Steven L. Beshear Governor

Robert D. Vance, Secretary Environmental and Public Protection Cabinet

Larry R. Bond Commissioner Department of Public Protection



Commonwealth of Kentucky Public Service Commission 211 Sower Blvd. P.O. Box 615 Frankfort, Kentucky 40602-0615 Telephone: (502) 564-3940 Fax: (502) 564-3460 psc.ky.gov

February 20, 2008

Mark David Goss Chairman .8

John W. Clay Vice Chairman

Caroline Pitt Clark Commissioner

PARTIES OF RECORD: Case No. 2007-00455 Big Rivers Electric Corporation

Attached is a copy of the informal conference memorandum which is being filed in the record of the above-referenced case. If you wish to make any comments regarding the contents of the memorandum, please do so within five days of receipt of this letter. Should you have any questions regarding the memorandum, please contact Richard Raff at 502/564-3940, Extension 263.

Sincerel Beth ିଅDonnell Executive Director

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#### INTRA-AGENCY MEMORANDUM

#### KENTUCKY PUBLIC SERVICE COMMISSION

TO: Main Case File No. 2007-00455

FROM: Richard G. Raff, Staff Attorney

**DATE:** February 19, 2008

**SUBJECT:** Big Rivers Electric Corporation, et al.

Pursuant to a Staff Notice dated January 29, 2008, an informal conference was held on February 19, 2008 at the Commission's Frankfort, Kentucky office. A copy of the list of attendees is attached hereto. Big Rivers gave a presentation describing the proposed special contracts with the aluminum smelters, Alcan and Century, and the various tariff adjustment clauses that would apply to the smelters and the non-smelter members under the proposed unwind transaction. A copy of the slides presented by Big Rivers is attached hereto.

Aspects of the special contracts that were discussed included the services Big Rivers will supply to the smelters, the charges to be paid by the smelters, the parties' respective protections under the contracts, provisions governing conditions for dealing with financial distress to the smelters and/or closure of one or both smelters, and provisions for future cooperation between the parties. Big Rivers also discussed the proposed smelter tariff adjustment clauses, including a fuel adjustment clause (FAC), an environmental surcharge, and a non-FAC purchase power agreement, as well as the proposed non-smelter member adjustment clauses. The presentation also covered various provisions within the proposed contracts that are intended to maintain the financial viability of Big Rivers and the smelters.

cc: Parties of Record (without copy of slides)



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

THE APPLICATIONS OF BIG RIVERS ELECTRIC CORPORATION FOR: (I) APPROVAL OF WHOLESALE TARIFF ADDITIONS FOR BIG RIVERS ELECTRIC CORPORATION, (II) APPROVAL OF TRANSACTIONS, (III) 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

#### February 19, 2008 Informal Conference

Please sign in: NAME

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Please sign in: NAME

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CASE NO. 2007-00455

February 19, 2008 Informal Conference

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CASE NO. 2007-00455

#### February 19, 2008 Informal Conference

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#### REPRESENTING

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C William Blackburn Big Rivers Electric Corporation 201 Third Street P. O. Box 24 Henderson, KY 42420

Honorable John N. Hughes Attorney at Law 124 West Todd Street Frankfort, KY 40601

Honorable James M. Miller Attorney at Law Sullivan, Mountjoy, Stainback & Miller, PSC 100 St. Ann Street P.O. Box 727 Owensboro, KY 42302-0727

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Honorable Frank N. King, Jr. Attorney at Law Dorsey, King, Gray, Norment & Hopgood 318 Second Street Henderson, KY 42420

Honorable Kendrick R. Riggs Attorney at Law Stoll Keenon Ogden, PLLC 2000 PNC Plaza 500 W Jefferson Street Louisville, KY 40202-2828 Honorable Dennis G. Howard II Assistant Attorney General Office of the Attorney General Utility & Rate Intervention Division 1024 Capital Center Drive Suite 200 Frankfort, KY 40601-8204

I.

Honorable Michael L. Kurtz Attorney at Law Boehm, Kurtz & Lowry 36 East Seventh Street Suite 1510 Cincinnati, OH 45202

Honorable Allyson K. Sturgeon Attorney at Law E.ON U.S. Services, Inc. 220 West Main Street Louisville, KY 40202



# Summary of Smelter Service Arrangements & Proposed Adjustment Clauses

February 19, 2008

### Today's Presentation

- Services Provided
- Charges to Smelters
- Parties' Respective Protections
- Smelter Financial Distress/Closure
- Future Cooperation
- Tariff Adjustment Clauses

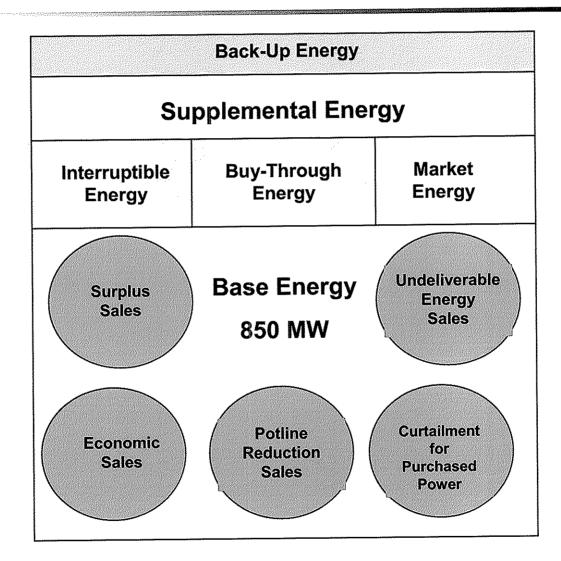


### Services Provided

- Non-exclusive Contractual Wholesale Service Retail Agreements §§ 2.1, 2.3.2(c)
  - Back-to-back arrangements among Big Rivers, Kenergy and the Smelters
- Base Power and Energy Retail Agreements § 2.3.1
  - Intended to satisfy Smelters' normal operating requirements
  - Smelters' increased load since 1998
- Supplemental Energy Retail Agreements § 2.3.2
  - Structure (pricing, amounts, etc.) developed in response to working experience with the Smelters since 1998
  - Simpler to include provisions in a single contract



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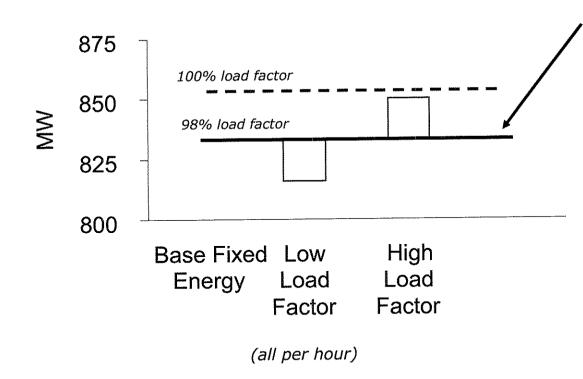




- Base Power and Energy
  - Alcan: 368 MW; Century: 482 MW Alcan Retail Agreement §§ 1.1.15, 2.31; Century Retail Agreement §§ 1.1.14, 2.3.1
  - Take-or-pay obligation Retail Agreements § 4.2
  - No scheduling requirements Retail Agreements § 3.2.1
     Notice of material changes in usage
  - Term: December 31, 2023 Retail Agreements § 2.1



 Base Power and Energy (cont'd) – Relationship of Base Fixed Energy and Base Variable Energy





- Smelters committed to purchase 7.3 million MWh –"Base Fixed Energy" annually under any circumstance Alcan Retail Agreement §§ 1.1.16, 2.3.1, 4.2; Century Retail Agreement §§ 1.1.17, 2.3.1, 4.2
- Charges are adjusted for fuel and variable O&M costs related to "Base Variable Energy": Alcan Retail Agreement §§ 1.1.20, 2.3.1, 4.2; Century Retail Agreement §§ 1.1.21, 2.3.1, 4.2
  - Avoided, for lower load factor
  - Incurred, for higher load factor, up to 100%

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- Supplemental Energy Categories
  - Interruptible Energy Retail Agreements § 2.3.2(a),
    - Retail Agreements Schedule 2.3.2(a)
      - 10 MW each
      - Smelters must schedule
      - Interruptible based on inability to serve non-Smelter members, Smelter base energy, and existing commitments from owned resources, SEPA contract or certain long-term contracts (2+ years)
        - Right to after-the-fact declaration of interruption
        - No limit on number or duration of interruptions



- Supplemental Energy Categories (cont'd)
  - Buy-Through Energy Retail Agreements § 2.3.2(b)
    - Related to Interruptible Energy
    - Big Rivers not obligated to offer
    - At election of a Smelter following notice of interruption
    - "Firms" Interruptible Energy price
  - Market Energy Retail Agreements § 2.3.2(c)
    - Additional energy required by a Smelter
      - E.g., increased Smelter capacity requirements
    - Big Rivers <u>may</u> but not obligated to provide



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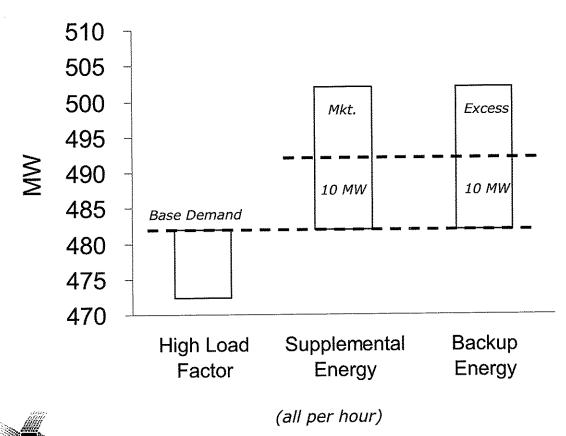
#### Services Provided (cont'd)

- Back-up Energy Retail Agreements § 2.3.3
  - A load following product
  - Big Rivers is the provider of last resort
- Transmission Services Retail Agreements § 4.5
  - If applicable, future unbundled services for Base Energy
  - Supplemental Energy
- Ancillary Services Retail Agreements § 4.5



#### Smelter Agreements

#### Energy Products – Supplemental and Backup Energy (E.g., Century)



- For load in an hour over Base Demand, Smelters may purchase Supplemental Energy up to 10MW:
  - Interruptible
  - Buy-through
  - Market (can exceed 10MW)
- Backup Energy also available
- Backup Energy over 10MW (Excess) priced at premium rate



### Charges to Smelters

······································	Base Power and	Su	pplemental Energy	Back-Up Energy				
	Energy	Interruptible	Buy-Through	Market	. •••			
Energy Price	Large Industrial Rate + 25 cents (98% load factor) Alcan Retail Agreement §§ 1.1.20, 4.2 Century Retail Agreement §§ 1.1.19, 4.2	Price set quarterly by agreement Retail Agreements § 4.3.1, Retail Agreements Schedule 2.3.2(a)(i)	Actual market price Retail Agreements § 4.3.2	Price set by quote Retail Agreements § 4.3.3	<u>Generated Energy</u> : Greater of hourly MISO locational marginal price or system lambda Retail Agreements § 4.4.1(a) <u>Purchased Energy</u> : 110% of highest all-inclusive cost for purchased energy Retail Agreements § 4.4.1(b) <u>More than 10 MW</u> : Greater of \$250/MWh or purchased energy price Retail Agreements § 4.4.1(c)			
Adjustments Retail Agreements § 4.8	<ul> <li>FAC</li> <li>Environmental Surcharge</li> <li>Non-FAC PPA</li> </ul>	Included in price Retail Agreements § 4.3.1, Retail Agreements Schedule 2.3.2(a)(i)	Included in price Retail Agreements §§ 2.3.2(b), 4.3.2	Included in price Retail Agreements §§ 2.3.2(c), 4.3.3	Included in price Retail Agreements §§ 2.3.2(c), 4.3.3			
Transmission and Ancillary Charges Retail Agreements § 1.1.121	On-system bundled & off-system recovered through Non-FAC PPA Retail Agreements § 4.5(a) and Appendix A	OATT Retail Agreements § 4.5(b)	OATT Retail Agreements § 4.5(b)	OATT Retail Agreements § 4.5(b)	Third-Party Charges Retail Agreements § 4.4.1(b)			

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#### Adjustments

- Fuel Adjustment Clause (FAC) Retail Agreements § 4.8.1
  - Provides for changes in fuel costs
  - Applies to Members and Smelters
- Environmental Surcharge (ES) Retail Agreements § 4.8.3
  - Recovers variable expenses of reagent and waste disposal
    - Net of sales of allowances and waste byproducts
  - Applies to Members and Smelters



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#### • Adjustments (cont'd)

- Non-FAC Purchase Power Adjustment (PPA) Retail Agreements § 4.8.2 and Appendix A
  - Recovers Smelter-related purchased power costs to the extent not recovered by the FAC or in base rates
  - Applies to the Smelters only
  - Smelters not obligated to pay Members' portion of non-FAC purchased power costs



- TIER Adjustment Charge Retail Agreements § 4.7
  - Smelters' payment if necessary to reach 1.24 TIER
  - Why is this necessary?

- Big Rivers needs to be assured to meet necessary financial metrics to:
  - Merit investment grade credit rating
  - Meet anticipated financial needs
- Smelters willing to provide additional revenue within parameters Retail Agreements § 4.7.1
- Allocation of costs in agreed circumstances Retail Agreements § 4.7.5
- TIER, for this purpose, calculated in accordance with agreements Alcan Retail Agreement §§ 1.1.74, 1.1.116; Century Retail Agreement § 1.1.75, 1.1.116
  - This TIER expected to exceed RUS TIER



- TIER Adjustment Charge (cont'd)
  - What if Big Rivers exceeds 1.24 TIER?
    - Rebate Retail Agreements § 4.9
      - Returns Smelters' share of excess amounts
      - The Member counterpart to the Rebate is Rebate Adjustment rider to the tariff
    - Equity Development Credit Retail Agreements § 4.10
      - Similar to Rebate but no distribution to Members
      - Big Rivers may need to build equity and may need to retain the Members' portion of the surplus above 1.24 TIER
      - Returns amounts to the Smelters until 1.24 TIER or large industrial rate



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#### Sample TIER Adjustment Calculations

	2009	2011
TIER Adjustment Rebate/Charge		
Pre TIER Adj/Rebate Revenues	495.0	522.1
Total Expenses	473.3	<u> </u>
Net Margin Before TIER Adjustment	21.7	3.0
Interest Charges	59.6	59.3
Pre-TIER Adjustment TIER	1.36	1.05
Increment needed for 1.24x TIER Contract TIER Adjustments	(7.4)	11.2
Less: Interest on Reserve Funds	(1.5)	(1.7)
Total Adjustments	(1.5)	(1.7)
Increment needed for 1.24x TIER with Adj.	(5.8)	12.9
Rebate Amount (\$M)	(5.8)	-
TIER Adjustment Charge (\$M)	-	12.9
Rebate to Members/Smelters (\$/M)		
Rurals	(1.4)	-
Large Industrials	(0.5)	-
Smelters	(3.9)	-
TIER Adjustment Charge to Smelters (\$/M)	-	12.9



- Surcharges Retail Agreements § 4.11
  - Purpose of the surcharges
    - Reduce member exposure to FAC and ES
    - Benefit of the surcharges returned to Members through Unwind Surcredit
  - Types
    - Fixed dollar amount per month Retail Agreements § 4.11(a)
      - 3 different monthly amounts over 3 periods
    - 60¢/MWh for Base Fixed Energy Retail Agreements § 4.11(b)
    - 0-60¢/MWh to the extent actual fuel costs exceed reference fuel cost Retail Agreements § 4.11(c)

- Subject to true-ups



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#### Charges to Smelters (cont'd)

- Surcharges and Surcredits
- The relationship between Smelter Surcharges and Member Surcredits in 2009 is shown at right
- 4.11(a) Fixed dollar amount per month
- 4.11 (b) 60¢/MWh for Base Fixed Energy
- 4.11 (c) Lesser of 60¢/MWh or excess of actual fuel costs over reference fuel cost \*
- Surcharges offset Member payments dollar for dollar

\* Subject to true-ups



Surcharges - 200	<u>99</u> Financial Model Line Number	Smelter Retail Agmt. Ref.	\$/ MWh	TWh	\$M	
1. Smelter Paym	nents					
Surcharge 1 Surcharge 2:	94	4.11(a)	0.70	7.30	5.11	
041 01141 go		4.11(b)	0.60	7.30	4.38	
		4.11(c)	0.12		0.84	
Subtotal Total	95		0.72	7.30	5.22 10.33	
2. Member Surc	redits					
Rurals	40		(2.95)	2.44	(7.20)	
Large Indus.	61		(2.95)	1.06	(3.14)	
Total			(2.95)	3.50	(10.33)	

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- Credits to Smelter Charges:
  - Unused energy (see p. 30 below) Retail Agreements § 4.13.1
  - Curtailment to avoid purchased power Retail Agreements § 4.13.2
    - Big Rivers, Kenergy and Smelters must agree
    - Credit equal to a projected market rate
  - Economic Sales
    - 75% of net proceeds of agreed sales to market but each Smelter is limited to: Retail Agreements § 4.13.3
      - 100MW/hour
      - 12 curtailments/year
      - 4 hours/curtailment



#### Protections of the Parties

- The parties negotiated various protections to help mitigate perceived risks
- These protections are key to the success of the Smelter arrangements
- These protections are balanced against one another in a manner the parties believe are both commercially reasonable and appropriate given the circumstances



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# **Big Rivers/Member Protections**

- Take-or-pay obligation Retail Agreements § 4.2
- TIER Adjustment Charge Retail Agreements § 4.7

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- Additional Smelter charge based on fluctuations of Big Rivers' net margins, within limits
- Adjustable Charges Retail Agreements § 4.8
  - Provides Big Rivers additional financial protection (FAC, ES, Non-FAC PPA)
- Smelter Surcharges Retail Agreements § 4.11
  - Additional mitigation of fuel costs
    - 2 surcharges fixed
    - 1 surcharge based on actual fuel costs



# Big Rivers/Member Protections (cont'd)

 Pricing flexibility for Interruptible and Market Energy Retail Agreements §§ 4.3.1, 4.3.3 and Appendix A

- Premium pricing for Back-up Energy Retail Agreements § 4.4
- No obligation to sell unused Smelter energy until Big Rivers' energy sold or it elects not to sell forward Retail Agreements § 10.1.2



# Big Rivers/Member Protections (cont'd)

- Payments required of disputed amounts Retail Agreements § 5.4
- Credit support
  - Parent guarantee Retail Agreements 13.3(ii)

- Letter of credit Retail Agreements 13.3(i)
  - Cover 2 months invoices plus potential tax liabilities
  - No obligation to provide letter of credit if Smelter parent is rated A+ or better from S&P
    - If rated by Moody's, similar rating required



# Big Rivers/Member Protections (cont'd)

#### Reserves

- Economic Reserve Retail Agreements § 1.1.34

At least \$75 million

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- Offsets FAC and ES charges to Members
- Returned to Members through the Member Rate Stability Mechanism (MRSM)
- Transition Reserve Retail Agreements § 1.1.119
  - \$35 million
  - Mitigates Big Rivers' potential loss of revenue if a Smelter terminates its contract



### **Kenergy Protections**

- No performance default if a corresponding obligation by a Smelter or Big Rivers
   exists Retail Agreements §§ 5.5(a), 5.5(b)
- No contest of the retail fee for 10 years Retail Agreements § 13.1.2



### **Smelter Protections**

 Protections of distortions of TIER Adjustment Charge Retail Agreements § 4.7.5

- E.g., Restructurings/acquisitions/mergers of Big Rivers or a Member resulting in a 5% increase in Big Rivers' total Member load Retail Agreements § 16.5
  - Amortize 24-month cost of a restructuring over 48 months
- Purchased power regulatory account for Members to ensure the Smelters do not pay the Members' portion of Non-FAC PPA Coordination Agreements § 3.16
- No rate case effective before Jan. 1, 2010 Retail Agreements § 13.1.1



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#### • Conditions to closing:

- Pre-closing right to terminate if:
  - Retail Agreements § 7.2
    - Commission order modifies pricing or other material terms of the agreements Retail Agreements § 7.2.3
    - Smelters conclude Big Rivers can't achieve the financial model filed with the Commission in December during the first 5

Years Retail Agreements § 7.2.4(a)

 Material adverse change in economic or business factors Retail Agreements § 7.2.4(b)



- Covenants of Big Rivers:
  - Operate system for benefit of Members and patrons consistent with prudent utility practices Coordination Agreements § 3.13

- No use of TIER Adjustment Charge as the substantive basis for an operating decision Coordination Agreements § 3.13
- Agreed list of retirement units Coordination Agreements § 3.15
- Depreciation rates provision Coordination Agreements § 3.10



#### Sales of unused energy

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- Surplus sales Retail Agreements § 10.1.1
  - General right to have unused energy sold, subject to:
    - Big Rivers sells its surplus energy first or elects not to sell Retail Agreements § 10.1.1
    - Other limitations regarding minimum amounts, minimum proceeds and absence of system emergencies Retail Agreements §§ 10.1.1, 10.1.2
  - Credit monthly charges for net proceeds only to the extent of fixed costs relating to that energy Alcan Retail Agreement §§ 1.1.11, 4.13.1; Century Retail Agreement §§ 1.1.10, 4.13.1



- Sales of unused energy (cont'd)
  - Undeliverable energy sales Retail Agreements § 10.2
    - Intended for Smelter "frozen potline" scenario
    - Requires casualty reducing demand by 50+ MW for 48 hours or more Retail Agreements § 10.2.1

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- Credit equal to full amount of net proceeds for up to 9 months, less an administrative fee Retail Agreements §§ 4.13.1, 10.2.1(a)
- Smelters waive any claims against Big Rivers or Kenergy as a result of the casualty in most cases Retail Agreements § 10.2.2
- Subject to limitations similar to surplus sales regarding priority of sales Retail Agreements § 10.2.1



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- Sales of unused energy (cont'd)
  - Potline Reduction Sales Retail Agreements § 10.3
    - Intended to help keep a Smelter operating if 1 potline to be shut down for 1+ year Retail Agreements § 10.3.1
    - I15MW (± 10MW) reduction in usage only Retail Agreements § 10.3.1
    - Credit to monthly charge equal to full amount of net proceeds for up to 4 years Retail Agreements § 10.3.6
      - 1 year gap required before accessing provision again Retail Agreement § 10.3.1(iv)
    - Subject to limitations similar to surplus sales Retail Agreements § 10.3.4



# Smelter Financial Distress/Closure

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- Several provisions intended to provide Smelters needed flexibility but protect Big Rivers and Members
  - Potline reduction sales Retail Agreements § 10.3
  - Termination right
    - 1 year notice of cessation of smelting operations Retail Agreements § 7.3.1
    - Limits on termination prior to 12/31/11 Retail Agreements § 7.3.1(b)
  - Transition reserve
  - Credit support Retail Agreements § 13.3



#### Smelter Financial Distress/Closure (cont'd)

- Transmission upgrades to facilitate offsystem sales <sup>I</sup>Retail Agreements § 9.2
- Post-termination service to the Smelters
  - Large industrial rate service for up to 15MW relating to non-smelting operations Retail Agreements § 13.7



#### Future Cooperation

 Parties established a process for cooperation based on desire to work constructively after the unwind

- Coordinating Committee
  - Representatives of Big Rivers, Members and Smelters Coordination Agreements § 4.1
  - Regular dissemination of information Coordination Agreements § 4.4



#### Future Cooperation (cont'd)

- Budgets
  - Smelter opportunity to comment Coordination Agreements § 3.4(a)

- Potential joint engagement of independent engineer Coordination Agreements § 3.4(b)
- Right to comment on material amendments to the budget Coordination Agreements § 3.4(f)
- No limitations on KPSC jurisdiction



#### Tariff Adjustment Clauses

- Member Smelter Tariff Adjustment Clauses
  - Common application of FAC and ES
  - Channels benefits from Smelter contracts to non-Smelter Members



# Tariff Adjustment Clauses

Adjustment Clause	Purpose	Applicability	Net Member Bill Impact				
Fuel Adjustment Clause (FAC)	Provides for changes in fuel costs	Members and Smelters	Offset by Economic Reserve for approximately 5 years				
Environmental Surcharge (ES)	Provides for recovery of approved environmental costs	Members and Smelters	Offset by Economic Reserve for approximately 5 years				
Unwind Surcredit	Transfers Unwind Surcharges paid by Smelters to Members	Members only	Yes, will result in a credit if greater than FAC and ES				
Rebate Adjustment	Mechanism for providing rebates to Members	Members only (there is a separate adjustment for Smelters in the Smelter Agreements)	Yes, will result in a credit if greater than FAC and ES				
Member Rate Stability Mechanism	Draws on the Economic Reserve to offset the impact of the FAC and ES (net of the impact of the Unwind Surcredit and the Rebate Adjustment)	Members only	Will be used to offset the impact of the FAC and ES net of the other 2 adjustments				



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#### Adjustment Clauses (cont'd)

#### Projected Impact on Member Rates

Member cost of riders is offset through 2012, with FAC significantly offset by Surcredit through whole period

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#### Rates (\$/ MWh)

Rates (\$/ MWh)																	
		2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
1	Member Non-Smelters																
2	Base (Net of MDA)	34.4	34.4	34.4	35.1	35.1	35.1	35.1	35.4	35.4	39.1	39.1	39.0	39.0	39.0	39.0	39.0
3	Regulatory Account	-	-	-	-	-	0.2	0.2	0.2	0.5	0.5	0.5	0.9	0.9	0.9	1.3	1.3
4	FAC	5.9	5.8	7.1	7.6	7.8	8.3	9.0	9.0	9.4	9.4	9.8	9.6	10.1	10.3	10.4	10.4
5	Env. Surcharge	0.5	0.8	2.7	2.6	2.9	2.9	3.0	4.1	4.2	4.1	4.3	4.2	4.5	4.6	4.6	4.8
6	Surcredit	(4.0)	(3.0)	(3.9)	(3.8)	(4.3)	(4.2)	(4.1)	(4.0)	(3.9)	(4.5)	(4.4)	(4.3)	(4.2)	(4.1)	(4.0)	(4.0)
7	Rebate:																
8	Accrued	(0.2)	(0.5)	(0.9)	-	-		-	-	-	-	-	-	-	-	-	-
9	Realized	-	(0.2)	(0.5)	(0.9)	-	-	-	-	-	-	-	-	-	-	-	-
10	MRSM	(2.4)	(3.6)	(5.3)	(5.5)	<u>(6.4</u> )	(1.2)			-		-					***
11	Effective Rate	34.4	34.4	34.4	35.1	35.1	41.1	43.2	44.8	45.6	48.7	49.2	49.5	50.3	50.7	51.4	51.6



# Questions?

