

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC

ATTORNEYS AT LAW

June 24, 2008

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Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: The Application of Big Rivers Electric Corporation for: (i) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (ii) Approval of Transactions, (iii) Approval to Issue Evidences of Indebtedness, and (iv) Approval of Amendments to Contracts; and of E.ON U.S. LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc. for Approval of Transactions
Case No. 2007-00455

Dear Ms. Stumbo:

This letter is to request a written advisory opinion from Public Service Commission ("Commission") Staff that no Commission approval is required for the termination of the leveraged leases of Big Rivers Electric Corporation ("Big Rivers") with Bank of America Leasing Corporation ("Bank of America") under the terms and conditions described in the letter sent to you on June 18, 2008, from counsel for Big Rivers and E.ON U.S. LLC ("E.ON U.S."), Western Kentucky Energy Corporation, and LG&E Marketing, Inc. (collectively, the "Joint Applicants"). The leases are proposed to be terminated on June 30, 2008. An expedited response to this request is sought because, as noted below, this opinion is required in connection with an opportunity that must be accepted within the next two days, and closed by the end of the month.

The original leveraged lease transaction required approval of the Commission because Big Rivers issued new evidences of indebtedness, and amended an existing mortgage and issued a new mortgage to secure Big Rivers' obligations under the leveraged lease transaction.¹ But no Commission approval is required to *terminate* the Bank of America leases. Terminating the Bank of America leases does not require Big Rivers to "issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person" KRS 278.300(1). Entering into the leveraged leases did not constitute a change in control of Big Rivers or of the leased units under KRS 278.020(4) or (5), so terminating the leases and reverting those rights to Big Rivers is not a change of control under those statutes.² And if there is no "change of control," no approval is required under KRS

¹ See, order dated November 24, 1999, in *Big Rivers Electric Corporation's Application for Approval of a Leveraged Lease of Three Generating Units*, P.S.C. Case No. 99-450, page 10

² See, order dated January 28, 2000, in *Big Rivers Electric Corporation's Application for Approval of a Leveraged Lease of Three Generating Units*, P.S.C. Case No. 99-450, page 3.

Stephanie L. Stumbo
June 24, 2008
Page Two

278.218. No term in the leveraged leases prohibits termination of the leases as contemplated by Big Rivers³.

The effect on Big Rivers of termination of the Bank of America leveraged leases is positive, whether or not the "unwind transaction" occurs. Under either scenario, Big Rivers is relieved of the risks, complexities and complications of the Bank of America leases, and termination eliminates any issues under the Bank of America leases resulting from the downgrading of the rating of Ambac Assurance Corporation ("Ambac"), which is a party integral to the leases. The downgrading of Ambac's rating by Moody's Investment Service on June 20, 2008, requires Big Rivers to replace Ambac as a credit enhancer in its leveraged leases, including the Bank of America leases.

Whether or not the unwind transaction occurs does not change the effect on Big Rivers of termination of the Bank of America leases, as reflected on its GAAP books or tax books. Whether or not the unwind transaction occurs, Big Rivers would amortize the gain in its financial statements over the original life of the Bank of America lease, as discussed at the June 19, 2008, informal conference in this matter. Regardless of the circumstances under which the lease termination occurs, Big Rivers benefits compared with the status quo.

Accordingly, Big Rivers withdraws, as inapplicable and moot, its prior requests that Big Rivers be authorized to enter into (i) a letter agreement to terminate the Bank of America leases (paragraph 4 of Big Rivers' Third Amendment and Supplement to Application dated April 23, 2008), (ii) the Bank of America Termination Agreement (Exhibit 4, Motion to Amend and Supplement Application dated June 11, 2008), and (iii) the Bank of America Cost Share Agreement, in its current form (Exhibit 5, Motion to Amend and Supplement Application dated June 11, 2008). Big Rivers sought approval for these documents even though the need for Commission approval to terminate the Bank of America leases was questionable. This was consistent with the Joint Applicants' approach to this case of placing before the Commission all agreements and documents related to the proposed transaction to which Big Rivers is a party without specifically parsing the law relevant to whether Commission approval of each document is mandated by law. That approach works when timing is not an issue; timing has now become a serious problem.

³ See, Affidavit of C William Blackburn, attached.

Stephanie L. Stumbo
June 24, 2008
Page Three

Big Rivers files with this letter a replacement for the Bank of America Cost Share Agreement that provides for E.ON U.S. to pay the cost of the early termination of the Bank of America lease (after the funding of certain portions of those costs by Big Rivers and others, using proceeds of various investment contracts and financial products established at the time of the leveraged lease transactions for that purpose), with no commitment on the part of Big Rivers to reimburse E.ON U.S. any of those costs. Big Rivers does not believe this agreement requires Commission approval, for the reasons stated above. These changes to the cost share arrangements surrounding the Bank of America lease early termination are designed to eliminate potential issues to the early termination that the Attorney General identified earlier today by e-mail message to counsel in Case No. 2007-00455.

Big Rivers further files with this letter a new Letter Agreement with E.ON U.S. This Letter Agreement obligates Big Rivers to reimburse E.ON U.S. \$1 million of the early termination costs, but the obligation of Big Rivers to make this reimbursement is not effective without Commission review and approval, and closing of the unwind transaction.

As the June 18 letter explains, and as the parties to this case discussed at the informal conference on June 19, the cost of terminating these leases will rise precipitously after June 30, 2008. Ultimately, if the unwind transaction closes that cost is proposed to be borne by Big Rivers⁴, E.ON. U.S., and the two smelter customers under the terms of the revised Bank of America Cost Share Agreement (the "Cost Share Agreement"), attached to this letter. Under the circumstances, early termination of the leases is entirely without risk to Big Rivers and, indeed, is very beneficial to Big Rivers.

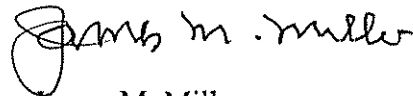
So that the leases may be terminated prior to June 30, 2008, Big Rivers requests a written advisory opinion at Staff's earliest convenience that no Commission approval is required for the termination of the leveraged leases of Big Rivers with Bank of America under the circumstances. Counsel for Bank of America has advised that if an order is entered making a determination that the Commission does not have jurisdiction in this instance, Bank of America cannot close the lease termination transaction until the thirty-three day appeal period has expired. To allow the parties to close by June 30, 2008, Big

⁴ If the unwind transaction closes, Big Rivers' total obligation to Bank of America for terminating the leases (in addition to the payments and investment contract proceeds delivered by Big Rivers at the time of the termination) is capped at \$1 million, plus a one-third share of certain transaction costs of Bank of America. If the leases are terminated and the unwind transaction does not close, Big Rivers would not owe that \$1 million amount or those transaction costs.

Stephanie L. Stumbo
June 24, 2008
Page Four

Rivers is requesting the Commission Staff to provide a written advisory opinion on this issue, and requesting the Commission not to enter an order.

Sincerely yours,

A handwritten signature in black ink that reads "James M. Miller". The signature is written in a cursive style with a large initial "J" and "M".

James M. Miller
Counsel to Big Rivers Electric Corporation

Attachments

c: Richard Raff, Esq.
All Parties

Commonwealth of Kentucky)
County of Henderson)

AFFIDAVIT OF C. WILLIAM BLACKBURN

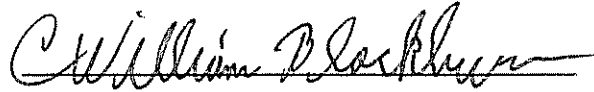
Comes the affiant, C. William Blackburn, and after first being duly sworn states and affirms as follows:

1. He is the same C. William Blackburn who is a witness in the pending Kentucky Public Service Commission Case No. 2007-00455.
2. The effect on Big Rivers Electric Corporation ("Big Rivers") of termination of the Bank of America leveraged leases is positive, whether or not the "unwind transaction" occurs. Under either scenario, Big Rivers no longer must deal with the risks, complexity and complications of the Bank of America leases, and termination of the leases eliminates any issues under the Bank of America leases resulting from the downgrading of the rating of Ambac Assurance Corporation ("Ambac"), which is a party integral to the leases. The downgrading of Ambac's rating by Moody's Investment Service on June 20, 2008, requires Big Rivers to replace Ambac as a credit enhancer in its leveraged leases, including the Bank of America leases.
3. Whether or not the unwind transaction occurs does not change the effect on Big Rivers of termination of the Bank of America leases, as reflected on its GAAP books or tax books. Whether or not the unwind transaction occurs, Big Rivers would amortize the gain in its financial

statements over the original life of the Bank of America lease, as discussed at the June 19, 2008, informal conference in this matter. Regardless of the circumstances under which the lease termination occurs, Big Rivers benefits compared with the status quo.

4. The cost of terminating these leases will rise precipitously after June 30, 2008. Ultimately that cost is proposed to be borne in part by Big Rivers under the terms of the Letter Agreement, attached to the letter dated June 24, 2008, from James M. Miller to Stephanie Stumbo, to which this affidavit is attached. That Letter Agreement obligates Big Rivers to reimburse E.ON \$1 million of the early termination costs, plus a one-third share of certain transaction costs of Bank of America (in addition to the payments and investment contract proceeds delivered by Big Rivers at the time of the termination). But the obligation of Big Rivers to make this reimbursement is not effective without Commission review and approval, and closing of the unwind transaction.
5. Big Rivers' obligations under the revised Cost Share Agreement do not include reimbursement of the \$1 million in early termination costs and Big Rivers' share of the transaction costs.
6. Under the circumstances, early termination of the leases is entirely without risk to Big Rivers and, indeed, is very beneficial to Big Rivers.

Further the affiant sayeth not, on this the 24th day of June, 2008.

A handwritten signature in cursive script that reads "C. William Blackburn". The signature is written in black ink and is positioned above a solid horizontal line.

C. William Blackburn

Subscribed and sworn to before me by C. William Blackburn on this
the 24th day of June, 2008.

A handwritten signature in cursive script that reads "Paula Mitchell". The signature is written in black ink and is positioned above a solid horizontal line.

Notary Public, Kentucky State-at-Large

My Commission Expires: 1-12-09

E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202

June 24, 2008

Big Rivers Electric Corporation
P.O. Box 24
Henderson, Kentucky 42419-0024
Attn: President & CEO

Subject: Payment Regarding the Buy-Out of The Bank of America

Gentlemen:

Reference is made to that certain letter agreement dated June 24, 2008 (the "Cost Share Agreement"), among Big Rivers Electric Corporation ("Big Rivers"), Alcan Primary Products Corporation, Century Aluminum of Kentucky General Partnership and E.ON U.S. LLC ("E.ON U.S."), pursuant to which, among other transactions, those parties agreed to fund certain costs and expenses associated with the termination of certain lease transactions and associated rights and obligations among Big Rivers, The Bank of America Leasing Corporation (and/or certain of its affiliates) and other parties (the "BofA Transactions"). Capitalized terms used but not defined in this letter agreement shall have their same respective meanings as in the Cost Share Agreement.

For and in consideration of the agreement of E.ON U.S., pursuant to the Cost Share Agreement, to contribute certain amounts toward the Lessor Consideration at the BofA Closing, which contribution will provide a material benefit to Big Rivers, Big Rivers hereby agrees to remit and pay to E.ON U.S. in immediately available funds, without set-off or deduction, the amount of ONE MILLION DOLLARS (\$1,000,000.00), upon the later to occur of (but not before): (a) the "Closing" contemplated in that certain Transaction Termination Agreement dated as of March 26, 2007, as amended, among Big Rivers, Western Kentucky Energy Corp. and LG&E Energy Marketing Inc.; or (b) the approval of that \$1,000,000.00 payment by Big Rivers to E.ON U.S. pursuant to this letter agreement issued by the Kentucky Public Service Commission (the "KPSC"). The parties acknowledge that the foregoing payment by Big Rivers (if and when it is made) is intended to defray certain of the costs and expenses that are to be incurred by E.ON U.S. pursuant to the Cost Share Agreement.

Big Rivers further agrees to use its reasonable best efforts, from and after the date hereof, to seek and secure the KPSC approval contemplated in Subclause (b) of the preceding paragraph at the earliest practicable time following the date hereof, at Big Rivers' sole cost and expense.

Big Rivers Electric Corporation
June 24, 2008
Page 2

Lastly, this letter (which is also being delivered to the Smelters on the date hereof) shall constitute the Election Notice of E.ON U.S. to Big Rivers and the Smelters contemplated in Section 5 of the Cost Share Agreement, provided the BofA Closing occurs on or before June 30, 2008, it being understood and agreed that this Election Notice shall become null and void and of no further force or effect *ab initio* in the event the BofA Closing has not occurred on or before June 30, 2008, and it shall thereafter create no obligations on the part of E.ON U.S., whether pursuant to the Cost Share Agreement or otherwise.

This letter agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to the conflict of laws rules or principles of that state.

If the foregoing is consistent with our agreement, please execute a copy of this letter in the space provided below and return it to the undersigned. Thank you.

E.ON U.S. LLC

By: _____
Paul W. Thompson
Senior Vice President – Energy Services

ACCEPTED AND AGREED TO:

BIG RIVERS ELECTRIC CORPORATION

By: _____
Michael Core, President & CEO

Big Rivers Electric Corporation
June 24, 2008
Page 3

cc: Alcan Primary Products Corporation
P.O. Box 44
Henderson, Kentucky 42419
Attn: Plant Manager, Sebree Smelter

Century Aluminum of Kentucky General Partnership
Hawesville Plant
P.O. Box 500
1627 State Route 271 North
Hawesville, Kentucky 42348
Attn: Plant Manager

LOU: 2847882-2

E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202

June 24, 2008

Big Rivers Electric Corporation
P.O. Box 24
Henderson, Kentucky 42419-0024
Attn: President & CEO

Alcan Primary Products Corporation
P.O. Box 44
Henderson, Kentucky 42419
Attn: Plant Manager, Sebree Smelter

Century Aluminum of Kentucky General Partnership
Hawesville Plant
P.O. Box 500
1627 State Route 271 North
Hawesville, Kentucky 42348
Attn: Plant Manager

Subject: Funding of Certain Amounts to be Paid to The Bank of America

Gentlemen:

Reference is made to (a) that certain letter agreement dated February 9, 2007, among Big Rivers Electric Corporation ("Big Rivers"), Alcan Primary Products Corporation ("Alcan"), Century Aluminum of Kentucky General Partnership ("Century" and, together with Alcan, the "Smelters") and E.ON U.S. LLC ("E.ON U.S."), pursuant to which, among other transactions, those parties agreed to jointly fund certain consent fees or the like that may become payable to certain other parties, upon the terms and subject to the conditions set forth therein (the "Joint Fee Sharing Agreement"), and (b) that certain letter agreement dated February 9, 2007, among Big Rivers, Alcan, Century and E.ON U.S., pursuant to which, among other transactions, those parties agreed to jointly fund certain transaction costs that may become payable or reimbursable to certain other parties, upon the terms and subject to the conditions set forth therein (the "Joint Cost Sharing Agreement").

Reference is also made to (a) that certain letter agreement dated April 18, 2008 (the "April 18 Letter"), between Big Rivers and Bank of America Leasing Corporation ("BofA"), pursuant to which Big Rivers agreed to purchase from BofA certain undivided

Big Rivers Electric Corporation
Alcan Primary Products Corporation
Century Aluminum of Kentucky General
Partnership
June 24, 2008
Page 2

beneficial trust interests related to certain defeased lease transactions (collectively, the "BofA Lease Transaction"), and (b) the proposed Omnibus Termination Agreement, draft dated May 27, 2008 (as finally negotiated and executed by the parties thereto, the "Termination Agreement"), among Big Rivers, Big Rivers Leasing Corporation, FBR-1 Statutory Trust, FBR-2 Statutory Trust, BofA, AME Investments, LLC, CoBank, ACB ("CoBank"), AME Asset Funding, LLC, U.S. Bank National Association, AIG Matched Funding Corp., Ambac Credit Products, LLC, and Ambac Assurance Corporation. Capitalized terms used but not defined in this letter shall have the meanings given in the Termination Agreement.

The parties desire to enter into this letter agreement to evidence their agreements with respect to the funding of the Lessor Consideration and certain transaction costs payable by Big Rivers under the Termination Agreement.

In consideration of the foregoing and their respective covenants and agreements set forth herein, the parties hereto agree as follows, effective as of the date first written above:

1. Notwithstanding anything to the contrary set forth therein, the parties hereto acknowledge and agree that the Lessor Consideration shall constitute neither "Fees" under and as defined in the Joint Fee Sharing Agreement nor "Transaction Costs" under and as defined in the Joint Cost Sharing Agreement.

2. The parties hereto shall contribute towards the Lessor Consideration (net of the proceeds referred to in Section 3 below), at the time contemplated below (but not before) as follows: Big Rivers shall contribute the Series B Prepayment Amount; the Smelters shall jointly contribute \$1,000,000; and E.ON U.S. shall contribute the balance.

The maximum \$1,000,000 increment to be funded jointly by the Smelters will be allocated between them on a basis satisfactory to them and reflected in a separate agreement between them. Each party's commitment would be to fund its respective share of the Lessor Consideration at the time of the closing of the transactions contemplated by the Termination Agreement, the conditions to such closing being governed by such agreement; provided, that in the event those transactions under the Termination Agreement are to close prior to the closing of the transactions contemplated by the Transaction Termination Agreement dated as of March 26, 2007, as amended, among Big Rivers, Western Kentucky Energy Corp. and LG&E Energy Marketing Inc. (the "Transaction Termination Agreement"), other than as a result of an election by E.ON U.S. to deliver an Election Notice (as defined below) pursuant to Section 5 of this letter agreement, E.ON

Big Rivers Electric Corporation
Alcan Primary Products Corporation
Century Aluminum of Kentucky General
Partnership
June 24, 2008
Page 3

U.S. shall have the right and option, exercisable in its sole discretion at any time (whether before or following the closing of the transactions contemplated by the Termination Agreement), to delay the funding of its respective share of the Lessor Consideration until the closing contemplated by the Transaction Termination Agreement, and in such event the funding obligation of E.ON U.S. shall not accrue under this letter agreement until such time as either that closing under the Transaction Termination Agreement has occurred or E.ON U.S. has elected to tender delivery of its respective share of the Lessor Consideration, whichever is earlier. Except as otherwise provided in Section 5 below, no party would be obligated to first fund any portion of its commitment unless and until the other parties fund their respective share at the same time.

3. The specific amount of the funding commitment of E.ON U.S. hereunder will be such amount as may be determined by Big Rivers and E.ON U.S. on the basis of the final terms and conditions of the Termination Agreement agreed to by them in writing, after taking into account the contributions of Big Rivers and the Smelters contemplated in Section 2 above, and the liquidation, sale, application and netting against the Lessor Consideration of all proceeds received by Big Rivers or its designee or paid on behalf of Big Rivers to any Lease Transaction Parties in respect of the termination, liquidation or sale (as applicable) of the Payment Agreements and the Funding Agreements; provided, that the funding commitment of E.ON U.S. hereunder shall be further conditioned on (a) the application of the Payment Termination Amount under each Payment Agreement and the application of the Series B Prepayment Amount at the closing contemplated by the Termination Agreement in the manner contemplated in that agreement and (b) the termination and/or liquidation of the Funding Agreements in full and the application of all proceeds of that termination and/or liquidation toward the payment of the Lessor Consideration at that closing. Big Rivers will keep E.ON U.S. and the Smelters reasonably apprised of the status and final negotiation of the terms and conditions of the Termination Agreement and will provide appropriate documentation detailing the Lessor Consideration prior to the closing of the transactions contemplated by the Termination Agreement.

4. Upon the closing of the transactions contemplated by the Termination Agreement, the government securities pledged under the Government Securities Pledge Agreements, together with any proceeds from the sale or other disposition thereof, shall be the sole property of Big Rivers.

5. E.ON U.S. will have the right and option, exercisable by it at any time by written notice delivered to Big Rivers and the Smelters at their addresses set forth above (an "Election Notice"), to elect to cause the closing of the transactions contemplated by the

Big Rivers Electric Corporation
Alcan Primary Products Corporation
Century Aluminum of Kentucky General
Partnership
June 24, 2008
Page 4

Termination Agreement (the "BofA Closing") to occur prior to the closing of the transactions contemplated by the Transaction Termination Agreement (the "Unwind Closing"), on the terms and conditions set forth in this Section 5. In the event an Election Notice is delivered by E.ON U.S. to Big Rivers and the Smelters as contemplated above, each of Big Rivers and E.ON U.S. will cooperate with one another and use their respective reasonable best efforts to cause the BofA Closing to occur as soon as practicable following the date of that notice, upon the terms and subject to the conditions set forth in the Termination Agreement to be agreed upon by Big Rivers and E.ON U.S. as contemplated above. Notwithstanding anything contained in this letter agreement to the contrary, in the event the BofA Closing shall occur (pursuant to that agreed Termination Agreement) following the delivery of an Election Notice but prior to the Unwind Closing (or an earlier termination of this letter agreement as contemplated below), E.ON U.S. agrees to initially contribute toward the BofA Closing the full amount of the Lessor Consideration contemplated in Section 2 of this letter agreement (that is, net of the proceeds referred to in Section 3 above) other than the Series B Prepayment Amount (which Big Rivers agrees to contribute at that BofA Closing), including the \$1,000,000.00 contribution from the Smelters described in that Section 2, as well as all related "Transaction Costs" (as defined in the Joint Cost Sharing Agreement) that are payable by Big Rivers to one or more of the Lease Transaction Parties under Section 5 of the Termination Agreement (exclusive of the Lessor Consideration). Thereafter, in the event the Unwind Closing shall occur: (a) the Smelters jointly agree to remit and pay to E.ON U.S. at the Unwind Closing the amount of \$1,000,000 in immediately available funds, representing the Smelters' collective contribution toward the Lessor Consideration as contemplated in that Section 2, and (b) all such "Transaction Costs" shall be subject to reimbursement in accordance with the Joint Cost Sharing Agreement. In the event the BofA Closing occurs following the delivery of an Election Notice but prior to the Unwind Closing as contemplated herein, then unless and until the Unwind Closing thereafter occurs, Big Rivers and the Smelters shall have no obligation to pay or reimburse E.ON U.S. for any portion of the Lessor Consideration (other than the application by Big Rivers of the proceeds described in Section 3 above that are within its possession or control, and other than the contribution by Big Rivers of the Series B Prepayment Amount as contemplated below) or such "Transaction Costs" contributed by E.ON U.S. at the BofA Closing.

6. The Joint Fee Sharing Agreement and the Joint Cost Sharing Agreement shall continue in full force and effect from and after the execution of this letter agreement in accordance with their respective terms. This letter agreement shall not be deemed to amend, modify or supplement the Joint Fee Sharing Agreement or the Joint Cost Sharing Agreement. For the avoidance of doubt, the parties hereto agree that, except as otherwise

Big Rivers Electric Corporation
Alcan Primary Products Corporation
Century Aluminum of Kentucky General
Partnership
June 24, 2008
Page 5

provided in Section 5 above, fees and expenses (exclusive of the Lessor Consideration) incurred by the Lease Transaction Parties payable or paid by Big Rivers pursuant to Section 5 of the Termination Agreement shall constitute "Transaction Costs" subject to shared contribution under and in accordance with the Joint Cost Sharing Agreement, but shall not constitute costs or expenses that are recoverable by Big Rivers from E.ON. U.S. or any of its affiliates or subsidiaries pursuant to any other agreement(s) between or among those parties. In addition, Big Rivers agrees that its respective share of the Lessor Consideration paid or payable by it under this letter agreement or the Termination Agreement (including the Series B Prepayment Amount) shall not be a cost or expense recoverable by Big Rivers under any other agreement(s) between or among Big Rivers, E.ON U.S. or any of its affiliates or subsidiaries.

7. It is acknowledged and agreed by the parties hereto that the final Termination Agreement may contain modifications or other changes to the defined terms used herein and the provisions applicable with respect thereto. The parties agree that no such modification(s) shall be deemed to modify this letter agreement absent the written agreement of the parties to such modification(s), and further agree that, to the extent any such modification or other change to the Termination Agreement requires an amendment or supplement to this letter agreement, the parties shall cooperate in good faith to negotiate and execute such amendment or supplement in order to sustain the intent of the parties as expressed herein.

8. Notwithstanding anything to the contrary set forth in this letter agreement, this letter agreement shall become null and void and of no further force or effect, without notice or further action on the part of any party, in the event the Transaction Termination Agreement shall be terminated in accordance with its terms at any time prior to the time at which E.ON U.S. shall have an unconditional obligation to fund its respective share of the Lessor Consideration pursuant to this letter agreement.

9. This letter agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to the conflict of laws rules or principles of that state.

[Signature page follows.]

Big Rivers Electric Corporation
Alcan Primary Products Corporation
Century Aluminum of Kentucky General
Partnership
June 24, 2008
Page 6

If the foregoing is consistent with our agreement, please execute a copy of this letter in the space provided below and return it to the undersigned. Thank you.

E.ON U.S. LLC

By: _____
Paul W. Thompson
Senior Vice President – Energy Services

ACCEPTED AND AGREED TO:

BIG RIVERS ELECTRIC CORPORATION

By: _____
Michael Core, President & CEO

ALCAN PRIMARY PRODUCTS CORPORATION

By: _____
Y'von d'Anjou, President

CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP

By: _____
E. Jack Gates, President