

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 A DECLARATORY ORDER )

Case No. 2013-00413

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REBUTTAL TESTIMONY

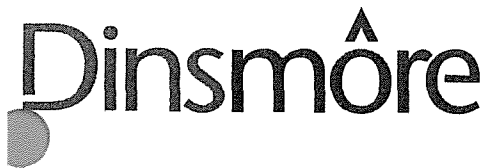
OF

ROBERT W. BERRY  
CHIEF OPERATING OFFICER

ON BEHALF OF

BIG RIVERS ELECTRIC CORP.

FILED: December 30, 2013



*Legal Counsel.*

DINSMORE & SHOHL LLP  
101 South Fifth Street ^ Suite 2500 ^ Louisville, KY 40202  
www.dinsmore.com

Edward T. Depp  
502-540-2347  
tip.depp@dinsmore.com

December 30, 2013

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**PUBLIC SERVICE  
COMMISSION**

**VIA HAND DELIVERY**

Hon. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

***Re: In the Matter of: Joint Application of Kenergy Corp. and Big Rivers  
Electric Corporation for Approval of Contracts and for a Declaratory  
Order; Case No. 2013-00413***

Dear Mr. Derouen:

With this letter I am enclosing one (1) original and eleven (11) copies of the Rebuttal Testimony of Robert W. Berry.

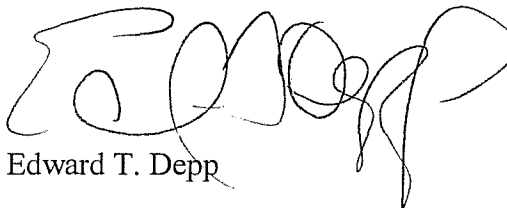
Please return a file-stamped copy to our courier.

Thank you, and if you have any questions, please call me.

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,

DINSMORE & SHOHL LLP



Edward T. Depp

ETD/lb  
Enclosure

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**Certificate of Service**  
**Kentucky PSC Case No. 2013-00413**

Thomas C. Brite, Esq.  
Brite & Hopkins, PLLC  
83 Ballpark Road  
Hardinsburg, Kentucky 40108

David Brown  
Stites & Harbison, PLLC  
1800 Providian Center  
400 West Market Street  
Louisville, Kentucky 40202

Jennifer B. Hans  
Lawrence W. Cook  
Dennis G. Howard, II  
Assistant Attorneys General  
1024 Capital Centre, Dr., Suite 200  
Frankfort, Kentucky 40602

Melissa D. Yates  
Denton & Keuler, LLP  
555 Jefferson St, Suite 301  
Paducah, Kentucky 42001

Burns Mercer  
Meade County RECC  
1351 Highway 79  
P.O. Box 489  
Brandenburg, Kentucky 40108

Michael Early  
Century Aluminum  
1300 SW Fifth Avenue, Suite 1750  
Portland, Oregon 97201

Gregory Starheim  
Kenergy Corporation  
3111 Fairview Drive  
P.O. Box 1389  
Owensboro, Kentucky 42302-1389

G. Kelly Nuckols  
Jackson Purchase Energy Corp.  
2900 Irvin Cobb Drive  
P.O. Box 4030  
Paducah, Kentucky 42002-0024

J. Christopher Hopgood, Esq.  
318 Second Street  
Henderson, Kentucky 42420

Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Boehm, Kurtz & Lowry  
36 E. Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

Robert A. Weishaar, Jr., Esq.  
McNees Wallace & Nurick LLC  
777 North Capitol Street, NE, Ste. 401  
Washington, DC 20002-4292

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. 2013-00413  
A Declaratory Order )

**REBUTTAL TESTIMONY**

**OF**

**ROBERT W. BERRY  
CHIEF OPERATING OFFICER**

**ON BEHALF OF**

**BIG RIVERS ELECTRIC CORPORATION**

**FILED: December 30, 2013**



1 REBUTTAL TESTIMONY  
2 OF  
3 ROBERT W. BERRY  
4

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**REBUTTAL TESTIMONY  
OF  
ROBERT W. BERRY**

5 **I. INTRODUCTION**

6  
7 **Q. Please state your name.**

8 A. My name is Robert W. Berry. I am employed by Big Rivers Electric  
9 Corporation (“Big Rivers”), 201 Third Street, Henderson, Kentucky 42420, as its  
10 Chief Operating Officer.

11 **Q. Are you the same Robert W. Berry who has filed direct testimony before the**  
12 **Kentucky Public Service Commission (the “Commission”) in this**  
13 **proceeding?**

14 A. Yes.

15  
16 **II. OVERVIEW OF TESTIMONY**

17  
18 **Q. What is the purpose of your testimony?**

19 A. The purpose of my rebuttal testimony is to respond to the direct testimony filed by  
20 witnesses for Kentucky Industrial Utility Customers, Inc. (“KIUC”) and Century  
21 Aluminum Sebree LLC (“Century Sebree”).

22 **Q. Will you please summarize Big Rivers’ position in this case?**

23 A. Yes. Big Rivers has agreed to participate in the proposed transaction among  
24 Century Sebree, Century Aluminum Company, Kenergy Corp. (“Kenergy”) and  
25 Big Rivers (the “Century Sebree Transaction”) in the role and on the terms

1 contained in the documents submitted for approval in this case. It has submitted  
2 those documents to the Commission and to its lender, the United States  
3 Department of Agriculture Rural Utilities Service (“RUS”), to obtain the  
4 approvals required before the Century Sebree retail agreement terminates at the  
5 end of the day on January 31, 2014. I believe the Century Sebree Transaction is  
6 prudent, and the documents submitted to the Commission for approval are fair,  
7 just and reasonable and should be approved as submitted, along with the alternate  
8 service arrangements and the declaratory order requested.

9 **Q. Please summarize the points that you will make in this rebuttal testimony?**

10 A. First, I would like to correct and supplement my direct testimony. Second, I will  
11 respond to certain positions and statements made by KIUC witness, Lane Kollen,  
12 and Century Sebree witness, Michael Early.

13 **Q. What clarifications or corrections do you wish to make regarding your prior  
14 testimony?**

15 A. On page 40 of my direct testimony, I included a table identifying the revenues not  
16 already reflected in Case No. 2013-00199 that Big Rivers would receive if the  
17 Century Sebree Transaction receives all necessary approvals. As I note in my  
18 rebuttal testimony in Case No. 2013-00199 (and the accompanying Exhibit Berry  
19 Rebuttal-6), that table contains incorrect amounts. The correct, updated amounts  
20 are as follows:

1

1	<b>Big Rivers Electric Corporation</b>	
2	<b>Century Sebree – Incremental Revenue</b>	
3		
4		<b>Annual</b>
5	<b>General &amp; Administrative Revenue</b>	<b>Fees</b>
6	ACES Power Marketing	\$ 531,184
7	NERC	38,060
8	National Renewables Cooperative (NRCO)	26,100
9	PSC Assessment (paid to Ky State Treasurer)	243,081
10	SERC	46,840
11	Property Taxes and Insurance	217,884
12		
13	<b>Total Annual Revenue While Century Sebree’s Load is Considered Sales for Big Rivers</b>	<b>\$ 1,103,149</b>

2

3 **Q. Are there any changes to the Transaction Documents since the filing of the**  
4 **drafts submitted to the Commission?**

5 A. Yes. In Section 3.10 of the Direct Agreement, a clarification has been made to  
6 ensure there is no ambiguity regarding the priority of that section and the  
7 obligations under the Load Curtailment Agreement. A copy of the changed page  
8 from the Direct Agreement showing that non-substantive change is attached to  
9 this rebuttal testimony as Exhibit RWB Rebuttal – 1.

10 **Q. Are there any other changes to the Transaction Documents?**

11 A. Yes. On December 27, 2013, Century Sebree asked to change the maximum  
12 amount of the Base Load and related load amounts in the proposed Electric  
13 Service Agreement and Arrangement and Procurement Agreement to better  
14 reflect Century Sebree’s current operations. We examined the load data for the  
15 Century Sebree smelter and, in an exchange of messages with Century Sebree

1 over the weekend, on Sunday afternoon agreed to change the maximum amount  
2 of the Base Load from 378 MW to 385 MW. Accordingly, in the agreement  
3 sections identified below, references to “378 MW” will become “385 MW,” and  
4 references to “388 MW” will become “395 MW.” We are checking the  
5 documents to confirm that we have all the edits that are required by this change,  
6 and we will file revised drafts of the documents with the appropriate changes  
7 noted prior to or at the hearing. These changes are not material because Big  
8 Rivers will procure the additional power requirements from the market and not  
9 from Big Rivers’ generation resources. As a result, the change will have no  
10 material effect on the rights and obligations of the parties under the Century  
11 Sebree Transaction.

12 Electric Service Agreement

- 13
- 14 • Section 1.1.11(a), (b), (c) and (d) (Base Load definition) (update  
15 references to 378 MW)
  - 16
  - 17 • Section 1.1.25 (Curtable Load definition) (update reference to  
18 378 MW and 388 MW)
  - 19
  - 20 • Section 1.1.35 (Excess Energy Rate definition) (update reference  
21 to 388 MW)
  - 22
  - 23 • Section 2.3.1 (update reference to 378 MW and references to 388  
24 MW)
  - 25
  - 26 • Section 4.6.9 (update reference to 388 MW)
  - 27

28 Arrangement Agreement

- 29
- 30 • Section 1.1.9(a), (b), (c) and (d) (Base Load definition) (update  
31 references to 378 MW)
  - 32
  - 33 • Section 1.1.23 (Curtable Load definition) (update reference to  
34 378 MW and 388 MW)
  - 35

1  
2  
3  
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8

- Section 1.1.34 (Excess Energy Rate definition) (update reference to 388 MW)
- Section 2.3.1 (update reference to 378 MW and references to 388 MW)
- Section 4.5.8 (update reference to 388 MW)

9 **III. THE PROPOSED CENTURY SEBREE TRANSACTION IS AN**  
10 **APPROPRIATE AND REASONABLE ARRANGEMENT FOR ELECTRIC**  
11 **SERVICE TO THE CENTURY SEBREE SMELTER.**  
12

13 **Q. Please summarize the nature of the Century Sebree Transaction.**

14 A. The Century Sebree Transaction allows Century Sebree to obtain through  
15 Kenergy, its retail electric supplier, electric energy and capacity for the  
16 requirements of its Sebree smelter from the wholesale power market at market-  
17 based prices. This is different from allowing Century Sebree “market access,” as  
18 Mr. Kollen incorrectly characterizes the Century Sebree Transaction throughout  
19 his testimony. The basic structure of the Century Sebree Transaction is described  
20 on page 9 of my direct testimony.

21 **Q. Does Century Sebree pay wholesale market prices for the energy it consumes**  
22 **at the Sebree smelter?**

23 A. No. As mentioned, the actual price paid by Century Sebree for electric service is  
24 based upon market prices, but includes several other factors as described in the  
25 various Century Sebree Transaction documents filed with the Application in this  
26 case. I understand that these contracts are treated like a tariff for Commission  
27 review purposes, but I do not consider them a “rate,” as Mr. Kollen contends.  
28 The actual amount paid by Century Sebree is based upon whatever price is

1 obtained in the wholesale market from time to time, plus the other items  
2 referenced above.

3 **Q. Are arrangements substantially similar to the terms of the Century Sebree**  
4 **Transaction made available by Big Rivers generally for retail service to other**  
5 **large industrials or retail customers?**

6 A. No.

7 **Q. If substantially similar arrangements are not available from Big Rivers for**  
8 **service by Big Rivers' Members to other retail customers on the Big Rivers**  
9 **system, does that give Century Sebree an unreasonable preference or**  
10 **advantage on the terms of its retail power supply, as argued by Mr. Kollen?**

11 A. No. There are numerous factors that distinguish service to Century Sebree from  
12 service to other customer classes and make the Century Sebree Transaction  
13 reasonable by any standard with which I am familiar. Those factors include but  
14 are not limited to the following:

15 • As all participants in this proceeding know, Century Sebree is one  
16 of two aluminum smelters located on the Big Rivers system. As I noted in my  
17 direct testimony, the Century Sebree Transaction is substantively identical to the  
18 transaction with the other aluminum smelter, Century Hawesville (the "Century  
19 Hawesville Transaction"). Most of the changes in the Century Sebree Transaction  
20 from the Century Hawesville Transaction simply reflect the different physical  
21 characteristics of the Sebree Smelter and nearby transmission infrastructure (*e.g.*,  
22 base load amount, delivery point, generation facilities potentially subject to  
23 reliability obligations, the absence of need for an initial SSR agreement or new

1 capacitors), the date the agreements become effective (which is based on the date  
2 Alcan gave the notice of termination) or the existence of the Load Curtailment  
3 Agreement (the reasons for which are described at length herein). The contractual  
4 structure of the Century Sebree Transaction and the risk allocation among the  
5 parties is not different in significant respects compared to the agreements for the  
6 Century Hawesville Transaction.

7 • The smelters are easily distinguishable from every other customer  
8 and customer class on the Big Rivers system by size alone. Century Sebree's load  
9 is 378 MW, and combined with the Century Hawesville load, an aggregate load of  
10 approximately 850 MW. This represents approximately 60% of Big Rivers'  
11 Member load of approximately 1,500 MW. The next largest load on the system is  
12 only 38 MW. As shown by the extensive history of Big Rivers with the smelters  
13 that is included in the record in this case and in the Century Hawesville  
14 Transaction case, P.S.C. Case No. 2013-00221, which has been incorporated into  
15 the record in this case by reference, the impact that the large smelter load has had  
16 on Big Rivers, its Members, and the Commonwealth of Kentucky is enormous  
17 and constant. These two retail customers are not and cannot be treated like any  
18 other customer or customer class for that reason. For example, the mere size of  
19 the Century Hawesville load is such that, under certain conditions, MISO requires  
20 Big Rivers to run its Coleman Generating Station just to protect the reliability of  
21 the bulk electric system.

22 • The Century Sebree smelter facility is different from other retail  
23 large industrial customers on the Big Rivers system because, since 1998, it and



1 the Century Hawesville facility have not been served with a wholesale power  
2 supply under the “all-requirements” contracts pursuant to which Big Rivers  
3 supplies the wholesale power requirements of its Members. As provided on page  
4 14 of the July 15, 1998 Amendment to Big Rivers’ all-requirements contract with  
5 Henderson-Union Electric Cooperative (“Henderson-Union”), a predecessor in  
6 interest of Kenergy, “Big Rivers shall have no responsibilities to Henderson-  
7 Union with respect to service to Alcan [Alcan Aluminum Corporation,  
8 predecessor in interest to Alcan Primary Products Corporation, “Alcan,” that is  
9 the predecessor in interest to Century Sebree] after the earlier to occur of  
10 December 31, 2011, or the date of termination of the Agreement for Electric  
11 Service.” A copy of that contract amendment is attached to this rebuttal  
12 testimony as Exhibit RWB Rebuttal – 2. In 1998, Henderson-Union began taking  
13 wholesale service from LG&E Energy Marketing, Inc. for its retail service to  
14 Alcan. A copy of the contract for that service is attached to this rebuttal  
15 testimony as Exhibit RWB Rebuttal – 3. The agreement between Henderson-  
16 Union and Alcan entered into in 1998 provided for and permitted Henderson-  
17 Union to acquire wholesale service for Alcan from a source other than Big Rivers.  
18 A copy of the 1998 agreement between Henderson-Union and Alcan is attached to  
19 this rebuttal testimony as Exhibit RWB Rebuttal – 4. The 2009 retail agreement  
20 between Kenergy and Alcan also provides for market power purchases by  
21 Kenergy for Alcan. The 2009 retail agreement is attached to this rebuttal  
22 testimony as Exhibit RWB Rebuttal – 5. All of these agreements were approved  
23 by the Commission. KIUC participated on behalf of Alcan, or its predecessor in

1 interest, in every proceeding in which the Commission reviewed these  
2 agreements, and supported Commission approval of these agreements in each  
3 proceeding.

4 • There is an established, Commission-approved and KIUC  
5 supported history of the smelters acquiring energy from the wholesale market or  
6 wholesale providers other than Big Rivers. The market pricing arrangement in  
7 the Century Sebree Transaction is similar to prior arrangement approved by the  
8 Commission for service to the smelters since 1998. A description of those  
9 arrangements is found in the Rebuttal Testimony of Gregory J. Starheim in Case  
10 No. 2013-00221, pages 5 through 10. So, contrary to Mr. Kollen's suggestion at  
11 page 5:3-6 of his testimony, the Century Sebree Transaction will not be the first  
12 time the Sebree smelter has acquired energy from a source other than Big Rivers'  
13 generation. Moreover, the Commission previously approved the Century  
14 Hawesville Transaction, which is substantively identical to the proposed Century  
15 Sebree Transaction. Mr. Kollen's suggestion on page 14 of his testimony that the  
16 Century Sebree Transaction can only be "fair, just and reasonable" if justified by  
17 the lack of profitability of the Sebree smelter makes no sense to me. The totality  
18 of the circumstances surrounding the Sebree smelter and the smelters in general  
19 justifies, if not requires, a fair, just and reasonable arrangement like that proposed  
20 in the Application.

21 **Q. But do you agree with Mr. Kollen that the differences he alleges between the**  
22 **profitability of the Century Hawesville smelter and the profitability of the**  
23 **Century Sebree smelter prevent the Commission's approval of the Century**

1           **Hawesville Transaction from serving as a basis for approving the Century**  
2           **Sebree Transaction?**

3       A.    No. As I have said in this proceeding and others, Big Rivers did not enter into  
4           discussions with Alcan and Kenergy to develop a market-based electric service  
5           arrangement because of information Big Rivers had about the profitability of  
6           Alcan's smelter. Alcan could decide to shut down its smelting operation, whether  
7           or not the Sebree smelter was profitable. In fact, despite Mr. Kollen's conclusions  
8           about the purported profitability of Alcan's Sebree smelter, on January 31, 2013,  
9           Alcan notified Kenergy that it was terminating its electric service agreement and  
10          that it intended to cease smelting operations. Then, four months later, based upon  
11          publicly-available information, it appears that Alcan transferred the Sebree  
12          smelter assets to Century Sebree for very modest compensation. This does not  
13          seem like the way Alcan would manage a profitable smelting operation.

14                 As I have explained before, Big Rivers entered into discussions with  
15           Alcan and Kenergy about a power supply arrangement similar to the Century  
16           Hawesville arrangements because the alternative was for Alcan to close the  
17           Sebree smelter. Alcan terminated its power supply agreement, so it would have  
18           had no power supply after January 31, 2014. Alcan would not even have had an  
19           agreement pursuant to which it could have received service for lighting and  
20           security purposes. Big Rivers and Kenergy had the options to either watch the  
21           Sebree smelter shut down or try to negotiate a service arrangement similar to the  
22           Century Hawesville Transaction that would save the Sebree smelter jobs and  
23           retain some benefits for the local economy. Big Rivers and Kenergy chose the

1           latter option. Once Century Sebree acquired the Sebree smelter on June 1, 2013,  
2           neither the profitability of Alcan’s operation of the Sebree smelter nor any  
3           alternate pricing arrangement Alcan may have been willing to try to negotiate had  
4           any further meaning.

5  
6   **IV.    THE COMMISSION SHOULD FIND THAT IT HAS NO JURISDICTION**  
7   **OVER THE LOAD CURTAILMENT AGREEMENT**  
8

9   **Q.    Please summarize the purpose of the Load Curtailment Agreement.**

10  A.    The Load Curtailment Agreement is intended to protect and indemnify Big Rivers  
11       and Kenergy if Big Rivers curtails the load at the Sebree Smelter in order to  
12       maintain the reliability of the bulk electric system.

13  **Q.    Mr. Early has said in his testimony that the Load Curtailment Agreement is**  
14       **subject to Commission jurisdiction. In the Application filed by Big Rivers**  
15       **and Kenergy, the applicants state on page 10 that they consider the**  
16       **Commission’s jurisdiction over this agreement to be “unclear.” What is the**  
17       **position of Big Rivers and Kenergy on the Commission jurisdiction over the**  
18       **Load Curtailment Agreement?**

19  A.    We do not believe the Commission has jurisdiction over the Load Curtailment  
20       Agreement. The Load Curtailment Agreement is necessary for Big Rivers, as a  
21       transmission owner, to comply with several reliability standards developed by the  
22       North American Electric Reliability Corporation (“NERC”), and approved by the  
23       Federal Energy Regulatory Commission (“FERC”). In addition, Big Rivers must  
24       comply with any regional reliability standards developed by the SERC Reliability

1 Corp. (“SERC”) because it has delegated authority from NERC to develop  
2 regional standards and enforce all FERC-approved NERC standards within most  
3 of the Commonwealth of Kentucky, including the entire Big Rivers transmission  
4 system. All users, owners, and operators of the bulk power system, including Big  
5 Rivers, must comply with NERC reliability standards that are approved by FERC.  
6 The development of all mandatory reliability standards and the enforcement  
7 thereof are subject to review by FERC, not the KPSC. Accordingly, the Load  
8 Curtailment Agreement is not subject to KPSC jurisdiction. Moreover, I  
9 understand that federal statutes do not permit any transmission user, owner, or  
10 operator to act in a manner that is inconsistent with any mandatory reliability  
11 standard of FERC, NERC, or SERC.

12 **Q. Please explain why the Load Curtailment Agreement is necessary for Big**  
13 **Rivers to comply with NERC reliability standards.**

14 A. NERC reliability standards require Big Rivers, as a NERC-registered balancing  
15 authority and transmission operator, to have the responsibility and clear decision-  
16 making authority to take whatever actions are necessary to ensure the reliability of  
17 its transmission system, including shedding firm load to mitigate operating  
18 emergencies. Moreover, having the Load Curtailment Agreement in place  
19 satisfies Big Rivers’ obligation to develop, maintain, and implement a set of plans  
20 for load shedding, as required under FERC-mandated reliability requirements.

21 **Q. Is the Load Curtailment Agreement necessary for any other purpose?**

22 A. Yes. Big Rivers owns and operates nearly 1,300 miles of transmission lines  
23 within the Commonwealth of Kentucky, several of which provide interstate

1 transmission service to Indiana and Illinois. Additionally, Big Rivers is a  
2 transmission-owning member of the Midcontinent Independent System Operator,  
3 Inc. (“MISO”), which is a FERC-certified regional transmission organization that  
4 is responsible for providing transmission service throughout many Midwest states  
5 and Manitoba, Canada. Big Rivers must comply with any directive from MISO,  
6 as the applicable NERC-registered reliability coordinator, to curtail firm load.

7 Further, a guiding principle in the development of the documents related  
8 to the Sebree Transaction is that Century Sebree must pay all costs incurred by  
9 Big Rivers and hold Big Rivers harmless for claims relating to operation of the  
10 Sebree Smelter. Based on MISO’s advice to Big Rivers regarding evaluation of  
11 Big Rivers’ Attachment Y-2 application to idle the Wilson Plant, Big Rivers  
12 conditioned its participation in the transaction on Century Sebree’s entry into the  
13 Load Curtailment Agreement. In substance, the Load Curtailment Agreement has  
14 two simple purposes (a) it permits Big Rivers to carry out directions to it or its  
15 obligations relating to reliability measures, and (b) protects Big Rivers from  
16 claims or actions by Century Sebree as a result of taking those actions.  
17 Obviously, there would be no need for a Load Curtailment Agreement if the  
18 Sebree Smelter was not operating.

19 **Q. Does the Commission have the authority to modify or reject the Load**  
20 **Curtailment Agreement?**

21 A. No. As discussed above, the Load Curtailment Agreement is necessary for Big  
22 Rivers to comply with several mandatory reliability standards developed and  
23 enforced by NERC and SERC, subject to FERC approval. As a result, the Load

1 Curtailment Agreement is not subject to KPSC jurisdiction. Moreover, under  
2 Section 215 of the Federal Power Act, the KPSC, as an agency of the  
3 Commonwealth of Kentucky, is not permitted to take any action that is  
4 inconsistent with any reliability standard. If the KPSC rejects or directs  
5 modification of the Load Curtailment Agreement, Big Rivers likely would be in  
6 violation of multiple reliability standards. The Commission's ability to reject or  
7 modify the Load Curtailment Agreement is therefore preempted by federal  
8 statute.

9 **Q. Are there penalties associated with violations of NERC reliability standards?**

10 A. Yes. Violations of NERC reliability standards are subject to a penalty of up to \$1  
11 million per day, per violation. Penalties are set by NERC and the applicable  
12 regional entity, and are subject to FERC approval.

13 **Q. What recourse does Big Rivers have if the Commission directs Big Rivers to  
14 modify or reject the Load Curtailment Agreement?**

15 A. If the KPSC takes action to modify or reject the Load Curtailment Agreement,  
16 NERC, SERC, and any other affected entity, including MISO and Big Rivers, has  
17 a right to request that FERC make a determination of the consistency of the  
18 Commission's action with the applicable reliability standards. FERC also has the  
19 authority to suspend any Commission order and uphold the Load Curtailment  
20 Agreement pending issuance of a FERC order on the merits.

1 V. **BIG RIVERS DOES NOT AGREE TO PERFORM**  
2 **LIVE LINE TRANSMISSION MAINTENANCE AS PROPOSED**  
3 **BY CENTURY SEBREE**  
4

5 Q. **Mr. Early asks the Commission to find that live line maintenance by Big**  
6 **Rivers on specified transmission lines is consistent with good utility practice.**  
7 **Does Big Rivers want live line maintenance performed on the specified**  
8 **transmission lines?**

9 A. No. As I stated on behalf of Big Rivers in the Century Hawesville Transaction  
10 case, Big Rivers does not want the live line maintenance that Century Sebree  
11 advocates performed on its transmission facilities.

12 Q. **Do you agree with Mr. Early that “live line maintenance” is an appropriate**  
13 **issue for this proceeding?**

14 A. Absolutely not. There is no provision in the documents submitted to the  
15 Commission in this case that even mentions “live line” maintenance, and “live  
16 line” maintenance is not required by the Century Sebree Transaction agreements.  
17 “Live line” maintenance was first raised by Century Hawesville on the second to  
18 last day of the negotiations for the Century Hawesville transaction, Case No.  
19 2013-00221. Big Rivers’ rejected the idea of “live line” maintenance and the  
20 subject was discussed at length during the July 30, 2013 evidentiary hearing in  
21 Case No. 2013-00221. Century Sebree is well aware and informed of Big Rivers’  
22 position regarding “live line” maintenance. Not one time during the negotiations  
23 of the Century Sebree agreements did Century Sebree ever request or suggest the  
24 need for “live line” maintenance as a condition to execution of the Century Sebree  
25 Transaction documents; therefore no provisions for “live line” maintenance exist



1 in the Century Sebree Transaction documents, and this maintenance practice is  
2 not required.

3 On page 3, line 20 of Mr. Early's testimony, he states "the contracts are  
4 the product of extensive negotiations among the parties." On page 4, lines 3  
5 through 6 he further states "the contract terms are acceptable to Century only as a  
6 package and any modification of the terms will make the entire arrangement  
7 unacceptable." It now appears Mr. Early's testimony is attempting to modify the  
8 agreements and add, through the regulatory process, provisions that he did not  
9 even attempt to achieve during the negotiations. This contradicts Mr. Early's  
10 previous statement regarding the modification of the terms of the agreements, as  
11 well as the language in section 14.1.1 of both the Electric Service Agreement and  
12 Arrangement and Procurement Agreement that states: "Neither Kenergy nor  
13 Century will support or seek, directly or indirectly, from any Governmental  
14 Authority, including the KPSC, any challenge to or change in the rates and  
15 charges set forth in this Agreement or other terms and conditions set forth herein."  
16 Because all of the parties agreed to the transaction as filed, and the agreements do  
17 not include any provisions relating to "live line" maintenance, the Commission  
18 should not consider "live line" maintenance an issue in this case. Mr. Early's  
19 request for the Commission to rule on "live line" maintenance is not based on  
20 reliability, but rather it is based on increasing corporate profits while ignoring all  
21 other considerations, including health and human life.

22 **Q. Are you familiar with the Midcontinent Independent System Operator, Inc.**  
23 **("MISO") filings at the Federal Energy Regulatory Commission for approval**

1           **of a System Support Resources (“SSR”) Agreement for Big Rivers’ Coleman**  
2           **Station?**

3    A.    Yes, I was responsible for providing the Big Rivers information requested by  
4           MISO for the FERC filings, which are found in FERC docket numbers ER14-  
5           292-000 and ER14-294-000.

6    **Q.    Are you also familiar with the protest filed by Century Hawesville in those**  
7           **dockets?**

8    A.    Yes, I am.

9    **Q.    In its protest, Century Hawesville alleges that Big Rivers currently and**  
10           **regularly performs “live line” maintenance on its transmission system for the**  
11           **benefit of some customers, but refuses to perform live line maintenance to**  
12           **benefit Century Hawesville. Do you agree with that assertion?**

13   A.    That is absolutely not true. Big Rivers does not perform “live line” maintenance  
14           as interpreted and requested by Century Sebree and Century Hawesville. Century  
15           Hawesville has formed this opinion based on misinterpretation of information it  
16           has obtained from the MISO website. The “live line” maintenance Century  
17           Sebree wants Big Rivers to perform includes working on the energized conductor,  
18           replacing the insulators on the pole or changing out the poles. When a utility  
19           submits a request to MISO to perform maintenance on a transmission line, it must  
20           fill out a MISO web-based request form. Big Rivers supplies generation and  
21           transmission outage information to MISO via the web based Control Room  
22           Operations Window (CROW) program. Once outages are entered in the CROW,  
23           MISO studies their impact on reliability of the proposed outage and either

1 approves or denies the request. The requested outage will not occur without  
2 MISO approval. MISO will cancel approved outages if necessary to ensure  
3 system reliability.

4 On the request form the requester must select one of five options: (1)  
5 “line out of service;” (2), “hot line work;” (3) “general system protection;” (4)  
6 “informational;” or (5) “normally open but in service.” When Big Rivers submits  
7 a request to perform maintenance such as repairing woodpecker holes, treating  
8 poles for insects or performing vegetation management, it disables the auto re-  
9 closure to protect the employee in the event he or she, or some of their equipment  
10 may come in contact with the energized line. When the auto re-closure is  
11 disabled, Big Rivers selects the designation “hot line work” that in turn is  
12 reflected on the MISO CROW report as HLW (hot line work). That is the nature  
13 of each of the “HLW” designated maintenance operations performed by Big  
14 Rivers on its transmission system. Century Hawesville’s claim that Big Rivers  
15 has performed “live line” maintenance is based on its review of MISO’s CROW  
16 reports which includes the designation HLW (hot line work). As I have explained  
17 here, the work Big Rivers currently performs with the line energized is  
18 significantly different than the “hot line” maintenance Century Hawesville and  
19 Century Sebree are attempting to force Big Rivers to perform.

20 Attached to my testimony as Exhibit RWB Rebuttal – 6 is a PowerPoint  
21 presentation prepared by Big Rivers that better reflects the significant difference  
22 between the “hot line” maintenance work Century Hawesville and Century Sebree  
23 are attempting to force Big Rivers to perform compared to the maintenance work

1 Big Rivers performs on energized transmission lines. Century Hawesville's  
2 misunderstanding could have been avoided if it would have simply contacted Big  
3 Rivers to discuss this issue. Unfortunately, Century Hawesville has not contacted  
4 Big Rivers to discuss the MISO HLW reports, but rather, it chose to communicate  
5 this misinformation to state legislators and regulatory agencies.

6 **Q. Do you believe the testimony of Michael Early on behalf of Century Sebree**  
7 **(pp. 5-6:19-3) accurately characterizes the conclusion of the Commission in**  
8 **its order in Case No. 2013-00221 regarding "live line" maintenance?**

9 A. No. In the same sentence with the statement referenced by Mr. Early, the  
10 Commission found that Big Rivers' past and future practice of de-energized line  
11 maintenance also was and is consistent with good and reasonable utility practice.  
12 Most importantly, the Commission went on to expressly reject obligating Big  
13 Rivers to perform live-line maintenance, saying the issue was something that  
14 needed to be agreed among the parties. The Commission further noted, correctly  
15 in my view, that the issue is simply one of economics, not reliability. Finally, the  
16 Commission further stated that Century Hawesville should have raised the issue  
17 earlier in its negotiations if the issue was so critical to it. With respect to the  
18 Sebree transaction, Century Sebree obviously knew about the issue within plenty  
19 of time to negotiate about it. Century Sebree chose not to do so. As was the case  
20 with the Hawesville smelter documents, Century Sebree agreed to the filing of the  
21 documents with the Commission for approval knowing that Big Rivers did not  
22 intend to perform live line maintenance on its transmission lines.

23

1 **VI. MISCELLANEOUS REBUTTAL POINTS**

2

3 **Q. Are there other points made in the intereვენors' witnesses' testimony with**  
4 **which you disagree?**

5 A. Yes. I disagree with many of Mr. Kollen points, and will address certain of those  
6 points in my rebuttal testimony.

7 **Q. At page 36:8-9, Mr. Kollen suggests that "Big Rivers should make every**  
8 **effort to mitigate its fixed costs by minimizing any operation and**  
9 **maintenance expense and capital expenditures at the idled power plants,**  
10 **including, but not limited to, retirement or sale of the units if economically**  
11 **justified." How do you respond to this suggestion?**

12 A. Big Rivers has, in fact, made every effort and taken every reasonable and  
13 economically-justified opportunity to minimize its expenses following  
14 termination of the two smelter agreements. Those efforts and the manner in  
15 which Big Rivers has managed to reduce expenses by over \$238 million to  
16 address the smelter contract terminations are thoroughly documented and  
17 discussed in Case No. 2013-00199, which is Big Rivers' pending rate case.  
18 However, as the Commission found on page 6 of its July 19, 2013 order in the  
19 Hawesville transaction case (Case No. 2013-00221), "[t]o the extent that [a party]  
20 desire[s] to address the impacts of the Century Kentucky contract on the rates of  
21 all other ratepayers and on generating resources, the proper venue for those issues  
22 is Big Rivers' pending rate case where those issues were raised."

1 Q. Mr. Kollen also testifies about who he believes should pay what he alleges are  
2 “stranded fixed costs” associated with the Sebree smelter contract  
3 termination. What is your response to that testimony?

4 A. I once again note that Commission’s previous ruling that rate case issues should  
5 be addressed in the pending rate case. The documents submitted in this case  
6 should be approved as filed.

7 Q. Mr. Kollen states on page 23:20-24 that Big Rivers built the Reid-Green-  
8 Station Two plant complex in close proximity to the Sebree Smelter  
9 primarily to serve the Sebree Smelter load, and Coleman Station in close  
10 proximity to the Hawesville Smelter primarily to serve the Hawesville  
11 Smelter load. Do you agree?

12 A. No. Big Rivers builds generation facilities to meet the total load of its system.  
13 For engineering reasons, generation is located near large load centers.

14 Q. Mr. Early states at page 5:4-6 of his testimony that Wilson Station will not be  
15 designated as a “must run” or System Support Resource. Is that accurate?

16 A. That will likely prove correct, but until Big Rivers receives the final Attachment  
17 Y from MISO, the status of Wilson Station is not final. Whatever conclusion  
18 MISO reaches in the final Attachment Y is binding on Big Rivers.

19

20 **VII. CONCLUSION**

21

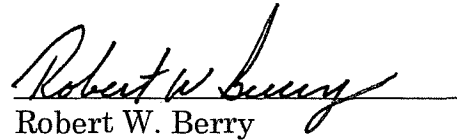
22 Q. Do you have any concluding remarks?

1 A. Yes. For the reasons stated in the application, our data requests responses and  
2 rebuttal testimony, I would ask the Commission to enter an order granting the  
3 relief requested in the application and denying the live line maintenance directive  
4 sought by Century Sebree.

**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. 2013-00413**

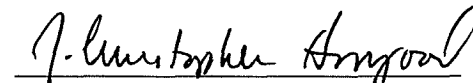
**VERIFICATION**

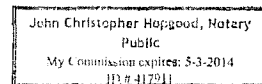
I, Robert W. Berry, verify, state, and affirm that I prepared or supervised the preparation of the Rebuttal Testimony filed with this Verification, and that this Rebuttal Testimony is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

  
Robert W. Berry

COMMONWEALTH OF KENTUCKY )  
COUNTY OF DAVIESS )

SUBSCRIBED AND SWORN TO before me by Robert W. Berry on this  
the 23<sup>rd</sup> day of December, 2013.

  
Notary Public, Ky. State at Large  
My Commission Expires 5-3-2014





*Table of Contents to Exhibits  
Rebuttal Testimony of Robert W. Berry  
Case No. 2013-00413*

Exhibit RWB Rebuttal 1 Revised Page from Direct Agreement

Exhibit RWB Rebuttal 2 Amendment dated July 15, 1998, to Wholesale Power Agreements between Big Rivers Electric Corporation and Henderson Union Electric Cooperative Corp.

Exhibit RWB Rebuttal 3 Agreement for Electric Service Between Henderson Union Electric Cooperative Corp. and LG&E Energy Marketing Inc. dated as of July 15, 1998

Exhibit RWB Rebuttal 4 Agreement for Electric Service Between Henderson Union Electric Cooperative Corp. and Alcan Aluminum Corporation dated as of July 15, 1998

Exhibit RWB Rebuttal 5 Retail Electric Service Agreement dated as of July 1, 2009, by and between Kenergy Corp. and Alcan Primary Products Corporation

Exhibit RWB Rebuttal 6 Presentation – “Big Rivers Electric Corporation: Explanation of Standard Maintenance Practice”



**DIRECT AGREEMENT**

Dated as of January [ ], 2014

by and between

**BIG RIVERS ELECTRIC CORPORATION**

and

**CENTURY ALUMINUM SEBREE LLC**

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the sum of the following without duplication either in this Agreement or with regard to the Electric Service Agreement or any Market Agreement:

(a) amounts reasonably estimated by Big Rivers to become due and payable to Big Rivers under this Agreement during the two succeeding months; and

(b) the amount (without duplication) of any credit support required to be provided and maintained under Section 14.3 of the Electric Service Agreement for the benefit of Big Rivers.

Century shall provide any credit support required by this Section to the Person designated by Big Rivers and Kenergy but Century shall not be required to post credit support to more than one Person with respect to the same underlying liability.

3.9 Additional Credit Support. Century shall provide and maintain additional credit support in the form required by any RTO or ISO and in the amount (a) determined by Big Rivers prior to termination of the Arrangement Agreement or, if after such termination, Kenergy with respect to the provision of Electric Services for resale to Century and (b) required under any Bilateral Contract for the purchase by Kenergy of any Electric Services for resale to Century, without the requirement for Big Rivers to provide credit support or be liable to the Bilateral Counterparty.

3.10 Right to Transmission Services. Notwithstanding any other provision in this Agreement or any Transaction Document (other than the Load Curtailment Agreement), Big Rivers acknowledges and agrees that Century (through Kenergy or the Market Participant) shall be entitled to Transmission Services, on the same rates, terms and conditions as other transmission customers pursuant to the Tariff, subject to the Load Curtailment Agreement.

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

3.12 Imbalance Energy Limit. Century acknowledges and agrees that it will not consume more than 10 MW of energy above the Base Load plus, if applicable, the Curtailable Load.

3.13 Transmission Charges. The Parties acknowledge and agree that delivery of Electric Services from the Delivery Point to the Century Substation is network integration transmission service and Big Rivers will not charge any supplemental amount in addition to the charge for network integration transmission service for delivery of Electric Services to the Delivery Point for the transmission of Electric Services from the Delivery Point to the Century Substation.



**U. S. DEPARTMENT OF AGRICULTURE  
RURAL UTILITIES SERVICE**

**RUS BORROWER DESIGNATION** KY 62 Big Rivers Electric Corp.

**THE WITHIN** AMENDMENT TO WHOLESALE POWER AGREEMENTS DATED  
OCTOBER 12, 1974, AND JUNE 11, 1962, BETWEEN BIG RIVERS ELECTRIC  
CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP.

**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

DATED

7/15/98

AMENDMENT TO WHOLESALE POWER AGREEMENTS DATED OCTOBER 12, 1974, AND JUNE 11, 1962, BETWEEN BIG RIVERS ELECTRIC CORPORATION AND HENDERSON UNION ELECTRIC COOPERATIVE CORP.

THIS AMENDMENT TO WHOLESALE POWER AGREEMENTS dated as of the 15<sup>th</sup> day of July, 1998, by and between BIG RIVERS ELECTRIC CORPORATION, having P.O. Box 24, with offices at 201 Third Street, Henderson, Kentucky 42420 ("Big Rivers"), First Party, and HENDERSON UNION ELECTRIC COOPERATIVE CORP., with offices at 6402 Old Corydon Road, Henderson, Kentucky 42420 ("Henderson Union"), Second Party, both parties being cooperative corporations organized under KRS Chapter 279 and related chapters of the Kentucky Revised Statutes.

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

WHEREAS, the parties hereto entered into a wholesale power agreement dated October 12, 1974, as amended, regarding the terms and conditions on which Big Rivers would sell Henderson Union all its requirements for electricity for resale to certain large industrial customers of Henderson Union (the "1974 Agreement"); and

WHEREAS, the parties now desire to amend the 1974 Agreement to update the list of covered contracts to delete the Agreement for Electric Service Between Henderson Union and Alcan Aluminum Corporation dated April 24, 1982, as amended, and to exclude the

Agreement for Electric Service Between Henderson Union and Alcan Aluminum Corporation of even date herewith; and

WHEREAS, the Parties now desire to amend the existing all requirements nature of the contracts between Big Rivers and Henderson Union to terminate Big Rivers' responsibility to provide the wholesale power supply used by Henderson Union to serve Alcan Aluminum Corporation; and

WHEREAS, the Parties seek to establish Henderson Union's ability to step outside the all requirements provisions of the 1962 Agreement and the 1974 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. Schedule No. 1 to this Amendment shall be substituted for and in lieu of Exhibit No.1 to the October 12, 1974 Agreement and Amendments No. 1 and 2 thereto, dated the 14th day of May, 1982 and the first day of January, 1990, and Amendment No. 3 thereto, dated May 15, 1997.

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 Henderson Union all its wholesale power requirements for electricity.



- 1.2 1974 Agreement: The amended and restated agreement dated October 12, 1974 regarding the terms and conditions on which Big Rivers now sells Henderson Union all its requirements for electricity for resale to certain large industrial customers of Henderson Union.
- 1.3 Agreement for Electric Service: The Agreement for Electric Service between Henderson Union Electric Cooperative and Alcan Aluminum Corporation, of even date herewith, as it exists on the Date of Implementation.
- 1.4 Agreements: Collectively, the 1962 Agreement and the 1974 Agreement.
- 1.5 Alcan: Alcan Aluminum Corporation.
- 1.6 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.
- 1.7. 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 Henderson Union for resale to Alcan.

- 1.8 Big Rivers Transaction Tariff: The Tariff filed by Big Rivers with the KPSC to become effective in conjunction with the Big Rivers/LEC Transaction.
- 1.9 Date of Implementation: 12:01 a.m. on the day after the closing date of the Big Rivers/LEC Transaction.
- 1.10 Designated Third-Party Supplier: Any supplier of wholesale electric service who sells electric capacity or energy directly to Henderson Union for resale to Alcan.
- 1.11 FERC: The Federal Energy Regulatory Commission or any successor agency.
- 1.12 KPSC: The Kentucky Public Service Commission or any successor agency.
- 1.13 LEM: LG&E Energy Marketing Inc., an affiliate of LEC.
- 1.14 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.
- 1.15 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.
- 1.16 RUS: The Rural Utilities Service or any successor agency.

- 1.17 Tier 1 Service: The take-or-pay electric service provided by Henderson Union to Alcan whereby Henderson Union purchases power directly from an LEC affiliate for resale to Alcan, 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 Henderson Union to Alcan whereby Henderson Union purchases power directly from an LEC affiliate for resale to Alcan, as set forth in the Agreement for Electric Service.
- 1.19 Tier 3 Service: The electric service provided by Henderson Union to Alcan whereby Henderson Union purchases power directly from an LEC affiliate through December 31, 2000 and thereafter from Third-Party Suppliers selected by Henderson Union for resale to Alcan 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 Henderson Union for resale to Alcan and Henderson Union shall be under no obligation to purchase wholesale power from Big Rivers for resale to Alcan. Big Rivers shall in no case have any Tier 1, Tier 2, Tier 3 Service, or any other

wholesale power supply responsibilities to Henderson Union with respect to any Alcan load. Notwithstanding the above, Big Rivers shall be obligated to provide Henderson Union 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 Henderson Union nor Alcan nor any subsequent wholesale supplier of power consumed by Alcan 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 Henderson Union's contractual obligation to Big Rivers with respect to Big Rivers' service to Henderson Union to serve Alcan's load at the Sebree Smelter; 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 Alcan. Notwithstanding the above, Henderson Union shall have the obligation to pay Big Rivers amounts owing under Big Rivers' tariff for service rendered to Henderson Union on behalf of Alcan prior to the Date of Implementation. Other than with respect to the wholesale power supply for Alcan's load, the all requirements provisions of the Agreements shall remain in effect.

3. Big Rivers covenants to Henderson Union as follows:

- 3.1 Big Rivers will transmit over Big Rivers' transmission system (i) energy purchased by Henderson Union from Designated Third-Party Suppliers for resale to Alcan as Tier 1, Tier 2 and Tier 3 Service, and (ii) energy constituting all or any portion of Alcan's Tier 1 purchase obligation under its Agreement for Electric Service that is to be resold by Henderson Union pursuant to the Agreement for Electric Service. Big Rivers will provide transmission service to Henderson Union or any Designated Third-Party Supplier for the above service in accordance with the type of transmission service reserved on Big Rivers' OASIS by Henderson Union 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 Henderson Union to Alcan, to provide Henderson Union 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 Henderson Union 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 Henderson Union with respect to the power delivered to Alcan as set forth in Paragraph 3.3 below.

3.3 For all power sold by Henderson Union to Alcan through the expiration or earlier termination of the Agreement for Electric Service, Henderson Union, 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 Alcan 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 Alcan 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 233,000 kilowatts (accordingly, the reactive power recorded by Alcan at the point of delivery shall not exceed 112,850 kilovars when the metered demand is at or above 233,000 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 Henderson Union at no additional charge so long as Alcan's usage of kilovars remains within these levels specified in (i) and (ii) above. In the event that Alcan's recorded reactive power demand exceeds the limitations set forth above, Henderson Union 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 over new facilities installed after the Date of Implementation of this tariff by Alcan at the Sebree Smelter (such as a 4th potline), the reactive power requirements of which will need to be separately evaluated and assessed by Big Rivers, Henderson Union and Alcan at such time as any such new facilities are constructed.

- 3.4 Big Rivers agrees to continue to perform for Henderson Union with respect to service to Alcan those services set forth in Schedule 2 to this Agreement, in a manner consistent with historical practices at no additional charge to Henderson Union or Alcan 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 Henderson Union. Any power supply meter reading and billing services performed by Big Rivers for Henderson Union 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 Henderson Union and Alcan 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 Henderson Union and/or any Designated Third-Party Supplier shall be contingent upon the following conditions:

4.1 Henderson Union 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 Henderson Union 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 Henderson Union from Designated Third-Party Suppliers.



- 4.3 Henderson Union 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), Henderson Union 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 Services 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 Henderson Union or that Designated Third-Party Supplier.
5. To the extent that Henderson Union is in material breach of responsibilities herein to Big Rivers relating to the wholesale power used to serve Alcan, 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 Alcan until such time as Henderson Union is no longer in such breach. Prior to any such suspension, Big Rivers shall give Henderson Union fifteen (15) days' notice and an opportunity to cure such a breach. Copies of such notice also shall be sent in writing to Alcan and LEM at that time.

6. Big Rivers shall indemnify and hold Henderson Union harmless from any liability to any Designated Third-Party Suppliers or Alcan 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 Henderson Union, its employees and agents that causes such failure to perform by Big Rivers.
7. Henderson Union 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 Henderson Union. Further, Henderson Union 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 Henderson Union or Alcan to perform their obligations with respect to Designated Third-Party Suppliers under the Agreement for Electric Service or, with respect to Henderson Union, 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 Henderson Union.
8. 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 Henderson Union under the Agreement for Electric Service with Alcan, shall not extend to the duties

of Henderson Union 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 Henderson Union or Alcan relating to Henderson Union's provision of electric service to Alcan, except as provided in Paragraph 9 of this Amendment, and any provisions of the Agreements inconsistent with this Amendment shall be of no further force and effect.

9. 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:

- 9.1 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 Alcan's 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.

- 9.2 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 Alcan) based upon the historical patronage measured by kilowatts 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.

9.3 Big Rivers and Henderson Union agree with each other that neither Big Rivers nor Henderson Union will permit any amendments or modifications of its bylaws that would adversely affect Alcan's rights to distribution hereunder. Henderson Union agrees with Big Rivers that Alcan 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 Henderson Union and that such allocations shall be promptly distributed to Alcan.

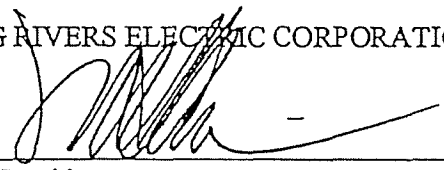
10. This Amendment shall commence as set forth in Section 3 below, and shall terminate upon the later of the expiration or termination of that transaction or the termination or expiration of the Agreements. However, notwithstanding the foregoing, Big Rivers shall have no responsibilities to Henderson Union with respect to service to Alcan after the earlier to occur of December 31, 2011 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:

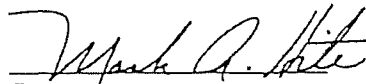
1. This Amendment is approved by the Administrator of the Rural Utilities Service,  
and
2. This Amendment has been filed with and accepted by the KPSC; and
3. Alcan, Henderson Union and Big Rivers shall have executed and filed all agreed orders of dismissal of litigation pursuant to Schedule 5.1(b)(15)(i) and Schedule 5.1(b)(15)(ii) of the Plan of Reorganization and any and all claims and causes of action to which Alcan is a participant against Big Rivers as debtor or restructured debtor, shall have been settled, compromised and released in a manner acceptable to Big Rivers, Henderson Union and Alcan 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:

  
Secretary

HENDERSON UNION ELECTRIC COOPERATIVE

By: John West  
President

ATTEST

\_\_\_\_\_  
Secretary



AGREEMENT FOR ELECTRIC SERVICE

Between

HENDERSON UNION ELECTRIC COOPERATIVE CORP.

and

LG&E ENERGY MARKETING INC.

July 15, 1998



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AGREEMENT FOR ELECTRIC SERVICE  
BETWEEN  
HENDERSON UNION ELECTRIC COOPERATIVE CORP.  
AND  
LG&E ENERGY MARKETING INC.

Article I. PARTIES:

The Parties to this Agreement, dated as of this 15<sup>th</sup> day of July, 1998, are HENDERSON UNION ELECTRIC COOPERATIVE CORP., a Kentucky corporation organized under KRS Chapter 279 ("HU"), and LG&E ENERGY MARKETING INC., an Oklahoma corporation ("LEM"). HU and LEM are each referred to individually as a "Party" and collectively as "Parties."

Article II. RECITALS:

This Agreement is premised on the following:

Section 2.01 Henderson Union is a member of Big Rivers Electric Corporation ("Big Rivers"), a Kentucky corporation organized under KRS Chapter 279, and purchases electric power from Big Rivers under:

- (a) Wholesale Power Supply Contract between Big Rivers and HU dated June 11, 1962, as supplemented and amended on July 22, 1970, as amended March 1, 1971, as further amended on December 15, 1975, and as further amended by Amendment No. 4 dated May 9, 1980 ("1962 Agreement");
- (b) Agreement between Big Rivers and HU dated October 12, 1974, as amended on May 14, 1982, and as further amended on January 1, 1990 ("1974 Agreement"); and

- (c) (Proposed) Amendment to Wholesale Power Agreements Dated October 12, 1974, and June 11, 1962, Between Big Rivers Electric Corporation and Henderson Union Electric Cooperative Corporation, dated as of July 15, 1998 ("1998 Amendment").
- (d) The 1962 Agreement, the 1974 Agreement and the 1998 Amendment are hereinafter collectively, the "HU/BREC Contract".

Section 2.02 Alcan Aluminum Corporation ("Alcan") owns an aluminum production plant in Sebree, Kentucky (the "Sebree Smelter"). Alcan is a member of HU and purchases Capacity and Energy from HU under an Agreement for Electric Service dated April 24, 1982 between HU and Anaconda Aluminum Company, a predecessor owner of the Sebree Smelter. The April 24, 1982 agreement was amended by Agreed Order of the United States District Court, Western District of Kentucky dated March 15, 1988 (Civil Action No. 87-0020-0(CS)) and by Amendment No. 1 to Agreement for Electric Service dated as of January 1, 1990 (together the "Existing Alcan Agreement"). The term of the Existing Alcan Agreement expires on December 31, 2010. However, HU and Alcan have negotiated an agreement ("New Alcan Agreement") which would become effective and replace the Existing Alcan Agreement as of the Effective Date of this Agreement, and would expire on December 31, 2011.

Section 2.03 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 the Bankruptcy Court approved certain modifications to, the First Amended Plan of Reorganization of Big Rivers (the "Plan of Reorganization"). The Plan of Reorganization, contemplates a proposed transaction (the "LEC Transaction") whereunder, among other things, a subsidiary of LG&E Energy Corp. ("LEC") will operate the Big Rivers generating assets until certain regulatory approvals are obtained (Phase I), and thereafter will lease the Big Rivers generating assets (Phase II), for a combined term of approximately twenty-five years. In connection with this Transaction, LEM will supply power to Big Rivers, a portion of which will be resold to HU for resale to HU's customers (exclusive of Alcan).

Section 2.04 The commitments of Big Rivers, LEM and various affiliates of LEM with respect to the LEC Transaction are set forth in a New Participation Agreement dated as of April 6, 1998, as amended on April 6, 1998 and *July 15*, 1998, and as such agreement may be subsequently amended (collectively, the "Participation Agreement"). In order to further facilitate the reorganization of Big Rivers, the Participation Agreement contemplates that as of the LEC Transaction Effective Date, HU will cease to be a wholesale requirements customer of Big Rivers with respect to that portion of its load attributable to Alcan and in certain other respects, and that as of such time, HU will commence to purchase power from LEM to meet certain requirements of Alcan as set forth herein and thereby enable HU to fulfill a portion of its obligations to Alcan under the New Alcan Agreement.

Section 2.05 Schedule A attached hereto sets forth the rates and additional terms and conditions, agreed to by LEM and HU to apply co-extensively for the terms of this Agreement and the New Alcan Agreement. Schedule A contains a three-tiered structure which provides for purchases of fixed amounts of firm energy at set rates as Tier 1 Energy, up to a fixed amount of firm energy at set rates as Tier 2 Energy (a portion of which is priced separately as Tier 2 Supplemental Energy), and varying and open-ended amounts of firm energy as Tier 3 Energy at set rates. The term of service with respect to Tier 1 Energy and Tier 2 Energy expires as of December 31, 2011 and the term of service with respect to Tier 3 Energy expires as of December 31, 2000. In addition, Schedule A provides for sale of the portion of Tier 2 Energy priced as Tier 2 Supplemental Energy, Tier 3 Back-up Energy and Tier 3 Interruptible Energy during the period January 1, 2001 to December 31, 2011. Certain Generation-Based Ancillary Services will be provided in conjunction with certain of these categories of power.

Section 2.06 This Agreement provides for wholesale power sales subject to the jurisdiction of the FERC under Section 205 of the Federal Power Act ("FPA"). Nevertheless, the parties agree that approval by the KPSC of the Plan of Reorganization and the LEC Transaction, to the extent requested by Big Rivers and certain subsidiaries of LEC in KPSC Case No. 97-204 and KPSC Case No. 98-267 as well as the occurrence of certain other

events as set forth in Article V below, are pre-conditions to the effectiveness of this Agreement.

Article III. DEFINITIONS:

The following terms, when used in this Agreement with initial capitalization, whether in the singular or the plural, shall have the meanings specified below or in Schedule A attached hereto:

Section 3.01 Agreement: This Agreement, including Schedule A attached hereto, together with any amendments to which the Parties may agree in writing from time to time (but exclusive of Schedule B which is attached to this Agreement for reference only).

Section 3.02 Alcan: Alcan Aluminum Corporation, its successors or assigns.

Section 3.03 A.M.: Means A.M., Central Standard Time or Central Daylight Time, as applicable.

Section 3.04 Ancillary Services: 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 include as of the Effective Date: (1) 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.

- Section 3.05 Bankruptcy Court: United States Bankruptcy Court for the Western District of Kentucky.
- Section 3.06 Billing Month: Each calendar month during the term of this Agreement in which electric service is rendered to HU by LEM.
- Section 3.07 Bundled Ancillary Services: Those Generation-Based Ancillary Services, in the quantities and upon the terms and conditions set forth in Section 7.03, to be provided by LEM to HU in conjunction with the purchase of those types of Energy services which are identified in Schedule A as including Bundled Ancillary Services.
- Section 3.08 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.
- Section 3.09 Effective Date: The date upon which this Agreement becomes effective as defined in Section 5.01.
- Section 3.10 Energy: The flow of electricity denominated in kilowatt-hours.
- Section 3.11 Existing Alcan Agreement: The agreements for electric service as further defined in Section 2.02.
- Section 3.12 FERC: The Federal Energy Regulatory Commission or any successor agency.
- Section 3.13 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 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.

Section 3.14 GREC: Green River Electric Corporation, its successors or assigns.

Section 3.15 Henderson Union: Henderson Union Electric Cooperative Corp., its successors or assigns.

Section 3.16 HU: Henderson Union Electric Cooperative Corp., its successors or assigns.

Section 3.17 HU/BREC Contract: The contract for wholesale electric service between Big Rivers and HU, as further defined in Section 2.01.

Section 3.18 KPSC: The Kentucky Public Service Commission or any successor agency.

Section 3.19 LEC: LG&E Energy Corp. or its affiliates.

Section 3.20 LEC Transaction: The transaction between Big Rivers and LEC as confirmed in the Plan of Reorganization.

Section 3.21 LEC Transaction Effective Date: The date upon which the LEC Transaction closes.

Section 3.22 LEM: LG&E Energy Marketing Inc., its successors or assigns.

Section 3.23 Minimum Purchase Obligation: The Minimum Purchase Obligation is a minimum monthly amount of kilowatthours that HU is required to purchase from LEM as described in Schedule A Sec. e.(1).

- Section 3.24 **Monthly Charge:** The total charge in each Billing Month for electric service computed in accordance with Schedule A.
- Section 3.25 **Open Access Transmission Tariff:** 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.
- Section 3.26 **Plan of Reorganization:** The First Amended Plan of Reorganization of Big Rivers Electric Corporation confirmed by the Bankruptcy Court on June 9, 1997 and as modified with approval of the Bankruptcy Court on June 1, 1998 in Case No. 96-41168.
- Section 3.27 **P.M.:** Means P.M., Central Standard Time or Central Daylight Time, as applicable.
- Section 3.28 **Point of Delivery:** The point(s) at which HU is interconnected with the Transmission Provider and at which it meters energy for delivery to Alcan. At such point(s), title to the Energy transfers from LEM to HU.
- Section 3.29 **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.

- Section 3.30 RUS: The Rural Utilities Service, an agency within the United States Department of Agriculture, or any successor agency.
- Section 3.31 Schedule A: The schedule, which is attached hereto, setting forth the rates from LEM to HU to become effective in conjunction with the LEC Transaction, and which is incorporated by reference into this Agreement and made a part hereto.
- Section 3.32 Sebree Smelter: The aluminum reduction plant owned and operated by Alcan or its successors, located at Sebree, Kentucky and any expansions, additions, improvements and replacements thereof or thereto at the existing site.
- Section 3.33 Southwire: Southwire Company, its successors or assigns.
- Section 3.34 System Disturbance Agreement: An agreement between Big Rivers, GREC, HU, LEM, Alcan, Southwire and such other entities as deemed necessary by the foregoing parties that specifies the means for identifying the source of and remedying harmonic total demand distortion and other disturbances within the Transmission Provider's control area.
- Section 3.35 Third-Party Supplier: Any supplier of wholesale electric service including LEM or Big Rivers that after December 31, 2000 sells Capacity or Energy directly or indirectly to HU for resale to Alcan for Tier 3 service.
- Section 3.36 Third-Party Transmission System: Any transmission system other than that of the Transmission Provider which is used to transmit Energy

purchased by HU to a point at which the Transmission Provider's transmission system is interconnected with that of another utility.

Section 3.37 Transmission Provider: Big Rivers, its successors or assigns or any other owner or lessee of transmission facilities directly interconnected with HU over which LEM or HU may contract for the delivery of electric power to HU for resale to Alcan.

Section 3.38 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 HU for resale to Alcan.

Section 3.39 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.

Article IV. AGREEMENT:

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

Article V. EFFECTIVE DATE AND COMMENCEMENT OF SERVICE:

Section 5.01 The Effective Date of this Agreement ("Effective Date") shall be 12:01 A.M. Central Time of the date following the LEC Transaction Effective Date provided that all of the conditions set forth in Section 5.02 are satisfied or waived by both parties in writing as of such time. LEM will provide notice to HU of the anticipated LEC Transaction Effective Date no less than 10 days prior to such anticipated date, and will promptly provide notice to HU of any subsequent change in the anticipated LEC Transaction Effective Date and the actual date on which it occurs.

Notwithstanding anything to the contrary in this Section, the provisions of this Article V shall become effective immediately upon execution of this Agreement.

Section 5.02 This Agreement shall not become effective until all of the following conditions have been satisfied or have been waived by each of the Parties:

- (a) This Agreement shall have been duly executed and delivered by the Parties.

- (b) The New Alcan Agreement shall be in full force and effect (or all conditions precedent to its effectiveness shall have been satisfied such that it will become effective simultaneously with the Effective Date of this Agreement).
- (c) All conditions precedent necessary for closing of the LEC Transaction shall have been satisfied or waived or shall be satisfied simultaneously with the Effective Date of this Agreement.
- (d) Alcan, Southwire (on behalf of itself and its subsidiary NSA, Inc.), GREC, HU 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 or Alcan is a participant against Big Rivers as debtor or restructured debtor, as well as against GREC and HU, as applicable, shall have been settled, compromised and released in a manner acceptable to Big Rivers, GREC, HU, Southwire and Alcan pursuant to Section 5.3(b) of the Plan of Reorganization.
- (e) LEM shall have made arrangements which are satisfactory to LEM, as determined by LEM in its sole discretion, (A) with Big Rivers for service under its Open Access Transmission Tariff for the transmission of the full amounts of Energy which LEM is required to deliver pursuant to this Agreement, to the extent that LEM is required to provide such transmission, (B) with Big

Rivers, RUS, HU, Alcan and any additional necessary party to assure that for so long as either LEM or its affiliate Western Kentucky Energy Leasing Corp., its successors or assigns ("Leaseco") are required to pay "Monthly Margin Payments" to the RUS (on behalf of Big Rivers) or to Big Rivers (as defined in and required by certain documents to be executed in connection with the LEC Transaction), LEM will not bear any transmission costs related to the delivery of Tier 1 Energy or Tier 2 Energy (including Tier 2 Supplemental Energy) that, when combined with certain margin payments promised by LEM or Leaseco to Big Rivers, exceed those certain Monthly Margin Payments payable by LEM or Leaseco to the RUS (on behalf of Big Rivers) or to Big Rivers, and (C) with such other persons as necessary to assure that in the event that neither LEM nor Leaseco have any further obligation to pay Monthly Margin Payments to Big Rivers, its successors or assigns, or the RUS (whether on behalf of Big Rivers or any successor or assign thereto) that LEM's actual cost for transmission under this Agreement will be limited in a manner acceptable to LEM; and all such arrangements shall be in full force and effect (or all conditions precedent to their effectiveness shall have been satisfied so that they will become effective as of 12:01 A.M. of the day after the LEC Transaction Effective Date).

- (f) The Parties shall have received all other approvals, permits and consents necessary for the provision of electric service under the terms of this Agreement.
- (g) The U.S. Bankruptcy Court for the Western District of Kentucky, Owensboro Division shall have issued an order in Case No. 96-41168, satisfactory in form and substance to LEM, approving the LEC Transaction and the Plan of Reorganization.
- (h) Each Party's warranties and representations made herein shall be true as of the Effective Date.
- (i) In light of the assignment described in Section 11.01 of this Agreement, Alcan shall have delivered to LEM, in form and substance satisfactory to LEM, such assurance as LEM deems necessary to secure HU's responsibilities to LEM.
- (j) The System Disturbance Agreement shall be in full force and effect, in form and substance acceptable to LEM and HU, (or all conditions precedent to its effectiveness shall have been satisfied so that it will become effective simultaneously with the Effective Date of this Agreement.

Section 5.03 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 LEM or HU believes all the conditions precedent have been satisfied, such Party shall notify the other Party in writing.



Section 5.04 This Agreement shall immediately terminate and the Parties shall have no further obligations under this Article V (other than with respect to liability for breaches under this Article V) if the Effective Date does not occur by December 31, 1998, or such later date to which the Parties have agreed in writing; provided that LEM may terminate this Agreement at an earlier date if its obligation to proceed with the LEC Transaction terminates. The obligation of the Parties under Section 5.03 shall continue until the earlier of (i) such time as this Agreement terminates pursuant to this Section 5.04, and (ii) the Effective Date.

Article VI. TERM:

Section 6.01 This Agreement shall remain in full force and effect from the Effective Date through December 31, 2011 unless earlier terminated pursuant to its terms.

Article VII. GENERAL OBLIGATIONS:

Section 7.01 LEM will supply and HU will purchase up to 233,000 kilowatts of firm Capacity and Energy in connection with Tier 1 Energy and Tier 2 Energy (inclusive, where applicable, of Tier 2 Supplemental Energy), and shall supply Tier 3 Energy, each to the extent specified in this Agreement including Schedule A hereto.

Section 7.02 HU will pay LEM for all Energy, Capacity, Ancillary Services or other services purchased from LEM, including the Tier 1 charge set forth in Schedule A, Sec. e.(3)(a)(ii), at the rates and on the terms and conditions specified in this Agreement, and will reimburse LEM for the full cost of

any transmission service purchased by LEM, if any, from the Transmission Provider for the transmission of Tier 3 Energy prior to January 1, 2001, or Tier 3 Backup Energy after December 31, 2000, if LEM charges HU the rate for Tier 3 Backup Energy set forth in Schedule A, Section d.(7)(ii).

Section 7.03 LEM will provide to HU in conjunction with each category of service which is described in Schedule A as including Bundled Ancillary Services the Generation-Based Ancillary Services specified in Section 7.03(a) and (b). Any Ancillary Services which HU requires in addition to those that are Bundled Ancillary Services must be purchased or obtained from the Transmission Provider or otherwise provided by HU (or if purchased from LEM, purchased pursuant to a separate agreement). The services identified in Section 7.03 (a) and (b) will be provided under the then-current rates, terms and conditions applicable to such services as set forth in LEM's Schedule of Rates for Sale of Generation-Based Ancillary Services filed with FERC, as such schedule may be revised from time-to-time at LEM's discretion ("LEM Ancillary Services Tariff," a copy of which is attached to this Agreement for informational purposes only as Schedule B), subject to the understanding that all charges for Bundled Ancillary Services (which are priced in accordance with LEM's Ancillary Services Tariff) are incorporated into the rates set forth in Schedule A, such that the rates set forth in Schedule A are not subject to change and provided further that, notwithstanding any provision of the LEM Ancillary

Services Tariff, LEM's obligation to provide these Bundled Ancillary Services to HU will not be excused in the event that such services cannot be provided from the generating plants owned by Big Rivers and operated by one or more affiliates of LEM. This Agreement constitutes a service agreement pursuant to the LEM Ancillary Services Tariff, pursuant to which LEM agrees to supply Regulation and Frequency Response Service, Energy Imbalance Service, Operating Reserve -- Spinning Reserve Service and Operating Reserve -- Supplemental Reserve Service to the extent specified herein. These services are available only in relation to the amounts of energy delivered to HU pursuant to each service and rate classification which is designated in Schedule A as including Bundled Ancillary Services.

- (a) Regulation and Frequency Response Service and Energy Imbalance Service. In accordance with this Agreement, LEM will provide HU with Regulation and Frequency Response Service and Energy Imbalance Service (within the 1.5% bandwidth specified in Schedule 4 of the LEM Ancillary Services Tariff), provided that to the extent that HU overschedules or underschedules energy purchases from LEM, the charges for and/or obligation to provide make-up energy associated with such deviation will be reflected within the charges for Tier 1, Tier 2, Tier 2 Supplemental Energy, Tier 3, Tier 3 Interruptible or Tier 3 Backup Energy, each to be

provided at the rates, terms and conditions set forth in this Agreement, including Schedule A.

- (b) Operating Reserves (Spinning and Supplemental). LEM will maintain sufficient spinning and non-spinning reserves consistent with reliability guides, principles, and responsibilities set forth in ECAR documents and guides and NERC criteria to support LEM's sales of Energy to HU in accordance with this Agreement.

Section 7.04 Upon the expiration or earlier termination of this Agreement, and absent any other agreements that may then exist between HU and LEM, HU will have no further obligation to purchase Energy or Capacity or any other service from LEM, and LEM will be under no obligation to provide Capacity, Energy or any other service to HU.

Section 7.05 At no time will LEM be liable to HU, Big Rivers or Alcan nor will HU be liable to LEM for payment of any stranded investment costs, exit fees or other costs of a similar nature of any kind whatsoever including, but not limited to, those related to the financing, construction, operation, maintenance or decommissioning of the Big Rivers generating assets or of the HU or Big Rivers transmission and distribution systems or other assets, or related to HU's status as a member of Big Rivers or HU's contractual obligations to Big Rivers or Alcan.

Section 7.06 LEM agrees that during the Term of the LEC Transaction, HU will be the exclusive retail electric supplier within, or for use within, the boundaries of its franchised or exclusive certified service territory, as it existed as of

February 18, 1998, plus expansions of such franchised or exclusive certified service territory as authorized by the KPSC, but exclusive of expansions that result from the consolidation or merger of HU with any other entity unless the territory acquired through such merger or consolidation was, as of March 19, 1997, the exclusive certified service territory of one of Big Rivers' member cooperatives as of that date. None of LEM or its affiliates will, directly or indirectly, sell, furnish, or offer or agree to sell or furnish energy to or for the benefit of the account of any end-user located within the exclusive certified service territory of HU (as described above), except as provided in this Agreement, or as expressly permitted by HU; provided that nothing in this Agreement shall prohibit LEM (or its affiliates) from:

- (i) selling to GREC or HU any Capacity, Energy or other services expressly contemplated in this Agreement or set forth in another written agreement which are required to serve any need of Southwire or Alcan, respectively;
- (ii) selling Capacity, Energy or other services to Southwire or Alcan to the extent that such company is free to purchase such Capacity, Energy or such other services from other than GREC or HU under applicable law and any agreement existing between (i) Southwire and GREC or (ii) Alcan and HU; and
- (iii) selling to Big Rivers for resale to any of its member cooperatives, or to any of Big Rivers' member cooperatives (to the extent that

such member cooperative is permitted by law and contract to purchase from a person other than Big Rivers), Capacity, Energy or other services required by the member cooperative to enable it to supply market-priced power to certain of its industrial customers.

Section 7.07 In the event LEM and HU enter into one or more agreements for the supply by LEM, following December 31, 2000, of Tier 3 Energy or any other arrangements with HU for the benefit of Alcan or any other customer or customers of HU, such agreements shall be separate from and independent of this Agreement and the Parties' respective rights and obligations hereunder, and any such transactions involving LEM shall not be deemed to be a transaction under this Agreement for any purpose.

Article VIII. SCHEDULING AND DELIVERY OF ENERGY:

Section 8.01 At least 10 days prior to the expected Effective Date and each October 1 thereafter during the Term of this Agreement, HU will obtain from Alcan and submit to LEM in writing the projected monthly amounts of Energy, Capacity and Generation-Based Ancillary Services, if any, HU expects to require during the remainder of the calendar year and during the following calendar year in connection with the load of Alcan. Such projections shall represent a good faith estimate by HU and Alcan of HU's anticipated requirements hereunder; provided, that such estimates shall not be binding and shall be used by LEM for planning and information purposes only. The estimates by HU shall be for all Energy, Capacity and Generation-

Based Ancillary Services to be purchased by HU pursuant to this Agreement for delivery to Alcan, calculated as the quantity to be delivered at the Point of Delivery.

Section 8.02 HU shall preschedule or cause to be prescheduled, all deliveries of Energy no later than 9:00 A.M., on the Working Day immediately preceding the day or days of delivery, or as otherwise mutually agreed by the Parties. HU'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 and Tier 2 Energy, inclusive of Tier 2 Supplemental Energy, and to the extent required and otherwise available consistent with the terms and conditions of this Agreement, Tier 3 Energy and Tier 3 Interruptible Energy). HU shall provide (or cause Alcan to provide) its preschedule to LEM and the Transmission Provider. HU shall make reasonable efforts to minimize changes in its preschedules and delivery schedules, but such changes shall be accommodated by LEM to the extent reasonably possible up to 30 minutes prior to the hour of delivery.

Section 8.03 LEM shall deliver all Energy and Capacity pursuant to this Agreement at the Point of Delivery. Additional Point(s) of Delivery may be agreed upon from time-to-time if required.

Article IX. METERING:

Section 9.01 HU has caused to be provided, or in conjunction with the Transmission Provider, will cause to be provided, the metering facilities at the Point of

Delivery. Metering facilities shall provide for the measurement in each hour of kilowatts, kilowatt hours, kilovars, kilovar hours, voltage fluctuation spectra, and such additional information as may be agreed upon by the Parties in writing.

Section 9.02 The meters at the Point of Delivery shall be read on the last date of each month (or such other date as may be agreed upon by the Parties) by a representative of the Transmission Provider and any meter may be read by representatives of LEM and HU if they so elect.

Section 9.03 For purposes of determining the LEM Sale Amount (as defined in Schedule A), during the period January 1, 2001 until the end of the term (as set forth in Sec. 6.01), HU will report to LEM each month for the most recently ended Billing Month the amount of Tier 3 power scheduled by HU on behalf of Alcan and delivered to HU at the Point of Delivery and the total metered consumption of Energy by Alcan during such Billing Month and such other information in its possession that is necessary or useful to calculation of the Monthly Charge, including without limitation, reported failures to deliver and the occurrence of force majeure events. Such report is due no later than the fifth day of each month (applicable to the prior Billing Month), or such other date as may be agreed upon by the Parties.

Section 9.04 HU will test, or cause to be tested, the calibration of the meter(s) at the Point of Delivery by comparison of accurate standards at least once every twelve (12) months (or more often if so required by law or regulation) and



shall give LEM not less than five (5) Working Days' prior notice of such testing. LEM shall have the right to observe and participate in all meter tests. Meters registering not more than plus or minus (+ or -) one percent (1%) inaccurate shall be deemed to be accurate (unless state law or regulation establishes a standard more stringent than 1%, in which case, the more stringent standard shall apply). 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 LEM requests a special meter test, HU shall cause the same to be conducted; provided, however, that if any special meter test made at the request of LEM discloses that the meters are recording accurately, LEM shall reimburse HU for the reasonable cost of such test. In all other respects meters through which HU delivers Energy to Alcan shall be installed, operated, maintained and tested in accordance with all applicable governmental regulations and Prudent Utility Practice.

Article X. RATES:

Section 10.01 HU 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.

Section 10.02 No State or local sales, excise, gross receipts or other taxes are included in the rates set forth in Schedule A. HU will pay or cause to be paid any such taxes which are now or hereafter applicable.

Article XI. BILLING:

Section 11.01 LEM shall bill HU on a monthly basis for the Monthly Charge as calculated pursuant to Section e. of Schedule A, based on the services rendered during the most recently ended Billing Month plus any other amounts then due. LEM shall reconcile all amounts due and owing and issue its bill as soon after the Billing Month's end as detailed information is available. HU shall pay LEM the Monthly Charge and any other amounts due in immediately available funds on or before the first Working Day after the 24th of the month in which the bill is issued. For the convenience of the Parties, and to facilitate satisfaction of HU's obligation to LEM, HU hereby assigns to LEM all of its right to receive such payment from Alcan under the New Alcan Agreement exclusive of any and all amounts due from Alcan to HU for payment to Third-Party Suppliers or transmission providers, including the Transmission Provider (if such charges are not owed by HU to LEM). HU also assigns to LEM all of its rights to collect and enforce collection of such amounts due from Alcan. Upon completion of appropriate documentation assuring LEM an unencumbered right to HU's account receivable (as described above), and to exercise all of HU's rights thereto, and upon receipt by LEM of appropriate assurances of payment from Alcan, LEM will release HU

from further liability under this Agreement for amounts subject to such assignment to LEM, provided that such release does not relieve HU of its other liabilities or responsibilities under this Agreement. HU agrees to cooperate with and assist LEM with respect to any collections of amounts due from Alcan to HU which are assigned to LEM pursuant to this section, provided that LEM will reimburse HU for any expenses HU incurs in providing such cooperation and assistance. The Parties will establish an account to be used exclusively for receiving Alcan's payments and from which disbursements will be made monthly (to the extent that funds are available) to each of HU and LEM for the amounts due to each. The rights and obligations of each of HU and LEM with respect to assignment of the account receivable and the disbursement account will be established by separate written agreements.

Section 11.02 If HU (or Alcan on behalf of HU) shall fail to pay any bill rendered by LEM within the time prescribed in Section 11.01, LEM may discontinue delivery of electric power and energy hereunder upon five (5) days' written notice to HU of its intention to do so. Such discontinuance for non-payment shall not in any way affect the obligation of HU to pay the amounts corresponding with the Minimum Purchase Obligation.

Section 11.03 In the event any bill rendered by LEM is not paid on the due date, interest will accrue and become payable by HU to LEM on all unpaid amounts at a rate of 4 percentage points over the then-effective prime commercial lending rate per annum published in the Money Rates section of *The Wall*

*Street Journal* commencing on the 1st day after the due date. (Should *The Wall Street Journal* discontinue publication of the prime commercial lending rate, the Parties shall agree on a mutually acceptable alternative source for that rate.)

Section 11.04 [RESERVED]

Section 11.05 In the event any portion of any bill is disputed by HU (or Alcan), the disputed amount shall be paid, under protest, when due. If the protested portion of the payment is found to be incorrect, LEM shall promptly cause to be refunded to HU (or to Alcan on behalf of HU, as applicable) the amount that was not then due and payable, together with interest accrued on each calendar day from the date of payment by HU to the date the refund is made. The same interest rate and computation method provided for in Section 11.03 shall be applied to the determination of interest due to HU on the refund.

Section 11.06 [RESERVED]

Section 11.07 No payment made by HU (or Alcan) pursuant to this Article XI shall constitute a waiver of any right of HU (or Alcan) to contest the correctness of any charge or credit.

Section 11.08 Within ninety (90) days after the end of each calendar year after such time as HU first purchases Tier 3 power for resale to Alcan from other than LEM, HU shall provide to LEM a copy of the certificate it receives from Alcan, executed by a duly authorized officer of Alcan, that states whether Alcan's net worth as of the end of such year exceeded \$300 million. In the

event the certificate reflects the net worth of Alcan to be less than \$300 million, the Parties shall discuss assurances that LEM may reasonably require from HU. Further, if during any calendar year Alcan notifies HU, pursuant to Section 13.5 of the New Alcan Agreement, that Alcan has reason to believe that its net worth is less than \$300 million, HU shall promptly provide LEM a copy of that notice, and said assurances shall be discussed. In the event any notice from Alcan contemplated above shall state that Alcan's net worth is (or is believed to be) less than \$300 million, HU agrees to permit LEM to participate in all discussions with Alcan that may be held regarding the assurance of Alcan's performance that may be required by HU from Alcan.

Article XII. OPERATIONAL RESPONSIBILITY:

Section 12.01 HU shall install and maintain, or shall cause to be installed and maintained, any and all interconnection equipment, metering, or substation equipment, and other equipment, including switching and protective equipment, necessary to enable LEM to deliver Energy at the Point of Delivery and for such Energy to be delivered to HU for resale and delivery to Alcan. HU 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 Energy, Capacity and Ancillary Services to be delivered by LEM to HU as provided for in this Agreement.

Section 12.02 HU shall cause to exist and pay for (or cause to have paid for) all final connections between the systems of the Transmission Provider and HU.

Article XIII. RIGHT OF ACCESS:

Duly authorized representatives of either Party hereto shall be permitted to enter the premises of the other Party hereto at all reasonable times in order to carry out the provisions of this Agreement.

Article XIV. CHARACTERISTICS OF SERVICE:

Electric service to be supplied by LEM to HU under this Agreement shall be three-phase, sixty cycle at 161,000 volts or as otherwise agreed to by LEM and HU. Regulation of voltage shall be within such limits as shall be agreed upon by the Parties but at no time shall be inconsistent with standards required by applicable governmental agencies or such other organizations that establish reliability and electric operation standards for the region.

Article XV. CHARACTERISTICS OF USAGE:

Section 15.01 HU shall take and use and require Alcan to 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%). If LEM incurs costs or harm as a result of such imbalance, LEM reserves the right to require HU, at HU's expense (for which HU, in its sole discretion may seek reimbursement from Alcan), to make necessary changes to correct such imbalance conditions. In addition to any other remedies that LEM may have hereunder, should HU (or Alcan)

fail to make such changes, LEM may in its determination of Energy in Schedule A, assume the load on each phase is equal to the greatest load on any phase.

Section 15.02 HU shall take and use and require Alcan to 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 limit is exceeded, determination of responsibility and allocation of responsibility for and costs of a resolution will be governed by the System Disturbance Agreement. HU's TDD level shall be baseline referenced to the TDD loading on Big Rivers' system as of June 1, 1997.

Article XVI. LIABILITY AND INDEMNIFICATION:

Section 16.01 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. Each Party releases the other Party from, and shall indemnify the other Party for, any such liability that the

releasing Party may have to persons not a Party to this Agreement and not affiliated with such Parties. As used in this Section 16.01 (i) the term "Party" means, in addition to such Party itself, its directors, officers and employees, (ii) the term "injury or damage" means actual compensatory damage, excluding special, indirect or consequential damage, (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.

Section 16.02 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 Article XX (Uncontrollable Forces).



Section 16.03 Survival: The provisions of this Article XVI 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.

Section 16.04 The provisions of this Article XVI 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.

Article XVII. BREACH AND DEFAULT:

Section 17.01 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 parenthesis) shall constitute a default:

- (a) Failure by a Party to make any payment as and when due hereunder (curable within 3 days);
- (b) Failure of a Party to perform any material duty imposed on it by this Agreement (curable within 30 days);
- (c) Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article XXII of this Agreement (not curable);
- (d) Failure of LEM to deliver to HU all amounts of Energy and Ancillary Services which HU is entitled to receive from LEM in accordance with this Agreement for more than 30 days, whether or not consecutive, in any 365 day period (not curable);

- (e) 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 (curable by withdrawing the petition or dismissing the proceeding within 60 days after filing);
- (f) Assignment by a Party for the benefit of creditors (not curable);
- (g) Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property (curable by discharge of such receiver or trustee within 60 days after appointment).
- (h) Failure, inability or refusal of HU to cure a breach or default by HU under the New Alcan Agreement which gives rise to a termination of that agreement, or any termination by HU of the New Alcan Agreement in breach or default thereof (not curable).

Article XVIII. REMEDIES OF THE PARTIES:

Section 18.01 Remedies, General: In event of a 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.

Section 18.02 Remedies Scope: 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 breach or default of any of the provisions herein provided that:

- (a) neither Party is entitled to recover from the other Party any consequential, incidental or special damages including without limitation, lost profits; and
- (b) unless LEM has defaulted pursuant to Section 17.01(d), HU's sole and exclusive right to damages or other relief for a failure by LEM to deliver power as required by this Agreement shall be the remedies and rights set forth in Section 18.03, provided that HU shall also be entitled to a billing adjustment as set forth in Schedule A.

**Section 18.03 Remedies for Failure to Deliver Power:**

- (a) HU may invoice LEM for its damages arising from any failure of LEM to deliver power in accordance with this Agreement, unless LEM's failure was the result of an Uncontrollable Force or LEM's performance was made impossible by the negligence or willful act or omission of HU or Alcan (or their respective employees, agents or contractors), or the breach or default by HU under this Agreement, in each of which cases no damages, compensation, offsets or other remedies shall be due, except as provided in subsection (b) of this Section 18.03. In the event damages are due under this subsection (a), the sole and exclusive damages shall equal HU's replacement power costs purchased at market plus 20%

of such costs and 100% of the costs of any Ancillary Service which LEM is obligated to deliver in conjunction with such power and fails to deliver). HU may invoice LEM from time-to-time but not more frequently than once per week. An invoice rendered in accordance with this subsection must be paid in full by LEM within 15 days of its receipt.

- (b) If LEM's ability to make Energy available to HU at the Point of Delivery 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, HU's payment obligation with respect to the Minimum Purchase Obligation shall be reduced in the manner set forth in Section e.(3)(a) of Schedule A.
- (c) If, because of an Uncontrollable Force (without regard to whether the Uncontrollable Force affects HU, Alcan, the Transmission Provider or some other necessary party), HU is unable to accept or receive Tier 1 Energy made available by LEM at the Point of Delivery, HU shall nonetheless be liable for the Minimum Purchase Obligations pursuant to Schedule A.
- (d) If, because of an Uncontrollable Force, HU is unable to receive and resell to Alcan Tier 3 Energy purchased from Third-Party Suppliers by HU, then LEM shall, upon request by HU, purchase

such power from HU at the lower of (i) HU's cost or (ii) 90% of the amount for which LEM is able to resell such power (less any costs directly associated with such sale, including but not limited to fees for transmission and associated services.)

Article XIX. ADDITIONAL HU COVENANTS:

Section 19.01 HU covenants that, except with respect to Tier 3 power to be supplied after December 31, 2000 in accordance with Schedule A and except during any period in which LEM fails or is unable to deliver HU's power requirements for service to Alcan, LEM shall be the exclusive supplier of power to HU for resale to Alcan until December 31, 2011. HU further covenants that it will not intentionally take any action that would diminish the expected volumes of Energy to be purchased under this Agreement, shorten its Term or otherwise adversely affect the economic value of this Agreement to LEM.

Section 19.02 HU covenants that:

- (a) it will at all times fully perform and discharge all of its obligations under the New Alcan Agreement (and under any agreement for Tier 3 service entered into by HU with any Third-Party Supplier for the benefit of Alcan pursuant to the New Alcan Agreement), and under any transmission agreement pursuant to which amounts of Energy are delivered directly or indirectly to HU for sale and transmission to Alcan;

- (b) it will not resell any Energy or Capacity or Ancillary Services purchased from LEM under this Agreement to any user other than Alcan, except as expressly permitted in this Agreement with respect to the amount of Tier 1 power subject to the Minimum Purchase Obligation or with the written authorization of LEM, and shall require that any Energy that HU purchases from LEM under this Agreement and resells to Alcan (other than pursuant to Section 27) of the New Alcan Agreement) must be consumed by Alcan for its Sebree Smelter;
- (c) it will not take any action or support any action by others that in any manner would impede HU's ability to fulfill its obligations to LEM under this Agreement nor will it amend or modify the New Alcan Agreement, including with respect to the rates, terms and conditions for service, the Tier 1, Tier 2, Tier 2 Supplemental, or Tier 3 Energy, Alcan's Minimum Purchase Obligations or the term of the New Alcan Agreement without the prior written consent of LEM.
- (d) it will not waive compliance by Alcan with any of its obligations under the New Alcan Agreement or fail to fully enforce the New Alcan Agreement against Alcan in any manner that would adversely affect HU's ability to fulfill its obligations under this Agreement;
- (e) [RESERVED]
- (f) it will provide to LEM all notices of default received or sent by HU pursuant to the New Alcan Agreement, the HU/BREC Contract or

any transmission agreement (if any) between HU and the  
Transmission Provider;

- (g) it will not terminate the New Alcan Agreement if the termination would be a breach by HU thereof; (the preceding clause includes, *inter alia*, rejection of the contract in bankruptcy);
- (h) it will not terminate the New Alcan Agreement for breach by Alcan without providing LEM notice of such Alcan breach and a reasonable opportunity for LEM to cure such Alcan breach, if it should elect, in its sole discretion, to do so and is permitted by Alcan to do so (which opportunity shall extend, at a minimum, for a period of not less than 10 days after the later of (i) the applicable period of time available for a cure by Alcan under the New Alcan Agreement, or (ii) notice of the breach by Alcan is delivered by HU to LEM);  
and
- (i) it will not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the New Alcan Agreement to any party without (i) first obtaining the written consent of LEM, which consent shall not be unreasonably withheld or delayed, and (ii) causing the transferee of the New Alcan Agreement to assume and agree to perform all of HU's obligations under this Agreement which arise following that assignment or transfer.

Section 19.03 HU covenants that (a) in the event there is an Uncontrollable Force that prevents LEM from delivering Energy and Capacity to HU as required

under this Agreement, HU shall use its best efforts to obtain Energy and Capacity for sale and delivery for Alcan as required under the New Alcan Agreement and (b) HU will take such other actions as reasonably necessary to avoid a breach or default under the New Alcan Agreement that might, if not cured as required by that agreement, result in Alcan's invocation of any of the remedies set forth in Section 23 of the New Alcan Agreement.

Section 19.04 HU covenants that (a) it will fully perform and discharge all of its obligations under the HU/BREC Contract and that it will not waive compliance by Big Rivers with that contract, (b) it will not amend that contract in a manner that reduces HU's purchase obligation to Big Rivers from that existing under the HU/BREC Contract as of the Effective Date, or to shorten the term of that contract without first obtaining the written consent of LEM, which consent shall not be unreasonably withheld or delayed. HU further agrees that it will fully enforce all of Big Rivers' obligations pursuant to the HU/BREC Contract pursuant to which Big Rivers provides services to HU which are necessary for its performance under this Agreement, or would adversely affect LEM's economic interest under this Agreement, unless HU has first established an alternative means by which to receive such services (without reliance on LEM, other than the extent to which LEM agrees in writing).

Section 19.05 (a) HU will permit LEM to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of



HU relating to its service to Alcan under the New Alcan Agreement, including (for example, but not by way of limitation) scheduled usage, meter records and billing records and records related to power supplied by Third-Party Suppliers as they relate to determination of the amount of Energy and Capacity supplied by LEM and delivered to or used by Alcan and the appropriate rate classification of such Energy and Capacity. HU shall retain all documentation applicable to service to Alcan under the New Alcan Agreement and Agreements with Third-Party Suppliers for a period of three years and consistent with the requirements of Section 25 of the New Alcan Agreement.

- (b) LEM will permit HU to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of LEM relating to its service to HU under this Agreement, including (for example, but not by way of limitation) scheduled deliveries, meter records and billing records and records related to payments made by Alcan to LEM pursuant to the assignment described in Section 11.01 of this Agreement and such other documents related to payment for and determination of the amount of Energy and Capacity supplied by LEM and delivered to HU for resale and delivery to Alcan and the appropriate rate classification of such Energy and Capacity. LEM shall retain all documentation applicable to service to HU under this Agreement for a period of three years.

Article XX. DISPUTE RESOLUTION AND CHOICE OF LAW:

Section 20.01 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, 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 20.01, each Party will at all times be free to seek injunctive relief, where its delay in doing so could result in irreparable injury.

Section 20.02 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.

Section 20.03 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 U.S. District Court for the Western District of 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 the same Circuit Court as selected by Alcan and HU as the Court in which venue will lie for the resolution of disputes under the New Alcan Agreement. Nothing in this paragraph prohibits a Party from referring to FERC any matter properly within FERC's jurisdiction.

Article XXI. UNCONTROLLABLE FORCES:

Section 21.01 No Party shall be considered to be in breach or default in the performance of any of its obligations under this Agreement when a failure of performance is due to an Uncontrollable Force, except as enumerated in this Article XXI. The Party claiming failure or inability 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, subject to Section 18.03 (Remedies for Failure to Deliver Power), 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 is due to causes arising out of its own negligence or

willful acts or omissions, or to removable or remediable causes which it fails to remove or remedy with reasonable dispatch.

Section 21.02 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.

Section 21.03 HU and LEM 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. HU also agrees to so notify LEM in the event that HU receives notice from Alcan or the Transmission Provider that such entity anticipates that it will be unable to perform its obligations to HU (under any contract or agreement that affects HU's performance under this Agreement) due to an Uncontrollable Force.

Section 21.04 Nothing contained herein shall be construed to require a Party to prevent or to settle a labor dispute against its will.

Article XXII. 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 (a) 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, and (b) LEM may assign or delegate all or any portion of its rights or obligations under this Agreement to LEC or any other entity controlled by LEC without the prior consent of HU. When consent is required, 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. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

Article XXIII. ADDITIONAL AGREEMENTS:

HU agrees that it will include in the New Alcan Agreement a provision that requires Alcan to bind each of its successors or assigns to its rights, interests and obligations with respect to the Sebree Smelter to continue service under and in accordance with the New Alcan Agreement at rates which will permit HU to continue to receive and pay for service under this Agreement with no change in price, terms and conditions, and such condition shall apply without regard to whether operation of the Sebree Smelter has been continuous.

Article XXIV. [RESERVED]

Article XXV. 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.

Article XXVI. REPRESENTATIONS AND WARRANTIES:

Section 26.01 HU hereby represents and warrants to LEM as follows:

- (a) HU is a 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.
- (b) The execution, delivery and performance of this Agreement by HU has been duly and effectively authorized by all requisite corporate action.
- (c) Without further investigation, LEM can rely upon any written notice from HU under Section 5.03 that one or more of the conditions precedent to the effectiveness of this Agreement have been satisfied.

Section 26.02 LEM hereby represents and warrants to HU as follows:

- (a) LEM is a corporation duly organized and validly existing and in good standing under the laws of the State of Oklahoma, is authorized

to do business in the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the term hereof.

- (b) The execution, delivery and performance of this Agreement by LEM has been duly and effectively authorized by all requisite corporate action.
- (c) Without further investigation, HU can rely upon any written notice from LEM under Section 5.03 that one or more conditions precedent to the effectiveness of this Agreement have been satisfied.

Article XXVII. AMENDMENTS:

Section 27.01 This Agreement may be amended, revised or modified by, and only by, a written instrument duly executed by both Parties.

Section 27.02 The rates for service specified in this Agreement shall remain in effect for the term of this Agreement, and shall not be subject to change through application to the FERC pursuant to the provisions of Section 205 of the FPA absent the agreement of each of the Parties to this Agreement. Further, the Parties agree and acknowledge that to the extent that a rate is identified in Schedule A as including a "Transmission Component," the actual cost of the transmission associated with such rate may be paid by a person or entity other than LEM, including pursuant to a payment methodology specified in that certain Transmission Services and

Interconnection Agreement between Big Rivers, LEM and certain affiliates of LEM dated on or prior to the LEC Transaction Effective Date, as such agreement may be amended. Accordingly, neither Party shall petition FERC or any other governmental agency pursuant to the provisions of Section 205 or 206 of the Federal Power Act or any other provision of law to amend any rate, methodology, including the payment methodology, or formula contained in this Agreement or said Transmission Services and Interconnection Agreement absent the agreement in writing of the other Party nor shall any Party cooperate with any other person(s), or request or encourage any other person(s) to make such petition; and each Party further agrees to oppose any action to change such rate, methodology (including the payment methodology) or formula, including but not limited to pursuing appeals of any order or decision directing such change, and to bear all of its own costs of such opposition including attorneys' fees. Nothing in this Agreement limits the right of any Party to challenge any aspect of the Transmission Provider's Open Access Transmission Tariff, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service issue presented to FERC.

Article XXVIII. GENERAL:

Section 28.01 Good Faith Efforts: The Parties agree that each shall 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 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.

Section 28.02 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 this or related agreements (e.g., transmission agreements pursuant to which power is delivered to the Point of Delivery).

Section 28.03 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 LEM: John R. McCall  
Executive Vice President, General Counsel  
and Corporate Secretary  
LG&E Energy Marketing Inc.  
220 West Main Street  
Louisville, Kentucky 40202  
Fax: 502/627-4622

TO HU: John F. West  
President and CEO  
Henderson Union Electric Cooperative Corp.  
P.O. Box 18  
Henderson, Kentucky, 42420  
Fax: 502/826-3999

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.

Section 28.04 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, unless 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, 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(s) that was so materially adversely affected shall be entitled, in its discretion, to terminate this Agreement.

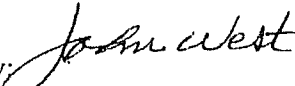
Section 28.05 Singular and Plural References: Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number and vice versa.

Section 28.06 Each provision of this Agreement providing for payment for Energy and other services, 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.

Section 28.07 Merger: This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the matter addressed herein.

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

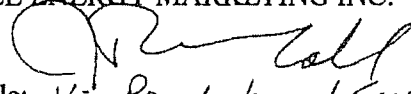
HENDERSON UNION ELECTRIC  
COOPERATIVE CORP.

By:   
Title: President and CEO

ATTEST:

\_\_\_\_\_  
Secretary

LG&E ENERGY MARKETING INC.

By:   
Title: Vice President and Secretary

ATTEST:

\_\_\_\_\_

## Schedule A

## HENDERSON UNION SMELTER RATE

## a. AVAILABILITY:

The rates set forth below apply to sales by LEM and corresponding purchases by HU of Energy, Capacity and Ancillary Services for resale to Alcan 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 233,000 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," HU 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 HU 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," HU 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, HU 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. HU 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 Henderson Union Electric Cooperative Corp. 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 HU

or the end-user) or for any change in fuel or environmental costs, whether imposed upon or incurred by LEM or imposed upon HU or Alcan or incurred by HU with respect to its distribution facilities or its sales of Energy or transmission to Alcan. Notwithstanding the foregoing, (i) HU 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 HU or Alcan or incurred by HU with respect to its distribution facilities or its sale of Energy or transmission to Alcan. 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 233,000 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 5,480,160 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, 2011.

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 223,000 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, 2011.

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 233,000 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, 2011. The Tier 3 Interruptible Energy Rate is the rate inclusive of providing interruptible energy associated with a maximum of 5,000 kilowatts of demand in a given hour to HU. Such rate, and the associated interruptible Energy up to 5,000

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 HU and Alcan (or such other form of notice acceptable to HU, Alcan and LEM). When available, this 5,000 kilowatts of hourly demand shall be provided to meet underschedules above 233,000 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 233,000 kilowatts for Tiers 1 and 2 in each hour that are not supplied pursuant to a purchase by HU 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
January 1, 2011 through December 31, 2011	\$0.02341

(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
January 1, 2011 through December 31, 2011	\$0.01643

## (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 HU 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 HU, 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 233,000 kilowatts of demand, and LEM has not notified HU of the non-availability of this rate, LEM shall supply Tier 3 Interruptible Energy for up to 5,000 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
January 1, 2011 through December 31, 2011	\$0.02223

## (7) Tier 3 Backup Energy Rate:

After December 31, 2000, in the event HU, 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 233,000 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 HU 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 HU on behalf of Alcan.

The Minimum Purchase Obligation in each Billing Month shall be the amount in kWh calculated by multiplying 96,040 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 47,530 kWh by 24 hours and by the number of days in that Billing Month for the period from January 1, 2003 through December 31, 2011.

The Tier 2 Purchase Allowance shall mean the positive difference in kWh in each Billing Month between the amount in kWh calculated by multiplying 5,480,160 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, 2011.

(2) Determination of Hourly and Monthly Billing Amounts:

Commencing January 1, 2001, for the purpose of determining the total kWh sold by LEM to HU 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 HU on behalf of Alcan, 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 233,000 kilowatts:

- (a) Where the LEM Sale Amount for that hour is equal to or greater than 233,000 kWh, the amount of kWh billed for that hour as the

Tier 1/Tier 2 Billing Amount shall be 233,000 kWh. To the extent the LEM Sale Amount exceeds 233,000 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 5,000 kilowatts of Tier 3 Interruptible Energy, the kWh in excess of 233,000 kWh up to 5,000 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 5,000 kilowatts of Tier 3 Interruptible Energy, the kWh in excess of 233,000 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 HU has scheduled and received Tier 3 Service on behalf of Alcan, where the LEM Sale Amount for that hour is less than 233,000 kWh, the amount of kWh billed as the Tier 1/Tier 2 Billing Amount for that hour shall be the greater of 215,000 kWh or the LEM Sale Amount in kWh.
  - (c) In any hour in which HU has not scheduled Tier 3 Service on behalf of Alcan, or in any hour in which HU has scheduled and received Tier 3 Service on behalf of Alcan and where the LEM Sale Amount for that hour is less than 233,000 kWh due to an out-of-service condition affecting one or more of Alcan'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 HU purchases any form of Tier 3 service, whether from LEM or Third Party Suppliers, HU shall be obligated to take or pay for Tier 1 and Tier 2 service at a minimum monthly load factor of 98%.
- (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, 2011 in which HU does not take Tier 3 service on behalf of Alcan, HU 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 HU for resale to Alcan, 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 HU from LEM for resale in such Billing Month. Payment of the Tier 1 Energy Charge is the only take-or-pay obligation of HU to LEM in Billing Months in which HU does not take Tier 3 service on behalf of Alcan.

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 HU 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, 96,040 kWh or (ii) during the period from January 1, 2003 through December 31, 2011, 47,530 kWh. The amount due under subpart (ii) shall not be reduced by reason of HU's failure to accept delivery for any reason, including an Uncontrollable Force, of Energy made available by LEM.

At its sole discretion, HU 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 HU is not also purchasing Energy in excess of the amount of kilowatthours used during the applicable period to determine the Minimum Purchase Obligation on behalf of Alcan.

- (b) Each Billing Month for the period from January 1, 2001 through December 31, 2011 in which HU purchases any form of Tier 3 service on behalf of Alcan, HU 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.
- (4) 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 HU does not take Tier 3 service on behalf of Alcan, HU 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 HU 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, 2011 in which HU purchases any form of Tier 3 service on behalf of Alcan, HU 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, 2011, HU 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, HU 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 HU 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 5,480,160 kWh by the number of days in that Billing Month). In addition, unless HU has separately provided for transmission for such Tier 3 Energy, HU 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, 2011, HU 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, 2011, HU 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.

SCHEDULE B

**LG&E ENERGY MARKETING INC.**  
**SCHEDULE OF RATES FOR SALE OF**  
**GENERATION-BASED ANCILLARY SERVICES**

LG&E Energy Marketing Inc.  
Rate Schedule FERC No. \_\_\_  
Original Tariff Sheet No. 1

**LG&E ENERGY MARKETING INC.**  
**SCHEDULE OF RATES FOR SALE OF**  
**GENERATION-BASED ANCILLARY SERVICES**

Filed: April 24 , 1998



## GENERAL TERMS AND CONDITIONS

1. Availability. Services are available hereunder to Big Rivers Electric Corporation ("Big Rivers") for its use or for resale to persons using Big Rivers' Transmission System pursuant to Big Rivers' Open Access Transmission Tariff and to other persons using Big Rivers' Transmission System with whom LEM enters into a service agreement. Neither Big Rivers nor any third-party user of Big Rivers' Transmission System shall be required to purchase the services available hereunder from LEM to the extent they are able to provide those services themselves or acquire them from an alternative supplier.
2. Services Available. Those generation-based ancillary services that FERC requires from time to time to be provided by a transmission provider similarly situated to Big Rivers and owning and operating the Generating Plants.
3. Applicability. LEM shall make available the services available hereunder, to the extent that such services can be provided from the Generating Plants, consistent with Prudent Utility Practice and any applicable limitations on the use of Station Two power; and LEM's performance hereunder shall be excused in the event that an Uncontrollable Force prevents LEM from providing such services from the Generating Plants to the extent such Uncontrollable Force affects such Generating Plants. Notwithstanding the preceding sentence, to the extent feasible, LEM may elect, at its sole discretion, to meet its obligations under this Rate Schedule FERC No. \_\_\_ using whatever resources it chooses. A request for services available hereunder that are of the type that cannot be physically provided by a generator located outside of Big Rivers' control area shall be given first priority by LEM relative to other uses of the Generating Plants. Different or additional applicability provisions may be provided for in individual service contracts, in which case such service agreement provisions will govern LEM's obligations.
4. Definitions.

**Generating Plants** - the generating plant units owned by Big Rivers and known as Reid Unit #1, Reid Combustion Turbine, Coleman Unit #1, Coleman Unit #2, Coleman Unit #3, Green Unit #1, Green Unit #2, Wilson Unit #1, and the units owned by the City of Henderson, Kentucky and known as Station Two Units 1 and 2; and all existing and future additions to any of the forgoing generating plant units.

**Power Value Amount** - that monetary amount owed by Big Rivers to LEM for services provided pursuant to the Power Purchase Agreement, determined pursuant to Section 6.2 of the Power Purchase Agreement.

Filed: April 24 , 1998

**Station Two** - the City of Henderson's Station Two generating station near the Green River in Henderson County, Kentucky.

**Transmission System** - the facilities owned, controlled or operated by Big Rivers that are used to provide transmission service under Part II and Part III of Big Rivers' Open Access Transmission Tariff.

**Uncontrollable Force** - any cause beyond the control of the Party affected, including, but not limited to, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court order or public authority (other than any filing of a petition in bankruptcy or reorganization or arrangement under any bankruptcy or insolvency laws), which by exercise of due foresight such Party could not reasonably have been expected to avoid, and to the extent that by exercise of due diligence it shall be unable to overcome.

**Unit Output** - the amount of energy produced by the Generating Plants as such amount of energy may change from time-to-time measured by subtracting from the Generating Plants' gross generation meter readings, the plant auxiliary uses, including but not limited to, energy used for reserve auxiliary, start-up, main auxiliary, other plant transformers, maintenance, back-up, and supplemental uses and other uses in connection with operation of the Generating Plants and also subtracting the amount of energy taken by Henderson from Station Two at such time.

5. Rates, Terms and Conditions:

**Reactive Supply and Voltage Control from Generation Sources Service:** The rates and/or methodology are described in Schedule 2.

**Regulation and Frequency Response Service:** The rates and/or methodology are described in Schedule 3.

**Energy Imbalance Service:** The rates and/or methodology are described in Schedule 4.

**Operating Reserve – Spinning Reserve Service:** The rates and/or methodology are described in Schedule 5.

**Operating Reserve – Supplemental Reserve Service:** The rates and/or methodology are described in Schedule 6.

6. Billing and Payment. A. Big Rivers: Amounts due for services provided pursuant to this Rate Schedule FERC No. \_\_\_ will be billed to Big Rivers monthly in conjunction with billing of services provided to Big Rivers by LEM under the Power Purchase Agreement. All terms and conditions of the Power Purchase Agreement applicable to

Filed: April 24 , 1998

billing and payment will apply to billing and payment for the services provided to Big Rivers under this Rate Schedule FERC No. \_\_\_. When LEM is required under this Rate Schedule FERC No. \_\_\_ to provide services to Big Rivers "without adjustment to the Power Value Amount" the rates for such services (as specified in the attached Schedules 2 through 6) are incorporated within the rates otherwise charged for Power under the Power Purchase Agreement and no additional charges will be added to Big Rivers' bill. When LEM provides services to Big Rivers in excess of those that are explicitly to be provided "without adjustment to the Power Value Amount," Big Rivers will be billed for that increment of service at the rates set forth in the attached Schedules 2 through 6.

B. Other Customers: Billing and payment provisions are as set forth in the applicable service agreement.

7. Effective Date. This Rate Schedule FERC No. \_\_\_ is effective on the date on which sales pursuant to this schedule commence and shall continue in effect until modified or cancelled by LEM.

Filed: April 24 , 1998

**SCHEDULE 2**

**REACTIVE SUPPLY AND VOLTAGE CONTROL  
FROM GENERATION SOURCES SERVICE**

In order to maintain transmission voltages on Big Rivers' Transmission System within acceptable limits, the Generating Plants will be operated to produce (or absorb) reactive power. The amount of Reactive Supply and Voltage Control from the Generation Sources Services that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by Big Rivers. The Transmission Customer must purchase this service from Big Rivers. LEM's charges to Big Rivers for such service will be as follows:

Any megavars requested by Big Rivers in excess of the amount available pursuant to the Power Purchase Agreement, if available from the Generating Plants, shall be provided to Big Rivers by LEM at the following rates:

Service Type	Point-to-Point	Point-to-Point	Network
	Firm	Non-Firm	
Annual (\$/KW-Yr)	\$1.71		
Monthly (\$/KW-Mo)	\$0.14	\$0.14	\$0.14
Weekly (\$/KW-Wk)	\$0.03	\$0.03	
Daily (\$/KW-Day)	\$0.0047	\$0.0047	
Hourly (\$K/WH)		\$0.0002	

Filed: April 24 , 1998

### SCHEDULE 3

#### REGULATION AND FREQUENCY RESPONSE SERVICE

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Provider. The Transmission Provider must offer this service when the transmission service is used to serve load within its control area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation. To the extent that LEM performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider. The amount of and charges for Regulation and Frequency Response Service are set forth below.

Filed: April 24 , 1998

LG&E Energy Marketing Inc.  
 Rate Schedule FERC No. \_\_\_  
 Original Tariff Sheet No. 7

Service Type	Point-to-Point	Point-to-Point	Network
	Firm	Non-Firm	
Annual (\$/KW-Yr) <sup>1</sup>	\$0.70		
Monthly (\$/KW-Mo)	\$0.06	\$0.06	\$0.06
Weekly (\$/KW-Wk)	\$0.01	\$0.01	
Daily (\$/KW-Day)	\$0.0019	\$0.0019	
Hourly (\$K/WH)		\$0.0001	

<sup>1</sup> Adjusted for losses/KW

Filed: April 24 , 1998

#### SCHEDULE 4

#### ENERGY IMBALANCE SERVICE

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The Transmission Provider must offer this service when the transmission service is used to serve load within the Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Energy Imbalance Service obligation. To the extent that LEM performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by LEM.

LEM shall establish a deviation band of +/-1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s). Parties should attempt to eliminate energy imbalances within the limits of the deviation band within thirty (30) days or within such other reasonable period of time as is generally accepted in the region and consistently adhered to by the Transmission Provider. If an energy imbalance is not corrected within thirty (30) days or a reasonable period of time that is generally accepted in the region and consistently adhered to by LEM, the Transmission Customer will compensate LEM for such service. Energy imbalances outside the deviation band will be subject to charges to be specified by LEM. The charges for Energy Imbalance Service are set forth below.

Filed: April 24 , 1998

Compensation

Energy:

Wherever the scheduled delivery to a customer for any hour is less than or greater than its integrated hourly metered load by an amount which is within +/- 1.5% of the scheduled transaction amount, 1) customer shall return to LEM the energy, in kind and under like conditions, when the customer has under scheduled for its load, or 2) LEM shall return the energy, in kind and under like conditions, when the customer has overscheduled for its load.

For every hour in which the customer's imbalance has exceeded the +/- 1.5% bandwidth, 1) the customer shall pay to LEM an amount not to exceed the higher of 100 mills per KWH or LEM's actual incremental cost when it supplies the energy, or 2) LEM shall pay the customer at a rate of 90% of LEM's decremental cost when LEM purchases the energy. LEM decremental cost will be based on the system lambda for that hour. The system lambda will be calculated each hour with the MWH output of each generator which is within the Control Area and from which LEM is entitled to purchase the output supplying power to the system being evaluated at the level of the generator's incremental/ decremental cost curve, whether on automatic generation control or not. The system lambda will be the incremental/decremental production cost recorded for the highest cost MWH source from among such sources for the hour. Transmission losses are not included in the determination.

Filed: April 24 , 1998



LG&E Energy Marketing Inc.  
Rate Schedule FERC No. \_\_\_\_  
Original Tariff Sheet No. 10

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Filed: June 9, 1998

**SCHEDULE 5**

**OPERATING RESERVE – SPINNING RESERVE SERVICE**

Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output. The Transmission Provider must offer this service when the transmission service is used to serve load within its control area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. To the extent that LEM performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by LEM. The amount of and charges for Spinning Reserve Service are set forth below.

The rate for this service shall not exceed the applicable rate per megawatt specified below times the Transmission Customer's highest monthly Network Load or Reserved Capacity:

Service Type	Point-to-Point	Point-to-Point	Network
	Firm	Non-Firm	
Annual (\$/KW-Yr)	\$2.56		
Monthly (\$/KW-Mo)	\$0.21	\$0.21	\$0.21
Weekly (\$/KW-Wk)	\$0.05	\$0.05	
Daily (\$/KW-Day)	\$0.0070	\$0.0070	
Hourly (\$K/WH)		\$0.0003	

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**SCHEDULE 6**

**OPERATING RESERVE – SUPPLEMENTAL RESERVE SERVICE**

Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Transmission Provider must offer this service when the transmission service is used to serve load within its control area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. To the extent LEM performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by LEM. The amount of and charges for Supplemental Reserve Service are set forth below.

The rate for this service shall not exceed the applicable rate per megawatt specified below times the Transmission Customer's highest monthly Network Load or Reserved Capacity.

Service Type	Point-to-Point	Point-to-Point	Network
	Firm	Non-Firm	
Annual (\$/KW-Yr)	\$2.56		
Monthly (\$/KW-Mo)	\$0.21	\$0.21	\$0.21
Weekly (\$/KW-Wk)	\$0.05	\$0.05	
Daily (\$/KW-Day)	\$0.0070	\$0.0070	
Hourly (\$K/WH)		\$0.0003	

Filed: April 24 , 1998



**AGREEMENT FOR ELECTRIC SERVICE**

**Between**

**HENDERSON UNION ELECTRIC COOPERATIVE CORP.**

**and**

**ALCAN ALUMINUM CORPORATION**

**JULY 15, 1998**

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AGREEMENT FOR ELECTRIC SERVICE  
BETWEEN  
HENDERSON UNION ELECTRIC COOPERATIVE CORPORATION  
AND  
ALCAN ALUMINUM CORPORATION

SECTION 1. PARTIES:

The Parties to this Agreement entered into this 15<sup>th</sup> day July, 1998 are HENDERSON UNION ELECTRIC COOPERATIVE CORP., a Kentucky corporation organized and existing under KRS Chapter 279 ("HU"), and ALCAN ALUMINUM CORPORATION, an Ohio corporation ("Alcan"). HU and Alcan are each referred to individually as a "Party" and collectively as "Parties."

SECTION 2. RECITALS:

This Agreement is premised upon the following:

2.1 Since January 15, 1985, Alcan has owned an aluminum production plant in Sebree, Kentucky (the "Sebree Smelter"). The Sebree Smelter is constructed for three lines of production and engineered for expansion to a fourth line which expansion is currently under study.

2.2 Alcan is a member of Henderson Union and has previously purchased Capacity and Energy from Henderson Union under an Agreement for Electrical Service dated April 24, 1982 between Henderson Union and Anaconda Aluminum Company, a predecessor owner of the Sebree Smelter. The April 24, 1982 agreement was amended by Agreed Order of the United States District Court, Western District of Kentucky dated



March 15, 1988 (Civil Action No. 87-0020-0(CS)) and by Amendment No. 1 to Agreement for Electrical Service dated as of January 1, 1990 (together the "Existing Agreement").

2.3 Henderson Union is a member of Big Rivers Electric Corporation ("Big Rivers"), a Kentucky corporation organized under KRS Chapter 279, and currently purchases its electric power requirements from Big Rivers under (i) a Wholesale Power Supply Contract dated June 11, 1962, as supplemented and amended on July 22, 1970, and as further amended March 1, 1971, December 15, 1975 and May 9, 1980 and (ii) a contract dated October 12, 1974 as amended by Amendment No. 1 dated May 14, 1982 and as further amended by Amendment No. 2 dated as of January 1, 1990 (together the "HU/BREC Contract").

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, the Bankruptcy Court 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. ("LEC") using one of its subsidiaries, as agent for Big Rivers, will operate the Big Rivers generating assets until certain regulatory approvals are obtained (Phase I), and thereafter will lease the Big Rivers generating assets (Phase II), for a combined term of approximately twenty-five years. In connection with and as part of the LEC Transaction, LEC has agreed to provide wholesale electric service to HU for resale to Alcan under this Agreement, and Big Rivers has agreed

to amend the HU/BREC contract with HU to allow such service and to provide that Big Rivers is no longer the source of power supply for Alcan.

2.5 Schedule A attached hereto contains the rates, charges, terms and conditions, agreed to by Alcan and HU and set forth separately in the HU Smelter Tariff to apply for the term of this Agreement. Regulatory approval of the HU Smelter Tariff and this Agreement is a pre-condition to implementation of the Plan of Reorganization and closing of the LEC Transaction. Schedule A contains a three-tiered structure which provides for purchases of fixed amounts 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 thereafter as shall be established by the KPSC.

2.6 Alcan and HU have entered into this Agreement for the following purposes:

- to implement the schedule of rates and charges contained in Schedule A.
- to clarify Alcan and HU's duty to perform their respective obligations to one another, and to establish express provisions for enforcing such duties;
- to establish that HU shall have no contractual obligation to supply, and Alcan 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, HU will provide Tier 3 Service to Alcan 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 including Capacity and Energy for the fourth potline expansion currently under study;

- to formally agree to the substitution of LEM as the wholesale supplier of Alcan's firm power requirements from HU; and
- for other purposes.

### SECTION 3. AGREEMENT:

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

### SECTION 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 Alcan by HU.

- 4.4. 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.
- 4.5. Effective Date: The date upon which this Agreement becomes effective as defined in Section 6.
- 4.6. Energy: The flow of electricity denominated in kilowatt hours.
- 4.7. Existing Agreement: The Agreement for Electrical Service dated April 24, 1982, between HU and Alcan as further defined in Recital 2.2.
- 4.8. FERC: The Federal Energy Regulatory Commission or any successor agency.
- 4.9. Firm Energy: Energy provided by HU to Alcan that cannot be curtailed except as a result of an Uncontrollable Force.
- 4.10. 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.
- 4.11. HU/BREC Contract: The contracts for wholesale electric service between Big Rivers and HU dated June 11, 1962 and October 12, 1974, both as supplemented and amended, as further defined in Recital 2.3.

- 4.12. HU/LEM Contract: The Agreement for Electric Service of even date herewith between LEM and HU.
- 4.13. KPSC: The Kentucky Public Service Commission or any successor agency.
- 4.14. LEC: LG&E Energy Corp. or its affiliates including LEM.
- 4.15. LEC Transaction: The transaction between Big Rivers and LEC as confirmed in the Plan of Reorganization.
- 4.16. LEM: LG&E Energy Marketing Inc., an Oklahoma corporation and an affiliate of LEC.
- 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 Alcan as defined in Section 8.2 and Schedule A.
- 4.19. 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.
- 4.20. 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 approved by the KPSC.

- 4.21. 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.
- 4.22. Point of Delivery: The existing set of meters at Big Rivers' Reid Substation or such other point of delivery to which the Parties mutually agree.
- 4.23. 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.
- 4.24. RUS: The Rural Utilities Service, an agency within the United States Department of Agriculture, or any successor agency.
- 4.25. Schedule A: The Schedule attached hereto containing the rates, charges, terms and conditions to be set forth in the Henderson Union Smelter Tariff to be filed with and approved by the KPSC.

- 4.26. Sebree Smelter: The aluminum reduction plant owned and operated by Alcan or its successors, located at Sebree, Kentucky.
- 4.27. Third-Party Supplier: Any supplier of wholesale electric service, including LEM and Big Rivers, that after December 31, 2000 sells Capacity or Energy to HU for resale to Alcan pursuant to the terms of this Agreement for Tier 3 Service.
- 4.28. Tier 3 Service: The electric service provided by HU and purchased by Alcan 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.
- 4.29. 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.
- 4.30. Transmission Provider: Big Rivers, its successors or assigns or any other owner or lessee of transmission facilities directly interconnected with HU over which LEM or HU may contract for the delivery of electric power to HU for resale to Alcan.

4.31. 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 HU for resale to Alcan.

4.32. 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.



SECTION 5. TERMINATION OF EXISTING AGREEMENT:

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

SECTION 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 HU Smelter Tariff shall have been approved by the KPSC, without modification.

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

6.1.4 LEM and HU shall have executed the HU/LEM Contract in form and substance acceptable to Alcan and the HU/LEM 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, Southwire Company (on behalf of itself and its subsidiary, NSA, Inc.), Green River Electric Corporation 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 Alcan is a participant against Big Rivers as debtor or reorganized debtor, as well as against HU, shall have been settled, compromised and released in a manner acceptable to Big Rivers, HU and Alcan 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.

#### SECTION 7. TERM:

7.1 This Agreement shall remain in full force and effect from the Effective Date through December 31, 2011 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, Alcan shall have no further contractual obligation to purchase Energy, Capacity or transmission service from HU and HU shall have no further contractual obligation to sell Energy, Capacity or transmission service to Alcan.

7.3 Upon the Effective Date of this Agreement, Alcan shall not be liable to Big Rivers or to HU for any liability of HU 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 HU's contractual obligations to Big Rivers; provided, however, that this Section 7.3 shall not exempt Alcan from claims by HU of stranded cost 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.

SECTION 8. TIER 1 and TIER 2 OBLIGATIONS:

8.1. HU shall supply and Alcan will purchase up to 233,000 kilowatts of firm Capacity and Energy in connection with Tier 1 and Tier 2 Service which HU assures as being continuously available to Alcan 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. Alcan shall pay for all electric service purchased from HU at the rates and on the terms and conditions specified in Schedule A and herein. Beginning January 1, 2001, for the purpose of matching Alcan's hourly purchase of Tier 3 Service with its metered consumption of Energy, Alcan's hourly metered consumption of Energy shall be used to determine monthly billing amounts charged by HU, as provided in Schedule A.

8.2. Alcan has a Minimum Purchase Obligation applicable to the volume of Tier 1 Energy, as set forth in Schedule A. If Alcan fails during any Billing Month to purchase the entire volume of Tier 1 Energy for consumption or for resale pursuant to Section 27, then Alcan 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, Alcan 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 215,000 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 Alcan'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 Sebree Smelter prevents HU from delivering or Alcan from receiving at least 215,000 kilowatt hours of Energy, in which case Alcan shall be billed only for the actual kilowatt hours of Energy it consumes during those hours. Nothing in this Section 8.3 shall relieve Alcan 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 HU/LEM Contract or the HU/BREC 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 Alcan 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. HU 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.

**SECTION 9. TIER 3 SERVICE OBLIGATIONS:**

9.1. Subject to the terms and conditions set forth herein and in Schedule A, HU agrees to buy and resell to Alcan and Alcan 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, HU shall purchase firm Energy from LEM for Alcan's Tier 3 Energy volume requirements which HU assures as being continuously available to Alcan 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 HU has no outstanding contractual obligation to purchase Tier 3 power for resale to Alcan, Alcan 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 HU to purchase

transmission service from BREC to which Alcan has agreed shall be performed by HU for the benefit of Alcan and the costs thereof shall be reimbursed by Alcan. Until such change in law is enacted, Alcan 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, Alcan shall purchase from HU any Tier 3 Interruptible Energy and Tier 3 Backup Energy that HU 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, Alcan shall be responsible for notifying HU from time to time of its Tier 3 power requirements, including the delivery date(s) associated with such requirements. Alcan shall notify HU sufficiently in advance of the delivery date(s) so that HU 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 Alcan's requirements. Alcan shall provide such financial assurances as may be reasonably required to hold HU harmless for such contracts, provided that such contracts have been agreed to by Alcan. As a condition to the effectiveness of each such contract for Tier 3 power, HU 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 Alcan each Billing Month in an amount that is equal to the amount that HU is required to pay each Billing Month to the Third-Party Supplier. In order to facilitate Alcan's power requirements for Tier 3 Service to the greatest extent

possible under applicable regulatory requirements and in recognition of the preceding sentence, HU 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. HU 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 on Big Rivers' transmission system to Alcan will be the applicable system loss factor specified in Big Rivers' OATT. For deliveries of Tier 3 Service, each of HU and Alcan (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 Alcan can communicate to HU 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, Alcan takes more Energy in Tier 3 than has been purchased and delivered to HU by Third-Party Suppliers, then Alcan 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 Alcan and scheduled by HU, Alcan shall have no obligation to pay the cost of excess Energy taken from LEM or any other source unless Alcan has consented to the contract with that Third-Party Supplier. The form of Alcan'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, Alcan shall have requested HU to schedule and HU shall have received deliveries of excess amounts of Tier 3 Energy from Third-Party Suppliers, then Alcan shall nevertheless be obligated to pay the full cost to HU 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 Alcan 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 HU as set forth in Section 8.3 hereof and Schedule A.

#### SECTION 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, Alcan will submit to HU in writing the projected monthly amounts of Energy, Capacity and Generation-Based Ancillary Services,

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

10.2. Alcan shall provide HU, 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. Alcan'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. Alcan shall make reasonable efforts to minimize changes in its preschedules and delivery schedules, but such changes shall be accommodated by HU to the extent reasonably possible up to 30 minutes prior to the hour of delivery. The estimates by Alcan shall be for all Energy, Capacity and Generation-Based Ancillary Services to be purchased by Alcan for delivery to Alcan 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. HU shall be obligated to deliver to Alcan 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 HU be in default under any provision of this Agreement where the non-delivery of Tier 3 Energy scheduled for delivery to HU 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 HU'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 HU and Big Rivers electrical systems and the Sebree Smelter, the Parties may, by written agreement, adjust scheduling procedures as necessary.

#### SECTION 11. METERING:

11.1. HU 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 HU and may be simultaneously read by a representative of Alcan if Alcan so elects.

11.2. HU 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 Alcan not less than five (5) Working Days' prior notice of such testing. Alcan shall have the right to observe and participate in all meter tests and the right at any time to access HU'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 Alcan requests a special meter test, HU shall conduct the same; provided, however, that if any special meter test made at the request of Alcan discloses that the meters are recording accurately, Alcan shall reimburse HU 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.

SECTION 12. RATES:

12.1. Alcan 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. HU and Alcan 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 HU'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 Alcan to HU hereunder. Alcan and HU 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 HU 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 HU upon application to and approval by the KPSC to provide for the recovery of any cost that is imposed directly on HU (rather than on any wholesale power or transmission supplier to HU) 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 HU on behalf of Alcan 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, Alcan and HU 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 HU fee shall be deemed to include all costs incurred by HU with respect to performing its obligations under this Agreement.

12.6. Each kilowatt hour purchased by Alcan 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 HU 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. Alcan will pay any such taxes which are now or hereafter applicable.

SECTION 13. BILLING:

13.1. HU shall bill Alcan 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 HU associated with purchases of Tier 3 Service shall be billed by HU to Alcan 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 Alcan's billing address by certified mail or overnight courier. The billing address is:

Alcan Aluminum Corporation  
Attn: James R. Martin  
Plant Manager  
Highway 2096  
P.O. Box 44  
Henderson, KY 42419  
Telephone: (502) 521-7300  
Facsimile: (502) 521-7341

Alcan may by written notice to HU change its billing address.

13.2. Alcan shall pay the bill rendered pursuant to Section 13.1, as directed by HU, 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 HU associated with purchases under this Agreement shall be provided by Alcan to HU 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 Alcan fails to pay the bill for the Monthly Charge within the prescribed period, HU may discontinue delivery of electric service hereunder upon five (5) days' written notice to Alcan of its intention to do so. Such discontinuance for non-payment shall not in any way affect the obligations of Alcan to pay the bill for the Monthly Charge. In addition, with respect to payments owed to Third-Party Suppliers for Tier 3 Service, Alcan



shall be liable for any late charges assessed by such parties against HU occasioned by Alcan'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, HU shall promptly cause to be refunded to Alcan any amount due, including interest accrued on each calendar day from the date of payment by Alcan 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 HU first purchases Tier 3 power for resale to Alcan from a source other than LEM, Alcan shall begin to provide to HU within ninety (90) days after the end of each calendar year, a certificate executed by a duly authorized officer that states whether Alcan's net worth as of the end of such year exceeds \$300 million. In addition to the assurances required under Section 9.2, in the event the certificate reflects the net worth of Alcan to be less than \$300 million, Alcan shall provide acceptable security to HU for Tier 3 purchases of Energy, transmission and ancillary services. At such time as HU first purchases Tier 3 power for resale to Alcan from a source other than LEM, then during any successive calendar year, if Alcan has reason to believe that its net worth is less than \$300 million, Alcan shall so notify HU 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 Alcan to contest the correctness of any charge or credit.

SECTION 14. FACILITIES TO BE PROVIDED BY ALCAN:

14.1. Alcan has provided or shall provide without cost to HU all easements for rights-of-way upon Alcan's property at the Sebree Smelter (at such locations and of such dimensions as may be mutually agreed upon) for HU's or Big Rivers' transmission and distribution lines operating at 12,470 volts and higher.

14.2. Alcan 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 Alcan's electrical substation at the Sebree Smelter), including such protective devices as may be reasonably necessary to protect the electrical systems of HU and Big Rivers from disturbances to such systems caused by Alcan as set forth in Section 21.2. Plans for equipment to be installed for such protection of the facilities of HU or Big Rivers shall be submitted to HU for prior approval.

SECTION 15. FACILITIES TO BE PROVIDED BY HU:

HU 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 Alcan's electrical substation.

SECTION 16. CONSTRUCTION STANDARDS:

HU and Alcan 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.

SECTION 17. OPERATIONAL RESPONSIBILITY:

17.1. HU 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 Alcan. Alcan 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.

SECTION 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. Alcan grants to HU and its agents and employees a license to enter Alcan's electrical substation located adjacent to the Sebree Smelter and upon Alcan's easements and rights-of-way to accomplish the purposes of this Agreement, provided that advance arrangements appropriate under the circumstances are made.

#### SECTION 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.

SECTION 20. CHARACTERISTICS OF SERVICE:

Electric service to be supplied by HU to Alcan 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. HU shall maintain and, upon request, provide to Alcan measurements of voltage fluctuation at the Point of Delivery.

SECTION 21. CHARACTERISTICS OF USAGE:

21.1. Power Factor

21.1.1 For all power taken by Alcan before January 1, 2001 under Tier 1, Tier 2 and Tier 3 as set forth herein, Alcan 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, Alcan 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 233,000 kilowatts. Accordingly, the reactive power recorded by Alcan at the Point of Delivery shall not exceed 112,850 kilovars when the metered demand is at or above 233,000 kilowatts.

21.1.3 In the event that Alcan's recorded reactive power demand exceeds the limitations set forth in Sections 21.1.1 or 21.1.2, whichever is applicable, HU shall purchase on behalf of Alcan 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 Alcan 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 HU's system, systems connected with HU's system, or facilities or other property in proximity to HU's system; or (B) prevent HU 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 Alcan, HU, LEC, Big Rivers and other parties.

21.2.2 Alcan 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%). HU reserves the right to require Alcan, at Alcan's sole expense, to make necessary changes to correct such imbalance conditions. In addition to any other remedies that HU may have hereunder, should Alcan fail to make such changes, HU 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 Alcan 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. Alcan's TDD level shall be baseline referenced to the TDD loading on Big Rivers' system as of June 1, 1997.

SECTION 22. INDEMNIFICATION:

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

22.2. HU hereby assigns to Alcan 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 HU for resale to Alcan as Tier 3 Service after December 31, 2000. Alcan shall indemnify, defend and hold HU harmless from any liability or expense arising out of Alcan'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. 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.

SECTION 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 28 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 30 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 HU to cure a breach or default by HU under the HU/LEM Contract which gives rise to a termination of that agreement, or any termination by HU of the HU/LEM 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.

#### SECTION 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.

SECTION 25. AUDIT:

Alcan 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. HU 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, HU 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.

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

26.4. If HU's ability to make Energy available to Alcan 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 Alcan 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, Alcan is unable to receive and utilize Tier 1 Energy or Tier 3 Energy purchased from Third-Party Suppliers by HU, then Alcan 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 HU to purchase power and/or transmission service for resale to Alcan pursuant to the provisions of this Agreement applicable to Tier 3 Service.

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

#### SECTION 27. SALE OF TAKE OR PAY ENERGY:

27.1. Alcan 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, Alcan may give HU 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 HU shall resell such Energy as

directed by Alcan or its marketing agent. Alcan may request that HU act as its marketing agent, in which case HU and Alcan shall agree on the terms, prices and other conditions of such resale and HU shall thereafter use its best efforts to sell the Tier 1 Energy. The resale by HU of such Tier 1 Energy shall not preclude HU on behalf of Alcan from purchasing and consuming Tier 2 Energy. However, Alcan shall be precluded from selling Tier 1 Energy during any hour in which Alcan is purchasing Tier 2 or Tier 3 Energy, except as provided in Section 26.6.

27.2. HU 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 Alcan of at least 30 days, to the extent transmission and ancillary services charges are incurred by HU and charged to Alcan to effect this resale of Tier 1 Energy, this amount shall be credited against the Monthly Charge. In the event of a shutdown by Alcan of less than 30 days, in order to effect a sale of Tier 1 Energy Alcan 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 Alcan of the kilowatt hours in Tier 1. Alcan shall continue to be obligated to HU for the Minimum Purchase Obligation set forth in Section 8.2.

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



SECTION 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.

SECTION 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.

SECTION 30. REPRESENTATIONS, WARRANTIES AND COVENANTS:

30.1. HU hereby represents and warrants to Alcan as follows:

30.1.1 HU 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 HU has been duly and effectively authorized by all requisite corporate action.

30.1.3 Without further investigation, Alcan can rely upon HU'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, HU represents that it has the written agreement of Big Rivers, approved by RUS, that HU shall have no further obligation to purchase Energy or Capacity from Big Rivers for resale to Alcan and that HU shall have no liability to Big Rivers, now or in the future for any stranded investment relating to Capacity previously sold to Alcan through HU.
- 30.1.5 HU covenants that it will at all times fully perform and discharge all of its obligations under the HU/LEM Contract, under any contracts with Third-Party Suppliers for Tier 3 Service entered into by HU pursuant to this Agreement, and under any transmission agreement pursuant to which amounts of power are delivered directly or indirectly to HU for sale and delivery to Alcan.
- 30.1.6 HU covenants that it will not waive compliance by LEM with any of its obligations under the HU/LEM Contract or fail to fully enforce the HU/LEM Contract against LEM in any manner that would adversely affect HU's ability to fulfill its obligations under this Agreement.
- 30.1.7 HU covenants that it will provide to Alcan all notices of default received or sent by HU pursuant to the HU/LEM Contract or the

HU/BREC Contract or any transmission agreement with the Transmission Provider.

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

30.2. Alcan hereby represents and warrants to HU as follows:

30.2.1 Alcan is a corporation duly organized and validly existing and in good standing under the laws of the State of Ohio, 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 Alcan has been duly and effectively authorized by all requisite corporate action.

30.2.3 Without further investigation, HU can rely upon Alcan'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.

SECTION 31. AMENDMENTS:

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

SECTION 32. PATRONAGE CAPITAL:

32.1. HU Patronage Capital. HU 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 HU's customers. Such

patronage capital shall be recorded by HU for the benefit of Alcan 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. Alcan and HU each agree to support implementation of these provisions. Alcan and HU 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 HU and other members of Big Rivers on account of property rights for the benefit of the members of HU (including Alcan) 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 HU's or Alcan's rights to receive distribution from Big Rivers.

32.2.4 HU agrees that Alcan 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 HU and that such allocations shall be promptly distributed to Alcan.

SECTION 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 or 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 HU of the HU/LEM 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 Alcan: James R. Martin  
Plant Manager  
Sebree Smelter  
Alcan Aluminum Corporation  
P.O. Box 44  
Henderson, Kentucky 42419

TO HU: John West  
President and CEO  
Henderson Union Electric Cooperative Corporation  
P.O. Box 18  
Henderson, Kentucky 42420

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(s) 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 Alcan 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 and year first above written.

HENDERSON UNION ELECTRIC  
COOPERATIVE CORP.

By: John West  
Title: President and CEO

ATTEST:

\_\_\_\_\_  
Secretary

ALCAN ALUMINUM CORPORATION

By: [Signature]  
Authorized Officer VICE PRESIDENT

ATTEST:

\_\_\_\_\_  
Secretary

SCHEDULE A

CLASSIFICATION OF SERVICE

HENDERSON UNION 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 Henderson Union Electric Cooperative Corp. (HU) and corresponding purchases by Alcan Aluminum Company (Alcan) of Energy, Capacity, and Ancillary Services for use at the Alcan primary aluminum smelter, including any fourth pot line if such pot line is constructed at the Alcan smelter, located in Seabee, 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, 2011. 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, 2011. 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 HU and Alcan is terminated early due to a breach of either Party or for any other reason, the HU 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 Alcan by HU.
4. Bundled Ancillary Services shall mean those Generation-Based Ancillary Services, in the quantities and upon the terms and conditions set forth in the HU/LEM Wholesale Agreement, to be provided by LEM to HU in conjunction with the purchase of those types of Energy services which are identified in Schedule A to the HU/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. HU/LEM Wholesale Agreement shall mean the Agreement for Electric Service between Henderson Union Electric Cooperative Corp. 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 HU is interconnected with the Transmission Provider and at which it meters energy for delivery to Alcan. At such point(s), title to the electrical Energy transfers from LEM or a Third Party Supplier to HU and instantaneously from HU to Alcan.
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 HU for resale to Alcan 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 HU over which LEM, a Third-Party Supplier, or HU may contract for the delivery of electric power to HU for resale to Alcan.

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 HU upon application to and approval by the Kentucky Public Service Commission, to provide for the recovery of any cost that is imposed directly on HU (rather than on any wholesale power or transmission supplier to HU) and that arises directly from legislative, regulatory or legal action.

(4) STRANDED COST AND EXIT FEES

Alcan shall not be liable to Big Rivers or HU for any liability of HU 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 HU's contractual obligations to Big Rivers; provided, however, that this provision shall not exempt Alcan from claims by HU of stranded cost or exit fees at the distribution level upon the expiration or earlier termination of the agreement for Electric Service between Alcan and HU.

e. HU 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 Alcan under this Schedule A shall be subject to a fee charged by HU of one-tenth of a mill (\$0.0001), 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 HU and Alcan.

## CLASSIFICATION OF SERVICE

### HENDERSON UNION SMELTER RATES, CHARGES, TERMS AND CONDITIONS SECTION I

a. AVAILABILITY

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

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

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

**THE FOLLOWING IS SCHEDULE A TO THE HU/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 HU of Energy, Capacity and Ancillary Services for resale to Alcan 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 233,000 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," HU 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 HU 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," HU 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, HU 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. HU 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 Henderson Union Electric Cooperative Corp. 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 HU or the end-user) or for any change in fuel or environmental costs, whether imposed upon or incurred by LEM or imposed upon HU or Alcan or incurred by HU with respect to its distribution facilities or its sales of Energy or transmission to Alcan.

Notwithstanding the foregoing, (i) HU 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 HU or Alcan or incurred by HU with respect to its distribution facilities or its sale of Energy or transmission to Alcan. 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 233,000 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 5,480,160 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, 2011.

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 223,000 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, 2011.

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 233,000 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, 2011. The Tier 3 Interruptible Energy Rate is the rate inclusive of providing interruptible energy associated with a maximum of 5,000 kilowatts of demand in a given hour to HU. Such rate, and the associated interruptible Energy up to 5,000 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 HU and Alcan (or such other form of notice acceptable to HU, Alcan and LEM). When available, this 5,000 kilowatts of hourly demand shall be provided to meet underschedules above 233,000 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 233,000 kilowatts for Tiers 1 and 2 in each hour that are not supplied pursuant to a purchase by HU 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
January 1, 2011 through December 31, 2011	\$0.02341

(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
January 1, 2011 through December 31, 2011	\$0.01643

(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 HU 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 HU, 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 233,000 kilowatts of demand, and LEM has not notified HU of the non-availability of this rate, LEM shall supply Tier 3 Interruptible Energy for up to 5,000 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
January 1, 2011 through December 31, 2011	\$0.02223

(7) Tier 3 Backup Energy Rate

After December 31, 2000, in the event HU, 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 233,000 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 HU 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 HU on behalf of Alcan.

The Minimum Purchase Obligation in each Billing Month shall be the amount in kWh calculated by multiplying 96,040 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 47,530 kWh by 24 hours and by the number of days in that Billing Month for the period from January 1, 2003 through December 31, 2011.

The Tier 2 Purchase Allowance shall mean the positive difference in kWh in each Billing Month between the amount in kWh calculated by multiplying 5,480,160 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, 2011.

(2) Determination of Hourly and Monthly Billing Amounts

Commencing January 1, 2001, for the purpose of determining the total kWh sold by LEM to HU 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 HU on behalf of Alcan, 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 233,000 kilowatts:

- (a) Where the LEM Sale Amount for that hour is equal to or greater than 233,000 kWh, the amount of kWh billed for that hour as the Tier 1/Tier 2 Billing Amount shall be 233,000 kWh. To the extent the LEM Sale Amount exceeds 233,000 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 5,000 kilowatts of Tier 3 Interruptible Energy, the kWh in excess of 233,000 kWh up to 5,000 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 5,000 kilowatts of Tier 3 Interruptible Energy, the kWh in excess of 233,000 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 HU has scheduled and received Tier 3 Service on behalf of Alcan, where the LEM Sale Amount for that hour is less than 233,000 kWh, the amount of kWh billed as the Tier 1/Tier 2 Billing Amount for that hour shall be the greater of 215,000 kWh or the LEM Sale Amount in kWh.

- (c) In any hour in which HU has not scheduled Tier 3 Service on behalf of Alcan, or in any hour in which HU has scheduled and received Tier 3 Service on behalf of Alcan and where the LEM Sale Amount for that hour is less than 233,000 kWh due to an out-of-service condition affecting one or more of Alcan'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 HU purchases any form of Tier 3 service, whether from LEM or Third Party Suppliers, HU 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, 2011 in which HU does not take Tier 3 service on behalf of Alcan, HU 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 HU for resale to Alcan, 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 HU from LEM for resale in such Billing Month. Payment of the Tier 1 Energy Charge is the only take-or-pay obligation of HU to LEM in Billing Months in which HU does not take Tier 3 service on behalf of Alcan.

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 HU 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, 96,040 kWh or (ii) during the period from January 1, 2003 through December 31, 2011, 47,530 kWh. The amount due under subpart (ii) shall not be reduced by reason of HU's failure to accept delivery for any reason, including an Uncontrollable Force, of Energy made available by LEM.

At its sole discretion, HU 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 HU is not also purchasing Energy in excess of the amount of kilowatthours used during the applicable period to determine the Minimum Purchase Obligation on behalf of Alcan.

- (b) Each Billing Month for the period from January 1, 2001 through December 31, 2011 in which HU purchases any form of Tier 3 service on behalf of Alcan, HU 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.
- (4) 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 HU does not take Tier 3 service on behalf of Alcan, HU 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 HU 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, 2011 in which HU purchases any form of Tier 3 service on behalf of Alcan, HU 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, 2011, HU 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, HU 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 HU 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 5,480,160 kWh by the number of days in that Billing Month). In addition, unless HU has separately provided for transmission for such Tier 3 Energy, HU 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, 2011, HU 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, 2011, HU 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

### HENDERSON UNION SMELTER RATES, CHARGES, TERMS AND CONDITIONS SECTION II (Tier 3 Service)

#### a. AVAILABILITY

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

#### b. TIER 3 AMOUNTS

HU shall be obligated to deliver to Alcan 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, HU shall determine the amount of Tier 3 Energy scheduled by HU on behalf of Alcan 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 HU on behalf of Alcan on a bundled basis from Third-Party Suppliers or otherwise provided pursuant to Section III of this Schedule A, then HU 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 HU on behalf of Alcan.

#### d. TIER 3 CHARGES

Under this Section II, Alcan shall be obligated to pay to HU all amounts that HU is obligated to pay to Third-Party Suppliers for sales of Tier 3 power to HU for resale to

Alcan. Such charges shall include: (i) the purchase price paid by HU 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 HU on third-party transmission systems to transmit such power to the Transmission Provider's transmission system. Such charges shall also include the cost to HU 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, HU shall bill Alcan 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 HU's payment is due to each Third-Party Supplier. Alcan shall pay HU 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 HU's payment to each Third-Party Supplier is due. If Alcan shall fail to pay any such bill within such prescribed period, upon five (5) days' written notice to Alcan of its intention to do so, HU may discontinue delivery of electric Energy hereunder. Such discontinuance for non-payment shall not in any way affect the obligation of Alcan to pay HU for all capacity or energy that HU has contracted to purchase for resale to Alcan, or the right of Alcan to request HU to resell Tier 3 Energy that Alcan is not entitled to receive.

CLASSIFICATION OF SERVICE

HENDERSON UNION SMELTER RATES, CHARGES, TERMS AND CONDITIONS  
SECTION III

a. AVAILABILITY:

This section of Schedule A applies to sales by HU and corresponding purchases by Alcan 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 5 OF BIG RIVERS' TRANSACTION TARIFF

Attached to this Section III and incorporated herein by reference is Section 5 of Big Rivers' Transaction Tariff. Under this Section III, Alcan shall be obligated to pay to HU all amounts that HU is obligated to pay to Big Rivers in accordance with the rates, charges, and other terms and conditions set forth in such Section 5.

c. RIGHT TO CHALLENGE TRANSMISSION RATES OR METHODOLOGY

For deliveries of Tier 3 service, each of HU and Alcan 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 5 OF BIG RIVERS' TRANSACTION TARIFF,  
WHICH IS INCORPORATED BY REFERENCE INTO THIS SCHEDULE A

5. BIG RIVERS HENDERSON UNION SMELTER RATE

a. AVAILABILITY:

This tariff applies to Henderson Union Electric Cooperative Corp. ("HU") for purchases by HU of transmission and ancillary services for certain power as set forth in Section 5.c.(1) sold to Alcan Aluminum Corporation ("Alcan") for use at the Alcan primary aluminum smelter located in Sebree, 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, 2011. 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, 2011, to the extent HU requires transmission service to make sales of energy to Alcan (including all Tier 3 Energy taken after the effective date of this tariff and any Tier 1 Energy and Tier 2 Energy HU supplies from sources other than LG&E Energy Marketing Inc. ("LEM") as permitted by the HU/LEM Wholesale Agreement), Big Rivers shall assess unbundled charges for transmission for all energy purchased by HU from Third-Party Suppliers on behalf of Alcan. Big Rivers shall charge HU for such transmission services according to the rates filed in Big Rivers' Open Access Transmission Tariff ("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 HU for power resold to Alcan. Big Rivers shall offer short- and long-term firm point-to-point service, non-firm point-to-point service, and network integration service to HU 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 HU. HU 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, 2011, to the extent generation-based ancillary services are not supplied by LEM in association with amounts purchased by HU from LEM, HU shall be required separately to purchase generation-based ancillary services necessary to transmit power on Big Rivers' transmission system to HU for power resold to Alcan. 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. HU 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 HU (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 5.c.(1). In addition, there shall be no additional charge to HU 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 5.f.

d. CHARGES

Each calendar month from the effective date of this tariff through December 31, 2011, HU shall pay a Transmission Charge calculated in accordance with the transmission service reserved by HU on Big Rivers' transmission system as set forth in Section 5.c.(1) of this tariff, plus separate Ancillary Services Charges for any ancillary services purchased by HU from Big Rivers, calculated in accordance with the services purchased as set forth in Section 5.c.(2).

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

As of the effective date of this tariff, Alcan shall have no further obligation to Big Rivers and there shall be no exit fee or stranded cost obligation owing from either Alcan or HU to Big Rivers or any other party relating to Big Rivers' supply of power and transmission to HU for power resold to Alcan 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 HU with respect to Alcan's load. This transmission and ancillary services tariff shall terminate as of December 31, 2011.

f. POWER FACTOR

For all power taken under this tariff on or before December 31, 2000 under Tier 1, Tier 2, and Tier 3, HU shall maintain and shall require Alcan 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, HU shall maintain and shall require Alcan 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 233,000 kilowatts. In the event that Alcan's recorded reactive power demand exceeds the limitations set forth above, HU 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 over new facilities (such as a 4th potline) installed after the effective date of this tariff by Alcan at the Sebree Smelter, the reactive power requirements of which will need to be separately evaluated and assessed by Big Rivers, HU and Alcan at such time as they are constructed.

g. BILLING

Big Rivers shall bill HU 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. HU 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 HU 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 LEM and HU 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 HU for power to be resold to Alcan at any time after the effective date of this tariff. Any Tier 3 power supply agreements negotiated between Big Rivers and HU for 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 Alcan load served by HU, and HU will cause Big Rivers to hold in reserve at



no additional cost existing transmission capacity in an amount needed for Alcan'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 Alcan and Henderson Union 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 Alcan's reasonably forecasted load growth shall be those designated by HU to Big Rivers. Transmission capacity held in reserve for Alcan'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 HU or HU's designated third-party supplier of power; provided, however, that if such transmission capacity held in reserve by Big Rivers for HU load growth attributable to Alcan is not contracted for by HU 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 HU for power resold to Alcan, HU shall not be charged 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 Rivers to HU for power resold to Alcan 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

TO HENDERSON-UNION	MONTH ENDING	ACCOUNT 82	HU
SUBSTATION ALCAN	SERVICE FROM _____	THROUGH _____	
<u>TRANSMISSION</u>			
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> DAY OF THE MONTH



*EXECUTION VERSION*

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**RETAIL ELECTRIC SERVICE AGREEMENT**

Dated as of July 1, 2009,

by and between

**KENERGY CORP.**

and

**ALCAN PRIMARY PRODUCTS CORPORATION**

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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 ALCAN PRIMARY PRODUCTS CORPORATION, a Texas corporation ("Alcan").

### RECITALS

A. Kenergy currently supplies and delivers to Alcan, the owner and operator of an aluminum reduction plant in Sebree, Kentucky, electric energy and related services pursuant to an Agreement for Electric Service, dated July 15, 1998, between Henderson Union Electric Cooperative Corp., Kenergy's predecessor-in-interest, and Alcan Aluminum Corporation, Alcan's predecessor-in-interest (the "Existing Alcan Agreement").

B. Kenergy currently purchases electric energy and related services for resale to Alcan 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 Alcan, to serve the energy requirements of Alcan 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 Alcan 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, Century Aluminum of Kentucky General Partnership ("Century"), and Alcan 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 Alcan ("Alcan Wholesale Agreement").

G. In connection with and as a condition to the Unwind Transaction and the Alcan Wholesale Agreement, Kenergy will supply and deliver, and Alcan 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 1

#### DEFINITIONS AND RULES OF INTERPRETATION

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

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

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

1.1.3 Agreement: As defined in the Preamble.

1.1.4 Alcan: As defined in the Preamble.

1.1.5 Alcan Guarantee: As defined in Section 13.3.

1.1.6 Alcan Parent: Alcan Corporation, a Texas corporation, and parent corporation of Alcan.

1.1.7 Alcan Wholesale Agreement: As defined in the Recitals.

1.1.8 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.

1.1.9 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.

1.1.10 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 Century Retail Agreement. If the Century

Retail Agreement is terminated or no longer in effect for any reason, Century's "Base Demand" shall be deemed to be 482 MW for purposes of calculating the Applicable Percentage.

1.1.11 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 Alcan 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 Alcan 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 Alcan 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.

1.1.12 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.

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

1.1.14 Base Curtailed Energy: For any Hour in a Billing Month, the amount of Energy that is either (a) curtailed by Alcan 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.

1.1.15 Base Demand: 368 MW, or such other amount of electric demand agreed in accordance with Section 3.1, integrated over an Hour.

1.1.16 Base Energy Charge: As defined in Section 4.2.

1.1.17 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.

1.1.18 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.

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

1.1.20 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.

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

1.1.22 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.

1.1.23 Big Rivers: As defined in the Recitals.

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

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

1.1.26 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.

1.1.27 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.

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

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

1.1.30 Century: As defined in the Recitals.

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

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

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

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

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

1.1.57 Interruptible Energy Charge: As defined in Section 4.3.1.

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

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

1.1.60 KPSC: Kentucky Public Service Commission.

1.1.61 kW: Kilowatt.

1.1.62 kWh: Kilowatt-hour.

1.1.63 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.

1.1.64 LG&E: As defined in the Recitals.

1.1.65 Lockbox Agreement: The Security and Lockbox Agreement to be entered into among Alcan, Kenergy, Big Rivers and a depository bank prior to the Effective Date with respect to the payment of certain amounts due by Alcan to Kenergy under this Agreement.

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

1.1.67 Market Energy Charge: As defined in Section 4.3.3.

1.1.68 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 to Section 4.13.2 during such Hour.

1.1.69 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.

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

1.1.71 Monthly Charge: As defined in Section 4.1.

1.1.72 MW: Megawatt.

1.1.73 MWh: Megawatt-hour.

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

1.1.75 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.

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

1.1.77 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.

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

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

1.1.80 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.

1.1.81 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.

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

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

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

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

1.1.86 Parties: Kenergy and Alcan.

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

1.1.88 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.

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

1.1.90 Potential Tax Liability: As defined in Section 13.3.

1.1.91 Potline Reduction: As defined in Section 10.3.1.

1.1.92 Potline Reduction Sales: As defined in Section 10.3.1.

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

1.1.94 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.

1.1.95 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.

1.1.96 Rebate: As defined in Section 4.9.

1.1.97 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.

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

1.1.99 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.

1.1.100 Restructuring Amount: As defined in Section 16.5.1.

1.1.101 Retail Fee: As defined in Section 4.12.

1.1.102 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.

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

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

1.1.105 Sebree Smelter: The aluminum reduction plant owned and operated by Alcan, located at Sebree, Kentucky, including any expansions, additions, improvements and replacements thereof or thereto at the existing site.

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: Alcan and Century.

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, Alcan, Big Rivers or Century.

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 Alcan Wholesale Agreement.

1.1.124 Transmission Upgrade: The transmission upgrade described in the Coordination Agreement dated the date hereof between Alcan 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 Alcan; 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 Alcan 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 Alcan 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 Alcan Base Monthly Energy, Supplemental Energy and Back-Up Energy.

2.3.1 Base Monthly Energy. Alcan 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 Alcan 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). Alcan 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 Alcan any Firm Energy which Big Rivers in its sole discretion offers to Kenergy for resale to Alcan 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. Alcan shall have ten minutes from the time it receives verbal Notice of Interruption to notify Big Rivers and Kenergy whether Alcan agrees to purchase Buy-Through Energy offered to be supplied by Big Rivers to Kenergy for resale to Alcan. Alcan 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 Alcan 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 Alcan 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 Alcan, upon the request of Alcan ("Market Energy") specifying (i) the requested amount and duration of such Energy, and (ii) all requested prices and material terms and conditions. Alcan 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 Alcan.

(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 Alcan setting forth Alcan's consent to the execution, delivery and performance of such contractual arrangements and upon Alcan'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 Alcan, Kenergy shall make application to, and use reasonable commercial efforts to obtain approval of, the KPSC to sell such Market Energy to Alcan 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 Alcan for Market Energy, Kenergy shall request that Big Rivers provide all Transmission Services necessary to transmit Market Energy requested by Alcan 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. Alcan acknowledges and agrees that Kenergy shall have no liability to Alcan 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 Alcan 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 Alcan 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 Alcan Kenergy's rights and remedies against the Third Party Supplier under such agreement.

(v) If Alcan 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 Alcan, 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 Alcan's request. Kenergy shall apply all revenues derived from such resale as a credit to Alcan, 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 Alcan 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. Alcan 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 Alcan during any Billing Month. Alcan shall, without regard to the obligations of Big Rivers pursuant to the Alcan 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 Alcan.

2.5 Title and Risk of Loss. Title to and risk of loss with respect to Energy provided by Kenergy to Alcan pursuant to this Agreement will pass from Kenergy to and rest in Alcan when the same is made available by Kenergy (or Big Rivers on behalf of Kenergy) at the Point of Delivery. After title passes to Alcan, Alcan 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. Alcan acknowledges and agrees that, to the extent Big Rivers has a corresponding or related obligation to Kenergy under the Alcan 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. Alcan acknowledges and agrees that Big Rivers may enforce an obligation of Alcan under this Agreement which corresponds or relates to an obligation of Kenergy to Big Rivers under the Alcan Wholesale Agreement.

### ARTICLE 3

#### CHANGES IN DEMAND AND SCHEDULING

3.1 Change In Base Demand. Alcan 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 Alcan 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, Alcan 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. Alcan 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 Alcan 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 Alcan.

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 Alcan 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 Alcan.

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 Alcan 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 Alcan and “Back-Up Energy” (as defined in the Century Retail Agreement) to Century, then the provisions of Section 4.4.1 shall apply to a proportional number of MW of Back-Up Energy for each of Alcan and Century.

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 Alcan 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 Alcan 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 Alcan, 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) 54,114.

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 Alcan 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 Alcan 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 Alcan as compared to the Budget during the remainder of the Fiscal Year. Kenergy shall collect or credit such modified amount from Alcan 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 Alcan 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 Century 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 Century 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 Century 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 Century 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 Century 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 Century 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 Century 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 Century 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 Century 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 Alcan 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 Century Retail Agreement (without regard to whether the Century 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 Century Retail Agreement (without regard to whether the Century 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, Alcan shall pay a surcharge (the "Surcharge") equal to the sum of the following:

(a) As applicable:

(i) \$184,361 each Billing Month from the Effective Date through and including December, 2011;

(ii) \$263,373 each Billing Month from January, 2012 through and including December, 2016;

(iii) \$367,380 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 Alcan 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 Alcan 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 Alcan 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, \$86,588.

The obligations of Alcan 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 Alcan 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 Alcan (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 Alcan 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 Alcan are set forth in Exhibit A.

4.13.2 Curtailement of Purchased Power. For any Billing Month, Kenergy will credit Alcan 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 Alcan, Kenergy and Big Rivers pursuant to this Section 4.13.2 and the corresponding section of the Century Retail Agreement. If both Alcan and Century 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 Century Retail Agreement, Alcan and Century 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,

Alcan 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, Alcan 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 Alcan of Energy prices reaching or exceeding the minimum price at which Alcan will consider curtailment. Sample calculations of credit that would be due to Alcan for curtailment of purchased power are set forth in Exhibit A.

4.13.3 Economic Sales. For any Billing Month, Kenergy will credit Alcan 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 Alcan, 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, Alcan and Big Rivers, (a) the amount of Base Demand per Hour curtailed by Alcan 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 Alcan and Century 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 Century Retail Agreement, Alcan and Century 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, Alcan 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, Alcan 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 Alcan of Energy prices reaching or exceeding the price of which Alcan 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 Alcan are set forth in Exhibit A.

4.13.4 Market Energy Sales. For any Billing Month, Kenergy will credit Alcan 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 Alcan 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. Alcan shall pay or cause to be paid any such taxes which are now or hereafter become applicable to the sale of Electric Services to Alcan under this Agreement.

## ARTICLE 5

### BILLING

5.1 Monthly Invoice. Kenergy shall bill Alcan 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. Alcan 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, Alcan hereby acknowledges and consents to the assignment by Kenergy to Big Rivers of its right to receive such payment from Alcan 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 Alcan. If Big Rivers owes credits or funds to Kenergy for the benefit of Alcan, Kenergy hereby assigns such credits or funds to Alcan and shall cooperate with and assist Alcan with respect to any collections of amounts due from Big Rivers to Kenergy; *provided*, that Alcan shall reimburse Kenergy for any reasonable expenses Kenergy incurs in providing such cooperation or assistance.

5.2 Right to Discontinue Service. If Alcan 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 Alcan 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 Alcan 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 Alcan 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 Alcan, 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 Alcan 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) Alcan (i) shall release Kenergy from any and all claims Alcan may have against Kenergy for the failure of Big Rivers to satisfy its obligations under the Alcan 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 Alcan 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 Alcan Wholesale Agreement, Kenergy shall immediately deliver to Alcan (i) a power-of-attorney with full power of substitution which shall designate Alcan 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 Alcan 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 Alcan for the purposes of obtaining legal or equitable relief as a result of the failure of Big Rivers to satisfy its obligations under the Alcan 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 Alcan may deem appropriate, and (ii) an assignment conveying to Alcan 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 Alcan Wholesale Agreement. The power-of-attorney and the assignment shall be in form and substance reasonably satisfactory to Alcan and shall be legally effective and enforceable under Kentucky or other Applicable Law.

5.6 No Waiver. No payment made by Alcan pursuant to this Article 5 will constitute a waiver of any right of Alcan 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 Alcan in connection with the application of a credit to Alcan'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 Alcan 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 Alcan shall have received a certificate to such effect from Kenergy and Big Rivers in respect of their respective representations and warranties in the Alcan 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 Alcan.

6.2.4 The Alcan Wholesale Agreement shall be acceptable in form and substance to Alcan and shall not have been amended, or, if amended, shall be acceptable in form and substance to Alcan.

6.2.5 The Alcan Guarantee will have been duly authorized, executed and delivered by Alcan 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, Century, LG&E and Alcan, 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 Alcan Wholesale Agreement, the Century Wholesale Agreement and the Century 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 Alcan 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 Alcan 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 Alcan 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) Alcan 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 Alcan 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 Alcan if the New Transaction is consummated.

7.2.5 Alcan Wholesale Agreement Termination. Kenergy may terminate this Agreement if Big Rivers terminates the Alcan 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 Alcan acknowledge and agree that the Existing Alcan 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 Sebree Smelter.

(a) Alcan 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 Sebree Smelter.

(b) No termination pursuant to Section 7.3.1(a) may be effective prior to December 31, 2010. If Century has given a "Notice of Termination for Closure" under the Century Retail Agreement prior to the delivery of Notice of Termination for Closure by Alcan and if the Transmission Upgrade has not been completed at the time of such termination, Alcan

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 Alcan 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 Sebree Smelter and has no current intention of re-commencing smelting operations at the Sebree Smelter.

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

## 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 Alcan not less than five Business Days' prior notice of such testing. Alcan 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 Alcan 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 Alcan discloses that the meters are not more than plus or minus 1% inaccurate, Alcan shall reimburse Kenergy for the reasonable cost of such test. In all other respects, meters through which Kenergy delivers Energy to Alcan 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 Alcan.

9.1.2 Alcan 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 Alcan'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 Alcan 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 Alcan as provided for in this Agreement.

9.3 Facilities Provided by Alcan.

9.3.1 Alcan has provided or shall provide, without cost to Kenergy or Big Rivers all easements for rights-of-way upon Alcan's property at the Sebree 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 Alcan 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 Alcan's substation located adjacent to the Sebree Smelter, including such protective devices as may be reasonably necessary to protect Big Rivers' transmission system from disturbance caused by Alcan. 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 Curtailment. 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. Alcan 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 Alcan 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. Alcan grants the duly authorized agents and employees of Kenergy and Big Rivers the right to reasonable access to the premises of Alcan 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 Alcan, 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 Alcan.

9.6.1 Alcan 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 Alcan grants to Kenergy and its agents and employees a license to enter Alcan's electrical substation located adjacent to the Sebree Smelter and upon Alcan'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 Alcan may request that Kenergy sell Energy through Big Rivers which is surplus to Alcan's needs by delivering prior written notice to Kenergy and Big Rivers (a) identifying the portion of Base Demand per Hour Alcan 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 Alcan'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 Alcan 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 Alcan 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 Alcan 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). Alcan 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 Alcan 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) Alcan 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 Alcan, 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 Alcan 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 Sebree Smelter unfit for normal use and limits Alcan's ability to engage in aluminum reduction operations thereat; (ii) Alcan'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 Alcan or any of its Affiliates. If and to the extent directed by Alcan, Kenergy immediately will request Big Rivers to use reasonable commercial efforts to sell an amount of Energy up to the corresponding reduction in Alcan'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." Alcan 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 Alcan. Upon Alcan providing a certificate representing that the event can not be remedied with reasonable diligence within six months, Alcan'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 Alcan'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 Alcan 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 ALCAN 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 ALCAN 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 ALCAN. THIS WAIVER SHALL ALSO NOT APPLY TO CLAIMS FOR DAMAGES OR OTHER REMEDIES FROM KENERGY OR BIG RIVERS BROUGHT BY ALCAN OR ITS SUBROGEE IN CONNECTION WITH A CIRCUMSTANCE WHERE (I) ALCAN 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) Alcan 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 Alcan, 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 Alcan 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) Alcan has ceased or will cease all aluminum smelting operations on one and only one of its potlines at the Sebree Smelter (a "Potline Reduction"); (ii) Alcan is reasonably likely to be able to continue aluminum smelting operations with respect to all of its other potlines at the Sebree Smelter as a result of the cessation of aluminum smelting operations on the potline referred to in clause (i); (iii) Alcan 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 Alcan Parent certifying as to the matters set forth in clauses (i), (ii), (iii), and (iv) above.

10.3.2 Alcan, 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 Alcan's demand in such amounts and over a period of time as is mutually satisfactory.

10.3.3 Alcan 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 Alcan 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 Alcan 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 Alcan 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 Alcan requests the Potline Reduction Sales be made on a Firm basis, Alcan 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, Alcan 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

Alcan. 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 Alcan to Kenergy and Big Rivers, and (c) the earlier of the date (i) one year after the date Alcan 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 Alcan 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. Alcan 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 Alcan 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) Alcan 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 Alcan, 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 Alcan 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. Alcan 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. Alcan shall consume all Energy purchased under this Agreement in connection with the operation of its Sebree Smelter except as expressly permitted pursuant to this Agreement.

10.5 Refund of Income Tax Estimated for Net Proceeds. Kenergy shall return to Alcan 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 Alcan 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 Alcan 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 Alcan of its payment obligations under Article 4, including its payment obligations with respect to the Base Energy Charge. ALCAN 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 ALCAN'S SOLE AND EXCLUSIVE REMEDIES IN THE EVENT THAT ALCAN 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 Alcan 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 Alcan. Alcan hereby represents and warrants to Kenergy as follows:

12.2.1 Alcan is a corporation duly organized and validly existing and in good standing under the laws of the State of Texas, 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 Alcan have been duly and effectively authorized by all requisite corporate 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 Alcan;

*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) Alcan 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 Alcan 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 Alcan 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, Alcan'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, Alcan, Big Rivers and, if the Century Retail Agreement is then in effect, Century, 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 Alcan 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 Alcan.

13.1.4 Notice of Material Filings. Kenergy shall provide or cause to be provided to Alcan 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 Alcan 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 Alcan under this Agreement, including scheduled usage, meter records and billing records. Kenergy shall retain all documentation applicable to service to Alcan 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 Alcan Credit Support. Alcan shall (i) if the rating of the unenhanced, unsecured debt obligations of Alcan Parent with Standard & Poor's is not "A+" or higher (and in addition, if Alcan 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 Alcan'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 Alcan Parent to guarantee to Big Rivers and Kenergy the payment and performance of all obligations of Alcan under this Agreement, including Potential Tax Liability, and the other documents entered into by Alcan and its affiliates in connection with the New Transaction

pursuant to a Guarantee Agreement executed by Alcan Parent in favor of Big Rivers and Kenergy which shall be satisfactory in form and substance to Big Rivers and Kenergy (the "Alcan Guarantee"). At the request of Big Rivers or Kenergy, Alcan will maintain the Alcan Guarantee until closure of all applicable tax years of Big Rivers. At the request of Alcan, Kenergy shall request that Big Rivers provide Alcan 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 Alcan 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 Alcan 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 Alcan 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 Alcan.

13.4.4 The expiration or earlier termination of this Agreement shall not modify or revoke the then existing entitlement of Alcan to allocations or distributions of patronage capital or the entitlement of Alcan 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 Alcan agree that the provisions of this Section 13.4 are not the exclusive provisions for determining Alcan'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 Alcan.

13.6 Negotiation of Replacement Agreement. If this Agreement has not been terminated earlier, Kenergy shall negotiate in good faith with Alcan 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 Sebree Smelter as set forth in Section 7.3.1 and Alcan continues non-smelting operations, Alcan 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 Alcan 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 Alcan Wholesale Agreement which gives rise to a termination of the Alcan Wholesale Agreement, or any termination by Kenergy of the Alcan 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 Alcan Wholesale Agreement if the actions or omissions of Kenergy caused such "Event of Default"; *provided*, that either Party may terminate this Agreement if the Alcan 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, Alcan, Century 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 Alcan 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 Century Retail Agreement.

16.5.4 If Alcan, Century, Kenergy and Big Rivers are not able to determine a mutually agreeable estimate of the Restructuring Amount, then Kenergy, Alcan, Century 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) 826-3999  
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 Alcan:                              Sebree Smelter  
Alcan Primary Products Corporation  
9404 State Route 2096  
Henderson, Kentucky 42452-9735  
Facsimile: (270) 521-7341  
Attn: Plant Manager

With a copy to: Rio Tinto Alcan  
1188 Sherbrooke Street West  
Montreal, Quebec H3A 3G2  
Canada  
Facsimile: (514) 848-1439  
Attn: Director Energy

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) 826-3999  
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 Alcan: Sebree Smelter  
Alcan Primary Products Corporation  
9404 State Route 2096  
Henderson, Kentucky 42452-9735  
Facsimile: (270) 521-7341  
Attn: Plant Manager

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 & CEO

ALCAN PRIMARY PRODUCTS  
CORPORATION

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

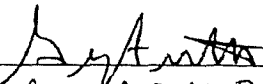
[Alcan Retail Agreement]

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

KENERGY CORP.

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

ALCAN PRIMARY PRODUCTS CORPORATION

By:  \_\_\_\_\_  
Name: GUY AUTHIER  
Title: PRESIDENT

[Alcan 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 Alcan, 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 Alcan 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 Alcan'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 Alcan, 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 Alcan 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 Alcan 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 Alcan; 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 Alcan 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 Alcan and to Kenergy under the Century Wholesale Agreement for resale to Century 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 Alcan and Century, 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 Alcan or with respect to "Scheduled Interruptible Energy" as defined in the Century Retail Agreement, or any combination thereof; and

(B) Big Rivers may retroactively implement Permitted Interruptions for any Hour to Kenergy for Alcan and Century 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 Alcan 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 Alcan 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 Alcan and Century Smelter Charges and Credits - (for purposes of examples, Retail Fee set at zero)

Year Modeled:

2009

Annualized Basis

Case	Derivation	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)	Potline 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) 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	1.1.15 - 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
2	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
3														
4	<b>Energy Balance (Annual TWh)</b>													
5	Assumed Load Factor	Assumption	98%	96%	100%	100%	100%	102%	100%	102%	88%	49%	85%	94%
6	Metered Energy	Assumption	7.297	7.148	7.446	7.428	7.428	7.560	7.428	7.560	6.567	3.649	6.310	7.012
7	2.3.2 - Supplemental Energy													
8	2.3.2(a) Interruptible Energy	Assumption				0.131								
9	2.3.2(b) Buy-Through Energy	Assumption					0.131							
10	2.3.2(c) Market Energy													
11	Consumed	Assumption						0.197						
12	Sold	Assumption						0.066						
13	1.1.13 - Backup Energy													
14	4.4.1(a) and (b) (within 10MW per Smelter)	Assumption							0.131	0.131				
15	4.4.1(c) - Excess	Assumption								0.131				
16	1.1.15 - Base Curtailed Energy													
17	4.13.2 - Curtailment of Purchased Power	Assumption											0.285	
18	4.13.3 - Economic Sales	Assumption (Max. Under Contract)												0.010
19	10.1 - Surplus Sales	Assumption								0.730				
20	10.2 - Undeliverable Energy Sales	Assumption									3.649			
21	10.3 - Potline Reduction Sales	Assumption (Approx. Max.)										0.987		
22	1.1.18 / 19 - Base Hourly / Monthly Energy	line 6 + 17 + 18 + 19 + 20 + 21	7.297	7.148	7.446	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297	7.297
23	1.1.22 - Base Variable Energy	line 22 - line 2	-	(0.149)	0.149	-	-	-	-	-	-	-	-	-
24														
25	<b>Key Rates</b>													
26	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	121.89
27	4.3 - Supplemental Energy **													
28	4.3.1 - Interruptible Energy Rate	Assumption				60.94								
29	4.3.2 - Buy-Through Energy Rate	Assumption					60.94							
30	4.3.3 - Market Energy Rate	Assumption						60.94						
31	4.4 - Backup Energy Rate	Assumption												
32	4.4.1(a) and (b) (within 10MW per Smelter)	Assumption							60.94	60.94				
33	4.4.1(c) - Excess	Contract								250.00				
34	1.1.72 - Market Reference Rate	Assumption											60.94	
35	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
36	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
37	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
38	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
39	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
40	4.11.4 - Surcharges:													
41	4.11 (a)	See contract charges below												
42	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
43	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
44	* 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).													
45	** 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

Annualized Basis

Case	Derivation	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	Buy-Through Energy	Market Energy	4.4.1 (a) and (b)	4.4.1 (c)					
					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	6 Month Duration	115 MW @ 98% Load Factor x 12 Months	Example curtails all market purchases	Max. of 9,600 MWh
46	Charges (\$M)													
47	4.2 Base Energy Charge	(2 x 35) + (23 x 36)	205.4	203.6	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 TIER 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	0.5	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	15.96	15.63	16.28	15.96	15.96	15.96	15.96	15.96	15.96	15.96	15.96	15.96
62	4.9 Rebate	See Supporting Schedules	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(17.5)	(7.1)	(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
67A	4.11 (d)	-\$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)
68	4.12 Retail Fee	Contract	-	-	-	-	-	-	-	-	-	-	-	-
69														
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 + admn. cost) ? Resale of Market Energy						4.0		39.9	199.3	53.0		1.1
74	Avoidable 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									199.3	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	78 + 79 + 80 + 81 + 82						4.0		30.4	199.3	53.9	17.4	0.8
85	Net Charges	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
86	Net Charges per MWh Metered													
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 4.13.1.													
88														



Exhibit A - Retail and Wholesale Service Agreement Examples - Combines Alcan and Century  
 Smelter Charges and Credits - (for purposes of example, Retail Fee set at zero)  
 Year Modeled: 2009

Annualized Basis

Case	Derivation	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)	Potline Reduction Sales (10.3)	Curtailed 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)					
					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	6 Month Duration	115 MW @ 98% Load Factor x 12 Months	Example curtails all market purchases	Max. of 9,600 MWh
89	Supporting Schedules													
90														
91	1.1.21 Smelter Base Rate													
92	Large Industrial Rate													
93	Load Factor (%)	Member Load Forecast	79%	79%	79%	79%	79%	79%	79%	79%	79%	79%	79%	79%
94	Energy (\$/ MWh)	Tarif	13.72	13.72	13.72	13.72	13.72	13.72	13.72	13.72	13.72	13.72	13.72	13.72
95	Demand (\$/ KW.mo.)	Tarif	10.15	10.15	10.15	10.15	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	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	31.39	31.39	31.39	31.39
99	Large Industrial Rate @ 98% LF	Contract	27.90	27.90	27.90	27.90	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	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	28.15	28.15	28.15	28.15
102														
103	1.1.23 Base Variable Rate													
104	FAC Base	Tarif	10.72	10.72	10.72	10.72	10.72	10.72	10.72	10.72	10.72	10.72	10.72	10.72
105	Environmental Surcharge base	Tarif	-	-	-	-	-	-	-	-	-	-	-	-
106	Purchased Power Base	Tarif	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75
107	Total		12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47	12.47
108														
109	4.11 (c) Surcharge													
110	Reference Fuel Expense (\$/ MWh)	Contract	16.44	16.44	16.44	16.44	16.44	16.44	16.44	16.44	16.44	16.44	16.44	16.44
111	Actual Fuel Expense (\$/ MWh)	Assumption	21.94	21.94	21.94	21.94	21.94	21.94	21.94	21.94	21.94	21.94	21.94	21.94
112	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	0.60	0.60	0.60	0.60
113														
114	1.1.12 Avoidable Base Charge													
115	1.1.11(a)													
116	(i) Base Rate plus Adjustable Charge Rates	35 + 37 + 38 + 39								41.83				
117	(ii) Base Fixed Energy made available whether or not sold	line 19								0.73				
118	\$M	line 116 x line 117								30.38				
119	Plus													
120	1.1.11(b)													
121	(i) Base Variable Rate plus Adjustable Charge Rates	36 + 37 + 38 + 39								25.95				
122	(ii) Base Variable Energy made available whether or not sold	line 23								-				
123	\$M	line 121 x line 122								-				
124	Less													
125	1.1.11(c)													
126	(i) Base Variable Rate plus Adjustable Charge Rates	36 + 37 + 38 + 39								25.95				
127	(ii) Base Fixed or Variable Energy neither Metered nor Sold									-				
128	\$M	line 126 x line 127								-				
129	Net	line 118 + line 123 - line 128								30.38				
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

Annualized Basis

Case	Derivation	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)	Polline 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)						
					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	6 Month Duration	115 MW @ 98% Load Factor x 12 Months	Example curtails all market purchases	Max. of 9,600 MWh	
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	579.409	579.409	579.409	579.409	579.409	579.409	579.409	579.409	579.409	579.409	579.409	
135	Increment from Base Case (Accounts for Both Smelters):														
136	Base Energy Charge	22 x 36		(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						8.0	40.9						
140	Net Proceeds	line 73						4.0		39.9	199.3	53.9		1.1	
141	Less: Credits	line 84						(4.0)		(30.4)	(199.3)	(53.9)	(17.4)	(0.9)	
142	Total Increment from Base Case	136 + 137 + 138 + 139 + 140 + 141		(3.9)	3.9	8.0	8.0	16.0	8.0	40.9	9.5	-	(17.4)	0.3	
143	Total Revenues	line 134 - line 142	579.4	575.5	583.3	587.4	587.4	595.4	587.4	620.3	588.9	579.4	579.4	562.0	579.7
144	System Expenses Before TIER Adjustment														
145	Base Case - Gross	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	
146	Net Debit to Power Purchases reflected in Regulatory Account	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)	
147	Base Case - Net	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	
148	Increment from Base Case														
149	Variable Costs *	23 x (36 + 37+ 38+ 39)		(3.9)	3.9	-	-	-							
150	Power Purchases	138 + 139				8.0	8.0	16.0	8.0	16.0	-	-	(17.4)	-	
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	548.8	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	15.5	
156	Interest Charges Plus Net Margin	line 155 + line 158	68.8	68.8	68.8	68.8	68.8	68.8	68.8	93.7	78.3	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	
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	
161	Pre-Adjustment TIER	line 156/ line 160	1.285	1.285	1.285	1.285	1.285	1.285	1.285	1.749	1.462	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)	(27.3)	(11.9)	(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	
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	
167	TIER Adjustment	line 162 + line 166	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(25.9)	(10.5)	(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		(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(1.0)	(25.9)	(10.5)	(1.0)	(1.0)	(1.3)	
172	Rebate:														
173	Smelter MWh		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)	(17.5)	(7.1)	(0.7)	(0.7)	(0.9)	
175															
176	* Example assumes variable costs incurred at rate stipulated in 1.1.21, plus FAC, Environmental Surcharge, and PPA														
177															

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

Annualized Basis

Case	Derivation	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)	Polling 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)					
					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	6 Month Duration	115 MW @ 98% Load Factor x 12 Months	Example curtails all market purchases	Max. of 9,600 MWh
178	Quarterly TIER Adjustment Charge													
179		Base Case												
180														
181	Revenues	579.4												
182	Expenses	564.1												
183	Net Margin Before TIER	15.3												
184	Interest + Margin	68.8												
185	Interest Charges	53.6												
186	Pre-Adjustment TIER	1.29												
187	Increment Needed for 1.24x	(2.4)												
188	Adjustments	1.4												
189	TIER Adjustment	(1.0)												
190	TIER Adjustment Charge													
191	1st Q	-												
192	2nd Q	-												
193	3rd Q	-												
194	4th Q	-												
195														
196	* Illustrative Forecast Weightings (actual forecast methodologies to be determined)													
197	YTD													
198	Original Budget													
199														
200	YTD													
201	Revenues													
202	Expenses													
203	Net Margin Before TIER													
204	Interest + Margin													
205	Interest Charges													
206	Pre-Adjustment TIER													
207	Increment Needed for 1.24x													
208	Adjustments													
209	TIER Adjustment													
210														
211	Revised Full-Year Forecast													
212	Revenues													
213	Expenses													
214	Net Margin Before TIER													
215	Interest + Margin													
216	Interest Charges													
217	Pre-Adjustment TIER													
218	Increment Needed for 1.24x													
219	Adjustments													
220	TIER Adjustment													
221														

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	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				
			96% 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.					
1.1.15 - Base Demand (MWh) (a)	Contract	850.0	850.0	850.0	850.0	850.0	850.0	850.0	850.0					850.0
1.1.16 - Base Fixed Energy (TWh) (b)	Contract	7.297	1.824	1.824	1.824	1.824	1.824	1.824	1.824	7.297		4.7.4	4.9	7.297
<b>Energy Balance (Annual TWh)</b>														
Assumed Load Factor	Assumption	98%	96%	100%	98%	98%								
Metered Energy	Assumption	7.297	1.787	1.862	1.824	1.824	1.824	1.824	1.824	7.297				7.297
2.3.2 - Supplemental Energy														
2.3.2(a) Interruptible Energy	Assumption													
2.3.2(b) Buy-Through Energy	Assumption													
2.3.2(c) Market Energy														
Consumed	Assumption													
Sold	Assumption													
1.1.13 - Backup Energy														
4.4.1(a) and (b) (within 10MW per Smelter)	Assumption													
4.4.1(c) - Excess	Assumption													
1.1.15 - Base Curtailed Energy														
4.13.2 - Curtailment of Purchased Power	Assumption													
4.13.3 - Economic Sales	Assumption (Max. Under Contract)													
10.1 - Surplus Sales	Assumption													
10.2 - Undeliverable Energy Sales	Assumption													
10.3 - Potline Reduction Sales	Assumption (Approx. Max.)													
1.1.18 / 19 - Base Hourly/ Monthly Energy	line 6 + 17 + 18 + 19 + 20 + 21	7.297	1.787	1.862	1.824	1.824	1.824	1.824	1.824	7.297				7.297
1.1.22 - Base Variable Energy	line 22 - line 2	-	(0.037)	0.037	-	-	-	-	-	(0.000)				-
<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
4.3 - Supplemental Energy **														
4.3.1 - Interruptible Energy Rate	Assumption													
4.3.2 - Buy-Through Energy Rate	Assumption													
4.3.3 - Market Energy Rate	Assumption													
4.4 - Backup Energy Rate	Assumption													
4.4.1(a) and (b) (within 10MW per Smelter)	Assumption													
4.4.1(c) - Excess	Contract													
1.1.72 - Market Reference Rate	Assumption													
1.1.21 - Base Rate	See Supporting Sched.	26.15	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
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
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
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
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
4.11 (c)	See Supporting Sched.	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60	0.60				0.600
* Placeholder value intended to represent costs of energy plus appropriate inclusion or exclusion of transmission service														
** Assumed priced at cost, for illustration														

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 Year Modeled: 2009

Illustrative Quarterly Basis - Base Case

Case	Derivation	Base Case	Illustrative Quarterly Basis - Base Case				Pre-Adjusted Year	Adjust. TIER Adjustment	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				
			96% load factor/ expense 5% above avg.	100% load factor/ expense 5% above avg.	96% load factor/ expense 0% above avg.	98% load factor/ expense 10% below avg.		4.7.4	4.9	
46	<b>Charges (\$M)</b>									
47	4.2 Base Energy Charge	(2 x 35) + (23 x 36)	205.4	50.9	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 29	-	-	-	-	-			
51	4.3.3 Market Energy	10 x 30	-	-	-	-	-			
52	4.4 Back-up Energy Charge									
53	4.4.1(a) and (b) (within 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	See Supporting Sched.	-	2.0	2.0	3.5	5.5	5.5	13.1	(13.1)
58	4.8 Adjustable Charges									
59	4.8.1 FAC Charge	22 x 37	81.9	20.0	20.8	20.5	20.5	81.9		81.9
60	4.8.2 Non-FAC Purchased Power Adjustment Charge	22 x 39	0.5	0.1	0.1	0.1	0.1	0.5		0.5
61	4.8.3 Environmental Surcharge	22 x 38	15.96	3.07	4.07	3.99	3.99	15.96		15.96
62	4.9 Rebate	See Supporting Schedules	(0.7)	-	-	-	-	-		(0.7)
63	4.10 Equity Development Credit	Contract								
64	4.11 Surcharge									
65	4.11 (a)	Contract	5.1	1.3	1.3	1.3	1.3	5.1		5.1
66	4.11 (b)	2 x 42	4.4	1.1	1.1	1.1	1.1	4.4		4.4
67	4.11 (c)	2 x 43	4.4	1.1	1.1	1.1	1.1	4.4		4.4
67A	4.11 (d)	- \$200,000 x 12	(2.4)	(0.8)	(0.6)	(0.6)	(0.6)	(2.4)		(2.4)
68	4.12 Retail Fee	Contract	-	-	-	-	-	-		-
69										
70	<b>Total Charges</b>		314.6	77.8	81.8	84.3	84.3	328.3	(13.1)	(0.7)
71										
72	<b>Credits (\$M)</b>									
73	Net Proceeds	(12+18+19+20)x25 - (tax + admin. cost) / Resale of Market Energy								
74	Avoidable Base Charge	See Supporting Schedules								
75										
76	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	17 x 34								
81	4.13.3 Economic Sales	line 73 x 75%								
82	4.13.4 Market Energy Sales	line 73								
83										
84	<b>Total Credits</b>	78 + 79 + 80 + 81 + 82								
85	<b>Net Charges</b>	line 70 - line 84	314.6	77.8	81.8	84.3	84.3	328.3	(13.1)	(0.7)
86	<b>Net Charges per MWh Metered</b>									
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 4.13.1.									
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 Modeled: 2009

Illustrative Quarterly Basis - Base Case

Case	Derivation	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				
			96% 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.					
89	<b>Supporting Schedules</b>													
90														
91	<b>1.1.21 Smelter Base Rate</b>													
92	<b>Large Industrial Rate</b>													
93	Load Factor (%)	Member Load Forecast	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	<b>Large Industrial Rate @ 98% LF</b>	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	<b>Smelter Base Rate</b>		28.15	28.15	28.15	28.15	28.15	28.15	28.15					28.15
102														
103	<b>1.1.23 Base Variable Rate</b>													
104	FAC Base	Tariff	10.72	10.72	10.72	10.72	10.72	10.72	10.72					10.72
105	Environmental Surcharge base	Tariff	-	-	-	-	-	-	-					-
106	Purchased Power Base	Tariff	1.75	1.75	1.75	1.75	1.75	1.75	1.75					1.75
107	<b>Total</b>		12.47	12.47	12.47	12.47	12.47	12.47	12.47					12.47
108														
109	<b>4.11 (c) Surcharge</b>													
110	Reference Fuel Expense (\$/ MWh)	Contract	16.44	16.4	16.4	16.4	16.4	16.4	16.4					16.4
111	Actual Fuel Expense (\$/ MWh)	Assumption	21.94	21.9	21.9	21.9	21.9	21.9	21.9					21.9
112	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
113														
114	<b>f.1.12 Avoidable Base Charge</b>													
115	<b>1.1.11(a)</b>													
116	(i) Base Rate plus Adjustable Charge Rates	35 + 37 + 38 + 39												
117	(ii) Base Fixed Energy made available whether or not sold	line 19												
118	<b>\$M</b>	line 116 x line 117												
119	Plus													
120	<b>1.1.11(b)</b>													
121	(i) Base Variable Rate plus Adjustable Charge Rates	36 + 37 + 38 + 39												
122	(ii) Base Variable Energy made available whether or not sold	line 23												
123	<b>\$M</b>	line 121 x line 122												
124	Less													
125	<b>1.1.11(c)</b>													
126	(i) Base Variable Rate plus Adjustable Charge Rates	36 + 37 + 38 + 39												
127	(ii) Base Fixed or Variable Energy neither Metered nor Sold													
128	<b>\$M</b>	line 126 x line 127												
129	Net	line 118 + line 123 - line 128												
130														

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 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	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				
			96% 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.					
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	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 + 39)		(0.5)	0.5									
138	Supplemental Energy	49 + 50 + 51												
139	Backup Energy	53 + 54												
140	Net Proceeds	line 73												
141	Less: Credits	line 84												
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	144.9	579.4						579.4
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 Debit 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	149 + 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	Interest Charges:													
158	Base Case	Financial Model	53.6	13.4	13.4	13.4	13.4	53.6						53.6
159	Increment from Base Case													
160	Total	line 158 - line 159	53.6	13.4	13.4	13.4	13.4	53.6						53.6
161	Pre-Adjustment TIER	line 156/line 160	1,285	0.759	0.759	1,285	2,339	5,141						1,285
162	Incremental Revenue Needed to Achieve TIER = 1.24x	(1.24 - line 161) x line 160	(2.4)	6.4	6.4	(0.6)	(14.7)	(2.4)						(2.4)
163	Adjustments:													
164	4.7.5(0) No revenue from Economic/ Transition Reserves	Financial Model	1.4	0.4	0.4	0.4	0.4	1.4						1.4
165	Other													
166	Total	line 164 + line 165	1.4	0.4	0.4	0.4	0.4	1.4						1.4
167	TIER Adjustment	line 162 + line 166	(1.0)	6.8	6.8	(0.3)	(14.4)	(1.0)						(1.0)
168	TIER Adjustment Charge	Max. of line 167 and zero	-											
169														
170	4.9 Rebate													
171	Excess TIER Amount		(1.0)	-	-	-	-	-						(1.0)
172	Rebate:													
173	Smelter MWh		68%	68%	68%	68%	68%	68%						68%
174	Rebate		(0.7)	-	-	-	-	-						(0.7)
175														
176	* Example assumes variable costs incurred at rate stipulated in 1.1.21, plus FAC, Environmental Surcharge, and PPA													
177														

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 Year Modeled: 2009

Illustrative Quarterly Basis - Base Case

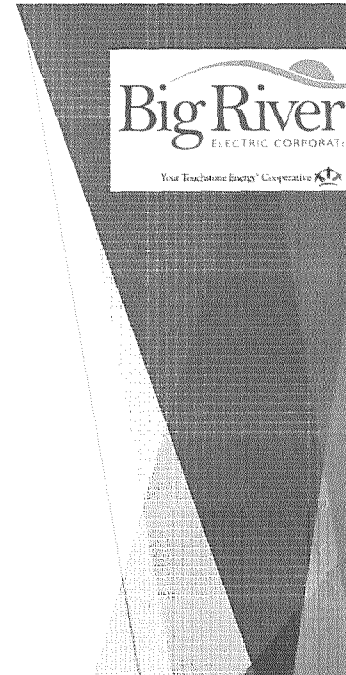
Case	Derivation	Base Case	Q1				Q2				Q3				Q4				Pre-Adjusted Year	Adjust. TIER Adjustment	Rebate	Adjusted Year
			Adj. Per 4.7.3		Adj. Per 4.7.3		Adj. Per 4.7.3		Adj. Per 4.7.3													
			96% load factor/expense 5% above avg.	100% load factor/expense 5% above avg.	96% load factor/expense 0% above avg.	98% load factor/expense 10% below avg.																
178	Quarterly TIER Adjustment Charge																					
179		Base Case	Intermediate Annual Forecasts *																			
			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	Revenues	579.4	578.4		579.4		579.4		579.4													
182	Expenses	564.1	570.2		578.2		578.2		578.2													
183	Net Margin Before TIER	15.3	8.2		1.2		1.2		1.2													
184	Interest + Margin	68.8	61.8		54.7		54.7		54.7													
185	Interest Charges	53.6	53.6		53.6		53.6		53.6													
186	Pre-Adjustment TIER	1.29	1.2		1.0		1.0		1.0													
187	Increment Needed for 1.24x	(2.4)	4.6		11.7		11.7		11.7													
188	Adjustments	1.4	1.4		1.4		1.4		1.4													
189	TIER Adjustment	(1.0)	6.0		13.1		13.1		13.1													
190	TIER Adjustment Charge																					
191	1st Q	-	-		-		-		-													
192	2nd Q	-	2.0	2.0	2.0		2.0		2.0													
193	3rd Q	-	2.0		5.5	3.5	5.5		5.5													
194	4th Q	-	2.0		5.5		5.5		5.5	0.0												
196	* Illustrative Forecast Weightings (actual forecast methodologies to be determined)																					
197	YTD		25%		50%		50%		75%													
198	Original Budget		75%		50%		50%		25%													
200	YTD																					
201	Revenues		143.9		289.7		434.6		434.6													
202	Expenses		147.1		296.2		437.2		437.2													
203	Net Margin Before TIER		(3.2)		(6.5)		(2.6)		(2.6)													
204	Interest + Margin		10.2		20.3		37.5		37.5													
205	Interest Charges		13.4		26.8		40.2		40.2													
206	Pre-Adjustment TIER		0.76		0.76		0.93		0.93													
207	Increment Needed for 1.24x		6.4		12.9		12.3		12.3													
208	Adjustments		0.4		0.7		1.1		1.1													
209	TIER Adjustment		6.8		13.6		13.3		13.3													
211	Revised Full-Year Forecast																					
212	Revenues		578.4		578.4		579.4		579.4													
213	Expenses		570.2		578.2		578.2		578.2													
214	Net Margin Before TIER		8.2		1.2		1.2		1.2													
215	Interest + Margin		61.8		54.7		54.7		54.7													
216	Interest Charges		53.6		53.6		53.6		53.6													
217	Pre-Adjustment TIER		1.15		1.02		1.02		1.02													
218	Increment Needed for 1.24x		4.6		11.7		11.7		11.7													
219	Adjustments		1.4		1.4		1.4		1.4													
220	TIER Adjustment		6.0		13.1		13.1		13.1													





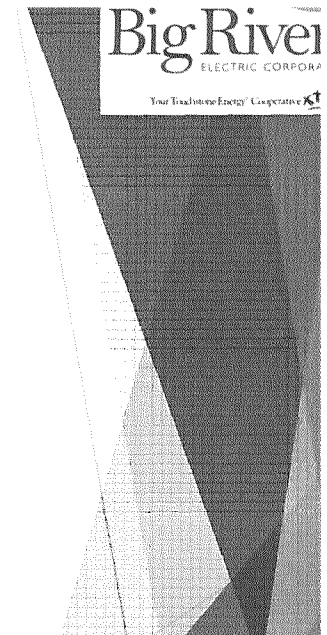
# Big Rivers Electric Corporation: Explanation of Standard Maintenance Practice

Monday, November 11, 2013

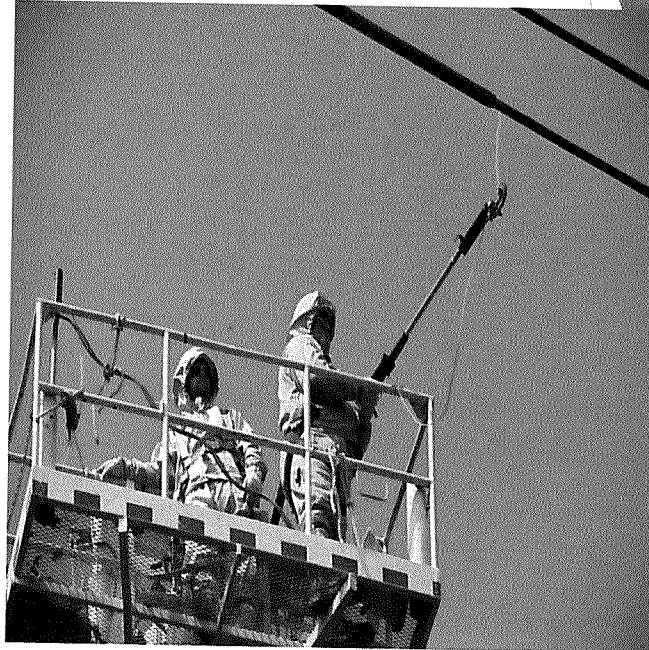


## Big Rivers' Safety Policy

“Safety is a way of life so no operating condition or urgency of service can ever justify endangering the health and well-being of anyone.”



## Typical Utility Industry “Hot” or “Live” Line Maintenance



- Cage system “bonded” to conductor (transmission line)

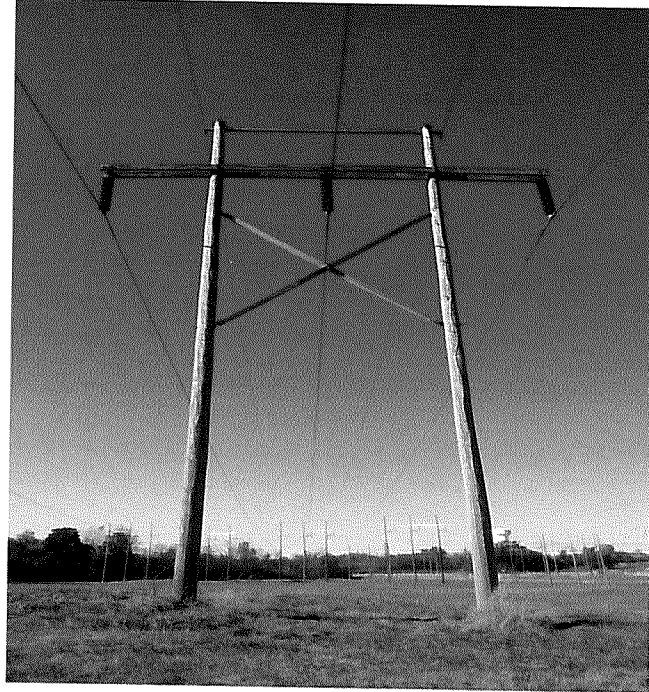
## Typical Utility Industry “Hot” or “Live” Line Maintenance



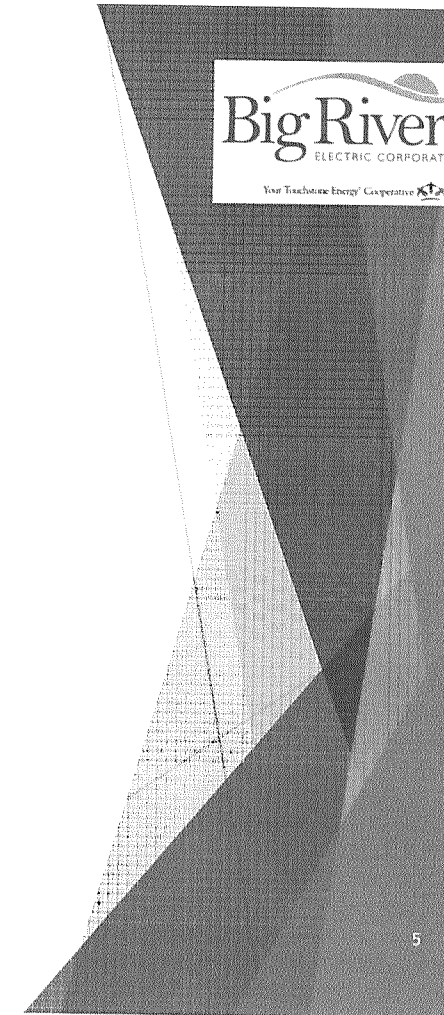
- Helicopter “bonded” to conductor (transmission line)

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Your Exclusive Energy Cooperative

## Century Alleged “Hot Line Work”



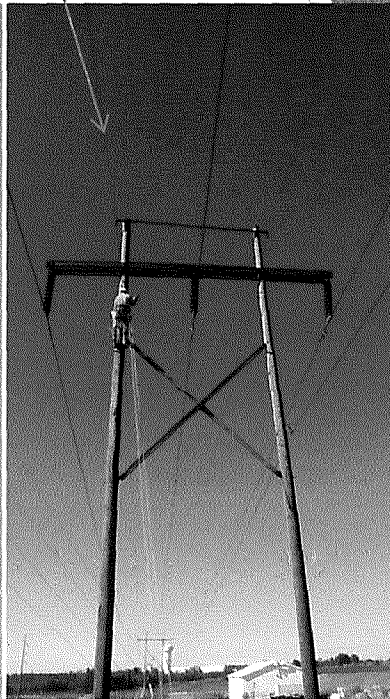
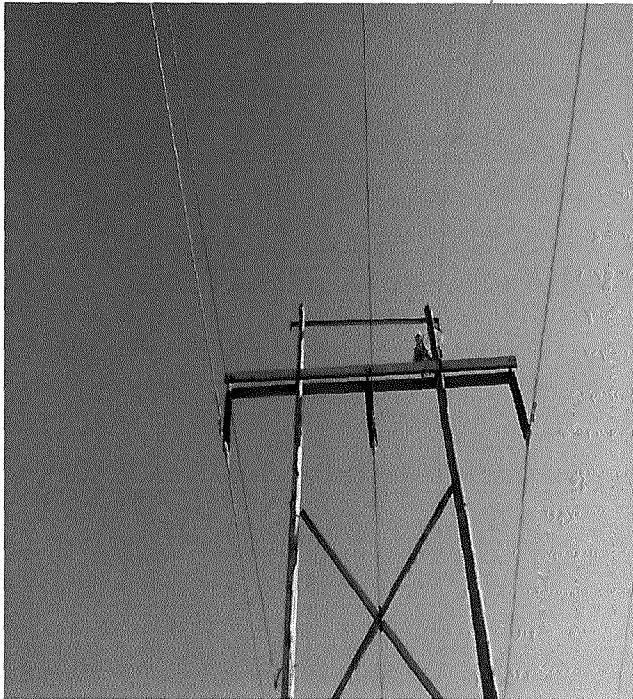
- Typical “H” structure framing (TH-10X) climbed with the line energized
- Any structure with insulators directly attached to the pole are not climbed in the insulator area
- Work done on the pole is done well below the minimum approach distance





## Century Alleged “Hot Line Work”

Minimum Approach Distance (MAD) from Energized Lines



- Employee using power glue dispenser to treat (fill) woodpecker hole

## Century Alleged “Hot Line Work”

De-energized  
lightning static line



Big River  
ELECTRIC CORP  
Your Touch on Energy® Cooperative

- Pole toppers are a mastic type cover applied to the top of the pole to keep out moisture
- Before a topper is applied a liquid anti-fungal solution is applied to control fungal decay organisms and wood destroying insects.



## Century Alleged “Hot Line Work”

De-energized  
Lightning Static Line



Big River  
ELECTRIC CORPORATION  
Your Tomorrow Energy Cooperative

- Tightening X-Brace Bolts: When poles are climbed each bolt is checked for tightness and tightened if needed; there are typically (4) 7/8” bolts on each pole.

## Century Alleged “Hot Line Work”



- Drilling Pole for Mitc Fumes: One part of the pole treatment is drilling a series of “stair stepped” holes, usually 4 or 5 around the perimeter of the pole starting above ground level.
- Mitc Fume vials (gas fumigant) are then put into the drilled holes and sealed with black plastic plugs.

## Century Alleged “Hot Line Work”



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Your Teekahone Energy Cooperative

- Ground Line Treatment - The ground around the bottom of the pole is excavated approximately 18” below ground level
- A special preservative paste is brushed onto the pole and covered with a covering/paper (tan color) and the hole is filled in with dirt.



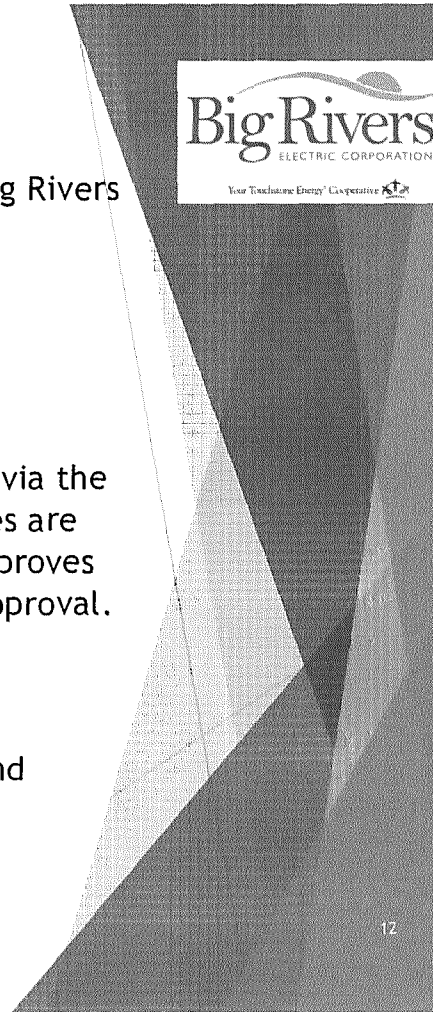
## Century Alleged “Hot Line Work”

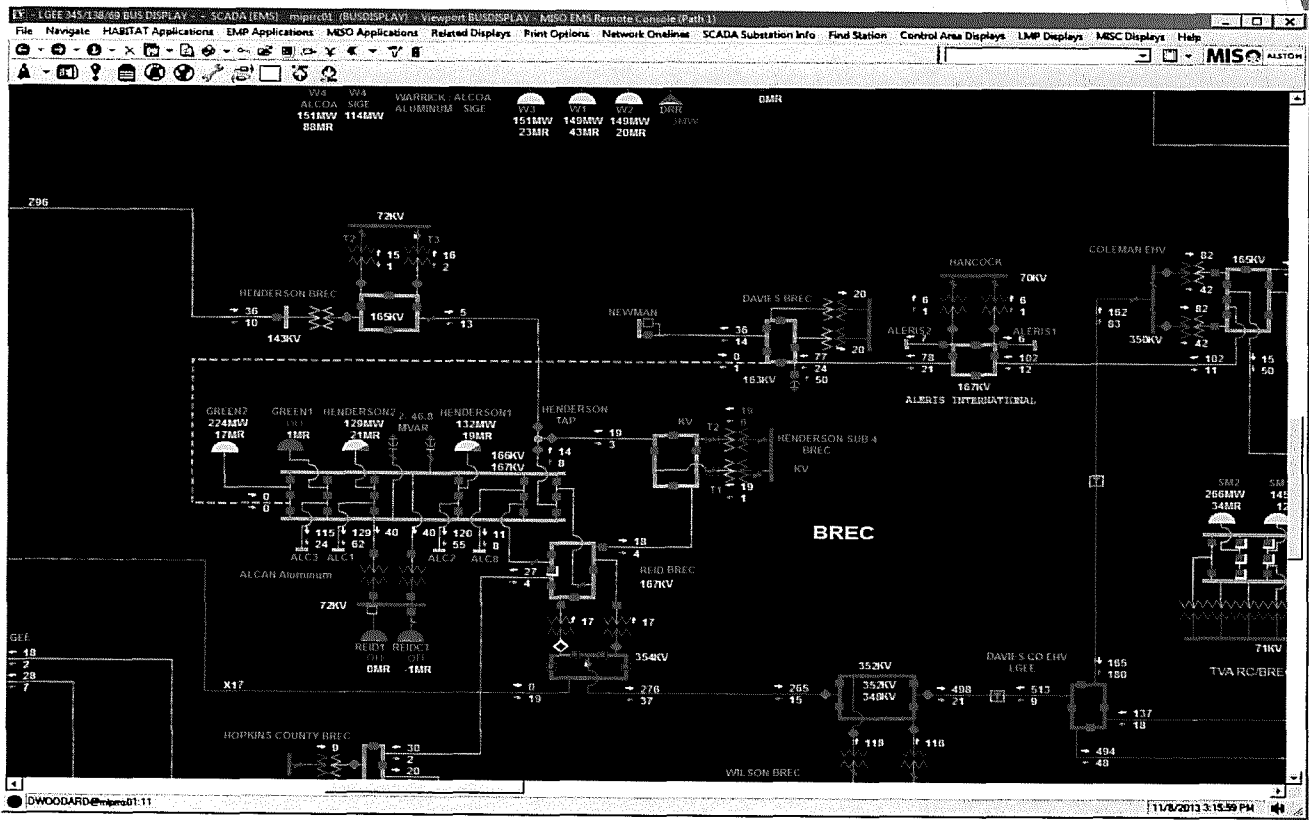


- Right-of-Way (ROW) machine used to cut limbs, tree tops, etc. on 161Kv line
- Work typically performed while lines are energized; when working near phase conductors, reclosers are turned off and a Closure Delay is issued
- Bucket trucks may also be used to perform necessary trimming; unless there is danger of an individual or limb getting into the MAD (Minimum Approach Distance) Zone work can be performed with lines energized

## MISO-Big Rivers Procedures

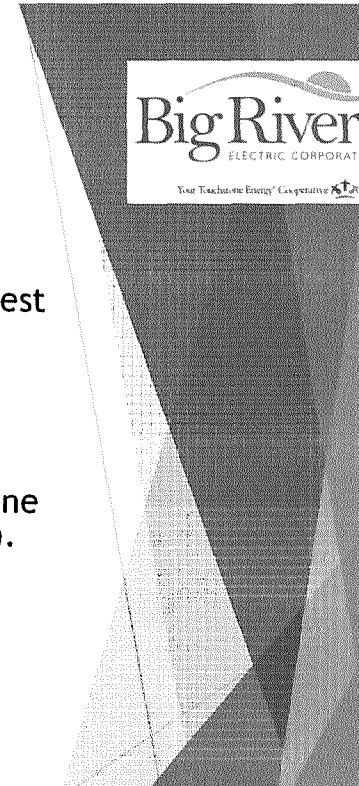
- Ensuring the reliability of the Bulk Electric System is the responsibility of Big Rivers and the Midcontinent Independent System Operator (MISO).
- MISO receives real-time system information from Big Rivers and others.
- Big Rivers supplies generation and transmission outage information to MISO via the web based Control Room Operations Window (CROW) program. Once outages are entered in the CROW, MISO studies their impact on reliability and either Approves or Denies the request. The requested outage will not occur without MISO approval. MISO will cancel approved outages if necessary to ensure system reliability.
- MISO performs real-time, day-ahead, and other future studies. Real-time and expected system conditions (loads, outages, etc.) are utilized by MISO as appropriate within the study process.





## Outage Process Overview

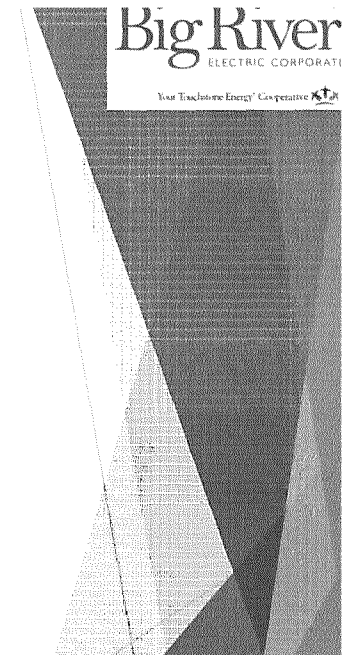
- Big Rivers maintenance or engineering personnel submit a clearance request or a caution delay request to Energy Control.
- A clearance indicates the equipment is out of service (de-energized).
- A caution delay indicates work is being performed near an energized line (this could include vegetation management work or pole maintenance).
- Big Rivers reviews the request for approval. If approved internally, the request is submitted to MISO for approval via the CROW.
- As Big Rivers implements the clearance or caution delay, actions are documented in a switching order.



## Caution Delay Example

The following example illustrates a caution delay on the Big Rivers owned Reid to Daviess County 161 kV circuit. The example includes:

- Internal Request
- CROW Ticket
- Switching Order





**BIG RIVERS ELECTRIC CORPORATION  
ENERGY TRANSMISSION CAUTION DELAY**

REQUEST NO. _____		
DATE: <u>10/17/2013</u>	TIME: <u>16:10</u>	
REQUESTED BY: <u>Brian Catron</u>		
CAUTION DELAY IS TO BE ISSUED:		
DATE: <u>10-18, 10-19, 10-21-13</u>	TIME: <u>7:15</u>	
WORK WILL BEGIN: <u>7:20</u> (TIME)		
DURATION OF REQUESTED CAUTION DELAY: HOURS: <u>30</u> TIME: _____		
EQUIPMENT OR TRANSMISSION LINE INVOLVED IN CAUTION DELAY: <u>Line 6-A</u> <u>Raid to Davless Co. 161 line.</u>		
SWITCHES OR PERIMETER POINTS THAT CAUTION DELAY WILL APPLY TO: <u>Raid - 0130-5</u> <u>Davless - 0709</u>		
REASON FOR REQUESTED CAUTION DELAY: <u>Treat poles</u>		
PERSON CAUTION DELAY WILL BE ISSUED TO: <u>Line Crew</u> (NAME)		
ENERGY CONTROL APPROVAL OF CAUTION DELAY REQUEST NO.: _____		
APPROVED: <u>X</u>	APPROVED WITH CONDITIONS: _____	
ENERGY CONTROL APPROVAL:		
	(NAME)	(DATE)
PLANNING ENG. APPROVAL:	<u>Tim Curtle</u>	<u>10/18/2013</u>
	(NAME)	(YES) (NO) (DATE)
NEIGHBOR APPROVAL:	_____	(YES) (NO) (DATE)
	(NAME)	(YES) (NO) (DATE)
TVA R.C. APPROVAL:	_____	(YES) (NO) (DATE)
	(NAME)	(YES) (NO) (DATE)
CO-OP APPROVAL:	_____	(YES) (NO) (DATE)
	(NAME)	(YES) (NO) (DATE)
PLANT APPROVAL:	_____	(YES) (NO) (DATE)
	(NAME)	(YES) (NO) (DATE)
SUPPLEMENTAL REQUEST FORM	YES	NO

CROW Web 5.6.0.295 - 0-00000000 (New) [Bastin, Bob logged in] - Windows Internet Explorer  
 https://apps.midwestiso.org/crow/Outages/outage\_req\_summary.aspx?new\_outage=1&category=1None

**MIS** Reports **Outage Requests** Options

**0-00000000 (New)**

**Request Summary** Request Details Approval Attachments (0)

Outage #: 0-00000000 rev. 1 (current) [History](#)

Requested By: Bastin, Bob

Company: BREC

Outage Status:

Outage Priority:

Priority Date:

Planned Start: 11 / 09 / 2013 08:00

Planned End: 11 / 09 / 2013 16:00

Recall Time:  Min. Recall Time

Prefessor:  [Request Start](#)

**Update Constraint Info**

Equipment Request Type for REIDDAVIE16\_1 1

- Out of Service
- Hot Line Work
- General System Protection
- Informational
- In Service Normally Open

Select Cancel

**Outage flags:** NEPL CF **Class 2** Thresh/OpGuide Watchlist ROA GSU diff AM Open Bkr Tolere Bk Start WPCU

**Equip. Requested:**

Control Area	Control Center	Station	Equip. Type	Circuit/Equipment	Description	Equipment Req. Type	Fac. Class	Voltage Class
X	BREC	BREC	REID, DAVIESS	Line	REIDDAVIE16_1 1	005	2	161 kV

[Add...](#)

**Outage Cause**

- Clearing Location:
- Requester Notes:
- OASIS Posting:
- Notes to Participants:

User Reference • Additional Outage Operations and CROW information is available on the MISO website (www.misoenergy.org) => Markets & Operations => Outage Coordination  
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CROW Web 5.6.0295 - 0-0000000 (New) | Bastin, Bob logged in | Windows Internet Explorer  
 https://apps.midwestiso.org/Outage/OutageReqSummaryPage/new/OutageReqCategory=None

MIS Reports **Outage Requests** Options CROW

0-00000000 (New) [Back] [Export] [New] [Duplicate] [Home]

Request Summary | Request Details/Approval | Attachments (0)

Outage #: 0-00000000 rev. 1 (current) [History...](#)

Requested By: Bastin, Bob Work Order Number:

Company: BREC Submitted By:

Outage Status: Last Updated:

Outage Priority: Planned Outage Category: T G

Priority Date:

Planned Start: 11 / 09 / 2013 08:00 Continuous/Daily: Continuous

Planned End: 11 / 09 / 2013 16:00 Outage Duration: Exactly 8 Hour(s)

Recall Time:  No Recall Time

Predecessor:  [Refresh Start]

Outage Flags: MERC OF **Class 2** Training/Outage Watchlist MGA GSI IntE Aff Open Ekr Telsms EA Start SPCE

Equip. Requested:

Control Area	Control Center	Station	Equip. Type	Circuit/Equipment	Description	Equipment Req. Type	Fac. Class	Voltage Class
X	BREC	BREC	RED, DAVISS	Line	REDDAVIE16_1	HLW	2	161 kV

[Add...](#)

Outage Cause:

- Cleaning Location:
  - Animals Smoke or Fire, Human Accidents
  - Communication Maintenance
- Requester Notes:
  - Construction
  - Inspection
  - Maintenance Repair Facility
  - Protection Maintenance
- OASIS Posting:
  - Safety Clearance
  - Support: Outage for Non-BES
  - Vegetation
  - Other

[Save Proposed](#) [Submit](#)

User Reference: Additional Outage Operations and CROW information is available on the NISO website (www.nisoweb.org) => Markets & Operations => Outage Coordination  
 CROW 5.6.0295 - 0-0000000 (New) | Bastin, Bob logged in | Windows Internet Explorer



Case No. 2013-0413



**Outage Request #1-04461965 rev. 4**  
Planned Outage Request

Requested Date/Time: 10/17/2013 17:32

**REIDDAVIE16\_1 1 HLW**

**Outage Request Summary**

Outage Number:	1-04461965 rev. 4	Outage Priority:	Planned 10/17/2013 17:32
Company:	BREC	Requested By:	Woodard, Dan 10/17/2013 17:32
Remote System:			
Work Order No.		Outage Category	Transmission
Outage Status:	Completed	Outage Type:	Planned
Planned Start:	<b>10/21/2013 06:30</b>	Planned End:	<b>10/21/2013 11:00</b>
Continuous/Daily:	Continuous	Alternate Dates:	
First Actual Start:	10/21/2013 07:53	Last Actual End:	10/21/2013 14:51
Min. Recall Time:	2	Late Submission:	No
Predecessor:		Last Updated:	McLean, Eric 10/21/2013 14:51
Outage Cause:	007 - Maintenance Repair Facility	Outage Sub-Cause:	-
Flags:	Class 2		
Requester Notes :			

**Outage Profiles**

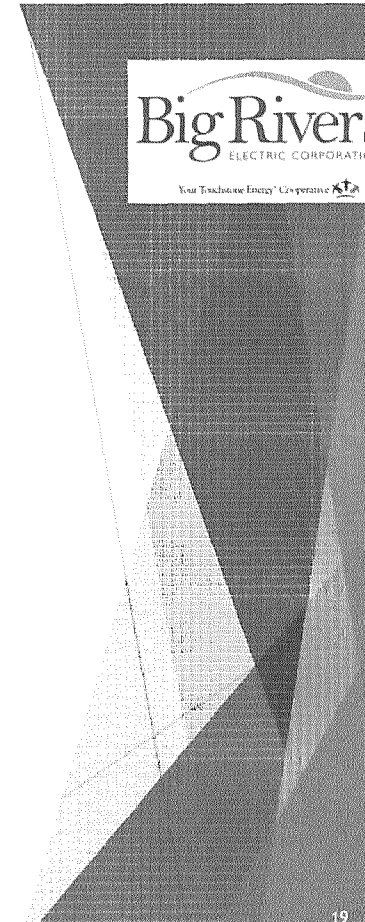
Planned Start	Planned End	Overrun	Status	By/When
10/21/2013 06:30	10/21/2013 11:00	No	Completed	McLean, Eric - 10/21/2013 14:51

**Equipment Requested**

Line	Control Area	Control Center	Station	Equip. Type	Circuit/Equipment	Description	Equipment Req. Type	Fac. Class	Voltage Class
Yes	BREC	BREC	REID. DAVIESS	Line	REIDDAVIE16_1 1		HLW	2	161 kV

**Implemented Outages**

Is Out	Event Number	Event For	Date/Time Out	Date/Time In	Comments
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**BIG RIVERS  
SWITCHING ORDER PROCEDURE**

LINE, PLANT, OR SUBSTATION: Reid 161KV TO DAVIESS CO 161KV CAUTION DELAY

EQUIPMENT OR LINE OUT OF SERVICE: RECLOSER OFF Reid-Daviess

RECLOSER OFF Daviess-Reid

WORK TO BE DONE: tree? poles

REQUESTED BY: B. Catron

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_ TO: \_\_\_\_\_

SCHEDULED BY: [Signature] CHECKED BY: T. M... [Signature]

CLEAR/HOLD	TIME	DATE	ISSUED TO	SYSTEM SUPERVISOR
CD-621	0905	10/21/13	T. Hayward	[Signature]
CD-621	0916	10/21/13	R. Tucker	[Signature]

RELEASED BY	TIME	DATE	SYSTEM SUPERVISOR
T. Hayward	1527	10/21/13	[Signature]
R. Tucker	1543	10/21/13	[Signature]

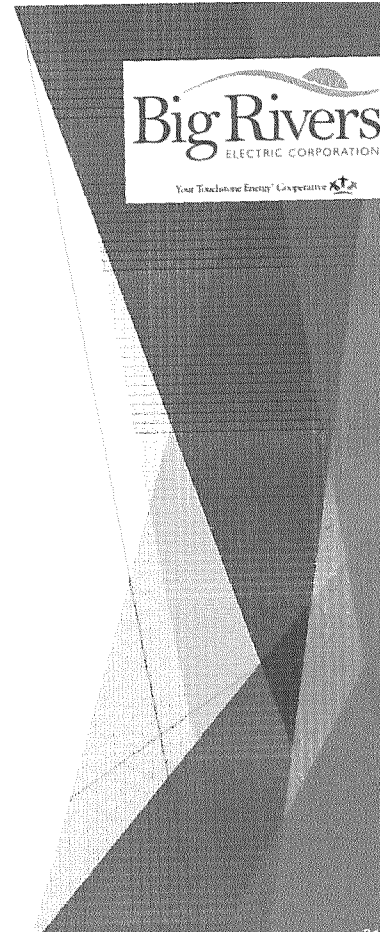
CD-621

**SWITCHING PROCEDURE**

TIME	DATE	OPERATION	SWITCH	DESCRIPTION	LOCATION	OPERATOR
0851	10/21/13	NOTIFY MISO RC SD# 464				Syng
0851		RECLOSER OFF Reid-Daviess 161 LINE			Reid 161	
0853		RECLOSER OFF DAVIESS-Reid 161 LINE			Daviess Co	
0905		ISSUE CAUTION DELAY				
0855		IMPLEMENT OUTAGE IN CROW				

**RESTORE**

1543	10/21/13	CAUTION DELAY RELEASED				R. Tardem
1549		RECLOSER ON Reid-Daviess 161 LINE			Reid 161	Syng
1550		RECLOSER ON DAVIESS-Reid 161 LINE			Daviess Co	
1551		COMPLETE OUTAGE IN CROW				



## System Conditions for Week of October 21, 2013



Unit Capabilities - Net MW						
Unit	Oct-21	Oct-22	Oct-23	Oct-24	Oct-25	Comments
C1	95	95	95	95	95	
C2	138	0	0	0	0	Came off line at 8:49 PM on 10/21 due to tube leak
C3	155	155	155	155	155	
G1	231	231	231	231	231	
G2	223	223	223	223	223	
H1	152	152	152	152	152	
H2	153	153	153	153	153	
W1	417	417	417	417	417	

## Century Net Cost Examples

**Assumes a \$50 per MWh Market Price**

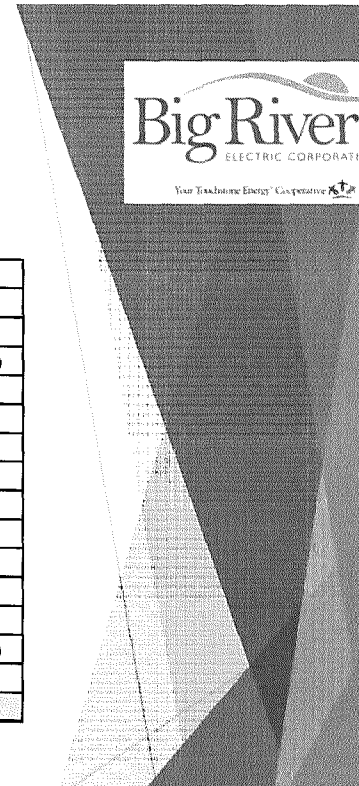
<b>A</b>	Market Price of Power (\$/MWh)	\$50
	Century Load (MW)	482
	Hours per Day	24
	<b>Total Daily Cost of Power for Century Load (\$)</b>	<b>\$578,400</b>
<b>B</b>	Coleman Generating Cost (\$/MW)	\$37
	Coleman Generation Output (MW)	443
	Hours Per Day	24
	<b>Total Operating Cost of Coleman (\$)</b>	<b>\$393,384</b>
<b>C</b>	Coleman Generation Revenue (\$/MWh)	\$50
	Coleman Generation Output (MW)	443
	Hours Per Day	24
	<b>Total Daily Revenue Credited to Century (\$)</b>	<b>\$531,600</b>
	<b>Net Daily Cost to Century (\$)</b>	<b>\$440,184</b>

(Lines A + B minus C)

**Assumes a \$100 per MWh Market Price**

<b>A</b>	Market Price of Power (\$/MWh)	\$100
	Century Load (MW)	482
	Hours per Day	24
	<b>Total Daily Cost of Power for Century Load (\$)</b>	<b>\$1,156,800</b>
<b>B</b>	Coleman Generating Cost (\$/MW)	\$37
	Coleman Generation Output (MW)	443
	Hours Per Day	24
	<b>Total Operating Cost of Coleman (\$)</b>	<b>\$393,384</b>
<b>C</b>	Coleman Generation Revenue (\$/MWh)	\$100
	Coleman Generation Output (MW)	443
	Hours Per Day	24
	<b>Total Daily Revenue Credited to Century (\$)</b>	<b>\$1,063,200</b>
	<b>Net Daily Cost to Century (\$)</b>	<b>\$486,984</b>

(Lines A + B minus C)





# QUESTIONS & COMMENTS

