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July 24, 2013

VIA FEDERAL EXPRESS

Jeff Derouen  
Kentucky Public Service Commission  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, KY 40602-0615

**Re:   *Joint Application of Kenergy Corp.                    )***  
          ***and Big Rivers Electric Corporation                    )***  
          ***for Approval of Contract and for a                    )*** **Case No. 2013-00221**  
          ***Declaratory Order    )***

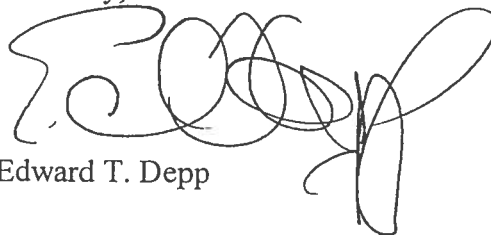
Dear Mr. Derouen:

Enclosed is one (1) original and ten (10) copies each of Kenergy Corp. and Big Rivers Electric Corporation's Rebuttal Testimony of Gregory J. Starheim and Rebuttal Testimony of Robert W. Berry in the above-referenced matter.

Thank you and please return a file stamped copy in the enclosed, postage paid envelope.

I certify that on this date a copy of these documents has been served on all persons on the attached service list by Federal Express.

Sincerely,



Edward T. Depp

ETD/lb  
Enclosures

cc:   James M. Miller, Esq. (w/enclosures)  
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BIG RIVERS ELECTRIC CORPORATION  
JOINT APPLICATION OF KENERGY CORP.  
AND BIG RIVERS ELECTRIC CORPORATION  
FOR APPROVAL OF CONTRACTS AND  
FOR A DECLARATORY ORDER  
CASE NO. 2013-00221

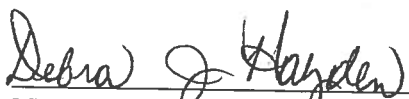
VERIFICATION

I, Gregory J. Starheim, verify, state, and affirm that I prepared or supervised the preparation of the Rebuttal Testimony filed with this Verification, and that this Rebuttal Testimony is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

  
\_\_\_\_\_  
Gregory J. Starheim

COMMONWEALTH OF KENTUCKY )  
COUNTY OF DAVIESS )

SUBSCRIBED AND SWORN TO before me by Gregory J. Starheim on  
this the 23<sup>rd</sup> day of July, 2013.

  
\_\_\_\_\_  
Notary Public, Ky. State at Large  
My Commission Expires 5-24-2015

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Joint Application of Kenergy Corp.     )  
and Big Rivers Electric Corporation    )  
for Approval of Contracts and for     )     Case No. 2013-00221  
A Declaratory Order                    )

REBUTTAL TESTIMONY

OF

GREGORY J. STARHEIM  
PRESIDENT and CHIEF EXECUTIVE OFFICER

ON BEHALF OF

KENERGY CORP.

FILED:     July 25, 2013

REBUTTAL TESTIMONY  
OF  
GREGORY J. STARHEIM

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1 REBUTTAL TESTIMONY  
2 OF  
3 GREGORY STARHEIM  
4

5 I. INTRODUCTION

6  
7 Q. State your name.

8 A. My name is Gregory J. Starheim. I am the President and Chief  
9 Executive Officer of Kenergy Corp. (“Kenergy”).

10 Q. Are you the same Gregory Starheim that has filed direct testimony  
11 before the Kentucky Public Service Commission (“the Commission”) in  
12 this proceeding?

13 A. Yes.  
14

15 II. PURPOSE OF TESTIMONY  
16

17 Q. What is the purpose of your rebuttal testimony?

18 A. The purpose of my rebuttal testimony is to respond to the direct  
19 testimony filed by witnesses for Kentucky Industrial Utility  
20 Customers, Inc. (“KIUC”) and Century Aluminum of Kentucky General  
21 Partnership (“Century”), and to the comments in lieu of testimony filed  
22 by the Attorney General. In my testimony I refer collectively to the  
23 Attorney General, KIUC and Century as the “intervenors.”

1 Q. Do you have an overall reaction to the comments and testimony filed  
2 by the Attorney General and KIUC?

3 A. Yes. Kenergy, Big Rivers Electric Corporation (“Big Rivers”) and  
4 Century have spent countless hours negotiating the transaction and  
5 documents that have been submitted to the Commission for approval  
6 (the “Century Transaction”). Kenergy and Big Rivers have agreed to  
7 and are prepared to sign those documents as they were filed. None of  
8 the parties is required to sign those documents. Kenergy and Big  
9 Rivers have reached this point because we believe that the economic  
10 benefits to the members of Kenergy and Big Rivers of pursuing the  
11 Century Transaction in the form presented is superior to simply  
12 standing by and allowing Century to terminate its smelting operations,  
13 as Century said it would in its August 20, 2012 notice of termination of  
14 its retail service agreement. Kenergy and Big Rivers continue to  
15 believe the Century Transaction is fair, just and reasonable and should  
16 be approved by the Commission as submitted. Nothing in the  
17 testimony or comments of the Attorney General or KIUC changes that  
18 position.

19 Q. Could approval by the Commission of the changes requested by the  
20 Attorney General and KIUC in the Century Transaction cause Century  
21 to refuse to continue smelting operations at its Hawesville smelter?

1 A. That question must be asked of Century. Of course, the Attorney  
2 General fundamentally opposes the Century Transaction, so if his  
3 position is adopted there is no possible transaction that could be  
4 approved, and there are no decisions to be made by the transaction  
5 parties. But Kenergy and Big Rivers would still require approval of  
6 the Alternate Service Agreement and the Wholesale Letter Agreement  
7 for purposes of providing electric service to the Hawesville smelter for  
8 non-smelting activities, and need the declaratory order to address a  
9 possible worst-case scenario.

10

11 III. THE CENTURY TRANSACTION PRESERVES THE REGULATORY  
12 FRAMEWORK IN KENTUCKY AND IS CONSISTENT WITH PAST  
13 TRANSACTIONS APPROVED BY THE COMMISSION

14

15 Q. The Attorney General in his comments argues to the Commission that  
16 the Century Transaction is illegal retail wheeling and should not be  
17 approved. Does Kenergy agree with that position?

18 A. No. This is largely a legal issue, but there are facts that I understand  
19 are relevant to the legal analysis.

20 The Century Transaction does not fit the Attorney General's  
21 definition of retail wheeling. That definition, on page 5 of his  
22 comments, is that retail wheeling is "[t]he transmission of electricity



1 from a wholesale supplier to a retail customer by a third party.” In the  
2 proposed transaction, electricity is acquired by and delivered by  
3 Kenergy to the Hawesville smelter, just as I understand it has been  
4 since the Hawesville smelter now owned by Century was constructed.  
5 Until July 15, 1998, Big Rivers was the wholesale supplier to Kenergy  
6 to serve this load. Between July 15, 1998, and July 16, 2009, Kenergy  
7 made market purchases of electricity from various wholesale suppliers  
8 for resale to the Hawesville smelter. Kenergy has been purchasing  
9 electricity for the Hawesville smelter since 2009 under a special  
10 wholesale contract with Big Rivers, and not under the all-requirements  
11 contract between Kenergy and Big Rivers.

12 Q. What do you mean by “market purchases”?

13 A. I consider a market purchase to be a purchase of electricity from the  
14 wholesale market as opposed to a purchase from Big Rivers under the  
15 long-term all-requirements contract between Kenergy and Big Rivers.  
16 Purchases of electricity by Kenergy for Century have been market  
17 purchases since 1998, when the all-requirements contract between Big  
18 Rivers and Kenergy was amended to “carve out” the wholesale power  
19 supply obligation of Big Rivers as it related to the load of the Century.

20 Kenergy (and its predecessor) always has been the retail electric  
21 supplier to the Hawesville smelter under the Kentucky Certified

1 Electric Service Territory Act, and it will continue to be so under the  
2 proposed arrangement.

3 Q. Is the proposed Century Transaction similar to prior arrangements  
4 Kenergy has had with the smelters?

5 A. Yes. Although I have been with Kenergy only a short time, my  
6 understanding is that analogous arrangements with the smelters have  
7 existed since 1998. As noted above, in 1998, as part of the  
8 consummation and implementation of Big Rivers' plan of  
9 reorganization, the Commission approved a series of agreements that  
10 included an amendment to the wholesale power agreement between  
11 Kenergy's predecessor, Green River Electric Corporation ("Green  
12 River") and Big Rivers (the "1998 Amendment") and an electric service  
13 agreement between Green River and Southwire Company  
14 ("Southwire"), the owner of the Hawesville smelter at that time (the  
15 "1998 Smelter Agreement"). Those orders were dated April 30, 1998,  
16 and June 11, 1998, in Case No. 97-204,<sup>1</sup> and July 14, 1998, in Case No.  
17 98-267.<sup>2</sup> Copies of those orders are attached to my rebuttal testimony  
18 as Exhibits GJS Rebuttal 1, 2 and 3, respectively.

---

<sup>1</sup> *In the Matter of: The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction*, P.S.C. Case No. 97-204.

<sup>2</sup> *In the Matter of: The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson*, Case No. 98-267.

1           The 1998 Amendment amended the existing wholesale power  
2 arrangements between Green River and Big Rivers to eliminate service  
3 to the Hawesville smelter from the all-requirements contract between  
4 the parties. The 1998 Amendment was approved by RUS. A copy of  
5 the 1998 Amendment is attached to my rebuttal testimony as Exhibit  
6 GJS Rebuttal 4.

7           The 1998 Smelter Agreement was the contract by which Green  
8 River undertook to acquire electricity for the Hawesville smelter's  
9 requirements from sources other than Big Rivers. A copy of that  
10 agreement is attached to my rebuttal testimony as Exhibit GJS  
11 Rebuttal 5. To perform its obligations for the power supply to the  
12 Hawesville smelter under the terms of the 1998 Smelter Agreement,  
13 Green River entered into wholesale power agreements with LG&E  
14 Energy Marketing, Inc. ("LEM") for Tier 1 Service, Tier 2 Service and,  
15 for a period, Tier 3 Service. Beginning in 2001, Green River, then  
16 Kenergy, began acquiring "Tier 3 Service" for the Hawesville smelter  
17 from other suppliers in the wholesale market. My understanding is  
18 that the amount of power involved in Tier 3 Service was basically the  
19 requirements of the Hawesville smelter above 309 MW.

1 Q. Have there been any other similar agreements between Kenergy and  
2 the smelters?

3 A. Yes. The current agreement for retail service to the Century  
4 Hawesville smelter was entered into in July of 2009. A copy of the  
5 existing 2009 retail service agreement between Kenergy and Century  
6 (“2009 Smelter Agreement”) is attached to my rebuttal testimony as  
7 Exhibit GJS Rebuttal 6.

8 As with the 1998 Smelter Agreement, the 2009 Smelter  
9 Agreement requires Kenergy to obtain a power supply for the  
10 Hawesville smelter. The primary power supply for the smelter was  
11 secured through Big Rivers, under a back-to-back wholesale agreement  
12 that again was entered into outside the all-requirements contract  
13 structure. Under Section 2.3.2(c) of the 2009 Smelter Agreement, if  
14 requested by Century, Kenergy is also obligated to make certain  
15 Market Energy purchases for the smelter in the wholesale market.  
16 Market Energy purchases are almost exactly like Tier 3 Energy  
17 transactions under the 1998 Smelter Agreement. Market Energy  
18 transactions under the 2009 Smelter Agreement are also similar to the  
19 energy purchases Kenergy will be making for Century under the  
20 proposed Century Transaction, except that the actual interface with  
21 the wholesale market will be through the Market Participant rather  
22 than Kenergy, unless Kenergy is also the Market Participant.

1 Q. The Attorney General says in footnote 23 on page 9 of its comments  
2 that Kenergy has made no Market Energy purchases for a smelter  
3 since 2009. Is that correct?

4 A. No. My understanding is that Kenergy made one-year Market Energy  
5 purchases of 10 MW each for Alcan Primary Products Corporation in  
6 2012 and 2013. In both cases, Big Rivers was selected as the wholesale  
7 supplier. Kenergy continues to provide Market Energy to Century at  
8 what is now its Sebree smelter. Market Energy transactions are  
9 reported to the Commission in accordance with an order of the  
10 Commission dated June 29, 2012, in Case No. 2012-00270, and  
11 Kenergy's tariff adopted pursuant to that order.

12 Q. In the 15 years since Kenergy or its predecessor have been acquiring  
13 electricity to serve the smelters from a source other than the Big  
14 Rivers all-requirements contract, has the Kentucky legislature, the  
15 Attorney General or anyone else criticized the 1998 Smelter  
16 Agreement or the 2009 Smelter Agreement as being part of an illegal  
17 retail wheeling scheme?

18 A. To my knowledge that issue has never been raised. In addition, I note  
19 that the Kentucky legislature actively considered legislation relating to  
20 this situation and none of the proposals by the legislators I am aware  
21 of limited the approach contemplated in the current documents. To the

1 contrary, many legislative proposals were premised on the type of  
2 power supply contemplated by the current documents.

3 Q. The Attorney General Comments (p. 6) allege that the Century  
4 Transaction would constitute retail wheeling prohibited under  
5 Kentucky law in part because it would “permit Century Aluminum, a  
6 retail customer, to obtain wholesale energy at market rates from a  
7 provider of its choice, via a pass through rate with Kenergy.” Does this  
8 accurately describe the proposed agreements?

9 A. No. As I explain below, Century obtains retail electric service from  
10 Kenergy, and it will not have the ability to unconditionally select the  
11 ultimate provider of Electric Services to be provided under the Electric  
12 Service Agreement.

13 The Century Transaction is intended to provide Century’s  
14 Hawesville Smelter with Electric Services purchased from a wholesale  
15 electric market (such as the MISO market) or pursuant to bilateral  
16 contracts with third parties (each, a “Bilateral Contract”). Section 2.3  
17 of the Electric Service Agreement provides that Kenergy will acquire  
18 these Electric Services for resale to Century through purchases under  
19 a Market Agreement with a Market Participant. Under Section 3.1.1  
20 of the Electric Service Agreement, the initial Market Agreement will  
21 be the Arrangement Agreement and the initial Market Participant will  
22 be Big Rivers.

1           The Electric Service Agreement will restrict Century's ability to  
2 obtain Electric Services "from a provider of its choice" because (1) the  
3 proposed agreements do not permit Century to select the ultimate  
4 provider of Electric Services that are provided from a wholesale electric  
5 market; the RTO or ISO, as applicable, of the applicable wholesale  
6 electric market would make that determination, (2) the Arrangement  
7 Agreement is, and any future Market Agreement will be, subject to  
8 approval by the Commission and (3) the Electric Service Agreement  
9 contains specified restrictions on Century's ability to enter into any  
10 future Market Agreement, select any future Market Participant or  
11 direct the Market Participant's entry into any Bilateral Contract. I  
12 discuss this last restriction more fully below in my testimony.

13           The Electric Service Agreement requires that each Market  
14 Agreement and any future Market Participant meet criteria specified  
15 in the Electric Service Agreement. Under Section 2.3.3 of that  
16 agreement, each Market Agreement must "(a) provide for delivery to  
17 Kenergy at the Delivery Point, (b) contain provisions to the effect of  
18 Sections 2.7 and 5.5 with respect to the Market Participant, (c) not  
19 require Kenergy to purchase Electric Services from a Person other  
20 than the Market Participant except during periods when Kenergy is  
21 the Market Participant, and (d) not result in Kenergy paying the  
22 Market Participant prior to the time Century pays Kenergy for any

1 amounts due or otherwise expose Kenergy to any greater financial  
2 risks than those agreed to by Kenergy under the Arrangement  
3 Agreement.” I would point out that the Delivery Point is not a market  
4 hub of any form and instead is located near the Hawesville Smelter.  
5 Under Section 3.1.3 of the Electric Service Agreement, Century’s  
6 selection of a new Market Participant will be subject to the following  
7 restrictions:

8 Century shall provide Kenergy with information describing in  
9 reasonable detail that the proposed arrangements with the new  
10 Market Participant do not increase Kenergy’s risks compared to  
11 the Arrangement Agreement. Such Person shall not become the  
12 Market Participant until Kenergy provides written notice of its  
13 consent and approval, which shall not be unreasonably withheld  
14 or delayed, to such Person becoming the Market Participant.  
15 Century also shall provide Kenergy with such additional  
16 information as Kenergy reasonably may request in connection  
17 therewith. Century shall give Kenergy and, if the Arrangement  
18 Agreement is in effect, Big Rivers not less than 120 days’ prior  
19 written notice of the appointment of such Person to be the new  
20 Market Participant. Kenergy shall use reasonable commercial  
21 efforts to obtain any necessary approvals or consents in  
22 connection with any entry into a Market Agreement with a new  
23 Market Participant. Century shall be responsible for any Costs  
24 to Kenergy resulting from a change in the Market Participant.  
25

26 Additionally, under Section 3.1.5 of that agreement, “no Person  
27 may become the Market Participant if any authorization or approval,  
28 consent or other action by, or notice to or filing or registration with, or  
29 license or permit from any Person, including any Governmental  
30 Authority, required to be obtained, given, accomplished or renewed for  
31 such Person to act in such capacity, shall not have been obtained,



1 given, accomplished or renewed and be in full force and effect.” The  
2 definition of Governmental Authority includes the Commission.

3 Finally, Century will not be able to unconditionally select the  
4 ultimate provider of Electric Services Kenergy receives under a Market  
5 Agreement and pursuant to a Bilateral Contract. Under Section 2.4.1  
6 of the Electric Service Agreement, the Market Participant’s entry into  
7 any Bilateral Contract requested by Century will be conditioned upon  
8 “(a) Kenergy’s prior receipt of a written notification from Century  
9 setting forth Century’s consent to the execution, delivery and  
10 performance of such Bilateral Contract, and (b) Kenergy’s satisfaction,  
11 in its sole discretion, only as to financial security arrangements and  
12 the elimination of risk to Kenergy associated with the Bilateral  
13 Contract and the Market Participant’s arrangements with the  
14 Bilateral Counterparty.” That section further provides that any  
15 Bilateral Contract must “(a) provide for delivery to Kenergy at the  
16 Delivery Point, (b) contain provisions to the effect of Sections 2.7 and  
17 5.5 with respect to the Bilateral Counterparty, (c) not require Kenergy  
18 to purchase Electric Services from a Person other than the Market  
19 Participant, except during periods when Kenergy is the Market  
20 Participant, and (d) not result in Kenergy paying the Market  
21 Participant prior to the time Century pays Kenergy for any amounts  
22 due.”

1 Q. Is the Century Transaction structure prudent, in your opinion?

2 A. Yes. Kenergy is an electric distribution cooperative. Excluding the  
3 smelters, Kenergy's 2012 revenues were approximately \$133,000,000  
4 compared against 2012 revenues from Century of approximately  
5 \$206,000,000. When acquiring a wholesale power supply in the  
6 magnitude required for a smelter, it is incumbent that Kenergy assure  
7 that "everyone is on the same page" and aware of the commitments  
8 that are going to be entered into when it comes to executing purchases  
9 of wholesale power, and that Kenergy is fully protected from any and  
10 all risks associated with the wholesale power supply that it purchases  
11 to serve Century. The Electric Service Agreement is designed to  
12 accomplish that goal, while also eliminating to the fullest extent  
13 possible Kenergy's exposure to risks. So the structure of the Electric  
14 Service Agreement is not retail wheeling, but rather that of a  
15 prudently-negotiated retail electric service agreement for the delivery  
16 of electric services to Kenergy for resale to a particular customer that  
17 happens to have an enormous load and very high load factor that  
18 consequently carries with it substantial risks to Kenergy if not  
19 balanced properly.

1 Q. Does the proposed transaction affect the Commission's jurisdiction  
2 over the transaction?

3 A. No. The application in this proceeding demonstrates that the  
4 Commission still maintains its traditional role in approving the  
5 agreements related to providing utility rates and service. If this were  
6 a retail wheeling transaction, my understanding is that the  
7 Commission would not have jurisdiction over purchases by a retail  
8 customer directly from a wholesale supplier. That is not the case here.  
9 I would add that the Attorney General's standing to participate in the  
10 Commission's review of this transaction is also unaffected. Finally, the  
11 parties expressly acknowledge in Section 14.1.2 of the Electric Service  
12 Agreement that nothing therein limits or expands the jurisdiction of  
13 the Commission over Kenergy, Big Rivers or the rates, terms and  
14 conditions of the provision of electric services to Century.

15  
16 IV. CONCLUSION

17  
18 Q. DO YOU HAVE ANY CONCLUDING REMARKS.

19 A. Yes. For the reasons stated in the application, our data requests  
20 responses and rebuttal testimony, I would ask the Commission to enter  
21 its order granting the relief requested by Kenergy and Big Rivers in  
22 the application.

1 Q. Does this conclude your rebuttal testimony?

2 A. Yes.

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Rebuttal Testimony of Gregory J. Starheim  
Case No. 2013-00221

Exhibit GJS Rebuttal 1 Order dated April 30, 1998, in *In the Matter of: The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction*, P.S.C. Case No. 97-204

Exhibit GJS Rebuttal 2 Order dated June 11, 1998, in *In the Matter of: The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction*, P.S.C. Case No. 97-204

Exhibit GJS Rebuttal 3 Order dated July 14, 1998, in *In the Matter of: The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the city of Henderson*, Case No. 98-267

Exhibit GJS Rebuttal 4 Amendment dated July 15, 1998, to Wholesale Power Agreements between Big Rivers Electric Corporation and Green River Electric Corporation

Exhibit GJS Rebuttal 5 Agreement for Electric Service Between Green River Electric Corporation and Southwire Company dated July 15, 1998

Exhibit GJS Rebuttal 6 Retail Electric Service Agreement dated as of July 1, 2009, by and between Kenergy Corp. and Century Aluminum of Kentucky General Partnership

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS ELECTRIC )  
CORPORATION, LOUISVILLE GAS AND )  
ELECTRIC COMPANY, WESTERN KENTUCKY )  
ENERGY CORP., WESTERN KENTUCKY )  
LEASING CORP., AND LG&E STATION TWO INC. ) CASE NO. 97-204  
FOR APPROVAL OF WHOLESALE RATE )  
ADJUSTMENT FOR BIG RIVERS ELECTRIC )  
CORPORATION AND FOR APPROVAL OF )  
TRANSACTION )

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS ELECTRIC )  
CORPORATION, LOUISVILLE GAS AND )  
ELECTRIC COMPANY, WESTERN KENTUCKY )  
ENERGY CORP., WESTERN KENTUCKY )  
LEASING CORP., AND LG&E STATION TWO INC. ) CASE NO. 97-204  
FOR APPROVAL OF WHOLESAL RATE )  
ADJUSTMENT FOR BIG RIVERS ELECTRIC )  
CORPORATION AND FOR APPROVAL OF )  
TRANSACTION )

O R D E R

BACKGROUND

On June 30, 1997, Big Rivers Electric Corporation ("Big Rivers") and the LG&E Parties<sup>1</sup> (collectively referred to as "Applicants") filed an application requesting the Commission to approve or declare nonjurisdictional numerous rate, financing and operating agreements that are an integral part of Big Rivers' efforts to implement the First Amended Plan of Reorganization ("Reorganization Plan") approved by the U.S. Bankruptcy Court in Big Rivers' Chapter 11 proceeding. These agreements provide for a long-term lease of Big Rivers' generating units to WKEC, reduced wholesale rates for

---

<sup>1</sup> The LG&E Parties are wholly-owned subsidiaries of LG&E Energy Corp. ("LEC"). The subsidiaries which are co-applicants with Big Rivers are Louisville Gas and Electric Company ("LG&E"); Western Kentucky Energy Corp. ("WKEC"); Western Kentucky Leasing Corp. ("Leaseco"); and WKE Station Two Inc. ("Station Two Subsidiary"), formerly known as LG&E Station Two Inc. In addition, LG&E Energy Marketing Inc. ("LEM"), formerly known as LG&E Power Marketing Inc., is a party to numerous agreements making up the proposed transaction.



Big Rivers' four member distribution cooperatives, and the financings necessary to effectuate a restructuring of Big Rivers' debts.

The Applicants requested a declaration from the Commission that implementation of the Reorganization Plan does not constitute a transfer of ownership or control over Big Rivers within the meaning of KRS 278.020(4) or 278.020(5). In the alternative, they requested that if the Commission determines that there is a transfer of control within the meaning of the statute, that the Commission approve the transfer of control, as implemented through a series of Reorganization Plan documents.<sup>2</sup> Approval was also requested of a Transmission Service and Interconnection Agreement, including to the extent required, Big Rivers' Open Access Transmission Tariff, which is to be filed at the Federal Energy Regulatory Commission ("FERC"). The Applicants have filed in this case numerous versions of the Reorganization Plan documents, as well as the corresponding tariffs which reflect the provisions of those documents.

In summary, the proposed transaction is structured into two phases. Under Phase I, WKEC will operate and maintain the Big Rivers' generating units, Big Rivers will sell all power generated to LEM, and LEM will resell to Big Rivers power sufficient to meet its wholesale obligations. All power not resold by LEM to Big Rivers can be sold by LEM for its own account. Leaseco will purchase from Big Rivers the generation-related

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<sup>2</sup> The Reorganization Plan documents include the Participation Agreement; the Facilities Operating Agreement; the Cost Sharing Agreement; the Power Purchase Agreement; the Lease and Operating Agreement; the Mortgage and Security Agreement; the Guarantee Agreement; the Nondisturbance Agreement; and the Tax Indemnification Agreement. See Application, at 14-15.

inventory<sup>3</sup> at its fair market value, all personal property at its net book value, and will be assigned certain intangible assets.<sup>4</sup> After necessary federal regulatory approvals are received, and prior to or contemporaneously with the commencement of Phase II, Leaseco will be merged with and into WKEC.

In Phase II, WKEC will lease Big Rivers' generating facilities for a 25-year term, perform all necessary operations and maintenance services, and sell the output of the generating facilities to LEM. WKEC will be an Exempt Wholesale Generator ("EWG") in accordance with Section 32 of the Public Utilities Holding Company Act of 1935 ("PUHCA") and its wholesale sales of power will be under the exclusive jurisdiction of FERC.

Station Two Subsidiary will subcontract with Big Rivers to perform operations and maintenance services for the Henderson Municipal Power & Light ("HMP&L") Station Two facility, and Big Rivers will assign to Station Two Subsidiary certain of its rights and obligations under contracts with HMP&L for operation of HMP&L's Station Two facility. Big Rivers' wholesale power supply contracts with its four member cooperatives will be revised, as well as the member cooperatives' retail contracts with the aluminum Smelters.<sup>5</sup>

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<sup>3</sup> Included in this inventory is all of Big Rivers' fuel and scrubber reagent, spare parts, SO<sub>2</sub> emission allowances, and all materials and supplies held for use in conjunction with the operation of the generating facilities.

<sup>4</sup> Intangible assets include real property leases, equipment leases, permits, and contracts used in connection with the operation of the generating facilities.

<sup>5</sup> The aluminum smelters are the Southwire Company and NSA, Inc. ("Southwire") and Alcan Aluminum Corporation ("Alcan").

The Reorganization Plan further provides that Big Rivers will contract with LEM to purchase power from LEM, at levels sufficient to cover all of the anticipated needs of Big Rivers' members. Big Rivers' outstanding debt with the Rural Utilities Service ("RUS"), formerly the Rural Electrification Administration, has been restructured and the current credit providers for Big Rivers' pollution control bonds have been replaced by new credit providers. Once the necessary approvals for the Reorganization Plan have been secured, Big Rivers will be out of the generating business while retaining its wholesale supply, transmission, and planning functions.

Big Rivers requested authority to implement on an interim basis rate reductions for wholesale electric service commencing on September 1, 1997 and continuing through the earlier of the closing date of the proposed transaction or August 31, 1998. The rate reductions proposed in Big Rivers' interim rates mirrored those of its proposed permanent rates. The Commission, by Order dated August 29, 1997, suspended the interim rates for one day and allowed them to become effective subject to change for service rendered on and after September 2, 1997. The Commission also determined that the approved interim rates should remain in effect only until issuance of a final rate Order determining the reasonableness of the proposed permanent rates.<sup>6</sup>

The Commission received requests for and granted intervention to the Office of the Attorney General ("AG"), Southwire, Alcan, Green River Electric Corporation ("Green River"), Henderson Union Electric Cooperative Corporation ("Henderson Union"), Jackson Purchase Electric Cooperative Corporation ("Jackson Purchase"), Meade

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<sup>6</sup> Case No. 97-204, Order dated August 29, 1997, at 4.

County Rural Electric Cooperative Corporation ("Meade County"), Chase Manhattan Bank ("Chase"), Bank of New York, Commonwealth Industries Inc., Willamette Industries Inc. ("Willamette"), PacifiCorp Power Marketing Inc., and the Kentucky Association of Plumbing, Heating and Cooling Contractors, Inc.

Informal conferences were held at the Commission's offices on July 16, 1997, October 8, 1997, and February 4, 1998. Public hearings were held on November 18 - 24, 1997 and March 18, 1998. Initial briefs were filed on January 30, 1998 with reply briefs filed on February 13, 1998. Supplemental briefs which were limited to the "unforeseen cost" issue were filed on March 30, 1998, with supplemental reply briefs filed on April 6, 1998.

#### HISTORY

Big Rivers is a rural electric cooperative utility, organized pursuant to KRS Chapter 279, which provides generating and transmission services to its four owner members. Each of its members is a rural electric cooperative utility engaged in the distribution of electricity and collectively they serve 91,500 customer members in 22 western Kentucky counties.

Big Rivers began experiencing financial problems in the mid-1980's shortly after completing construction of its newest generating station, the Wilson Generating Station ("Wilson"). Those problems were precipitated by a number of factors, including the relatively high cost of Wilson, a significant reduction in load growth, and claims by the Smelters that any rate increase would render their operations noncompetitive in world markets and drive them out of business. Big Rivers was eventually able to negotiate a debt

restructuring agreement with its creditors which the Commission approved in 1987 along with higher rates for all customers, including new rates for the Smelters which varied with the price of aluminum.

The revenue levels necessary to satisfy Big Rivers' debts as restructured in 1987 could not be achieved solely from power sales to its four member cooperatives. Rather, additional revenues needed to be generated each year through the sale of increasing levels of power to non-member wholesale customers. Unfortunately, the wholesale market for power was soft during this time and Big Rivers' sales efforts were unsuccessful in producing the revenue levels necessary. By the early 1990's Big Rivers recognized that it would soon be in a default position and it began discussions with RUS on the need for further debt restructuring.

Big Rivers' fortunes also changed from bad to worse during this period with the criminal and civil investigations and trials involving bribes and kickbacks in connection with its coal contracts and a former general manager. In an effort to find a long-term solution to its mounting financial problems, Big Rivers hired a "turn-around" specialist to advise and assist management in pursuing available business options. This action led to Big Rivers' solicitation of business offers and the eventual decision in early 1996 to pursue a business arrangement with PacifiCorp Holdings, Inc. ("PacifiCorp"). Under the terms of that transaction, a subsidiary of PacifiCorp would lease Big Rivers' generating units for 25 years and sell back to Big Rivers certain quantities of power at pre-established prices. While negotiating the terms of this transaction, Big Rivers was also negotiating with its major creditors to achieve a consensual restructuring of its debts and with its system's two largest retail customers, two aluminum smelters, to achieve long-term rate reductions and rate

stability. When its efforts to achieve a consensual debt restructuring were unsuccessful, Big Rivers filed on September 25, 1996 a petition for reorganization under Chapter 11 of the Bankruptcy Code.

Big Rivers' Plan of Reorganization, as originally filed with the Bankruptcy Court on January 22, 1997, included the lease transaction with PacifiCorp and lower electric rates that had been negotiated with the two smelters, one large non-smelter industrial customer and the four member cooperatives. The following month the Bankruptcy Court initiated an auction process to determine whether the PacifiCorp lease was providing maximum value to the Big Rivers' estate. The only entity to submit a bid in this process was LEC, and on March 19, 1997 the Bankruptcy Court accepted LEC's lease proposal on the basis that it would provide greater value to the Big Rivers' estate.

Big Rivers' Plan of Reorganization, as amended, which now included a lease transaction with subsidiaries of LEC and the lower rates previously negotiated with certain customers, was approved by the Bankruptcy Court on June 9, 1997. While the Bankruptcy Court has exclusive jurisdiction over a debtor's plan of reorganization, that jurisdiction does not include the right to approve a change in rates for a debtor utility whose rates are subject to regulation. Rather, the Bankruptcy Code, 11 U.S.C. §1129(a)(6), requires a debtor utility to obtain all necessary rate approvals from the appropriate regulatory agencies as a condition for final approval of a reorganization plan that includes a change in rates.

## DISCUSSION OF ISSUES

### Unforeseen Cost Issue

The Big Rivers' tariffs for service to Alcan and Southwire, which are to remain in effect for 12-13 years, specified that the Smelter rates contained therein would not be adjusted to reflect any cost or payment incurred by Big Rivers or the member distribution cooperatives for any expenditures due to legislation, regulatory action, legal action, or due to any other reason, whether foreseeable or unforeseeable (commonly known as the unforeseen cost issue).<sup>7</sup> This tariff provision was premised on the assumption that there would be no major changes in environmental law or regulation during the remaining term of the Smelter contracts, which extend to 2010 for Southwire and 2011 for Alcan.<sup>8</sup>

Contrary to this assumption, on October 10, 1997, the U. S. Environmental Protection Agency ("EPA") issued a notice of proposed rulemaking which would significantly reduce the existing emission levels for nitrogen oxide (NOx). The emission reductions, if implemented, have the potential to significantly increase Big Rivers' capital and operating costs such that wholesale rate increases would be necessary. This tariff provision became the focus of extensive cross-examination during the November 1997 hearing. Numerous questions were raised concerning the financial ability of Big Rivers to absorb this or any other unforeseen costs without increasing rates and whether

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<sup>7</sup> First Revised Exhibit 3(b), filed September 25, 1997, Item 9, at 48, 76, and 77 of 115. The tariffs referenced the following examples of such action: carbon tax, BTU tax, CO, emissions reduction, or any other environmental or energy tax, charge, or liability.

<sup>8</sup> Transcript of Evidence ("T.E."), Volume I, November 18, 1997, at 100.

exempting the Smelters from paying an appropriate share of unforeseen costs would obligate all other customers to pay the Smelters' share. At the conclusion of the November 1997 hearing, the Commission stated that the absence of a resolution of the unforeseen cost issue was a serious deficiency and suggested that the affected parties attempt to negotiate a mechanism to allocate future unforeseen costs in an equitable manner to each class of ratepayers.<sup>9</sup>

Big Rivers and the LG&E Parties notified the Commission on January 27, 1998 that a resolution of the unforeseen cost issue had been agreed to by some of the parties<sup>10</sup> and a term sheet for the resolution was submitted on February 3, 1998. In summary, the unforeseen cost resolution includes the following provisions:

- 1) LEM will supply directly to Henderson Union and Green River the wholesale power needed to serve Alcan and Southwire, with LEM assuming all the risks for the Smelter loads.
- 2) Big Rivers will continue to supply wholesale power to Henderson Union and Green River for their non-smelter loads, as well as the total loads of Jackson Purchase and Meade County.

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<sup>9</sup> T.E., Volume V, November 24, 1997, at 235-236.

<sup>10</sup> The parties agreeing to the Resolution were Big Rivers, the LG&E Parties, Alcan, Southwire, Green River, Henderson Union, and Meade County.



- 3) LEM will pay directly to RUS, on the behalf of Big Rivers, the level of Smelter net margins originally included in Big Rivers' financial models.<sup>11</sup>
- 4) Big Rivers and LEM agreed to a number of changes concerning the financing of all future capital improvements envisioned for the Big Rivers' generating facilities.
- 5) Revisions were made to the RUS mortgage which provide Big Rivers a financing source for its share of future capital improvements.<sup>12</sup>
- 6) The use of arbitrage sale proceeds was revised, which would allow Big Rivers to make additional payments on its RUS mortgage as well as the RUS asset residual value note ("ARVP").
- 7) Big Rivers will pay to LEM \$1.85 million per year over the 25-year lease. The Smelters will pay to LEM an additional .5 mills per KWH on Tier 1 and Tier 2 power purchased.
- 8) Big Rivers was required by RUS to make additional up-front payments on its mortgage, and Big Rivers and LEM agreed

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<sup>11</sup> The original Big Rivers' financial model was provided in the Application as Appendix L. While revisions to the financial model have been prepared and submitted, all versions are based on the version contained in Appendix L. These subsequent revisions have been identified as "MH-5A," "MH-5B," "SUP-11," and "SUP-16."

<sup>12</sup> Referred to in the record as the "clawback" provision.

to a financing arrangement which would allow Big Rivers to make the additional payments.

Big Rivers, the LG&E Parties, Alcan, Southwire, and Chase all expressed support for the unforeseen cost resolution.<sup>13</sup> Big Rivers stated that the resolution addressed the Commission's concerns regarding how Big Rivers would meet future unforeseen costs, including the possible impact of the EPA's NOx proposal, without the subsidization of the Smelters by non-Smelter customers.<sup>14</sup> The LG&E Parties noted that the resolution changes Big Rivers' initial funding responsibilities for capital expenses and allows it additional funds and increases its financial flexibility in the early years of the transaction.<sup>15</sup> Alcan and Southwire argue that the resolution should be given a chance to close since it has the potential to finally resolve the difficult Big Rivers' situation in a manner that is fair to all customer classes and creditors.<sup>16</sup> Chase contends that the resolution provides significant benefits to Big Rivers and its non-Smelter customers, in that Big Rivers is protected from credit risks associated with the Smelters, Big Rivers and its other customers are shielded from unforeseen costs attributable to the Smelters' load, and all customers will enjoy the same rates they were to receive under the Reorganization Plan.<sup>17</sup>

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<sup>13</sup> The Bank of New York filed a statement on March 30, 1998 concurring with the statements filed by Chase, but did not file a separate brief.

<sup>14</sup> Big Rivers Supplemental Initial Brief at 4.

<sup>15</sup> LG&E Parties Initial Brief Addressing Future Unforeseen Cost Issue at 14-15.

<sup>16</sup> Alcan and Southwire Supplemental Brief on Unforeseen Cost Resolution at 15.

<sup>17</sup> Chase Brief Concerning "Unforeseen Costs" Issue at 3.

Willamette did not oppose the unforeseen cost resolution, noting that it was more fair and reasonable than Big Rivers' original proposal.<sup>18</sup> However, Willamette expressed its concern that the customers remaining with Big Rivers would have to bear the annual \$1.85 million payment to LEM, either directly through the cost of electric power or indirectly by other revenue that would otherwise be dedicated to offsetting costs borne by Big Rivers' customers.<sup>19</sup>

The AG opposed the unforeseen cost resolution, contending that the filing was incomplete and the record lacked sufficient evidence upon which to base a decision.<sup>20</sup> The AG further argued against the resolution because it would cause Big Rivers to incur additional expenses to maintain the Smelters' fixed rates and negate the Smelters' contribution to the debt payments, all to the detriment of the other customers.<sup>21</sup> The AG also claims that the resolution will cause Big Rivers, Green River, and Henderson Union to be in violation of KRS 279.095 because they will no longer be operated for the mutual benefit of their members.<sup>22</sup>

In support of the unforeseen cost resolution, Big Rivers prepared an economic analysis which compared the cash flows generated in its financial model under two scenarios. The first financial model, identified as MH-5A, included no expenditures for

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<sup>18</sup> Willamette Initial Brief on the Unforeseen Cost Issue at 1.

<sup>19</sup> Id. at 6.

<sup>20</sup> AG Initial Brief on the Unforeseen Cost Resolution at 2.

<sup>21</sup> Id. at 7.

<sup>22</sup> Id. at 8-10.

unforeseen costs; while the second, identified as SUP-11, reflected the \$1.85 million annual payments.<sup>23</sup> The comparison revealed that, over the 25-year term, SUP-11 showed a cumulative decrease in cash flow of \$130.3 million on a nominal basis and a negative \$18.5 million cumulative net present value when compared to MH-5A.<sup>24</sup> In each year of the analysis, the ending cash balance was positive, but at lower levels in SUP-11 than in MH-5A. However, arbitrage sales were not modeled in either MH-5A or SUP-11.

In evaluating the reasonableness of the unforeseen cost resolution, the Commission has considered all of the arguments put forth by the parties and the economic analysis prepared by Big Rivers. In addition, the Commission has considered the potential impact that arbitrage sales would have on the economic analysis which compared the financial models MH-5A and SUP-11. Arbitrage sales are defined in the Reorganization Plan as all net revenues received in any particular calendar year resulting from one of three types of transactions. The first reflects the net benefit of purchasing power from third parties instead of purchasing such power from LEM during off-peak periods. The second reflects the net benefit of selling equivalent amounts of power using purchases from LEM during peak periods. The third reflects the net revenues of any new off-system power sales in excess of net revenues currently

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<sup>23</sup> MH-5A is a version of the Appendix L financial model updated before the November 1997 hearing, prior to the parties addressing the unforeseen cost issue. SUP-11 is based on MH-5A, but reflects the impact of the Resolution, and was filed on February 23, 1998, as part of the Robison, Schaefer, and Hite Supplemental Testimony.

<sup>24</sup> Response to the Commission's March 10, 1998 Order, Item 1, page 4 of 16.

projected for such sales.<sup>25</sup> Originally, the net revenues from arbitrage sales were to be allocated 50 percent to Big Rivers and 50 percent as a payment on the RUS ARVP. As part of the unforeseen cost resolution, the allocation was changed to one third to Big Rivers, one third as payment on the RUS mortgage, and one third as payment on the ARVP. The Commission believes that arbitrage sales were an important benefit originally to Big Rivers' Reorganization Plan and that the unforeseen cost resolution's changes to arbitrage sales have increased that benefit.

The Commission finds that the unforeseen cost resolution is reasonable and addresses the concerns expressed at the November 24, 1997 hearing. The change in the way capital expenditures are financed, the adjustment in the allocation of operation and maintenance costs, the availability of financing resources for Big Rivers in the event additional unforeseen capital expenditures arise, the guarantee of the Smelter margins, and the revisions to arbitrage sale proceeds are all improvements to the overall transaction. The benefits of these improvements outweigh any detriments of the additional expenses for Big Rivers. While the ending cash flow is lower with the unforeseen cost resolution than without it, such a comparison is inappropriate. The financial model without the resolution included no expenditures for unforeseen costs, although Big Rivers was at risk for all such costs. The financial model with the resolution transfers that previously unquantifiable risk to the LG&E Parties for a known cost. The unforeseen cost issue has thus been resolved in a manner which produces

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<sup>25</sup> Application Appendix C, page 35 of 121, First Amended Plan of Reorganization. The current projections for off-system sales are incorporated into the financial model, beginning in 2011.

significant additional benefits for non-Smelter customers without changing non-Smelter rates and is consistent with the cooperatives' obligations under KRS 279.095. Therefore, based on the representations and concepts expressed in the documents filed on or before February 27, 1998, the Commission approves in principle the unforeseen cost resolution.

#### Market Power Purchases

A central feature of Big Rivers' application is the proposal to allow Alcan, Southwire, and certain Large Industrial Customers the option of acquiring a portion of their power needs from third-party suppliers of their choice, no earlier than January 1, 2001.<sup>26</sup> This option is incorporated into the proposed Smelter tariffs as "Tier 3" and in the proposed Large Industrial Customer tariffs as "Market Power Purchases."

Smelters' Tier 3 Purchases. The interim tariffs permitted to go into effect on September 2, 1997 created three rate levels for Alcan and Southwire: Tier 1, Tier 2, and Tier 3. Under the interim tariffs, the maximum demand available under Tier 1 and Tier 2 energy is 233,000 KW for Alcan and 339,000 KW for Southwire, at a 98 percent load factor for each Smelter. Any demand in excess of these levels qualifies for purchase under Tier 3. The Smelter tariffs are structured as energy only rates which include the fixed costs typically recovered through a demand charge. The Tier 1 energy volumes

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<sup>26</sup> This option was part of the original application, as well as a component of the Resolution.

constitute the Smelters' minimum purchase obligation<sup>27</sup> and the payment of the Tier 1 energy charges constitute their respective take-or-pay obligations to Big Rivers. The energy rates for Tier 1, Tier 2, and Tier 3 are fixed under the interim tariffs, and a separate transmission rate is included for Tier 3 energy only.<sup>28</sup>

Under the proposed tariffs,<sup>29</sup> the three tier rate structure is retained, with LEM supplying power directly to Henderson Union and Green River for consumption by the Smelters. The demand and energy levels are essentially the same as those in the interim tariffs. The rates for Tier 1 and Tier 2 energy are the same as in the interim tariff, with the exception of the additional .5 mill per KWH payment to LEM to resolve the unforeseen cost issue. Two changes occur on January 1, 2001. First, the Tier 2 energy rate, which had been fixed, will be subject to change annually in accordance with a schedule incorporated into the tariff. Second, the Tier 3 energy rate, which had also been fixed at the same rate as in the interim tariff, is terminated and LEM has no further

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<sup>27</sup> Alcan's minimum purchase obligation, Tier 1, is calculated by multiplying 2,304,960 KWH by the number of days in the billing month; the Tier 2 purchase allowance is the difference between the minimum purchase obligation and the amount calculated by multiplying 5,480,160 KWH by the number of days in the billing month. For Southwire, the minimum purchase obligation is based on 3,045,840 KWH and the Tier 2 purchase allowance is based on 7,973,280 KWH. See Second Revised Exhibit 3(a), filed August 22, 1997, pages 26, 27, and 36 of 52.

<sup>28</sup> The Tier 1 energy rate is \$.0307 per KWH; Tier 2 is \$.02098 per KWH; and the total Tier 3 rate, excluding transmission, is \$.01958 per KWH. The Tier 3 transmission rate is \$.98 per KW per month of Tier 3 demand. See Second Revised Exhibit 3(a), filed August 22, 1997, pages 25, 26, 34, and 35 of 52.

<sup>29</sup> The reference "proposed tariffs" reflects the terms and conditions contained in the documents filed on February 27, 1998. Also, these proposed tariffs reflect the impact of the resolution, which the Commission has accepted in principle.

obligation to supply the Smelters power in excess of the Tier 1 and Tier 2 volumes. All power consumed in excess of the Smelters' Tier 1 and Tier 2 maximum demands can be acquired from any power supplier at market-based rates. For these purchases the Smelters are to assume the responsibilities of identifying the third-party supplier, setting the terms of the transaction, calculating the amount of losses involved, and securing the transmission path.<sup>30</sup> The Smelters' respective distribution cooperatives, Green River or Henderson Union, would sign the actual contracts with the third-party supplier and purchase the power to supply the Smelters.

The AG opposed the Tier 3 market purchase provision, contending that wholesale market access for retail customers by contract is retail wheeling which is not authorized by the Territorial Boundary Act for electric service, KRS 278.016-278.018. The AG argues that the parties that negotiated Tier 3 have achieved electric deregulation and dictated its terms, without the benefit of legislative direction or oversight, for all incremental power used by the two largest retail electric customers in Kentucky. If Tier 3 is approved, the AG contends, it will establish a precedent which will encourage large power users served by other utilities to ask for similar or better treatment, and as a policy matter, such a precedent should not be established.<sup>31</sup>

Big Rivers, the LG&E Parties, Alcan, Southwire, and Chase disagreed with the bases for the AG's opposition and cited numerous arguments to support the market purchase option. They contend that the option is not retail wheeling, is not contrary to

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<sup>30</sup> Response to the Commission's October 21, 1997 Order, Items 4 and 26.

<sup>31</sup> AG Initial Brief at 7-10.



Kentucky law or public policy, need not await any legislative analysis of electric industry restructuring, and is not dissimilar to the right afforded to Gallatin Steel Company in 1995 to choose its wholesale power supplier. The market purchase option, they claim, is designed to reduce costs to the Smelters without raising costs for other customers,<sup>32</sup> while the Reorganization Plan as a whole brings the benefits of competitively priced power to all customers.<sup>33</sup>

Other Industrials' Market Power Purchases. Big Rivers proposed that three years after closing its Reorganization Plan certain Large Industrial Customers could acquire a portion of their power requirements under market-based conditions. To be eligible, a customer would have to have a peak demand of one MW or greater, sign a contract for a minimum term of five years, have a base contract demand of not less than 75 percent of its maximum contract demand, and have a minimum contractual monthly load factor of 70 percent.<sup>34</sup> Big Rivers estimated that six customers could be eligible for this market-based proposal.<sup>35</sup>

The AG opposed this proposal, claiming it was an attempt to offer other industrial customers rates similar to the market purchase Tier 3 proposal for the Smelters. While agreeing that the proposal did not create the same contractual market access as the

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<sup>32</sup> Big Rivers Reply Brief at 8-9.

<sup>33</sup> LG&E Parties Initial Brief at 16.

<sup>34</sup> Revised Big Rivers Transaction Tariff, filed February 23, 1998, Item 29 at Original Sheet No. 37.

<sup>35</sup> Response to the Commission's August 12, 1997 Order, Item 29. The customers are Commonwealth Aluminum, Kimberly-Clark (Scott Paper), Willamette, World Source, A-CMI, and Wal-Mart Store No. 701.

Smelters would have, the AG argued that the proposal should be rejected because Big Rivers was giving up the right to serve a portion of its load, as well as the ability to earn a full contribution to fixed costs, for no apparent reason. The AG contends that there is no reason for a bankrupt utility to offer such a pricing option.<sup>36</sup>

The LG&E Parties supported the proposal, noting that if market power is priced below Big Rivers' system power, industrial customers who accepted the market-priced option could achieve lower average prices by blending system-priced power with market-priced power.<sup>37</sup> Chase stated that, like the market purchase Tier 3 proposal, this proposal for large industrial customers did not violate the certified service territory statute.<sup>38</sup>

Commission Analysis. Big Rivers has served its member distribution cooperatives for many years through a succession of full requirements contracts that have been required by the RUS to secure prior loan funds. As part of the negotiating process that led to the rates embodied in the Reorganization Plan, the RUS and other affected parties agreed to modify these full requirements contracts to accommodate the market power purchases for the Smelters and qualifying industrial customers. No similar accommodations have been forthcoming for any other customer.

The market purchase rate proposals constitute, at a minimum, the functional equivalent of retail wheeling for 8 out of 91,500 customers. If the electric industry in

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<sup>36</sup> AG Initial Brief at 11.

<sup>37</sup> LG&E Parties Initial Brief at 14.

<sup>38</sup> Chase Initial Post-Hearing Brief at 4.

Kentucky is to be restructured to include retail wheeling, the Commission believes that such a restructuring should be undertaken voluntarily, in a reasoned and comprehensive manner which is designed to meet the overall needs of the Commonwealth and all its citizens, not just the specific needs of a single utility and a few large customers. Further, the Commission does not believe that electric restructuring can permanently be implemented on a case-by-case approach until a rigorous investigation of all aspects of the issue results in a determination that restructuring is in the public's best interest. Until that determination is made, proposals to offer 8 out of 91,500 customers the right to seek lower cost power through retail wheeling constitute unreasonable preferences in violation of KRS 278.170(1).

The existing regulatory scheme in Kentucky requires electric utilities to serve all customers within their certified territorial boundaries. For the Big Rivers' distribution cooperatives, this statutory obligation includes not only the distribution of electric energy to their customers, but also the selection and acquisition of an adequate source of supply to meet the foreseeable needs of their customers. The Commission does not believe that it has the authority to revise this statutory scheme to transfer, from the utility to a limited group of customers, the function of selecting a source of supply to meet those customers' needs. The market purchase options proposed here are dissimilar to the transaction approved in 1995 when East Kentucky Power Cooperative Corporation ("East Kentucky") lacked sufficient capacity to fulfill its contractual obligation to supply

Owen Electric Cooperative for service to Gallatin Steel Company.<sup>39</sup> The contracts and tariffs in that case indicate that East Kentucky fulfilled its contractual obligation by selecting the source of additional generating capacity, not by granting the retail customer the right to select the source of generation.

Therefore, the proposals to terminate the Tier 3 fixed rate after 2000 and to implement market purchase Tier 3 and the Market Power Purchase option for other industrial customers in three years are rejected. Green River and Henderson Union will be responsible for securing additional quantities of power for the Smelters after 2000. The cost for this power is unknown at this time and may result in future changes to the Tier 3 rate for the Smelters.

#### Revenue Decrease Allocation and Rate Design

For purposes of calculating the revenue impact of its proposed rates, Big Rivers utilized a test year ended December 31, 1996. Based on the rates in effect at the end of the test year, and various normalization adjustments to the actual demand and energy units billed during the test year, Big Rivers calculated its normalized test year revenues to be \$266,261,661.<sup>40</sup> Big Rivers calculated pro forma revenues of \$231,482,524, based on its proposed rates and several billing adjustments which reduce its billing demand from a normalized level of 14.4 million KW to a pro forma level of 13.4 million KW. The result is a decrease in revenues of \$34.8 million, or 13.06 percent.<sup>41</sup>

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<sup>39</sup> Case No. 94-456, East Kentucky Power Cooperative, Inc.'s Filing of a Proposed Contract with Gallatin Steel Company.

<sup>40</sup> Application Exhibit 17, at 1, 5 and 6.

<sup>41</sup> Id. at 1 and 8.

Based on Big Rivers' pro forma revenue analysis, the proposed rates produce the following decreases and average rates for Big Rivers' three customer groups.<sup>42</sup>

<u>Customer Group</u>	<u>Existing Average Rates</u>	<u>Proposed Average Rate</u>	<u>Total Decrease</u>	<u>Percentage Decrease</u>
1. Smelters:	28.85 mills/KWH	24.7 mills/KWH	13.7 percent	\$20.2 million
2. Non-Smelter industrials:	34.60 mills/KWH	31.1 mills/KWH	12.8 percent	\$6 million
3. Rurals:	42.18 mills/KWH	37.2 mills/KWH	11.8 percent	\$8.6 million

The Commission finds that Big Rivers' comparison of its proposed rates to its existing rates is flawed. In determining customers' adjusted billing units, Big Rivers relied on its most recent Power Requirements Study to change the demand and energy billing units for several customers. For instance, Willamette's demand billing units were increased by 99,000 KW and its energy billing units were increased by 75 million KWH.<sup>43</sup> Big Rivers also included the impact of the market purchase option in calculating pro forma revenue. In determining the percentage rate decrease, Big Rivers compared pro forma revenue based on pro forma billing units to normalized revenue based on normalized billing units, thereby masking the true effect of the proposed rate change. The Commission believes that a more valid analysis would be one that compares customers' annual bills based on pro forma billing units at both Big Rivers' old base rates

<sup>42</sup> "Existing Average Rate" and "Proposed Average Rate" derived from Application Exhibit 17 at 5-8; "Total Decrease" and "Percentage Decrease" from Application Exhibit 17 at 7-8.

<sup>43</sup> Application Exhibit 17 at 3 and 5.

and its proposed base rates.<sup>44</sup> Under such a comparison the average decrease for each customer group would be: Smelters - 18.0 percent; non-Smelter industrials - 12.3 percent; and Rurals - 9.2 percent.

Big Rivers presented a cost-of-service analysis which reflected both its pre-restructuring cost structure and its post-restructuring cost structure. The results of this analysis were consistent with the allocation of the proposed decrease amongst the customer classes.

AG Rate Issues. The AG objected to the proposed rates, focusing primarily on the rates offered to the Smelters. The AG urges rejection of the proposed Smelter rates and associated contracts because the Smelters are allowed to leave the Big Rivers system after 2011, their rates are fixed for the term of their current contracts, and their take-or-pay obligations are dramatically reduced.<sup>45</sup> Based on the AG's cost-of-service study, he also argues that the Tier 2 rates make no meaningful contribution to fixed costs, the Smelters make a smaller contribution to fixed costs than other classes, and the Smelters' rates are priced below their cost of service. The AG also argues that the proposed treatment of stranded costs and exit fees for the Smelters is unfair, unjust, and discriminatory.<sup>46</sup> Based on the results of his own cost-of-service study, the AG

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<sup>44</sup> For this analysis, Big Rivers' proposed base rates for the Smelters include the agree upon .5 mills per KWH to resolve the unforeseen cost issue.

<sup>45</sup> Brown Kinloch Direct Testimony at 16-28.

<sup>46</sup> AG Initial Brief on the Unforeseen Cost Resolution at 10. In this brief, the AG notes that his original objections to the proposed Smelter rates now focus on Henderson Union and Green River, rather than Big Rivers, due to the impacts of the resolution of the unforeseen cost issue.

recommended rejection of the proposed rates for all customer classes and adoption of a \$5.36 per KW per month demand charge and a 19.58 mills per KWH energy charge for all customer classes and all sales.<sup>47</sup>

Big Rivers noted that the proposed rates are an integral part of the Reorganization Plan and are supported by its cost-of-service study.<sup>48</sup> Big Rivers criticized the AG's cost-of-service study as flawed in its treatment of the purchased power costs from LEM and for proposing rates which resulted in disproportionate rate reductions favoring the rural customers at the expense of the Smelters.<sup>49</sup>

Alcan and Southwire contend that the AG's cost-of-service study is flawed in assuming that purchased power costs were composed only of energy costs, omitting the lease and transmission payments as factors to be included, not considering the lower Smelter line losses, and allocating to the Smelters transmission costs below 161 KV.<sup>50</sup>

The Commission finds the AG's arguments to be less than persuasive. Since the Smelters new contracts will expire at the same time as their old contracts, they are not being allowed to leave the Big Rivers' system. Resolution of the unforeseen cost issue, coupled with the fixed cost of wholesale power from LEM, justifies the prohibition of future rate adjustments, except as noted herein, attributable to wholesale but not retail cost changes. While the Smelters take-or-pay obligations have been reduced, Big Rivers

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<sup>47</sup> Brown Kinloch Direct Testimony at 42.

<sup>48</sup> Big Rivers Reply Brief at 11-12.

<sup>49</sup> Id.

<sup>50</sup> Alcan and Southwire Main Brief at 15 and 20.

suffers no harm because LEM has agreed to guarantee the margins from Smelter sales at levels above the take-of-pay obligations.

In addition, the record demonstrates that the AG's cost-of-service study is flawed in assuming that purchase power costs are composed only of energy costs, by allocating costs of transmission facilities below 161 KV to the Smelters, and by omitting consideration of the lease and transmission payments and the lower Smelter line losses. These flaws undermine his proposed alternative rates. The AG has also failed to justify why his proposed class rate reductions are more reasonable than Big Rivers. The Commission also finds unacceptable the underlying premise in the AG's proposal which is the need for a rate increase in 2012 of 29 percent in the demand charge and 4 percent in the energy charge.<sup>51</sup> Thus, the AG's rate proposals are not reasonable and will not be accepted.

Willamette Rate Issues. Willamette argues that the rates proposed for it are discriminatory, not based on cost of service, and are the result of negotiations that included neither itself nor a majority of the industrial customers. It contends that its decrease of 7.29 percent is not as large as that of some other customers in the large industrial class, its additional load has been ignored by Big Rivers, and it should be granted lower rates more in line with those of the Smelters given its status as the system's third largest customer with the third highest load factor. Willamette also argues that the impact of load factor on cost of service should be reflected in rates. In fact, Willamette argues that unless it signs a five year contract that puts 25 percent of its load

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<sup>51</sup> T.E., Volume V, November 24, 1997, at 227-228.



at market risk, it will receive a 1.5 percent rate increase.<sup>52</sup> As an alternative to revised lower rates, Willamette proposed that all its load in excess of its current 55.5 MW level be eligible for the Market Power Purchase option.<sup>53</sup>

Big Rivers disagreed with Willamette's arguments and rate proposals, noting that Willamette has different load and operating characteristics from the Smelters which justify a different classification of service. Big Rivers argues that Willamette will receive the overall rate reductions available to all non-Smelter industrial customers and will be eligible for the Market Power Purchase option.<sup>54</sup> Big Rivers' revenue comparison shows individual non-Smelter industrial customers experiencing annual bill reductions ranging from 1.51 percent to 26.83 percent, with a class average reduction of 12.82 percent.<sup>55</sup>

The Commission finds Willamette's arguments to be unpersuasive. Willamette's analysis ignores the changes made by Big Rivers in developing its pro forma revenues and presents its arguments regarding the proposed increase based on the same flawed comparison used by Big Rivers. When customers' annual bills based on pro forma billing units at both Big Rivers' old base rates and its proposed base rates are compared, Willamette's proposed decrease will be 12.8 percent while the non-Smelter industrial class has an average decrease of 12.3 percent. Thus, Big Rivers' proposed decrease for Willamette compares favorably with that of the non-Smelter industrial class as a

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<sup>52</sup> Willamette Initial Brief at 2 and 6.

<sup>53</sup> Biscopick Direct Testimony at 16-17.

<sup>54</sup> Big Rivers Reply Brief at 13-19.

<sup>55</sup> Application Exhibit 17, page 7.

whole and, therefore Willamette suffers no undue discrimination by Big Rivers' rate proposal. In addition, Willamette has not demonstrated and the Commission finds no basis to believe that Willamette's proposal will generate the revenue levels needed by Big Rivers under the Reorganization Plan. The Commission further finds that Big Rivers' proposal does not unfairly single out Willamette for a lesser rate decrease than other customers within its class. Therefore, Willamette's rate proposals are denied.

Large Industrial Customer Rates Having rejected the Market Power Purchase option, the Commission finds it necessary to develop a schedule of rates for the large industrial class that will generate over the next 25 years the same approximate revenue stream as the rates proposed by Big Rivers. The Commission also finds merit in the argument raised by Willamette that differences in customers' load factors affect a utility's cost of service and such differences should be reflected in rates.

A simple approach to developing a new rate schedule for the non-smelter industrials would be to retain the \$7.37 demand charge proposed by Big Rivers and then calculate the energy charge necessary to generate the additional required revenues. However, a demand charge that is substantially lower than the previous charge of \$10.15 per KW necessitates an energy charge that would be significantly higher than the previous energy charge. Such a high energy charge, coupled with the impact of eliminating the Market Power Purchase option, would have a detrimental impact on high load factor customers because they would pay revenues markedly in excess of those produced by Big Rivers' proposed rates.

A rate design with a higher demand charge and corresponding lower energy charge will minimize such impact for the higher load factor customers that would have been eligible for the Market Purchase option. Therefore, the rates for the non-smelter industrial class will retain the \$10.15 demand charge that had been in effect prior to the interim rates and the entire decrease will be achieved through a reduction in the energy charge. The result is an energy charge of 13.715 mills per KWH for all energy sold. This energy charge is appropriate because, as Big Rivers pointed out, its post-restructuring variable costs of 18.44 mills per KWH as per its cost-of-service analysis are somewhat artificial because of the energy-only pricing structure contained in the power purchase agreement with LEM.<sup>56</sup> Had that pricing structure included separate demand and energy components, Big Rivers' cost of service would reflect much lower variable costs.<sup>57</sup> A comparison of the results of the Commission-developed rates to the results of Big Rivers' old rates using the pro forma billing units reflects an average decrease of 11.64 percent for the non-smelter industrial class with a 12.58 percent decrease for Willamette. Willamette will continue to have among the lowest rates on the Big Rivers system. Based on these factors, the Commission is satisfied that its rate design is fair, just, and reasonable for all customers in the non-smelter industrial class and should be adopted.

Smelter Tariff Provisions. The AG objected to two provisions in the Henderson Union and Green River Smelter tariffs. One provision would prohibit any adjustment to

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<sup>56</sup> Application Exhibit 11 at 48.

<sup>57</sup> Id. at 49.

rates to reflect cost or payment incurred by Big Rivers or the cooperatives for any expenditures incurred due to legislation, regulatory, or legal action. The AG argues such a provision attempts to divest the Commission of its authority to change rates.<sup>58</sup> The other provision would allow the Smelters to avoid the payment of stranded costs or exit fees. The AG argues that the issue of stranded costs and exit fees will be a subject for electric industry deregulation, and that such a prohibition infringes upon the legislative prerogative, and unduly favors the Smelters.<sup>59</sup>

Big Rivers countered that under the terms of the Reorganization Plan, there should be no stranded costs or exit fees for anyone on the Big Rivers system to pay.<sup>60</sup> The LG&E Parties contend that the proposed resolution of the unforeseen cost issue eliminates any concerns that non-smelter customers would be at risk for future unforeseen costs related to the Smelter load.<sup>61</sup> Alcan and Southwire stated their belief that all stranded cost issues have been dealt with in the Reorganization Plan.<sup>62</sup>

For Big Rivers, the Commission finds that the lease transaction, coupled with the unforeseen cost resolution, will minimize any risk that non-Smelter customers would be allocated the Smelters' share of costs resulting from legislative, regulatory, or legal changes. Similarly, this transaction will minimize the risk of stranded costs or exit fees

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<sup>58</sup> AG Initial Brief at 3.

<sup>59</sup> Id. at 12.

<sup>60</sup> Big Rivers Initial Brief at 23.

<sup>61</sup> LG&E Parties Initial Brief Addressing Future Unforeseen Cost Issue at 17.

<sup>62</sup> Alcan and Southwire Supplemental Brief on Unforeseen Cost Resolution at 9.

allocable to the Smelters at the wholesale level. Thus, these provisions do not appear to be unreasonable for application to Big Rivers' wholesale costs.

However, the Commission finds that the same situation does not exist at the retail level. It is impossible to predict the cost changes that could occur over the next 13 years for Henderson Union and Green River and there is no agreement, analogous to the unforeseen cost resolution, to provide indemnification for changes in retail costs allocable to the Smelters. Neither the prohibition for cost adjustments due to legislative, regulatory, or legal action nor the prohibition of stranded costs or exit fees are reasonable at the distribution level and it is unreasonable to include these provisions in the distribution cooperative tariffs and contracts with the Smelters.

#### Other Transaction Issues

Lease of Generating Units. Big Rivers has proposed to lease, for a term of 25 years, all its generating units to WKEC while having a 25 year right to purchase power, within established minimum and maximum quantities, from LEM. The lease transaction is the centerpiece of the Reorganization Plan and it enables Big Rivers to divest itself of its generating capacity while purchasing only the quantities of power projected to be needed over the 25 year term. The Commission finds that the proposed lease transaction does constitute a change in control within the parameters of KRS 278.020(4) and 278.020(5) and is subject to our jurisdiction. Based on a review of the record and the lease transaction as evidenced by the documents on file as of February 27, 1998, the Commission finds that WKEC has the financial, managerial, and technical expertise to operate Big Rivers' generating units and the transfer is in accordance with law, for a

proper purpose and is consistent with the public interest. Therefore, the Commission will approve the lease transaction in principle, subject to verification that the final transaction documents do not materially change the transaction as reviewed in this case.

In addition, the Commission finds that the proposed accounting treatment for the lease transaction is in accordance with generally accepted accounting principles and the Commission concurs with that treatment. Big Rivers should provide the Commission with the accounting entries made to record the lease transaction within 10 days of their entry on the books of Big Rivers.

Transmission Service and Interconnection Agreement. The Applicants requested approval of the Transmission Service and Interconnection Agreement, as well as Big Rivers' Open Access Transmission Tariff, which will be filed at FERC. The Commission finds that, to the extent these documents are subject to our jurisdiction, they are reasonable and should be approved in principle subject to review of the final draft agreements to verify that there have been no material changes.

Evidences of Indebtedness. Big Rivers and the LG&E Parties have requested the Commission's approval for Big Rivers to issue evidences of indebtedness as contained in several of the transaction documents.<sup>63</sup> These financings are an integral part of the Reorganization Plan and are necessary to implement the debt restructuring and lease

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<sup>63</sup> The documents in question are the Cost Sharing Agreement; the Lease and Operating Agreement; the Mortgage and Security Agreement; the agreement with new credit providers AMBAC and Credit Suisse First Boston, relating to the Pollution Control Bonds, to the extent required; and the security instruments evidencing liens given to LEM under the terms of the revised Participation Agreement.

transaction. The Commission finds that the proposed financing is for a lawful object within Big Rivers' corporate purpose, is necessary and appropriate for the proper performance of its wholesale electric service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

Station Two Subsidiary. Big Rivers and the LG&E Parties requested that the Commission approve Big Rivers' transfer to the Station Two Subsidiary of certain obligations with respect to HMP&L's Station Two facility. In addition, the LG&E Parties requested that the Commission declare the Station Two Subsidiary to be a jurisdictional utility because KRS 96.520 limits a municipal utility to selling excess power either out of state or to a Commission-regulated utility.

The Commission finds that the transfer of HMP&L Station Two facility obligations to the Station Two Subsidiary is reasonable and will be approved. At the March 18, 1998 hearing, the LG&E Parties stated that legislation was pending in the 1998 Regular Session of the Kentucky General Assembly which would eliminate the need to declare the Station Two Subsidiary to be a jurisdictional utility. This legislation has since been approved by the General Assembly and signed by the Governor.<sup>64</sup> Therefore, the request to declare the Station Two Subsidiary a jurisdictional utility is denied as moot.

EWG Status. Big Rivers and the LG&E Parties requested that the Commission declare each of Big Rivers' generating facilities to be an "eligible facility" within the meaning of Section 32(a)(2) of PUHCA. This finding is a prerequisite for WKEC to be

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<sup>64</sup> Senate Bill 269 was passed by the Senate on February 27, 1998, the House of Representatives on March 23, 1998, and was signed by the Governor on April 1, 1998.

declared an exempt wholesale generator by FERC and thereby exempt from all provisions of PUHCA.

After examining the evidence, the Commission finds that the generating facilities of Big Rivers have been used for the generation of electric energy exclusively for sale at wholesale. The Commission further finds that allowing the Big Rivers generating facilities to be eligible facilities will benefit consumers by allowing Big Rivers to consummate its Reorganization Plan which includes the lease transaction, is in the public interest, and does not violate Kentucky law. At the request of the LG&E Parties, the Commission will condition this grant of eligible facility status upon the closure of the transaction between Big Rivers and the LG&E Parties.

Wholesale Power Contracts. Big Rivers and the LG&E Parties requested that the Commission approve the amendments to the wholesale power contracts with the member distribution cooperatives. As with other transaction documents, the Commission finds that these contracts as filed by February 27, 1998, should be approved in principle, subject to deletion of the Smelters' exemptions from distribution level cost changes due to legislative, regulatory, or legal action or distribution level stranded costs and exit fees. The final drafts of these contracts will be reviewed as part of the new proceeding to ensure that appropriate changes have been made to reflect the decisions herein and that no other material changes have been made.

Consolidation of Pending Fuel-Related Cases

In its Application, Big Rivers requested that this case be consolidated with two fuel-related cases currently pending at the Commission. This request was subsequently



expanded when Big Rivers filed its initial brief on February 13, 1998 to include additional fuel adjustment clause ("FAC") proceedings covering November 1, 1990 through April 30, 1994 which were remanded to the Commission in January 1998. Big Rivers argues that consolidation of these proceedings with the case at bar and the Commission's approval of the rates set forth in Big Rivers' Plan of Reorganization will render those cases moot.

As a result of an extensive investigation into Big Rivers' fuel procurement practices, the Commission on July 21, 1994, in Case No. 90-360-C,<sup>65</sup> found that Big Rivers had incurred unreasonable fuel costs as a result of its decisions to enter certain coal supply contracts and required Big Rivers to amortize and credit those costs to its customers. Based upon the record developed in Case No. 90-360-C, the Commission in subsequent FAC review proceedings<sup>66</sup> ordered Big Rivers to make additional credits to its customers.

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<sup>65</sup> Case No. 90-360-C, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1990 to April 30, 1993.

<sup>66</sup> Case No. 92-490-B, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 1993 to October 31, 1993 (August 9, 1994); Case No. 92-490-C, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1993 to April 30, 1994 (November 1, 1994); Case No. 94-458, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1992 to October 31, 1994 (March 5, 1996); Case No. 94-458-A, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1994 to April 30, 1995 (June 19, 1996); Case No. 94-458-B, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 1995 to October 31, 1995 (July 9, 1996); Case No. 94-458-C, An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 1995 to April 30, 1996 (October 16, 1996).

As a result of judicial reviews filed by Big Rivers and the Smelters, the Franklin Circuit Court affirmed the Commission's July 21, 1994 Order to disallow the unreasonable fuel costs, but remanded the matter to the Commission to determine whether two fuel contracts complied with the FAC regulation and whether the fuel costs associated with those contracts were prudent or the result of improper fuel procurement practices.<sup>67</sup> The Court further directed the Commission to determine, if appropriate, the amount of any additional refunds.

The Commission and Big Rivers appealed the Franklin Circuit Court ruling. Finding that the Franklin Circuit Court's judgment was not final, the Kentucky Court of Appeals on July 3, 1997 dismissed these appeals.<sup>68</sup> On January 14, 1998, the Kentucky Supreme Court denied the Commission's Motion for Discretionary Review.<sup>69</sup> As a result, these cases are again before the Commission.<sup>70</sup>

Having considered Big Rivers' request for consolidation, the Commission denies it. As the request relates to the remanded proceedings, it was not properly raised. The proceedings involving Big Rivers' FACs were not remanded to the Commission until

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<sup>67</sup> Big Rivers Electric Corp. v. Pub. Serv. Com'n, No. 94-CI-01184, slip op. at 14 (Franklin Cir. Ct. Oct. 20, 1995).

<sup>68</sup> Pub. Serv. Com'n v. Big Rivers Electric Corp., No. 95-CA-3079-MR, slip op. at 2-3 (Ky. Ct. App. July 3, 1997).

<sup>69</sup> Pub. Serv. Com'n v. Big Rivers Electric Corp., No. 97-SC-610-D (Ky. Jan. 14, 1998).

<sup>70</sup> Not all of the Orders have been remanded to the Commission. Actions for review of Commission Orders in Cases No. 94-458, 94-458-A, 94-458-B, and 94-458-C are still pending before Franklin Circuit Court and have not been remanded to the Commission.

January 14, 1998. The issue was not before the Commission when the principal hearing in this matter was held and was raised for the first time in Big Rivers' initial brief.<sup>71</sup> The parties have not had an adequate opportunity to address the issue.<sup>72</sup>

Moreover, consolidation of the fuel cases into this proceeding is inconsistent with the express directives of the Franklin Circuit Court judgment. The Court directed the Commission to make certain determinations regarding two fuel contracts and the fuel costs incurred under those contracts. Consolidation will not advance this objective but impede it. Under Big Rivers' proposed approach, the Commission would consolidate the cases into this proceeding and then take no further action.

The Commission is not the appropriate forum to address Big Rivers' argument that the Bankruptcy Court's approval of the Plan of Reorganization extinguishes any right of ratepayers to pursue refunds and renders the Franklin Circuit Court judgment moot. That forum is the Franklin Circuit Court. As the matter currently stands, Franklin Circuit Court has directed the Commission to take certain actions. Its judgment has not been modified, suspended or revoked. No court of superior jurisdiction has relieved the Commission of its obligations under the judgment. Absent such court action, the Commission must comply with the judgment and make the required determinations. Given the voluminous record and complex issues in the remanded cases, those

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<sup>71</sup> Big Rivers Initial Brief at 25-33.

<sup>72</sup> For that matter, Big Rivers failed to provide notice of its request to all parties in Case No. 90-360-C. The record fails to reflect that any notice of the consolidation proposal was given to Prestige Coal Company.

determinations should be made in a separate proceeding and not be consolidated with this proceeding.

#### Depreciation Study

Big Rivers disclosed during the proceeding that the required accounting for the lease transaction might result in the book value of Wilson being overstated, and that there might have to be an asset book value write down. However, before Big Rivers could finalize its determination of the need for a write down, it had initiated a new depreciation study, which has not yet been completed.

The Commission finds that within 30 days of Big Rivers' completion and acceptance of a new depreciation study, a copy should be filed with the Commission. No changes in depreciation rates should be implemented under that study until the Commission has reviewed the new study. Big Rivers should also promptly inform the Commission of its determination regarding the need for an asset book value write down and, if one is determined to be necessary, initiate the appropriate proceeding.

#### Debt Service Plan

The AG objected to the debt service schedule contained in Big Rivers' financial model, contending that it was back loaded. The AG argued that only 36 percent of the principal on the RUS debt will be paid by the time the Smelters are expected to leave the Big Rivers system.<sup>73</sup> The AG notes that under the unforeseen cost issue resolution,

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<sup>73</sup> AG Initial Brief at 18.

more of the debt service is shifted to the later years of the transaction, when only the non-Smelter ratepayers are still on the system.<sup>74</sup>

The Smelters argued that the AG's statement about the 36 percent figure is true, but completely misleading because debt service is not measured only by the repayment of principal, but by the sum of principal and interest. The Smelters stated that the projected debt service schedule, agreed to by the lenders, represents a largely levelized combination of interest and debt principal payments.<sup>75</sup>

The Commission has reviewed the arguments and concludes that the AG's analysis has not taken into consideration the entire scope of the impact of the transaction, as modified by the unforeseen cost resolution. The AG's argument fails to consider the fact that the repayments to RUS must equal a pre-determined present value, regardless of the timing of principal and interest payments. This arrangement allows Big Rivers a degree of flexibility during the early years of the transaction. In addition, the AG does not appear to have considered the impact of LEM's lease payments or the potential impact of arbitrage sales on the outstanding debt. Concerning the impact of the unforeseen cost resolution, Big Rivers apparently had no loan sources to fund the up-front capital expenditures as envisioned in the original plan. While the resolution did result in a shift of the debt service schedule, it also provided Big Rivers with a needed source of financing for its reduced capital expenditures responsibilities. Therefore, while the situation identified by the AG is an important consideration, taken in light of the overall benefits and provisions of the transaction as modified, the

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<sup>74</sup> AG Initial Brief on the Unforeseen Cost Resolution at 2.

<sup>75</sup> Alcan and Southwire Main Brief at 31.

Commission finds that the arguments of the AG do not justify the rejection of the proposed debt service schedule.

#### Monitoring and Reporting

The proposed transaction, as modified by the resolution of the unforeseen cost issue, contains what the Commission believes to be a valuable incentive to Big Rivers: the ability to make arbitrage sales and Other Sales.<sup>76</sup> Big Rivers has placed a significant amount of reliance on its ability to make Other Sales and the revenues to be generated by those sales will be critical to its long-term financial restructuring.<sup>77</sup> To encourage Big Rivers to utilize this option to its greatest potential, and to ensure that the Commission is timely informed of Big Rivers' progress in making both arbitrage sales and Other Sales, the Commission will require Big Rivers to:

- Develop and file with the Commission within 60 days of the Transaction Closing Date, a strategic plan concerning arbitrage sales;
- Develop and file with the Commission within 30 days of the date of this Order, an interim sales plan, to be in effect until the strategic sales plan is implemented;
- File with the Commission within six months after the date of this Order, and every six months thereafter, a report on arbitrage sales and Other Sales; and

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<sup>76</sup> Other Sales are off-system sales envisioned in Big Rivers' financial models to begin after the termination of the current Smelter contracts in 2011.

<sup>77</sup> From 2011 to 2022, Big Rivers forecasts annual gross sales revenues ranging from \$36.1 million to \$45.9 million, which represents 15 to 20 percent of all gross sales revenues during the period. See Robison, Schaefer, and Hite Supplemental Testimony, Exhibit SUP-11, lines 304 through 309. Percentage impact is determined by dividing line 307 by line 309 in any year after 2010.

- File with the Commission a report, appended to its annual report, comparing its actual cash flows for the calendar year with the amounts included in the SUP-11 financial model filed in this proceeding.<sup>78</sup>

### SUMMARY AND CONCLUSION

Throughout this proceeding the Applicants, the Smelters, and three distribution cooperatives have repeatedly stated that the proposed rates are an integral part of the Reorganization Plan, were the result of intense and extensive negotiations, and that any modifications could disrupt the carefully balanced interests of those who participated in the negotiations. Simultaneously, the AG and one distribution cooperative, Jackson Purchase, have vigorously opposed the proposed rates on the basis that the benefits of the reorganization have not been fairly distributed among all customer classes, resulting in unduly preferential rates for some customers. The Commission has taken all these statements into consideration and has made the findings and decisions set forth herein based on the evidence and the critical need for Big Rivers to emerge from bankruptcy as quickly as possible.

It has not been an easy task to balance all aspects of the transaction and the proposed rates with our statutory obligations under KRS Chapter 278. Our task was not made any easier by the inclusion of certain rate provisions which appeared to be the product of less than equal bargaining leverage among the parties to the Reorganization Plan. We recognize that there will need to be some changes to the transaction to

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<sup>78</sup> The report will be based on lines 363 through 411 of SUP-11, and include explanations for any deviations from the SUP-11 figures in excess of 10 percent.

accommodate our findings. However, we do not believe that those changes will significantly alter either the purpose or the intent of the transaction.

From the perspectives of Big Rivers and its major creditors, our decisions should not reduce the cash flow reflected in Big Rivers' financial models, thus preserving Big Rivers' ability to meet its operating expenses and debt service payments. In addition, as a result of the resolution of the unforeseen cost issue, the margins that were projected to be earned on sales to the Smelters will now be guaranteed by LEM. Although we have denied the market power purchase option for large industrial customers, we have developed rates for this class which provide a reasonable rate reduction, generally between 7 to 12 percent based upon anticipated loads, without requiring the commitment to a five year contract. For the rural consumers, the rate reductions implemented in September 1997 will remain in effect. In addition, the resolution of the unforeseen cost issue should provide significant financial protections to the rural and large industrial customers from the risks of new regulatory, legal or environmental costs not associated with their load.

From the perspective of the Smelters, our decisions retain the fixed prices for Tier 1 and Tier 2 power which is critical to their ability to compete in the world-wide aluminum market. Although we have denied the Tier 3 market purchases for the Smelters' incremental power needs, our decision to allow LEM to supply the Smelters' Tier 1 and Tier 2 power provides an extra margin of reliability and allows Green River and Henderson Union to reduce their full-requirements relationship with Big Rivers. While we have rejected the Smelters' exemption from unforeseen costs and exit fees at the



distribution level, we have allowed such exemptions for any wholesale costs or fees attributable to Big Rivers. We truly believe that Big Rivers and the Smelters are vital to the economy of western Kentucky and their fortunes have been intertwined for many years. Even though our decisions today sever most of their existing ties, the Smelters' ability to purchase reasonably priced power at fixed costs from LEM is the result of the availability of valuable generating assets on the Big Rivers system.

Transaction Documentation Approval

The application, as filed on June 30, 1997, contained the supporting transaction documents which were incomplete or otherwise noted as being subject to further revision. Over the next five months, the Applicants filed revisions to the transaction documents and many were not finalized as of the November 1997 hearing. To accommodate the Applicants, the Commission established December 19, 1997 as the due date for final drafts of the documents and January 15, 1998 as the date to resolve the unforeseen cost issue.

Documents were not in final draft form by late December 1997. The Applicants subsequently requested, and the Commission granted, an extension to January 30, 1998 to resolve the unforeseen cost issue. On January 27, 1998, the Applicants and the Smelters filed a joint notice that the unforeseen cost issue had been resolved in principle, but not yet reduced to writing, and subsequently requested to indefinitely suspend the briefing schedule. The Commission, by Order dated January 29, 1998, denied the request, citing KRS 278.190(3) as limiting our rate jurisdiction to 10 months, which would expire on April 30, 1998.

A supplemental procedural schedule dated February 13, 1998 was adopted to investigate the unforeseen cost resolution and it established February 23, 1998 as the final date for all documents. The Applicants filed some documents by that date, but indicated that others were incomplete and would be filed later that week. The AG objected to this delay and, by Order dated February 26, 1998, the Commission extended the due date to February 27, 1998, but admonished the Applicants that any documents not filed by that date would not be considered in this case.

In contravention of the February 26, 1998 Order, the Applicants continued to file documents after the due date. Chase then objected, claiming a denial of due process, when the Applicants filed additional documents on March 19, 1998, after the supplemental public hearing.

The Commission well recognizes the importance of the pending transaction to Big Rivers' financial rehabilitation and the need to act as expeditiously as possible. However, the parties' due process rights must be respected and accommodated. In addition, the continual revisions to the transaction documents have frustrated the Commission's investigative efforts to the extent that we are no longer confident that the transaction contemplated by the Applicants is not materially different from the transaction reviewed at the March 18, 1998 hearing. Therefore, we will approve the transaction documents in principle as filed with the Commission on the due date of February 27, 1998.

To afford the parties and the Commission an opportunity to verify that no material changes have been made to the structure of the transaction, we will require the

Applicants to file as quickly as possible, but no later than May 29, 1998, final drafts of all transaction documents that have undergone any changes since February 27, 1998. The documents should be filed in a new docket with copies to all parties to this case. The scope of review will be limited to determining whether the final transaction documents have materially changed since those filed by February 27, 1998 and to review the changes necessitated by this Order. Each document filed should contain a clear identification of each change and be supported by a detailed explanation of the reason for the change. The review should take no more than 30 days and will include one round of discovery and an informal conference or hearing if necessary.

IT IS THEREFORE ORDERED that:

1. Based on the documents on file with the Commission as of February 27, 1998, the proposed transaction, as modified by the resolution of the unforeseen cost issue, is approved in principle, subject to the modifications contained in this Order.
2. The market power provision in the Smelters' Tier 3 rate and the Market Power Purchase option for certain Large Industrial Customers are hereby denied and the termination date on the Tier 3 fixed rate is rejected.
3. The rates for non-Smelter industrial customers are modified as discussed in this Order. The remaining rates proposed by Big Rivers and contained in the tariff draft bearing an issued date of February 23, 1998 are approved. All rates approved herein are effective for service rendered on and after the date of this Order.
4. The alternative rates proposed by the AG are hereby denied.
5. The alternative rate proposed by Willamette is hereby denied.

6. Provisions in the Smelters' tariffs and their contracts with the distribution cooperatives prohibiting rate adjustments to reflect costs or payments incurred by the distribution cooperatives for expenditures due to legislation, regulatory, or legal action are rejected.

7. Provisions in the Smelters' distribution cooperative contracts and tariffs exempting the Smelters from paying any stranded costs or exit fees relating to the distribution cooperatives are rejected.

8. The Applicants shall file, in a new case, the final drafts of the transaction documents supported by a clear identification of each change made and a detailed explanation of each change to the versions on file with the Commission as of February 27, 1998. The Applicants shall serve copies of all documents on the parties to this case, who shall be deemed parties to the new case.

9. The Transmission Service and Interconnection Agreement, and Big Rivers Open Access Transmission Tariff are approved in principle subject to review of the final drafts of the documents.

10. Evidences of indebtedness required of Big Rivers in conjunction with the transaction documents are approved in principle, subject to review of the final transaction documents.

11. The transfer of control of Big Rivers' generating units to WKEC and the transfer of the HMP&L Station Two facility obligations are hereby approved in principle, subject to review of the final version of the transaction documents.

12. Big Rivers' generating facilities are "eligible facilities" within the meaning of Section 32(a)(2) of PUHCA, subject to the closure of the transaction as contemplated by Big Rivers and the LG&E Parties.

13. Big Rivers shall file the accounting entries made to record the lease transaction within 10 days of entry into the books of Big Rivers.

14. The Wholesale Power Contracts between Big Rivers and the distribution cooperatives are approved in principle, subject to the revisions discussed in this Order and subject to the review of the final version of the contracts.

15. Big Rivers shall file a copy of the new depreciation study within 30 days of its completion and acceptance, and shall not implement any changes in depreciation rates recommended in that study until the Commission has reviewed the study.

16. Big Rivers shall not write down the book value of any generating station without prior Commission approval.

17. Within 30 days of the date of this Order, Big Rivers shall file its tariffs, reflecting all revisions and modifications as described in this Order.

18. Within 60 days of the transaction closing date, Big Rivers shall file a strategic plan for maximizing arbitrage sales.

19. Within 30 days of the date of this Order, Big Rivers shall file an interim sales plan, to be in effect until the strategic sales plan is implemented.

20. Within six months of the date of this Order, and every six months thereafter, Big Rivers shall file a report of arbitrage sales and Other Sales.

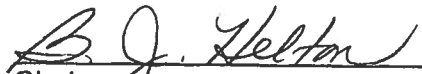
21. Big Rivers shall file a report, appended to its annual report, comparing its actual cash flows for the calendar year with the amounts included in the SUP-11 financial model filed in this proceeding. The report shall be based on lines 363 through 411 of SUP-11, and include explanations for any deviations from the SUP-11 amounts in excess of 10 percent.

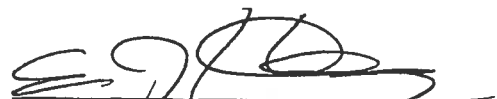
22. The reports required herein shall initially be submitted by Big Rivers subject to further modifications as deemed necessary by the Commission, to allow for the monitoring of Big Rivers' compliance with the transaction and the findings of this Order.

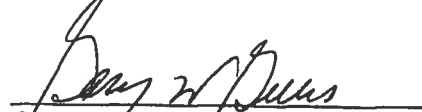
Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky, or any agency thereof, as to the securities authorized herein.

Done at Frankfort, Kentucky, this 30th day of April, 1998.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS )  
ELECTRIC CORPORATION, )  
LOUISVILLE GAS AND ELECTRIC )  
COMPANY, WESTERN KENTUCKY )  
ENERGY CORP., WESTERN )  
KENTUCKY LEASING CORP., ) CASE NO. 97-204  
AND LG&E STATION TWO INC. FOR )  
APPROVAL OF WHOLESALE RATE )  
ADJUSTMENT FOR BIG RIVERS )  
ELECTRIC CORPORATION AND FOR )  
APPROVAL OF TRANSACTION )

O R D E R

On April 30, 1998, the Commission issued an Order approving the immediate and permanent implementation of reduced rates for Big Rivers Electric Corporation ("Big Rivers") and approving, in principle, the lease of Big Rivers' generating units to a subsidiary of LG&E Energy Corp. ("LEC"). Six petitions requesting the Commission to rehear limited portions of that Order have been filed by the following parties: (1) Big Rivers; (2) Alcan Aluminum Corporation, Southwire Company, and NSA, Inc. ("The Smelters"); (3) Chase Manhattan Bank; (4) The Bank of New York; (5) the Attorney General's Office of Rate Intervention ("AG"); and (6) Green River Electric Corporation and Henderson Union Electric Cooperative Corporation ("The Co-ops").

Effective Date of Rates

In its original application, Big Rivers proposed reduced rates which were requested to become effective during the pendency of this case. In response to the request, the

Commission entered an Order on August 28, 1997 allowing the reduced rates to become effective on September 2, 1997. Those rates, hereinafter referred to as the "September 2 rates," were designated by the Commission to remain in effect only until it issued a final Order in this case, which occurred on April 30, 1998.

The rates subsequently approved by the Commission in its April 30, 1998 Order were designed to reflect the implementation of Big Rivers' proposed lease transaction with LEC and were designated to become effective immediately and permanently. Those rates, hereinafter referred to as the "transaction rates," differed in certain significant respects from the September 2 rates.

In their respective petitions, Big Rivers and the Smelters challenge the Commission's April 30, 1998 decision to make the transaction rates effective immediately and permanently. They contend that by making the transaction rates effective on April 30, 1998, the Commission inadvertently created legal and regulatory problems that will continue up until the closing of the Big Rivers lease transaction. These problems arise because under Big Rivers' reorganization plan as filed with the Bankruptcy Court, the September 2 rates were to remain in effect until closing of the Big Rivers lease transaction,<sup>1</sup> and only then were the transaction rates to become effective.

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<sup>1</sup> The Smelters raise the same issue in their petitions filed in: (1) Case No. 97-219, The Application of Green River Electric Corporation to Adjust Electric Rates; and (2) Case No. 97-200, The Application of Henderson Union Electric Cooperative Corporation to Adjust Electric Rates.



More specifically, the Smelters emphasize that the 0.5 mill per KWH included in the Tier 1 and Tier 2 transaction rates was designed to compensate LEC for assuming the additional risk associated with future unforeseen environmental, legislative, and regulatory costs and was to become effective only upon the closing of the Big Rivers lease transaction. In addition, Big Rivers points out that the transaction rates provide that the Smelters' load will be served by LEC, but that service cannot legally commence until the lease transaction closes. Thus, between April 30, 1998 and the closing of the lease transaction, there is a regulatory gap because Big Rivers must continue to serve the Smelters but it has no rates in effect to provide that service. Big Rivers also requests a delay in filing its Transaction Tariff until the time that such filing has been authorized by the Bankruptcy Court.

Chase Manhattan Bank and The Bank of New York ("the Banks") similarly request rehearing to change the effective date of the transaction rates to the date of the closing of the lease transaction. They also request the Commission to modify its April 30, 1998 Order to provide that the September 2 rates will remain in effect until closing of the lease transaction or August 31, 1998, whichever occurs first.

Based on the petitions for rehearing and being otherwise sufficiently advised, the Commission finds that its April 30, 1998 Order has inadvertently created a regulatory gap in the provision of electric service to customers of Big Rivers. Due to the provisions of the lease transaction and Big Rivers' reorganization plan, the transaction rates cannot become effective until the closing of the lease. Therefore, the Commission will grant rehearing and, since the record already supports these changes, will modify the April 30, 1998 Order to

provide that: 1) the rates that went into effect on September 2, 1997 should remain in effect until closing of the Big Rivers lease transaction or further Order by the Commission; and 2) the transaction rates approved by the April 30, 1998 Order should become effective the day after Big Rivers closes its lease transaction. In addition, the Commission finds good cause to allow Big Rivers to delay filing its Transaction Tariff until its lease transaction is closed.

The Commission further finds that the Banks' request to automatically terminate the September 2 rates on August 31, 1998 raises an issue that warrants additional review. For example, Big Rivers has already indicated a willingness to continue charging the September 2 rates until September 1, 1999 (Big Rivers Petition For Rehearing, p. 3, fn. 1) and the Banks have not suggested what rates should be charged after August 31, 1998 if the lease transaction has not closed. Thus, all parties should have an opportunity to address this issue on rehearing.

#### Reasonableness Of Rates

The AG challenges on three grounds the reasonableness of the transaction rates approved by the April 30, 1998 Order. The first is the absence of a specific finding in that Order that the rates approved therein are "fair, just, and reasonable," and the lack of any findings therein to support such a conclusion. The second is whether it is unduly discriminatory to afford the Smelters rates that are fixed for a term of years while other customers are afforded rates that might change over time. The third is whether it is unduly discriminatory to afford the Smelters firm power without an added demand charge for power classified as Tier 2 and, until January 1, 2001, Tier 3.

The omission of a finding that the transaction rates are fair, just, and reasonable was an inadvertent oversight. Contrary to the AG's assertions, the transaction rates are not unduly discriminatory when considered in conjunction with those factors that are critical to the success of Big Rivers' proposed lease transaction. The purpose of that transaction is to allow Big Rivers to emerge from bankruptcy, no longer be financially burdened by unsold generating capacity, and provide all its customers an immediate rate reduction.

The complexity of both Big Rivers' reorganization plan as proposed to the Bankruptcy Court, and the elimination of the Smelters' proposed exemption from future unforeseen costs, influences the entire analysis of Big Rivers' proposed rates and their reasonableness. Given all the many factors that must be considered in reviewing the rates proposed by Big Rivers in this proceeding, there is no question that the transaction rates approved on April 30, 1998 are fair, just, and reasonable. First, there are obvious and distinct differences between the Smelters and all other customers of Big Rivers. The size of the Smelters' total load and Big Rivers' reliance on the Smelters for system revenues are distinguishing factors. The Smelters' total load accounts for three-fourths of Big Rivers' system load and historically the Smelters have contributed two-thirds of the system's revenues.<sup>2</sup> By operating 24 hours per day, 365 days per year, at almost 100 percent load factors, the Smelters' loads are unique in their operating characteristics and the margins on those sales are of critical importance to the financial restructuring of Big Rivers. The

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<sup>2</sup> Although LEC rather than Big Rivers will provide the wholesale power for the Smelters' after closing the lease transaction, there will be a concomitant reduction in Big Rivers' power supply with an LEC guarantee of the Smelters' margins.

energy-intensive, cost-sensitive nature of the aluminum smelting industry, which has frequently pitted the Smelters' financial viability against that of Big Rivers, also makes the Smelters unique among Big Rivers' customers.

All of these factors have led the Smelters to seize every available opportunity to reduce their loads as permitted under their contracts with Big Rivers in an effort to reduce their costs of operation. Absent fixed rates for a term of years, there is a very high probability that the Smelters would continue to exercise their contractual rights to further reduce their loads, resulting in further negative impacts on Big Rivers and all non-smelter customers, as well as the economy of Western Kentucky in general. In return for the fixed Tier 1 and Tier 2 rates during the term of their contracts, the Smelters relinquished their rights to continually reduce their loads. By eliminating future Smelter load reductions, Big Rivers was able to demonstrate to its creditors an assured future stream of margins, which was critical to a consensual debt restructuring.

Taking all these factors into consideration, in light of the overall benefits of the lease transaction and the elimination of the Smelters' exemption from future unforeseen costs, the Commission determined the transaction rates to be fair, just, and reasonable. The transaction rates, in combination with the projected revenues from non-member sales, will allow Big Rivers to pay its reasonable expenses, service its debt and allow it to regain its financial integrity.

Similarly, the Smelters' rates for power under Tier 2 and, until January 1, 2001, Tier 3 must be viewed as part of an overall resolution of Big Rivers' significant financial problems and the many factors enumerated above. The fact that the proposed rates were

based largely on negotiations by certain parties to the bankruptcy proceeding, with the actual cost support prepared after the fact, is of no consequence. The cost support does show that, overall, under the lease transaction, the total revenue stream generated from all rates will be adequate to cover Big Rivers' costs. While each individual component of each rate may not precisely match to an individual component of Big Rivers' costs, all costs will be adequately covered.

There is no merit to the AG's claim of rate discrimination by omitting a separately stated demand charge from the Smelters' rates for Tier 2 and pre-2001 Tier 3 power. This claim arises under the AG's proposed cost-of-service study, which the Commission rejected as flawed in the April 30, 1998 Order. The record clearly demonstrates that while this power is priced at energy only rates, those rates exceed variable cost and provide a contribution to fixed costs. It is significant to note that the Smelters' Tier 1 power is also priced at an energy only rate but the AG raises no objection to that rate. Overall, the transaction rates are based on Big Rivers' cost of service and the AG's attempt to single out for individual analysis the Tier 2 and pre-2001 Tier 3 rates is inappropriate.

The rates proposed in this case by Big Rivers cannot be viewed in a vacuum. It must be remembered that Big Rivers has been experiencing serious financial problems since completion of its Wilson Generating Plant in 1984. Big Rivers' rates have not been based on traditional cost-of-service principles since that time due to cost deferrals and the need to produce revenues from off-system sales. For all these reasons we find no undue discrimination in the structure of the Tier 2 and pre-2001 Tier 3 rates. Rehearing is denied on the issues raised by the AG.

### Fixed Rate For Post-2000 Tier 3 Power

The Co-ops object to our elimination of a January 1, 2001 termination date for the Smelters' Tier 3 fixed rates. Under Big Rivers' application as modified, Tier 3 power after the year 2000 would be available at market rates which could vary frequently. Our decision to reject the termination date does not mean that the Co-ops must continue to supply Tier 3 power at the tariffed rate if it is uneconomical to do so at that rate. The Commission's intent was for the Tier 3 rate to remain fixed only until it is changed by a tariff filing or rate application.

After the year 2000, either Co-op can file on an as needed basis to change the Tier 3 rate to track its wholesale power costs. The Commission did not view this as an unjust or unreasonable burden for either affected Co-op. It has always been their responsibility to secure an adequate supply of power to satisfy the load requirements of their member-customers. In the past, the Co-ops have fulfilled this responsibility primarily through a full-requirements contract with a single wholesale power supplier. However, the structure of the electric industry is undergoing significant change and there are now many competitors in the wholesale power markets. The Co-ops have agreed to modify their full requirements contracts with Big Rivers to allow LEC to supply the wholesale power for the Smelters' under Tier 1, Tier 2, and, until January 1, 2001, Tier 3. To the extent additional power sources are needed for the Smelters under Tier 3 after the year 2000, the Co-ops should be responsible for securing those sources. However, the Commission recognizes that our April 30, 1998 Order may have created some confusion regarding the pricing for Tier 3 power after the year 2000. Therefore, we will grant the Co-ops' request for rehearing.

IT IS THEREFORE ORDERED that:

1. Rehearing is granted on the petitions of Big Rivers, the Smelters and the Banks to the extent that the April 30, 1998 Order is modified to allow Big Rivers to continue charging the September 2 rates until the closing of the lease transaction or further Order by the Commission, and Big Rivers is granted a delay in the filing of its Transaction Tariff until the date of closing.

2. The transaction rates approved by the April 30, 1998 Order are fair, just, and reasonable rates to become effective one day after the closing of the lease transaction.

3. Rehearing is granted to the Banks on the issue of whether the September 2 rates should automatically terminate after August 31, 1998 if the lease transaction has not closed by that date.

4. The AG's petition for rehearing is granted to the extent that the April 30, 1998 Order is modified to include the discussion herein on the basis for finding that the transaction rates are fair, just and reasonable. All other rehearing issues raised by the AG are denied.

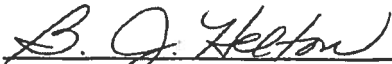
5. Rehearing is granted to the Co-ops on the issue of pricing power for the Smelters under Tier 3 after the year 2000.

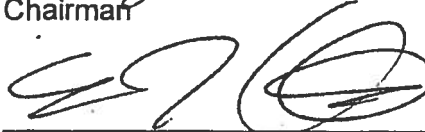
6. All provisions of the April 30, 1998 Order not modified herein shall remain in full force and effect.

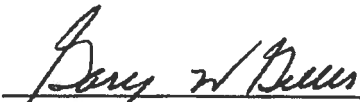
7. Within 20 days of the date of this Order, the parties shall file proposed procedural schedules for the rehearing phase of this case.

Done at Frankfort, Kentucky, this 11th day of June, 1998.

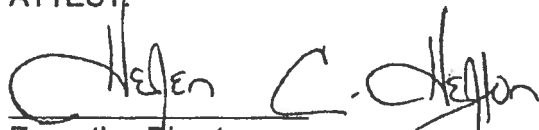
PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS )  
ELECTRIC CORPORATION FOR APPROVAL )  
OF THE 1998 AMENDMENTS TO STATION )  
TWO CONTRACTS BETWEEN BIG RIVERS ) CASE NO. 98-267  
ELECTRIC CORPORATION AND THE CITY )  
OF HENDERSON, KENTUCKY AND THE )  
UTILITY COMMISSION OF THE CITY OF )  
HENDERSON )

O R D E R

By Order dated April 30, 1998 in Case No. 97-204,<sup>1</sup> the Commission approved new rates for Big Rivers Electric Corporation ("Big Rivers"), and approved in principle a 25 year lease of its generating units to a subsidiary of LG&E Energy Corp. The Commission's decision was based on the transaction as reflected in the documents filed as of February 27, 1998. However, since many of the documents were revised after that date, the Commission directed that the final drafts of all jurisdictional documents be submitted in this case for a determination of whether material changes have been made to the structure of the transaction.

This case was established on May 15, 1998 when Big Rivers filed the 1998 Amendments to Station Two Contracts which relate to its operation of the City of Henderson's Station Two Generating Plant. Over the next 45 days, Big Rivers filed the

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<sup>1</sup> The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. For Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and For Approval of Transaction.

final drafts of all transaction documents. A procedural schedule was entered providing all parties an opportunity to engage in discovery and a public hearing was held on July 6, 1998.

The Commission notes at the outset that this is anything but a routine review of documents relating to a rate adjustment and asset lease. Big Rivers is a debtor in possession under Chapter 11 of the United States Bankruptcy Code. The documents under review are essential and critical components of Big Rivers' plan of reorganization as approved by the Bankruptcy Court on June 1, 1998. All of the parties to Case No. 97-204 were made parties to this case. Most of them participated to some extent in this case, but no party objected to any of the documents under review herein. The absence of any objection, however, does not diminish the Commission's obligation to ensure that there have been no material changes in the transaction. This obligation takes on greater importance here since the term of the lease is 25 years and the power contracts have terms that extend up to 25 years.

Based on a comprehensive analysis of the final drafts of the transaction documents, the Commission finds that there have been several material changes made to the structure of the lease transaction. The most current economic analysis of the lease transaction, filed by Big Rivers on July 7, 1998 and identified as PSC2-38R, has been compared to the one identified as SUP-11, which formed the basis for our conditional approval in Case No. 97-204. To the extent the transaction has undergone a material change, it is discussed herein.

### Transmission Service for Smelter Loads

The documents on file with the Commission as of February 27, 1998 provided as follows with respect to the Smelters' transmission service:

- 1) Green River Electric Corporation ("Green River") and Henderson Union Electric Cooperative Corp. ("Henderson Union") would arrange for and reserve transmission on Big Rivers' transmission system for Tier 1 Energy, Tier 2 Energy, and Tier 3 Energy purchased from LG&E Energy Marketing Inc. ("LEM") for resale to Southwire Company ("Southwire") and Alcan Aluminum Corporation ("Alcan").<sup>2</sup>
- 2) Transmission services were to be provided at Big Rivers' Open Access Transmission Tariff ("OATT") rates.<sup>3</sup>
- 3) Green River and Henderson Union were responsible for all transmission costs and were entitled to a transmission credit against the total payments owed to LEM. The credit equaled the amount the cooperative paid to Big Rivers for the transmission of Tier 1 Energy, Tier 2 Energy, Tier 3 Interruptible Energy, and Tier 3 Backup Energy.<sup>4</sup>
- 4) LEM would pay to the RUS, on behalf of Big Rivers, a monthly smelter margin payment ("monthly margin payments"), which reflected the net

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<sup>2</sup> See Case No. 97-204, Document filing of February 23, 1998, Volume III, Tabs 15 and 16, at 8-12. The reference is to the Amendments to the Wholesale Power Agreements between Big Rivers and Green River and Big Rivers and Henderson Union, Paragraphs 3 and 4.

<sup>3</sup> Id. at 11.

<sup>4</sup> See Case No. 97-204, Documents filed February 27, 1998, the Agreements between Henderson Union and LEM and Green River and LEM, Schedule A, part g.

smelter margins originally included in Big Rivers' financial model. The monthly margin payments would remain fixed regardless of the amount of power actually supplied by LEM to the Smelters and the payments specifically excluded any transmission service revenues.<sup>5</sup>

Big Rivers, the LG&E Parties, and the Smelters had strongly stressed the significance of the guaranteed monthly margin payments and the significant benefit this arrangement represented to Big Rivers.<sup>6</sup> The Commission accepted this argument, noting in the April 30, 1998 Order that the guarantee of the smelter margins was an improvement to the overall transaction, which the Commission approved in principle.

The changes made to the transaction documents reviewed in Case No. 97-204 include the following relating to transmission service for the Smelters' load:

- 1) LEM will arrange for and reserve transmission on Big Rivers' transmission system for Tier 1 Energy, Tier 2 Energy, and Tier 3 Energy. LEM will continue to provide Green River and Henderson Union with the energy resold to the Smelters, with the types and amounts of transmission reserved by LEM for these sales being referred to as Member Transmission.<sup>7</sup>

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<sup>5</sup> See Case No. 97-204, Supplemental Testimony of A. J. Robison, Stephen Schaefer, and Mark A. Hite, at 4, 5, and 8.

<sup>6</sup> See Case No. 97-204, Transcript of Evidence, Volume VI, March 18, 1998, at 11-12, 15, and 48; Big Rivers Supplemental Initial Brief at 14-16; LG&E Parties Initial Brief Addressing Future Unforeseen Cost Issue at 3; Alcan and Southwire Supplemental Brief on Unforeseen Cost Resolution at 4-5.

<sup>7</sup> Document filing of May 29, 1998, Volume II, Tab 8, at 19-25. The reference is to the Transmission Service and Interconnection Agreement, Sections 6.5.1. and 6.5.2.

- 2) LEM will continue to pay the monthly margin payments to the RUS on behalf of Big Rivers. However, these payments have been revised to include the revenue for smelter transmission service, which was originally shown separately in the Big Rivers financial model.<sup>8</sup>
- 3) As long as the full monthly margin payments are made pursuant to the terms of the transaction agreements, Big Rivers will deem the full cost of the Member Transmission to have been paid at the then applicable OATT rate as part of the monthly margin payments. Consequently, LEM's cumulative cost for Member Transmission charged by Big Rivers will never exceed the cumulative amount of the monthly margin payments.<sup>9</sup>

The impact of these changes on Big Rivers is that if its OATT transmission rate increases, it will no longer recover the full smelter margin payments and its cost of transmission service. The margin payments are now to be reduced by any increase in transmission rates above the levels agreed to by the Smelters.

Big Rivers contends that it had always borne the economic risk of future changes in transmission costs as applied to the fixed wholesale power rates for service to the Smelters for which the monthly margin payments are to be received. Big Rivers argues that the designation of a portion of the monthly margin payments as a transmission payment at OATT rates in no way changes the economic positions of Big Rivers and the

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<sup>8</sup> Response to the Commission's June 12, 1998 Order, Item 7, page 37 of 81.

<sup>9</sup> Document filing of May 29, 1998, Volume II, Tab 8, at 22-23.

LG&E Parties, but merely provides Big Rivers with the same economic risk regarding transmission which it has always had.<sup>10</sup>

The significant changes to the smelter transmission arrangements presented by Big Rivers and the LG&E Parties have affected the Commission's evaluation of the overall lease transaction. The documents upon which the Commission based its April 30, 1998 approval in principle stated that smelter transmission service would be obtained at OATT rates. At that time, the monthly margin payments excluded transmission service revenues, making it impossible to adjust the payments for transmission cost changes. The revisions proposed in this proceeding allow the smelter margins modeled by Big Rivers to be used to offset any shortfall in transmission revenues resulting from the actual OATT rates exceeding the transmission rates agreed to by the Smelters. In the event of such a shortfall in transmission revenue, the proposed revisions to the smelter transmission service will result in lower overall revenues to Big Rivers and expose its non-smelter customers to potential rate increases.

Big Rivers contends that it has always borne this economic risk, and that the proposed revisions do not change the arrangement that was part of the unforeseen cost resolution. The documents on file with the Commission as of February 27, 1998 do not support this position. Based on those documents, Green River and Henderson Union had the initial risk of fluctuations in OATT rates for the smelter load transmission service; however, the transmission credit appeared to shift this risk to LEM. The revisions proposed in this proceeding now shift that risk back to Big Rivers.

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<sup>10</sup> Response to the Commission's June 12, 1998 Order, Item 13(c), page 7 of 10.

Big Rivers has contended that it does not expect its transmission rates, as modeled in its financial model,<sup>11</sup> to change during the terms of the Smelters' contracts. Big Rivers claims that it is just as likely that its transmission rates will decrease as increase, but has offered no analysis or study to support its claim.

The Commission finds it likely, however, that for Big Rivers to improve its ability to make arbitrage sales, it may have to join an Independent System Operator ("ISO") to eliminate transmission rate pancaking. In the event the transmission rates established for the ISO are higher than Big Rivers' OATT, under the proposed revision, Big Rivers is faced with a no win situation. If it does not join an ISO, its ability to make critical arbitrage sales could be restricted. If it does join, it would incur additional costs for transmitting power to the Smelters, but would be unable to recover those costs from LEM or the Smelters. Big Rivers' inability to recover these costs would put pressure on its overall financial condition, and could eventually result in higher rates for its remaining customers.

Having considered all of the factors discussed herein, the Commission will accept the designation of LEM, rather than Green River and Henderson Union, as the party responsible for arranging and reserving transmission service with Big Rivers. The Commission also accepts the inclusion of the transmission revenues from the Smelters, as shown in Big Rivers' financial model, in the monthly margin payments. However, the

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<sup>11</sup> The latest update of Big Rivers' financial model, identified as PSC2-38R, shows transmission rates through 2006 at \$.98/KW/month. In 2007, the rate for network transmission appears to increase to \$1.02/KW/month while non-firm point-to-point transmission is priced at \$1.04/KW/month. In the year immediately after the Smelter contracts are scheduled to expire, all transmission is shown at the \$1.04/KW/month rate.

Commission finds unreasonable the provision that allows increases in the OATT rates charged to LEM, except as modeled originally by Big Rivers, to be offset by the remaining portion of the monthly margin payment. That portion of the monthly margin payment reflecting the modeled net smelter margins exclusive of transmission revenues should remain as described in the documents on file with the Commission as of February 27, 1998.

In determining an equitable methodology for the recovery of unforeseen increases in transmission costs due to the Smelters' load, the Commission will be guided by the unforeseen cost resolution previously negotiated by the parties to the transaction. Under this approach, for any increase in Big Rivers' OATT rate in excess of that included in its financial model, 50 percent of the excess will be charged to LEM as part of its transmission costs. The bundled rates charged by LEM to Green River and Henderson Union will be equally adjusted. Consequently, the bundled rates charged by Green River and Henderson Union to Southwire and Alcan, respectively, will be adjusted to reflect the 50 percent of the increase in transmission costs. In the event that Big Rivers' OATT rate falls below the transmission rate included in its financial model, the rates charged to LEM, Green River, Henderson Union, Southwire, and Alcan will not be reduced. Any revenues in excess of the OATT rates should be retained by Big Rivers as an offset to the \$1.85 million payment it makes each year as its 50 percent contribution to resolve the Smelters' indemnification for future unforeseen costs.

Agreement for Electric Service to Commonwealth Industries, Inc.

One of the documents filed in this proceeding was a draft of a new Agreement for Retail Electric Service ("Agreement") between Green River and Commonwealth



Industries, Inc. ("Commonwealth"). As a preliminary matter, the Commission notes that filing of this Agreement was not anticipated. There was no indication by any party in Case No. 97-204 that the agreement for service to Commonwealth would be subject to any additional negotiations or revisions. Apparently, one or both of the parties to the Agreement were dissatisfied with the Commission's April 30, 1998 Order in Case No. 97-204, and seized the opportunity presented by this instant case to submit a revised contract for electric service. Although the Agreement is not within the intended scope of this case, in the interest of administrative efficiency we will consider the merits of the Agreement.

This Agreement, when compared to one reviewed in Case No. 97-204, contains several changes which tend to favor the interests of Commonwealth over those of Green River and its wholesale power supplier, Big Rivers. The most significant of these changes is the establishment of two primary levels of power and billing for service to Commonwealth: (1) Peaking Power - defined as power and associated energy taken at 35,000 KW and above at a load factor of 10 percent or less, up to a maximum of 5,000 KW; and (2) all other power ("non-peaking power") and associated energy, taken at 35,000 KW and below.

Under its previous agreement, Commonwealth was required to take-or-pay for the full \$10.15 demand charge applied to its contract demand of 40,000 KW, regardless of its actual demand level. Under the proposed Agreement, Commonwealth's non-peaking demand will be capped at a maximum of 35,000 KW to which the \$10.15 demand charge will be applied. All energy taken up to the 35,000 KW level will be billed at Big Rivers' wholesale energy rate plus a retail energy adder of \$.0003 per KWH. For

the Peaking Power, all demand in excess of 35,000 KW would incur no demand charge, but would be billed a "peaking energy charge of \$0.075" per KWH plus the retail adder previously mentioned.

Commonwealth contends that, compared to its previous agreement, this Peaking Power provision provides it with the proper financial incentive to manage its operation processes to eliminate the short term surges in power consumption that occur on its system from time to time. These surges in consumption cause its billing demand to spike above its 35,000 KW contract demand.<sup>12</sup> Commonwealth also argues that the pricing terms included in the proposed Agreement will produce a revenue level closer to the level envisioned in the Commission's April 30, 1998 Order in Case No. 97-204. Commonwealth makes these assertions based on its historic demand and energy billing units for calendar years 1996-1997.

Based on a review of the merits of the proposed Agreement, the Commission finds that it should be rejected. None of the proponents of the Agreement have shown good cause to justify granting Commonwealth terms or prices for electric service that are more favorable than those available to others within the same customer class, i.e. non-smelter industrial customers served from dedicated delivery points. A demand charge of \$10.15 for each KW in excess 35,000 KW will provide Commonwealth with a far greater financial incentive to avoid surges in consumption than will the proposed Peaking Power energy rate.

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<sup>12</sup> In Case No. 97-204, Big Rivers modeled a continuous demand level of 35,000 KW for Commonwealth throughout the 25-year planning horizon without recognizing any "needle peaks" or "spike demands" in excess of 35,000 KW.

Particularly unpersuasive are Commonwealth's arguments regarding its annual electric bill as calculated under: 1) the rates proposed by Big Rivers in Case No. 97-204; 2) the rates approved by the Commission in Case No. 97-204; and 3) the rates under this proposed Agreement. Commonwealth's Exhibit 2, which is intended to be an analysis of its annual electric bill and the corresponding level of revenues flowing to Big Rivers, is misleading. The Commission did not design rates for only the 1996 normalized test year, as implied in this exhibit. The billing units in Commonwealth's Exhibit 2 do not correspond to those included in the Big Rivers' financial model which the Commission utilized to develop rates for Commonwealth and all other members of its class for the entire 25-year term of the lease transaction.

Commonwealth has calculated its annual electric bill to be higher than what it might have expected because it utilized a demand level consistently higher than the 35,000 KW included in Big Rivers' model. Had Commonwealth utilized its expected demand level of 35,000 KW, its calculation of revenues would have been less by \$487,200 per year.<sup>13</sup>

Customers' electric bills and the corresponding level of utility revenues are affected by both the rates and the customers' usage. It would be pure coincidence if Commonwealth or any other customer consumed power at levels identical to those in the normalized historic test year or the 25-year forecast. Commonwealth cannot reasonably expect to receive special treatment merely because it now asserts that its consumption levels will differ from those incorporated into the Big Rivers' model.

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<sup>13</sup> (468,000 KW \* \$10.15) = \$4,750,200  
less: (420,000 KW \* \$10.15) = \$4,263,000 equals \$487,200.

### Capital Budgets

On April 6, 1998, Big Rivers and the LG&E Parties executed a document entitled "New Participation Agreement," which replaced the original Participation Agreement and the Amended and Restated Participation Agreement contemplated by the lease transaction. This New Participation Agreement reflected changes in the transaction documents related to the resolution of the unforeseen cost issue, as well as clarifications of the parties' intent and the correction of errors.<sup>14</sup> On June 10, 1998, Big Rivers and the LG&E Parties filed a document entitled "Second Amendment to the New Participation Agreement" ("Second Amendment"). The Second Amendment reflected numerous clarifications and corrections to the majority of the lease transaction documents, reflected the decisions announced in the Commission's April 30, 1998 Order, and resolved uncertainties related to environmental issues. In addition, the Second Amendment addressed and resolved differences of opinion between Big Rivers and the LG&E Parties concerning the appropriate composition of the annual capital budget.<sup>15</sup>

Subsequent to filing the documents in February 1998 to resolve the unforeseen cost issue, Big Rivers and the LG&E Parties discovered there were significant differences between the amounts each party projected for the annual capital budgets for Big Rivers' generating plants. At that time, there was no upper limit on Big Rivers' exposure for non-incremental capital costs, which were reflected in the annual capital budget. Thus, the annual capital budget levels represented a major area of uncertainty

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<sup>14</sup> Response to the Commission's June 12, 1998 Order, Item 7, page 5 of 81.

<sup>15</sup> Id., pages 13 through 22 of 81.

in Big Rivers' financial modeling. As reflected in the Second Amendment, the LG&E Parties agreed to limit Big Rivers' exposure to unlimited increases in the annual capital budgets. Big Rivers had originally projected non-incremental capital costs to be \$83.8 million over the life of the lease transaction. The Second Amendment capped this total exposure at \$147.7 million, an increase of \$63.9 million over the transaction term.<sup>16</sup>

While the Commission can appreciate Big Rivers' desire to limit its exposure to increases in the capital budgets, the impacts of incurring an additional \$63.9 million in costs on Big Rivers' financial model should be considered. Big Rivers was requested to provide an update of the SUP-11 version of its financial model that reflected the lease transaction as described in the documents filed in this case. The ending cash balance at the end of the lease term was shown in SUP-11 as \$171.8 million.<sup>17</sup> The updated financial model, PSC2-38R,<sup>18</sup> showed that the ending cash balance at the end of the lease term was \$24.8 million.<sup>19</sup> The difference between the SUP-11 and PSC2-38R versions of the financial model reflected numerous revisions to the financial model,

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<sup>16</sup> Response to the Attorney General's First Information Request, Item 4, pages 2 and 3 of 5.

<sup>17</sup> See Case No. 97-204, Supplemental Testimony of A. J. Robison, Stephen Schaefer, and Mark A. Hite, Supplemental Exhibit 11, Printout of File SUP11.WK4, Year 2022, Line 404.

<sup>18</sup> Big Rivers had originally filed an updated financial model, PSC2-38, in its response to the Commission's June 23, 1998 Order, Item 38. However, at the public hearing on July 6, 1998, Big Rivers indicated that it had discovered some errors in that filing and submitted the revised financial model, PSC2-38R, as Big Rivers Cross-Examination Exhibit No. 2.

<sup>19</sup> Big Rivers Cross-Examination Exhibit No. 2, File PSC2-38R.WK4, Year 2022, Line 326.

including the additional \$63.9 million in non-incremental capital costs provided by the terms of the Second Amendment.

The Commission finds that the modifications to the annual capital budgets required by the Second Amendment are reasonable and should be approved. However, this and other modifications contained in Big Rivers' financial model heighten concerns about Big Rivers' financial condition during the later years of the lease. In the April 30, 1998 Order, the Commission required Big Rivers to file a supplemental annual report comparing its actual cash flows for the calendar year with the amounts included in the SUP-11 financial model. The report was to be based on lines 363 through 411 of SUP-11, and include explanations for any deviations from the SUP-11 amounts in excess of 10 percent. The Commission will continue this requirement, but will substitute the updated financial model PSC2-38R for SUP-11, with the report now based on lines 285 through 333 of PSC2-38R. In addition, to better monitor Big Rivers' financial condition over the term of the lease transaction, Big Rivers will be required to submit with its annual report an updated version of its financial model.<sup>20</sup> The updated financial model will cover the period beginning with the current annual report year and ending with the last year of the lease transaction. All changes in assumptions and variables from one year to the next should be explained in detail.

#### Revolving Credit Agreement

On June 26, 1998, Big Rivers filed a copy of a revolving credit agreement ("Credit Agreement") it has entered into with the National Rural Utilities Cooperative

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<sup>20</sup> One hard copy of the updated financial model and one computer disc version should be provided.

Finance Corporation ("CFC"). Under the terms of the Credit Agreement, CFC will provide Big Rivers a maximum aggregate principle amount outstanding of \$15 million. For each 12-month period the Credit Agreement is in effect, Big Rivers will be required to reduce to zero all amounts outstanding for at least five consecutive business days, with the first reduction due within 360 days of the first advance. The term of the Credit Agreement is 5 years. Big Rivers believes that the CFC Credit Agreement does not require Commission approval.

The Commission's jurisdiction to approve evidences of indebtedness is set forth in KRS 278.300. Specifically excluded from that jurisdiction under KRS 278.300(8) is the approval of notes payable at periods of not more than 2 years from the date issued and renewable for not more than a total of 6 years. The Commission finds that the terms of the CFC Credit Agreement fall within this exemption and, therefore, we agree with Big Rivers that no Commission approval is needed.

#### Smelters' Tier 3 Service Contracts

The proposed power contracts between Green River, Henderson Union, and the Smelters contain specific provisions concerning contracts for Tier 3 service from third-party power suppliers. When seeking Commission approval to make a sale of Tier 3 power to the Smelters, Green River and Henderson Union are contractually obligated to request that such approval be effective 20 days from the date of notice.<sup>21</sup> However, KRS 278.180(1) requires a minimum of 30 days notice prior to changing a rate, unless good cause is shown to shorten the notice period to 20 days. Green River and

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<sup>21</sup> See Agreement for Electric Service between Alcan and Henderson Union and Agreement for Electric Service between Southwire and Green River, Section 9.2.

Henderson Union have indicated that the parties would accept a revision to the power agreements that reflects the 30-day statutory requirement.<sup>22</sup>

The Commission finds that the power agreements between Green River, Henderson Union, and the Smelters should be revised to reflect the 30-day notice provision set forth in KRS 278.180(1). Including this notice in the power agreements will not prevent any of the parties to those agreements from requesting a shorter notice period on a case-by-case basis when a Tier 3 service contract is filed.

Promissory Note for LEM Advances

Big Rivers has requested that the Commission approve the promissory note associated with the LEM advances, noting that such approval was omitted from the April 30, 1998 Order in Case No. 97-204. While we believe that note to have been implicitly approved by that Order, the Commission now explicitly finds that the promissory note for the LEM advances is for a lawful object within Big Rivers' corporate purpose, is necessary and appropriate for the proper performance of its wholesale electric service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

1998 Amendments to the Station Two Contracts

Big Rivers has requested that the Commission approve the 1998 Amendments to the Station Two Contracts, which were filed with the Commission on May 15, 1998. The Commission finds that these documents are reasonable and should be approved.

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<sup>22</sup> Response to the Commission's June 23, 1998 Order, Item 20.



### Green River Wholesale Contract Amendment, Schedule 1

On June 6, 1998, Big Rivers submitted a substitute Schedule 1 to its wholesale power agreement with Green River. The substitute Schedule 1 reflects the inclusion of the proposed new service agreement between Green River and Commonwealth. Based on the decision herein to reject the new Commonwealth agreement, the Commission rejects the substitute Schedule 1 to the wholesale power agreement.

### Standby Bond Purchase Agreements

On June 24, 1998, Big Rivers filed Standby Bond Purchase Agreements ("Standby Agreements") related to its 1983 and 1985 Pollution Control Bonds ("1983 and 1985 Bonds") and Credit Suisse First Boston, the new provider of letters of credit for those bonds. The Standby Agreements were required as part of the rating agencies' evaluation of the 1983 and 1985 Bonds. Big Rivers requested that the Commission permit the late filing of the Standby Agreements in this case.

As the Standby Agreements are an integral part of the overall financial restructuring of Big Rivers' obligations, the Commission will permit the late filing and hereby approves the Standby Agreements as part of all other financial agreements presented in this proceeding.

### Confidentiality Petition for Marketing Plan

As part of its April 30, 1998 Order in Case No. 97-204, the Commission required Big Rivers to file an interim sales plan which would address how Big Rivers planned to pursue arbitrage sales opportunities until the lease transaction closed. On May 29, 1998, Big Rivers filed its Interim Sales Plan and a petition for confidential treatment of that document. On June 18, 1998, Alcan and Southwire responded to the petition,

requesting a modification to the petition that would permit all parties to Case No. 97-204 who have executed appropriate confidentiality agreements to obtain copies of the Interim Sales Plan. On June 23, 1998, Big Rivers filed its reply to the Smelters' response, expressing its opposition to the request. At the July 6, 1998 public hearing, Big Rivers requested that the Commission include a ruling on the petition for confidential treatment in its Order in this proceeding.

The Commission finds that it is not appropriate to rule on Big Rivers' petition for confidentiality or the Smelters' request for access in this proceeding. The Interim Sales Plan was filed in Case No. 97-204, and the petition and request will be adjudicated in that case. In addition, the Commission finds no reason to modify its normal procedures for the processing of requests for confidentiality.

#### Distribution Cooperative Tariff

Green River and Henderson Union have submitted proposed Smelter tariffs to the Commission for approval. The proposed tariffs incorporate both the agreements for electric service between the cooperatives and the respective Smelters and Schedule A of those agreements, which details the terms and rates for Smelter service. Alcan and Southwire have notified the Commission of their opposition to incorporating the agreements for electric service into the tariffs, contending that the proposed tariffs only need to incorporate Schedule A. At the July 6, 1998 hearing the Smelters identified this disagreement as an issue for the Commission to address in this Order.

The Commission finds that there has been no evidence offered by the Smelters to justify the exclusion of the agreements for electric service from the smelter tariffs as filed with the Commission. Consequently, the Commission will not require Green River

or Henderson Union to remove the language incorporating the agreements for electric service from the proposed tariffs.

#### Jurisdiction over OATT

On July 1, 1998, Big Rivers, Alcan, Green River, Henderson Union, and Southwire filed a joint motion requesting that the Commission assert jurisdiction over Big Rivers' OATT to the extent that the Federal Energy Regulatory Commission ("FERC") does not assert jurisdiction over the OATT. The July 1, 1998 motion notes that Big Rivers' status as a generation and transmission cooperative, combined with the limited jurisdiction of FERC over such entities, creates a "regulatory gap" in jurisdiction over many provisions of the OATT. The parties to the July 1, 1998 motion request that the Commission fill this regulatory gap by asserting jurisdiction, subject to five specific limitations enumerated in the motion.

Big Rivers was formed pursuant to the requirements of KRS Chapter 279. KRS 279.210 provides that every corporation formed under that chapter shall be subject to the general supervision of the Commission and shall be subject to all the provisions of KRS 278.010 to 278.450 inclusive, and KRS 278.990. Therefore, to the extent that FERC has not asserted jurisdiction over Big Rivers' OATT, the Commission will do so, in accordance with KRS Chapters 278 and 279. However, the Commission will assert this jurisdiction without the specific limitations referenced in the July 1, 1998 motion, as the applicants have not demonstrated why the expression of such limitations are necessary or reasonable.

### Fuel Adjustment Clause Cases

Big Rivers has requested that, concurrent with our decision in this case, all pending fuel adjustment clause ("FAC") cases be dismissed. Motions to dismiss are currently pending in each of those FAC cases. While the FAC cases have not been consolidated with the instant case, the Commission recognizes their importance to the closing of Big Rivers' lease transaction. Therefore, Orders will be issued in the near future holding in abeyance those FAC cases that have been remanded to the Commission and that are not directly affected by the Franklin Circuit Court Order of June 29, 1998 in Civil Action No. 94-CI-01184. Those cases will be closed once Franklin Circuit Court recalls and vacates its Judgment of October 20, 1995 in that action. As to those cases that are directly affected by the Franklin Circuit Court Order of June 29, 1998, we find that the motions to dismiss are moot and Orders to that effect will be issued by the Commission in the near future. As to all remaining FAC cases, the Commission intends to issue Orders in the near future closing those cases without the need for further action by Big Rivers.

### SUMMARY AND CONCLUSION

As announced in the April 30, 1998 Order in Case No. 97-204, the purpose of this proceeding was to review the final drafts of all jurisdictional documents to determine whether any material changes had been made to the lease transaction. As discussed in this Order, material changes have been made in the areas of smelter transmission service and Big Rivers' funding obligations to the annual capital budgets.

While we have denied the proposed methodology for the recovery of unforeseen increases in transmission costs due to the Smelters' load, we believe that the approved

methodology represents a fair and reasonable solution. While we have accepted the modifications to the annual capital budgets, these changes will be costly to Big Rivers over the next 25 years. Consequently, Big Rivers' long-term financial survival is not a certainty but, rather, is a goal that will have to be achieved by management. Critical to meeting this goal will be the successful marketing of power off-system. A greater degree of Commission monitoring will also be necessary and, thus, we have established additional financial reporting requirements for Big Rivers. The Commission remains optimistic that with continued hard work and dedication by Big Rivers, its financial viability will be assured and it will prosper hand-in-hand with the economy of Western Kentucky.

IT IS THEREFORE ORDERED that:

1. Based on the final drafts of all documents filed in this proceeding, Big Rivers' proposed lease transaction with the LG&E Parties is approved, subject to the modifications contained in this Order.
2. The proposed methodology for the recovery of unforeseen changes in transmission costs due to the Smelters' load is denied.
3. A 50/50 sharing methodology for the recovery of unforeseen changes in transmission costs due to the Smelters' load, as discussed in this Order, is approved.
4. The proposed revision to Schedule 1 of the Green River Wholesale Power Contract with Big Rivers and the proposed new agreement between Green River and Commonwealth are denied.
5. Ordering Paragraph No. 21 of the April 30, 1998 Order in Case No. 97-204 is modified to the extent that the PSC2-38R financial model, lines 285 through 333,

shall replace the reference to the SUP-11 financial model, lines 363 through 411. In addition, Big Rivers shall annually file an updated version of its financial model with its annual report to the Commission, covering the period beginning with the current annual report year and ending with the last year of the lease transaction. All changes in assumptions and variable from one year to the next shall be explained in detail.

6. All evidences of indebtedness required to be issued by Big Rivers in conjunction with the transaction documents are approved, including the LEM Promissory Note and the Standby Agreements. The CFC Credit Agreement is exempt from Commission approval.

7. The Smelter Tier 3 Service Contracts are modified to provide the Commission with 30 days notice of effectiveness, in accordance with KRS 278.180(1).

8. The 1998 Amendments to the Station Two Contracts are approved.

9. The Smelters' objection to the form of the Green River and Henderson Union Smelter Tariffs is overruled.

10. Big Rivers' OATT filed in this proceeding is hereby approved and the OATT shall be subject to the jurisdiction of this Commission to the extent that FERC has not asserted jurisdiction and preempted this Commission.


11. Within 30 days of the date of this Order, Big Rivers shall file its tariffs, reflecting all revisions and modifications as described in this Order.


12. Ordering Paragraph Nos. 13, 15, 16, 18, 20, and 22 of the April 30, 1998 Order in Case No. 97-204 shall remain in full force and effect as if separately ordered herein.

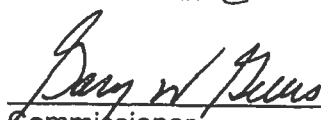
Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky, or any agency thereof, as to the securities authorized herein.

Done at Frankfort, Kentucky, this 14th day of July, 1998.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

U. S. DEPARTMENT OF AGRICULTURE  
RURAL UTILITIES SERVICE

BUS BORROWER DESIGNATION EX 62 Big Rivers Electric Corp

THE WITHIN AMENDMENT TO WHOLESALE POWER AGREEMENTS DATED

FEBRUARY 16, 1998, AND JUNE 11, 1982, BETWEEN BIG RIVERS ELECTRIC

CORPORATION AND GREEN RIVER ELECTRIC CORPORATION

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE  
TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE  
PURPOSES OF SUCH CONTRACT.



FOR THE ADMINISTRATOR

DATE

7/15/98



**AMENDMENT TO WHOLESALE POWER AGREEMENTS DATED  
FEBRUARY 16, 1988, AND JUNE 11, 1962, BETWEEN BIG RIVERS ELECTRIC  
CORPORATION AND GREEN RIVER ELECTRIC CORPORATION**

THIS AMENDMENT TO WHOLESALE POWER AGREEMENTS is dated as of the 15<sup>th</sup> day of July, 1998, by and between BIG RIVERS ELECTRIC CORPORATION, P.O. Box 24, 201 Third Street, Henderson, Kentucky 42420 ("Big Rivers"), First Party, and GREEN RIVER ELECTRIC CORPORATION, P.O. Box 1389, 3111 Fairview Drive, Owensboro, Kentucky 42302-1389 ("Green River"), Second Party, both parties being cooperative corporations organized and operating under KRS Chapter 279 and related chapters and sections of the Kentucky Revised Statutes.

WHEREAS, the parties hereto entered into a wholesale power agreement dated June 11, 1962, as amended, regarding the terms and conditions on which Big Rivers would sell Green River all its wholesale power requirements for electricity (the "1962 Agreement"); and

WHEREAS, the parties hereto entered into an amended and restated agreement dated February 16, 1988, as amended once on June 14, 1989, twice on December 8, 1989, once on March 28, 1990, once on September 23, 1991, once on September 24, 1991, once on December 2, 1993, once on May 15, 1997, and once on November 21, 1997 regarding the terms and conditions on which Big Rivers would sell Green River all its requirements for electricity for resale to certain large industrial customers of Green River (the "1988 Agreement"); and

WHEREAS, the parties now desire to amend the 1988 Agreement to update the list of covered contracts to delete the Agreement for Electric Service Between Green River

Electric Corporation and NSA, Inc. dated June 14, 1982, as amended, and the Agreement for Electric Service between Green River Electric Corporation and Southwire Rod and Cable, dated June 8, 1989, and to exclude the Agreement for Electric Service between Green River Electric Corporation and Southwire Company of even date herewith; and

WHEREAS, the Parties now desire to amend the existing all requirements nature of the contracts between Big Rivers and Green River to terminate Big Rivers' responsibility to provide the wholesale power supply used by Green River to serve Southwire Company; and

WHEREAS, the Parties seek to establish Green River's ability to step outside the all requirements provisions of the 1962 Agreement and the 1988 Agreement under the circumstances identified in this Amendment;

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, the parties agree as follows:

**Section 1.** Exhibit 1 to the 1988 Agreement shall be and is hereby amended to read as set out in Schedule 1, which is attached hereto and incorporated herein by reference.

**Section 2.** The Agreements are amended to include the following provisions:

1. DEFINITIONS:

1.1 1962 Agreement: The wholesale power agreement dated June 11, 1962, as amended, regarding the terms and conditions on which Big Rivers now sells Green River all its wholesale power requirements for electricity.

1.2 1988 Agreement: The amended and restated agreement dated February 16, 1988, as amended, regarding the terms and conditions on which Big Rivers now sells

Green River all its requirements for electricity for resale to certain large industrial customers of Green River.

- 1.3 Agreements: Collectively, the 1962 Agreement and the 1988 Agreement.
- 1.4 Agreement for Electric Service: The Agreement for Electric Service between Green River Electric Corporation and Southwire Company, of even date herewith, as it exists on the Date of Implementation.
- 1.5 Ancillary Services: Those services that are necessary to support the transmission of energy from resources to loads while maintaining reliable operation of Big Rivers' transmission system, as set forth and described in Big Rivers' Open Access Transmission Tariff as filed with and approved by the KPSC and/or FERC, as applicable.
- 1.6 Big Rivers/LEC Transaction: The transaction contemplated by a series of agreements under which Big Rivers, LG&E Energy Corp. ("LEC"), and affiliates of LEC will enter into a Phase I or Phase II transaction wherein (i) Big Rivers will sell the output of, or lease, its generators to LEC affiliates and under which, *inter alia*, (ii) LEC affiliates, instead of Big Rivers, will provide wholesale power to Green River for resale to Southwire.
- 1.7 Big Rivers Transaction Tariff: The Tariff filed by Big Rivers with the KPSC to become effective in conjunction with the Big Rivers/LEC Transaction.
- 1.8 Date of Implementation: 12:01 a.m. on the day after the closing date of the Big Rivers/LEC Transaction.

- 1.9 Designated Third-Party Supplier: Any supplier of wholesale electric service who sells electric capacity or energy directly to Green River for resale to Southwire.
- 1.10 FERC: The Federal Energy Regulatory Commission or any successor agency.
- 1.11 KPSC: The Kentucky Public Service Commission or any successor agency.
- 1.12 LEM: LG&E Energy Marketing Inc., an affiliate of LEC.
- 1.13 OASIS: Open Access Same-time Information System, an information system and standards of conduct developed in accordance with Part 37 of FERC's regulations and all additional requirements implemented by subsequent FERC orders dealing with OASIS, on which Big Rivers will post its available transmission capacity pursuant to its Open Access Transmission Tariff and on which it will accept all requests for transmission service.
- 1.14 Open Access Transmission Tariff: Any transmission tariff approved by FERC following a filing by a public utility pursuant to 18 C.F.R. 35.28(c) or approved by FERC as constituting reciprocal transmission service following a submittal by a non-public utility pursuant to 18 C.F.R. 35.28(e) or approved by the KPSC.
- 1.15 RUS: The Rural Utilities Service or any successor agency.
- 1.16 Southwire: Southwire Company.
- 1.17 Tier 1 Service: The take-or-pay electric service provided by Green River to Southwire whereby Green River purchases power directly from an LEC affiliate for resale to Southwire, as set forth in the Agreement for Electric Service.

1.18 Tier 2 Service: The electric service associated with delivery of energy designated as "Tier 2 Energy," including Tier 2 Supplemental Energy, provided by Green River to Southwire whereby Green River purchases wholesale power directly from an LEC affiliate for resale to Southwire, as set forth in the Agreement for Electric Service.

1.19 Tier 3 Service: The electric service provided by Green River to Southwire whereby Green River purchases power directly from an LEC affiliate through December 31, 2000 and thereafter from Third-Party Suppliers selected by Green River for resale to Southwire as set forth in the Agreement for Electric Service.

1.20 WKEC: Western Kentucky Energy Company, one of the LEC affiliates.

1.21 Working Day: Any Monday through Friday of each week except legal holidays established by law in the United States of America or the Commonwealth of Kentucky.

2. Commencing on the Date of Implementation, Big Rivers shall be under no obligation to provide wholesale power to Green River for resale to Southwire and Green River shall be under no obligation to purchase wholesale power from Big Rivers for resale to Southwire. Big Rivers shall in no case have any Tier 1, Tier 2, Tier 3 Service, or any other wholesale power supply responsibilities to Green River with respect to any Southwire load, excepting only any Tier 3 Service power supply arrangements that later may be negotiated between Green River and Big Rivers for wholesale service for any period after December 31, 2000. Notwithstanding the above, Big Rivers shall be obligated to provide

Green River and/or any Designated Third-Party Supplier with unbundled transmission service and certain specified Ancillary Services, as set forth below in Paragraph 3. As of the Date of Implementation and thereafter, neither Green River nor Southwire, nor any subsequent wholesale supplier of power consumed by Southwire shall have any responsibility for any stranded investment costs, exit fees or other costs, whether or not foreseeable, of any kind whatsoever related to the financing, construction, operation, maintenance or decommissioning of Big Rivers' generating assets or the Big Rivers transmission system or other assets, or related to Green River's contractual obligation to Big Rivers with respect to Big Rivers' service to Green River to serve Southwire's load at the NSA Smelter or the Southwire Rod & Cable Mill; provided, however, that nothing in the above language shall excuse any party from any new contractual obligations agreed to by that party after the Date of Implementation relating to the financing, construction, operation, maintenance or decommissioning of any new, dedicated transmission facilities on Big Rivers' transmission system used for the provision of transmission service for the power consumed by Southwire. Notwithstanding the above, Green River shall have the obligation to pay Big Rivers amounts owing under Big Rivers' tariff for service rendered to Green River on behalf of Southwire prior to the Date of Implementation. Other than with respect to the wholesale power supply for Southwire's load, the all requirements provisions of the Agreements shall remain in effect.

3. Big Rivers covenants to Green River as follows:

- 3.1 Big Rivers will transmit over Big Rivers' transmission system (i) energy purchased by Green River from Designated Third-Party Suppliers for resale to Southwire as Tier 1, Tier 2 and Tier 3 Service, and (ii) energy constituting all or any portion of Southwire's Tier 1 purchase obligation under its Agreement for Electric Service that is to be resold by Green River pursuant to the Agreement for Electric Service. Big Rivers will provide transmission service to Green River or any Designated Third-Party Supplier for the above service in accordance with the type of transmission service reserved on Big Rivers' OASIS by Green River or any Designated Third-Party Supplier, or as transmission is otherwise available consistent with Big Rivers' Open Access Transmission Tariff.
- 3.2 Big Rivers agrees, with respect to Tier 1, Tier 2, and Tier 3 Service, provided by Green River to Southwire, to provide Green River or any Designated Third-Party Supplier with all transmission and Ancillary Services offered to WKEC and/or LEM as part of the Big Rivers/LEC Transaction and to offer Green River or any Designated Third-Party Supplier all rates, terms, and conditions for transmission (including firm and non-firm point-to-point service and network service) and all Ancillary Services in accordance with Big Rivers' Open Access Transmission Tariff, as such tariff is then in effect. Notwithstanding the above, Big Rivers agrees to provide reactive power to Green River with respect to the power delivered to Southwire as set forth in Paragraph 3.3 below.

3.3 For all power sold by Green River to Southwire through the expiration or earlier termination of the Agreement for Electric Service, Green River, in order to avoid liability for additional payments to Big Rivers for reactive power as set forth below, shall: (i) during the period from the Date of Implementation through December 31, 2000, require Southwire to maintain a power factor at the point of delivery specified in the Agreement for Electric Service as nearly as practicable to unity and in no case shall the power factor be allowed to fall below 0.90 leading or lagging with respect to the power delivered thereunder; and (ii) during the period from January 1, 2000 through the expiration or earlier termination of the Agreement for Electric Service, require Southwire to maintain its usage of reactive power at the point of delivery at a level such that the reactive power demand does not exceed the reactive demand that would occur at a power factor of 0.90 lagging at the metered demand up to 339,000 kilowatts (accordingly, the reactive power recorded by Southwire at the point of delivery shall not exceed 164,185 kilovars when the metered demand is at or above 339,000 kilowatts). Big Rivers, in consideration for certain payments to be received from LEC or its affiliates as part of the Big Rivers/LEC Transaction, agrees to provide reactive power to Green River at no additional charge so long as Southwire's usage of kilovars remains within the levels specified in (i) and (ii) above. In the event that Southwire's recorded reactive power demand exceeds the limitations set forth above, Green River agrees to purchase sufficient reactive power from a third-party



source to maintain the above specified power factor or usage of reactive power, or pay Big Rivers for such required amounts of reactive power, if available from Big Rivers. The above described reactive power limits shall not be applicable to any reactive power consumed on the proposed fifth pot line by Southwire.

Specifically with respect to any fifth pot line that may be constructed at the Southwire smelter for all Energy that Southwire purchases and receives from Green River, Green River shall require Southwire to maintain a power factor at the point of delivery that shall be at unity or leading, but in no event shall be lagging. Green River shall require Southwire, at its sole expense, to either install the necessary equipment or pay Green River's costs to acquire the necessary reactive power from third-party suppliers of generation-based ancillary services, to satisfy the limitation set forth in this paragraph.

- 3.4 Big Rivers agrees to continue to perform for Green River with respect to service to Southwire those services set forth in Schedule 2 to this Agreement, in a manner consistent with historical practices at no additional charge to Green River or Southwire in consideration for certain payments to be received from LEC or its affiliates as part of the Big Rivers/LEC Transaction. In addition to those services enumerated on Schedule 2, Big Rivers will continue to perform without additional charge those operations and maintenance services reasonably performed by a wholesale power supplier in a manner consistent with historical practices between Big Rivers and Green River. Any power supply meter reading and billing

services performed by Big Rivers for Green River and any Designated Third-Party Supplier consistent with this Section 3.4 shall be provided separately from Big Rivers' billing for transmission and ancillary services, which shall be provided in accordance with Big Rivers' Open Access Transmission Tariff and this Amendment.

- 3.5 Big Rivers agrees and recognizes that each of Green River and Southwire shall have the right to intervene, fully participate in, and challenge at any regulatory proceeding at the appropriate regulatory agency (i) the applicable transmission rates, (ii) the applicable transmission loss factor, and/or (iii) the appropriate methodology used to determine the applicable Big Rivers' transmission rates or transmission loss factor used in Big Rivers' Open Access Transmission Tariff.
4. Big Rivers' commitment to provide the transmission service, Ancillary Services, and other services set forth in Paragraph 3 above to Green River and/or any Designated Third-Party Supplier shall be contingent upon the following conditions:
  - 4.1 Green River and/or any Designated Third-Party Supplier shall make a monthly payment to Big Rivers of the full amount owing for all such transmission service and Ancillary Services.
  - 4.2 Green River and/or any Designated Third-Party Supplier shall arrange for transmission and any required Ancillary Services using Big Rivers' OASIS to determine the availability of, and to reserve transmission on, Big Rivers' transmission system for the type of transmission sought for the Tier 1, Tier 2 and

Tier 3 Service power purchased by Green River from Designated Third-Party Suppliers.

- 4.3 Green River and/or any Designated Third-Party Supplier shall pay for transmission service and all required Ancillary Services on Big Rivers' transmission system according to the rates, terms, and conditions contained in the Big Rivers Transaction Tariff and, where applicable therein, Big Rivers Open Access Transmission Tariff.
- 4.4 With respect to Tier 3 Service (after December 31, 2000) Green River shall purchase from its Designated Third-Party Supplier(s) sufficient amounts of energy to compensate for transmission losses in accordance with the applicable transmission loss factors and in the manner specified in the Open Access Transmission Tariff of Big Rivers.
- 4.5 The Designated Third-Party Supplier shall have delivered such Tier 1, Tier 2 or Tier 3 Service power to the Big Rivers transmission system as scheduled by Green River or that Designated Third-Party Supplier.
5. Green River agrees to purchase, or cause Designated Third-Party Suppliers to purchase, transmission services from Big Rivers under the following terms and conditions. During the period commencing January 1, 2001 and terminating December 31, 2010, Green River shall reserve and pay for, or cause one or more Designated Third-Party Suppliers to reserve and pay for, firm transmission services (including all transmission based ancillary services) on Big Rivers' transmission system at the applicable rates under Big Rivers'

Open Access Transmission Tariff to deliver all or a portion of the Tier 3 Service that Green River purchases for resale to Southwire. Green River further agrees that in the event that the amount paid to Big Rivers in any month during the subject ten-year period is less than \$83,300, Green River shall pay an additional amount to Big Rivers equal to the difference in such month between \$83,300 and the amount paid for such reserved transmission. Big Rivers agrees that provided Green River requires Southwire in the Agreement for Electric Service to take-or-pay for delivery of Tier 3 Service in an amount that is no less than \$83,300 per month during the subject ten-year period, then Big Rivers will hold Green River harmless for any portion of Southwire's take-or-pay transmission obligation not received by Green River from Southwire. Green River agrees to assign to Big Rivers any rights of action it may have against, or payment obligations from, Southwire in connection with a failure by Southwire to pay Green River the above described take-or-pay commitment to be set forth in the Agreement for Electric Service.

6. To the extent that Green River is in material breach of its responsibilities herein to Big Rivers relating to the wholesale power used to serve Southwire, Big Rivers shall be entitled to suspend the provision of transmission service, Ancillary Services, and other services for the wholesale power to be sold to Southwire until such time as Green River is no longer in such breach. Prior to any such suspension, Big Rivers shall give Green River fifteen (15) days' notice and an opportunity to cure such a breach. Copies of such notice also shall be sent in writing to Southwire and LEM at that time.

7. Big Rivers shall indemnify and hold Green River harmless from any liability to any Designated Third-Party Suppliers or Southwire that accrues as a result of a failure by Big Rivers to perform its obligations relating to Tier 1, Tier 2, or Tier 3 Service under this Amendment that is not excused by reason of Uncontrollable Forces or by an act or omission by Green River, its employees and agents that causes such failure to perform by Big Rivers.
8. Green River shall indemnify and hold Big Rivers harmless from liability for any liability to Designated Third-Party Suppliers occasioned by purchases of Tier 3 Service under this Amendment, except where such liability arises by action or omission of Big Rivers, its employees and its agents, other than Green River. Further, Green River shall indemnify and hold Big Rivers harmless for any expense incurred by Big Rivers or liability of Big Rivers to Designated Third-Party Suppliers as a result of a failure by Green River or Southwire to perform their obligations with respect to Designated Third-Party Suppliers under the Agreement for Electric Service or, with respect to Green River, any agreements with Designated-Third Party Suppliers, provided that such failure to perform such obligations is not due to an act or omission of Big Rivers or its employees and its agents, other than Green River.
9. In the event of any conflict between the provisions of this Amendment and those of the Agreements it amends, the provisions of this Amendment shall govern. Any obligation of Big Rivers under the Agreements to perform any covenant required of Green River under the Agreement for Electric Service with Southwire, shall not extend to the duties of

Green River as they relate to Tier 1, Tier 2, or Tier 3 Service. Other than as set forth in Paragraph 3 of this Amendment, Big Rivers shall have no obligations to Green River or Southwire relating to Green River's provision of electric service to Southwire, except as provided in Paragraph 10 of this Amendment, and any provisions of the Agreements inconsistent with this Amendment shall be of no further force and effect.

10. Except to the extent not permitted by Kentucky law and Internal Revenue Service laws, regulations and promulgated rules regarding cooperative operation and tax accounting that become effective after the Date of Implementation, Big Rivers agrees to record for financial reporting and tax accounting purposes patronage capital as follows:

10.1 Only margins from patronage source income will qualify for allocation as patronage capital. None of the LG&E Parties will be treated as a member or patron under the Big Rivers/LEC Transaction. Big Rivers will not credit to any patron's account any margin on Southwire sales or any other patronage capital that could be attributable to transactions involving LEM. Non-patronage income will be booked as equity of Big Rivers that shall be paid to members of Big Rivers on liquidation as payments on account of property rights of such members.

10.2 Upon a liquidation of Big Rivers, Big Rivers will pay all liabilities, including taxes, then pay the balance of capital accounts (membership fees and assigned capital credits) and, if monies remain, such monies will be paid to Big Rivers' members on account of property rights for the benefit of the members of Big Rivers' member distribution cooperatives (including Southwire) based upon the

historical patronage measured by kilowatt hours from Big Rivers over the life of the organization. The life of the organization is defined to begin at the date Big Rivers was created and is not redefined or otherwise modified by Big Rivers' bankruptcy filing, reorganization, or the confirmation of the plan of reorganization, or otherwise.

10.3 Big Rivers and Green River agree with each other that neither Big Rivers nor Green River will permit any amendments or modifications of its bylaws that would adversely affect Southwire's rights to distribution hereunder. Green River agrees with Big Rivers that Southwire will share on a non-discriminatory basis the allocations of patronage capital and payments on account of property rights of members distributed by Big Rivers to Green River and that such allocations shall be promptly distributed to Southwire.

11. This Amendment shall commence as set forth in Section 3 below, and shall terminate upon the later of the expiration or termination of that transaction or the termination or expiration of the Agreements. However, notwithstanding the foregoing, Big Rivers shall have no responsibilities to Green River with respect to service to Southwire after the earlier to occur of December 31, 2010 or the date of termination of the Agreement for Electric Service.

**Section 3.** This Amendment shall be effective on the date upon which the last of the following conditions precedent occurs:

1. This Amendment is approved by the Administrator of the Rural Utilities Service,  
and
2. This Amendment has been filed with and accepted by the KPSC; and
3. Southwire, Green River and Big Rivers shall have executed and filed all agreed orders of dismissal of litigation pursuant to Schedule 5.1(b)(15)(i) and Schedule 5.1(b) (15)(ii) of the Plan of Reorganization and any and all claims and causes of action to which Southwire is a participant against Big Rivers as debtor or restructured debtor, shall have been settled, comprised and released in a manner acceptable to Big Rivers, Green River and Southwire pursuant to Section 5.3(b) of the Plan of Reorganization, and
4. The Phase I or Phase II Transaction with LEC and its affiliates shall have become effective.

IN TESTIMONY WHEREOF, the parties hereto have executed this Amendment in multiple counterparts as of the date first hereinabove written.

BIG RIVERS ELECTRIC CORPORATION

By: 

\_\_\_\_\_  
President

ATTEST:



Mark A. Hite  
Secretary

GREEN RIVER ELECTRIC CORPORATION

By: Dean Stanley  
President and ~~General Manager~~ CEO

ATTEST

\_\_\_\_\_  
Secretary

**Schedule 1**

**CONTRACTS OF GREEN RIVER ELECTRIC CORPORATION  
FOR RESALE OF ELECTRIC SERVICE TO INDUSTRIAL CUSTOMERS**

(1) Agreement for Electric Service between Green River Electric Corporation and Martin Marietta Aluminum, Inc., dated May 15, 1978, as amended by Amendment No. 1 thereto, dated November 5, 1979. Martin Marietta Aluminum, Inc., changed its name to Commonwealth Aluminum Corporation effective January 11, 1985, and changed its name to Commonwealth Industries, effective \_\_\_\_\_.

(2) Amended and Restated Agreement for Electric Service between Green River Electric Corporation and Willamette Industries, Inc. - Kentucky Mills Division, dated September 16, 1991.

## Schedule 2

### Services to be Provided by Big Rivers to Green River with Respect to Service to Southwire

1. Perform line switching services in Big Rivers' generation switchyards to provide 161 kV line outages as requested by Southwire.
2. Maintain, test and repair Big Rivers' two way radio located in Southwire's control room which is used for emergency communication.
3. Maintain, test and repair ring-down communication telephone systems that connects Big Rivers' control center to the Southwire control room.
4. Maintain, test and repair the relays located in Big Rivers' generation switchyard control buildings that are associated with the pilot wire schemes between Big Rivers switchyards and the Southwire switchyard.
5. Maintain, test, repair and read all revenue meters and revenue metering associated equipment used to deliver power to Southwire.
6. Maintain, test, repair and read the meter pulse generation devices located in Big Rivers' generation switchyards used for Southwire load control efforts.
7. Inspect, maintain, and repair the 161 kV lines located between Big Rivers' generation switchyards and the Southwire switchyard.
8. Submit on a timely basis bills for Green River to Southwire and supply to Green River billing information regarding the monthly revenue meter readings.

**AGREEMENT FOR ELECTRIC SERVICE**

**Between**

**GREEN RIVER ELECTRIC CORPORATION**

**and**

**SOUTHWIRE COMPANY**

**JULY 15, 1998**

99851:Lou3

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Agreement for Electric Service  
Between  
Green River Electric Corporation  
and  
Southwire Company

1. PARTIES:

The Parties to this Agreement, entered into this 15<sup>th</sup> day of July, 1998, are Green River Electric Corporation ("GREC"), an electric cooperative corporation organized and existing under KRS Chapter 279, and Southwire Company, a corporation organized and existing under the laws of the State of Delaware ("Southwire"). GREC and Southwire are each referred to individually as a "Party" and collectively as "Parties."

2. RECITALS:

This Agreement is premised upon the following:

- 2.1 Southwire owns and, through its subsidiary, NSA, Inc. ("NSA"), operates the NSA Plant, an aluminum reduction plant in Hancock County, Kentucky. Southwire also owns and operates the Rod Mill, an aluminum rod and cable manufacturing facility in Hancock County, Kentucky.
- 2.2 On June 14, 1982, GREC and National-Southwire Aluminum Company, the predecessor of NSA, entered into an agreement for electric service to the NSA Plant (the "1982 Agreement") that amended and restated the agreement of the parties as of that date. The 1982 Agreement, as amended, is effective through

December 31, 2010. Under this Agreement, Southwire has agreed to enter into a direct contractual relationship pursuant to which it will undertake a take or pay obligation for electric service purchased from GREC. On June 8, 1989, GREC and Southwire entered into an agreement for electric service to the Rod Mill. The contract for the Rod Mill is effective through December 31, 2010, at which time it will automatically renew until terminated by twelve months' notice. This Agreement will supersede the 1982 Agreement and the contract for the Rod Mill, and will apply to all of Southwire's power requirements at the NSA Plant and the Rod Mill, including a proposed fifth potline at the NSA Plant.

- 2.3 GREC is a member of Big Rivers Electric Corporation ("Big Rivers"), an electric cooperative corporation organized under KRS Chapter 279, and currently purchases all of its requirements for electric generating and transmission capacity and associated energy consumed by NSA and Southwire under contracts dated June 11, 1962, as amended, and February 16, 1988, as amended.
- 2.4 On September 25, 1996, Big Rivers filed a petition in bankruptcy (United States Bankruptcy Court for the Western District of Kentucky, Case No. 96-41168). On June 9, 1997, the bankruptcy court confirmed, and on June 1, 1998, approved certain modifications to, the First Amended Plan of Reorganization of Big Rivers (the "Plan of Reorganization"). The Plan of Reorganization confirms a proposed transaction (the "LEC Transaction") whereunder, among other things, LG&E Energy Corp. or one of its affiliates ("LEC"), will operate Big Rivers' generating assets until certain regulatory approvals are obtained (Phase I), and thereafter will



lease Big Rivers' generating assets (Phase II) for a combined period of approximately twenty-five years. In connection with and as part of the LEC Transaction, LEC has agreed to provide wholesale electric supply service, through LG&E Energy Marketing Inc. ("LEM") to GREC for resale to Southwire under this Agreement and Big Rivers has agreed to amend the BREC/GREC Contract to allow such service and to provide that Big Rivers is no longer the source of power supply for Southwire.

2.5 Southwire and GREC have agreed to a tariff, the rates, charges, terms and conditions of which are contained in Schedule A attached hereto, to apply for the term of this Agreement to electricity sales to the NSA Plant and the Rod Mill. Regulatory approval of the tariff and this Agreement is a condition precedent to implementation of the Plan of Reorganization and closing of the LEC Transaction. The tariff has a three-tiered structure that provides for sales and purchases of a fixed amount of energy at set rates under Tier 1, up to a fixed amount of energy at set rates under Tier 2 (including separate rates for Tier 2 Supplemental Energy) and both varying and open-ended amounts of energy under Tier 3 at rates that are fixed through December 31, 2000, and as thereafter shall be established by the KPSC.

2.6 Southwire and GREC have entered into this contract for the following purposes:

- to implement the schedule of rates and charges contained in Schedule A;

- to clarify Southwire's and GREC's duties to perform their respective obligations to one another, and to establish express provisions for enforcing such duties;
- to establish that GREC shall have no contractual obligation to supply, and Southwire shall have no contractual obligation to purchase Capacity or Energy after this Agreement terminates;
- to provide a mechanism whereby, after December 31, 2000, absent a change in law as set forth in Section 9.1.2, GREC will provide Tier 3 Service to Southwire to satisfy its Capacity and Energy requirements in excess of the levels specified for Tier 1 and Tier 2 as set forth in Schedule A;
- to formally agree to the substitution of LEM as the wholesale supplier of Southwire's firm power requirements from GREC; and
- for other purposes.

3. AGREEMENT:

In consideration of the premises and mutual covenants contained herein, the Parties agree as follows:

4. DEFINITIONS:

The following terms, when used herein with initial capitalization, whether in the singular or the plural, shall have the meanings specified:

4.1 Agreement:

This Agreement, including all exhibits and schedules attached hereto, together with any amendments to which the Parties may agree in writing from time to time.

4.2 Big Rivers:

Big Rivers Electric Corporation, a Kentucky electric cooperative corporation organized under KRS Chapter 279, its successors and assigns, including any successor to or lessee of Big Rivers' transmission facilities.

4.3 Billing Month:

Each calendar month during the term of this Agreement in which electric service is rendered to Southwire by GREC.

4.4 BREC/GREC Contract:

The contract for wholesale electric service dated February 16, 1988 between Big Rivers and GREC, dated June 11, 1962, as amended, and February 16, 1988, as amended and supplemented.

4.5 Capacity:

The maximum rate of flow at which electric energy is made available, measured as the integrated 30 minute demand at the Point of Delivery.

4.6 Effective Date:

The date upon which this Agreement becomes effective as defined in Section 6.

4.7 Energy:

The flow of electricity denominated in kilowatt hours.

4.8 Existing Agreements:

The June 14, 1982 contract for retail electric service between GREC and National-Southwire Aluminum Company (the predecessor of NSA), as amended, and the June 8, 1989 contract for retail electric service to the Rod Mill between GREC and Southwire, as amended.

4.9 FERC:

The Federal Energy Regulatory Commission or any successor agency.

4.10 Firm Energy:

Energy provided by GREC to Southwire that cannot be curtailed except as a result of an Uncontrollable Force.

4.11 Generation-Based Ancillary Services:

All ancillary services that FERC requires a transmission provider to offer or provide to a transmission customer and that can be produced only by an operator of generation facilities. These include (i) reactive supply and voltage control from generation sources service, (ii) regulation and frequency response service, (iii) energy imbalance service, (iv) operating reserve--spinning reserve service, and (v) operating reserve--supplemental reserve service.

4.12 KPSC:

The Kentucky Public Service Commission or any successor agency.

4.13 LEC:

LG&E Energy Corp. or its affiliates, including LEM.

4.14 LEC Transaction:

The transaction between Big Rivers and LEC as confirmed in the Plan of Reorganization.

4.15 LEM:

LG&E Energy Marketing Inc., an Oklahoma corporation and an affiliate of LEC.

4.16 LEM/GREC Contract:

The agreement for wholesale electric service of even date herewith between LEM and GREC.

4.17 Monthly Charge:

The total charge in each Billing Month for electric service computed in accordance with Schedule A.

4.18 Minimum Purchase Obligation:

The take or pay obligation of Southwire as defined in Section 8.2 and Schedule A.

4.19 NSA Plant:

The aluminum reduction plant owned by Southwire and operated by NSA in Hancock County, Kentucky, and any expansions, additions, improvements or replacements thereof or thereto on the existing site.

4.20 OASIS:

Any open access same-time information system established pursuant to FERC orders and regulations upon which a utility providing transmission service will post its available transmission capacity pursuant to its Open Access Transmission Tariff and upon which it will accept all requests for transmission service.

4.21 OATT:

Any Open Access Transmission Tariff approved by FERC following filing by a public utility pursuant to 18 C.F.R. 35.28(c) or approved by FERC as constituting reciprocal transmission service following a submittal by a non-public utility pursuant to 18 C.F.R. 35.28(e) or approval by the KPSC.

4.22 Plan of Reorganization:

The First Amended Plan of Reorganization of Big Rivers Electric Corporation confirmed by the United States Bankruptcy Court for the Western District of Kentucky on June 9, 1997 in Case No. 96-41168 as modified with approval of the Bankruptcy Court on June 1, 1998.

4.23 Point of Delivery:

The existing set of meters at Big Rivers' Coleman substation or such other point of delivery to which the Parties mutually agree.

4.24 Prudent Utility Practice:

Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts which, in the exercise of reasonable judgment in

light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

4.25 Rod Mill:

Southwire's rod and cable mill in Hancock County, Kentucky, and any expansions, additions, improvements or replacements thereof or thereto on the existing site.

4.26 RUS:

The Rural Utilities Service, an agency within the United States Department of Agriculture, or any successor agency.

4.27 Schedule A:

The Schedule attached hereto containing the rates, charges, terms and conditions to be set forth in the Green River Electric Smelter Tariff to be filed with and approved by the KPSC.

4.28 Third-Party Supplier:

Any supplier of wholesale electric service, including LEM and Big Rivers, that, after December 31, 2000, sells Capacity or Energy to GREC for resale to Southwire pursuant to the terms of this Agreement for Tier 3 Service.

4.29 Tier 3 Service:

The electric service provided by GREC and purchased by Southwire pursuant to Section 9 of this Agreement and Schedule A. References to "Tier 3 Backup Energy" and "Tier 3 Interruptible Energy" are used as defined in Schedule A.

4.30 Transmission-Based Ancillary Services:

All ancillary services that FERC requires a transmission provider to offer or provide to a transmission customer and that do not require control of generation facilities. These include scheduling, system control and dispatch service and specifically exclude Generation-Based Ancillary Services. In addition to FERC-required ancillary services, this definition shall include reactive power provided from the existing level of transmission capacitor banks on Big Rivers' transmission system.

4.31 Transmission Provider:

Big Rivers, its successors or assigns or any other owner or lessee of transmission facilities directly interconnected with GREC over which LEM or GREC may contract for the delivery of electric power to GREC for resale to Southwire.



4.32 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. Such causes include, but are not limited to: acts of God; strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the Government, whether Federal, State or local, civil or military, civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, inability of either Party hereto to obtain necessary materials, supplies or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities, whether Federal, State or local, civil or military, and any other forces which are not reasonably within the control of the Party claiming suspension. A forced outage of a generating unit or units is not an Uncontrollable Force unless it prevents the physical delivery of power to GREC for resale to Southwire.

4.33 Working Days:

Mondays through Fridays of each week except legal holidays established by law in the United States of America or the Commonwealth of Kentucky.

5. TERMINATION OF EXISTING AGREEMENTS:

Upon the Effective Date of this Agreement, it shall be substituted for the Existing Agreements as to all rights, obligations and duties of NSA and Southwire on the one hand and GREC on the other from and after such Effective Date, and all rights, obligations and duties of the Parties under the Existing Agreements shall be terminated, except that all payment or refund obligations, if any, incurred under the Existing Agreements shall be preserved until satisfied.

6. EFFECTIVE DATE AND COMMENCEMENT OF SERVICE:

6.1 The obligation of the Parties under this Agreement shall not commence until the Effective Date, except that the obligation of the Parties under this Section 6 and under Sections 33.1 and 33.2 shall become effective immediately upon execution. The Effective Date of this Agreement shall be 12:01 a.m. Central Time of the date following the day upon which the last of the following conditions is satisfied or waived:

6.1.1 This Agreement shall have been duly executed by the Parties.

6.1.2 This Agreement, including Schedule A, and the Green River Electric Smelter tariff, shall have been approved by the KPSC without modification.

6.1.3 Big Rivers and GREC shall have executed an amendment to the BREC/GREC Contract in form and substance acceptable to Southwire and that amendment shall be in full force and effect.

- 6.1.4 LEM and GREC shall have executed the LEM/GREC Contract in form and substance acceptable to Southwire and the LEM/GREC Contract shall be in full force and effect.
- 6.1.5 All conditions precedent necessary for closing of the LEC Transaction shall have been satisfied or waived and the LEC Transaction is closed, all simultaneously with the Effective Date of this Agreement.
- 6.1.6 The Parties, Alcan Aluminum Corporation, Henderson Union Electric Cooperative Corp. and Big Rivers shall have executed and filed all agreed orders of dismissal of litigation pursuant to Schedule 5.1(b)(15)(i) and Schedule 5.1(b)(15)(ii) of the Plan of Reorganization, and any and all claims and causes of action to which Southwire is a participant against Big Rivers as debtor or reorganized debtor, as well as against GREC, shall have been settled, compromised and released in a manner acceptable to Big Rivers, GREC and Southwire pursuant to Section 5.3(b) of the Plan of Reorganization.
- 6.1.7 The Parties shall have received all other approvals, permits and consents necessary for the provision of electric service under the terms of this Agreement.
- 6.1.8 Each Party's warranties and representations made herein shall be true as of the Effective Date.
- 6.2 Each of the Parties shall strive in good faith to satisfy all of the foregoing conditions precedent at the earliest practicable date (other than those which the

Parties agree to waive). At such time as either Party believes all of the conditions precedent have been satisfied, such Party shall notify the other Party.

6.3 This Agreement shall immediately terminate and the Parties shall have no further obligations hereunder (other than with respect to liability for breaches under this Section 6) if the Effective Date does not occur by December 31, 1998, or such later date to which the Parties have agreed in writing. The obligations of the Parties under this Section 6 shall continue until such time as this Agreement terminates pursuant to this Section 6.3.

6.4 To the extent any of the conditions precedent in Section 6.1 requires that another agreement be in full force and effect, that condition shall be satisfied if the conditions precedent to the effectiveness of that other agreement have been satisfied so that it will become effective as of 12:01 a.m. Central Time of the day following the day all the other conditions to this Agreement have been satisfied.

TERM; NO FURTHER OBLIGATIONS:

7.1 This Agreement shall remain in full force and effect from the Effective Date through December 31, 2010 unless earlier terminated pursuant to its terms.

7.2 Upon the expiration or earlier termination of this Agreement, and except as provided in a separate written agreement, neither Southwire nor NSA shall have any further contractual obligation to purchase Energy, Capacity, or transmission service from GREC and GREC shall have no further contractual obligation to sell Energy, Capacity, or transmission service to Southwire.

7.3 Upon the Effective Date of this Agreement, neither Southwire nor NSA shall be liable to Big Rivers or to GREC for any liability of GREC to Big Rivers for any stranded investment costs, exit fees or other costs, whether or not foreseeable, of any kind whatsoever related to the financing, construction, operation, decommissioning or maintenance of the Big Rivers generating assets or the Big Rivers transmission system or other assets, or related to GREC's contractual obligations to Big Rivers; provided, however, that this Section 7.3 shall not exempt Southwire from claims by GREC of stranded investment or exit fees at the distribution level upon the expiration or earlier termination of this Agreement.

7.4 Each provision of this Agreement providing for payment for electric service, for collection of any 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.

8. TIER 1 AND TIER 2 OBLIGATIONS:

- 8.1 GREC shall supply and Southwire shall purchase up to 339,000 kilowatts of firm Capacity and Energy in connection with Tier 1 and Tier 2 Service which GREC assures as being continuously available to Southwire to meet the Tier 1 Energy and Tier 2 Energy (including where applicable Tier 2 Supplemental Energy) volumes as specified in Schedule A hereto, and shall supply Tier 3 Service as provided in Section 9 and Schedule A. Southwire shall pay for all electric service purchased from GREC at the rates and on the terms and conditions specified in Schedule A and herein. Beginning January 1, 2001, for the purpose of matching Southwire's hourly purchase of Tier 3 Service with its metered consumption of Energy, Southwire's hourly metered consumption of Energy shall be used to determine monthly billing amounts charged by GREC, as provided in Schedule A.
- 8.2 Southwire has a Minimum Purchase Obligation applicable to the volume of Tier 1 Energy as set forth in Schedule A. If Southwire fails during any Billing Month to purchase the entire volume of Tier 1 Energy for consumption or for resale pursuant to Section 27, then Southwire shall pay an amount equal to the rate of \$0.014 per kilowatt hour multiplied by the number of kilowatt hours by which the obligation as set forth in Schedule A to purchase Tier 1 Energy exceeds the actual number of kilowatt hours purchased.
- 8.3 Consistent with Schedule A, Southwire agrees that in each hour during any Billing Month after December 31, 2000 in which it is purchasing Tier 3 Service, it shall purchase or be billed a minimum amount of 309,000 kilowatt hours of Tier 1 and

Tier 2 Energy except in those hours in which an out-of-service condition affects one or more of Southwire's potlines (including any scheduled or unscheduled outage for maintenance or repair or any outage due to an Uncontrollable Force) or where an Uncontrollable Force on Big Rivers' transmission system or at the NSA Plant prevents GREC from delivering or Southwire from receiving at least 309,000 kilowatt hours of Energy, in which case Southwire shall be billed only for the actual kilowatt hours of Energy it consumes during those hours. Nothing in this Section 8.3 shall relieve Southwire of its minimum monthly obligation during any month in which it is purchasing Tier 3 Service to purchase Tier 1 and Tier 2 Energy at a minimum load factor of 98% of maximum demand as set forth in Schedule A.

8.4 Neither Party, during the term of this Agreement, shall agree to any contractual obligation with a third party, including any modification of the LEM/GREC Contract or the BREC/GREC Contract, that directly or indirectly restricts or otherwise precludes it from performing its obligations hereunder. Neither Party, by contract or otherwise, shall agree to or support any action by a third party that impairs the ability of Southwire to receive power at the prices and on the terms and conditions set forth herein and in Schedule A. However, the Parties acknowledge that nothing in this Section 8.4 shall be construed to limit in any respect Big Rivers' ability to post its available transmission capacity on its OASIS and to sell such transmission capacity in accordance with its Open Access Transmission Tariff.

8.5 GREC agrees to reserve or cause LEM to reserve adequate transmission capacity on the Big Rivers transmission system for the delivery of Tier 1 and Tier 2 Energy.

9. TIER 3 SERVICE OBLIGATIONS:

9.1 Subject to the terms and conditions set forth herein and in Schedule A, GREC agrees to buy and resell to Southwire and Southwire agrees to accept and pay for Tier 3 Service, including transmission service.

9.1.1 For the period from the Effective Date through December 31, 2000, GREC shall purchase firm Energy from LEM for Southwire's Tier 3 Energy volume requirements which GREC assures as being continuously available to Southwire at the rate and upon the terms and conditions set forth in Schedule A.

9.1.2 After December 31, 2000, and to the extent that GREC has no outstanding contractual obligation to purchase Tier 3 power for resale to Southwire, Southwire shall purchase its power requirements in excess of Tier 1 and Tier 2 service directly from authorized electric suppliers and outside Tier 3 if and to the extent permitted by law; provided, however, that at the time such change in law occurs, any continuing obligation of GREC to purchase transmission service from BREC to which Southwire has agreed, shall be performed by GREC for the benefit of Southwire and the costs thereof shall be reimbursed by Southwire. Until such change in law is enacted,



Southwire shall purchase such Tier 3 power requirements as set forth in Section 9.2 herein.

9.1.3 In addition to the power purchased and sold under Section 9.1.2 above, after December 31, 2000, and through the date of expiration or earlier termination of this Agreement, Southwire shall purchase from GREC any Tier 3 Interruptible Energy and Tier 3 Backup Energy that GREC has purchased from LEM on a scheduled or unscheduled basis as set forth in Schedule A.

9.2. For deliveries of Tier 3 Service after December 31, 2000, Southwire shall be responsible for notifying GREC from time to time of its Tier 3 power requirements, including the delivery date(s) associated with such requirements. Southwire shall notify GREC sufficiently in advance of the delivery date(s) so that GREC can contract, using Prudent Utility Practice, for the purchase of Tier 3 power (Capacity, Energy, transmission and ancillary services) from one or more suppliers at prices, terms and conditions which respond to Southwire's requirements. Southwire shall provide such financial assurances as may be reasonably required to hold GREC harmless for such contracts, provided that such contracts have been agreed to by Southwire. As a condition to the effectiveness of each such contract for Tier 3 power, GREC shall make application to, and use its best efforts to obtain approval of, the KPSC to make a corollary sale of Tier 3 power to Southwire each Billing Month in an amount that is equal to the amount that GREC is required to pay each Billing Month to the Third-Party Supplier. In

order to facilitate Southwire's power requirements for Tier 3 Service to the greatest extent possible under applicable regulatory requirements and in recognition of the preceding sentence, GREC shall request in its KPSC filing(s) that the necessary regulatory approval will become effective twenty (20) days from the date of Notice and that the KPSC allow the proposed rate(s) to become effective without suspension.

- 9.3 Charges for the cost of transmission and ancillary services shall be at rates provided in the Transmission Provider's OATT.
- 9.4 GREC shall cause any Third-Party Supplier of Tier 3 power to reserve transmission services on the Transmission Provider's OASIS as is necessary to transfer such power to the Point of Delivery.
- 9.5 The transmission loss factor with respect to Tier 3 Service delivered by Big Rivers' transmission system to Southwire will be the applicable system loss factor specified in Big Rivers' OATT. For deliveries of Tier 3 Service, each of GREC and Southwire (i) reserves the right to challenge at any regulatory proceeding at the appropriate regulatory agency the applicable rate, the applicable transmission loss factor, and/or the appropriate methodology used to determine the applicable rate or transmission loss factor and (ii) recognizes the other's right to intervene in and participate fully in any such proceedings.
- 9.6 The Parties agree to establish within thirty (30) days of the Effective Date an operations committee ("Committee") composed of one or more representatives from each Party. The purpose of the Committee will be to develop protocols

under which Southwire can communicate to GREC its power requirements for Tier 3 Service and to provide a forum in which the Parties can discuss industry changes affecting the power markets and the associated use of transmission facilities.

9.7 If, for any reason, after December 31, 2000, Southwire takes more Energy in Tier 3 than has been purchased and delivered to GREC by Third Party Suppliers, then Southwire shall pay the cost of the excess Energy taken in accordance with the terms of Schedule A applicable to Tier 3 Interruptible Energy and Tier 3 Backup Energy. In the event a Third-Party Supplier fails to deliver Energy requested by Southwire and scheduled by GREC, Southwire shall have no obligation to pay the cost of excess Energy taken from LEM or any other source unless Southwire has consented to the contract with that Third-Party Supplier. The form of Southwire's consent shall be determined by the Committee to be established under Section 9.6 hereof.

9.8 If, in any hour or any month after December 31, 2000, Southwire shall have requested GREC to schedule and GREC shall have received deliveries of excess amounts of Tier 3 Energy from Third-Party Suppliers, then Southwire shall nevertheless be obligated to pay the full cost to GREC of all such Tier 3 Energy. For purposes of this Section 9.8, the term "excess amounts of Tier 3 Energy" shall mean more kilowatt hours than Southwire could accept and consume in such hour or in such Billing Month without being subject to the minimum hourly or minimum monthly requirements for the purchase of Energy from GREC as set forth in Section 8.3 hereof and Schedule A.

9.9 During the period commencing January 1, 2001 and terminating December 31, 2010, Southwire shall pay GREC \$83,300 per month for transmission services requested by Southwire in connection with the delivery of Tier 3 Energy. In return, GREC will reserve, or cause Third Party Suppliers to reserve, the amount of transmission services (including all transmission-based ancillary services) available for \$83,300 per month, as determined at the applicable rates under Big Rivers' OATT for the type(s) of transmission services Southwire requests. If the supply of transmission services available is more than is required for the delivery of the amount of Tier 3 Energy for a given period of time, Southwire may request, for such period of time, that GREC reserve up to the full amount of transmission services available, and GREC shall use its best efforts on behalf of Southwire to resell or assign to third parties the excess amount of transmission services to the extent permitted by Big Rivers' OATT. If the supply of transmission services available for \$83,300 per month is insufficient to meet Southwire's requirements for the delivery of the amount of Tier 3 Energy, then GREC shall separately acquire, and Southwire shall pay for, additional transmission services pursuant to this Section 9.

10. SCHEDULING AND DELIVERY OF ENERGY

10.1 At least ten (10) days prior to the expected Effective Date and each October 1 thereafter during the Term of this Agreement, Southwire will submit to GREC in writing the projected monthly amounts of Energy, Capacity and Generation-Based Ancillary Services, if any, Southwire expects to require during the remainder of

the calendar year and during the following calendar year in connection with the load of Southwire. Such projections shall represent a good faith estimate by Southwire of its anticipated requirements hereunder; provided, that such estimates shall not be binding and shall be used by GREC for planning and information purposes only. The estimates by Southwire shall be for all Energy, Capacity and Generation-Based Ancillary Services to be purchased by GREC for delivery to Southwire pursuant to this Agreement calculated as the quantity to be delivered at the Point of Delivery.

- 10.2 Southwire shall provide GREC, the Transmission Provider and LEM its preschedule of all deliveries of power no later than 9:00 a.m. Central Time, on the business day immediately preceding the day or days of delivery, or as otherwise mutually agreed by the Parties. Southwire's preschedule shall specify for each hour of each day scheduled its best estimate of its requirements for Energy, Capacity and Generation-Based Ancillary Services, including all Tier 1 Energy, Tier 2 Energy, Tier 3 Energy and, to the extent available, Tier 3 Interruptible Energy. Southwire shall make reasonable efforts to minimize changes in its preschedules and delivery schedules, but such changes shall be accommodated by GREC to the extent reasonably possible up to 30 minutes prior to the hour of delivery. The estimates by Southwire shall be for all Energy, Capacity and Generation-Based Ancillary Services to be purchased by GREC for delivery to Southwire pursuant to this Agreement calculated as the quantity to be delivered at the Point of Delivery.

- 10.3 All deliveries shall be at the Point of Delivery.
- 10.4 GREC shall be obligated to deliver to Southwire only those amounts of Tier 3 Energy actually received by it or the Transmission Provider, net of applicable transmission losses on the Transmission Provider's transmission system. In no case will GREC be in default under any provision of this Agreement where the non-delivery of Tier 3 Energy scheduled for delivery to GREC is due to an act or omission by a Third-Party Supplier that has failed to deliver the scheduled amount of Tier 3 Energy to the Transmission Provider's transmission system.
- 10.5 All deliveries shall be deemed to be made during the hours and in the amounts recorded on GREC's metering facilities at the Point of Delivery, subject to the provisions of Section 11.
- 10.6 To the extent necessary or convenient for the implementation of this Agreement or to make such procedures more consistent with the practical operation of the GREC and Big Rivers electrical systems and the NSA Plant and the Rod Mill, the Parties may, by written agreement, adjust scheduling procedures as necessary.

11. METERING:

11.1 GREC has caused or will cause to be provided the metering facilities on the source side at the Point of Delivery. Metering facilities shall provide the measurement of kilowatts, kilowatt hours, kilovars, kilovar hours, voltage fluctuation spectra, and such other information as may be agreed upon by the Parties in writing. Each meter used under this Agreement shall be read on the last date of each Billing Month (or such other date as may be agreed upon by the Parties) by a representative of GREC and may be simultaneously read by a representative of Southwire if Southwire so elects.

11.2 GREC shall test, or cause to be tested, the calibration of the meter(s) by comparison of accurate standards at least once every twelve (12) months and shall give Southwire not less than five (5) Working Days' prior notice of such testing. Southwire shall have the right to observe and participate in all meter tests and the right at any time to access GREC's meters for comparative readings. Meters registering not more than plus or minus (+ or -) one percent (1%) inaccurate shall be deemed to be accurate. The reading of any meter which shall have been disclosed by tests to be inaccurate shall be corrected for the sixty (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, mutually acceptable estimates shall be made for such period from the best information available. If Southwire requests a special meter test, GREC shall conduct the same; provided, however, that if any special meter test made at

the request of Southwire discloses that the meters are recording accurately, Southwire shall reimburse GREC for the reasonable cost of such test. In all other respects meters shall be installed, operated, maintained and tested in accordance with all applicable government regulations and Prudent Utility Practice.

12. RATES:

12.1 Southwire agrees to pay the Monthly Charge for the electric service purchased hereunder in accordance with the rates and charges set forth in Schedule A to this Agreement; subject, however, to modifications in the Monthly Charge as a result of any Uncontrollable Force.

12.2 GREC and Southwire agree that, from the date of execution and throughout the term of this Agreement, neither Party shall seek or support, directly or indirectly, from the KPSC, FERC or any other state or federal administrative, judicial or governmental body, any change in GREC's rates, charges, terms and conditions attached as Schedule A hereto except for a change in Tier 3 pricing terms and conditions for the period following December 31, 2000 and except as provided in Section 12.3. Each Party acknowledges that any effort to effect such a change would constitute a material breach of this Agreement permitting the non-breaching Party to seek the remedies provided for in Section 23. Notwithstanding the provisions of Section 33.4 of this Agreement, the Parties agree that the continuation of the rates, terms and conditions set forth in Schedule A is a condition to the enforceability of this Agreement, and they acknowledge that any change in those rates, terms and conditions for any reason whatsoever would



violate that condition, permitting either Party to cease performing its obligations hereunder. It is the intent of the Parties hereto that, during the term of this Agreement, the rates, charges, terms and conditions in Schedule A shall not be changed or modified in any way by the KPSC or any other state or federal administrative, judicial or governmental body, and shall under all circumstances be the terms and conditions to be applied and the rates and charges to be paid by Southwire to GREC hereunder. Southwire and GREC further agree that the provisions of Section 21 and Schedule A with respect to reactive power and energy imbalances shall govern in all instances where there is a conflict or apparent conflict with FERC rules or regulations respecting reactive power and energy imbalances. The provisions of this Section 12.2 shall not apply to the GREC fee, which shall be treated in accordance with Section 12.6.

- 12.3 Notwithstanding anything in Section 12.2 above, the rates and charges set forth in Schedule A to this Agreement may be modified by GREC upon application to and approval by the KPSC to provide for the recovery of any cost that is imposed directly on GREC (rather than on any wholesale power or transmission supplier to GREC) and that arises directly from legislative, regulatory or legal action.
- 12.4 The provisions of Section 12.2 shall not apply with regard to the rates, terms and conditions for firm point-to-point transmission service, non-firm point-to-point transmission service, network integration service and Generation-Based Ancillary Services reflected in Big Rivers' OATT, which rates, terms and conditions as applied to Tier 3 Service taken by GREC on behalf of Southwire are not subject

to any limitation and may be changed by Big Rivers through new rate filings at FERC and/or the KPSC. For purposes of clarification, Southwire and GREC agree that, to the extent transmission and ancillary services rates are a component of the rates set forth in Schedule A with respect to fixed rates for Tier 1 Service, Tier 2 Service, Tier 2 Supplemental Service, Tier 3 Interruptible Service and Tier 3 Backup Service (to the extent that such rate is \$0.0307 per kWh), such bundled rates are not subject to change in any respect as a result of changes in the Transmission Provider's OATT. The provisions of Section 12.2 do not limit the rights of the Parties under Section 9.5 to challenge any aspect of the Transmission Provider's OATT including the applicable loss factor or methodology proposed or any other transmission or ancillary service issue presented to FERC by the Transmission Provider.

- 12.5 The GREC fee shall be deemed to include all costs incurred by GREC with respect to performing its obligations under this Agreement.
- 12.6 Each kilowatt hour purchased by Southwire under Tier 1 (including any take-or-pay Energy), Tier 2 and Tier 3 of this Agreement shall be subject to a fee charged by GREC of one-tenth of a mill (\$0.0001) payable monthly as part of the Monthly Charge, provided that, after December 31, 2000, the fee shall be subject to change by order of the KPSC upon application of either or both Parties.
- 12.7 No State or local sales, excise, gross receipts or other taxes are included in the rates set forth in Schedule A. Southwire will pay any such taxes which are now or hereafter applicable.

13. BILLING:

13.1 GREC shall bill Southwire for the Monthly Charge on the first Working Day after the fourteenth (14th) day of the month following the Billing Month, provided that any amounts owing to Third-Party Suppliers by GREC associated with purchases of Tier 3 Service shall be billed by GREC to Southwire not less than ten (10) days prior to the payment date to the applicable Third-Party Supplier if such payment date is earlier than the twenty-fourth (24th) day of such month. Bills and refunds, if any, shall be mailed to Southwire's billing address by certified mail or overnight courier. The billing address is:

Southwire Company  
Attn: John B. Henderson  
Vice President, Primary Aluminum Division  
One Southwire Drive  
P.O. Box 1000  
Carrollton, Georgia 30119  
Phone: 770-832-5256

Southwire may by written notice to GREC change its billing address.

13.2 Southwire shall pay the bill rendered pursuant to Section 13.1, as directed by GREC, by 12:00 noon, Central Time, on the first Working Day after the twenty-fourth (24th) day of the month in which the bill is rendered, provided that any amounts owing to Third-Party Suppliers by GREC associated with purchases under this Agreement shall be provided by Southwire to GREC in immediately available funds on a Working Day not less than forty-eight (48) hours prior to the payment date to the applicable Third-Party Supplier. All payments and refunds shall be made by electronic funds transfer. Amounts not paid by the due date shall be

payable with simple interest accrued on each calendar day from the due date to the date of payment. The interest shall be at a rate of four percentage points (4%) over the then-effective prime commercial lending rate per annum published in the Money Rates section of the Wall Street Journal. Should the Wall Street Journal discontinue publication of the prime commercial lending rate, the Parties shall agree on a mutually acceptable substitute.

13.3 If Southwire fails to pay the bill for the Monthly Charge within the prescribed period, GREC may discontinue delivery of electric service hereunder upon five (5) days' written notice to Southwire of its intention to do so. Such discontinuance for non-payment shall not in any way affect the obligations of Southwire to pay the bill for the Monthly Charge. In addition, with respect to payments owed to Third-Party Suppliers for Tier 3 Service, Southwire shall be liable for any late charges assessed by such parties against GREC occasioned by Southwire's failure to pay the Monthly Charge within the prescribed period.

13.4 In the event any portion of any bill is disputed, the disputed amount shall be paid, under protest, when due. If the protested portion of the payment is found to be incorrect, GREC shall promptly cause to be refunded to Southwire any amount due, including interest accrued on each calendar day from the date of payment by Southwire to the date the refund is made. The same interest rate and computation method in Section 13.2 shall be applied to the determination of interest due on the refund.

13.5 At such time as GREC first purchases Tier 3 power for resale to Southwire from a source other than LEM, Southwire shall begin to provide to GREC within ninety (90) days after the end of each calendar year a certificate, executed by a duly authorized officer, that states whether Southwire's net worth as of the end of such year exceeds \$200 million. In addition to the assurances required under Section 9.2, in the event the certificate reflects the net worth of Southwire to be less than \$200 million, Southwire shall provide acceptable security to GREC for Tier 3 purchases of Energy, transmission and ancillary services. At such time as GREC first purchases power for resale to Southwire from a source other than LEM, then, during any successive calendar year, if Southwire has reason to believe that its net worth is less than \$200 million, Southwire shall so notify GREC and such security shall be discussed.

13.6 Each Party shall have the right to demand adequate assurance of performance pursuant to KRS 355.2-609 from the other Party, and such demands shall be governed by that section.

13.7 No payment made pursuant to this Section 13 shall constitute a waiver of any right of Southwire to contest the correctness of any charge or credit.

14. FACILITIES TO BE PROVIDED BY SOUTHWIRE:

14.1 Southwire has provided or shall provide (without cost to GREC) all easements for rights-of-way upon Southwire's property at the NSA Plant and the Rod Mill (at such locations and of such dimensions as may be mutually agreed upon) for

GREC's or Big Rivers' transmission and distribution lines operating at 12,470 volts and higher.

- 14.2 Southwire has furnished and installed or shall furnish or install such facilities and equipment as may be necessary to enable it to receive and use Capacity and Energy purchased hereunder at and from the Point of Delivery (other than the 161 kV transmission line between the Point of Delivery and Southwire's electrical substation at the NSA Plant), including such protective devices as may be reasonably necessary to protect the electrical systems of GREC and Big Rivers from disturbances to such systems caused by Southwire as set forth in Section 21.2. Plans for equipment to be installed for such protection of the facilities of GREC or Big Rivers shall be submitted to GREC for prior approval.

15. FACILITIES TO BE PROVIDED BY GREC:

GREC has caused to be furnished and installed, or shall cause to be furnished or installed, all of the facilities required for the delivery of Energy to the Point of Delivery, as well as the 161 kV transmission lines required between the Point of Delivery and Southwire's electrical substation at the NSA Plant.

16. CONSTRUCTION STANDARDS:

GREC and Southwire shall construct and maintain their respective facilities in accordance with the standard electric utility practices of the National Electric Safety Code of the American National Standards Institute, the rules and regulations of the KPSC and other applicable laws, codes and regulations.

17. OPERATIONAL RESPONSIBILITY:

17.1 GREC will operate and maintain or cause to be operated and maintained all of the facilities owned by it or by Big Rivers on the premises of Southwire. Southwire will operate and maintain, or cause to be operated and maintained, all of the facilities and equipment owned by it.

17.2 Each Party will operate and maintain its electrical facilities in a safe operating condition in conformity with Prudent Utility Practice.

18. RIGHT OF ACCESS:

18.1 The duly authorized agents and employees of each Party shall have free access to the premises of the other Party at all times as required for the purposes of installing, repairing, inspecting, testing, renewing or exchanging any or all of its equipment located on the premises of the other Party, for reading or testing meters, or for performing any other work incident to the performance of this Agreement. Each Party shall make advance arrangements appropriate under the circumstances before entering the premises of the other Party.

18.2 Each Party shall properly protect the property of the other Party or Big Rivers located on its premises, and shall permit no one to inspect or adjust the wiring and apparatus of the other Party (or Big Rivers), except with that Party's consent. It is agreed, however, that neither Party assumes the duty or responsibility of inspecting the wiring or apparatus of the other Party.

18.3 Southwire grants to GREC and its agents and employees a license to enter Southwire's electrical substation located adjacent to the NSA Plant and upon Southwire's easements and rights-of-way to accomplish the purposes of this Agreement, provided that advance arrangements appropriate under the circumstances are made.

19. OWNERSHIP AND REMOVAL OF EQUIPMENT:

19.1 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 Big Rivers) on or in the premises of the other Party shall be and remain the property of the Party (or Big Rivers) 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.

19.2 Upon the termination of this Agreement or any extension thereof, the owner (including, if applicable, Big Rivers) 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.



20. CHARACTERISTICS OF SERVICE:

Electric service to be supplied by GREC to Southwire under this Agreement shall be three-phase, sixty cycle at 161,000 volts. Regulation of voltage shall be within such limits as shall be agreed upon by the Parties, but at no time shall be inconsistent with applicable governmental regulations that establish reliability and electric operation standards for the region. GREC shall maintain and, upon request, provide to Southwire measurements of voltage fluctuation at the Point of Delivery.

21. CHARACTERISTICS OF USAGE:

21.1 Power Factor.

21.1.1 For all power taken by Southwire before January 1, 2001 under Tier 1, Tier 2 and Tier 3 as set forth herein, Southwire shall maintain a power factor at the Point of Delivery as nearly as practicable to unity and in no case shall the power factor be allowed to fall below 0.90 leading or lagging with respect to power delivered hereunder.

21.1.2 For all power taken under Tier 1, Tier 2 and Tier 3 after December 31, 2000 through the expiration or earlier termination of this Agreement, Southwire shall maintain its usage of reactive power at the Point of Delivery at a level such that the reactive power demand does not exceed the reactive demand that would occur at a power factor of 0.90 lagging at the metered demand up to 339,000 kilowatts. Accordingly, the reactive power recorded by Southwire at the Point of Delivery shall not exceed 164,190 kilovars when the metered demand is at or above 339,000 kilowatts.

21.1.3 In the event that Southwire's recorded reactive power demand exceeds the limitations set forth in Sections 21.1.1 or 21.1.2, whichever is applicable, GREC shall purchase on behalf of Southwire sufficient reactive power from a third party source to maintain the required power factor or pay Big Rivers according to its OATT for such services.

21.2 Electric Disturbances and Phase Balancing:

21.2.1 Southwire shall not use the Energy delivered under this Agreement in such a manner as to cause electric disturbances which reasonably may be expected to (A) cause damage to or interference with GREC's system, systems connected with GREC's system, or facilities or other property in proximity to GREC's system; or (B) prevent GREC from satisfactorily serving other purchasers. Agreements as to the apportionment of responsibility for and costs of electrical disturbances and remedies relating thereto are set forth in a System Disturbance Agreement of even date herewith by and among Southwire, GREC, LEC, Big Rivers and other parties.

21.2.2 Southwire shall take and use the Capacity and Energy hereunder in such a manner that the load at the Point of Delivery shall not cause a current imbalance between phases greater than five percent (5%). GREC reserves the right to require Southwire, at Southwire's sole expense, to make necessary changes to correct such imbalance conditions. In addition to any

other remedies that GREC may have hereunder, should Southwire fail to make such changes, GREC may, in its determination of billing demand for the transmission charges in Schedule A, assume the load on each phase is equal to the greatest load on any phase.

21.2.3 Southwire shall take and use Capacity and Energy hereunder in such a manner that the current harmonic total demand distortion (TDD), measured at the Point of Delivery, shall not exceed limits as described in IEEE Standard 519, Section 10. In the event the TDD limitation is exceeded, determination of responsibility and for costs of a resolution shall be governed by the System Disturbance Agreement referenced in Section 21.2.1. Southwire's TDD level shall be baseline referenced to the TDD loading on Big Rivers' system as of June 1, 1997.

22. INDEMNIFICATION:

22.1 Southwire shall indemnify, defend and hold GREC harmless for any liability to Third-Party Suppliers and for any expense incurred by GREC as a result of a failure by Southwire to perform its obligations under this Agreement with respect to Tier 3 Service after December 31, 2000. Southwire shall have the right to control any litigation between GREC and any Third-Party Supplier arising out of any failure by Southwire to perform such obligations.

22.2 GREC hereby assigns to Southwire all claims or rights of action against and all recoveries from any Third-Party Supplier or insurer based upon a breach by a Third-Party Supplier of any agreement to provide power to GREC for resale to

Southwire as Tier 3 Service after December 31, 2000. Southwire shall indemnify, defend and hold GREC harmless from any liability or expense arising out of Southwire's conduct of any litigation of such claims or rights of action.

22.3 Each Party releases and shall indemnify, defend and hold the other Party harmless from any liability arising from the actions or omissions of its own employees, agents or contractors (unless such actions or omissions resulted from the negligence or willful misconduct of the other Party, or its breach or default under this Agreement), provided, that the provisions of this sentence shall not apply to injury or damage that may be suffered or incurred by a Party to this Agreement unless arising out of or resulting from a breach or default under this Agreement by the other Party hereto, or the negligence or willful misconduct of the other Party or its employees, agents or contractors. As used in this Section 22.3, (i) the term "Party" means, in addition to such Party itself, its directors, officers and employees, (ii) the term "damage" means actual compensatory damage (excluding consequential damage to either of the Parties), (iii) the term "person" means any person, including those not connected with either Party to this Agreement, and (iv) the term "property" means the property of any person.

22.4 In addition to all other rights and remedies that may be available to the Parties pursuant to this Agreement, under applicable laws or at equity, but subject to any limitations on remedies provided for elsewhere in this Agreement, each Party (the "Indemnifying Party") agrees to defend, indemnify and hold harmless the other Party, and its directors, officers, employees, agents and representatives, and each

of them (collectively, the "Indemnified Parties"), of and from any and all losses, costs, liabilities, claims, actions, suits, damages, costs and expenses (including, without limitation, reasonable attorneys fees) that the Indemnified Parties may suffer or incur, resulting from, arising out of, or in connection with, any misrepresentation, breach of warranty or non-fulfillment of any covenant or agreement by the Indemnifying Party contained in this Agreement, but subject in all cases to the provisions of Section 26 (Uncontrollable Forces).

22.5 Survival: The provisions of this Section 22 shall survive any expiration or termination of this Agreement and shall continue to be binding on the Parties, notwithstanding any investigations made by either Party.

22.6 The provisions of this Section 22 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of any valid insurance policy of either Party.

23. BREACH; DEFAULT; REMEDIES:

23.1 The occurrence of any of the following events, unless otherwise excused pursuant to the terms of this Agreement, constitutes a breach by the relevant Party under this Agreement and, if not curable or not cured within the applicable cure period (indicated in parentheses) shall constitute a default:

- (a) Failure by a Party to make any payment as and when due hereunder (curable within 3 days following notice of breach from the non-breaching Party to the affected Party);

- (b) Failure of a Party to perform any material duty imposed on it by this Agreement (curable within 30 days following notice of breach from the non-breaching Party to the affected Party);
- (c) Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Section 28 of this Agreement (not curable);
- (d) Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency 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 if such proceedings are not withdrawn or dismissed within 60 days after such institution (in which case a default occurs on the 61st day after filing);
- (e) Assignment by a Party for the benefit of creditors (not curable);
- (f) Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property if such receiver or trustee is not discharged within 60 days after appointment (in which case a default occurs on the 61st day after appointment); or
- (g) Failure, inability or refusal of GREC to cure a breach or default by GREC under the LEM/GREC Contract which gives rise to a termination of that agreement, or any termination by GREC of the LEM/GREC Contract in breach or default thereof (not curable).

- 23.2 In the event of a default by either Party, the non-defaulting Party may, in its own 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.
- 23.3 The remedies provided in this Agreement are cumulative unless specifically designated to be an exclusive remedy. Nothing contained in this Agreement shall be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the default of any of the provisions herein, provided that neither Party is entitled to recover from the other Party any consequential, incidental or special damages including, without limitation, lost profits.

24. DISPUTE RESOLUTION:

24.1 Should any dispute arise between the Parties concerning the terms or conditions of this Agreement, the duties or obligations of the Parties under this Agreement, or the implementation, interpretation or breach of this Agreement, other than a dispute governed by Section 21.2, either Party may request in writing a meeting between an authorized representative of each of the Parties to discuss and attempt to reach a resolution of the dispute. Such meeting shall take place within ten (10) days (or such shorter or longer time as agreed upon by the Parties) of the request. Any resolution mutually agreed upon by the Parties shall be reduced to written form and signed by each Party, and thereafter shall be binding upon each Party to this Agreement. Absent such resolution, the Parties shall be entitled to pursue all rights and remedies that they may have at law, in equity or pursuant to this Agreement (subject to the limitations set forth in the Agreement) to resolve that dispute. Notwithstanding the provisions of this Section 24.1, each Party will at all times be free to seek injunctive relief, where its delay in doing so could result in irreparable injury.

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

24.3 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 U.S. federal judicial system (in which event



exclusive jurisdiction and venue shall lie with the federal district courts in Kentucky), and the Parties hereby agree to submit to the jurisdiction of the Kentucky courts for such purpose. Venue in state court actions shall be in Henderson Circuit Court. Nothing in this paragraph prohibits a Party from referring to the KPSC any matter properly within the KPSC's jurisdiction.

25. AUDIT:

Southwire shall have the right to audit, at its own expense, and at mutually agreeable times, all accounts and records regarding any information material to billings made pursuant to this Agreement, subject to the disclosure and confidentiality provisions of any applicable third-party contract or agreement. GREC shall retain all records and supporting documentation for billings under this Agreement for three (3) years beyond the date of the bill. If such records and supporting documentation were originally prepared in computer readable form, GREC shall retain them in such form. Adjustments to any costs, payments or settlements determined pursuant to an audit conducted under this Section 25 shall be paid by the responsible Party to the owed Party within a reasonable time, and shall include interest accrued on such adjustment for each calendar day from the original due date to the date of payment of such adjustment by the responsible Party at the rate and computation method specified in Section 13.2.

26. UNCONTROLLABLE FORCES:

26.1 No Party shall be considered to be in breach or default in the performance of any of its obligations hereunder, when a failure of performance is due to an Uncontrollable Force, except as enumerated in this Section 26. The Party

claiming failure of ability to perform shall promptly contact the other Party and provide written notice that an Uncontrollable Force has caused failure of performance. In the event either Party shall be unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties, to the extent that they are affected by such Uncontrollable Force, shall be suspended during the continuance of any inability so caused, but for no longer period. A Party shall not be relieved of liability for failing to perform if such failure be due to causes arising out of its own negligence or to removable or remediable causes which it fails to remove or remedy with reasonable dispatch.

26.2 Either Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability with all reasonable dispatch.

26.3 GREC and Southwire agree to 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. GREC also agrees to so notify Southwire in the event that GREC receives notice from LEM or the Transmission Provider that such entity anticipates that it will be unable to perform its obligations to GREC (under any contract or agreement that affects GREC's performance under this Agreement) due to an Uncontrollable Force.

26.4 If GREC's ability to make Energy available to Southwire in the amount provided by this Agreement is interrupted or curtailed for a period longer than five (5)

consecutive minutes because of an Uncontrollable Force, then, for the period of and to the extent of such interruption or curtailment, the amount of Energy that Southwire is obligated to purchase under the Minimum Purchase Obligation shall be reduced as set forth in Schedule A.

26.5 If, because of an Uncontrollable Force, Southwire is unable to receive and utilize Tier 1 Energy or Tier 3 Energy purchased from Third-Party Suppliers by GREC, then Southwire shall be liable for the charge for the Minimum Purchase Obligation pursuant to Section 8.2 and Schedule A and for the payment of any charges incurred by GREC to purchase power and/or transmission service for resale to Southwire pursuant to the provisions of this Agreement applicable to Tier 3 Service.

26.6 If, because of an Uncontrollable Force, Southwire is unable to receive and utilize Tier 3 Energy purchased from Third-Party Suppliers, then GREC shall make reasonable efforts to avoid taking delivery of such Energy. Southwire may provide an estimate to GREC of the length of time required to remedy Southwire's inability to receive such Energy, and GREC shall use reasonable efforts to sell that Tier 3 Energy to other parties for that period of time, including (if requested by Southwire) by selling such power to LEM pursuant to Section 18.03(d) of the LEM/GREC Contract. GREC shall apply all revenues derived from such sale as a credit to Southwire, net of any transmission and ancillary service charges or other expenses incurred to make such resale. When practical, GREC shall advise Southwire of the terms and conditions of such sale and Southwire shall then advise

GREC whether to sell such Energy. Furthermore, Southwire shall use reasonable efforts to assist GREC in selling such Tier 3 Energy.

26.7 Nothing contained herein shall be construed to require a Party to prevent or to settle a labor dispute against its will.

27. SALE OF TAKE OR PAY ENERGY:

27.1 Southwire has a Minimum Purchase Obligation under this Agreement for Tier 1 Energy as set forth in Section 8.2. At any time during the term of this Agreement, Southwire may give GREC no less than forty-eight (48) hours notice under Section 33.3 of its intent to sell all or any part of its Tier 1 Energy to other parties, and GREC shall resell such Energy as directed by Southwire or its marketing agent. Southwire may request that GREC act as its marketing agent, in which case GREC and Southwire shall agree on the terms, prices and other conditions of such resale and GREC shall thereafter use its best efforts to sell the Tier 1 Energy. The resale by GREC of such Tier 1 Energy shall not preclude GREC on behalf of Southwire from purchasing and consuming Tier 2 Energy. However, Southwire shall be precluded from selling Tier 1 Energy during any hour in which Southwire is purchasing Tier 2 or Tier 3 Energy, except as provided in Section 26.6.

27.2 GREC shall arrange for transmission service and associated ancillary services for Tier 1 Energy to be resold pursuant to the terms and rates set forth in Schedule A. In the event of a shutdown by Southwire of at least 30 days, to the extent transmission and ancillary services charges are incurred by GREC and charged to

Southwire to effect this resale of Tier 1 Energy, this amount shall be credited against the Monthly Charge. In the event of a shutdown by Southwire of less than 30 days, in order to effect a sale of Tier 1 Energy, Southwire shall be required to reserve additional quantities of transmission service to resell that power and to pay for such quantities of transmission in accordance with Big Rivers' OATT.

27.3 For billing purposes, the sale of Tier 1 Energy under this Section 27 shall be deemed a purchase and resale by Southwire of the kilowatt hours in Tier 1. Southwire shall continue to be obligated to GREC for the Minimum Purchase Obligation set forth in Section 8.2.

27.4 Except as provided in Section 26.6, Southwire agrees that it will not resell any Energy purchased from GREC under this Agreement other than Tier 1 Energy which may be resold pursuant to this Section 27.

28. SUCCESSORS AND ASSIGNS:

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Party, except that assignment may be made by either Party without the consent of the other Party to such person or entity as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the stock of such Party. Such consent shall not be unreasonably withheld, conditioned or delayed. In no event shall either Party assign this Agreement to any third party that does not have adequate financial capacity or that would

otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, nor shall either Party assign this Agreement on any terms at variance from those set forth in this Agreement, except as agreed to in writing by the Parties. No permitted assignment or transfer shall change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. Unless otherwise agreed by the Parties in writing, each Party agrees that it will bind each of its successors or assigns to its rights, interests and obligations under this Agreement. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

29. WAIVER:

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

30. REPRESENTATIONS, WARRANTIES, COVENANTS:

30.1 GREC hereby represents and warrants to Southwire as follows:

30.1.1 GREC 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.

30.1.2 The execution, delivery and performance of this Agreement by GREC has been duly and effectively authorized by all requisite corporate action.

30.1.3 Without further investigation, Southwire can rely upon GREC's written notice under Section 6.2 above or otherwise that one or more of the conditions precedent to the effectiveness of this Agreement have been satisfied.

30.1.4 Upon the Effective Date of this Agreement, GREC represents that it has the written agreement of Big Rivers, approved by RUS, that GREC shall have no further obligation to purchase Energy or Capacity from Big Rivers for resale to Southwire and that GREC shall have no liability to Big Rivers, now or in the future for any stranded investment relating to Capacity previously sold to Southwire through GREC.

30.1.5 GREC covenants that it will at all times fully perform and discharge all of its obligations under the LEM/GREC Contract, under any contracts with Third-Party Suppliers for Tier 3 Service entered into by GREC pursuant to this Agreement, and under any transmission agreement pursuant to which amounts of power are delivered directly or indirectly to GREC for sale and delivery to Southwire.

30.1.6 GREC covenants that it will not waive compliance by LEM with any of its obligations under the LEM/GREC Contract or fail to fully enforce the

LEM/GREC Contract against LEM in any manner that would adversely affect GREC's ability to fulfill its obligations under this Agreement.

30.1.7 GREC covenants that it will provide to Southwire all notices of default received or sent by GREC pursuant to the LEM/GREC Contract or the BREC/GREC Contract or any transmission agreement with the Transmission Provider.

30.1.8 GREC covenants that (a) it will fully perform and discharge all of its obligations under the BREC/GREC Contract and that it will not waive compliance by Big Rivers with that contract, (b) it will not amend the BREC/GREC contract in a manner that reduces Big Rivers' transmission obligation to GREC from that existing under the BREC/GREC Contract as of the Effective Date or to shorten the term of that contract without first obtaining the written consent of Southwire, which consent shall not be unreasonably withheld or delayed. GREC further agrees that it will fully enforce all of Big Rivers' obligations under the BREC/GREC Contract pursuant to which Big Rivers provides services to GREC that are (i) necessary for GREC's performance under this Agreement, or (ii) the absence of which would adversely affect Southwire's economic interests under this Agreement, unless GREC has first established an alternative means by which to receive such services.

30.2 Southwire hereby represents and warrants to GREC as follows:



30.2.1 Southwire is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware, 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.

30.2.2 The execution, delivery and performance of this Agreement by Southwire has been duly and effectively authorized by all requisite corporate action.

30.2.3 Without further investigation, GREC can rely upon Southwire's written notice under Section 6.2 above or otherwise that one or more of the conditions precedent to the effectiveness of this Agreement have been satisfied.

31. AMENDMENTS:

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

32. PATRONAGE CAPITAL:

32.1 GREC Patronage Capital. GREC is a non-profit Kentucky corporation that, during any calendar year, may realize revenues from its own operations in excess of related expenses ("margins"). For financial accounting purposes, such margins have been and shall continue to be recorded as patronage capital held for the benefit of GREC's customers. Such patronage capital shall be recorded by GREC for the benefit of Southwire as earned during the term of this Agreement.

32.2 Big Rivers Patronage Capital and Payments. The Parties acknowledge that the following Section 32.2 incorporates Section 21 of Schedule 5.4(a) to the Plan of Reorganization. Southwire and GREC each agree to support implementation of these provisions. Southwire and GREC further agree to abide by the terms of this Section 32.2 to the extent applicable to either Party.

Except to the extent not permitted by Kentucky law and Internal Revenue Service laws, regulations and promulgated rules regarding cooperative operation and tax accounting that become effective after the Effective Date, Big Rivers will record for financial reporting and tax accounting purposes patronage capital as follows:

32.2.1 Only margins from patronage source income will qualify for allocation as patronage capital. None of the LG&E Parties is a member or patron under the LG&E Energy Transaction. Big Rivers will not credit to any Patron's account any margin on Smelter sales or any other patronage capital that could be attributable to transactions involving LEM. Non-patronage income will be booked as equity of Big Rivers that shall be paid to members on liquidation as payments on account of property rights of members.

32.2.2 Upon liquidation, Big Rivers will pay all liabilities, including taxes, then pay the balances of capital accounts (membership fees and assigned capital credits) and, if monies remain, such monies will be paid to GREC and other members of Big Rivers on account of property rights for the benefit of the members of GREC (including Southwire) based upon historical

patronage measured by kilowatt hours purchased from Big Rivers over the life of the organization. The life of the organization is defined to begin at the date Big Rivers was created and is not redefined or otherwise modified by Big River's bankruptcy filing, reorganization, or the confirmation of the Plan of Reorganization, or otherwise.

32.2.3 Big Rivers will not permit any amendments or modifications of its Bylaws that would adversely affect GREC's or Southwire's rights to receive distribution from Big Rivers.

32.2.4 GREC agrees that Southwire will share on a nondiscriminatory basis in Big Rivers allocations of patronage capital and payments on account of property rights of members distributed by Big Rivers to GREC and that such allocations shall be promptly distributed to Southwire.

33. GENERAL:

33.1 Good Faith Efforts:

The Parties agree that each shall in good faith take all reasonable actions necessary to permit the other Party to fulfill its obligations under this Agreement, provided, that no Party shall be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, conditioned, or delayed. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, such notice will be given as far in advance as is reasonably practical.

33.2 Information Exchange:

The Parties shall cooperate in the exchange of information between themselves in order to further the purposes of this Agreement, to verify compliance with the terms of this Agreement and to keep each other fully informed of facts which could constitute a material change in any of the business or financial relationships contemplated by the LEC Transaction, including but not limited to:

- a. Facts which may constitute a default, material breach, or termination by either Big Rivers or LEC of the New Participation Agreement between Big

Rivers and LEC dated April 6, 1998, as amended, or other documents relating to the LEC Transaction.

- b. Facts which may constitute a default, material breach or termination by either LEM or GREC of the LEM/GREC Contract.

33.3 Notices:

Except as herein otherwise expressly provided, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or by any qualified and recognized delivery service, or sent by United States mail postage prepaid to the persons specified below unless otherwise provided for in this Agreement.

TO SOUTHWIRE:

John B. Henderson  
Vice President, Primary Aluminum Division  
Southwire Company  
One Southwire Drive  
Carrollton, Georgia 30119  
Phone: 770-832-5256  
Fax: 770-832-5254

TO GREC:

Dean Stanley  
President and CEO  
Green River Electric Corporation  
311 Fairview Drive  
Owensboro, KY 42303  
Phone: 502-926-4141  
Fax: 502-685-2279

Either Party may at any time, by written notice to the other Party, change the designation or address of the person specified to receive notices pursuant to this Agreement.

33.4 Severability:

If any clause, sentence, paragraph or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unenforceable or invalid, such judgment shall not affect, impair or invalidate the remainder of this Agreement but shall be confined in its operation to the clause, sentence, paragraph or any part thereof directly involved in the controversy in which the judgment is rendered, provided that if the loss or failure of such clause, sentence, paragraph or part of this Agreement shall materially adversely affect the benefit of the bargain to be received by either or both of the Parties, then 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 shall be entitled, in its discretion, to terminate this Agreement, and provided further that this Agreement shall be unenforceable against Southwire if any part of Sections 12.1 or 12.2 or Schedule A is not approved by the KPSC or is adjudged by a court of competent jurisdiction to be unenforceable or invalid.

33.5 Singular and Plural References:

Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number and vice versa.

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

GREEN RIVER ELECTRIC CORPORATION

By: *Dean Stanley*  
Title: President and CEO

~~ATTEST:~~

\_\_\_\_\_  
Title: Secretary

SOUTHWIRE COMPANY

By: *John R. Plummer*  
Title: Vice President

ATTEST:

*Lance Lee Hunt*  
Title: Secretary  
*vice President*

## SCHEDULE A

### CLASSIFICATION OF SERVICE

#### GREEN RIVER SMELTER RATES, CHARGES, TERMS AND CONDITIONS

##### GENERAL PROVISIONS

a. AVAILABILITY

The rates, charges, terms and conditions set forth in this Schedule A apply to sales by Green River Electric Corporation (GREC) and corresponding purchases by Southwire Company (Southwire) of Energy, Capacity, and Ancillary Services for use at the Southwire primary aluminum smelter, including any fifth pot line if such pot line is constructed at the Southwire smelter, and further including the adjacent rod and cable mill, all located in Hancock County, Kentucky. The rates, charges, terms and conditions of the sales and purchases of Energy, Capacity, and Ancillary Services are set forth in detail in Section I, Section II, and Section III of this Schedule A.

b. TERM OF SCHEDULE A

The rates, charges, terms and conditions set forth in the General Provisions and in Section I and Section III of this Schedule A shall take effect at 12:01 a.m. Central Time on the day after the closing date of the transaction between Big Rivers Electric Corporation (Big Rivers) and LG&E Energy Corp. (LEC) and its affiliates (the Effective Date) and shall terminate at midnight on December 31, 2010. The rates, charges, terms and conditions set forth in Section II of this Schedule A shall take effect at 12:01 a.m. Central Time on January 1, 2001, and shall terminate at midnight on December 31, 2010. Notwithstanding any other agreement, this Schedule A, including Section I, Section II, and Section III of this Schedule A, shall not be modified except as specified in paragraph d.(3) below.

If the Agreement for Electric Service between Southwire and GREC is terminated early due to a breach of either Party or for any other reason, the GREC Smelter Tariff filed with and approved by the Kentucky Public Service Commission that sets forth the rates, charges, terms and conditions contained in this Schedule A shall continue in full force and effect until changed by Order of the Kentucky Public Service Commission.

c. DEFINITIONS

When capitalized within this Schedule A, including the attachments to Section I and Section III of this Schedule A, the capitalized word or term shall have the meaning set forth below.



1. Ancillary Services shall mean those services that FERC designates from time-to-time as necessary to support the transmission of Energy while maintaining the reliability of the applicable transmission system, and which includes as of the Effective Date: (a) Scheduling, System Control and Transmission Dispatch Service, (2) Reactive Supply and Voltage Control from Generation Sources Services, (3) Regulation and Frequency Response Service, (4) Energy Imbalance Service, (5) Operating Reserve - Spinning Reserve Service, and (6) Operating Reserve - Supplemental Reserve Service.
2. Big Rivers shall mean Big Rivers Electric Corporation, its successors or assigns.
3. Billing Month shall mean each calendar month during the term of this Agreement in which electric service is rendered to Southwire by GREC.
4. Bundled Ancillary Services shall mean those Generation-Based Ancillary Services, in the quantities and upon the terms and conditions set forth in the GREC/LEM Wholesale Agreement, to be provided by LEM to GREC in conjunction with the purchase of those types of Energy services which are identified in Schedule A to the GREC/LEM Wholesale Agreement as including Bundled Ancillary Services.
5. Capacity shall mean the maximum rate of flow at which electric Energy is made available, measured as the integrated 30 minute demand at the Point(s) of Delivery.
6. Energy shall mean the flow of electricity denominated in kilowatt-hours.
7. FERC shall mean the Federal Energy Regulatory Commission or any successor agency.
8. Generation-Based Ancillary Services shall mean all Ancillary Services that FERC requires a transmission provider to offer or provide to a transmission customer and that can be produced only by an operator of generation facilities. These include (i) reactive supply and voltage control from generation sources service to support transmission of electricity, (ii) regulation and frequency response service, (iii) energy imbalance service, (iv) operating reserve-- spinning reserve service, and (v) operating reserve-supplemental reserve service.
9. GREC/LEM Wholesale Agreement shall mean the Agreement for Electric Service between Green River Electric Corporation and LG&E Energy Marketing Inc.

10. LEM shall mean LG&E Energy Marketing Inc., its successors or assignees.
11. Open Access Transmission Tariff ("OATT") shall mean any transmission tariff approved by FERC following filing by a public utility pursuant to 18 C.F.R. § 35.28(c) or approved by FERC as constituting reciprocal transmission service following a submittal by a non-public utility pursuant to 18 C.F.R. § 35.28(e), or approved by the KPSC.
12. Point of Delivery shall mean the point(s) at which GREC is interconnected with the Transmission Provider and at which it meters energy for delivery to Southwire. At such point(s), title to the electrical Energy transfers from LEM or a Third Party Supplier to GREC and instantaneously from GREC to Southwire.
13. Third-Party Supplier shall mean any supplier of wholesale electric service, including LEM and Big Rivers, that after December 31, 2000, sells Capacity or Energy directly or indirectly to GREC for resale to Southwire for Tier 3 service. When used in Section II of this Schedule A, the term Third-Party Supplier shall also include any third-party provider of Generation-Based or Transmission-Based Ancillary Services in connection with Tier 3 service, including LEM and Big Rivers.
14. Transmission-Based Ancillary Services shall mean all ancillary services that FERC requires a transmission provider to offer or provide to a transmission customer and that do not require control of generation facilities. These include scheduling, system control and dispatch service and specifically exclude Generation-Based Ancillary Services. In addition to FERC-required ancillary services, this definition shall include reactive power provided from the existing level of transmission capacitor banks on Big Rivers' transmission system.
15. Transmission Provider shall mean Big Rivers, its successors or assigns, or any other owner or lessee of transmission facilities directly interconnected with GREC over which LEM, a Third-Party Supplier, or GREC may contract for the delivery of electric power to GREC for resale to Southwire.

d. (1) NO ADJUSTMENT FOR FUEL PURCHASES

The rates and charges under this Schedule A shall not be increased or decreased by any adjustment for the cost of fuel, whether under 807 KAR 5:056 or otherwise.

(2) NO ADJUSTMENT FOR ENVIRONMENTAL SURCHARGE

The rates and charges under this Schedule A shall not be increased or decreased by any adjustment for an environmental surcharge, whether under KRS 278.183 or otherwise.

(3) PERMITTED ADJUSTMENT FOR LEGISLATIVE, REGULATORY OR LEGAL ACTION

The rates and charges under this Schedule A may be modified by GREC upon application to and approval by the Kentucky Public Service Commission, to provide for the recovery of any cost that is imposed directly on GREC (rather than on any wholesale power or transmission supplier to GREC) and that arises directly from legislative, regulatory or legal action.

- (4) Southwire shall not be liable to Big Rivers or GREC for any liability of GREC to Big Rivers for any stranded investment costs, exit fees or other costs, whether or not foreseeable, of any kind whatsoever related to the financing, construction, operation, decommissioning or maintenance of the Big Rivers generating assets or the Big Rivers transmission system or other assets, or related to GREC's contractual obligations to Big Rivers; provided, however, that this provision shall not exempt Southwire from claims by GREC of stranded cost or exit fees at the distribution level upon the expiration or earlier termination of the Agreement for Electric Service between Southwire and GREC.

e. GREC FEE

In addition to the charges set forth in Section I, Section II, and Section III of this Schedule A and in addition to any permitted adjustment in rates pursuant to Paragraph d.(3) above, each kilowatt hour purchased by Southwire under this Schedule A shall be subject to a fee charged by GREC of one-tenth of a mill (\$.0001), payable monthly, provided that after December 31, 2000, the fee shall be subject to change by order of the Kentucky Public Service Commission upon application of either or both of GREC and Southwire.

CLASSIFICATION OF SERVICE

GREEN RIVER SMELTER RATES, CHARGES, TERMS AND CONDITIONS  
SECTION I

a. AVAILABILITY

This section of Schedule A applies to sales by GREC and corresponding purchases by Southwire of Energy, Capacity, and Ancillary Services that GREC will purchase on behalf of Southwire from LEM under the GREC/LEM Wholesale Agreement.

b. INCORPORATION OF SCHEDULE A TO THE GREC/LEM AGREEMENT

Attached to this Section I and incorporated herein by reference is Schedule A to the GREC/LEM Wholesale Agreement. Under this Section I, Southwire shall be obligated to pay to GREC all amounts that GREC is obligated to pay to LEM in accordance with the rates, charges, and other terms and conditions set forth in Schedule A to the GREC/LEM Wholesale Agreement.

c. NO ADJUSTMENTS FOR LEGISLATIVE, REGULATORY OR LEGAL ACTION

The rates and charges under this Section I are fixed, with the exception of the rates for Tier 3 transmission service as set forth in the Transmission Provider's OATT, and shall not be adjusted to reflect any cost or payment incurred by LEM or Big Rivers for any expenditures due to legislation or regulatory or legal action, or any cost or payment incurred by LEM or Big Rivers for any expenditures due to any other reason, whether foreseeable or unforeseeable (e.g. carbon tax, BTU tax, CO<sub>2</sub>, emissions reduction or any other environmental or energy tax, charge or liability imposed on the generator or wholesale seller of such power, but exclusive of such charges if imposed on GREC or the end user).

THE FOLLOWING IS SCHEDULE A TO  
THE GREC/LEM WHOLESALE  
AGREEMENT, WHICH IS INCORPORATED  
BY REFERENCE INTO THIS SCHEDULE A

a. AVAILABILITY:

The rates set forth below apply to sales by LEM and corresponding purchases by GREC of Energy, Capacity and Ancillary Services for resale to Southwire for use in accordance with the terms of this Agreement. The maximum demand for Tier 1 Energy and Tier 2 Energy (inclusive of Tier 2 Supplemental Energy), collectively, shall be 339,000 kilowatts.

The rates charged are for Energy supply delivered to the Point of Delivery. Where a rate set forth in this Schedule A is identified as including a "Transmission Component," GREC will not be required to pay to LEM any charge for transmission in addition to the stated rate. If the type of service does not include a Transmission Component, then GREC must arrange for transmission or reimburse LEM for its actual costs of transmission related to such service if LEM has arranged for such transmission. Where a rate set forth in this Schedule A is identified as including "Bundled Ancillary Services," GREC will not be required to pay to LEM any charge in addition to the stated rate for providing the following Generation-Based Ancillary Services in the quantities and upon the terms and conditions set forth in Section 7.03 of the Agreement: Regulation and Frequency Response Service, Energy Imbalance Service, and Operating Reserves (Spinning and Supplemental) Service. Except to the extent expressly provided herein, GREC is also responsible for arranging to receive any necessary Ancillary Services directly from the Transmission Provider or must pay LEM for obtaining or providing such Ancillary Services. GREC expressly agrees that it will arrange with the Transmission Provider at its own cost for adequate reactive power and voltage support service to support all deliveries of Energy pursuant to this Agreement.

b. AGREEMENT:

This rate schedule is a part of and incorporated within the Agreement For Electric Service Between Green River Electric Corporation and LG&E Energy Marketing Inc. (which is defined therein, together with all schedules and attachments, as "Agreement"). The rates set forth in this Schedule A are subject in all respects to the terms and conditions of the Agreement. Schedule A shall be in effect throughout the term of the Agreement and, in accordance with the Agreement, is not subject to modification for any reason, foreseeable

or unforeseeable, including any adjustments resulting from regulatory, legal or legislative actions (e.g., carbon tax, BTU tax, CO<sub>2</sub>, emissions reduction or any other environmental or energy tax, charge or liability imposed on the generator or wholesale seller of such power, but exclusive of such charges if imposed on GREC or the end-user) or for any change in fuel or environmental costs, whether imposed upon or incurred by LEM or imposed upon GREC or Southwire or incurred by GREC with respect to its distribution facilities or its sales of Energy or transmission to Southwire. Notwithstanding the foregoing, (i) GREC is not hereby relieved of its obligations with respect to taxes under Section 10.02 of the Agreement or transmission charges related to the delivery of Tier 3 Energy, as set forth below and (ii) LEM has no obligation with respect to taxes, surcharges or other costs or liabilities imposed upon GREC or Southwire or incurred by GREC with respect to its distribution facilities or its sale of Energy or transmission to Southwire. Any capitalized word or phrase not defined in this Schedule A shall have the meaning set forth elsewhere in the Agreement.

c. DEMAND MEASUREMENT

Demand shall be measured using where applicable the maximum integrated thirty-minute demand at the Point of Delivery.

d. RATES:

- (1) The Tier 1 Energy Rate and the Tier 2 Energy Rate as set forth in Sections d.(2) and (3), are the rates inclusive of all expenses of providing an aggregate 339,000 kilowatts of firm electric service at a 98% load factor for total Tier 1 and Tier 2 kilowatt hours in each month equal to the amount in kWh calculated by multiplying 7,973,280 kWh by the number of days in that Billing Month. Accordingly, no separate demand charge is applicable to electric service under Tier 1 or Tier 2. Tier 1 Energy and Tier 2 Energy are available from the Effective Date through December 31, 2010.

The Tier 2 Supplemental Energy Rate as set forth in Section d.(4) is the rate for providing Tier 2 Energy in excess of a 98% load factor up to a 100% load factor based on an aggregate 339,000 kilowatts of firm electric service. The Tier 2 Supplemental Energy rate is available only during the period commencing January 1, 2001 and ending December 31, 2010.

The Tier 3 Energy Rate as set forth in Section d.(5) is the rate for providing firm Energy but not transmission service for all volumes of Energy above the maximum demand of 339,000 kilowatts for Tiers 1

and 2. The Tier 3 Energy Rate is available from the Effective Date through December 31, 2000. The Tier 3 Interruptible Energy Rate and Tier 3 Back-up Energy Rate are available only during the period commencing January 1, 2001 and ending December 31, 2010. The Tier 3 Interruptible Energy Rate is the rate inclusive of providing interruptible energy associated with a maximum of 7,000 kilowatts of demand in a given hour to GREC. Such rate, and the associated interruptible Energy up to 7,000 kilowatts per hour is made available solely at LEM's discretion. LEM has the right to withdraw the availability of all or any portion of this service at any time upon one week's written notice to GREC and Southwire (or such other form of notice acceptable to GREC, Southwire and LEM). When available, this 7,000 kilowatts of hourly demand shall be provided to meet underschedules above 339,000 kilowatts of demand of Tier 3 Energy from Third-Party Suppliers before recourse to the Tier 3 Backup Energy Rate.

After December 31, 2000, all volumes of Energy above the maximum demand of 339,000 kilowatts for Tiers 1 and 2 in each hour that are not supplied pursuant to a purchase by GREC from a Third Party Supplier (or by separate contract from LEM) or under the Tier 3 Interruptible Energy Rate shall be supplied at the Tier 3 Backup Energy Rate.

(2) Tier 1 Energy Rate:

The Tier 1 Energy Rate for firm power is \$0.0312 per kWh. This Rate includes a Transmission Component and the Bundled Ancillary Services.

(3) Tier 2 Energy Rate:

The Tier 2 Energy Rate includes a Transmission Component and the Bundled Ancillary Services. The Tier 2 Energy Rate for firm power is:

Period	\$ per kWh
Effective Date through December 31, 2000	\$0.02148
January 1, 2001 through December 31, 2001	\$0.02169
January 1, 2002 through December 31, 2002	\$0.02179
January 1, 2003 through December 31, 2003	\$0.02229
January 1, 2004 through December 31, 2004	\$0.02240
January 1, 2005 through December 31, 2005	\$0.02251
January 1, 2006 through December 31, 2006	\$0.02273
January 1, 2007 through December 31, 2007	\$0.02312

January 1, 2008 through December 31, 2008	\$0.02344
January 1, 2009 through December 31, 2009	\$0.02377
January 1, 2010 through December 31, 2010	\$0.02410

(4) Tier 2 Supplemental Energy Rate

The Tier 2 Supplemental Energy Rate includes a Transmission Component and the Bundled Ancillary Services. The Tier 2 Supplemental Energy Rate for firm power is:

Period	\$ per kWh
January 1, 2001 through December 31, 2001	\$0.01471
January 1, 2002 through December 31, 2002	\$0.01481
January 1, 2003 through December 31, 2003	\$0.01531
January 1, 2004 through December 31, 2004	\$0.01542
January 1, 2005 through December 31, 2005	\$0.01553
January 1, 2006 through December 31, 2006	\$0.01575
January 1, 2007 through December 31, 2007	\$0.01614
January 1, 2008 through December 31, 2008	\$0.01646
January 1, 2009 through December 31, 2009	\$0.01679
January 1, 2010 through December 31, 2010	\$0.01712

(5) Tier 3 Energy Rate

The Tier 3 Energy Rate for firm power for the period from the Effective Date through December 31, 2000, shall be \$0.0192 per kWh divided by one minus the applicable transmission loss rate as determined under the Transmission Provider's Open Access Transmission Tariff. The Tier 3 Energy Rate shall terminate as of 12:01 A.M. on January 1, 2001, and LEM shall, as of that time and thereafter, have no further obligation to sell and deliver to GREC Capacity and Energy in excess of the volumes of Tier 1 Energy and Tier 2 Energy (inclusive of Energy priced as Tier 2 Supplemental Energy) provided for in Section d.(1), above, except for Tier 3 Interruptible Energy and Tier 3 Back-up Energy, which shall be sold and delivered by LEM in the limited circumstances set forth elsewhere in this Agreement. This Tier 3 Energy Rate includes Bundled Ancillary Services but does not include a Transmission Component.

(6) Tier 3 Interruptible Energy Rate

After December 31, 2000, in the event GREC, in any hour and for any reason, fails to receive sufficient volumes of Tier 3 Energy to be



delivered to it by a Third-Party Supplier to account for its purchase of Energy above 339,000 kilowatts of demand, and LEM has not notified GREC of the non-availability of this rate. LEM shall supply Tier 3 Interruptible Energy for up to 7,000 kilowatts of demand each hour at the following rates per kWh, inclusive of transmission losses. This Tier 3 Interruptible Energy Rate includes a Transmission Component and the Bundled Ancillary Services.

Period	\$ per kWh
January 1, 2001 through December 31, 2001	\$0.02112
January 1, 2002 through December 31, 2002	\$0.02122
January 1, 2003 through December 31, 2003	\$0.02132
January 1, 2004 through December 31, 2004	\$0.02142
January 1, 2005 through December 31, 2005	\$0.02152
January 1, 2006 through December 31, 2006	\$0.02172
January 1, 2007 through December 31, 2007	\$0.02202
January 1, 2008 through December 31, 2008	\$0.02233
January 1, 2009 through December 31, 2009	\$0.02263
January 1, 2010 through December 31, 2010	\$0.02295

(7) Tier 3 Backup Energy Rate

After December 31, 2000, in the event GREC, in any hour and for any reason fails to receive sufficient volumes of Tier 3 Energy to be delivered to it to account for its purchase of Energy above 339,000 kilowatts of demand, and to the extent such Energy supplied in that hour is not supplied as Tier 3 Interruptible Energy, LEM shall supply such Energy as Tier 3 Backup Energy and shall charge GREC a Tier 3 Backup Energy Rate of the greater of (i) \$0.0307 per kWh or (ii) 110% of amounts paid by LEM to obtain and deliver such Energy, including any amounts paid by LEM for transmission and ancillary services on any Third-Party Transmission Systems and 100% of transmission costs on the Transmission Providers' system, provided that LEM will not charge a rate for Tier 3 Backup Energy greater than the maximum rate for energy imbalance service permitted under its rate schedule for the sale of Ancillary Services as filed with FERC.

To the extent LEM charges \$0.0307 per kWh for Tier 3 Backup Energy, that rate includes a Transmission Component and Bundled Ancillary Services. To the extent LEM charges 110% of amounts paid by LEM to obtain and deliver such Energy for Tier 3 Backup Energy, the rate does not include a Transmission Component, nor any Ancillary Services.

(8) Bundled Rates Not Subject to Change

The Tier 1 Energy Rate, the Tier 2 Energy Rate, the Tier 2 Supplemental Energy Rate, the Tier 3 Interruptible Energy Rate, and the Tier 3 Backup Energy Rate (as set forth in Sections d.(2), d.(3), d.(4), d.(6) and d.(7)(i) of this Schedule A respectively), are bundled rates and are not subject to change for any reason, including changes in the Transmission Provider's Open Access Transmission Tariff. (See Section b. of this Schedule A).

The Tier 3 Energy Rate from the Effective Date through December 31, 2000 includes a base component of \$0.0192 per kWh for Energy supply and Bundled Ancillary Services, as set forth in Section d.(5). The base component of the Tier 3 Energy Rate through December 31, 2000, is not subject to change for any reason. (See Section b. of this Schedule A). However, during this period, the Tier 3 Energy Rate may be adjusted for changes in the applicable transmission loss factor.

e. CALCULATION OF THE MONTHLY CHARGE:

(1) Definitions

The LEM Sale Amount for each hour shall be calculated as the metered amount of Energy in that hour at the Point of Delivery, and LEM shall provide sufficient power for transmission losses necessary to reach such Point of Delivery. After December 31, 2000, the LEM Sales Amount shall be further adjusted by subtracting from it the amount of Tier 3 Energy scheduled by and delivered to GREC on behalf of Southwire.

The Minimum Purchase Obligation in each Billing Month shall be the amount in kWh calculated by multiplying 126,910 kWh by 24 hours and by the number of days in that Billing Month for the period from the Effective Date of this Agreement through December 31, 2002, and the amount in kWh calculated by multiplying 47,040 kWh by 24 hours and by the number of days in that Billing Month for the period from January 1, 2003 through December 31, 2010 provided, however, that if Southwire (or any subsidiary of Southwire) builds the fifth pot line at the Southwire Smelter, the Minimum Purchase Obligation after December 31, 2002 shall be the amount in kWh calculated by multiplying 36,260 kWh by 24 hours and by the number of days in that Billing Month.

The Tier 2 Purchase Allowance shall mean the positive difference in kWh in each Billing Month between the amount in kWh calculated by

multiplying 7,973,280 kWh by the number of days in that Billing Month less the Minimum Purchase Obligation, for the period from the Effective Date of this Agreement through December 31, 2010.

(2) Determination of Hourly and Monthly Billing Amounts

Commencing January 1, 2001, for the purpose of determining the total kWh sold by LEM to GREC as Tier 1 Energy, Tier 2 Energy, Tier 2 Supplemental Energy, Tier 3 Interruptible Energy, and Tier 3 Backup Energy, and to balance such amounts against hourly deliveries of Tier 3 Energy scheduled and received by GREC on behalf of Southwire, LEM shall determine the LEM Sale Amount for each hour of each Billing Month. The LEM Sale Amount for each hour will then be used to determine the Tier 1/Tier 2 Billing Amount, the Tier 3 Interruptible Billing Amount, and the Tier 3 Backup Billing Amount for each such hour by comparing the LEM Sale Amount to the applicable maximum Tier 1/Tier 2 combined demand of 339,000 kilowatts:

- (a) Where the LEM Sale Amount for that hour is equal to or greater than 339,000 kWh, the amount of kWh billed for that hour as the Tier 1/Tier 2 Billing Amount shall be 339,000 kWh. To the extent the LEM Sale Amount exceeds 339,000 kWh, the excess shall be allocated as either Tier 3 Interruptible Energy or Tier 3 Backup Energy, as follows:
  - (i) Provided LEM has not given notice of the non-availability of all or a portion of the 7,000 kilowatts of Tier 3 Interruptible Energy, the kWh in excess of 339,000 kWh up to 7,000 kWh shall be the Tier 3 Interruptible Billing Amount in that hour, and any remaining amounts of kWh shall be the Tier 3 Backup Billing Amount;
  - (ii) If LEM has given notice of the non-availability of all or any portion of the 7,000 kilowatts of Tier 3 Interruptible Energy, the kWh in excess of 339,000 kWh up to the amount of kWh of Tier 3 Interruptible Energy that remains available in that hour, if any, shall be the Tier 3 Interruptible Billing Amount in that hour, and any remaining amounts of kWh shall be the Tier 3 Backup Billing Amount;
- (b) In any hour in which GREC has scheduled and received Tier 3 Service on behalf of Southwire, where the LEM Sale Amount for that hour is less than 339,000 kWh, the amount of kWh

billed as the Tier 1/Tier 2 Billing Amount for that hour shall be the greater of 309,000 kWh or the LEM Sale Amount in kWh.

- (c) In any hour in which GREC has not scheduled Tier 3 Service on behalf of Southwire, or in any hour in which GREC has scheduled and received Tier 3 Service on behalf of Southwire and where the LEM Sale Amount for that hour is less than 339,000 kWh due to an out-of-service condition affecting one or more of Southwire's pot lines (including any scheduled or unscheduled outage for maintenance or repair or any outage due to an Uncontrollable Force) or due to an Uncontrollable Force preventing LEM delivery of the requested Energy, the Tier 1/Tier 2 Billing Amount for that hour shall be equal to the LEM Sale Amount.
- (d) After determining for each hour the Tier 1/Tier 2 Billing Amount, the Tier 3 Interruptible Billing Amount, and the Tier 3 Backup Billing Amount, at the end of each Billing Month LEM shall determine the Monthly Tier 1/Tier 2 Billing Amount, the Monthly Tier 3 Interruptible Billing Amount, and the Monthly Tier 3 Backup Billing Amount, by summing the hourly amounts of each of the three billing categories for all hours in that Billing Month.
- (e) In any Billing Month after December 31, 2000, in which GREC purchases any form of Tier 3 service, whether from LEM or Third Party Suppliers, GREC shall be obligated to take or pay for Tier 1 and Tier 2 service at a minimum monthly load factor of 98%, unless such take-or-pay obligation has been waived by LEM with respect to any Billing Month.

(3) Tier 1

- (a) Each Billing Month for the period from the Effective Date of this Agreement through December 31, 2000, and in each Billing Month for the period from January 1, 2001 through December 31, 2010 in which GREC does not take Tier 3 service on behalf of Southwire, GREC shall pay a Tier 1 Energy Charge that shall be the sum of (i) the rate set forth in Section d.(2) of this Schedule A multiplied by the number of kWh purchased by GREC for resale to Southwire, but no more than the Minimum Purchase Obligation, and (ii) a rate of \$0.0140 per kWh multiplied by the number of kWh, if any, by which the Minimum Purchase Obligation exceeds the number of kWh

purchased by GREC from LEM for resale in such Billing Month. Payment of the Tier 1 Energy Charge is the only take-or-pay obligation of GREC to LEM in Billing Months in which GREC does not take Tier 3 service on behalf of Southwire.

If the amount calculated pursuant to subpart (ii) of the preceding paragraph within this subsection (a) is more than 0 and if during any hour of the Billing Month for which the calculation is being made LEM failed to deliver Energy to GREC at the Point of Delivery for more than (5) consecutive minutes for any reason other than a discontinuance of delivery pursuant to Section 11.02, then the amount due pursuant to subpart (ii) shall be reduced, provided that such reduction does not reduce the amount due pursuant to subpart (ii) to less than 0, by the product of (X) \$0.0140 and (Y) for each hour in which such failure to deliver occurred, the "Delivery Difference," if such Delivery Difference is positive. The "Delivery Difference" is the amount determined (for each hour in which such failure to deliver occurred) by subtracting the LEM Sale Amount for the applicable hour from (i) during the period from the Effective Date through December 31, 2002, 126,910 kWh or (ii) if Southwire does not build the fifth potline, during the period from January 1, 2003 through December 31, 2010, 47,040 kWh or (iii) if Southwire builds the fifth potline, then during the period from January 1, 2003 through December 31, 2010, 36,260 kWh. The amount due under subpart (ii) shall not be reduced by reason of GREC's failure to accept delivery for any reason, including an Uncontrollable Force, of Energy made available by LEM.

At its sole discretion, GREC may purchase all or any portion of the Minimum Purchase Obligation for resale to third-party consumers, utilities, power marketers, power brokers, or any other party to which power can be legally sold, but such resale may occur only during such hours as GREC is not also purchasing Energy in excess of the amount of kilowatt hours used during the applicable period to determine the Minimum Purchase Obligation on behalf of Southwire.

- (b) Each Billing Month for the period from January 1, 2001 through December 31, 2010 in which GREC purchases any form of Tier 3 service on behalf of Southwire, GREC shall pay a Tier 1 Energy Charge computed by multiplying the rate set forth in

Section d.(2) of this Schedule A by the Monthly Purchase Obligation.

Tier 2

- (a) Each Billing Month for the period from the Effective Date of this Agreement through December 31, 2000, and each Billing Month for the period from January 1, 2001 through December 31, 2011 in which GREC does not take Tier 3 service on behalf of Southwire, GREC shall pay a Tier 2 Energy Charge computed by multiplying the applicable rate set forth in Section d.(3) of this Schedule A by the number of kilowatt hours delivered to GREC by LEM within the Tier 2 Purchase Allowance, up to and including the full Tier 2 Purchase Allowance.
- (b) Each Billing Month for the period from January 1, 2001 through December 31, 2010 in which GREC purchases any form of Tier 3 service on behalf of Southwire, GREC shall pay a Tier 2 Energy Charge computed by multiplying the applicable rate set forth in Section d.(3) of this Schedule A by the Tier 2 Purchase Allowance.
- (c) Each Billing Month for the period from January 1, 2001 through December 31, 2010, GREC shall pay a Tier 2 Supplemental Energy Charge computed by multiplying the applicable rate set forth in Section d.(4) of this Schedule A by the positive difference, if any, between (x) the Monthly Tier 1/Tier 2 Billing Amount and (y) the Tier 2 Purchase Allowance.

(5) Tier 3

Each Billing Month from the Effective Date of this Agreement until December 31, 2000, GREC shall pay a Tier 3 Energy Charge computed by multiplying the applicable Tier 3 Energy Rate set forth in Section d.(5) of this Schedule A by the number of kWh purchased by GREC from LEM in excess of the sum of the Minimum Purchase Obligation and the Tier 2 Purchase Allowance (*i.e.*, the amount in kWh determined each Billing Month by multiplying 7,973,280 kWh by the number of days in that Billing Month). In addition, unless GREC has separately provided for transmission for such Tier 3 Energy, GREC shall pay LEM a Tier 3 transmission charge equal to the amount that LEM pays for such service.

(6) Tier 3 Interruptible

Each Billing Month from January 1, 2001 to December 31, 2010, GREC shall pay a Tier 3 Interruptible Energy Charge computed by multiplying the Monthly Tier 3 Interruptible Billing Amount by the applicable rate in Section d.(6) of this Schedule A.

(7) Tier 3 Backup

Each Billing Month from January 1, 2001 to December 31, 2010, GREC shall pay a Tier 3 Backup Energy Charge computed by summing the hourly charges for Tier 3 Backup Energy, with such hourly charges computed by multiplying the Tier 3 Backup Billing Amount for each hour by the applicable rate for that hour, as set forth in Section d.(7) of this Schedule A including transmission and Ancillary Service costs as set forth therein

## CLASSIFICATION OF SERVICE

### GREEN RIVER SMELTER RATES, CHARGES, TERMS AND CONDITIONS SECTION II (Tier 3 Service)

a. AVAILABILITY

This section of Schedule A applies to sales by GREC and corresponding purchases by Southwire of Tier 3 power purchased under contract by GREC from Third-Party Suppliers for resale to Southwire. The terms and conditions under which GREC shall arrange such contracts for Tier 3 purchases and the obligation of Southwire to make corollary retail purchases shall be governed by the terms and conditions of the Agreement for Electric Service between GREC and Southwire approved herewith.

b. TIER 3 AMOUNTS

GREC shall be obligated to deliver to Southwire only those amounts of Tier 3 Energy delivered by Third-Party Suppliers to the Transmission Provider's transmission system, less the amount of transmission losses applicable to such Energy calculated at the then-effective transmission loss factor contained in the Transmission Provider's OATT.

In order to provide the information necessary for the calculation of the LEM Sale Amount as set forth in Section I of this Schedule A, for each hour of each Billing Month, GREC shall determine the amount of Tier 3 Energy scheduled by GREC on behalf of Southwire and delivered to the Transmission Provider's transmission system in that hour, net of applicable transmission losses.

c. TIER 3 ANCILLARY SERVICES

With respect to the Tier 3 Service purchased under this Section II, if Generation-Based Ancillary Services have not been purchased by GREC on behalf of Southwire on a bundled basis from Third-Party Suppliers or otherwise provided pursuant to Section III of this Schedule A, then GREC shall separately purchase from any other Third Party Supplier capable of supplying them the Generation-Based Ancillary Services necessary to transmit Energy on the Transmission Provider's transmission system to GREC on behalf of Southwire.

d. TIER 3 CHARGES

Under this Section II, Southwire shall be obligated to pay to GREC all amounts that GREC is obligated to pay to Third-Party Suppliers for sales of Tier 3 power to GREC for resale to Southwire. Such charges shall include: (i) the purchase price paid by GREC for such Tier 3 power; (ii) the costs, if any, of transmission service provided by



the Transmission Provider; and (iii) the costs of any transmission services and Ancillary Services taken by GREC on third-party transmission systems to transmit such power to the Transmission Provider's transmission system. Such charges shall also include the cost to GREC of purchasing Generation-Based Ancillary Services necessary to transmit Energy on the Transmission Provider's transmission system. When applicable, such charges may also include costs for the purchase of additional amounts of Energy equal to the applicable transmission loss factor(s) on any third party transmission system(s) used to transmit Energy to the Transmission Provider's transmission system.

e. BILLING

For amounts owed to Third-Party Suppliers with respect to Tier 3 Service, GREC shall bill Southwire on the earlier of the first working day after the 13th day of the month or on a working day at least ten days prior to the date on which GREC's payment is due to each Third-Party Supplier. Southwire shall pay GREC in immediately available funds on the earlier of the first working day after the 24th day of the month or on a working day no later than forty-eight hours prior to the date on which GREC's payment to each Third-Party Supplier is due. If Southwire shall fail to pay any such bill within such prescribed period, upon five (5) days' written notice to Southwire of its intention to do so, GREC may discontinue delivery of electric Energy hereunder. Such discontinuance for non-payment shall not in any way affect the obligation of Southwire to pay GREC for all capacity or energy that GREC has contracted to purchase for resale to Southwire, or the right of Southwire to request GREC to resell Tier 3 Energy that Southwire is not entitled to receive.

CLASSIFICATION OF SERVICE

GREEN RIVER SMELTER RATES, CHARGES, TERMS AND CONDITIONS  
SECTION III

a. AVAILABILITY:

This section of Schedule A applies to sales by GREC and corresponding purchases by Southwire of transmission services and Ancillary Services in conjunction with the transmission on Big Rivers' transmission system of Energy purchased (i) from power suppliers other than LEM under Section I, (ii) from LEM as unbundled Tier 3 Energy without transmission services under Section I, and (iii) from Third-Party Suppliers under Section II of Schedule A.

b. INCORPORATION OF SECTION 6 OF BIG RIVERS' TRANSACTION TARIFF

Attached to this Section III and incorporated herein by reference is Section 6 of Big Rivers' Transaction Tariff. Under this Section III, Southwire shall be obligated to pay to GREC all amounts that GREC is obligated to pay to Big Rivers in accordance with the rates, charges, and other terms and conditions set forth in such Section 6.

c. RIGHT TO CHALLENGE TRANSMISSION RATES OR METHODOLOGY

For deliveries of Tier 3 service, each of GREC and Southwire shall have the right (i) to challenge at any regulatory proceeding at the appropriate regulatory agency the applicable transmission rate, the applicable transmission loss factor, and/or the appropriate methodology used to determine the applicable transmission rate or transmission loss factor; and (ii) to intervene in and participate fully in any such proceeding.

THE FOLLOWING IS SECTION 6 OF BIG RIVERS'  
TRANSACTION TARIFF, WHICH IS INCORPORATED BY  
REFERENCE INTO THIS SCHEDULE A

6. BIG RIVERS GREEN RIVER SMELTER RATE

a. AVAILABILITY:

This tariff applies to Green River Electric Corporation ("GREC") for purchases by GREC of transmission and ancillary services for certain power as set forth in Section 6.c.(1) sold to Southwire Company ("Southwire") for use at the Southwire primary aluminum smelter, including any fifth pot line if such pot line is constructed at the Southwire smelter, and further including the adjacent rod & cable mill, all located in Hancock County, Kentucky.

b. TERM OF THE RATE:

This tariff shall take effect at 12:01 a.m. on the day after the Closing Date of the transaction between Big Rivers and LG&E Energy Corp. ("LEC") and its affiliates and shall terminate at midnight on December 31, 2010. This tariff shall remain in effect during the entire term hereof, without modification.

c. RATES:

(1) Transmission Rates

For the period from the effective date of this tariff through December 31, 2010, to the extent GREC requires transmission service to make sales of energy to Southwire (including all Tier 3 Energy taken after the effective date of this tariff and any Tier 1 Energy and Tier 2 Energy GREC supplies from sources other than LG&E Energy Marketing Inc. ("LEM") as permitted by the GREC/LEM Wholesale Agreement), Big Rivers shall assess unbundled charges for transmission for all energy purchased by GREC from Third-Party Suppliers on behalf of Southwire. Big Rivers shall charge GREC for such transmission services according to the rates filed in Big Rivers' OATT filed at and accepted by the Federal Energy Regulatory Commission and/or the Kentucky Public Service Commission as a comparable transmission tariff, as they are then in effect, applied to each kW of transmission demand or network service reserved on Big Rivers' Open Access Same-time Information System ("OASIS") by GREC for power resold to Southwire. Big Rivers shall offer short- and long-term firm point-to-point service, non-firm point-to-point service, and network integration service to GREC for

this service under the terms and conditions of Big Rivers' OATT, with the charge for transmission to be based on the type and amount of transmission service selected and reserved each month on the OASIS by GREC. GREC will in all cases be responsible for obtaining such service using Big Rivers' OASIS.

(2) Ancillary Services Rates:

During the period from the effective date of this tariff through December 31, 2010, to the extent generation-based ancillary services are not supplied by LEM in association with amounts purchased by GREC from LEM, GREC shall be required separately to purchase generation-based ancillary services necessary to transmit power on Big Rivers' transmission system to GREC for power resold to Southwire. Required ancillary services include: Reactive Supply and Voltage Control from Generation Sources Service; Regulation and Frequency Response Service; Energy Imbalance Service; Operating Reserve - Spinning Reserve Service; and Operating Reserve - Supplemental Reserve Service. GREC shall be entitled to purchase these generation-based ancillary services from any party capable of supplying them, including Big Rivers or LEM. Big Rivers' OATT contains rates for such services when supplied by Big Rivers to GREC (with the exception of certain quantities of reactive power), and the rates used shall be the then-effective tariff rates for the individual ancillary services selected. Transmission-based ancillary service charges for Scheduling, System Control, and Dispatch Service shall be included as part of the transmission rate determined in accordance with Section 6.c.(1). In addition, there shall be no additional charge to GREC for reactive power provided from the existing level of transmission capacitor banks on Big Rivers' transmission system or for the level of reactive power specified in Section 6.f.

d. CHARGES

Each calendar month from the effective date of this tariff through December 31, 2010, GREC shall pay a Transmission Charge calculated in accordance with the transmission service reserved by GREC on Big Rivers' transmission system as set forth in Section 6.c.(1) of this tariff, plus separate Ancillary Services Charges for any ancillary services purchased by GREC from Big Rivers, calculated in accordance with the services purchased as set forth in Section 6.c.(2).

e. TERMINATION OF TARIFF AND OBLIGATIONS TO PURCHASE AND SELL:

As of the effective date of this tariff, Southwire shall have no further obligation to Big Rivers and there shall be no exit fee or stranded cost obligation owing from either Southwire or GREC to Big Rivers or any other party relating to Big Rivers' supply of power and transmission to GREC for power resold to Southwire prior to the effective date of this tariff. As of the effective date of this tariff, Big Rivers has no further obligation to provide electric power supply service to GREC with respect to Southwire's load. This transmission and ancillary services tariff shall terminate as of December 31, 2010.

f. POWER FACTOR

For all power taken under this tariff on or before December 31, 2000 under Tier 1, Tier 2, and Tier 3, GREC shall maintain and shall require Southwire to maintain a power factor at the point of delivery as nearly as practicable to unity and in no case shall the power factor be allowed to fall below 0.90 leading or lagging with respect to power delivered hereunder. For all power taken under this tariff after December 31, 2000 under Tier 1, Tier 2 and Tier 3, GREC shall maintain and shall require Southwire to maintain its usage of reactive power at the point of delivery at a level such that the reactive power demand does not exceed the reactive power demand that would occur at a power factor of 0.90 lagging at the metered demand up to 339,000 kilowatts. In the event that Southwire's recorded reactive power demand exceeds the limitations set forth above, GREC shall purchase sufficient reactive power from a third-party source or shall purchase such reactive power from Big Rivers, to the extent available. The above described reactive power limits shall not be applicable to any reactive power consumed on the proposed fifth pot line. Specifically, for all Energy that Southwire purchases and receives from GREC with respect to any fifth pot line that may be constructed at the Southwire smelter, GREC shall require Southwire to maintain a power factor at the point of delivery that shall be at unity or leading, but in no event shall be lagging. At its sole expense, Southwire shall install the necessary equipment, or request GREC to acquire the necessary reactive power from third-party suppliers of generation-based ancillary services, to satisfy the limitation set forth in this paragraph.

g. BILLING

Big Rivers shall bill GREC on the first working day after the 13<sup>th</sup> of the month for the previous month's transmission and ancillary services taken hereunder. GREC shall pay Big Rivers in immediately available funds on or before the first working day after the 24<sup>th</sup> of the month. If GREC shall fail to pay any such bill within such prescribed period, Big Rivers may discontinue delivery of

electric power and energy hereunder upon five (5) days' written notice to GREC and LEM of its intention to do so.

h. POWER SUPPLY OBLIGATIONS

Big Rivers shall have no power supply obligations under this tariff for Tier 1, Tier 2 or Tier 3 service or otherwise to GREC for power to be resold to Southwire at any time after the effective date of this tariff. Any Tier 3 power supply agreements negotiated between Big Rivers and GREC for wholesale power supply after December 31, 2000 shall be set forth separately.

i. TRANSMISSION OBLIGATIONS

(a) Priority Reservation of Existing Transmission Capacity

Through December 31, 2001, consistent with FERC Order No. 888, Big Rivers shall continue to have a transmission planning obligation with respect to the Southwire load served by GREC, and GREC will cause Big Rivers to hold in reserve at no additional cost existing transmission capacity in an amount needed for Southwire's reasonably forecasted load growth, provided such projections of forecasted load growth are made available to Big Rivers prior to the effective date of Big Rivers' OATT. Big Rivers will give Southwire and GREC a written notice of filing and a copy of all filed materials at the time of any filing involving Big Rivers' OATT. The point-to-point transmission paths to be held in reserve for Southwire's reasonably forecasted load growth shall be those designated by GREC to Big Rivers. Transmission capacity held in reserve for Southwire's reasonably forecasted load growth during this period shall be posted on Big Rivers' OASIS and made available to third-parties on a non-firm basis until such time as it is needed and contracted for at OATT rates by GREC or GREC's designated third-party supplier of power; provided, however, that if such transmission capacity held in reserve by Big Rivers for GREC load growth attributable to Southwire is not contracted for by GREC by December 31, 2001, Big Rivers shall thereafter be entitled to release such capacity held in reserve and post it for sale on a firm basis on its OASIS.

(b) Rates, Terms, and Conditions Not Unfavorable

For service to GREC for power resold to Southwire, GREC shall not be charged by Big Rivers more than the lesser of (i) the amount that Big Rivers imputes to itself for its own off-system transactions, or (ii) the amount Big Rivers charges to any third-party after the effective date of

this tariff for comparable transmission service and ancillary services. The terms and conditions of transmission service and ancillary services offered by Big River to GREC for power resold to Southwire shall not be (i) less favorable than those applied by Big Rivers to itself for its own off-system transactions under its OATT or (ii) less favorable than those applied by Big Rivers to any third-party taking service after the effective date of this tariff.

j. BILLING FORM

BIG RIVERS ELECTRIC CORP., P.O. BOX 24, HENDERSON, KY 42420

MONTH ENDING

TO GREEN RIVER ACCOUNT 82 GR

SUBSTATION NSA SERVICE FROM \_\_\_\_\_ THROUGH \_\_\_\_\_

TRANSMISSION  
DEMAND KW TIMES \$ \_\_\_\_\_ EQUALS \$ \_\_\_\_\_

ADJUSTMENT KW TIMES \$ \_\_\_\_\_ EQUALS \$ \_\_\_\_\_

SUBTOTAL \$ \_\_\_\_\_

ANCILLARY SERVICES \$ \_\_\_\_\_

TOTAL AMOUNT DUE \$ \_\_\_\_\_

DUE IN IMMEDIATELY AVAILABLE FUNDS ON OR BEFORE THE FIRST WORKING DAY AFTER THE 24<sup>TH</sup> OF THE MONTH

**RETAIL ELECTRIC SERVICE AGREEMENT**

Dated as of July 1, 2009,

by and between

**KENERGY CORP.**

and

**CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP**

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## RETAIL ELECTRIC SERVICE AGREEMENT

This RETAIL ELECTRIC SERVICE AGREEMENT (this "Agreement") is dated as of July 1, 2009, and made by and between KENERGY CORP., a Kentucky rural electric cooperative corporation ("Kenergy"), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership ("Century").

### RECITALS

A. 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").

B. 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").

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 energy suppliers, including Big Rivers Electric Corporation ("Big Rivers"), an electric generation and transmission cooperative of which Kenergy is a Member.

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, 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.

F. In connection with and as a condition to the Unwind Transaction, Kenergy and Big Rivers have agreed to enter into a wholesale electric service agreement, dated as of the date hereof, for the purchase and sale of electric energy and related services for resale by Kenergy to Century ("Century Wholesale Agreement").

G. In connection with and as a condition to the Unwind Transaction and the Century Wholesale Agreement, Kenergy will supply and deliver, and Century will purchase, retail electric service on the terms and conditions set forth herein.

## 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 I

#### 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 less Base Curtailed Energy in such 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* Supplemental Energy 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 rate, expressed in dollars per MWh, 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 Recitals.

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 Preamble.

1.1.30 Century Guarantee: As defined in Section 13.3.

1.1.31 Century Parent: Century Aluminum Company, a Delaware corporation, and a parent corporation of Century.

1.1.32 Century Wholesale Agreement: As defined in the Recitals.

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



1.1.34 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) \$157 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' unrestricted cash on hand following the consummation of the Unwind Transaction less \$125 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.

1.1.35 Economic Sales: As defined in Section 4.13.3.

1.1.36 Effective Date: As defined in Section 6.1.

1.1.37 Electric Services: Electric services, including capacity and associated Energy and Transmission Services, provided by Kenergy pursuant to this Agreement.

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

1.1.39 Environmental Surcharge: As defined in Section 4.8.3.

1.1.40 Environmental Surcharge Factor: With respect to any Billing Month, a monthly environmental surcharge factor, expressed in dollars per MWh, that is calculated in accordance with the "Monthly Environmental Surcharge Factor" as defined in Big Rivers' Environmental Surcharge Rider.

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

1.1.42 Equity Development Credit: As defined in Section 4.10.

1.1.43 Event of Default: As defined in Section 14.1.

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

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

1.1.46 Existing Century Agreement: As defined in the Recitals.

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

1.1.48 FAC Charge: As defined in Section 4.8.1.

1.1.49 FAC Factor: With respect to any Billing Month, the fuel adjustment factor, expressed in dollars per MWh, that is calculated in accordance with the FAC in dollars per kWh.

1.1.50 FERC: Federal Energy Regulatory Commission.

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

1.1.52 Fiscal Year: The fiscal year of Big Rivers.

1.1.53 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.

1.1.54 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.

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

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

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

1.1.58 Interruptible Energy Charge: As defined in Section 4.3.1.

1.1.59 Interruptible Energy Terms: As defined in Schedule 2.3.2(a).

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

1.1.61 KPSC: Kentucky Public Service Commission.

1.1.62 kW: Kilowatt.

1.1.63 kWh: Kilowatt-hour.

1.1.64 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 from the Regulatory Account. 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. For the avoidance of doubt, the Large Industrial Rate shall be determined without regard to the effect of the Surcharge, the Rural Economic Reserve, the Economic Reserve or the Transition Reserve.

1.1.65 LG&E: As defined in the Recitals.

1.1.66 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 by Century to Kenergy under this Agreement.

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

1.1.68 Market Energy Charge: As defined in Section 4.3.3.

1.1.69 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.

1.1.70 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.

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

1.1.72 Monthly Charge: As defined in Section 4.1.

1.1.73 MW: Megawatt.

1.1.74 MWh: Megawatt-hour.

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

1.1.76 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.

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

1.1.78 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. For the avoidance of doubt, Southwire Company is not a New Ratepayer.

1.1.79 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 Century under this Agreement and "Electric Services" as defined in the Alcan Retail Agreement to Alcan

including the Century Wholesale Agreement, the Alcan Wholesale Agreement, coordination agreements, lockbox agreements, and all other related agreements.

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

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

1.1.82 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 (a) the Rebate and (b) 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 Rural Economic Reserve, the Economic Reserve or the Transition Reserve.

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

1.1.84 Notice of Interruption: As defined in Schedule 2.3.2(a).

1.1.85 Notice of Termination for Closure: As defined in Section 7.3.1(a).

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

1.1.87 Parties: Kenergy and Century.

1.1.88 Permitted Interruption: As defined in Schedule 2.3.2(a).

1.1.89 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.

1.1.90 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 Big Rivers.

1.1.91 Potential Tax Liability: As defined in Section 13.3.

1.1.92 Potline Reduction: As defined in Section 10.3.1.

1.1.93 Potline Reduction Sales: As defined in Section 10.3.1.

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

1.1.95 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 Big Rivers shall agree on a mutually acceptable alternative source for that rate.

1.1.96 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.

1.1.97 Rebate: As defined in Section 4.9.

1.1.98 Regulatory Account: The regulatory account containing purchased power costs to be recovered by Big Rivers from the Members with respect to sales to their Non-Smelter Ratepayers.

1.1.99 Response: As defined in Schedule 2.3.2(a).

1.1.100 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.

1.1.101 Restructuring Amount: As defined in Section 16.5.1.

1.1.102 Retail Fee: As defined in Section 4.12.

1.1.103 Rural 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 \$60.9 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 Rural Economic Reserve after the Effective Date.

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

1.1.105 Scheduled Interruptible Energy: As defined in Schedule 2.3.2(a).

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

1.1.107 Service Period: As defined in Section 2.1.

1.1.108 Smelters: Century and Alcan.

1.1.109 Supplemental Energy: As defined in Section 2.3.2.

1.1.110 Supplemental Energy Charge: As defined in Section 4.3.

1.1.111 Surcharge: As defined in Section 4.11.

1.1.112 Surplus Sales: As defined in Section 10.1.1.

1.1.113 System Emergency: Any cessation of operation or reduction in the provision or delivery of Electric Services by Kenergy due in whole or in part to: (a) a disconnection of all or a portion of Big Rivers' or Kenergy's system from the transmission grid (other than as a direct result of Big Rivers' or Kenergy's 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' or Kenergy's system or any material component thereof or imminent danger of material damage to property, or (iii) other dangerous occurrences that Big Rivers or Kenergy believes, in the exercise of Prudent Utility Practice, should be prevented or curtailed.

1.1.114 System Firm: An obligation to supply Energy from:

- (a) Big Rivers' owned or leased generation facilities,
- (b) Big Rivers' contract with the Southeastern Power Authority (Contract No. 89-00-1501-637), or
- (c) 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 Ratepayers, the Smelters and Third Parties under power sales agreements entered into prior to the making of such obligation to supply Energy.

1.1.115 Term: As defined in Section 7.1.

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

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

1.1.118 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.

1.1.119 TIER Adjustment: As defined in Section 4.7.5.

1.1.120 TIER Adjustment Charge: As defined in Section 4.7.1.

1.1.121 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.

1.1.122 Transmission Charge: As defined in Section 4.5.

1.1.123 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 in accordance with the terms and conditions of the Century Wholesale Agreement.

1.1.124 Transmission Upgrade: The transmission upgrade described in the Coordination Agreement dated the date hereof between Century and Big Rivers.

1.1.125 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.

1.1.126 Undeliverable Energy Sales: As defined in Section 10.2.1.

1.1.127 Unwind Transaction: The consummation of the transactions contemplated on the 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, Kenergy will supply, and Century will purchase, Electric Services 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 Kenergy to Century under this Agreement shall be nominally three-phase, sixty cycle at 161,000 volts or as otherwise agreed to by the Parties and Big Rivers. The Parties and Big Rivers 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, Kenergy will deliver, or cause to be delivered, at the Point of Delivery to Century Base Monthly Energy, Supplemental Energy and Back-Up Energy.

2.3.1 Base Monthly Energy. Century may purchase 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) and Schedule 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 or Third Party Suppliers pursuant to Section 2.3.2(c).

(a) Interruptible Energy. As of the Effective Date, Kenergy shall make available to Century up to 10 MW per Hour of Energy subject to Kenergy’s right to interrupt the delivery of such Energy (“Interruptible Energy”) in accordance with the terms and conditions set forth in Schedule 2.3.2(a). Century hereby agrees to the terms and conditions of Schedule 2.3.2(a) and agrees to purchase the Scheduled Interruptible Energy made available thereunder and through its consent to quarterly confirmations from Big Rivers to Kenergy as described in Schedule 2.3.2(a).

(b) Buy-Through Energy. Upon each Notice of Interruption, Kenergy will offer to sell to Century any Firm Energy which Big Rivers in its sole discretion offers to Kenergy 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 Permitted Interruption upon which Big Rivers would supply such Energy. Century shall have ten minutes from the time it 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. Century promptly shall confirm verbal acceptance of the Buy-Through Energy with a facsimile confirmation or pursuant to other electronic communications acceptable to Kenergy and Big Rivers. Upon 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 to notify Kenergy and Big Rivers of acceptance of the Buy-Through Energy during the period provided shall constitute a rejection of the Buy-Through Energy, and the Permitted Interruption shall thereafter be implemented in

accordance with the applicable Notice of Interruption and neither Kenergy nor Big Rivers shall have any obligation to supply Century Buy-Through Energy during such Permitted Interruption.

(c) Market Energy. Kenergy shall use reasonable commercial efforts to 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, upon the request of Century ("Market Energy") specifying (i) the requested amount and duration of such Energy, and (ii) all requested prices and material terms and conditions. Century shall pay to Kenergy all amounts that Kenergy is obligated to pay to either Big Rivers or any Third Party Supplier, including the purchase price paid by Kenergy for such Market Energy and the costs, if any, of transmission services or related services incurred on Third Party transmission systems to transmit such Market Energy to a point of interconnection with Big Rivers' transmission system. Nothing in this Agreement may be construed to limit the ability of Kenergy to purchase Energy or other electric services from Third Party Suppliers to serve Century.

(i) Kenergy's obligation to enter into any contractual arrangements with Big Rivers or a Third Party Supplier for the purchase of Market Energy shall be conditioned upon Kenergy's prior receipt of a written notification from Century setting forth Century's consent to the execution, delivery and performance of such contractual arrangements and upon Century's providing such financial assurances as may be reasonably required to hold Kenergy harmless for its obligations in connection therewith.

(ii) As a condition to the effectiveness of any contractual arrangements for the purchase of Market Energy for resale to Century, Kenergy shall make application to, and use reasonable commercial efforts to obtain approval of, the KPSC to sell such Market Energy to Century each Billing Month in an amount that is equal to the amount that Kenergy is required to pay each Billing Month to Big Rivers or a Third Party Supplier, as applicable, for such Market Energy.

(iii) Promptly following request by Century for Market Energy, 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. The amount of Market Energy transmitted from a point of interconnection on Big Rivers' system to the Point of Delivery shall be reduced by the applicable system loss factor as provided in the OATT. Century acknowledges and agrees that Kenergy shall have no liability to Century for Big Rivers' denial of Kenergy's duly submitted request for reservation of Transmission Services.

(iv) With respect to a purchase of Market Energy from a Third Party Supplier, Kenergy shall be obligated to deliver to Century only those amounts of Market Energy received from such Third Party Supplier, net of applicable losses of Energy on Big Rivers' transmission system. Kenergy will not be in default under any provision of this Agreement nor will it have any liability to Century if the non-delivery of Market Energy is due to a failure by a Third Party Supplier to deliver the full amount of Market Energy under the terms and conditions of the agreement between Kenergy and such Third Party Supplier provided that

Kenergy has assigned to Century Kenergy's rights and remedies against the Third Party Supplier under such agreement.

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

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

2.4 Power Factor. Century shall use commercially reasonable efforts to maintain (a) a power factor at the Point of Delivery as nearly as practicable to unity, and (b) a power factor that is not below 0.90 leading or lagging with respect to maximum electric demand incurred by Century during any Billing Month. Century shall, without regard to the obligations of Big Rivers pursuant to the Century Wholesale Agreement, cause to be maintained a power factor at the Point of Delivery at unity with respect to Energy purchased by Kenergy or Big Rivers from Third Parties for resale to Century.

2.5 Title and Risk of Loss. Title to and risk of loss with respect to Energy provided by Kenergy to Century pursuant to this Agreement will pass from Kenergy to and rest in Century when the same is made available by Kenergy (or Big Rivers on behalf of Kenergy) at the Point of Delivery. After title passes to Century, 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. Century acknowledges and agrees that, to the extent Big Rivers has a corresponding or related obligation to Kenergy under the Century Wholesale Agreement, Kenergy's performance of an obligation under this Agreement is subject to and conditioned upon Big Rivers' performance of such corresponding or related obligation to Kenergy. Century acknowledges and agrees that Big Rivers may enforce an obligation of Century under this Agreement which corresponds or relates to an obligation of Kenergy to Big Rivers under the Century Wholesale Agreement.

### ARTICLE 3

#### CHANGES IN DEMAND AND SCHEDULING

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

3.2 Scheduling.

3.2.1 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 Kenergy and Big Rivers promptly of any material change in its intended usage.

3.2.2 In accordance with the OATT, Century must 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, or as otherwise mutually agreed by the Parties and, if applicable, Big Rivers, the delivery of Interruptible Energy and Market Energy.

ARTICLE 4

CHARGES AND CREDITS

4.1 Monthly Charge. Century shall pay Kenergy 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,
- 4.1.7 plus the FAC Charge calculated pursuant to Section 4.8.1,
- 4.1.8 plus the Non-FAC Purchased Power Adjustment Charge calculated pursuant to Section 4.8.2,
- 4.1.9 plus the Environmental Surcharge calculated pursuant to Section 4.8.3,
- 4.1.10 plus or minus the monthly amortization of the Restructuring Amount calculated pursuant to Section 16.5,
- 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 plus the Retail Fee calculated pursuant to Section 4.12,

4.1.15 less the credits calculated pursuant to Section 4.13,

4.1.16 plus or minus other amounts calculated pursuant to Section 4.14, and

4.1.17 plus taxes calculated 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, Kenergy is obligated to pay 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) any and all of the charges for Buy-Through Energy purchased by Kenergy for delivery to Century pursuant to Section 2.3.2(b) during such Billing Month including 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

(b) all other charges that Kenergy may be required to pay to Big Rivers in connection with Buy-Through Energy, including 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) any and all of the charges for Market Energy purchased by Kenergy for delivery to Century pursuant to Section 2.3.2(c) during such Billing Month including 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

(b) all other charges that Kenergy may be required to pay to Big Rivers or any Third Party Suppliers in connection with Market Energy, including any amount payable upon termination by reason of default of the supply arrangements between Kenergy and Big Rivers or Kenergy and a Third Party Supplier, net of recoveries by Kenergy or 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 by Big Rivers 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 real time 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 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 Schedule 2.3.2(a), and (z) the amount of Back-Up Energy resulting from the non-delivery of Market Energy purchased by Kenergy from 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 Kenergy provides Back-Up Energy to Century and “Back-Up Energy” (as defined in the Alcan Retail Agreement) to Alcan, then the provisions of Section 4.4.1 shall apply to a proportional number of MW of Back-Up Energy for 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 in accordance with the terms of the Century Wholesale Agreement, 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, 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) 74,005.

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 an Excess TIER Amount and 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. Kenergy shall collect such estimated amount from Century 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, 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 Century as compared to the Budget during the remainder of the Fiscal Year. Kenergy shall collect or credit such modified amount from Century 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 Century 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 to 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 Retail 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 this Section 4.7.5, the TIER Adjustment will be calculated on an Hourly basis only with respect to the partial period of the first 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, the Environmental Surcharge Rider or the Regulatory Account that are 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. The expiration or termination of Big Rivers' Member Discount



Adjustment Rider shall be deemed to be an increase in the Non-Smelter Member Rates for purposes of this clause (a), without regard to whether such expiration or termination occurs prior to, on or after the Effective Date.

(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 Rural Economic Reserve, the Economic Reserve or the Transition Reserve or relating to the Surcharge or the "Surcharge" under the Alcan Retail 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 Rural Economic Reserve, the Economic Reserve and the Transition Reserve shall not generate any revenue or tax liability and the application of funds from the Rural Economic Reserve, 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 Retail 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 Retail 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 Retail 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 Retail 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 Potline Reduction Sales or sales of Energy pursuant to the corresponding sections of the Alcan Retail 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 or transaction costs paid by Big Rivers as part of or in connection with 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, Kenergy will 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 (without regard to whether the Alcan Retail Agreement is then in effect).

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, Kenergy 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 (without regard to whether the Alcan Retail Agreement is then in effect).

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 notwithstanding anything in this Agreement to the contrary, Century 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; *plus*
- (b) For any Billing Month, the product of (i) Base Fixed Energy and (ii) \$0.60 per MWh; *plus*
- (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 Century 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 Century 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 Century 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; *minus*

(d) For each of the first 96 Billing Months, \$113,412.

The obligations of Century 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 Retail Fee. For any Billing Month, the "Retail Fee" shall, unless modified in accordance with Section 13.1.2, be an amount equal to the sum of:

- (a) the product of:
  - (i) \$0.000045 per kWh, and
  - (ii) the sum of the Base Monthly Energy, Supplemental Energy, and Back-Up Energy purchased by Century pursuant to this Agreement, and
- (b) \$2,614 per month.

4.13 Credits.

4.13.1 Surplus Sales, Undeliverable Energy Sales and Potline Reduction Sales. For any Billing Month, Kenergy will credit Century (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 Reduction Sales to which Century is entitled pursuant to Section 10.2 or Section 10.3, respectively, less \$0.25 per MWh as an 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 Century are set forth in Exhibit A.

4.13.2 Curtailed Purchased Power. For any Billing Month, Kenergy will credit Century 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 Century, Kenergy and Big Rivers pursuant to this Section 4.13.2 and the corresponding section of the Alcan Retail Agreement. If both Century and Alcan agree to the curtailment of the delivery of Base Demand per Hour pursuant to this Section 4.13.2 and the corresponding section of the Alcan Retail Agreement, Century and Alcan shall notify Kenergy and Big Rivers as to whose curtailment shall take precedence. If Kenergy and Big Rivers are 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 Kenergy and Big Rivers first shall take precedence. From time to time, Century shall notify Kenergy and Big Rivers of the minimum price at which it is willing to consider curtailment of the delivery of Base Demand per Hour pursuant to this Section 4.13.2. Notwithstanding the foregoing, Century hereby releases Kenergy and Big Rivers from any or all claims or liabilities resulting from a failure of Kenergy or Big Rivers to fulfill its obligations pursuant to this Section 4.13.2 (other than applying credits under this Section 4.13.2 to the Monthly Charge), including a failure to notify Century of Energy prices reaching or exceeding the minimum price at which Century will consider curtailment. Sample calculations of credit that would be due to Century for curtailment of purchased power are set forth in Exhibit A.

4.13.3 Economic Sales. For any Billing Month, Kenergy will credit Century 100% of the Net Proceeds Kenergy receives from Big Rivers (which is 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 Century, Kenergy and Big Rivers if Big Rivers sells such curtailed Base Demand per Hour to the wholesale Energy market ("Economic Sales"); *provided*, that unless otherwise agreed among Kenergy, Century and Big Rivers, (a) the amount of Base Demand per Hour curtailed by 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 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 Retail Agreement, Century and Alcan must notify Kenergy and Big Rivers as to whose curtailment shall take precedence. If Kenergy and Big Rivers are 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 Kenergy and Big Rivers first shall take precedence. From time to time, Century shall notify Kenergy and Big Rivers of the minimum price at which it is willing to consider curtailment pursuant to this Section 4.13.3. Notwithstanding the foregoing, Century hereby releases Kenergy and Big Rivers from any or all claims or liabilities resulting from the failure of Kenergy or Big Rivers to fulfill its obligations pursuant to this Section 4.13.3 (other than applying credits under this Section 4.13.3 to the Monthly Charge), including a failure to notify Century of Energy prices reaching or exceeding the price of which Century will consider curtailment and the failure to make such sales after such notification. Sample calculations of the portion of the Net Proceeds from Economic Sales that would be credited to Century are set forth in Exhibit A.

4.13.4 Market Energy Sales. For any Billing Month, Kenergy will credit Century all revenues derived from the resale of Market Energy purchased from Third Party Suppliers, net

of any transmission services charges or any other charges or other expenses in connection therewith whenever incurred, that Kenergy receives from the sale of Market Energy to Third Parties pursuant to Section 2.3.2(c)(v). Sample calculations of credit that would be due to Century for such sales of Market Energy 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. Century shall pay or cause to be paid any such taxes which are now or hereafter become applicable to the sale of Electric Services to Century under this Agreement.

## ARTICLE 5

### BILLING

5.1 Monthly Invoice. Kenergy shall bill Century on or before the tenth 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. Century shall pay Kenergy (or Big Rivers on behalf of Kenergy) 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 or such earlier date of such month on which the Members' payment to Big Rivers for the provision of electric services is due. For the convenience of the Parties, and to facilitate satisfaction of Kenergy's obligation to Big Rivers, Century hereby acknowledges and consents to the assignment by Kenergy to Big Rivers of its right to receive such payment from Century under this Agreement other than with respect to the Retail Fee and Kenergy's rights to collect and enforce collection of such amounts due from Century. If Big Rivers owes credits or funds to Kenergy for the benefit of Century, Kenergy hereby assigns such credits or funds to Century and shall cooperate with and assist Century with respect to any collections of amounts due from Big Rivers to Kenergy; *provided*, that Century shall reimburse Kenergy for any reasonable expenses Kenergy incurs in providing such cooperation or assistance.

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

5.3 Default Interest. If any monthly invoice rendered by Kenergy (or Big Rivers on behalf of Kenergy) is not paid on the due date, interest will accrue and become payable by Century to Kenergy 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 Century, the disputed amount must be paid, under protest, when due. If the disputed amount of the payment is found to be incorrect, following receipt from Big Rivers, Kenergy (or Big Rivers on behalf of Kenergy) shall promptly cause to be refunded to Century 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 Release and Indemnification.

(a) Century (i) shall release Kenergy from any and all claims Century may have against Kenergy for the failure of Big Rivers to satisfy its obligations under the Century Wholesale Agreement, and (ii) agrees to indemnify, hold harmless and defend Kenergy from and against any and all claims Big Rivers may assert against Kenergy in connection with any failure by Big Rivers to perform under the Century Wholesale Agreement, but only if Kenergy shall have fully performed its obligations set forth in clause (b) below.

(b) If Big Rivers shall default under the Century Wholesale Agreement, Kenergy shall immediately deliver to Century (i) a power-of-attorney with full power of substitution which shall designate Century or its designee as Kenergy's attorney-in-fact (which shall be coupled with an interest and irrevocable) for purposes of negotiating and prosecuting any and all claims Kenergy may have against Big Rivers for a failure of Big Rivers to satisfy its obligations under the Century Wholesale Agreement and to file or prosecute any claim, litigation, suit or proceeding before any Governmental Authority in the name of Kenergy or in its own name, or take such other action otherwise deemed appropriate by Century for the purposes of obtaining legal or equitable relief as a result of the failure of Big Rivers to satisfy its obligations under the Century Wholesale Agreement and to compromise, settle, or adjust any suit, action or proceeding related to Big Rivers' failure to satisfy such obligations and to give such discharges or releases as Century may deem appropriate, and (ii) an assignment conveying to Century all of Kenergy's right, title and interest in and to any legal, equitable or other relief, including the recovery of damages and the grant of injunctive relief or other remedies to which Kenergy may be entitled with respect to Big Rivers' failure to satisfy its obligations under the Century Wholesale Agreement. The power-of-attorney and the assignment shall be in form and substance reasonably satisfactory to Century and shall be legally effective and enforceable under Kentucky or other Applicable Law.

5.6 No Waiver. No payment made by Century pursuant to this Article 5 will constitute a waiver of any right of Century to contest the correctness of any charge or credit.

5.7 No Payment. In no case shall Kenergy or Big Rivers be obligated to make a payment to Century in connection with the application of a credit to Century'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 Big Rivers and Kenergy in the Century Wholesale 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 Century shall have received a certificate to such effect from Kenergy and Big Rivers in respect of their respective representations and warranties in the Century Wholesale 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 The Century Wholesale Agreement shall be acceptable in form and substance to Century and shall not have been amended, or, if amended, shall be acceptable in form and substance to Century.

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 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 Kenergy 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.

6.2.8 The Century Wholesale 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.

6.2.9 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 for the execution, delivery or performance by Century of its obligations under this Agreement.

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 Kenergy or Century 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 Section 6.2 to be satisfied in full or waived by the Person in whose favor the condition exists on or before July 31, 2009, 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 Wholesale 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 Big Rivers 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 Due to Business Judgment.**

(a) Either Party may terminate this Agreement without cost or penalty by providing written notice of termination to the other Party and Big Rivers if it determines in its business judgment, exercised in good faith, that based on information considered by it, including information provided by Big Rivers, Big Rivers' operations cannot produce during the first five years of the Service Period the charges projected in Big Rivers' financial model and filed with the KPSC in the application for approval of the New Transaction.

(b) Century may terminate this Agreement without cost or penalty by providing written notice of termination to Kenergy and Big Rivers if it determines in its business judgment, exercised in good faith, that there has been a material adverse change in the production facilities of Century or a material change in economic or business factors external to the terms of the New Transaction, that would have a material adverse financial effect on Century if the New Transaction is consummated.

**7.2.5 Century Wholesale Agreement Termination.** Kenergy may terminate this Agreement if Big Rivers terminates the Century Wholesale Agreement prior to the Effective Date.

**7.2.6 Effect of Pre-Effective Date Termination.** If this Agreement is terminated in accordance with this Section 7.2, Kenergy and Century 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. This Agreement may be terminated after the occurrence of the Effective Date in accordance with this Section 7.3.

7.3.1 Termination for Closing of Hawesville Smelter.

(a) Century may terminate this Agreement as of a date not less than one year from the date it provides written notice (a "Notice of Termination for Closure") to Kenergy and Big Rivers of the termination of this Agreement in accordance with this Section 7.3 in connection with the termination and cessation of all aluminum smelting operations at the Hawesville Smelter.

(b) No termination pursuant to Section 7.3.1(a) may be effective prior to December 31, 2010. If Alcan has given a "Notice of Termination for Closure" under the Alcan Retail Agreement prior to the delivery of Notice of Termination for Closure by Century and if the Transmission Upgrade has not been completed at the time of such termination, Century may not exercise its right to terminate this Agreement pursuant to this Section 7.3.1 with an effective date prior to December 31, 2011. To be effective, any Notice of Termination for Closure must be accompanied by a certificate of the president of Century Parent including a representation and warranty that it has made a business judgment in good faith to terminate and cease all aluminum smelting at the Hawesville Smelter and has no current intention of re-commencing smelting operations at the Hawesville 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.

## ARTICLE 8

### METERING

8.1 Metering Facilities. Kenergy 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. Kenergy 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. Kenergy 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 Century not less than five Business Days' prior notice of such testing. 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 Big Rivers will make mutually

agreed upon estimates for such period from the best information available. If Century requests a special meter test, Kenergy shall cause such test to be conducted; *provided, however*, that if any special meter test made at the request of Century discloses that the meters are not more than plus or minus 1% inaccurate, Century shall reimburse Kenergy for the reasonable cost of such test. In all other respects, meters through which Kenergy delivers Energy 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 Kenergy will operate and maintain or cause to be operated and maintained any facilities owned by it on the premises of Century.

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

9.2 Facilities Provided by Kenergy. Kenergy has caused to be furnished and installed, or shall cause to be 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. Kenergy 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 deliver Energy to Century at the Point of Delivery. Kenergy 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 Kenergy to Century as provided for in this Agreement.

9.3 Facilities Provided by Century.

9.3.1 Century has provided or shall provide, without cost to Kenergy or Big Rivers all easements for rights-of-way upon Century's property at the Hawesville Smelter (at such locations and of such dimensions as may be mutually agreed upon) for Big Rivers' transmission lines and for any Kenergy distribution lines.

9.3.2 Century has furnished and installed, shall furnish and install, or cause to be furnished or installed, such facilities and equipment as may be necessary to enable it to receive and use Energy purchased hereunder at and from Century's substation located adjacent to the Hawesville Smelter, including such protective devices as may be reasonably necessary to protect Big Rivers' transmission system from disturbance caused by Century. Additional plans

for equipment to be installed for such protection of the facilities of Kenergy or Big Rivers shall be submitted to Kenergy and Big Rivers for prior approval.

9.4 Curtailement. 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, Kenergy 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 Kenergy or 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. Century acknowledges and agrees that 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. Kenergy shall request Big Rivers notify 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. Kenergy 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 Big Rivers) on or in the premises of the other Party (or Big Rivers) to receive service under this Agreement shall be and remain the property of the Party (or Big Rivers) 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, Big Rivers) 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.

9.6 Right of Access. Century grants the duly authorized agents and employees of Kenergy and Big Rivers the right to reasonable access to the premises of Century to the extent reasonably required for the purposes of installing, repairing, inspecting, testing, renewing or exchanging any or all of its equipment located on the premises of Century, for reading or testing meters, or for performing any other work incident to the performance of this Agreement. Kenergy or Big Rivers shall make reasonable advance arrangements before entering the premises of Century.

9.6.1 Century shall use commercially reasonable efforts to properly protect the property of Kenergy or Big Rivers, located on its premises, and shall permit no Person to inspect or adjust the wiring and apparatus of Kenergy (or Big Rivers) except with Kenergy's consent. Neither Party assumes the duty or responsibility of inspecting the wiring or apparatus of the other Party.

9.6.2 Century grants to Kenergy and its agents and employees a license to enter Century's electrical substation located adjacent to the Hawesville Smelter and upon Century's easements and rights-of-way to accomplish the purposes of this Agreement, *provided* that reasonable advance arrangements appropriate under the circumstances are made.

## ARTICLE 10

### COVENANTS

#### 10.1 Surplus Sales.

10.1.1 Century may request that Kenergy sell Energy through Big Rivers 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 Century requests Kenergy and Big Rivers sell 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. Kenergy and 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. Any request by Century pursuant to this Section 10.1 shall be irrevocable following Big Rivers' entry into contractual obligations with a Third Party relating to such Surplus Sales.

10.1.2 Century acknowledges and agrees that Big Rivers and Kenergy 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 and the Environmental Surcharge Factor (each calculated on a per MWh basis). Century acknowledges that neither Kenergy nor Big Rivers will have any obligation 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.

10.1.3 For the avoidance of doubt, nothing in this Section 10.1 shall relieve Century of its obligation for the Base Energy Charge or the TIER Adjustment Charge or any other portion of the Monthly Charge pursuant to Article 4.

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

## 10.2 Undeliverable Energy Sales.

10.2.1 Century shall notify Kenergy and Big Rivers of the occurrence of (i) any event which results in damage to or destruction of plant or equipment that renders all or a portion of the Hawesville Smelter unfit for normal use and limits Century's ability to engage in aluminum reduction operations thereat; (ii) Century's demand is initially reduced by at least 50 MW per Hour or more as a result thereof; (iii) such limitation is expected to continue for a period of 48 consecutive hours or longer; and (iv) the proximate cause of such casualty is not an intentional misconduct or willful misconduct of Century or any of its Affiliates. If and to the extent directed by Century, Kenergy immediately will request Big Rivers to use reasonable commercial efforts to sell an amount of Energy up to the corresponding reduction in Century's demand as a result of such event during the continuance of such limitation, subject to the same terms, conditions and limitations as set forth for Surplus Sales in Section 10.1. The sales of Energy described in this Section 10.2 shall be referred to as "Undeliverable Energy Sales." Century may provide such notice orally if followed promptly by written notice.

(a) For a period of up to six months from the date of the occurrence of such event, all of the Net Proceeds of any such sales (less the administrative fee pursuant to Section 4.13.1) shall be credited against the Monthly Charge or, if in excess of the Monthly Charge otherwise applicable, such excess shall be paid to Century. Upon Century providing a certificate representing that the event can not be remedied with reasonable diligence within six months, Century's rights under this Section 10.2 shall be extended for an additional period up to three months.

(b) Upon expiration of the period of Century's rights under this Section 10.2, neither Kenergy nor Big Rivers shall have any obligations to sell or cause to be sold Energy to a Third Party which otherwise would be available for purchase by Century hereunder except as otherwise expressly required pursuant to Section 4.13.3 as Economic Sales, Section 10.1 as Surplus Sales, or Section 10.3 as Potline Reduction Sales. Undeliverable Energy Sales may not be greater than Base Demand per Hour.

(c) If the circumstances described in clauses (i), (ii), and (iv) of this Section 10.2.1 do not continue for a period of 48 consecutive hours or longer, such sales of Energy will be treated as Surplus Sales under Section 10.1 unless Section 10.3 applies.

10.2.2 CENTURY HEREBY WAIVES ANY AND ALL FUTURE CLAIMS OR OTHER RIGHTS FOR DAMAGES FROM KENERGY OR BIG RIVERS IN CONNECTION WITH ANY EVENT GIVING RISE TO OR RELATING TO AN EVENT RESULTING IN CENTURY NOT BEING ABLE TO ACCEPT ENERGY AS CONTEMPLATED BY SECTION 10.2.1, PROVIDED THAT THIS WAIVER SHALL NOT APPLY TO CLAIMS FOR DAMAGES OR OTHER REMEDIES BROUGHT BY THIRD PARTIES WHICH ARE NOT AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OF CENTURY. THIS WAIVER SHALL ALSO NOT APPLY TO CLAIMS FOR DAMAGES OR OTHER REMEDIES FROM KENERGY OR BIG RIVERS BROUGHT BY CENTURY OR ITS SUBROGEE IN CONNECTION WITH A CIRCUMSTANCE WHERE (I) CENTURY IS UNABLE TO ACCEPT ENERGY AS CONTEMPLATED IN SECTION 10.2.1, (II) BIG RIVERS IS UNABLE TO DELIVER ENERGY TO THE SMELTERS, AND (III) BIG RIVERS



IS UNABLE TO MAKE UNDELIVERABLE ENERGY SALES FROM ITS OWN GENERATING FACILITIES PURSUANT TO SECTION 10.2.1 ALL AS A RESULT OF INTENTIONAL MISCONDUCT OR WILLFUL MISCONDUCT OF BIG RIVERS.

10.2.3 For any applicable Undeliverable Energy Sale, (i) Century shall pay to Kenergy for payment 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) Kenergy shall pay to Century, 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 Century may request Kenergy cause Big Rivers to 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 by delivering not less than 30 days' prior notice 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 (a "Potline Reduction"); (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 Century's demand in such amounts and over a period of time as is mutually satisfactory.

10.3.3 Century 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 Century may at any time terminate the Potline Reduction and assume responsibility for acquiring Market Energy required during the remainder of the Potline Reduction Sales Agreement.

10.3.4 Century acknowledges that neither Kenergy nor Big Rivers will 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 Century requests the Potline Reduction Sales be made on a Firm basis, Century 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, Century will reimburse Kenergy for the benefit of Big Rivers the full cost of such actions and indemnify Kenergy and Big Rivers for any costs, obligations or liabilities incurred by either of them, including liabilities to Third Parties.

10.3.6 All of the Net Proceeds of any Potline Reduction Sales (less the administrative fee pursuant to Section 4.13.1) 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 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, and (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 suspended potline or (ii) all Potline Reduction Sales Agreements have been terminated or expired after Century commences smelting operations with respect to one or more pots on the 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. Century 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 Century from providing a new notice under Section 10.3.1 after aluminum smelting operations at the suspended potline have been restored.

10.3.7 For any Potline Reduction Sale, (i) Century shall pay to Kenergy for payment 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) Kenergy shall pay to Century, upon Kenergy's receipt of such payment from Big Rivers, 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 Energy 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 this Section 10.3 are met.

10.4 Resale. Century may not resell or cause to be resold any Electric Services purchased from Kenergy under this Agreement, except as expressly permitted in this Agreement or with the prior written consent of Kenergy and Big Rivers, which may be withheld by either of them in their sole discretion. Century shall consume all Energy purchased under this Agreement

in connection with the operation of its Hawesville Smelter except as expressly permitted pursuant to this Agreement.

10.5 Refund of Income Tax Estimated for Net Proceeds. Kenergy shall return to 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 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.

## 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 Century if it receives notice from Big Rivers that Big Rivers 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 Century 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 Century of its payment obligations under Article 4, including its payment obligations with respect to the Base Energy Charge. CENTURY ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF SECTION 10.1 (SURPLUS SALES), SECTION 10.2 (UNDELIVERABLE ENERGY SALES) AND SECTION 10.3 (POTLINE REDUCTION SALES) SHALL CONSTITUTE CENTURY'S SOLE AND EXCLUSIVE REMEDIES IN THE EVENT THAT CENTURY IS UNABLE TO RECEIVE ENERGY INCLUDING IF THAT INABILITY IS CAUSED BY AN UNCONTROLLABLE FORCE.

## ARTICLE 12

### REPRESENTATIONS AND WARRANTIES

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

12.1.1 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.

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

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

12.2.1 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.

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

## ARTICLE 13

### ADDITIONAL AGREEMENTS

13.1 Regulatory Proceedings.

13.1.1 *Proceedings That Affect Rates.*

(a) 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 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 Kenergy of the procedures in KRS 278.455 to flow-through any wholesale rate decrease to the Non-Smelter Ratepayers.

(b) 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 Kenergy 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 this Agreement or other terms and conditions set forth herein, including the relationship of the Large Industrial Rate to amounts payable by Century pursuant hereto, except that any Party may initiate or intervene in a proceeding to (i) clarify, interpret or enforce this Agreement, or (ii) 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.

(c) If *Commonwealth of Kentucky ex rel. Gregory D. Stumbo, Attorney General v. Public Service Comm'n and Union Light, Heat and Power Co.*, Franklin Circuit Court, C.A. No. 06-CI-269, or any Applicable Law relating thereto restricts the amounts recovered under the FAC, Appendix A, or the Environmental Surcharge Rider, then Kenergy, Century, Big Rivers and, if the Alcan Retail Agreement is then in effect, Alcan, shall negotiate in good faith to amend this Agreement (and other agreements entered into in connection herewith) to restore the relative rights and economic benefits thereunder. If such parties are unable to reach an agreement on such amendments, then this Section 13.1.1 shall not restrict Big Rivers from seeking KPSC approval for an increase to its base rates or an amendment to the FAC, Appendix A, or the Environmental Surcharge Rider.

13.1.2 *Kenergy Retail Fee.* Kenergy or Century may seek approval of any changes to the Retail Fee not earlier than ten years after the Effective Date of this Agreement.

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

13.1.4 *Notice of Material Filings.* Kenergy shall provide or cause to be provided to 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. Kenergy will permit Century 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 this Agreement, including scheduled usage, meter records and billing records. Kenergy shall retain all documentation applicable to service to Century under this Agreement for a period of three years beyond the date of the service. Nothing in this Section 13.2 shall obligate Kenergy to disclose attorney-client privileged information.

13.3 Century Credit Support. Century shall (i) if the rating of the unenhanced, unsecured debt obligations of Century Parent with Standard & Poor's 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 this 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 ("Potential Tax Liability"); and (ii) cause Century Parent to guarantee to Big Rivers and Kenergy the payment and performance of all obligations of Century under this Agreement, including Potential Tax Liability, and 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 and Kenergy (the "Century Guarantee"). At the request of Big Rivers or Kenergy, Century will maintain the Century Guarantee until closure of all applicable tax years of Big Rivers. At the request of Century, Kenergy shall request that Big Rivers provide Century with information as to the amount and calculation of the estimated Potential Tax Liability and documentation in support thereof.

13.4 Patronage Capital.

13.4.1 Kenergy is a non-profit Kentucky corporation that, during any calendar year, may realize revenues from its own operations in excess of related expenses ("margins"). For financial accounting purposes, such margins have been and shall continue to be recorded as patronage capital held for the benefit of Kenergy's customers. Such patronage capital shall be recorded by Kenergy for the benefit of Century as earned during the term of this Agreement.

13.4.2 Kenergy will not permit any amendments or modifications of its Bylaws that would adversely affect the rights of Century to distributions of patronage capital or payments on account of property rights of the Members distributed by Big Rivers to Kenergy.

13.4.3 Kenergy agrees that Century will share on a nondiscriminatory basis in the allocations of patronage capital and payments on account of property rights of Members distributed by Big Rivers to Kenergy and that such allocations shall be promptly distributed to Century.

13.4.4 The expiration or earlier termination of this Agreement shall not modify or revoke the then existing entitlement of Century to allocations or distributions of patronage capital or the entitlement of Century to payments on account of property rights as set forth in this Section 13.4 when such property rights are determined.

13.4.5 Kenergy and Century agree that the provisions of this Section 13.4 are not the exclusive provisions for determining Century's entitlement to distributions by Kenergy of patronage capital or payments on account of property rights.

13.5 Post-Termination Obligation. Subject to Section 13.7, upon termination of this Agreement, neither Kenergy nor Big Rivers will have any contractual obligation under this Agreement to supply any capacity, Energy or other related services to Century.

13.6 Negotiation of Replacement Agreement. If this Agreement has not been terminated earlier, Kenergy shall negotiate in good faith with Century and Big Rivers, 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, 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.

## 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 Wholesale 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 Wholesale Agreement which gives rise to a termination of the Century Wholesale Agreement, or any termination by Kenergy of the Century Wholesale 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 Wholesale Agreement if the actions or omissions of Kenergy caused such "Event of Default"; *provided*, that either Party may terminate this Agreement if the Century Wholesale 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 therefor, 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 Big Rivers 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. Except for the restrictions set forth in Section 13.1, 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 product of the Restructuring Amount and the Applicable Percentage; *provided*, that the application of this Section 16.5 shall not result in Century paying less than the sum of the Large Industrial Rate, the FAC Factor, the Non-FAC Purchased Power Adjustment Factor and the Environmental Surcharge Factor, all 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 Retail 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 Kenergy, Century, Alcan or Big Rivers 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 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 given pursuant to Schedule 2.3.2(a) 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, with copies of all such notices to Big Rivers to the address set forth below, in the same manner as notice is otherwise given hereunder:

If to Kenergy: Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420  
Facsimile: (270) 286-3999  
Attn: President and CEO

With a copy to: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Facsimile: (270) 827-2558  
Attn: President and CEO

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

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

If to Big Rivers: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Facsimile: (270) 827-2558  
Attn: President and CEO

For notices pursuant to Section 14.1:

If to Kenergy: Kenergy Corp.  
6402 Old Corydon Road  
Henderson, Kentucky 42420  
Facsimile: (270) 286-3999  
Attn: President and CEO

With a copy to: Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Facsimile: (270) 827-2558  
Attn: President and CEO

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

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 expressly provided in Section 6.1 and Section 7.2.6 hereof.

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 Big Rivers.

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.

KENERGY CORP.

By: Sanford Novick  
Name: Sanford Novick  
Title: President and CEO

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

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

[Century Retail Agreement]

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

KENERGY CORP.

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

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

By: *Matt Powell*  
Name: *MATT POWELL*  
Title: *Vice President*

[Century Retail Agreement]



**SCHEDULE 2.3.2(a)**

**INTERRUPTIBLE ENERGY**

(a) Interruptible Energy. Kenergy may purchase from Big Rivers on a System Firm basis up to 10 MW per Hour of Interruptible 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 (a).

(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:

(A) 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.

(B) 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").

(C) Subject to Big Rivers' rights to interrupt in accordance with Section (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:

(A) 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;

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

(C) 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). 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 Back-Up Energy pursuant and subject to Sections 2.3.3 and 4.4. 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:

(A) 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

(B) 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 part (A) above.

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

**SCHEDULE 4.11(c)**  
**REFERENCE ANNUAL FUEL COSTS PER MWH**

<u>Year</u>	<u>Fuel Cost per MWH Sales*</u>
2008	15.68
2009	16.44
2010	16.74
2011	17.23
2012	17.65
2013	18.25
2014	17.82
2015	18.37
2016	18.38
2017	18.74
2018	18.43
2019	19.18
2020	19.04
2021	19.90
2022	19.23
2023	19.74

\* Includes cost of Startups

**SCHEDULE 6.2.2**  
**LISTING OF OBLIGATIONS TERMINATED PURSUANT TO THE UNWIND**  
**TRANSACTIONS**

**RETAIL OBLIGATIONS AND AMENDMENTS**

1. Agreement for Electric Service, dated July 15, 1998, between Henderson Union Electric Cooperative Corp. and Alcan Aluminum Corporation
2. Agreement for Electric Service, dated July 15, 1998, between Green River Electric Corporation and Southwire Company
3. Amendment No. 1 to Agreement for Electric Service, dated as of July 15, 1998, between Henderson Union Electric Cooperative Corp. and Alcan Aluminum Corporation
4. Amendment No. 1 to Agreement for Electric Service, dated as of July 15, 1998, between Green River Electric Corporation and Southwire Company
5. Amendment No. 2 to Agreement for Electric Service, dated as of November 30, 2000, between Kenergy Corp. and Alcan Aluminum Corporation
6. Amendment No. 2 to Agreement for Electric Service, dated as of November 30, 2000, between Kenergy Corp. and Southwire Company

**WHOLESALE OBLIGATIONS AND AMENDMENTS**

7. Agreement for Electric Service, dated as of July 15, 1998, between Green River Electric Corporation and LG&E Energy Marketing Inc.
8. Agreement for Electric Service, dated as of July 15, 1998, between Henderson Union Electric Cooperative Corp. and LG&E Energy Marketing Inc.
9. Amendment to Wholesale Power Agreements Dated October 12, 1974 and June 11, 1962 Between Big Rivers Electric Corporation and Kenergy Corp., dated as of November 30, 2000, between Big Rivers Electric Corporation and Kenergy Corp.
10. Amendment to Wholesale Power Agreements Dated February 16, 1988 and June 11, 1962 Between Big Rivers Electric Corporation and Kenergy Corp., dated as of November 30, 2000, between Big Rivers Electric Corporation and Kenergy Corp.
11. Agreement of Big Rivers Electric Corporation with Respect to Future Policies and Procedures Regarding Big Rivers' Transmission System (sometimes referred to as the "Wholesale ISO Agreement"), dated as of July 15, 1998, between Big Rivers Electric Corporation, Green River Electric Corporation, Henderson Union Electric Cooperative Corp., Jackson Purchase Electric Cooperative Corporation, and Meade County Rural Electric Cooperative

#### **CERTAIN REORGANIZATION DOCUMENTS**

12. Letter Regarding Schedule 5.4(a)(1) Provisions Regarding Restitution Amounts, dated July 2, 1998, from Geo. F. Hobday, Jr. on behalf of Big Rivers, sent to Frank N. King, W. David Denton, David C. Brown, Michael Kurtz, Allison Wade, and Charles Ritz
13. Letter Regarding Restitution Payments, dated July 13, 1998, from Michael Kurtz sent to James M. Miller and Geoff Hobday
14. Letter Regarding Restitution Payments, dated July 14, 1998, from Michael Core, on behalf of Big Rivers, sent to Allan Eyre and John Henderson
15. Letter Regarding Restitution Payments, dated July 15, 1998, from Allan B. Eyre, on behalf of Alcan, and John Henderson, on behalf of NSA and Southwire, sent to Michael Core

#### **SECURITY AND LOCKBOX AGREEMENTS**

16. Security and Lockbox Agreement, dated as of July 15, 1998, among PNC Bank, N.A., LG&E Energy Marketing Inc., Kenergy (as successor to Henderson Union), Alcan Corporation (as successor to Alcan Aluminum Corporation) and Alcan Primary Products Corporation (as successor to Alcan Corporation)
17. Security and Lockbox Agreement, dated as of July 15, 1998, by and among LG&E Marketing Inc., Green River Electric Corporation, and Southwire Company

#### **LOAD MANAGEMENT AGREEMENTS**

18. Load Management Agreement for Electric Power Supply, dated as of July 15, 1998, among LG&E Energy Marketing Inc., Alcan Corporation (as successor to Alcan Aluminum Corporation) and Alcan Primary Products Corporation (as successor to Alcan Corporation)
19. Load Management Agreement for Electric Power Supply, dated as of July 15, 1998, among LG&E Energy Marketing Inc., Southwire Company, Century Aluminum Company (as successor to Southwire Company), Century Aluminum of Kentucky LLC (as successor to Century Aluminum Company), Hancock Aluminum LLC (as successor to Century Aluminum of Kentucky LLC), and Century Aluminum of Kentucky General Partnership (as successor to Hancock Aluminum LLC and NSA, Ltd.)

#### **ASSURANCES AND GUARANTIES**

20. Assurances Agreement, dated July 15, 1998, between LG&E Energy Marketing Inc. and Alcan Aluminum Corporation, with Related Guaranty, dated July 15, 1998, executed by LG&E Energy Corp. in favor of Alcan Aluminum Corporation

21. Assurances Agreement, dated July 15, 1998, between LG&E Energy Marketing Inc. and Southwire Company, with Related Guaranty, dated July 15, 1998, executed by LG&E Energy Corp. in favor of Southwire Company
22. Assurances Agreement, dated as of November 30, 2006, between Century Aluminum of Kentucky General Partnership and Big Rivers Electric Corporation
23. First Amendment to Assurances Agreement Dated as of November, 30, 2006, dated as of November \_\_, 2007, by and between Century Aluminum of Kentucky General Partnership and Big Rivers Electric Corporation
24. Guaranty, dated August 1, 2003, from Alcan Corporation to and in favor of the E.ON Parties
25. Guaranty, dated July 15, 1998, of E.ON (as successor to LG&E Energy Corp.) to and in favor of Kenergy (as successor to Henderson Union)
26. Guaranty, dated July 15, 1998, by E.ON (as successor to LG&E Energy Corp.) to and in favor of Kenergy (as successor to Green River Electric Corporation)

#### **INDEMNIFICATION AGREEMENTS**

27. Indemnification and Assignment Agreement, dated July 15, 1998, between Henderson Union Electric Cooperative Corp. and Alcan Aluminum Corporation
28. Indemnification and Assignment Agreement, dated July 15, 1998, between Green River Electric Corporation and Southwire Company

#### **TIER 3 CONTRACTS AND RELATED DOCUMENTS**

29. Agreement for Tier 3 Electric Service (2001-2002), dated as of July 15, 1998, between Green River Electric Company and LG&E Energy Marketing, Inc., with Southwire Company as a third-party beneficiary
30. Agreement for Tier 3 Electric Service (2001-2005), dated as of July 15, 1998, between Green River Electric Company and LG&E Energy Marketing, Inc., with Southwire Company as a third-party beneficiary
31. Agreement for Interruptible Tier 3 Energy, dated as of July 25, 2002, between Kenergy Corp. and Big Rivers Electric Corporation
32. Agreement for Interruptible Tier 3 Energy, dated as of November 5, 2002, between Kenergy Corp. and Big Rivers Electric Corporation
33. Agreement for Interruptible Tier 3 Energy, dated as of September 15, 2003, between Kenergy Corp. and Big Rivers Electric Corporation

34. Agreement for Interruptible Tier 3 Energy, dated as of November 30, 2006, between Kenergy Corp. and Big Rivers Electric Corporation
35. Agreement for Tier 3 Energy (Century), dated as of November 29, 2007, between Kenergy Corp. and Big Rivers Electric Corporation
36. Agreement for Tier 3 Energy (Alcan), dated as of November 29, 2007, between Kenergy Corp. and Big Rivers Electric Corporation
37. Consent to the Agreement for Tier 3 Energy (Alcan), dated November 29, 2007, by Alcan Primary Products Corporation
38. Consent to the Agreement for Tier 3 Energy (Century), dated November 29, 2007, by Century Aluminum of Kentucky General Partnership
39. All other agreements related to the provision of Tier 3 service by or among Big Rivers, Kenergy, the Smelters or any LG&E parties

#### **OTHER AGREEMENTS**

40. Assumption and Consent Agreement, dated as of August 1, 2003, among Alcan Primary Products Corporation, WKE Station Two Inc., LG&E Energy Marketing Inc., Western Kentucky Energy Corp. and Kenergy
41. Undertaking of Alcan Corporation, dated August 1, 2003, from Alcan to and in favor of LG&E Energy Marketing Inc., and the Undertaking of Alcan Aluminum Corporation, dated July 15, 1998, in favor of Henderson Union Electric Cooperative Corporation and LG&E Energy Marketing Inc.
42. Special Assignment Agreement, dated as of March 26, 2001, among LG&E Marketing Inc., Southwire Company, Century Aluminum of Kentucky LLC and Century Aluminum Company
43. Consent and Agreement, dated December 23, 2005, among Century Aluminum of Kentucky LLC, Century Aluminum Company, Hancock Aluminum LLC, NSA, Ltd., Century Aluminum of Kentucky General Partnership, Metalsco, Ltd., Skyliner, Inc., Century Kentucky, Inc. and LG&E Energy Marketing Inc.
44. Agreement with Respect to Procedures Regarding Big Rivers' Transmission System, dated as of July 15, 1998, between Green River Electric Corporation and Southwire Company
45. Agreement with Respect to Procedures Regarding Big Rivers' Transmission System, dated as of July 15, 1998, between Henderson Union Electric Cooperative Corp. and Alcan Aluminum Corporation
46. Joint Use Agreement, dated as of February 8, 2000, between Western Kentucky Energy Corp. and Big Rivers Electric Corporation



**SCHEDULE 6.2.3**  
**LISTING OF CERTAIN DULY AUTHORIZED AND EXECUTED AGREEMENTS**

**RETAIL AGREEMENTS**

1. Retail Electric Service Agreement by and between Kenergy Corp. and Alcan Primary Products Corporation
2. Retail Electric Service Agreement by and between Kenergy Corp. and Century Aluminum General Partnership

**WHOLESALE AGREEMENTS**

3. Wholesale Electric Service Agreement (Alcan) by and between Big Rivers Electric Corporation and Kenergy Corp.
4. Wholesale Electric Service Agreement (Century) by and between Big Rivers Electric Corporation and Kenergy Corp.

**COORDINATION AGREEMENTS**

5. Coordination Agreement by and between Big Rivers Electric Corporation and Alcan Primary Products Corporation
6. Coordination Agreement by and between Big Rivers Electric Corporation and Century Aluminum of Kentucky General Partnership

**LOCKBOX AGREEMENTS**

7. Security and Lockbox Agreement (Alcan) by and among Old National Bank, Big Rivers Electric Corporation, Kenergy Corp., and Alcan Primary Products Corporation
8. Security and Lockbox Agreement (Century) by and among Old National Bank, Big Rivers Electric Corporation, Kenergy Corp., and Century Aluminum of Kentucky General Partnership

**GUARANTEES**

9. Parent Guarantee by Alcan Corporation in favor of Kenergy Corp., and Big Rivers Electric Corporation
10. Parent Guarantee by Century Aluminum Company in favor of Kenergy Corp., and Big Rivers Electric Corporation

**APPENDIX A**  
**Non-FAC Purchased Power Adjustment Factor**

- A. Base Monthly Energy Sales to the smelters are subject to a Non-FAC Purchased Power Adjustment (PPA) to recover purchased power costs that the smelters have agreed to pay and are not otherwise included in Big Rivers' Fuel Adjustment Clause (FAC).
- B. Definitions

Definitions have the meanings given to them in the Agreement except as provided below:

"Account" is the specified numbered account as set forth in the Uniform System of Accounts – Electric, promulgated under Bulletin 1767B-1 by the Rural Utilities Service, an agency of the U.S. Department of Agriculture.

"SEPA" is the Southeastern Power Administration, an agency of the U.S. Department of Energy, or any successor agency.

"Wholesale Smelter Agreements" are the Alcan Wholesale Agreement and the Century Wholesale Agreement.

C. Determination of the PPA

- (1) The monthly amount computed for all wholesale sales to which this PPA is applicable shall be increased or decreased at a rate per kWh in accordance with the following formula:

$$PPA = PP(m)/S(m) - PP(b)/S(b)$$

Where PPA is the PPA Factor for the month; PP(m) is the current Purchased Power Cost for the month; S(m) is the current applicable sales; PP(b) is the Purchased Power Cost for the base period; and S(b) is the sales in the base period. For the initial base period, PP(b)/S(b) (the "Purchased Power Base") is \$0.00175.

- (2) Purchased Power Costs (PP) shall be the sum of:
- (a) The total cost of power purchased (including purchases from SEPA) that is expensed by Big Rivers to Account 555 (excluding those costs that are recovered through Big Rivers' FAC and excluding costs expensed to Account Nos. 555.150, 555.151, and 555.152 regarding Big Rivers' cost share of HMP&L's Station Two) including transmission and related costs that are expensed to Account 565;
- (b) The total amount of any adjustments to Purchased Power Costs attributable to prior months, whether positive or negative; and

- (c) The total cost of amounts credited by Big Rivers to Kenergy with respect to voluntary curtailments under Section 4.13.2 of either Smelter Wholesale Agreement to allow Big Rivers to avoid market priced purchases of power.

Less:

- (d) The total cost of power purchased directly associated with sales (including related system energy losses) by Big Rivers either to non-Member purchasers of power or to Kenergy under either Wholesale Smelter Agreement for resale to either Smelter as energy products other than Base Monthly Energy, assuming SEPA power followed by the lowest cost power, whether generated or purchased, shall be allocated to Applicable Sales.
- (3) Applicable Sales (S) shall be all kilowatt-hours sold at wholesale by Big Rivers (a) to its Members under all electric rate schedules, including the Large Industrial Rate, for resale to Kentucky ratepayers (other than the Smelters), and (b) to Kenergy as Base Monthly Energy as defined in each of the Wholesale Smelter Agreements.
  - (4) The current month (m) shall be the second month preceding the month in which the PPA Factor is billed.

Exhibit A - Retail and Wholesale Service Agreement Examples - Combines Alean and Century  
 Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)  
 Year Modeled: 2009

Case	Derivation	Annualized Basis												
		Base Case	Low Load Factor	High Load Factor	Supplemental Energy (4.3)			Backup Energy (4.4)		Surplus Sales (10.1)	Undeliverable Energy Sales (10.2)	Pottine Reduction Sales (10.3)	Curtailed Purchased Power (4.13.2)	Economic Sales (4.13.3)
					Interruptible Energy 20 MW (10 MW per Smelter) for 75% of Hours in Year	Buy-Through Energy 20 MW (10 MW per Smelter) for 75% of Hours in Year	Market Energy 40 MW for 75% of Hours in Year / 10 MW Resold	4.4.1 (a) and (b) 20 MW (10 MW per Smelter) for 75% of Hours in Year	4.4.1 (c) 40 MW for 75% of Hours in Year					
1.1.18 - Base Demand (MW) (a)	Contract	850.0	850.0	850.0	850.0	850.0	850.0	850.0	850.0	850.0	850.0	850.0	850.0	850.0
1.1.18 - Base Fixed Energy (TWh) (b)	Contract	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297
<b>Energy Balance (Annual TWh)</b>														
Assumed Load Factor	Assumption													
Watered Energy	Assumption	98%	98%	100%	100%	100%	102%	100%	102%	88%	49%	85%	94%	98%
2.3.2 - Supplemental Energy	Assumption	7.297	7.148	7.448	7.428	7.428	7.560	7.428	7.560	0.567	3.649	6.310	7.012	7.287
2.3.2(a) Interruptible Energy	Assumption				0.131									
2.3.2(b) Buy-Through Energy	Assumption					0.131								
2.3.2(c) Market Energy	Assumption													
Consumed	Assumption													
Sold	Assumption						0.197		0.060					
1.1.13 - Backup Energy	Assumption													
4.4.1(a) and (b) (within 10MW per Smelter)	Assumption													
4.4.1(c) - Excess	Assumption							0.131	0.131					
1.1.18 - Base Curtailed Energy	Assumption													
4.13.2 - Curtailment of Purchased Power	Assumption													
4.13.3 - Economic Sales	Assumption (Max. Under Contract)												0.285	
10.1 - Surplus Sales	Assumption													0.010
10.2 - Undeliverable Energy Sales	Assumption									0.730				
10.3 - Pottine Reduction Sales	Assumption (Approx. Max.)										3.649			
1.1.18 / 18 - Base Hourly Monthly Energy	line 6 + 17 + 18 + 19 + 20 + 21	7.297	7.148	7.448	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297
1.1.22 - Base Variable Energy	line 22 - line 2		(0.149)	0.149										
<b>Key Rates</b>														
Market Energy Price	Assumption *	60.94	60.94	60.94	60.94	60.94	60.94	60.94	60.94	60.94	60.94	60.94	60.94	121.89
4.3 - Supplemental Energy **	Assumption													
4.3.1 - Interruptible Energy Rate	Assumption				60.94									
4.3.2 - Buy-Through Energy Rate	Assumption					60.94								
4.3.3 - Market Energy Rate	Assumption						60.94							
4.4 - Backup Energy Rate	Assumption							60.94						
4.4.1(a) and (b) (within 10MW per Smelter)	Assumption								60.94	60.94				
4.4.1(c) - Excess	Contract									250.00				
1.1.72 - Market Reference Rate	Assumption													60.94
1.1.21 - Base Rate	See Supporting Sched.	28.15	28.15	28.15	28.15	28.15	28.15	28.15	28.15	28.15	28.15	28.15	28.15	28.15
1.1.23 - Base Variable Rate	See Supporting Sched.	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47
1.1.52 - FAC Factor	Tariff	11.22	11.22	11.22	11.22	11.22	11.22	11.22	11.22	11.22	11.22	11.22	11.22	11.22
1.1.43 - Environmental Surcharge Factor	Tariff	2.19	2.19	2.19	2.19	2.19	2.19	2.19	2.19	2.19	2.19	2.19	2.19	2.19
1.1.84 - Non-FAC Purchased Power Adjustment Factor	Contract (Appendix A)	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08
4.11.4 - Surcharges:														
4.11 (a)	See contract charges below													
4.11 (b)	Contract	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60
4.11 (c)	See Supporting Sched.	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60
* Placeholder value intended to represent costs of energy plus appropriate inclusion or exclusion of transmission services charges or any other charges or other expenses, per the Retail Service Agreement (see also Net Proceeds, below).														
** Assumed priced at cost, for illustration														

**Exhibit A - Retail and Wholesale Service Agreement Examples - Combines Alcan and Century Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)**  
 Year Modeled: 2009

Case	Derivation	Annualized Basis													
		Base Case	Low Load Factor	High Load Factor	Supplemental Energy (4.3)			Backup Energy (4.4)		Surplus Sales (10.1)	Undeliverable Energy Sales (10.2)	Pottline Reduction Sales (10.3)	Curtailment for Purchased Power (4.13.2)	Economic Sales (4.13.3)	
					Interruptible Energy 20 MW (10 MW per Smelter) for 75% of Hours in Year	Buy-Through Energy 20 MW (10 MW per Smelter) for 75% of Hours in Year	Market Energy 40 MW for 75% of Hours in Year/ 10 MW Resold	4.4.1 (a) and (b)	4.4.1 (c)						
46	Charges (\$M)														
47	4.2 Base Energy Charge	(2 x 35) + (23 x 36)	205.4	203.8	207.3	205.4	205.4	205.4	205.4	205.4	205.4	205.4	205.4	205.4	
48	4.3 Supplemental Energy Charge														
49	4.3.1 Interruptible Energy	8 x 28	-	-	-	8.0	-	-	-	-	-	-	-	-	
50	4.3.2 Buy-Through Energy	9 x 29	-	-	-	8.0	-	-	-	-	-	-	-	-	
51	4.3.3 Market Energy	10 x 30	-	-	-	-	-	16.0	-	-	-	-	-	-	
52	4.4 Back-up Energy Charge														
53	4.4.1(a) and (b) (within 10MW per Smelter)	14 x 32	-	-	-	-	-	8.0	8.0	-	-	-	-	-	
54	4.4.1(c) - Excess	15 x 33	-	-	-	-	-	-	32.9	-	-	-	-	-	
55	4.5 Transmission Services Charge	Contract	-	-	-	-	-	-	-	-	-	-	-	-	
56	4.6 Excess Reactive Demand Charge	Contract	-	-	-	-	-	-	-	-	-	-	-	-	
57	4.7 THER Adjustment Charge	See Supporting Sched.	-	-	-	-	-	-	-	-	-	-	-	-	
58	4.8 Adjustable Charges														
59	4.8.1 FAC Charge	22 x 37	81.9	80.2	83.5	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	
60	4.8.2 Non-FAC Purchased Power Adjustment Charge	22 x 39	0.5	0.6	0.6	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	
61	4.8.3 Environmental Surcharge	22 x 38	15.98	15.83	16.28	15.98	15.98	15.98	15.98	15.98	15.98	15.98	15.98	15.98	
62	4.9 Rebate	See Supporting Schedules	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(7.1)	(0.7)	(0.7)	(0.7)	(0.9)	
63	4.10 Equity Development Credit	Contract	-	-	-	-	-	-	-	-	-	-	-	-	
64	4.11 Surcharge														
65	4.11 (a)	Contract	5.1	5.1	5.1	5.1	5.1	5.1	5.1	5.1	5.1	5.1	5.1	5.1	
66	4.11 (b)	2 x 42	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	
67	4.11 (c)	2 x 43	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	
68A	4.11 (d)	2 x 43	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	
68B	4.12 Retail Fee	\$200,000 x 12	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	
69	4.12 Retail Fee	Contract	-	-	-	-	-	-	-	-	-	-	-	-	
70	Total Charges		314.6	310.7	318.4	322.6	322.6	330.6	322.6	338.6	308.2	314.6	314.6	314.4	
71															
72	Credits (\$M)														
73	Net Proceeds	(12+18+19+20)x25 - (tax + admin. cost) * Resale of Market Energy						4.0		36.9	199.3	53.9		1.1	
74	Available Base Charge	See Supporting Schedules								30.4					
75															
76	4.13														
77	4.13.1 Surplus, Undeliverable Energy, and Pottline Reduction Sales														
78	Surplus Sales	Min. of 73 and 74								30.4					
79	Undeliverable Energy, and Pottline Reduction Sales	line 73									169.3	53.9			
80	4.13.2 Curtailment for Purchased Power	17 x 34											17.4		
81	4.13.3 Economic Sales	line 73 x 75%												0.8	
82	4.13.4 Market Energy Sales	line 73						4.0							
83															
84	Total Credits	76 + 79 + 80 + 81 + 82						4.0		30.4	199.3	53.9	17.4	0.8	
85	Net Charges per MWh, Meters	line 70 - line 84	314.6	310.7	318.4	322.6	322.6	326.6	322.6	338.6	277.8	115.3	260.6	297.2	313.6
86	Net Charges per MWh, Meters														
87	* Simplified calculation, in practice would include estimated Big Rivers tax liability (as applicable per sections 1.1.79, 10.1.4, 10.2.3, 10.3.7, and 13.3). Administrative fees are modeled per section 4.12.1.														
88															



**Exhibit A - Retail and Wholesale Service Agreement Examples - Combines Alcan and Century Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)**  
 Year Modelled: 2009

Case	Derivation	Annualized Basis															
		Base Case	Low Load Factor	High Load Factor	Supplemental Energy (4.3)			Backup Energy (4.4)		Surplus Sales (10.1)	Undeliverable Energy Sales (10.2)	Positive Reduction Sales (10.3)	Curtailed Purchased Power (4.13.2)	Economic Sales (4.13.3)			
					Interruptible Energy	Buy-Through Energy	Market Energy	4.4.1 (a) and (b)	4.4.1 (c)								
131	4.7 TIER Adjustment Charge																
132	4.7.5 TIER Adjustment																
133	System Revenues Before TIER Adjustment																
134	Base Case	Financial Model	578,409	578,409	578,409	579,409	579,409	578,409	578,409	578,409	578,409	578,409	578,409	578,409	579,409	579,409	
135	Increment from Base Case (Accounts for Both Smelters):																
136	Base Energy Charge	22 x 38		(1.9)	1.9	-	-	-	-	-	-	-	-	-	-	-	
137	FAC/ES/PPA Charges	23 x (37 + 38 + 39)		(2.0)	2.0	-	-	-	-	-	-	-	-	-	-	-	
138	Supplemental Energy	49 + 50 + 51				8.0	8.0	16.0									
139	Backup Energy	53 + 54							4.0	8.0	40.8						
140	Net Proceeds	line 73															
141	Less Credits	line 84															
142	Total Increment from Base Case	136 + 137 + 138 + 139 + 140 + 141		(3.9)	3.9	8.0	8.0	16.0	8.0	40.8	39.8	198.3	53.9		(17.4)	(0.9)	
143	Total Revenues	line 134 + line 142	578.4	575.5	583.3	587.4	587.4	594.4	587.4	620.3	588.9	579.4	579.4	582.0	579.7	579.7	
144	System Expenses Before TIER Adjustment	Financial Model	564.4	564.4	564.4	564.4	564.4	564.4	564.4	564.4	564.4	564.4	564.4	564.4	564.4	564.4	
145	Base Case - Gross	Financial Model	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	(0.3)	
146	Net Debt to Power Purchases reflected in Regulatory Account	Financial Model	564.1	564.1	564.1	564.1	564.1	564.1	564.1	564.1	564.1	564.1	564.1	564.1	564.1	564.1	
147	Base Case - Net	Financial Model															
148	Increment from Base Case	23 x (36 + 37 + 38 + 39)		(3.9)	3.9	-	-	-	-	-	-	-	-	-	-	-	
149	Variable Costs *	136 + 139				8.0	8.0	16.0	8.0	16.0	-	-	-	-	(17.4)	-	
150	Power Purchases																
151	Interest (net of capitalization)																
152	Other																
153	Total Increment from Base Case	149 + 150 + 151 + 152		(3.9)	3.9	8.0	8.0	16.0	8.0	16.0	-	-	-	-	(17.4)	-	
154	Total Expenses	line 147 + line 153	564.1	560.3	568.0	572.1	572.1	580.1	572.1	580.1	564.1	564.1	564.1	564.1	564.4	564.1	
155	Net Margin Before TIER Adjustment	line 143 - line 154	15.3	15.3	15.3	15.3	15.3	15.3	15.3	40.1	24.8	15.3	15.3	15.3	15.3	15.5	
156	Interest Charges Plus Net Margin	line 155 + line 156	68.8	68.8	68.8	68.8	68.8	68.8	68.8	93.7	79.3	68.8	68.8	68.8	68.8	69.1	
157	Interest Charges																
158	Base Case	Financial Model	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	
159	Increment from Base Case																
160	Total	line 158 + line 159	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6	
161	Pre-Adjustment TIER	line 158/line 160	1,285	1,285	1,285	1,285	1,285	1,285	1,285	1,285	1,285	1,285	1,285	1,285	1,285	1,290	
162	Incremental Revenue Needed to Achieve TIER = 1.24x	(1.24 - line 161) x line 160	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.4)	(2.7)	
163	Adjustments																
164	4.7.5(f) No revenue from Economic Transition Reserves	Financial Model	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	
165	Other																
166	Total	line 164 + line 165	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	
167	TIER Adjustment	line 162 + line 166	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.3)	
168	TIER Adjustment Charge	Max. of line 167 and zero															
169																	
170	4.9 Rebate																
171	Excess TIER Amount																
172	Rebate		(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.3)	
173	Smelter MWh		68%	68%	68%	68%	68%	68%	68%	68%	68%	68%	68%	68%	68%	68%	
174	Rebate		(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.9)	
175																	
176																	
177	* Example assumes variable costs incurred at rate stipulated in 1.1.21, plus FAC, Environmental Surcharge, and PPA																

**Exhibit A - Retail and Wholesale Service Agreement Examples - Combines Alcan and Century Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)**  
 Year Modeled: 2009

Case	Derivation	Annualized Basis												
		Base Case	Low Load Factor	High Load Factor	Supplemental Energy (4.3)			Backup Energy (4.4)		Surplus Sales (10.1)	Undeliverable Energy Sales (10.2)	Poline Reduction Sales (10.3)	Curtailment for Purchased Power (4.13.2)	Economic Sales (4.13.3)
					Interruptible Energy	Buy-Through Energy	Market Energy	4.4.1 (a) and (b)	4.4.1 (c)					
178	Quarterly TIER Adjustment Charge				20 MW (10 MW per Smelter) for 75% of Hours in Year	20 MW (10 MW per Smelter) for 75% of Hours in Year	40 MW for 75% of Hours in Year/ 10 MW Resold	20 MW (10 MW per Smelter) for 75% of Hours in Year	40 MW for 75% of Hours in Year	10% of Base Fixed Energy	8 Month Duration	115 MW @ 98% Load Factor x 12 Months	Example curtails at market purchases	Max. of 9,600 MWh
179		Base Case												
180														
181	Revenues													
182	Expenses													
183	Net Margin Before TIER		579.4											
184	Interest + Margin		564.1											
185	Interest Charges		15.3											
186	Pre-Adjustment TIER		86.8											
187	Increment Needed for 1.24x		53.6											
188	Adjustments		1.29											
189	TIER Adjustment		(2.4)											
190	TIER Adjustment		1.4											
191	TIER Adjustment Charge		(1.0)											
192	1st Q													
193	2nd Q													
194	3rd Q													
195	4th Q													
196	Illustrative Forecast Weightings (actual forecast methodologies to be determined)													
197	YTD													
198	Original Budget													
199	YTD													
200	Revenues													
201	Expenses													
202	Net Margin Before TIER													
203	Interest + Margin													
204	Interest Charges													
205	Pre-Adjustment TIER													
206	Increment Needed for 1.24x													
207	Adjustments													
208	TIER Adjustment													
209	TIER Adjustment													
210	Revised Full-Year Forecast													
211	Revenues													
212	Expenses													
213	Net Margin Before TIER													
214	Interest + Margin													
215	Interest Charges													
216	Pre-Adjustment TIER													
217	Increment Needed for 1.24x													
218	Adjustments													
219	TIER Adjustment													
220	TIER Adjustment													
221	TIER Adjustment													



Exhibit A - Retail and Wholesale Service Agreement Examples - Combines Alcan and Century  
 Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)  
 Year Modeled: 2009

Case	Derivation	Illustrative Quarterly Basis - Base Case											
		Base Case	Q1		Q2		Q3		Q4	Pre-Adjusted Year	Adjust. TIER Adjustment	Rebate	Adjusted Year
			Adj. Per 4.7.3	98% load factor/expense 5% above avg.	100% load factor/expense 5% above avg.	Adj. Per 4.7.3	98% load factor/expense 0% above avg.	Adj. Per 4.7.3	98% load factor/expense 10% below avg.		4.7.4	4.9	
1	1.1.16 - Base Demand (MW) (a)												
2	1.1.18 - Base Fixed Energy (TWh) (b)	Contract	850.0	850.0	850.0	850.0	850.0	850.0	850.0	850.0			850.0
3		Contract	7.297	1.824	1.824	1.824	1.824	1.824	7.297				7.297
4	Energy Balance (Annual TWh)												
5	Assumed Load Factor												
6	Market Energy	Assumption	98%	95%	100%	98%	98%						
7	2.3.2 - Supplemental Energy	Assumption	7.297	1.787	1.862	1.824	1.824	7.297					7.297
8	2.3.2(a) Interruptible Energy	Assumption											
9	2.3.2(b) Buy-Through Energy	Assumption											
10	2.3.2(c) Market Energy	Assumption											
11	Consumed												
12	Sold	Assumption											
13	1.1.13 - Backup Energy	Assumption											
14	4.4.1(a) and (b) (within 10MW per Smelter)	Assumption											
15	4.4.1(c) - Excess	Assumption											
16	1.1.18 - Base Curtailed Energy	Assumption											
17	4.1.3.2 - Curtailment of Purchased Power	Assumption											
18	4.1.3.3 - Economic Sales	Assumption (Max. Under Contract)											
19	10.1 - Surplus Sales	Assumption											
20	10.2 - Undeliverable Energy Sales	Assumption											
21	10.3 - Pipeline Reduction Sales	Assumption											
22	1.1.18/19 - Base Hourly/Monthly Energy	Assumption (Approx. Max.)											
23	1.1.22 - Base Variable Energy	line 6 + 17 + 18 + 19 + 20 + 21	7.297	1.787	1.862	1.824	1.824	7.297					7.297
24		line 22 - line 2		(0.037)	0.037			(0.000)					
25	Key Rates												
26	Market Energy Price	Assumption *	60.94	60.94	60.94	60.94	60.94	60.94	60.94				60.94
27	4.3 - Supplemental Energy **	Assumption *											
28	4.3.1 - Interruptible Energy Rate	Assumption											
29	4.3.2 - Buy-Through Energy Rate	Assumption											
30	4.3.3 - Market Energy Rate	Assumption											
31	4.4 - Backup Energy Rate	Assumption											
32	4.4.1(a) and (b) (within 10MW per Smelter)	Assumption											
33	4.4.1(c) - Excess	Assumption											
34	1.1.72 - Market Reference Rate	Contract											
35	1.1.21 - Base Rate	Assumption											
36	1.1.23 - Base Variable Rate	See Supporting Sched.	28.15	28.15	28.15	28.15	28.15	28.15	28.15				28.15
37	1.1.52 - FAC Factor	See Supporting Sched	12.47	12.47	12.47	12.47	12.47	12.47	12.47				12.47
38	1.1.43 - Environmental Surcharge Factor	Tariff	11.22	11.22	11.22	11.22	11.22	11.22	11.22				11.22
39	1.1.84 - Non-FAC Purchased Power Adjustment Factor	Tariff	2.19	2.19	2.19	2.19	2.19	2.19	2.19				2.19
40	4.11.4 - Surcharges	Contract (Appendix A)	0.08	0.08	0.08	0.08	0.08	0.08	0.08				0.08
41	4.11 (a)												
42	4.11 (b)	See contract charges below											
43	4.11 (c)	Contract	0.60	0.60	0.60	0.60	0.60	0.60	0.60				0.60
44		See Supporting Sched	0.60	0.60	0.60	0.60	0.60	0.60	0.60				0.60
45	** Assumed price at cost, for illustration												0.600

**Exhibit A - Retail and Wholesale Service Agreement Examples - Combined Alcan and Century Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)**  
 Year Modeled: 2009

Case	Derivation	Illustrative Quarterly Basis - Base Case											
		Base Case	Q1		Q2		Q3		Q4	Pre-Adjusted Year	Adjust. TIER Adjustment	Rebate	Adjusted Year
			Adj. Per 4.7.3	Adj. Per 4.7.3	Adj. Per 4.7.3	Adj. Per 4.7.3		4.7.4	4.9				
		98% load factor/expense 5% above avg.	100% load factor/expense 5% above avg.	98% load factor/expense 0% above avg.	98% load factor/expense 10% below avg.								
46	Charges (\$M)												
47	4.2 Base Energy Charge	(2 x 35) + (23 x 30)	205.4	50.0	51.8	51.4	51.4	205.4				205.4	
48	4.3 Supplemental Energy Charge												
49	4.3.1 Interruptible Energy	8 x 28	-	-	-	-	-	-				-	
50	4.3.2 Buy-Through Energy	9 x 28	-	-	-	-	-	-				-	
51	4.3.3 Market Energy	10 x 30	-	-	-	-	-	-				-	
52	4.4 Back-up Energy Charge												
53	4.4.1(a) and (b) (with 10MW per Smelter)	14 x 32	-	-	-	-	-	-				-	
54	4.4.1(c) - Excess	15 x 33	-	-	-	-	-	-				-	
55	4.5 Transmission Services Charge	Contract	-	-	-	-	-	-				-	
56	4.6 Excess Reactive Demand Charge	Contract	-	-	-	-	-	-				-	
57	4.7 TIER Adjustment Charge	Contract	-	-	-	-	-	-				-	
58	4.8 Adjustable Charges	See Supporting Sched.	-	2.0	2.0	3.5	5.5	5.5	13.1	(13.1)		-	
59	4.8.1 FAC Charge												
60	4.8.2 Non-FAC Purchased Power Adjustment Charge	22 x 37	81.9	20.0	20.8	20.5	20.5	81.9				81.9	
61	4.8.3 Environmental Surcharges	22 x 39	0.5	0.1	0.1	0.1	0.1	0.5				0.5	
62	4.9 Rebate	22 x 38	15.98	3.81	4.07	3.99	3.99	15.98				15.98	
63	4.10 Equity Development Credit	See Supporting Schedules	(0.7)	-	-	-	-	-				(0.7)	
64	4.11 Surcharge	Contract	-	-	-	-	-	-				-	
65	4.11 (a)												
66	4.11 (b)	Contract	5.1	1.3	1.3	1.3	1.3	5.1				5.1	
67	4.11 (c)	2 x 42	4.4	1.1	1.1	1.1	1.1	4.4				4.4	
67A	4.11 (d)	2 x 43	4.4	1.1	1.1	1.1	1.1	4.4				4.4	
68	4.12 Retail Fee	\$200,000 x 12	(2.4)	(0.6)	(0.6)	(0.6)	(0.6)	(2.4)				(2.4)	
69		Contract	-	-	-	-	-	-				-	
70	Total Charges		314.6	77.8	81.8	84.3	84.3	328.3	(13.1)	(0.7)		314.6	
71	Credits (\$M)												
72	Net Proceeds	(12 x 18 + 19 x 20) x 25 - (tax + admn. cost) * 7 Resale of Market Energy											
74	Avoidable Base Charge	See Supporting Schedules											
75	4.13												
77	4.13.1 Surplus, Undeliverable Energy, and Potline Reduction Sales												
78	Surplus Sales	Min. of 73 and 74											
79	Undeliverable Energy, and Potline Reduction Sales	line 73											
80	4.13.2 Curtailment for Purchased Power	line 73											
81	4.13.3 Economic Sales	line 73 x 75%											
82	4.13.4 Market Energy Sales	line 73											
83	Total Credits	78 + 79 + 80 + 81 + 82											
84	Net Charges	line 70 - line 84	314.6	77.8	81.8	84.3	84.3	328.3	(13.1)	(0.7)		314.6	
85	Net Charges per MWh Metered												
86	* Simplified calculation, in practice would include estimated Big Rivers tax liability (as applicable per sections 11.79, 10.1.4, 10.2.3, 10.3.7, and 13.3). Administrative fees are modeled per section 4.13.1												

**Exhibit A - Retail and Wholesale Service Agreement Examples - Combines Alcan and Century Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)**  
 Year Modeled: 2009

Case	Derivation	Illustrative Quarterly Basis - Base Case												
		Base Case	Q1		Q2		Q3		Q4		Pre-Adjusted Year	Adjust. TIER Adjustment	Rebate	Adjusted Year
			Adj. Per 4.7.3	98% load factor/expense 5% above avg.	Adj. Per 4.7.3	100% load factor/expense 5% above avg.	Adj. Per 4.7.3	98% load factor/expense 0% above avg.	Adj. Per 4.7.3	98% load factor/expense 10% below avg.				
89	<b>Supporting Schedules</b>													
90	1.1.21 Smelter Base Rate													
91	Large Industrial Rate													
92	Load Factor (%)													
93	Member Load Forecast	79%	79%	79%	79%	79%	79%	79%	79%				79%	
94	Energy (\$/MWh)	Tariff	13.72	13.72	13.72	13.72	13.72	13.72	13.72				13.72	
95	Demand (\$/KW-mo.)	Tariff	10.15	10.15	10.15	10.15	10.15	10.15	10.15				10.15	
96	Blend		31.39	31.39	31.39	31.39	31.39	31.39	31.39				31.39	
97	MDA (\$/MWh)	[Tariff]	-	-	-	-	-	-	-				-	
98	Net Rate (\$/MWh)		31.39	31.39	31.39	31.39	31.39	31.39	31.39				31.39	
99	Large Industrial Rate @ 88% LF	Contract	27.90	27.90	27.90	27.90	27.90	27.90	27.90				27.90	
100	Plus Margin	Contract	0.25	0.25	0.25	0.25	0.25	0.25	0.25				0.25	
101	Smelter Base Rate		28.15	28.15	28.15	28.15	28.15	28.15	28.15				28.15	
102	1.1.23 Base Variable Rate													
103	FAC Base													
104	Environmental Surcharge base	Tariff	10.72	10.72	10.72	10.72	10.72	10.72	10.72				10.72	
105	Purchased Power Base	Tariff	-	-	-	-	-	-	-				-	
106	Total	Tariff	1.75	1.75	1.75	1.75	1.75	1.75	1.75				1.75	
107			12.47	12.47	12.47	12.47	12.47	12.47	12.47				12.47	
108	4.11 (c) Surcharge													
109	Reference Fuel Expense (\$/MWh)	Contract	16.44	16.4	16.4	16.4	16.4	16.4	16.4				16.4	
110	Actual Fuel Expense (\$/MWh)	Assumption	21.84	21.9	21.9	21.9	21.9	21.9	21.9				21.9	
111	Min. of (i) Actual Less Reference and (ii) \$0.60 (not less than zero)		0.60	0.60	0.60	0.60	0.60	0.60	0.60				0.60	
112														
113	1.1.12 Avoidable Base Charge													
114	1.1.11(a)													
115	(i) Base Rate plus Adjustable Charge Rates	35 + 37 + 38 + 39												
116	(ii) Base Fixed Energy made available whether or not sold	line 19												
117	\$M	line 116 x line 117												
118	Plus													
119	1.1.11(b)													
120	(i) Base Variable Rate plus Adjustable Charge Rates	36 + 37 + 38 + 39												
121	(ii) Base Variable Energy made available whether or not sold	line 23												
122	\$M	line 121 x line 122												
123	Less													
124	1.1.11(c)													
125	(i) Base Variable Rate plus Adjustable Charge Rates	36 + 37 + 38 + 39												
126	(ii) Base Fixed or Variable Energy neither Metered nor Sold	line 126 x line 127												
127	\$M	line 126 x line 127												
128	Net	line 116 + line 123 - line 128												
129														
130														

**Exhibit A - Retail and Wholesale Service Agreement Examples - Combines Alcan and Century Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)**  
 Year Modeled: 2009

**Illustrative Quarterly Basis - Base Case**

Case	Derivation	Base Case	Illustrative Quarterly Basis - Base Case				Pre-Adjusted Year	Adjust. TIER Adjustm ent	Rebate	Adjusted Year
			Q1	Q2	Q3	Q4				
			Adj. Per 4.7.3	Adj. Per 4.7.3	Adj. Per 4.7.3	Adj. Per 4.7.3				
131	4.7 TIER Adjustment Charge									
132	4.7.5 TIER Adjustment									
133	System Revenues Before TIER Adjustment									
134	Base Case	Financial Model	579,409	144,852	144,852	144,852	144,852	579,409	579,409	
135	Increment from Base Case (Accounts for Both Smelters)									
136	Base Energy Charge	22 x 36	(0.5)	0.5	-	-	-	-	-	
137	FAC/ ES/ PPA Charges	23 x (37 + 38 + 36)	(0.5)	0.5	-	-	-	-	-	
138	Supplemental Energy	49 + 50 + 51								
139	Backup Energy	53 + 54								
140	Net Proceeds	line 73								
141	Less: Credits	line 64								
142	Total Increment from Base Case	136 + 137 + 138 + 139 + 140 + 141	(1.0)	1.0	-	-	(0.0)	-	-	
143	Total Revenues	line 134 - line 142	579.4	143.9	145.8	144.9	144.8	578.4	578.4	
144	System Expenses Before TIER Adjustment									
145	Base Case - Gross	Financial Model	564.4	141.1	141.1	141.1	141.1	564.4	564.4	
146	Net Debt to Power Purchases reflected in Regulatory Account	Financial Model	(0.3)	(0.1)	(0.1)	(0.1)	(0.1)	(0.3)	(0.3)	
147	Base Case - Net	Financial Model	564.1	141.0	141.0	141.0	141.0	564.1	564.1	
148	Increment from Base Case									
149	Variable Costs *	23 x (36 + 37 + 38 + 39)	(1.0)	1.0	-	-	(0.0)	-	-	
150	Power Purchases	138 + 139								
151	Interest (net of capitalization)									
152	Other		7.1	7.1	-	-	(14.1)	-	-	
153	Total Increment from Base Case	148 + 150 + 151 + 152	6.1	8.0	-	-	(14.1)	-	-	
154	Total Expenses	line 147 + line 153	564.1	147.1	149.0	141.0	126.9	564.1	564.1	
155	Net Margin Before TIER Adjustment	line 143 - line 154	15.3	(3.2)	(3.2)	3.8	17.9	15.3	15.3	
156	Interest Charges Plus Net Margin	line 155 + line 158	68.8	10.2	10.2	17.2	31.3	68.8	68.8	
157	Base Case	Financial Model	53.6	13.4	13.4	13.4	13.4	53.6	53.6	
158	Increment from Base Case									
159	Total	line 158 - line 159	53.6	13.4	13.4	13.4	13.4	53.6	53.6	
160	Pre-Adjustment TIER	line 156/ line 160	1,285	0,759	0,759	1,285	2,339	5,141	1,285	
161	Incremental Revenue Needed to Achieve TIER = 1.24x	(1.24 - line 161) x line 160	(2.4)	8.4	8.4	(0.6)	(14.7)	(2.4)	(2.4)	
162	Adjustments									
163	4.7.5(7) No revenue from Economic/ Transition Reserves	Financial Model	1.4	0.4	0.4	0.4	0.4	1.4	1.4	
164	Other		-	-	-	-	-	-	-	
165	Total	line 164 + line 165	1.4	0.4	0.4	0.4	0.4	1.4	1.4	
166	TIER Adjustment	line 162 + line 160	(1.0)	6.8	6.8	(0.3)	(14.4)	(1.0)	(1.0)	
167	TIER Adjustment Charge	Max. of line 167 and zero	-	-	-	-	-	-	-	
168	4.8 Rebate									
169	Excess TIER Amount		(1.0)	-	-	-	-	-	(1.0)	
170	Rebate									
171	Smelter MWh		68%	68%	68%	68%	68%	68%	68%	
172	Rebate		(0.7)	-	-	-	-	-	(0.7)	
173	Example assumes variable costs incurred at rate stipulated in 1.1.21, plus FAC, Environmental Surcharge, and PPA									

Exhibit A - Retail and Wholesale Service Agreement Examples - Combines Aicm and Century  
 Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)  
 Year Modeled: 2009

Case	Derivation	Illustrative Quarterly Basis - Base Case												
		Base Case	Q1		Q2		Q3		Q4		Pre-Adjusted Year	Adjust. TIER Adjustment	Rebate	Adjusted Year
			Adj. Per 4.7.3		Adj. Per 4.7.3		Adj. Per 4.7.3		Adj. Per 4.7.3					
			98% load factor/ expense 5% above avg.		100% load factor/ expense 5% above avg.		98% load factor/ expense 0% above avg.		98% load factor/ expense 10% below avg.					
178	Quarterly TIER Adjustment Charge													
179		Intermediate Annual Forecasts *												
		Base Case	3 Months Actual, 9 Months Forecast	Change Applicable to Next Quarter	6 Months Actual, 6 Months Forecast	Change Applicable to Next Quarter	9 Months Actual, 3 Months Forecast	Change Applicable to Next Quarter						
180	Revenue													
181	Expenses	579.4	578.4		578.4		579.4							
182	Net Margin Before TIER	504.1	570.2		578.2		579.2							
184	Interest + Margin	15.3	8.2		1.2		1.2							
185	Interest Charges	68.8	61.8		54.7		54.7							
186	Pre-Adjustment TIER	53.8	53.8		53.8		53.8							
187	Increment Needed for 1.24s	1.29	1.2		1.0		1.0							
188	Adjustments	(2.4)	4.8		11.7		11.7							
189	TIER Adjustment	1.4	1.4		1.4		1.4							
190	TIER Adjustment Charge	(1.0)	6.0		13.1		13.1							
191	1st Q													
192	2nd Q													
193	3rd Q		2.0	2.0	2.0		2.0							
194	4th Q		2.0		5.5	3.5	5.5							
195			2.0		5.5		5.5	0.0						
196	* Illustrative Forecast Weightings (actual forecast methodologies to be determined)													
197	YTD													
198	Original Budget		25%		50%		75%							
199			75%		50%		25%							
200	YTD													
201	Revenue													
202	Expenses	143.9	269.7		434.8									
203	Net Margin Before TIER	147.1	298.2		437.2									
204	Interest + Margin	(3.2)	(6.5)		(2.6)									
205	Interest Charges	10.2	20.3		37.5									
206	Pre-Adjustment TIER	13.4	26.8		40.2									
207	Increment Needed for 1.24s	0.78	0.78		0.83									
208	Adjustments	6.4	12.9		12.3									
209	TIER Adjustment	0.4	0.7		1.1									
210		6.8	13.6		13.3									
211	Revised Full-Year Forecast													
212	Revenue													
213	Expenses	578.4	579.4		579.4		579.4							
214	Net Margin Before TIER	570.2	578.2		578.2		578.2							
215	Interest + Margin	8.2	1.2		1.2		1.2							
216	Interest Charges	61.8	54.7		54.7		54.7							
217	Pre-Adjustment TIER	53.8	53.8		53.8		53.8							
218	Increment Needed for 1.24s	1.15	1.02		1.02		1.02							
219	Adjustments	4.8	11.7		11.7		11.7							
220	TIER Adjustment	1.4	1.4		1.4		1.4							
221		6.0	13.1		13.1		13.1							