under this Agreement but such breach does not constitute, or would not with the passage of time or the giving of notice constitute, an Event of Default and this Agreement does not provide any other remedy therefore, if such breach has not been cured by the breaching Party within 60 days after receiving written notice from the non-breaching Party setting forth, in reasonable detail, the nature of such breach, the non-breaching Party may bring a claim for money damages with respect to such breach and exercise its rights under Section 15.2, but will not be entitled to terminate, or seek to terminate, this Agreement, or suspend performance of its obligations and duties hereunder as a result of such breach.

## ARTICLE 15

### DISPUTE RESOLUTION

15.1 Resolution Meetings. If a dispute arises 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 among an authorized representative of each of the Parties and, if applicable,

Century to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten days or such shorter or longer time as agreed upon by the Parties of the request. Nothing in this Section 15.1 shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement.

15.2 Right to Pursue Rights and Remedies. Absent resolution of a dispute pursuant to Section 15.1, the Parties may pursue at any Governmental Authority all rights and remedies that they may have at law, in equity or pursuant to this Agreement subject to the limitations set forth in this Agreement. Notwithstanding the provisions of this Article 15, each Party may at all times seek injunctive relief, where its delay in doing so could result in irreparable injury.

## ARTICLE 16

### GENERAL PROVISIONS/SUCCESSORS AND ASSIGNS

16.1 Binding Nature. This Agreement will 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 as provided in Section 16.4, and except that, subject to satisfaction of the conditions of Section 16.2, assignment may be made by either Party to such Person as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the equity of such Party. When consent is required, consent may not be unreasonably withheld, conditioned or delayed.

16.2 Limitation on Assignment. In no event may either Party assign this Agreement (including as part of a sale of all or substantially all the assets of the assigning Party or a merger with or purchase of substantially all the equity interests of such Party) (i) to any Person that does not have adequate financial capacity as demonstrated to the reasonable satisfaction of the non-assigning Party or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement or (ii) on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties.

16.3 Duties. No permitted assignment or transfer will 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.

16.4 Financing Lien. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

16.5 Big Rivers Restructuring.

16.5.1 In connection with a Restructuring, Kenergy, Century, Alcan and Big Rivers shall determine a good faith estimate of the cumulative increase or decrease in the TIER Adjustment that such Restructuring would cause in each Fiscal Year over the 24-Billing Month

period following the date of the effectiveness of Restructuring (the “Restructuring Amount”). Any change in the Large Industrial Rate approved at the time of or in connection with the Restructuring shall not be considered as an effect of the Restructuring. Nothing in this Agreement, including this Section 16.5, shall limit the ability of Big Rivers to seek a change in or modification of the Large Industrial Rate in connection with the occurrence of a Restructuring.

16.5.2 The Monthly Charge in each month of the 48-month period following the effectiveness of the Restructuring shall be increased or decreased, as applicable, by an amount equal to 1/48th of the Restructuring Amount; *provided*, that the application of this Section 16.5 shall not result in Kenergy paying less than the sum of the Large Industrial Rate, the FAC Factor, the Environmental Surcharge Factor and the Non-FAC Purchased Power Adjustment Factor, and, on a per MWh basis, for a customer with a 98% load factor with respect to Base Monthly Energy in any Fiscal Year. Sample calculations for determining a Restructuring Amount are set forth in Exhibit A.

16.5.3 This Section 16.5 shall not be applicable to any Restructuring undertaken in response to the loss of revenue caused by the termination of the Alcan Wholesale Agreement.

16.5.4 If Century, Alcan, Kenergy and Big Rivers are not able to determine a mutually agreeable estimate of the Restructuring Amount, then Big Rivers, Kenergy, Century or Alcan may petition to the KPSC to determine the Restructuring Amount.

## ARTICLE 17

### MISCELLANEOUS

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

17.2 Jurisdiction. The Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over each and every judicial action brought under or in relationship to this Agreement; *provided* that the subject matter of such dispute is not a matter reserved by law to the KPSC, or to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Nothing in this paragraph prohibits a Party from referring to FERC any matter properly within FERC’s jurisdiction.

17.3 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

#### 17.4 Amendments.

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

17.4.2 The Parties acknowledge and agree that nothing in this Agreement shall limit the right of Big Rivers to file changes to the OATT, or limit the right of any Party to challenge any aspect of the OATT, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service issue presented to FERC.

17.5 Good Faith Efforts. The Parties agree that each will 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 will 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 may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

17.6 Notices. A notice, consent, approval or other communication under this Agreement must be in writing, addressed to the Person to whom it is to be delivered at such Person's address shown below and (a) personally delivered (including delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile, with a duplicate notice sent by a nationally recognized overnight courier service, *provided however*, that (i) a notice under Section 2.3.2(a)(iii) or Section 10.2 may be given by telephone to be followed as soon as reasonably practicable by written notice as described herein and (ii) a notice of Uncontrollable Force shall be given by whatever means is available followed by notice in writing as described herein as soon as reasonably practicable. A notice given to a Person in accordance with this Section 17.6 will be deemed to have been delivered (a) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (b) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section 17.6, the address of a Party is the address set out below or such other address which that Party may from time to time deliver by notice to the other Party, in accordance with this Section 17.6:

If to Big Rivers:	Big Rivers Electric Corporation 201 Third Street Henderson, Kentucky 42420 Facsimile: _____ Attn: President and CEO
If to Kenergy:	Kenergy Corp. 6402 Old Corydon Road Henderson, Kentucky 42420 Facsimile: _____ Attn: President and CEO

17.7 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 will not affect, impair or invalidate the remainder of this Agreement but will 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 materially adversely affects 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 that was so materially adversely affected will be entitled, in its discretion, to terminate this Agreement.

17.8 Survival. Each provision of this Agreement providing for payment for Electric Services and any other amounts due hereunder, distribution of patronage capital, assignment of the right to collect and enforce collection of amounts due, or related to remedies for default, damage claims, indemnification or payment of other liabilities will survive termination of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

17.9 Merger. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the matters addressed herein and supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement, except as otherwise provided in (a) Section 6.1 and Section 7.2.5 hereof, (b) Amendment to Wholesale Power Agreements, dated as of July 15, 1998, by and between Big Rivers and Green River Electric Corporation, or (c) Amendment to Wholesale Power Agreements, dated as of July 15, 1998, by and between Big Rivers and Henderson Union Electric Cooperative Corp. The Parties agree and acknowledge that the agreements referred to in clauses (b) and (c) shall survive following the effectiveness of this Agreement. The Parties acknowledge that Big Rivers and Century disagree, notwithstanding the Unwind Transaction, as to the obligation of Big Rivers, in the absence of a new or amended contract, to serve Kenergy for the benefit of Century when the Existing Century Agreement terminates or when the this Agreement terminates.



17.10 Further Assurances. The Parties shall execute such additional documents including a consent to assignment, legal opinions, estoppel letters or similar documents, and shall cause such additional actions to be taken as may be required or, in the judgment of any Party, be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.

17.11 Counterparts. This Agreement may be executed in any number of counterparts, which together will constitute but one and the same instrument and each counterpart will have the same force and effect as if they were one original.

17.12 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard or care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement other than Century.

17.13 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

17.14 No Agency. This Agreement is not intended, and may not be construed to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party will have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or to be an agent or representative of, or otherwise bind, the other Party.

[Signatures Follow on Next Page]

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

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:



2009

Annualized Basis

Case	Charges (\$M)	4.2 Base Energy Charge	4.3 Supplemental Energy Charge	4.3.1 Interruptible Energy	4.3.2 Buy-Through Energy	4.3.3 Market Energy	4.4 Back-up Energy Charge	4.4.1(a) and (b) (within 10MW per Smelter)	4.4.1(c) - Excess	4.5 Transmission Services Charge	4.6 Excess Reactive Demand Charge	4.7 TIER Adjustment Charge	4.8 Adjustable Charges	4.8.1 FAC Charge	4.8.2 Non-FAC Purchased Power Adjustment Charge	4.8.3 Environmental Surcharge	4.9 Rebate	4.10 Equity Development Credit	4.11 Surcharge	4.11 (a)	4.11 (b)	4.11 (c)	4.12 Retail Fee	Total Charges	Credits (\$M)	Net Proceeds	Avoidable Base Charge	4.13	4.13.1 Surplus, Undeliverable Energy, and Polline Reduction Sales	4.13.1 Surplus Sales	Undeliverable Energy, and Polline Reduction Sales	4.13.2 Curtailment for Purchased Power	4.13.3 Economic Sales	4.13.4 Market Energy Sales	Total Credits	Net Charges per MWh Metered	Net Charges				
Base Case		(2 x 34) + (21 x 35)			8 x 27	9 x 28	10 x 29	12 x 31	13 x 32	Contract	Contract	See Supporting Sched.	20 x 36	20 x 38	20 x 37	See Supporting Schedules	Contract	Contract	Contract	2 x 41	2 x 42	Contract				(17+18+19)x25 - (tax + admn. cost) %	See Supporting Schedules		Min. of 71 and 72	line 71	15 x 33	line 71	4.13.4 Market Energy Sales	76 + 77 + 78 + 79 + 80	line 68 - line 82						
Derivation																																									
High Load				Interruptible Energy																																					
Low Load				Interruptible Energy																																					
Supplemental Energy (4.3)				Buy-Through Energy																																					
Backup Energy (4.4)				Market Energy and (b)	4.4.1 (a)	4.4.1 (c)																																			
Surplus																																									
Undeliverable																																									
Reduction																																									
Curtailment																																									
Economic																																									
Max. of																																									
9,600																																									
MWh																																									







2009

Illustrative Quarterly Basis - Base Case

Case	Derivation	Base Case	Q1	Q2	Q3	Q4	Pre-Adjusted Year	Adjusted TIER	Adjusted Year
44	Charges (\$M)								
45	4.2 Base Energy Charge	(2 x 34) + (21 x 35)							
46	4.3 Supplemental Energy Charge								
47	4.3.1 Interruptible Energy	8 x 27							
48	4.3.2 Buy-Through Energy	9 x 28							
49	4.3.3 Market Energy	10 x 29							
50	4.4 Back-up Energy Charge								
51	4.4.1(a) and (b) (within 10MW per Smelter)	12 x 31							
52	4.4.1(c) - Excess	13 x 32							
53	4.5 Transmission Services Charge	Contract							
54	4.6 Excess Reactive Demand Charge	Contract							
55	4.7 TIER Adjustment Charge	See Supporting Sched.							
56	4.8 Adjustable Charges								
57	4.8.1 FAC Charge	20 x 36							
58	4.8.2 Non-FAC Purchased Power Adjustment Charge	20 x 38							
59	4.8.3 Environmental Surcharge	20 x 37							
60	4.9 Rebate	See Supporting Schedules							
61	4.10 Equity Development Credit	Contract							
62	4.11 Surcharge								
63	4.11 (a)	Contract							
64	4.11 (b)	2 x 41							
65	4.11 (c)	2 x 42							
66	4.12 Retail Fee	Contract							
67	Total Charges								
68	Total Charges								
69	Credits (\$M)								
70	Net Proceeds	(17+18+19)x25 - (tax + admn. cost) % Resale of Market Energy See Supporting Schedules							
71	Net Proceeds								
72	Avoidable Base Charge								
73	4.13								
74	4.13.1 Surplus, Undeliverable Energy, and Polline Reduction Sales								
75	4.13.1 Surplus, Undeliverable Energy, and Polline Reduction Sales	Min. of 71 and 72							
76	Surplus Sales	line 71							
77	Undeliverable Energy, and Polline Reduction Sales	line 71							
78	4.13.2 Curtailment for Purchased Power	15 x 33							
79	4.13.3 Economic Sales	line 71							
80	4.13.4 Market Energy Sales								
81	Total Credits	76 + 77 + 78 + 79 + 80							
82	Net Charges								
83	Net Charges	line 68 - line 82							
84	Net Charges per MWh Metered								
85	Net Charges per MWh Metered								









**COORDINATION AGREEMENT**

Dated as of [\_\_\_\_\_]

by and between

**BIG RIVERS ELECTRIC CORPORATION**

and

**CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**

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## COORDINATION AGREEMENT

This COORDINATION AGREEMENT ("Agreement") is made and entered into as of [\_\_\_\_], by and between BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric cooperative ("Big Rivers"), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership ("Century"). Big Rivers and Century are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

A. Kenergy Corp., a Kentucky retail rural electric cooperative, currently supplies and delivers to Century, the owner and operator of an aluminum reduction plant in Hawesville, Kentucky, electric energy and related services pursuant to an Agreement for Electric Service, dated July 15, 1998, between Green River Electric Corporation, Kenergy's predecessor-in-interest, and Southwire Company, Century's predecessor in interest (the "Existing Century Agreement").

B. Kenergy currently purchases certain electric energy and related services for resale to Century from Western Kentucky Energy Corp., an affiliate of E. ON U.S., LLC, formerly known as LG&E Energy Corp. (together with such affiliates and parent, collectively, "LG&E") under an Agreement for Electric Service, dated as of July 15, 1998 (the "Kenergy/LG&E Contract").

C. Kenergy also currently purchases additional electric energy and related services for resale to Century, to serve the energy requirements of Century not provided by LG&E, from third-party suppliers, including Big Rivers.

D. The Existing Century Agreement and the Kenergy/LG&E Contract were entered into in connection with the consummation of a series of transactions implementing the First Amended Plan of Reorganization of Big Rivers, as part of which, among other things (i) Big Rivers leased its generating facilities to LG&E and (ii) Big Rivers entered into a power purchase arrangement with LG&E whereby LG&E supplied Big Rivers with electric energy and related services for resale to its Members.

E. Big Rivers and LG&E have agreed to terminate and unwind existing transactions among them relating to the lease by Big Rivers of its interest in its generating facilities to LG&E and the sale by LG&E of electric energy and related services to Big Rivers.

F. In connection with and as a condition to such termination and unwind transactions, Big Rivers has agreed to supply electric energy and related services to Kenergy for resale to Century pursuant to a wholesale power sales agreement, dated as of the date hereof (the "Century Wholesale Agreement").

G. Kenergy has agreed to supply a similar amount of electric energy and related services to Century pursuant to a retail electric service agreement, dated as of the date hereof (the "Century Retail Agreement").

H. Big Rivers, Kenergy and Century have further agreed that Century will make payments due under the Century Retail Agreement to a depository bank under a certain Security and Lockbox Agreement to be executed among Big Rivers, Kenergy, Century and a depository bank selected by those parties (the “Lockbox Agreement”) or, under arrangements relating to sales of Energy by Third Party Suppliers to Kenergy for resale to Century to the depository under other similar lockbox arrangements among Kenergy, Century and the Third Party Supplier.

I. As a further condition to the execution and delivery of the Century Wholesale Agreement by Big Rivers, and the execution and delivery of the Century Retail Agreement by Century, respectively, the Parties desire to enter into this Agreement to coordinate the performance of their respective obligations under such agreements.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and their mutual covenants set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Definitions; Rules of Interpretations. Capitalized terms used in this Agreement and not defined herein have the meanings assigned to those terms in the Century Retail Agreement. The rules of interpretation set forth in Section 1.2 of the Century Retail Agreement shall apply to this Agreement as though fully set forth herein.

2. Term and Survival of Obligations. This Agreement shall commence on the date first written above, provided that the obligations of the Parties under Section 3 and Section 5 shall not commence until the Effective Date. This Agreement shall continue in effect until the Century Retail Agreement expires or is terminated in accordance with its terms. Notwithstanding the foregoing, any provision of this Agreement providing for payment from one party to the other for assignment of the right to collect and enforce collection of amounts due, or related to remedies for default, damage claims, or payment of other amounts will survive termination or expiration of this Agreement to the extent necessary for its enforcement and the protection of the Party in whose favor such provision exists.

3. Covenants and Agreements.

3.1 Century Retail Agreement. Century shall (i) fully perform and discharge all of its obligations under the Century Retail Agreement unless excused in accordance with the terms thereof; (ii) not act or rely upon any written or oral waivers granted by Kenergy of Century’s performance under or compliance with provisions of the Century Retail Agreement that could be reasonably expected to materially adversely affect Big Rivers’ rights or interests under the Century Wholesale Agreement without the prior written consent of Big Rivers; (iii) not waive the performance and discharge by Kenergy of its material obligations under the Century Retail Agreement without the prior written consent of Big Rivers; (iv) not amend or modify the Century Retail Agreement without the prior written consent of Big Rivers (the addition, deletion, modification or amendment of supplemental tariffs contemplated by the Century Retail Agreement which has been approved by the KPSC is deemed not to be an amendment or modification of the Century Retail Agreement for the purposes of this Section 3.1); (v) not

terminate or repudiate the Century Retail Agreement (including by rejection or similar termination in a bankruptcy proceeding involving Century) other than in accordance with the provisions thereof without the prior written consent of Big Rivers; (vi) make payments pursuant to the Century Retail Agreement when due and in accordance therewith and the Lockbox Agreement for so long as such agreements exist; (vii) not take any action or support any action by others that in any manner would impede Century's ability to fulfill its obligations to Kenergy or Big Rivers under the Century Retail Agreement or this Agreement or act in any manner that could reasonably be expected to materially adversely affect its ability to perform or discharge its obligations under this Agreement; (viii) provide Big Rivers with a copy of all notices sent to Kenergy pursuant to the Century Retail Agreement; and (ix) not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Century Retail Agreement except in accordance with Article 16 thereof; *provided*, that any transfer or assignment pursuant to Article 16 thereof which requires the consent or approval of Kenergy also shall require the consent of Big Rivers.

3.2 Century Wholesale Agreement. Big Rivers shall (i) fully perform and discharge all of its obligations under the Century Wholesale Agreement unless excused in accordance with the terms thereof; (ii) not act or rely upon any written or oral waivers granted by Kenergy of Big Rivers' performance under or compliance with provisions of the Century Wholesale Agreement that could be reasonably expected to materially adversely affect Century's rights or interests under the Century Retail Agreement without the prior written consent of Century; (iii) enforce the performance and discharge by Kenergy of its material obligations under the Century Wholesale Agreement and not waive the performance and discharge by Kenergy of its material obligations thereunder; (iv) not amend or modify the Century Wholesale Agreement without the prior written consent of Century (the addition, deletion, modification or amendment of supplemental tariffs contemplated by the Century Wholesale Agreement which has been approved by the KPSC is deemed not to be an amendment or modification of the Century Wholesale Agreement for the purposes of this Section 3.2); (v) not terminate or repudiate the Century Wholesale Agreement (including by rejection or similar termination in a bankruptcy proceeding involving Big Rivers) other than in accordance with the provisions thereof; (vi) not take any action or support any action by others that in any manner would impede Big Rivers' ability to fulfill its obligations to Kenergy or Century under the Century Wholesale Agreement or this Agreement or act in any manner that could reasonably be expected to materially adversely affect its ability to perform or discharge its obligations under this Agreement; (vii) provide Century with a copy of all notices sent to Kenergy pursuant to the Century Wholesale Agreement; and (viii) not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Century Wholesale Agreement except in accordance with Article 16 thereof; *provided*, that any transfer or assignment pursuant to Article 16 thereof which requires the consent or approval of Kenergy also shall require the consent of Century.

3.3 Assurances Agreement Payments. Big Rivers shall pay Century upon the Effective Date an amount equal to \$139,423 less \$4,167 for each month after December 31, 2006 (calculated as of the 25th day of each month) (the "Assurances Agreement Payment") in lieu of amounts otherwise payable under Section 3(i) of the Assurances Agreement between Century and LG&E Energy Marketing Inc., dated as of July 15, 1998. Big Rivers shall make the Assurances Agreement Payment to Century on the Effective Date; *provided*, that Big Rivers may

credit all or any portion of the Assurances Agreement Payment against one or more invoices relating to the sale of electric energy or related services to Kenergy for resale to Century prior to the Effective Date.

### 3.4 Budget.

(a) Big Rivers shall provide to Century for its review and evaluation (i) on or prior to the date 90 days prior to the end of each Fiscal Year, a copy of Big Rivers' then-current draft proposed annual capital and operating budget (the "Proposed Budget") for the following Fiscal Year, and (ii) any reasonably requested supporting information with respect to the Proposed Budget or expenditures in excess of the Budget.

(b) If requested by either Century or Alcan, Big Rivers and Century and, if the Alcan Retail Agreement is in effect, Alcan, shall jointly engage an independent expert (the "Independent Engineer") and shall agree on the scope of review required to evaluate the draft Proposed Budget. Big Rivers shall pay 50% and Century shall pay 50% of the fees and expenses of the Independent Engineer (or Century shall pay 25% if the Alcan Retail Agreement is in effect).

(c) Century shall have the opportunity to present the conclusions and recommendations of the Independent Engineer with respect to the Proposed Budget to the Coordinating Committee and to Big Rivers' Board of Directors as soon as reasonably practicable following the Independent Engineer's completion of the Proposed Budget evaluation.

(d) Big Rivers and Century will treat the reports, opinions and other work product of the Independent Engineer as confidential, proprietary business information that will not be publicly disclosed or offered as evidence in any regulatory or legal proceeding by Big Rivers, Kenergy or Century.

(e) On or prior to the last day of each Fiscal Year, Big Rivers shall provide Century copies of the final Budget for the following year. Big Rivers intends to use reasonable commercial efforts to keep its expenses each year within such year's Budget, but makes no representation that keeping its expenses within such year's Budget will be commercially feasible.

(f) Big Rivers shall provide Century notice if:

(i) Big Rivers (A) incurs or plans to incur \$4 million of capital expenditures in any Fiscal Year in excess of the capital expenditures in the Budget for such Fiscal Year, or (B) thereafter incurs or plans to incur an additional \$3 million of capital expenditures in excess of the capital expenditures in the Budget for such Fiscal Year; or

(ii) Big Rivers (A) incurs or plans to incur operating expenses in any Fiscal Year aggregating 2.5% in excess of Big Rivers' total operating expenses in the Budget for such Fiscal Year, or (B) thereafter, incurs or plans to incur an additional 1.25% of such total operating



expenses in the Budget, excluding in each case expenses for fuel, environmental compliance or purchased power.

At the request of Century, the Coordinating Committee shall meet to discuss the causes of such capital expenditures or operating expenses in excess of the budgeted amounts and, after meeting with the Coordinating Committee, if further requested, Big Rivers shall permit Century to make one presentation to Big Rivers' Board with respect thereto.

3.5 Plan of Reorganization. The Parties acknowledge and agree that nothing in the Century Retail Agreement, the Century Wholesale Agreement, this Agreement or any document or agreement relating thereto may be construed to amend, affirm, waive or otherwise alter the terms of Schedule 5.4(a) of the Big Rivers' plan of reorganization, as modified June 1, 1998, or any document or agreement relating thereto regarding the obligation of Big Rivers to serve Kenergy for the benefit of Century; *provided*, that Century and Big Rivers disagree, notwithstanding the Unwind Transaction, as to the obligation of Big Rivers, in the absence of a new or amended contract, to serve Kenergy for the benefit of Century when the Existing Century Agreement terminates or when the Century Retail Agreement terminates. The Parties acknowledge that clarity on this issue is desired by both Parties so that necessary and appropriate capital planning and decision-making can be undertaken. The Parties agree to endeavor in good faith to resolve this disagreement prior to 2015.

3.6 Century Credit Support. Century shall (i) if the rating of the unenhanced, unsecured debt obligation of Century Parent with Standard & Poors is not "A+" or higher (and in addition, if Century Parent has such a rating from Moody's, that rating with Moody's is not "A1" or higher), provide and maintain, credit support in the form of a letter of credit from a bank rated "A+" or higher, or other credit support acceptable to Big Rivers and Kenergy, in an amount equal to the amounts estimated by Big Rivers to be due to Big Rivers and Kenergy with respect to Century's obligations under the Century Retail Agreement for a period of two months, and any amount which Big Rivers estimates reasonably could be due with respect to taxes relating to any sale of Energy pursuant to Section 4.13.3 as Economic Sales, Section 10.1 as Surplus Sales, Section 10.2 as Undeliverable Energy Sales or Section 10.3 as Potline Reduction Sales, in each case, of the Century Retail Agreement ("Potential Tax Liability"); and (ii) cause Century Parent to guarantee to Big Rivers and Kenergy payment and performance of all obligations of Century under the Century Retail Agreement, including Potential Tax Liability, and all obligations of Century under the other documents entered into by Century and its Affiliates in connection with the New Transaction pursuant to a Guarantee Agreement executed by Century Parent in favor of Big Rivers and Kenergy which shall be satisfactory in form and substance to Big Rivers (the "Century Guarantee"). At the request of Big Rivers, Century will maintain the Century Guarantee until closure of all applicable tax years of Big Rivers. At the request of Century, Big Rivers will provide Century with information as to the amount and calculation of the estimated Potential Tax Liability and reasonably detailed documentation in support thereof.

3.7 Transmission Upgrade. As soon as reasonably practicable, Big Rivers will develop, finance and construct improvements to its transmission facilities to permit Big Rivers to transmit to its border all Base Energy.

3.8 Proceedings Affecting Rates. The Parties acknowledge and agree that (i) Big Rivers shall have the right to seek KPSC approval for changes to the Non-Smelter Member Rates, and FERC approval of changes to the OATT, from time to time, but Big Rivers shall not seek an increase in its base rates to take effect before January 1, 2010, excluding any roll-in to Big Rivers' base rates of costs that would otherwise be recovered by the Environmental Surcharge or the FAC, and (ii) Big Rivers will not seek to implement a wholesale rate reduction other than the Rebate to its Members under the procedures available in KRS 278.455 without the consent of Century; *provided* that this commitment by Big Rivers will have no effect on the availability to Big Rivers' Members of the procedures in KRS 278.455 to flow-through any wholesale rate decrease to the Non-Smelter Ratepayers. Century shall have the right to intervene and participate in any proceeding that may affect rates at the KPSC or FERC or before any other Governmental Authority. Neither Big Rivers nor Century will support or seek, directly or indirectly, from any Governmental Authority, including the KPSC, any challenge to or change in the rate formula set forth in the Century Wholesale Agreement or the Alcan Retail Agreement or other terms and conditions set forth therein, including the relationship of the Large Industrial Rate to amounts payable by Century pursuant to the Century Retail Agreement, except that any Party may initiate or intervene in a proceeding to (a) clarify, interpret or enforce the Century Wholesale Agreement or the Century Retail Agreement, or (b) challenge the applicable rate for Transmission Services should those services be unbundled for purposes of calculating the Large Industrial Rate. For the avoidance of doubt, Century's intervention and participation in a regulatory proceeding involving cost of service issues relating to the rates of the Non-Smelter Ratepayers shall not be considered a challenge to the rate formula.

(a) Nothing in this Agreement shall limit or expand the jurisdiction of the KPSC or the FERC over Big Rivers or the rates, terms and conditions of electric service to Century pursuant to the Century Retail Agreement or otherwise.

(b) Big Rivers will provide Century a copy of any filing with the KPSC or FERC that seeks a change in Big Rivers' tariff or relief authorized by KRS 278.020, KRS 278.030, KRS 278.212, KRS 278.218, KRS 278.300, KRS 278.183 or 807 KAR 5:056.

3.9 Communications; Request for Meetings. Big Rivers will establish with Century procedures for the regular dissemination of information relating to the operational and financial performance of Big Rivers. If Century believes Big Rivers has or may incur unreasonable costs or expenses, Century may request in writing a meeting with Big Rivers' management to discuss such costs or expenses. Such meeting will take place within ten Business Days of the request but shall not be held more frequently than once per fiscal quarter. Nothing in this Section shall obligate Big Rivers to take any action as a result of such meeting.

3.10 Depreciation Rates.

(a) Big Rivers shall not modify its depreciation rates without the approval of or consent or acceptance by the KPSC or, if the KPSC no longer has jurisdiction over Big Rivers, by any other Governmental Authority having jurisdiction over such modification. Big Rivers will provide Century reasonable notice of the implementation of such modification together with reasonably detailed documentation describing such modification and an opportunity to discuss such modification with Big Rivers' management prior to the filing of

an application for approval of the modification of such depreciation rates with the KPSC or other Governmental Authority having jurisdiction.

(b) Big Rivers shall not initiate a request to a Governmental Authority or RUS for changes to its depreciation rates that would be projected to cause the weighted average depreciation rates for the period from the Effective Date through December 31, 2016, to exceed the weighted average depreciation rates for the same period set forth in the Model; *unless* (1) Big Rivers determines in good faith, based on discussions with a nationally recognized statistical rating organization and after consultation with Century, that it is necessary to make such a modification to its depreciation rates in order to maintain an investment grade credit rating, (2) a Governmental Authority with jurisdiction or RUS directs Big Rivers to modify its depreciation rates, or (3) Big Rivers' independent auditors assert that they would not be able to deliver an unqualified audit opinion with respect to Big Rivers' financial statements as a result of Big Rivers' failure to seek or implement a modification of its depreciation rates. For purposes of this clause (b), Big Rivers' weighted average depreciation rates for the period from Effective Date through December 31, 2016, shall be the sum of its total depreciation expense for each year for that same period over the sum of the average gross depreciable plant for each year over that same period, with appropriate adjustments for partial years.

3.11 Audit Rights. Big Rivers will permit Century to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Big Rivers relating to its service under the Century Wholesale Agreement to Kenergy for resale to Century, including scheduled deliveries, meter records and billing records and records related to payments to Big Rivers and such other documents related to payment for and determination of the amount of electric energy, Transmission Services and other related services supplied by Big Rivers and delivered to Kenergy for resale and delivery to Century. Big Rivers shall retain all documentation applicable to service to Kenergy under the Century Wholesale Agreement for a period of three years. Nothing in this Section 3.11 shall obligate Big Rivers to provide attorney-client privileged information.

3.12 System Disturbance Agreement. The Parties hereby acknowledge and agree that the System Disturbance Agreement, dated as of July 15, 1998, among Big Rivers, WKE Station Two Inc., Western Kentucky Energy Corp., predecessors in interest to Kenergy, and the Smelters shall continue in effect with respect to Big Rivers, Kenergy and the Smelters (but not Southwire Company) during the term of the Service Period.

3.13 Operation of System. Big Rivers shall operate its electric generation and transmission system for the mutual benefit of the Members and patrons consistent with Prudent Utility Practices, and will apply the same standards to operating decisions that may affect the Monthly Charge. Big Rivers will not use the payment obligation of Century under Section 4.7 (TIER Adjustment Charge) of the Century Retail Agreement as the substantive basis for making an operating decision.

3.14 Property Rights.

3.14.1 Big Rivers' nonpatronage net earnings, after offset (if applicable) by any available tax loss carryforward amounts attributable to a deficit in nonpatronage net earnings

from prior taxable years, shall, if positive, be retained by Big Rivers as a permanent source of equity and, if negative, shall be carried forward to be applied as an offset against future positive nonpatronage net earnings.

3.14.2 Upon liquidation, the assets of Big Rivers shall be distributed in the following order: (i) all debts and obligations of Big Rivers shall be paid in accordance with lawful priorities, (ii) each Member's or other patron's capital account balance shall be paid without priority on a *pro rata* basis until all such capital accounts (as determined subsequent to adjusting such accounts by allocations of patronage net earnings for the year of liquidation exclusive of any gain arising from the liquidation) have been reduced to zero, and (iii) any remaining assets of Big Rivers shall be paid to the current and former Members or other patrons of Big Rivers based upon the amount of their historic patronage with Big Rivers measured by kilowatt-hours purchased from Big Rivers over the life of Big Rivers. The life of Big Rivers is defined to begin at the date Big Rivers was formed in 1961 and to continue uninterrupted through Big Rivers' bankruptcy reorganization to the date of liquidation.

3.14.3 The provisions of this Section 3.14 shall survive the expiration or earlier termination of this Agreement.

3.15 Big Rivers Capitalization Policy. To the extent consistent with Accounting Principles, Applicable Law and guidance of applicable Governmental Authorities or RUS, Big Rivers shall capitalize expenditures for the replacement of the items related to Big Rivers' generation facilities identified in the list of the retirement units set forth in the Schedule 3.15.

3.16 Purchased Power Regulatory Account. Big Rivers will request KPSC to and, if the KPSC approves, shall (a) establish a regulatory account containing purchased power costs to be recovered by Big Rivers from the Members with respect to sales to their Non-Smelter Ratepayers in an amount equal to the sum of the Non-FAC Purchased Power Adjustment Factor in each month multiplied by the amount of Energy delivered in each month to the Members for such sales; and (b) establish the method of recovery of such amounts from Non-Smelter Ratepayers at each general rate adjustment case.

3.17 Model. It is understood and agreed that (i) all financial and production cost models ("Model") including the Model filed with the KPSC in connection with the application for approval of the Unwind Transaction and the New Transaction have been developed solely by Big Rivers to provide its best estimate of the future operations of Big Rivers after the Unwind Transaction is consummated, and (ii) Century by executing this Agreement and consummating the Unwind Transaction is not indicating its agreement or disagreement with the forecasted work plans, assumptions or specific expenditures embedded in the Model.

#### 4. Coordinating Committee.

4.1 The parties have agreed to the establishment of a committee ("Coordinating Committee"), consisting of representatives of the Members' chief executive officers, Century, Alcan, and Big Rivers management, organized for the purpose of reviewing,

analyzing and discussing information relating to Big Rivers' operational and financial performance. The Coordinating Committee shall meet at least once each calendar quarter.

4.2 If the Coordinating Committee does not exist or does not function with the subject matter of this Section 4, then Big Rivers shall have the same obligations as to the Smelters, jointly.

4.3 At a minimum of once a year and at such other times as the Parties may agree, the members of the Coordinating Committee will establish a meeting with Big Rivers' board members. These meetings will be informal and the purpose of such meetings will be to discuss Big Rivers' operating and financial performances and plans, and issues affecting the electric utility and smelting industry operations.

4.4 The information to be discussed by the Coordinating Committee shall include (i) analysis criteria and procedures for evaluating plans, procedures, expenditures and maintenance programs, (ii) budgets, (iii) operations and capital expenditures, (iv) fuel procurement or supply, (v) comparison of actual performance to the Budget and an explanation of variances to the Budget, (vi) load forecasts and integrated resource plans, (vii) depreciation studies, proposed changes in depreciation rates and associated proposed changes in electric rates, and (viii) other activities that may impact Big Rivers' operational and financial performance. Big Rivers shall provide the Coordinating Committee members any reasonably requested supporting information relating to the items discussed.

## 5. Cure Rights.

5.1 Notwithstanding any provision contained in the Century Retail Agreement that affords Century the right to terminate the Century Retail Agreement upon any breach or default by Kenergy thereunder, Century shall provide Big Rivers a reasonable opportunity, exercisable in Big Rivers' sole discretion, to cure any such breach or default by Kenergy prior to exercising such termination rights, which opportunity shall extend, at a minimum, for a period of not less than 10 Business Days after the later of (i) the date of expiration of the applicable period of time (if any) available for a cure by Kenergy under the Century Retail Agreement, and (ii) the date on which notice of the breach or default by Kenergy is delivered by Century to Big Rivers. Century hereby consents to any attempt by Big Rivers to cure any breaches or defaults by Century under the Century Retail Agreement that may hereafter occur, provided, that Big Rivers does not materially interfere with Century's attempts (if any) to so cure such breaches or defaults.

5.2 Notwithstanding any provision contained in the Century Wholesale Agreement that affords Big Rivers the right to terminate the Century Wholesale Agreement upon any breach or default by Kenergy thereunder, Big Rivers shall provide Century a reasonable opportunity, exercisable in Century's sole discretion, to cure any such breach or default by Kenergy prior to exercising such termination rights, which opportunity shall extend, at a minimum, for a period of not less than ten Business Days after the later of (i) the date of expiration of the applicable period of time (if any) available for a cure by Kenergy under the Century Wholesale Agreement, and (ii) the date on which notice of the breach or default by Kenergy is delivered by Big Rivers to Century. Big Rivers hereby consents to any attempt by

Century to cure any breaches or defaults by Big Rivers under the Century Wholesale Agreement that may hereafter occur, provided, that Century does not materially interfere with Big Rivers' attempts (if any) to so cure such breaches or defaults.

6. Representations and Warranties.

6.1 Big Rivers. Big Rivers hereby represents and warrants to Century as follows:

(a) Big Rivers is an electric generation and transmission cooperative 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 and the Century Wholesale Agreement, to perform its obligations hereunder and thereunder, 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) Subject to Section 6.1(c), this Agreement, the Century Wholesale Agreement and other agreements entered into by Big Rivers in connection therewith constitute Big Rivers' valid and binding obligation enforceable against it in accordance with their terms, except as enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement and the Century Wholesale Agreement by Big Rivers have been duly and effectively authorized by all requisite corporate action.

(c) As of the Effective Date, all consents, approvals, authorizations, actions or orders, including without limitation, those which must be obtained from Governmental Authorities and the RUS, required for its authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement and the Century Wholesale Agreement have been obtained other than as may be required under Applicable Law to be obtained, given, accomplished or renewed at any time or from time to time and which are routine in nature or which cannot be obtained, or are not normally applied for, prior to the time they are required and which Big Rivers has no reason to believe will not be timely obtained.

(d) Subject to Section 6.1(c), its execution and delivery of this Agreement and the Century Wholesale Agreement, its consummation of the transactions contemplated by this Agreement and the Century Wholesale Agreement, and its fulfillment of and compliance with the terms and provisions hereof and thereof do not conflict with or violate any judicial or administrative order, award, judgment or decree applicable to it, or conflict with any of the terms, conditions or provisions of its Articles of Incorporation or Bylaws or any material instrument, mortgage, agreement, contract or restriction to which it is a party, or by which any of its properties are bound, or require the approval, consent or authorization of any federal, state or local court, or any of its creditors, or of any other Person, or give any party with rights under any such instrument, agreement, contract, mortgage, judgment, award, order or other restriction the right to terminate, modify or otherwise change its rights or obligations thereunder which has not been obtained.

6.2 Century. Century hereby represents and warrants to Big Rivers as follows:

(a) Century is a general partnership duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky and is authorized to do business in 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) This Agreement, the Century Retail Agreement and other agreements entered into by Century in connection therewith constitute Century's valid and binding obligation enforceable against it in accordance with their terms, except as enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement and the Century Retail Agreement by Century have been duly and effectively authorized by all requisite partner action.

(c) All consents, approvals, authorizations, actions or orders, including without limitation, those which must be obtained from governmental agencies or authorities, required for its authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement and the Century Wholesale Agreement have been obtained.

(d) Its execution and delivery of this Agreement and the Century Retail Agreement, its consummation of the transactions contemplated by this Agreement and the Century Retail Agreement, and its fulfillment of and compliance with the terms and provisions hereof and thereof do not conflict with or violate any judicial or administrative order, award, judgment or decree applicable to it, or conflict with any of the terms, conditions or provisions of its partnership agreement or any material instrument, mortgage, agreement, contract or restriction to which it is a party, or by which any of its properties are bound, or require the approval, consent or authorization of any federal, state or local court, or any of its creditors, or of any other Person, or give any party with rights under any such instrument, agreement, contract, mortgage, judgment, award, order or other restriction the right to terminate, modify or otherwise change its rights or obligations thereunder which has not been obtained.

7. Miscellaneous.

7.1 No Affect on Rights or Defenses. Nothing in this Agreement shall require performance by a Party of any of its obligations under the Century Retail Agreement or the Century Wholesale Agreement, as applicable, if it may assert, as a defense to its non-performance, any defenses or excuses to such performance that may be available to it under the provisions of the Century Retail Agreement or the Century Wholesale Agreement, or under Applicable Law.

7.2 Entire Agreement. This Agreement, the Century Retail Agreement, the Century Wholesale Agreement and the other agreements and documents denoted on Schedule

6.2.3 of the Century Retail Agreement constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by each of the Parties hereto. Each Party acknowledges that it has not relied upon any representations, statements or warranties of the other Party in executing this Agreement except for those representations and warranties expressly set forth in the foregoing documents.

7.3 Waiver. The waiver by either Party of any breach of any term, covenant or condition contained herein will not be deemed a waiver of any other term, covenant or condition, nor will it be deemed a waiver of an subsequent breach of the same or any other term, covenant or condition contained herein.

7.4 Notices. A notice, consent, approval or other communication under this Agreement must be delivered in writing, addressed to the Person to whom it is to be delivered, and must be (a) personally delivered to that Person's address (which will include delivery by a nationally recognized overnight courier service), or (b) transmitted by facsimile to that Person's address, with a duplicate notice sent by a nationally recognized overnight courier service to that Person's address. A notice given to a Person in accordance with this Section will be deemed to have been delivered (a) if personally delivered to a Person's address, on the day of delivery if such day is a Business Day, or otherwise on the next Business Day, or (b) if transmitted by facsimile to a Person's facsimile number and a correct and complete transmission report is received, or receipt is confirmed by telephone, on the day of transmission if a Business Day, otherwise on the next Business Day; *provided, however*, that such facsimile transmission will be followed on the same day with the sending to such Person of a duplicate notice by a nationally recognized overnight courier to that Person's address. For the purpose of this Section, the address of a Party is the address set out below or such other address which that Party may from time to time deliver by notice to the other Party in accordance with this Section:

if to Big Rivers:           Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Attn: President and CEO  
Fax: [\_\_\_\_\_]

if to Century:            Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Fax: (270) 852-2882

With copy to:           Century Aluminum Company  
2511 Garden Road  
Building A, Suite 200  
Monterey, CA 93940  
Attn: General Counsel  
Fax: (831) 642-9328



7.5 Dispute Resolution. If a dispute arises 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 the other Party to discuss and attempt to reach a resolution of the dispute. Such meeting will take place within ten Business Days or such shorter or longer time as agreed upon by the Parties of the request. Nothing in this Section shall toll or extend the cure period with respect to the failure by a Party to perform its obligations under this Agreement. Absent such resolution, the Parties may 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 this Agreement to resolve that dispute. Notwithstanding the provisions of this Section each Party may at all times seek injunctive relief, where its delay in doing so could result in irreparable injury.

7.6 Assignments and Transfers. No Party shall assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party, *provided, however*, that no prior consent shall be required with respect to an assignment to any person who is a permitted assignee of Century pursuant to the Century Retail Agreement or a permitted assignee of Big Rivers pursuant to the Century Wholesale Agreement. Either Party may, without the approval of the other Party, assign this Agreement as collateral security or grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement in connection with the general financing of its assets or operations.

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

7.8 Jurisdiction. The Parties hereby agree that the courts of the Commonwealth of Kentucky will have exclusive jurisdiction over each and every judicial action brought under or in relationship to this Agreement, *provided* that the subject matter of such dispute is not a matter reserved by law to the KPSC, or to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of Kentucky courts for such purpose. Venue in state court actions will be in the Henderson Circuit Court as the court in which venue will lie for the resolution of any related disputes under this Agreement. Nothing in this paragraph prohibits a Party from referring to FERC or any other Governmental Authority any matter properly within its jurisdiction.

7.9 Good Faith Efforts. The Parties agree that each will 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, the Century Wholesale Agreement and the Century Retail Agreement; *provided* that no Party will 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 may not be unreasonably withheld, conditioned, or delayed unless otherwise provided herein. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment may not be unreasonably exercised. Where notice to the

other Party is required to be given herein, and no notice period is specified, reasonable notice shall be given.

7.10 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties and their respective successors and permitted assigns.

7.11 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

7.12 Third-Party Beneficiaries. Nothing in this Agreement may be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement.

7.13 Kenergy Obligations Separate. Nothing contained in this Agreement shall obligate Century or Big Rivers for any obligations or liabilities of Kenergy, whether under or pursuant to the Century Retail Agreement, the Century Wholesale Agreement or otherwise.

7.14 No Power Sales Commitment. The Parties acknowledge that Big Rivers and Kenergy intend to enter into the Century Wholesale Agreement and Century and Kenergy intend to enter into the Century Retail Agreement which agreements contain the terms and conditions setting forth the wholesale sale of power by Big Rivers and the purchase of such power by Kenergy, and the corresponding retail sale of such power by Kenergy and the purchase of such power by Century. Nothing contained in this Agreement shall be deemed to be or create an agreement or commitment of Big Rivers to sell to Century, or an agreement of Century to purchase from Big Rivers, any electric energy or related services.

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

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

By: \_\_\_\_\_  
Name:  
Title:



**SECURITY AND LOCK BOX AGREEMENT (Century)**

This SECURITY AND LOCK BOX AGREEMENT, dated as of [\_\_\_\_\_] (the "Lockbox Agreement"), is made by and among **OLD NATIONAL BANK**, of Evansville, Indiana (the "Depository Bank"), **BIG RIVERS ELECTRIC CORPORATION**, a Kentucky corporation (together with its successors and assigns, the "Supplier"), **KENERGY CORP.**, a Kentucky electric cooperative corporation (together with its successors and assigns, "Kenergy") and **CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP** (together with its successors and assigns, the "Smelter").

**PRELIMINARY STATEMENTS**

A. Reference is made to that certain Retail Electric Service Agreement for Electric Service dated [\_\_\_\_\_] between Kenergy and the Smelter (as amended, modified or supplemented from time to time, the "Smelter Agreement"), pursuant to which Kenergy is obligated to sell to the Smelter and the Smelter agrees to purchase from Kenergy retail electric service in accordance with the terms and conditions specified therein.

B. Reference is made to that certain Agreement for wholesale electric service dated as of [\_\_\_\_\_] between Kenergy and Supplier, pursuant to which Supplier agrees to provide wholesale electric service to Kenergy for resale to the Smelter under terms described therein (collectively the "Wholesale Contract").

C. Reference is made to any additional agreements entered into from time to time, between Supplier and Distribution Cooperative that provide for the sale of wholesale electric service by Supplier to Kenergy (for resale by Kenergy to the Smelter) which Supplier, the Smelter and Kenergy agree, in writing, shall be covered by the terms of this Lockbox Agreement (collectively, the "Additional Supplier Agreements" and together with the Wholesale Contract, the "Total Supplier Agreements").

D. Reference is made to any additional agreements entered into, from time to time between Kenergy and the Smelter that provide for the sale to the Smelter of additional retail electric service procured from the Supplier by Kenergy which Supplier, the Smelter and Distribution Cooperative agree, in writing, shall be covered by the terms of this Lockbox Agreement (collectively, the "Additional Smelter Agreements" and together with the Smelter Agreement, the "Total Smelter Agreements").

E. The parties hereto wish to provide security to Supplier for obligations arising to Supplier from Kenergy pursuant to the Total Supplier Agreements (the "Secured Obligations") and for the orderly application of all amounts owing by the Smelter to Kenergy with respect to retail electric service pursuant to the Total Smelter Agreements (collectively, the "Smelter Payments"), without setoff for any other amounts that may be owing from Kenergy to the Smelter. Accordingly, Kenergy has agreed to establish, in the name of Kenergy, a bank account with the Depository Bank, which account shall be designated as, and hereinafter referred to as, the Lockbox Account (as hereinafter defined).

F. The Depository Bank has agreed to maintain the Lockbox Account pursuant to and in accordance with this Lockbox Agreement.

G. The Parties further understand and agree that the Smelter's only responsibility under this Lockbox Agreement is to make the Smelter Payments to the Depository Bank in accordance with the instructions set forth in Section hereof (or such other instructions as may be subsequently agreed to by Supplier and Kenergy pursuant to the Lockbox Agreement and delivered to the Smelter).

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Payments by the Smelter. Unless otherwise agreed in writing, Supplier, the Smelter and Kenergy hereby irrevocably agree that Smelter Payments shall be paid by wire transfer or through the Automated Clearing House (ACH) network to the Depository Bank for deposit in the Lockbox Account in accordance with Section 3 hereof and coincident with date payments are due and owing under the Total Supplier Agreements and the Total Smelter Agreements applicable to this service. Supplier, the Smelter and Kenergy agree that Smelter Payments shall be deemed to have been made to Kenergy and shall be credited toward the Smelter's payment obligations under the Total Smelter Agreements and satisfaction of Smelter's obligation to make Smelter Payments. Kenergy and Supplier agree that amounts received by the Depository Bank from the Smelter shall be deemed to have been paid to Supplier by Kenergy, shall be thereafter the property of Supplier and shall be credited toward the Secured Obligations, subject to Section 3.

2. Lockbox Account. The Depository Bank has established account number [103089518] in the name "Kenergy Lockbox Account" (such account and any successor account are referred to as the "Lockbox Account") and the Depository Bank shall not change the name or account number without the prior written consent of Supplier. Supplier shall possess exclusive dominion and control, as a secured party, of the funds (and any and all proceeds therefrom) from time to time in the Lockbox Account. Neither Kenergy nor any person or entity claiming by, through or under Kenergy shall have any control over the use of, or any right to withdraw any amount from, the Lockbox Account, except that Supplier shall have the right to withdraw or direct the withdrawal of amounts from the Lockbox Account. The Depository Bank shall be entitled to rely on, and shall act in accordance with, all instructions given to it by Supplier with respect to the Lockbox Account and the funds therein without further consent by Kenergy.

3. [Distribution Cooperative Fees. Prior to each day that Smelter deposits funds in the Lockbox Account or if such deposits are received by the Depository Bank after 12:00 noon, Henderson, Kentucky time, then the next Business Day, (a "Payment Day") Supplier will provide a notice in writing to the Depository Bank (the "Distribution Cooperative Notice"), setting forth the amount to be applied to Distribution Cooperative with respect to the Retail Fee (as defined in the Smelter Agreement) for the month in which such Distribution Cooperative Notice is received (the "Distribution Cooperative Fees") and attaching copies of (i) the monthly statement provided by Distribution Cooperative to Smelter pursuant to the Total Smelter Agreements and (ii) the monthly statement provided by Supplier to Distribution Cooperative pursuant to the Total Supplier Agreements. The Depository Bank shall be under no obligation to verify or confirm any of the information or calculations contained in any Distribution Cooperative Notice. Concurrently with delivery of Kenergy Notice to the Depository Bank, Supplier shall delivery a copy thereof to Distribution Cooperative and Smelter, but the effectiveness of any such Distribution Cooperative Notice, as it relates to the Depository Bank's

obligations under this Section 3, shall not depend on the delivery thereof to Depository Bank and Smelter.]

4. Duties of the Depository Bank.

(a) The Depository Bank shall apply and credit to the Lockbox Account all wire transfers directed to such Lockbox Account, even though such wire transfers may identify the Lockbox Account as an account of Kenergy. The Smelter shall direct Smelter Payments to the Depository Bank in accordance with the following instructions:

Account Name: Kenergy Lockbox Account (Century)

Bank ABA No. 086300012

Account No. [\_\_\_\_\_]

Reference: Kenergy Corp. – Century Primary Products Corporation

The Depository Bank agrees (x) to maintain the Lockbox Account as a segregated account from Kenergy's other accounts, if any, maintained with the Depository Bank, (y) to refrain from commingling the funds deposited in the Lockbox Account with any other funds of Kenergy and (z) that the location of the Lockbox Account shall not be changed without the prior written consent of Supplier.

(b) On each Payment Day, the Depository Bank shall, on behalf of Distribution Cooperative, withdraw and distribute the following amounts from funds on deposit in the lockbox Account in the following priority, and, in each case to the extent of the amount on deposit after giving effect to any prior withdrawal and distribution provided that prior to each application of funds, the Depository Bank shall have received from Supplier a Distribution Cooperative Notice for the month in which such distribution is to be made:

(i) to the depository Bank, to pay fees, costs, expenses and indemnities as and when due to the Depository Bank on such Payment Date; then

(ii) to Kenergy in an amount equal to Kenergy Fees, pursuant the following wire transfer instructions: [\_\_\_\_\_]; and then

(iii) the remainder to Supplier, pursuant to the following wire transfer instructions: [\_\_\_\_\_].

5. Assignment; Acknowledgement of Release; Grant of Security Interest; Remedies Upon Default.

(a) As security for Kenergy's obligations to Supplier under the Total Supplier Agreements and for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, Kenergy hereby assigns to Supplier all of its rights to receive the Smelter Payments and all of its rights to collect and enforce collection of such amounts due from the Smelter (collectively, the "Smelter Contract Rights"). The Smelter hereby

acknowledges and consents to such assignment, and further agrees that, in realizing its rights in respect of the Smelter Contract Rights, Supplier may sell and foreclose on such rights separately and apart from the disposition in respect of the rest of the Total Smelter Agreements. Kenergy agrees to cooperate with and assist Supplier with respect to any collections of amounts due from the Smelter to Kenergy which are assigned to Supplier pursuant to this Section, provided that Supplier will reimburse Kenergy for any expenses it incurs in providing such cooperation and assistance. Kenergy represents and warrants to Supplier that such assigned payments and rights are not subject to any existing liens or encumbrances.

(b) Upon execution of this Lockbox Agreement by Kenergy and the execution by Kenergy of any and all UCC Financing Statements requested by Supplier as of the execution hereof, and so long as this Lockbox Agreement remains in effect, Supplier hereby releases Kenergy from further liability under the Total Supplier Agreements for any Smelter Payments assigned hereby, *provided* that such release does not relieve Kenergy of its other liabilities or responsibilities under each of the Total Supplier Agreements.

(c) To secure the performance by Kenergy of all its obligations under the Total Supplier Agreements, Kenergy hereby irrevocably pledges and/or assigns to Supplier, and grants to Supplier a security interest in (i) the Smelter Contract Rights, (ii) all Smelter Payments, excluding the Retail Fee, (to the extent such Smelter Payments have not been previously assigned to Supplier by Kenergy) (iii) all of its right, title and interest in, to and under the Lockbox Account and all funds contained therein, and in all obligations of the Depository Bank to Kenergy with respect thereto and (iv) in all proceeds of the foregoing (such items in respect of which such security interest is given hereinafter collectively referred to as the "Collateral"). Upon the occurrence of a default by Kenergy under the Wholesale Contract, Supplier may, in addition to exercising any of the remedies available to it under the Total Supplier Agreements,

(x) enforce its right to all or any portion of the Collateral by such appropriate judicial proceedings as it shall deem most effective to protect and enforce such right;

(y) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce its right to the Collateral, or any portion thereof, to the extent permitted by applicable law; or

(z) sell, assign or otherwise liquidate any or all of the Collateral and take possession of the proceeds of any such sale or liquidation.

(d) Following the occurrence of a default by Kenergy under any Total Supplier Agreement and the enforcement by Supplier of its rights with respect to the Collateral in accordance with clause (c) above, Supplier shall be entitled to retain the proceeds received from any such enforcement.



6. Indemnity. Supplier hereby agrees to indemnify and hold the Depository Bank harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable legal fees) (collectively, "Claims") with respect to the performance of this Lockbox Agreement unless such Claims arise from the Depository Bank's gross negligence or willful misconduct. Supplier further agrees, so long as the Smelter pays all Smelter Payments to the Depository Bank, to pay, indemnify and hold the Smelter harmless from and against any and all Claims of or against the Depository Bank with respect to the performance, interpretation, construction and enforcement of this Lockbox Agreement.

7. Fees and Expenses. Supplier hereby agrees that all fees and charges associated with the Lockbox Account as shall from time to time be mutually agreed upon by Supplier and the Depository Bank shall be included on a monthly consolidated account analysis statement which the Depository Bank shall submit to Supplier. This statement shall set forth the fees and charges payable by Supplier for such month and be accompanied by such supporting documentation as the Depository Bank shall deem reasonable. All fees and charges set forth in the statement described above shall be deducted from the Lockbox Account by Depository Bank.

8. Limitations on Liability of the Depository Bank. The Depository Bank undertakes to perform those duties as are expressly set forth herein and the other processing requirements as may be covered in any procedure agreement consented to by Kenergy and Supplier. Notwithstanding any other provisions of this Lockbox Agreement, it is agreed by the parties hereto that the Depository Bank shall not be liable for any action taken by it or any of its directors, officers, agents or employees in accordance with this Agreement except for its or their own gross negligence or willful misconduct. In no event shall the Depository Bank be liable for losses or delays resulting from force majeure, computer malfunctions, interruption of communication facilities, labor difficulties or other causes beyond the Depository Bank's reasonable control or for indirect, special or consequential damages.

9. Account Information. Upon the request of any party, the Depository Bank shall provide to each of Supplier and Kenergy statements summarizing the activity in the Lockbox Account. In addition, the Depository Bank will provide to each of Supplier and Kenergy copies of all information reasonably requested by either of them.

The Depository Bank may rely, and shall be protected in acting or refraining from acting, upon any notice (including but not limited to electronically confirmed facsimiles of such notice) reasonably believed by the Depository Bank to be genuine and to have been given by the proper party or parties.

The Depository Bank shall have no obligation to review or confirm that any actions taken pursuant to this Lockbox Agreement comply with any other agreement or document between the Supplier, the Smelter and the Distributive Cooperative or between any of them. The provisions of this paragraph shall survive termination of the Lockbox Agreement.

10. Waiver of Right of Set-Off. So long as any obligation of Kenergy to the Supplier under this Lockbox Agreement remains outstanding, the Depository Bank waives, with respect to all of its existing and future claims against Kenergy or any affiliate thereof, all existing

and future rights of set-off and banker's liens against the Lockbox Account and all items (and proceeds thereof) that come into its possession in connection with the Lockbox Account; *provided* that the Depository Bank retains the right to charge the Lockbox Account for all items deposited in and credited to the Lockbox Account after the date hereof and subsequently returned to the Depository Bank unpaid and for all fees and charges associated with such returned items.

11. Effectiveness; Integration; Amendments. This Lockbox Agreement shall be effective as of the date first written above, and the Depository Bank shall be in a position to process remittances to the Lockbox Account commencing [\_\_\_\_], 2008. This Lockbox Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter contained herein. To the extent that any other agreement or understanding, whether in writing or oral, relating to the matters referred to herein is inconsistent with this Lockbox Agreement, this Lockbox Agreement shall supersede such other agreement, including any procedures agreement and any other agreement between Kenergy and the Depository Bank relating to the collection of the Smelter Payments. No provision of this Lockbox Agreement may be amended, modified or waived, except by a written instrument executed by the parties hereto. Any provision of this Lockbox Agreement which is or is declared illegal, invalid or unenforceable under any law or regulation shall not affect the legality, validity or enforceability of any other provisions hereof.

12. Termination. This Lockbox Agreement shall terminate on the earliest of (a) the date on which the Depository Bank receives a certificate of an authorized officer of Supplier to the effect that all Secured Obligations have been paid in full, (b) the date of termination of this Lockbox Agreement by Supplier (with the consent of Kenergy, which consent shall not be unreasonably withheld) upon 60 days prior written notice to the Depository Bank and to Kenergy or (c) the date of termination of this Lockbox Agreement by the Depository Bank (with the consent of Supplier, which consent shall not be unreasonably withheld) upon 60 days prior written notice to Kenergy and to Supplier, provided that such 60 day period shall be extended at the request of Supplier if a substitute depository bank cannot be established during such 60 day period. Upon termination of this Lockbox Agreement pursuant to this Section, Supplier shall be released from any and all liability and obligations with respect to such Lockbox Account or arising hereunder, and the Lockbox Account shall, at the option of Kenergy, be transferred to Kenergy's name and become an account from which Kenergy may withdraw any and all funds contained therein, or the account shall be closed.

13. Substitute Depository Bank. In the event that the Depository Bank resigns or is removed by the Parties hereto (other than due to the occurrence of the events contemplated by clause (a) of Section 12 hereof), a substitute bank shall be nominated by Supplier which nominee shall be approved by Kenergy (with notice to be provided to the Smelter). Such substitute Depository Bank shall accept such appointment by executing a comparable Lockbox Agreement and shall thereafter succeed to all rights and responsibilities of the Depository Bank as therein provided.

14. Notices. All notices, requests or other communications given to Kenergy, Supplier or the Depository Bank shall be given in writing (including telex, facsimile transmission or similar writing) at the address or telex or facsimile number specified below:

Depository Bank: Old National Bank  
1 Main Street  
Evansville, IN 47708  
Attn: Anna Lee Tepoch  
Facsimile No.: (812) 465-0123

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

Kenergy: Kenergy Corp.  
P.O. Box 18  
Henderson, KY 42419-0018  
Attn:  
Facsimile: (270) 685-5981

Smelter: Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Fax: (270) 852-2882

Any party may change its address or facsimile number or notices hereunder by notice to each other party hereunder. Each notice, request or other communication shall be effective (a) if given by facsimile transmission, when such facsimile is transmitted to the facsimile number specified in this Section, (b) if given by mail, two business days after such communication is deposited in the mail with first class postage prepaid, addressed as aforesaid or (c) if given by any other means, when delivered at the address specified in this Section.

15. Acknowledgment of Security Interest. By execution of this Lockbox Agreement the Depository Bank acknowledges and consents to the security interest granted by Kenergy to Supplier pursuant to Section 5. Kenergy agrees to promptly execute and deliver all further instruments and documents that may be necessary or which Supplier may in good faith reasonably request, in order to perfect and protect any pledge or security interest granted hereby, including, without limitation, such financing or continuation statements, or amendments thereto, as Supplier may reasonably request.

16. Governing Law. Except to the extent that federal law or the laws of the state in which the Depository Bank is located govern the Lockbox Account, this Lockbox Agreement shall be governed by, and interpreted in accordance with, the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules. For purposes of this Lockbox Agreement, the Commonwealth of Kentucky shall be deemed the bank's jurisdiction under the Kentucky Uniform Commercial Code.

17. Counterparts. This Lockbox Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Lockbox Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

OLD NATIONAL BANK

By: \_\_\_\_\_  
Name:  
Title:

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

KENERGY CORP.

By: \_\_\_\_\_  
Name:  
Title:

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

By: \_\_\_\_\_  
Name:  
Title:



COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

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

EXHIBIT 21

Testimony of Mark W. Glotfelty

December 2007

**COMMONWEALTH OF KENTUCKY  
BEFORE THE  
PUBLIC SERVICE COMMISSION OF KENTUCKY**

**Case No. 2007-00455**

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**DIRECT TESTIMONY OF  
MARK W. GLOTFELTY**

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**ON BEHALF OF  
APPLICANTS**

**DECEMBER 2007**



**DIRECT TESTIMONY OF  
MARK W. GLOTFELTY**

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**Q. Please state your name and address.**

A. My name is Mark W. Glotfelty. I am a Vice President in the Investment Banking Division of Goldman, Sachs & Co. My business address is 85 Broad Street, New York, NY 10004.

**Q. Please describe your educational background and relevant experience.**

A. I hold a Bachelor of Science and Master of Public Affairs degrees from Indiana University. I have been employed by Goldman Sachs for the past 10 years in two different positions – investment banker and credit analyst.

In my current position, for which I have served for the past 5 years, I am the practice leader for the Rural Electric Cooperative Sector within the Energy and Power Group. I have served as the lead banker on over \$2 billion of generation and transmission (also known as “G&T”) capital markets transactions.

1 As a credit analyst I worked in the Credit Risk Management and Advisory  
2 Department. My primary job functions included advising clients on credit  
3 structure for capital markets transactions, developing credit rating strategies  
4 and presentations for clients presenting to the major credit rating agencies  
5 (Moody's, Standard & Poor's, and Fitch), assigning counter party trading  
6 limits and exposures for trading, reviewing and approving all negotiated and  
7 competitive capital markets transactions undertaken by the Municipal Bond  
8 Department, and approving securities purchases for Goldman Sachs Asset  
9 Management's money market funds.

10  
11 Prior to working at Goldman Sachs, I was an Associate Director in Standard  
12 & Poor's Utilities Practice Group. My primary job function was to assign  
13 credit ratings to rural electric and public power utilities.

14  
15 **Q. What is the purpose of your testimony?**

16  
17 A. I have been asked by Big Rivers Electric Corporation, a rural electric  
18 generation and transmission cooperative, to describe the credit structure,  
19 including the appropriate minimum Times Interest Earned Ratio ("TIER")  
20 and other requirements relating to the unwind, needed to achieve investment  
21 grade credit ratings from the two major credit rating agencies – Moody's and  
22 Standard & Poor's – and access the public capital markets.

1           What follows is a summary of my opinion on requirements needed to achieve  
2           investment grade credit ratings from the two major credit rating agencies.  
3           The rating agencies have independent views of credit quality and will make  
4           their own determination of credit quality. Please note that any information  
5           about Big Rivers was provided to me by Big Rivers. I have relied upon and  
6           assume the accuracy and completeness of such information without  
7           performing any independent verification.

8  
9   **Q.**    Please explain the key credit factors you believe the rating agencies  
10       will use to analyze Big Rivers.

11  
12   **A.**    The key credit factors the rating agencies will focus include:

13  
14           ***TIER.*** In the analysis of a G&T's credit quality, TIER is an important  
15           credit factor because it measures interest coverage; the higher the  
16           ratio the more protection a bondholder enjoys. It is one of several  
17           objective financial measures used by the rating agencies in evaluating  
18           credit quality.

19  
20           ***Management.*** Areas that are considered include management's  
21           experience and track record in running the G&T, setting and achieving  
22           financial targets, risk management policies and procedures,

1 interaction/relationship with the Board, and a well articulated  
2 business strategy/vision for the G&T.

3  
4 ***Financial Performance.*** The focus of the analysis is on the ability of  
5 the G&T to produce stable and predictable coverage of annual debt  
6 service from core revenues, financial flexibility and liquidity, and a  
7 reasonable level of leverage.

8  
9 ***Rate Competitiveness.*** This is measured by how a G&T's wholesale  
10 rates compare to other utilities in the region for both the present and  
11 future. Particular emphasis is given to rate forecasts taking into  
12 account the impact of planned resource additions.

13  
14 ***Electric Operations.*** The operating profile analysis focuses on the  
15 diversity of the power supply portfolio, plant performance, fuel  
16 procurement strategy, hedging and risk management practices, and  
17 the in-house capability for resource planning.

18  
19 ***Markets.*** The market analysis focuses on the markets that a G&T  
20 serves which are primarily its members. Each member is analyzed to  
21 determine its underlying credit characteristics that include the  
22 composition of the economic base, growth prospects, service area

1 demographics, household incomes, employment trends, proportion of  
2 electric sales and revenues to residential, commercial and industrial  
3 companies, and the top industrial accounts across the members of a  
4 G&T to measure the degree of load concentration. Particular emphasis  
5 is given to any industrial account that accounts for a significant  
6 percentage of sales and revenues of the company.

7  
8 *Regulation.* Given that most G&Ts have autonomous rate setting  
9 authority, the main focus is on the willingness and ability of the G&T  
10 to set rates on a timely basis sufficient to cover all costs and provide a  
11 reasonable financial cushion. However, if the G&T is rate regulated,  
12 as in the case of Big Rivers, the focus is on the relationship with the  
13 regulatory body, past experience in getting requested rates approved  
14 and the rate setting process.

15  
16 **Q. Can you compare the TIER Ratios of comparable G&Ts with what**  
17 **Big Rivers might consider?**

18  
19 A. With respect to TIER ratios, we can look at 20 rated investment grade G&Ts  
20 with ratings that range from AA to BBB+ and their TIER ratios for the years  
21 2006, 2005, and 2004 and an average of the three years. The table below  
22 summarizes the results.

1

G&T	Ratings	----- TIER (x)-----			3 Year
	MDY/S&P/F CH	2004	2005	2006	Average
	--				
Alabama Electric	/BBB+/BBB+	1.10	1.19	1.29	1.19
Arkansas Electric	A1/AA-/AA-	1.22	1.36	1.53	1.37
Associated Electric	A1/AA/AA	1.32	1.18	1.26	1.25
Basin Electric	A1/A+/AA-	1.21	1.79	1.32	1.44
Brazos Electric	--/A-/A	1.91	1.66	2.07	1.88
Buckeye Power	A1/A+/A+	2.88	3.46	2.67	3.00
Central Iowa Power	--/A/A-	1.38	1.40	1.61	1.46
Chugach Electric	A2/A-/A-	1.35	1.42	1.41	1.39
Dairyland Power	A2/A/--	1.24	1.54	1.51	1.43
Golden Spread	--/--/A-	2.68	6.45	3.55	4.23
Great River Energy	A3/BBB+/A-	1.24	1.49	1.83	1.52
Hoosier Energy	A3/A/--	1.10	1.20	1.20	1.17
Oglethorpe Power	A3/A/A	1.08	1.08	1.10	1.09
Old Dominion	A3/A/A	1.20	1.20	1.39	1.26
San Miguel	--/A/--	1.21	1.34	1.35	1.30
Seminole Electric	--/A/--	1.05	1.14	1.24	1.14
South Texas Electric	--/A/--	1.07	1.24	1.24	1.18
Tri-State	Baa1/A/A-	1.43	1.47	1.11	1.34
Wabash Valley	--/BBB+/--	1.26	1.27	1.23	1.25
Western Farmers	--/BBB+/A-	1.39	1.31	1.33	1.34
Average		1.42	1.71	1.56	1.56
Median		1.24	1.35	1.34	1.34

Source: G&T  
Accounting and  
Finance  
Association

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3 If we narrow the group of 20 noted above to include a mix of G&Ts rated in

4 the single A and BBB category, the results are as follows:

5

G&T	Ratings MDY/S&P/FCH	----- TIER (x) -----			3 Year Average
		2004	2005	2006	
Alabama Electric	--/BBB+/BBB+	1.10	1.19	1.29	1.19
Arkansas Electric	A1/AA-/AA-	1.22	1.36	1.53	1.37
Basin Electric	A1/A+/AA-	1.21	1.79	1.32	1.44
Chugach Electric	A2/A-/A-	1.35	1.42	1.41	1.39
Great River Energy	A3/BBB+/A-	1.24	1.49	1.83	1.52
Hoosier Energy	A3/A/--	1.10	1.20	1.20	1.17
Old Dominion	A3/A/A	1.20	1.20	1.39	1.26
Tri-State	Baa1/A/A-	1.43	1.47	1.11	1.34
Wabash Valley	--/BBB+/--	1.26	1.27	1.23	1.25
Western Farmers	--/BBB+/A-	1.39	1.31	1.33	1.34
Average		1.25	1.37	1.36	1.33
Median		1.23	1.34	1.33	1.34

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3 **Q. Please explain the other key credit factors the rating agencies will**  
4 **analyze in their assessment of Big Rivers.**

5

6 A. Following Big Rivers' emergence from bankruptcy and the unwinding of the  
7 LG&E transaction, it is likely that the rating agencies will evaluate Big  
8 Rivers' credit profile on a prospective basis.

9

10 As in rating any G&T, the rating agencies will analyze the credit strengths  
11 and weaknesses in the previously cited six credit factor categories. The key  
12 to achieving investment grade credit ratings is having the credit strengths  
13 offset any perceived weaknesses. The credit strengths the rating agencies  
14 will consider include:

- 15 • the improvement in Big Rivers' equity position;

- 1 • the monetary and operational value to Big Rivers' members;
- 2 • regaining operational control of the power plants; and
- 3 • regionally competitive wholesale power rates.

4

5 In general, the key credit concerns the rating agencies will likely focus upon  
6 include the following:

- 7 • a G&T's revenue and load concentration;
- 8 • management's ability to successfully manage all aspects/risks of  
9 the business;
- 10 • ability to achieve the financial forecast;
- 11 • the regulatory regimen; and
- 12 • future costs of complying with environmental regulations  
13 related to coal fired plants.

14

15 **Q. Can you propose some targets for Big Rivers' TIER Ratio?**

16

17 A. In my view, the rating agencies may accept a minimum annual TIER of 1.24x  
18 to achieve investment grade credit ratings. While that minimum TIER ratio  
19 is below the average and median TIER ratios for the peer group,  
20 traditionally, the rating agencies may take into account other positive credit  
21 factors for a G&T, such as its equity level and competitive wholesale power  
22 rates.



1 **Q. What are other important objective financial measures that the**  
2 **rating agencies will evaluate in determining whether to rate Big**  
3 **Rivers as investment grade?**

4  
5 A. The rating agencies might also consider these other major financial metrics:  
6 (i) an annual minimum debt service coverage ratio of 1.25x or greater,  
7 (ii) equity as a percentage of total capitalization, and (iii) days' cash and total  
8 liquidity.

9  
10 • ***Debt Service Coverage.*** The rating agencies may require Big  
11 Rivers to maintain a minimum annual debt service coverage  
12 ratio of 1.25x because the rating agencies will consider it  
13 important for Big Rivers to be able to generate sufficient cash  
14 each year to pay principal and interest on its outstanding  
15 indebtedness.

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17 • ***Equity Level.*** The rating agencies may expect minimum equity  
18 level as a percentage of total capitalization of greater than 20%,  
19 which is based on the below peer group.

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<b>G&amp;T</b>	<b>Ratings</b> <b>MDY/S&amp;P/FCH</b>	<b>2006</b> <b>Equity as a % of</b> <b>Total Cap</b>
Alabama Electric	--/BBB+/BBB+	10.60
Arkansas Electric Basin	A1/AA-/AA-	47.08
Chugach Electric	A1/A+/AA-	34.00
Great River Electric	A2/A-/A-	29.25
Hoosier Energy	A3/BBB+/A-	13.46
Old Dominion Energy	A3/A/--	12.66
Tri-State	A3/A/A	25.95
Wabash Valley	Baa1/A/A-	17.42
Western Farmers	--/BBB+/--	15.08
	--/BBB+/A-	12.45
Average		21.80
Median		16.25

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- Liquidity.** The rating agencies will evaluate Big Rivers' days' cash and total liquidity by comparing Big Rivers' unrestricted cash and investments (days' cash) and lines of credit to its annual operating expenses. Because any organization with substantial operating expenses will require some measure of credit cushion, the rating agencies generally expect four to six months of liquidity in the form of cash or a combination of cash and committed lines of credit.

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**Q. Why does Big Rivers need to mortgage its property under an indenture in substitution of its existing RUS Mortgage?**

A. In order to obtain capital markets financing Big Rivers will need to mortgage its property under a new indenture because investors will likely expect the mortgage to be part of the security they receive when they purchase bonds sold by Big Rivers. Without such a mortgage, any debt issued by Big Rivers may be deeply subordinated, which would increase the cost of such debt.

**Q. Why should Big Rivers extend the term of its wholesale power contracts with its members?**

A. Because it is likely that bond investors and the rating agencies will look at the strength of Big Rivers' members' payment obligations to Big Rivers in investing in and rating any issuances of indebtedness, the term of Big Rivers' wholesale power contracts with its members must extend at least until the maturity date of such indebtedness. Because issuances of long-term indebtedness often have a maturity of 30 years, investors and the rating agencies -- in all likelihood -- will be more comfortable if the wholesale power contracts extend at least 35 years to permit long-term issuances of debt by Big Rivers without having to go back to the members to extend the term of

1 the wholesale power contracts.

2

3 **Q. Does this conclude your testimony at this time?**

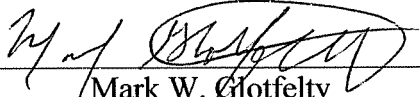
4

5 A. Yes.

6

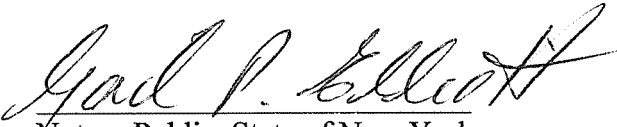
**VERIFICATION**

I verify, state, and affirm that the foregoing testimony is true and correct to the best of my knowledge and belief.

  
Mark W. Glotfelty

STATE OF NEW YORK  
COUNTY OF NEW YORK

Subscribed and sworn to before me by Mark W. Glotfelty on this the 21<sup>st</sup> day of December, 2007.

  
Notary Public, State of New York  
My Commission Expires: 3/5/10

GAIL P. ELLIOTT  
Notary Public, State of New York  
No. 03-4963157  
Qualified in Bronx County  
Commission Expires 3/5/10