

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC

ATTORNEYS AT LAW

Ronald M. Sullivan  
Jesse T. Mountjoy  
Frank Stainback  
James M. Miller  
Michael A. Fiorella  
William R. Dexter  
Allen W. Holbrook  
R. Michael Sullivan  
P. Marcum Willis  
Bryan R. Reynolds  
Mark G. Luckett  
Tyson A. Kamuf  
Mark W. Starnes

January 13, 2005

**Via Federal Express**

Ms. Elizabeth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard, P.O. Box 615  
Frankfort, Kentucky 40602-0615

Case 2005-00029

RECEIVED

JAN 14 2005

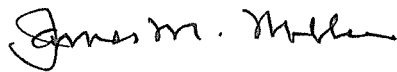
PUBLIC SERVICE  
COMMISSION

Re: In the matter of: The Application of Big Rivers Electric Corporation, LG&E Energy Marketing Inc., Western Kentucky Energy Corp., WKE Station Two Inc., and WKE Corp. for Approval of Amendments to Transaction Documents

Dear Ms. O'Donnell:

Enclosed are an original and ten copies of the application of Big Rivers Electric Corporation, LG&E Energy Marketing Inc., Western Kentucky Energy Corp., WKE Station Two Inc., and WKE Corp. in the above referenced matter. This application seeks Public Service Commission approval for minor amendments to the Big Rivers - LG&E 1998 transaction documents to recognize name changes that flow from the 2003 reorganization of Alcan Aluminum Corporation. Please feel free to contact me with any questions.

Sincerely yours, .



James M. Miller

JMM/ej  
Enclosures

cc: David Spainhoward  
Patrick Northam, Esq.

Telephone (270) 926-4000  
Telecopier (270) 683-6694

100 St. Ann Building  
PO Box 727  
Owensboro, Kentucky  
42302-0727

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

**RECEIVED**

JAN 14 2005

PUBLIC SERVICE  
COMMISSION

**In the Matter of:**

**Application of Big Rivers Electric Corporation, )**  
**LG&E Energy Marketing Inc., Western Kentucky )**  
**Energy Corp., WKE Station Two Inc., and WKE )**  
**Corp. for Approval of Amendments to )**  
**Transaction Documents )**

**CASE NO.** 2005-00029

**APPLICATION**

Big Rivers Electric Corporation (“Big Rivers”), LG&E Energy Marketing, Inc. (“LEM”), Western Kentucky Energy Corp. (“WKEC”), WKE Station Two Inc. (“Station Two Subsidiary”), and WKE Corp. hereby request approval by the Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR 5:001, Section 8, of proposed amendments to agreements between Big Rivers and affiliates of LG&E Energy LLC (“LG&E Energy”) that were originally approved by the Commission in Case Nos. 97-204 and 98-267 (the “Transaction Documents”). The proposed amendments, and the reasons for those amendments are described in a letter agreement attached hereto and incorporated herein as Appendix A (“Letter Agreement”). Briefly stated, the amendments recognize, for purposes of the Transaction Documents, that (1) Alcan Aluminum Corporation (“Alcan Aluminum”) has reorganized under Texas law into Alcan Corporation and three wholly-owned subsidiary corporations: Alcan Primary Products Corporation (“Alcan Primary), Alcan Products Corporation, and Alcan Fabrication Corporation; and that (2) all of Alcan Corporation’s rights, title, interests, and obligations (as successor of Alcan Aluminum) under and pursuant to the Transaction Documents (including all of Alcan Corporation’s rights, title, and interests in the aluminum production plant

and related facilities and operations formerly owned by Alcan Aluminum and located at or near Sebree, Kentucky) are assigned and transferred to Alcan Primary.

In support of this Application, Big Rivers, LEM, WKEC, Station Two Subsidiary, and WKE Corp. state as follows:

1. Big Rivers' full name is Big Rivers Electric Corporation. Big Rivers is a rural electric cooperative organized under KRS Chapter 279. The post office address of Big Rivers is Post Office Box 24, 201 Third Street, Henderson, Kentucky 42420. A certified copy of the Big Rivers' Articles of Incorporation was attached as Exhibit 1 to the Application of Big Rivers in *In the Matter of: The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction*, Case No. 97-204 and is incorporated herein.

2. The Applicants, WKEC, Station Two Subsidiary, LEM and WKE Corp., are subsidiaries or affiliates of LG&E Energy, and are collectively referred to herein as the "LG&E Affiliates."

3. The common mailing address of all LG&E Affiliates, except WKEC, is P.O. Box 32010, 220 West Main Street, Louisville, Kentucky 40232. The mailing address of WKEC is 145 North Main Street, P. O. Box 1518, Henderson, KY 42419-1518. None of the LG&E Affiliates is subject to the jurisdiction of the Commission. They join in this application solely because they were parties to the applications in PSC Case Nos. 97-204 and 98-267, in which they were co-applicants with Big Rivers in seeking the approvals required by both Big Rivers and the LG&E Affiliates to implement the LG&E Transaction. The LG&E Affiliates therefore request, with the support of Big Rivers, a deviation pursuant to 807 KAR 5:001, Section 14, from any

other filing requirements that might otherwise apply in this matter to an applicant for relief from the Commission.

4. Big Rivers owns generating assets, and purchases, transmits and sells electricity at wholesale. Its principal purpose is to provide the wholesale electricity requirements of its three distribution cooperative members (“Distribution Cooperatives”): Kenergy Corp. (“Kenergy”), Meade County Rural Electric Cooperative Corporation (“Meade County”), and Jackson Purchase Energy Corp. (“Jackson Purchase”). The Distribution Cooperatives in turn provide retail electric service to approximately 101,000 consumer/members located in 22 Western Kentucky Counties, to wit: Ballard, Breckenridge, Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson, Hancock, Hardin, Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Meade, Muhlenberg, Ohio, Union and Webster.

5. Big Rivers leases its generating assets and certain other assets to, and has entered into related transactions with the LG&E Affiliates. That transaction, as the Commission well knows, implemented Big Rivers’ plan of reorganization under Chapter 11 of the United States Bankruptcy Code in *In Re: Big Rivers Electric Corporation*, Debtor, United States Bankruptcy Court for the Western District of Kentucky, Owensboro Division, Case No. 96-41168 (the “LG&E Transaction”). As noted above, the LG&E Transaction was approved by the Commission in orders entered in Case Nos. 97-204 and 98-267. That plan of reorganization was consummated and the LG&E Transaction was closed effective July 15, 1998. Big Rivers and the LG&E Affiliates have been operating under the terms of the LG&E Transaction and the Transaction Documents since that date.

6. The Transaction Documents which will be amended were originally approved by the Commission in Case Nos. 97-204 and 98-267. The Commission has previously stated that an

amendment to those Commission-approved documents requires Commission approval. *See In the Matter of: Big Rivers Electric Corporation's Application for Approval of a Leveraged Lease of Three Generating Units*, Case No. 99-450, Order of November 24, 1999, page 10, and *In the Matter of: Joint Application of Powergen Plc, LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company for Approval of a Merger*, Case No. 2000-095, Order of May 15, 2000, Appendix A, "Other Commitments and Assurances," paragraph 5.

#### **Statement of Purpose**

7. The purpose of this application is to obtain an order from the Commission approving the proposed amendments to the Transaction Documents that are set out in the Letter Agreement.

#### **Description of the Terms of the Letter Agreement**

8. The Letter Agreement makes two principal changes to the Transaction Documents. First, the definition of "Alcan" in the Transaction Documents is amended to mean "Alcan Aluminum Corporation, Alcan Primary Products Corporation and their respective successors and assigns." An excerpt of the definition of "Alcan" from Exhibit X to the New Participation Agreement is attached hereto as Appendix B. Second, in order to clarify the meaning of "certain customers" and to conform that meaning to the original understanding of the parties, the definition of "Smelters" in Section 6.5.1 of the Transmission Service and Interconnection Agreement ("Transmission Agreement"), one of the Transaction Documents, is amended so that "certain customers" shall be deemed to be a reference to "Alcan" and "Southwire," each as defined in the New Participation Agreement, and any other references in the Transmission Agreement to the "Smelters" shall be deemed to mean the "Smelters" as defined in the New Participation Agreement (as so amended). An excerpt of that section of the

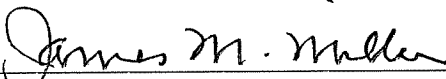
Transmission Agreement is attached hereto as Appendix C. The proposed Letter Agreement has no substantive effect on the existing rights of the parties to the Transaction Documents.

9. This application and the relief requested are similar in most respects with the application made by the parties in *In the Matter of: Application of Big Rivers Electric Corporation, LG&E Energy Marketing Inc., Western Kentucky Energy Corp., WKE Station Two Inc., and WKE Corp. for Approval of Amendments to Transaction Documents*, Case No. 2001-305. In that case, the parties sought approval of a similar letter agreement that made amendments of a similar nature to the Transaction Documents to reflect the addition of Century Aluminum Company as a party to the Southwire Company smelter contract.

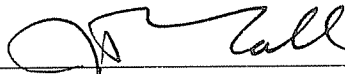
**WHEREFORE**, Big Rivers Electric Corporation, LG&E Energy Marketing, Inc., Western Kentucky Energy Corp., WKE Station Two Inc., and WKE Corp. respectfully request that the Commission issue an order granting the following relief:

- a. Approval of the amendments to the Transaction Documents that are detailed in the Letter Agreement;
- b. Approval for Big Rivers and the LG&E Affiliates to deviate from the Commission's regulations regarding this application as set out above; and
- c. All other relief to which the Applicants may appear entitled.

This the 13<sup>th</sup> day of January, 2005.

  
SULLIVAN, MOUNTJOY, STAINBACK  
& MILLER, P.S.C.  
James M. Miller  
100 St. Ann Building, P. O. Box 727  
Owensboro, Kentucky 42302-0727  
(270) 926-4000

ATTORNEYS FOR BIG RIVERS  
ELECTRIC CORPORATION



---

John R. McCall  
Executive Vice President, General Counsel  
and Corporate Secretary  
LG&E Energy LLC  
220 West Main Street  
P.O. Box 32010  
Louisville, KY 40232  
(502) 627-3665

ATTORNEY FOR WESTERN KENTUCKY  
ENERGY CORP., WKE STATION TWO INC.,  
LG&E ENERGY MARKETING INC., AND WKE  
CORP.

July 18, 2003

Big Rivers Electric Corporation  
201 Third Street  
P.O. Box 24  
Henderson, KY 42419-0024  
Attn: Michael Core  
President and CEO

RE: Proposed Mergers Involving Alcan Aluminum Corporation and its Affiliates

Gentlemen:

Reference is made to (a) the New Participation Agreement, dated as of April 6, 1998, as amended, among Big Rivers Electric Corporation ("Big Rivers"), LG&E Energy Marketing Inc. ("LEM"), Western Kentucky Energy Corp. ("WKEC") and WKE Station Two Inc. ("Station Two Subsidiary") (the "New Participation Agreement"), (b) the Lease and Operating Agreement, dated as of July 15, 1998, as amended, between Big Rivers and WKEC (the "Lease"), (c) the Power Purchase Agreement, dated as of July 15, 1998, as amended, between LEM and Big Rivers (the "Power Purchase Agreement"), and (d) the Transmission Service and Interconnection Agreement, dated as of July 15, 1998, as amended, among Big Rivers, LEM, WKEC, and Station Two Subsidiary (the "Transmission Agreement"). Capitalized terms used but not defined in this letter agreement shall have their same respective meanings as in the New Participation Agreement.

As you know, Alcan Aluminum Corporation ("Alcan") and its parent company, Alcan, Inc., intend to effect a certain two-step restructuring transaction whereby:

(a) Alcan will be merged with and into Alcan Corporation, a newly-formed Texas corporation that is wholly-owned by Alcan, Inc., in accordance with Texas and Ohio law, with Alcan Corporation being the surviving corporation in that merger; and

(b) Alcan Corporation will thereafter merge with three separate, newly-formed and wholly-owned subsidiary corporations of Alcan Corporation by the names of Alcan Primary Products Corporation ("Alcan Primary"), Alcan Products Corporation and Alcan Fabrication Corporation, in accordance with Texas law, with Alcan Corporation and each of those subsidiary corporations surviving that merger, but with the effect that certain assets, properties and obligations of Alcan Corporation (as successor of Alcan) being assigned and transferred to those three subsidiary corporations.

Included in the assets, properties and obligations of Alcan Corporation being assigned and transferred to Alcan Primary pursuant to the second-step merger transaction described above (among other assets, properties and obligations) are all of Alcan Corporation's rights, title, interests and obligations (as successor of Alcan) under and pursuant to the following agreements and instruments (collectively, the "Assigned Agreements"):



- (i) the Agreement for Electric Service, dated as of July 15, 1998, as amended, between Alcan Corporation and Kenergy Corp. (as successor by merger of Henderson Union Electric Cooperative Corp.) (the "Alcan Power Agreement");
- (ii) the Assurances Agreement, dated as of July 15, 1998, as amended, between Alcan Corporation and LEM (the "Assurances Agreement");
- (iii) the Security and Lock Box Agreement, dated as of July 15, 1998, among Alcan Corporation, Kenergy, LEM and PNC Bank, N.A.;
- (iv) the Systems Disturbance Agreement, dated as of July 15, 1998, among Big Rivers Electric Corporation, Station Two Subsidiary, WKEC, Kenergy, Alcan Corporation, Southwire Company and Century Aluminum Company;
- (v) the Load Management Agreement for Electric Power Supply, dated as of July 15, 1998, between LEM and Alcan Corporation;
- (vi) the Indemnification and Assignment Agreement, dated as of July 15, 1998, between Kenergy and Alcan Corporation; and
- (vii) the Agreement with Respect to Procedures Regarding Big Rivers' Transmission System, dated as of July 15, 1998, between Kenergy and Alcan Corporation.

Also included in the assets and properties of Alcan Corporation being assigned and transferred to Alcan Primary pursuant to the second-step merger transaction described above (among other assets, properties and obligations) are all of Alcan Corporation's rights, title and interests (as successor of Alcan) in and to the aluminum production plant and related facilities and operations formerly owned by Alcan and located at or near Sebree, Kentucky.

This letter will serve as the written acknowledgment and agreement of Big Rivers, LEM, WKEC, Station Two Subsidiary and WKE Corp. that from and after the completion of the above-described merger transactions among Alcan, Alcan Corporation and its three wholly-owned subsidiary corporations, including Alcan Primary (the "Closing"), any references in any Operative Document to "Alcan" shall have the meaning set forth below, and the relevant Operative Documents (including the definitions of other capitalized terms used therein which are based, in whole or in part, on the definition of "Alcan") are hereby amended accordingly:

**"Alcan"** shall mean Alcan Aluminum Corporation, Alcan Primary Products Corporation and their respective successors and assigns, and/or such other Persons (whether or not Affiliates of any of the foregoing) as may now or hereafter own or hold, directly or indirectly, any right, title, interest or obligation under, in or to

(a) the Alcan Power Agreement, any portion thereof or any successor contract thereto, or (b) the aluminum production plant and related facilities and operations formerly owned by Alcan Aluminum Corporation at the existing site at or near Sebree, Kentucky as of April 6, 1998 (or any portions thereof), and any expansions, additions, improvements and replacements thereof or thereto at or within two miles of those facilities, but exclusive of acquisitions of other existing aluminum production plants and related facilities.

Section 6.5.1 of the Transmission Agreement generally defines "the Smelters" as "certain customers of" a distribution cooperative that is now Kenergy Corp. To avoid any doubt about whether that language changes the definition of Smelters used elsewhere in the Operative Documents, Big Rivers, WKE, LEM and Station Two Subsidiary desire to confirm their original understanding that those "certain customers" of Kenergy Corp. are in fact Alcan and Southwire. To that end those parties agree that from and after the Closing, the reference in Section 6.5.1 of the Transmission Agreement to "certain customers of said Cooperative ("the Smelters")" shall be deemed to be a reference to "Alcan" and "Southwire", each as defined in the New Participation Agreement (as previously amended and as amended by this letter agreement), and any other references in the Transmission Agreement to "the Smelters" shall be deemed to mean the "Smelters" as defined in the New Participation Agreement (as so amended).

The parties to this letter agreement acknowledge that, in light of the amendments to the Operative Documents to be effected hereby, this letter agreement must be approved by the Kentucky Public Service Commission. Each party hereto agrees to use its commercially reasonable efforts to obtain such approval from the Kentucky Public Service Commission as soon after the date hereof as is reasonably practicable, agrees to reasonably cooperate with the other parties hereto in their efforts to obtain such approval, and agrees that it shall not take any position before the Kentucky Public Service Commission that such approval should be denied, conditioned or delayed in any respect.

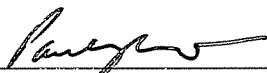
The amendments contemplated in this letter shall have no substantive effect on the parties' respective obligations under the Operative Documents beyond the express updating of the definitions of "Alcan" and the "Smelters" contemplated herein. Except as amended or modified by this letter agreement, the Operative Documents shall continue in force and effect from and after the date hereof in accordance with their respective terms. If the foregoing is consistent with your agreement, please execute a copy of this letter agreement in the space provided below and return it to the undersigned.

Big Rivers Electric Corporation  
July 18, 2003  
Page 4

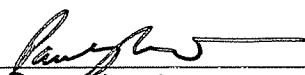
Thank you for your cooperation.

Sincerely yours,


**LG&E ENERGY MARKETING INC.**

By   
Title svp

**WESTERN KENTUCKY ENERGY CORP.**

By   
Title President

**WKE STATION TWO INC.**

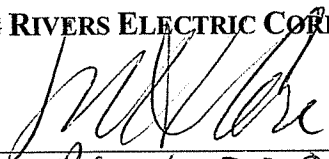
By   
Title President

**WKE CORP.**

By   
Title President

**ACKNOWLEDGED AND AGREED TO:**

**BIG RIVERS ELECTRIC CORPORATION**

By   
Title Pres & CEO

**EXHIBIT X**  
**Definitions**

1. **Accounting Practices.** "*Accounting Practices*" means generally accepted accounting principles applied by companies required to report accounts in accordance with the FERC Uniform System of Accounts, except that the accounting for Capital Assets shall be based on the RUS Uniform System of Accounts Bulletin 1767B, as such Bulletin may be amended, modified or replaced from time to time (but subject to the Capitalization Guidelines).
2. **Actual Environmental O&M.** "*Actual Environmental O&M*" shall have the meaning ascribed thereto (a) during Phase I in Section 5 of the Cost Sharing Agreement and (b) during Phase II in Section 2.3.3 of the Lease.
3. **Affiliate.** "*Affiliate*" of any designated Person means any Person that has a relationship with the designated Person whereby either of such Persons directly or indirectly controls, is controlled by, or is under common control with the other, or holds or beneficially owns 5 percent or more of the equity interest in the other or 5 percent or more of any class of voting securities of the other. For this purpose, the term "control" means the power, direct or indirect, of one Person to direct or cause the direction of the management or policies of another, whether by contract, through voting securities or otherwise.
4. **Alcan.** "*Alcan*" means Alcan Aluminum Corporation, its successors or assigns, or such other Person as succeeds to its interest in the aluminum production plant and related facilities and operations located at the existing site at or near Sebree, Kentucky, and any expansions, additions, improvements or replacements thereof or thereto at or within two miles of those facilities, but exclusive of acquisitions of existing aluminum production plants and related facilities.
5. **Ancillary Services.** "*Ancillary Services*" has the meaning set forth in Section 1.1 of Big Rivers' Open Access Transmission Service Tariff.
6. **Annual Capital Budget.** "*Annual Capital Budget*" shall mean the annual capital budget for the Assets approved (a) during Phase I by the Oversight Committee in accordance with Sections 6.1 and 6.2 of the Cost Sharing Agreement and (b) during Phase II by the Operating Committee in accordance with Section 7.3 of the Lease.
7. **Annual Deficiency.** "*Annual Deficiency*" means, with respect to any Year, the Minimum Annual Power Purchase Amount for that Year less the amount of megawatt-hours of Base Power purchased by Big Rivers during that Year, if such sum is positive.
8. **Annual Fixed Payment.** "*Annual Fixed Payment*" means an amount paid by LEM to Big Rivers pursuant to the Unit Power Sales Agreement (Section 3 of the

**CONFIDENTIAL PROTECTED MATERIAL  
SUBJECT TO COURT ORDER**

TRANSMISSION SERVICE AND INTERCONNECTION AGREEMENT

6.4 Provision of Transmission-Based Ancillary Services by Big Rivers to the Transmission Customer. Big Rivers shall be required to provide the following transmission-based Ancillary Services to the Transmission Customer: transmission scheduling, system control, and reactive supply and voltage control as available from the Transmission System within the capability of the system at the time service is provided (provided that Big Rivers has no responsibility to install additional capability). The costs of these transmission-based Ancillary Services provided by Big Rivers to the Transmission Customer are included in the cost of transmission services embodied in the Tariff rate schedules.

6.5 Member Transmission.

6.5.1. Big Rivers acknowledges and agrees as follows: In order to aid Big Rivers in obtaining certain approvals of the Kentucky Public Service Commission ("KPSC") as required for Big Rivers to pursue a plan of reorganization that will allow it to emerge from bankruptcy, LEM has undertaken the obligation to provide to Henderson Union Electric Cooperative Corp. ("Henderson Union") and Green River Electric Corporation ("Green River Electric," together with Henderson Union, the "Cooperatives") electric energy in certain specified quantities for resale to certain customers of said Cooperative ("the

**CONFIDENTIAL PROTECTED MATERIAL  
SUBJECT TO COURT ORDER**

TRANSMISSION SERVICE AND INTERCONNECTION AGREEMENT

Smelters") to be delivered to specified points of interconnection between such Cooperative and Big Rivers at fixed prices. Those obligations are set forth in agreements hereinafter referred to as the LEM/Henderson Union Agreement and the LEM/Green River Electric Agreement. In conjunction with LEM's obligation to provide such electric energy to the Cooperatives, LEM may contract with Big Rivers for transmission service, either point-to-point service or network service, under Big Rivers' Tariff as reasonably necessary to meet its obligations to deliver energy pursuant to the LEM/Green River Electric Agreement or the LEM/Henderson Union Agreement. The obligation to sell to the Cooperatives electric energy delivered to specified points of interconnection between such Cooperative and Big Rivers, including the fixed price commitment, was previously the obligation of Big Rivers, and Big Rivers expected to purchase power from LEM to meet such commitment. In conjunction with Big Rivers' restructuring under the jurisdiction of the U.S. Bankruptcy Court for the Western District of Kentucky, and LEM's undertaking of the obligation to sell energy directly to the Cooperatives, LEM and Big Rivers agreed pursuant to the Lease and Operating Agreement and the Power Purchase Agreement, that WKEC and LEM, respectively, will pay to the Administrator of the Rural Utilities Service, U.S. Department of Agriculture or any

**CONFIDENTIAL PROTECTED MATERIAL  
SUBJECT TO COURT ORDER**

TRANSMISSION SERVICE AND INTERCONNECTION AGREEMENT

successor agency or administration (on behalf of Big Rivers) or to Big Rivers certain "Monthly Margin Payments" which in the aggregate are roughly equivalent to the amount of revenue Big Rivers expected to receive from sales to the Cooperatives pursuant to the fixed price commitment less the price at which Big Rivers would have purchased power from LEM for such purpose. In consideration for the Monthly Margin Payments and LEM's assistance in attempting to secure the approval of the KPSC for Big Rivers' reorganization, Big Rivers agrees to the provisions of this Section 6.5.

6.5.2. The Parties agree that LEM will be entitled to reserve network transmission service on Big Rivers' Transmission System for 572 MW of Tier 1 Energy and Tier 2 Energy to be sold to the Cooperatives pursuant to the LEM/Green River Electric Agreement and the LEM/Henderson Union Agreement (where Tier 1 Energy and Tier 2 Energy have the meanings set forth in the LEM/Green River Electric Agreement and the LEM/Henderson Union Agreement) and 300 MW of non-firm point-to-point transmission service (with receipt and delivery points to be specified upon the Effective Date of the Tariff and annually thereafter subject to their availability in Big Rivers' Open Access Same-Time Information System ("OASIS") at each such time); provided however that (i) at any point in time, LEM will not use the