



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**  
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David L. Armstrong  
Chairman

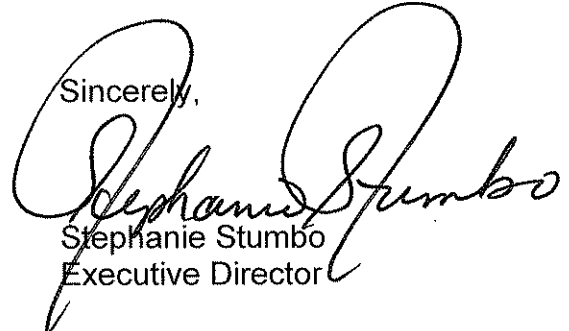
John W. Clay  
Vice Chairman

9  
June 5, 2008

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

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

Sincerely,




Stephanie Stumbo  
Executive Director

vh/

**INTRA-AGENCY MEMORANDUM**

**KENTUCKY PUBLIC SERVICE COMMISSION**

**TO:** Case File No. 2007-00455

**FROM:** Richard Raff, Staff Attorney 

**DATE:** June 5, 2008

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

Pursuant to the Commission's Order dated May 2, 2008, an informal conference was held on May 9, 2008 at the Commission's offices in Frankfort, Kentucky. The purpose of the conference was to discuss all aspects of the pending application, including the request for approval of financing, and the potential resolution of outstanding issues. A list of the attendees is attached hereto.

Big Rivers presented a two-page list of financing-related documents (copy attached hereto) and discussed those that had been recently revised. Big Rivers also discussed recent re-pricings of auction rate pollution control bonds and its expectations for future rates on those bonds. Big Rivers stated that all necessary consents for its proposed refinancing have been obtained.

Big Rivers indicated that, since the original version of its unwind financial model was filed in this case, there has been significant increases in fuel prices, which adversely impact the financial projections in that model. As a consequence, some of the parties have been discussing the issue of increased fuel costs in an effort to address that situation.

The E.ON parties presented a 17-page document, titled "Western Kentucky Energy System Performance," discussing the performance levels of the Big Rivers' generating units as achieved under the operation of Western Kentucky Energy. (A copy of the document is attached hereto.) The E.ON parties also presented a discussion on the consent fees that would be paid to creditors and other necessary parties to effectuate a closing of the proposed unwind transaction. Due to the confidential nature of this information, representatives of Big Rivers' member co-ops, the city of Henderson, and the International Brotherhood of Electrical Workers Union were excused since they had not signed a confidentiality agreement. Subsequent to this discussion, and at the request of the E.ON parties, a smaller group of each attending party met to identify and discuss outstanding issues that had been identified as needing to be further addressed by the applicants. At the conclusion of the meeting, the applicants agreed to put together a list of the outstanding issues that needed to be further addressed, and to present that list at another conference to be held on May 15, 2008.

Attachments  
cc with attendee list only: Parties of Record

1

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 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

=====  
May 9, 2008 Informal Conference  
=====

Please sign in:  
NAME

REPRESENTING

CARI Lyod  
Mark Bailey  
Doug Beresford  
Don Meade  
Tyson Kamuf  
Larry Cook  
Paul Adams  
Bob Amato  
Melissa Gates  
Kelly Lusk  
Denny W. Jensen  
SANDY NOVICK  
Jack Gaines

Big Rivers  
Big Rivers  
Big Rivers  
IBEW  
Big Rivers  
AG  
AG  
PSC  
JPFE & Meade  
JPBC  
Meade Co.  
KENERGY  
JPFE, Kenney, Meade

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

THE APPLICATIONS OF BIG RIVERS )  
ELECTRIC CORPORATION FOR: )  
(I) APPROVAL OF WHOLESALE TARIFF )  
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AND LG&E ENERGY MARKETING, INC. )  
FOR APPROVAL OF TRANSACTIONS )

CASE NO. 2007-00455

=====  
May 9, 2008 Informal Conference  
=====

Please sign in:  
NAME

REPRESENTING

Mike Kurtz

Alcan - Centory / KIUC

DAVID BROWN

Smelter's

Deborah T. Eversole

E.ON

David Spink

Big Rivers

Allyson K. Sturgeon

E.ON

David Sinclair

E.ON

RALPH BOWLING

EON

Lonnie Belka

E.ON

Bob Berry

E.ON

Mike Cole

Big Rivers

BOB MUDGER

J CARA

Chuck Bueghel

UEC - Big Rivers

Jack Hyler

WMP&K

Paul Thompson

E.ON





**Informal Conference in Case No. 2007-00455**  
**May 9, 2008**  
**Big Rivers Electric Corporation**

**LIST OF FINANCING-RELATED DOCUMENTS**

- Exhibit 45, Revolving Line of Credit Agreement (CFC)
- Exhibit 46, Revolving Credit Agreement (CoBank ACB)
- Exhibit 49, Indenture
- Exhibit 50, Facility Lessor (D) Secured Note (PBR-1), (PBR-2) and (PBR-3)
- Exhibit 51, Facility Lessor (E) Secured Note (PBR-1), (PBR-2) and (PBR-3)
- Exhibit 52, Ambac Credit Products Secured Note (PBR-1), (PBR-2) and (PBR-3)
- Exhibit 53, PCB Series 2001A Note
- Exhibit 54, Ambac Municipal Bond Insurance Policy Series 1983 Note
- Exhibit 55, Standby Bond Purchase Agreement Note (Series 1983 Bonds)
- Exhibit 56, Termination of Third Amended and Restated Subordination, Nondisturbance, Assignment and Intercreditor Agreement
- Exhibit 57, Termination of Third Restated Mortgage and Security Agreement
- Exhibit 58, Amended and Restated Stock Pledge Agreement
- Exhibit 59, Amended and Restated Funding Agreement Pledge Agreement (PBR-1), (PBR-2) and (PBR-3)
- Exhibit 60, Amended and Restated Payment Agreement Pledge Agreement (PBR-1), (PBR-2) and (PBR-3)
- Exhibit 61, Amended and Restated Government Securities Pledge Agreement (PBR-1), (PBR-2) and (PBR-3)
- Exhibit 62, Partial Termination of Funding Agreement Pledge Agreement (PBR-1), (PBR-2) and (PBR-3)
- Exhibit 63, Partial Termination of Payment Agreement Pledge Agreement (PBR-1), (PBR-2) and (PBR-3)

Exhibit 64, Partial Termination of Government Securities Pledge Agreement (PBR-1), (PBR-2) and (PBR-3)

Exhibit 65, Intercreditor Agreement

Exhibit 66, Letter Agreement (Ambac Assurance Corporation and Ambac Credit Products, LLC)

Exhibit 67, Letter Agreement (Bank of America Leasing Corporation)

Exhibit 68, Creditor Consent, Termination and Release Agreement

Exhibit 69, First Amendment to ISDA Master Agreement (PBR-1), (PBR-2) and (PBR-3) (Big Rivers Swap)

Exhibit 70, Escrow Agreement (PBR-1), (PBR-2) and (PBR-3)

Exhibit 71, First Amendment to ISDA Master Agreement (PBR-1), (PBR-2) and (PBR-3)

Exhibit 72, Amended and Consolidated Loan Contract (RUS)

Exhibit 73, RUS 2008 Promissory Note, Series A (RUS)

Exhibit 74, RUS 2008 Promissory Note, Series B (RUS)



# **Western Kentucky Energy System Performance**

*Prepared for:  
KPSC Informal Hearing  
MAY 9, 2008*

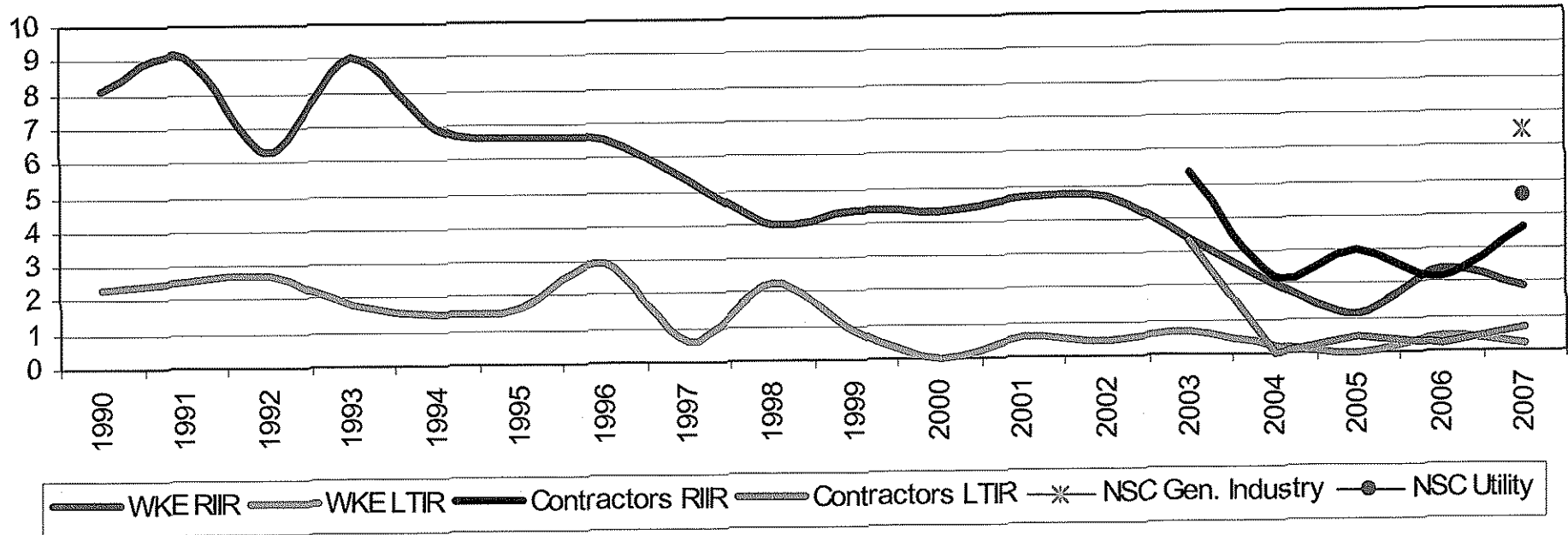
## WKE Operations compare favorably to industry standards

- ◆ Employee & contractor safety is a Key Performance Indicator – With results significantly better than industry average.
- ◆ System performance above average as compared to similar size/type units, with larger units in top quartile.
- ◆ System consistently maintains a capacity factor > 80%.
- ◆ Level of investment in plant O&M has increased at a rate > inflation in order to maintain unit reliability.
- ◆ WKE capital investment consistently above the BREC cost share cap as specified within existing lease agreement to achieve long-term unit operability.
- ◆ Significant capital investment in NOx Control & Coleman FGD.

## WKE actively benchmarks performance against industry

- ◆ System performance as compared to a panel of similar generating units:
  - Fossil-steam coal units.
  - US Midwest (Former ECAR, MAPP & MAIN).
  - Similar environment & operating requirements.
  - Similar fuel type.
  - Panel data provided by E.ON U.S. Generation Services Group.
  
- ◆ Comparison Groups
  - 200-500 MW [Wilson, Green 1 & 2]
  - 100-200 MW [Coleman 1-3, HMPL 1 & 2]

# Safety results better than industry experience

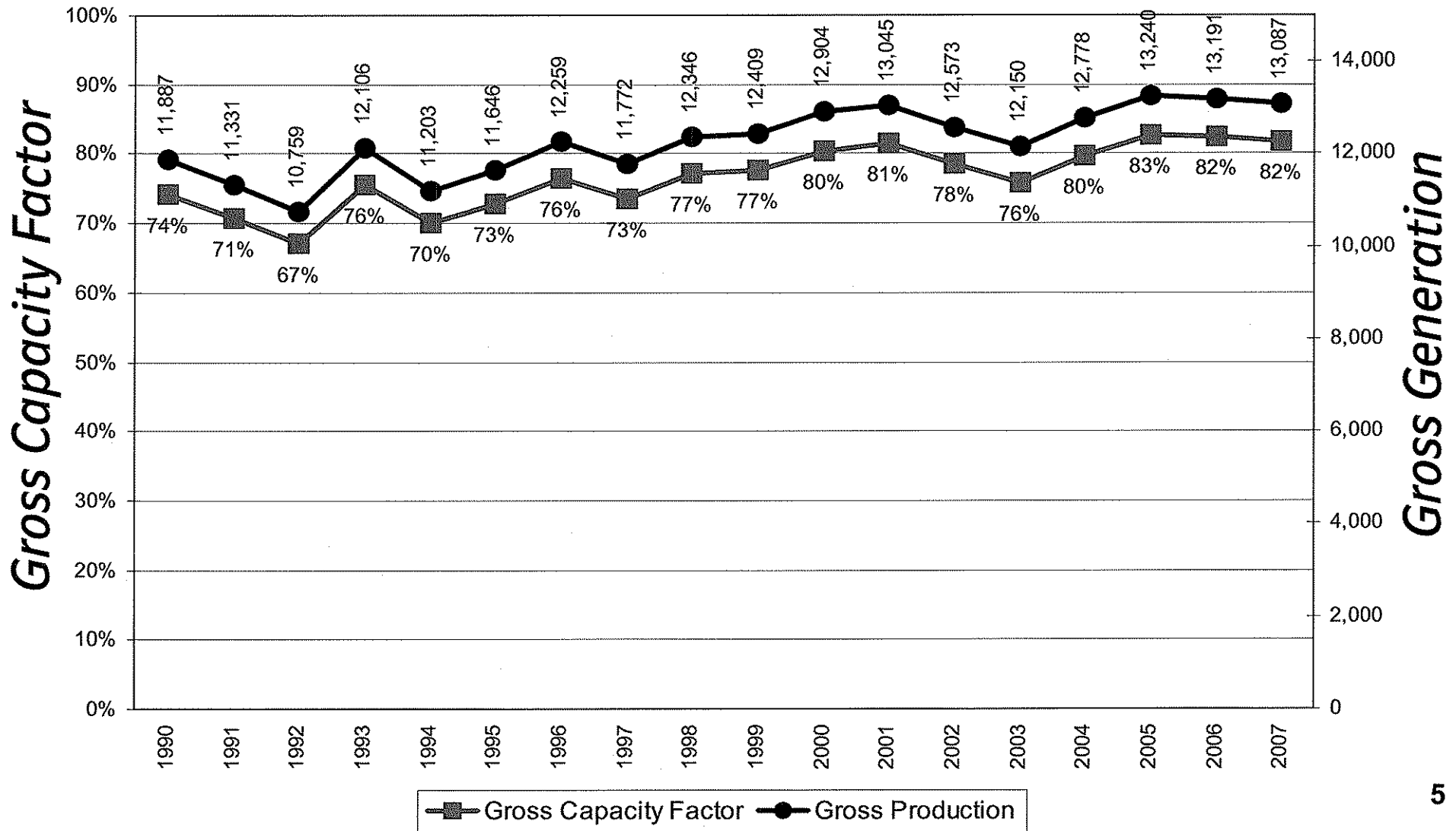


RIIR = Recordable Injury Incident Rate. OSHA Recordable Injuries Per 200,000 Man Hours.

LTIR = Lost Time Incident Rate. OSHA Lost Time Injuries Per 200,000 Man Hours.

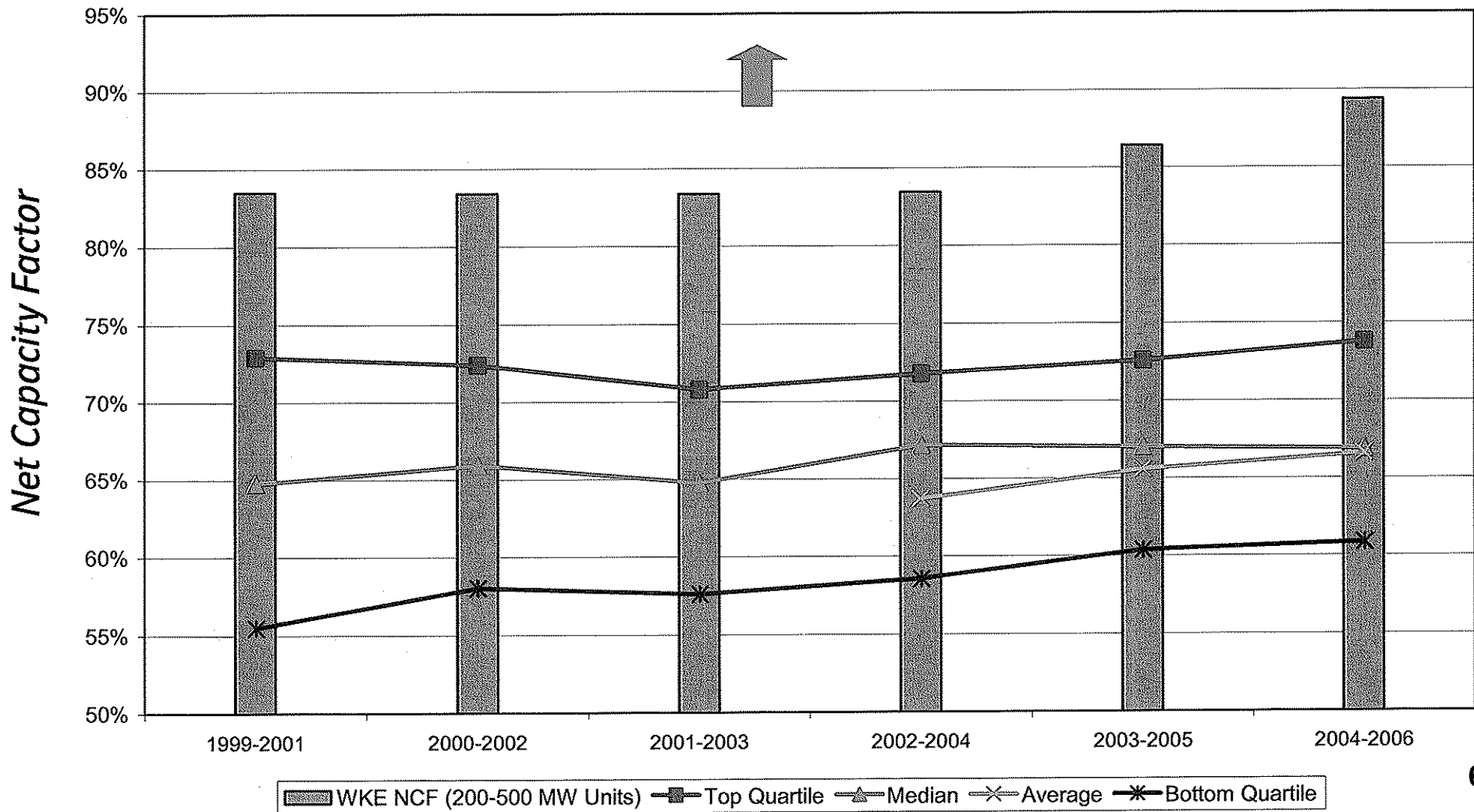
NSC = National Safety Council.

# System generation levels continue an upward trend



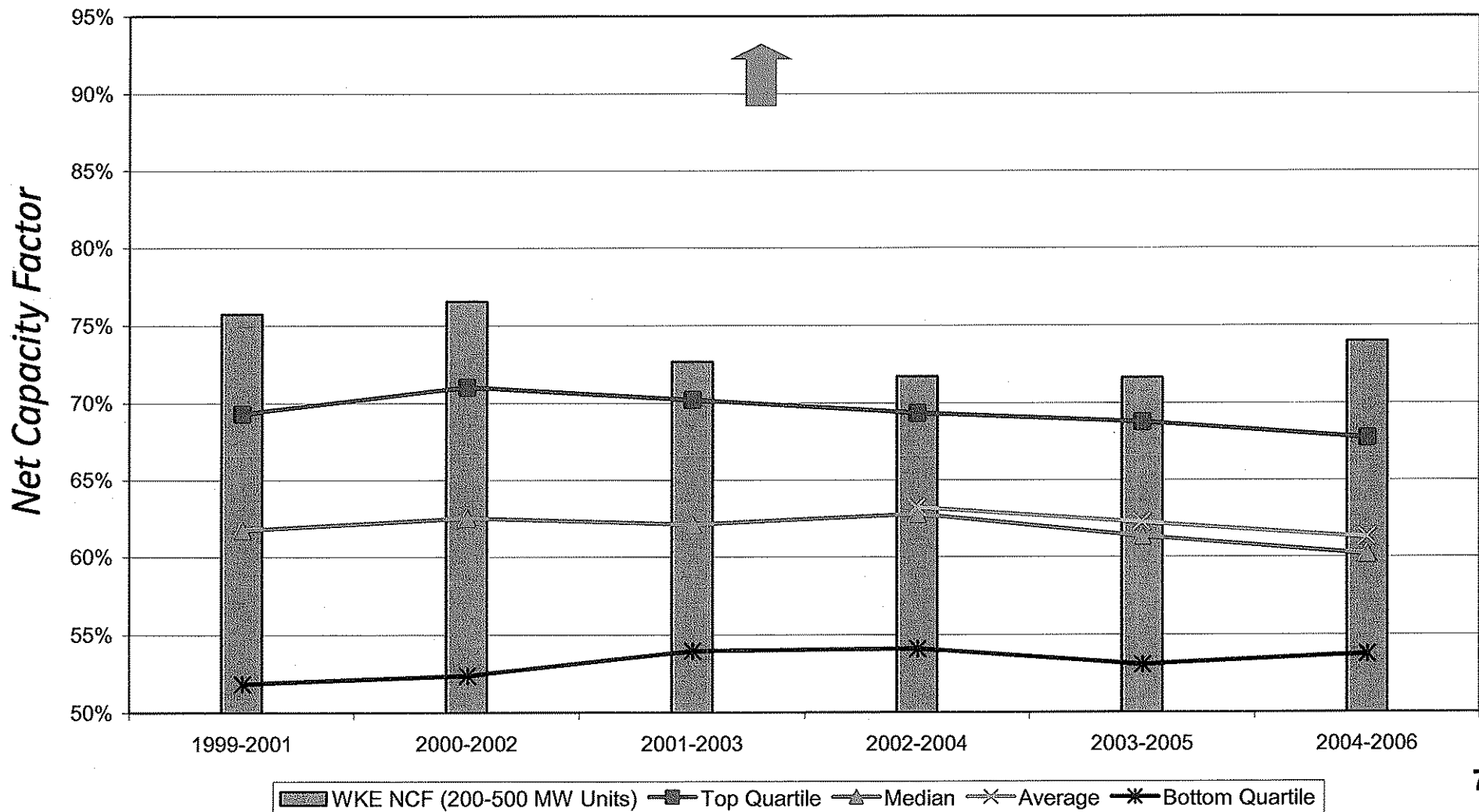
# Wilson & Green units consistently operate in higher range of top quartile performance

200 MW – 500 MW Units



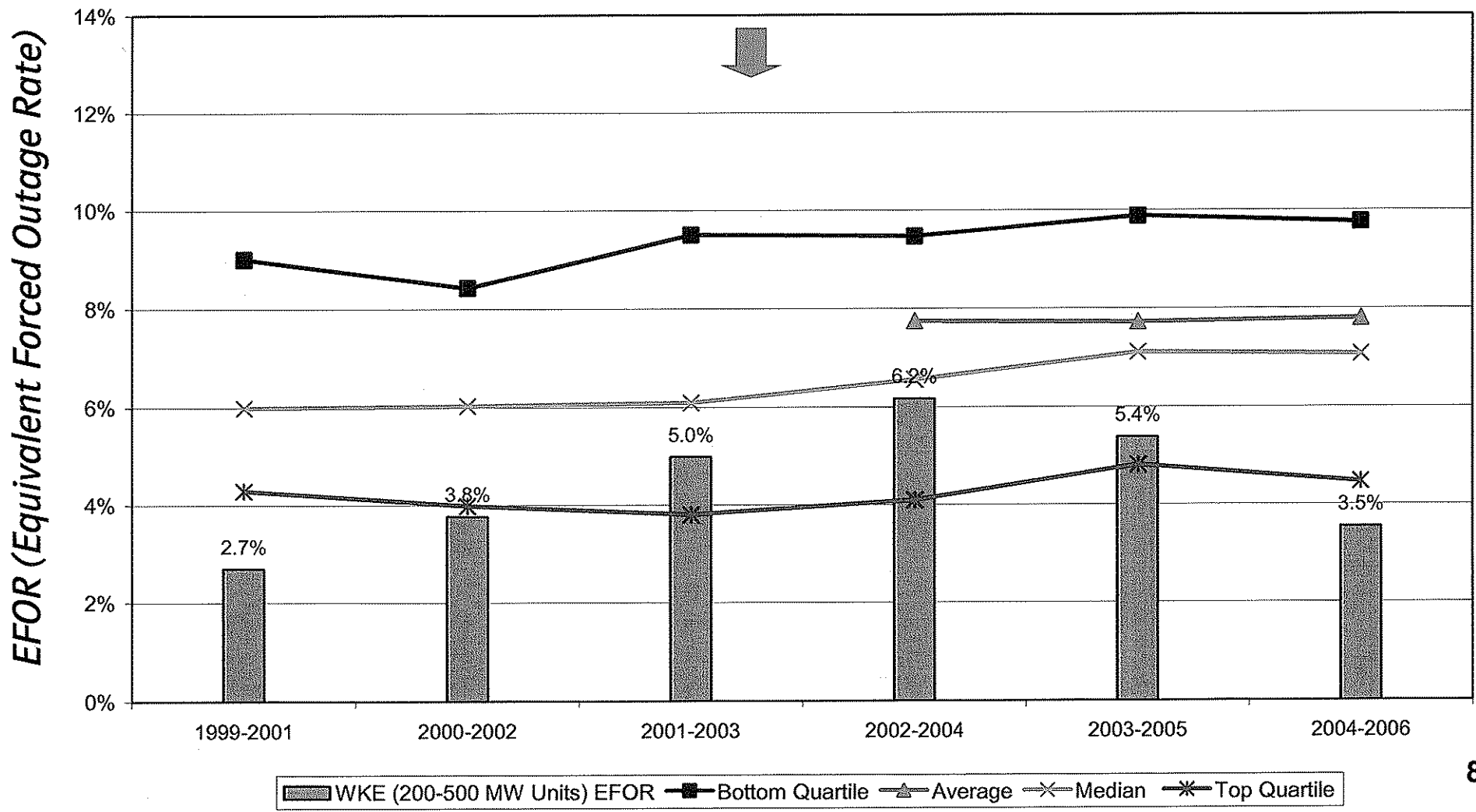
# Coleman & HMPL units continuously operate at top quartile levels

## 100 MW – 200 MW Units



# Green & Wilson units (combined average) have achieved top quartile performance

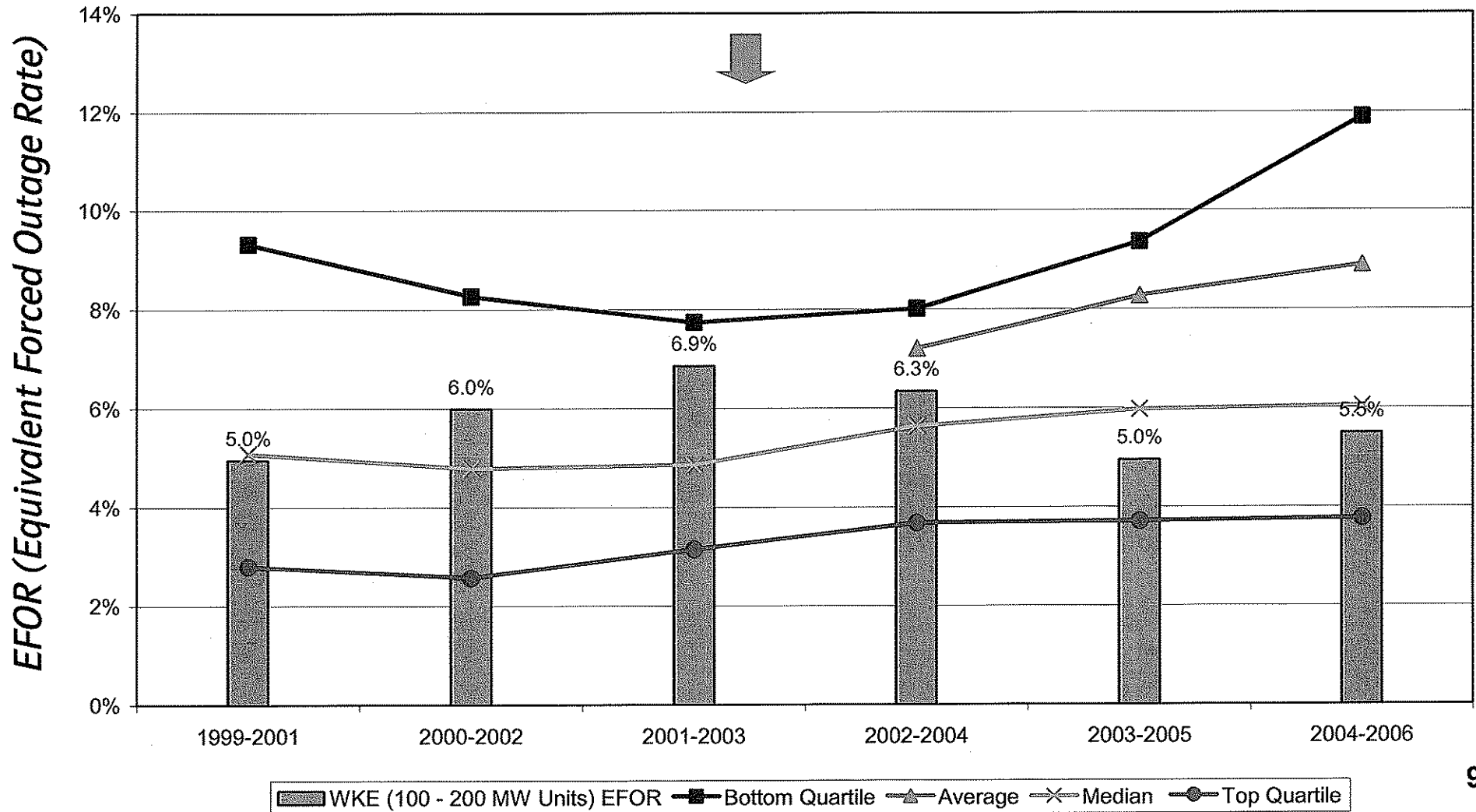
200 MW – 500 MW Units



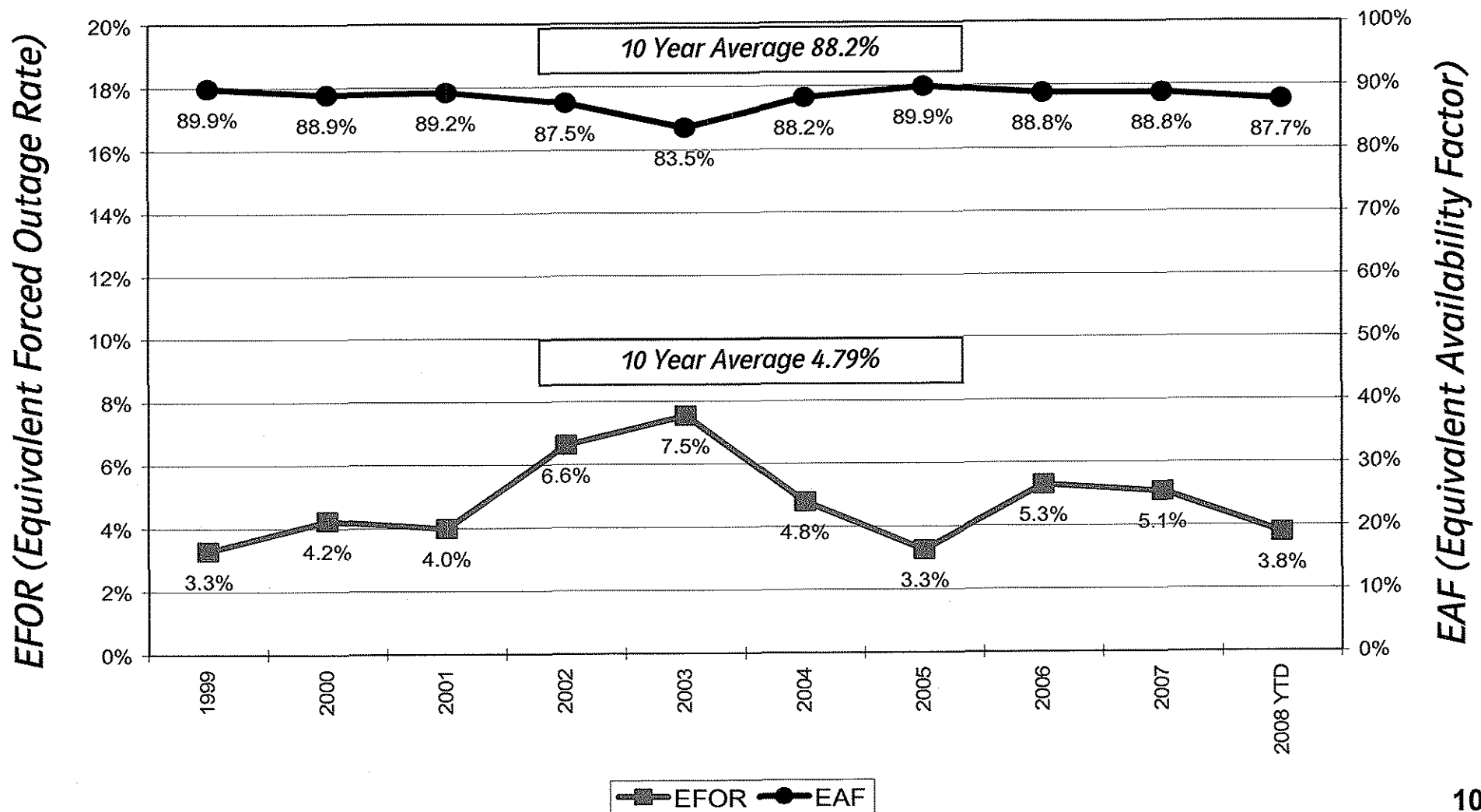


# Coleman & HMPL units performing better than panel median

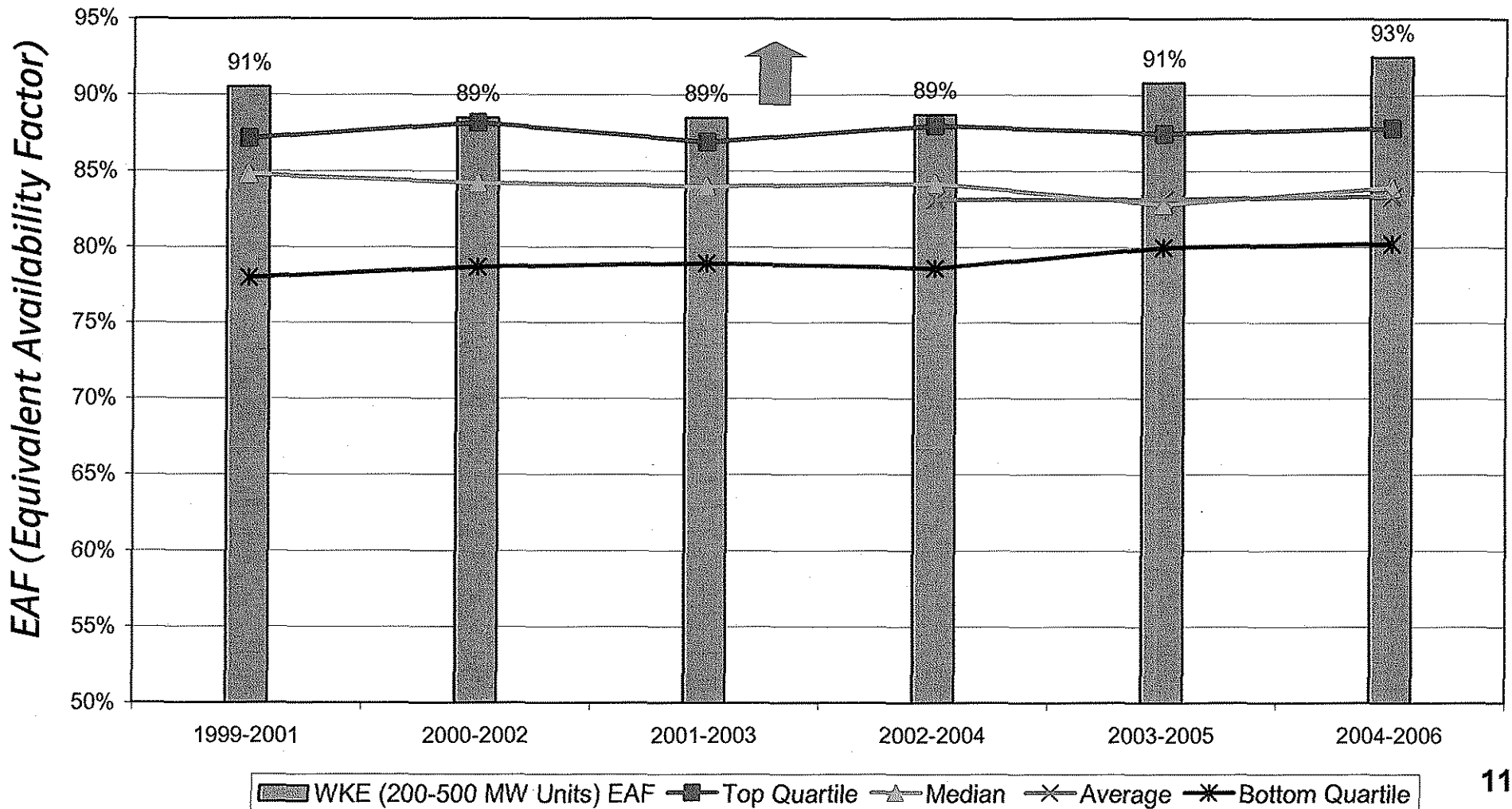
## 100 MW – 200 MW Units



# WKE's O&M and Capital investment program has resulted in consistent unit availability

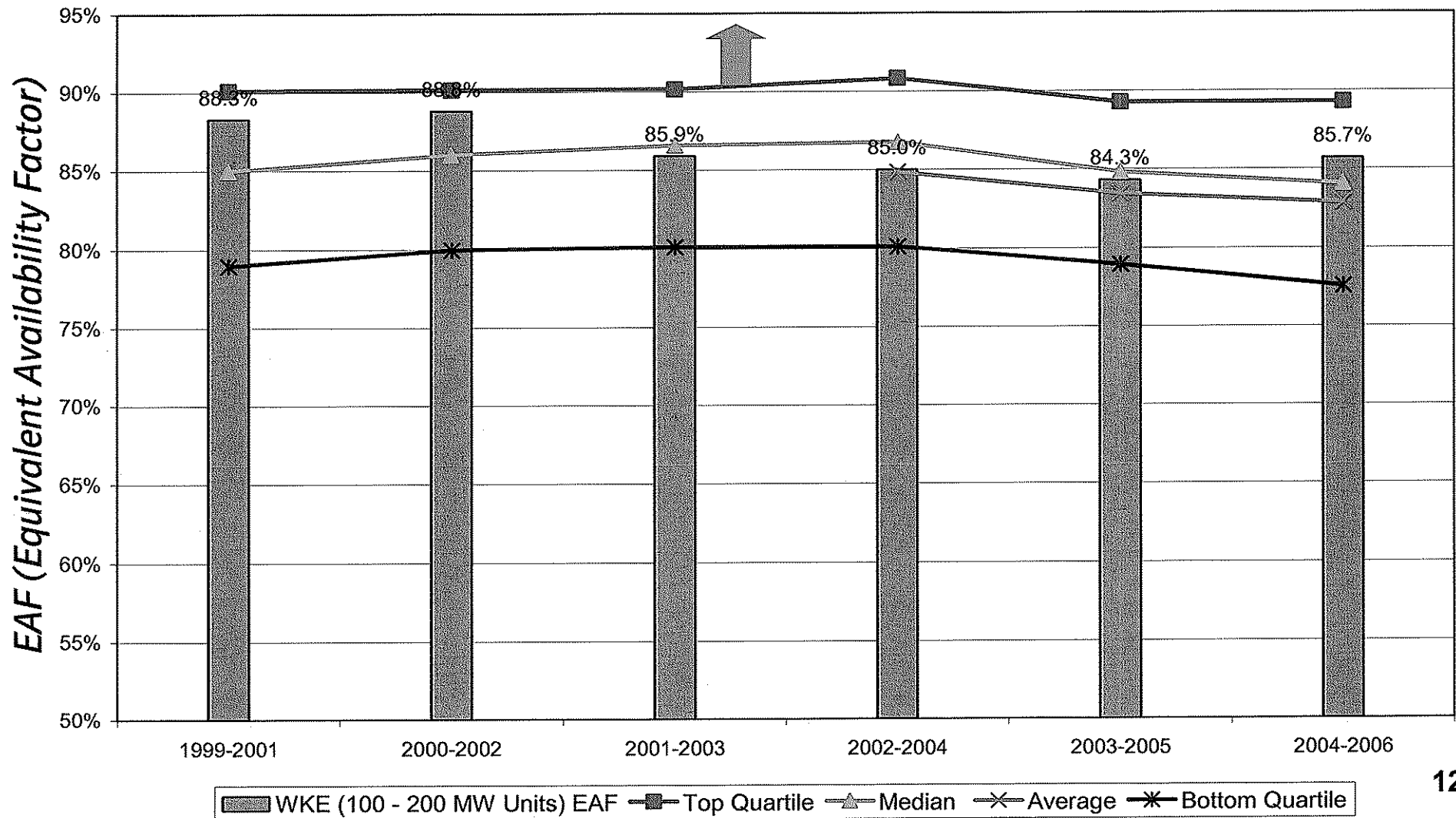


Green & Wilson units (combined) have achieved top quartile performance as compared to benchmark panel  
200 MW – 500 MW Units

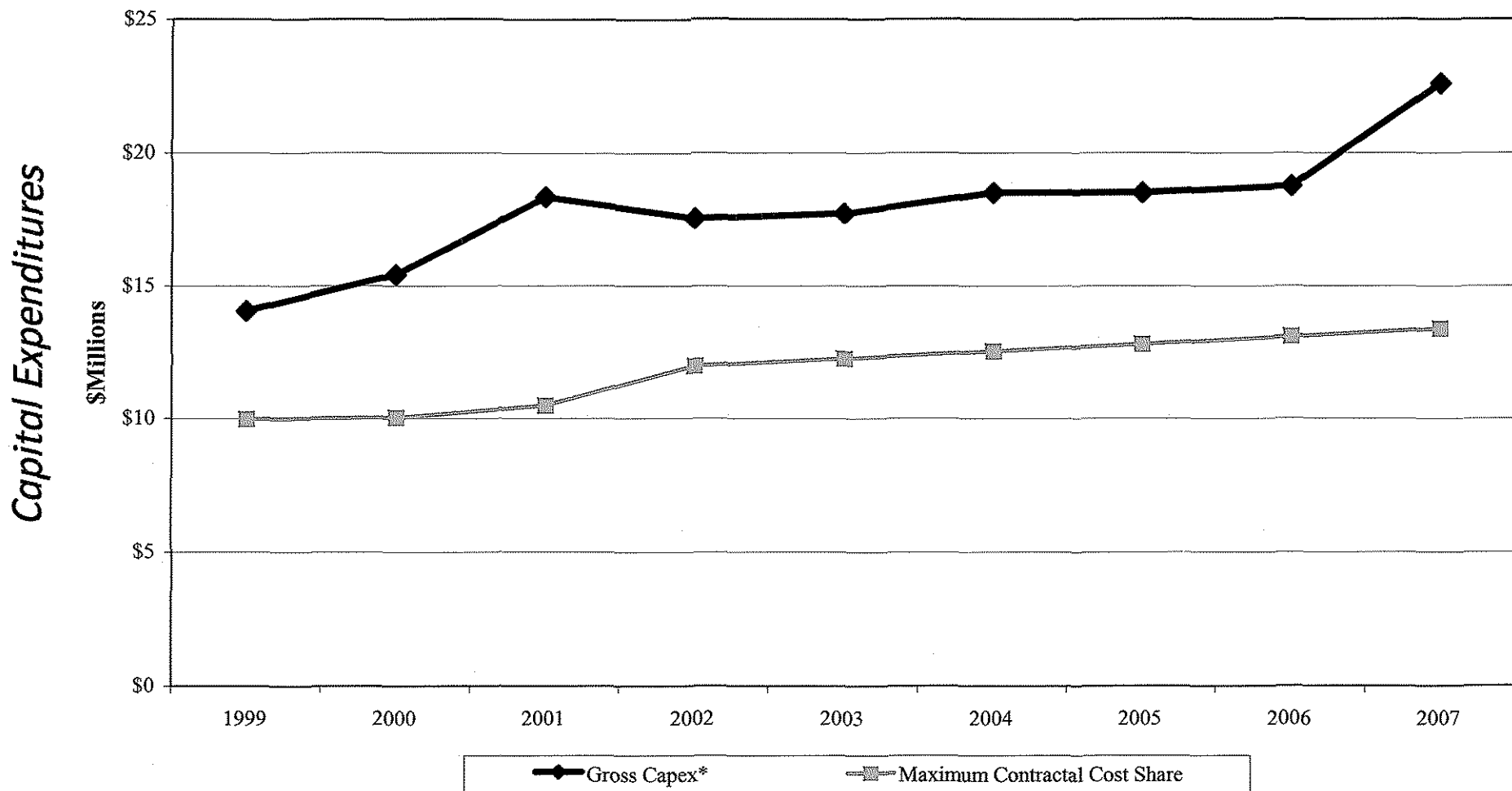


# Coleman & HMPL units operate above industry average

## 100 MW – 200 MW Units

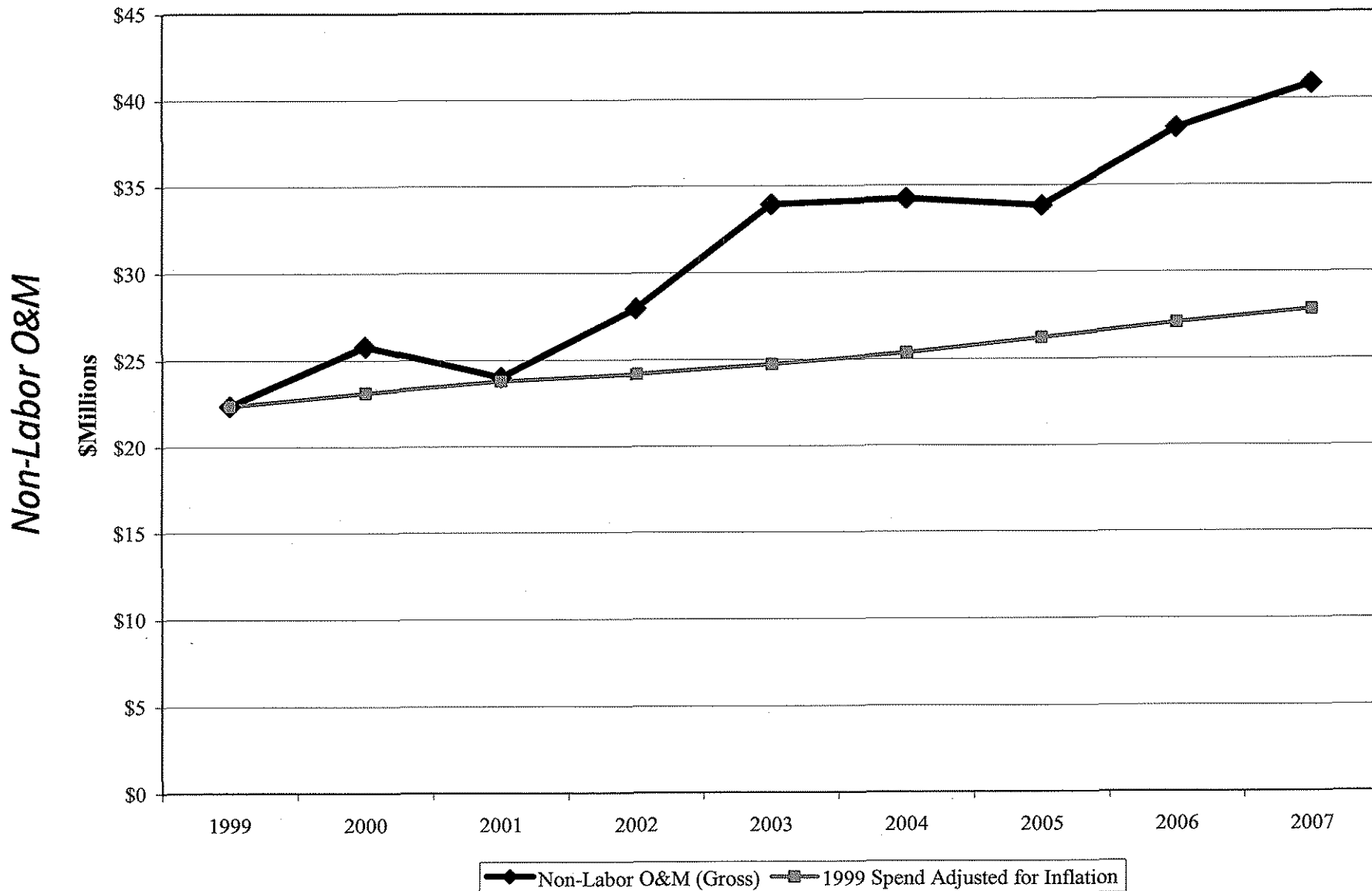


WKE base Capital investment is consistently above BREC Cap limit included in the current lease agreement in order to maintain long-term unit operability



\*Excludes Coleman FGD, NOx Program, Coleman Ash Pond, Oracle10.7/Maximo costs, Grinding Mills/Energy Dock & Oracle 11i.

# Non-Labor O&M investment exceeds the rate of inflation



Stone and Webster Report provided additional information on system status. Several items noted are included in existing operating plans with no major changes anticipated.

**Primary Areas of Interest and Clarification:**

- ◆ Generators - All OEM testing and monitoring guidelines are followed and performed primarily during unit outages. Current test results do not warrant actions that deviate from medium or long-term plans.
- ◆ Transformers - Comprehensive testing program is in place to monitor large transformer condition. Based on S&W's records review, one transformer was identified as problematic which had previously been replaced. Based on current test results, no changes to plan are anticipated at this time.

## **Primary Areas of Interest and Clarification (Continued):**

- ◆ High Energy Piping - An extensive testing and monitoring program is in place. This long term plan and program is tracked through the boiler condition assessment program. S&W's initial report did not consider all information that was available.
  
- ◆ BREC Heat Rate and Outage Rates - S&W's initial reports were based on an outdated Production Work Plan.
  
- ◆ The BREC Production Work Plan was based on the WKE Plan and includes additional projects and spending to enable BREC to achieve the reliability and generation output levels included in the financial model.



## WKE has laid a strong foundation for BREC to resume Operations

- ◆ Employee and contractor safety culture has been firmly integrated into operating practice.
- ◆ BREC will continue to benefit from an experienced and capable workforce.
- ◆ Investment in O&M and Capital necessary to achieve long-term operability.
- ◆ WKE has had a vested interest in maintaining unit reliability in order to deliver on contractual obligations and minimize purchased power expense at market prices.
- ◆ WKE's approach to system operations has and will continue to focus on potential operation through the full lease term.

**INTRA-AGENCY MEMORANDUM**

**KENTUCKY PUBLIC SERVICE COMMISSION**

**TO:** Case File No. 2007-00455  
**FROM:** Richard Raff, Staff Attorney *RR*  
**DATE:** June 4, 2008  
**SUBJECT:** Big Rivers Electric Corporation, et al.

Pursuant to a Commission Staff notice of informal conference issued on May 12, 2008, an informal conference was held on May 15, 2008 at the Commission's offices in Frankfort, Kentucky. The purpose of the conference was to discuss all issues raised in the case and the potential for settlement of those issues. A list of the attendees is attached hereto.

Big Rivers presented a list of issues that had been previously identified by the parties as needing to be clarified or further addressed as part of the application in this case. A copy of the issues list is attached hereto. The parties discussed those issues, and Big Rivers agreed to notify all of the parties by the middle of the following week as to a proposed schedule for the filing of supplemental information in the record of the case to further clarify and address the identified issues.

Attachments

cc with attendee list only: Parties of Record



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

THE APPLICATIONS OF BIG RIVERS )  
ELECTRIC CORPORATION FOR: )  
(I) APPROVAL OF WHOLESALE TARIFF )  
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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

=====  
May 15, 2008 Informal Conference  
=====

Please sign in:

NAME	REPRESENTING
<u>RICHARD RAFF</u>	<u>PSC-LEGAL</u>
<u>Doug Beresford</u>	<u>Big Rivers</u>
<u>Jim Miller</u>	<u>BREC</u>
<u>Shirley Rign</u>	<u>SKD / E.ON</u>
<u>Allyson Sturgeon</u>	<u>E.ON</u>
<u>Paul Adams</u>	<u>AG</u>
<u>Larry Cook</u>	<u>OAG</u>
<u>David Sparabow</u>	<u>Big Rivers</u>
<u>Melissa Yax</u>	<u>JPEC / MCREC</u>
<u>Frank W. King</u>	<u>Kenergy</u>
<u>Boch Games</u>	<u>JPEC, Meade, Kenergy</u>
<u>DON MEADE</u>	<u>IBEW</u>
<u>Lonnie Bellar</u>	<u>E.ON</u>
<u>Paul Thompson</u>	<u>E.ON</u>
_____	_____
_____	_____
_____	_____



DRAFT SETTLEMENT CONCEPTS  
Big Rivers Electric Corporation  
P.S.C. Case Nos. 2007-00455 and -00460  
May 15, 2008

1. Big Rivers will supplement its rebuttal testimony to supply a comprehensive, written summary of its due diligence plan and efforts regarding the Big Rivers generation units and sites since the Unwind Transaction negotiations commenced to demonstrate that its due diligence plan and efforts are reasonable for purposes of the Unwind Transaction.
2. Big Rivers will supplement its rebuttal testimony to describe in more detail why the \$200 million reduction in the Maximum Allowed Balance in the RUS 2008 Promissory Note, Series A before the end of 2015 does not materially affect Big Rivers' risk exposure.
3. Big Rivers would seek a finding from the Commission in its order authorizing Big Rivers to execute any amendments to the Station Two Contracts between and among Big Rivers, City of Henderson Utility Commission and City of Henderson, which the parties may enter into prior to the closing of the Unwind Transaction, that do not materially adversely affect the Unwind Financial Model or Big Rivers' operating risks following the closing of the Unwind Transaction.
4. Big Rivers will supplement its rebuttal testimony to address in more detail the concerns that the Smelter Agreements unreasonably shift risks to Big Rivers, and "front-end load" benefits for the Smelters.
5. Big Rivers will supplement its response to Item 13 of the Commission Staff's Second Supplemental Request for Information to explain in more detail the table of rates in that data request response.
6. Big Rivers will provide and file before any hearing in this matter a revision to the Unwind Financial Model showing the cumulative effects on that model of the changes that have occurred in the Unwind Transaction since December 28, 2007, including changes in the Unwind Transaction described in this set of "Draft Settlement Concepts."

7. Big Rivers is searching for a resolution to the issues raised regarding the prohibition in the Smelter Agreements on a Big Rivers rate adjustment that becomes effective prior to January 1, 2010.
8. Big Rivers is evaluating a resolution to the issues raised regarding the fuel and environmental expenses used to calculate the first two months of operation under the fuel adjustment clause and the environmental surcharge.
9. Big Rivers would commit that its chief executive officer and relevant members of its senior staff will meet informally with the Commission and the Attorney General's Office of Rate Intervention at least annually to advise them regarding: (i) general operations and finances of the corporation; (ii) transition activities; (iii) regulatory and industry developments that may affect the corporation in the future; (iv) the status of its plans for addressing the \$200 million reduction in the Maximum Allowed Balance in the RUS 2008 Promissory Note, Series A before the end of 2015; and (v) changes in the competitiveness of the Smelters in the world aluminum market of which it becomes aware that it believes could materially affect the commitment of the smelters to continue operations.
10. Big Rivers would commit to maintaining a sound and constructive relationship with those labor organizations that may represent certain employees of Western Kentucky Energy Corp.
11. Big Rivers would commit to bargain in good faith with IBEW during any collective bargaining sessions.
12. Big Rivers would commit to filing with the Commission on or before June 30 of each year, through the date on which it files a case for a general adjustment of its rates, the "Big Rivers New Financial Model." The Big Rivers New Financial Model would supplement the Big Rivers monthly filing of its RUS Form 12, its Financial and Statistical Report (Annual Report) required by the Commission and the Big Rivers annual report (containing audited financial statements). The Big Rivers New Financial Model would contain actual financial results for the prior year, the current year's budget, and three forecasted years beyond the current year.

13. Big Rivers would commit that it will file an integrated resource plan, in accordance with the Commission's regulations, for the Big Rivers system no later than November 2010.
14. Big Rivers is searching for a resolution to the issue regarding filing of a depreciation study in connection with the filing of Big Rivers' next application for a general rate adjustment.
15. Big Rivers would commit to file an application for a general rate adjustment within three years following the date of the final order in this matter.
16. Big Rivers would commit that the Economic Reserve will be funded at closing of the Unwind Transaction by an amount no less than \$\_\_\_\_\_ [\$75 million plus any new funds from fuel issue settlement].
17. Big Rivers would commit that it will file a report with the Commission within 120 days after the closing of the Unwind Transaction stating that all Big Rivers conditions to the closing of the Unwind Transaction have been satisfied or waived, and if waived, the terms on which waiver was granted.
18. Big Rivers would commit to finalize its due diligence on the generating facilities and sites using all resources available to it.
19. Big Rivers would commit to fund, initiate and maintain a risk management plan and program, which would include the ability to identify and address the impact of contingencies including, but not limited to, fuel prices, cost exposure for environmental remediation programs (both existing and contemplated), and any other material risks pertaining to Big Rivers. Big Rivers would commit to be prepared, in connection with the proceeding on its next application for a general adjustment in rates, to respond to questions regarding identified risks and steps taken under its Risk Management program to address or mitigate those risks.
20. Big Rivers would commit to provide to the Commission, in connection with the proceeding on its next application for a general adjustment in rates, a copy of any reports, recommendations or other documents produced by the

Coordinating Committee or either smelter, and that is provided to the Big Rivers board of directors through 2011.

21. Big Rivers would commit to continue to employ in the conduct of its business the level of workforce required to safely and professionally operate its facilities.
22. Big Rivers would commit to advise the Commission and the Attorney General of any material changes in the evidences of indebtedness that comprise its financing arrangements, on a timely basis.
23. Big Rivers would commit, in connection with the filing of its integrated resource plans, to advise the Commission of any material changes to RUS' criteria for the financing of both new coal-fired plants, and regarding any financing relating to existing coal-fired plants, on a timely basis. In the event of any such changes, BREC would commit to supply a plan for assessing the impact and ramifications (if any), and how BREC will address those changes.
24. Big Rivers would commit to advise the Commission of any material changes to the smelter-related retail and wholesale contracts, on a timely basis.
25. Big Rivers would commit to advise the Commission and the Attorney General in the event of any material changes in its agreements with HMP&L, on a timely basis.
26. Big Rivers would commit, in connection with the proceeding on its next application for a general adjustment in rates, to advise the Commission in the event of any material changes in its collective bargaining agreements with labor unions.
27. Big Rivers would commit to construct the transmission system additions and improvements for which the Commission issued a certificate of public convenience and necessity in P.S.C. Case No. 2007-00177, and would commit to advise the Commission and the Attorney General on a timely basis of any material events related to the Big Rivers transmission system that impacts Big Rivers' long-term ability to wheel excess power to its border for sale into other markets.



28. Big Rivers would account on its books for emission allowances it acquires in the Unwind Transaction in accordance with the RUS Uniform System of Accounts.
29. Big Rivers is formulating a proposal regarding the concerns over Big Rivers' proposed schedule for selling SO<sub>2</sub> allowances in its inventory (excluding the 14,000 SO<sub>2</sub> allowances acquired by Big Rivers in the Unwind Transaction).