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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

RECEIVED

DEC 28 2007

PUBLIC SERVICE
COMMISSION

In the Matter of:

THE APPLICATIONS OF BIG RIVERS)
ELECTRIC CORPORATION FOR:)
(I) APPROVAL OF WHOLESALE TARIFF)
ADDITIONS FOR BIG RIVERS ELECTRIC)
CORPORATION, (II) APPROVAL OF)
TRANSACTIONS, (III) APPROVAL TO ISSUE)
EVIDENCES OF INDEBTEDNESS, AND)
(IV) APPROVAL OF AMENDMENTS TO)
CONTRACTS; AND)

CASE NO. 2007-00455

E.ON U.S., LLC, WESTERN KENTUCKY ENERGY)
CORP. AND LG&E ENERGY MARKETING,)
INC. FOR APPROVAL OF TRANSACTIONS)

EXHIBIT 3

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December 2007

Transaction
Termination Agreement

TRANSACTION TERMINATION AGREEMENT

DATED AS OF MARCH 26, 2007

AMONG

BIG RIVERS ELECTRIC CORPORATION,

LG&E ENERGY MARKETING INC.

AND

WESTERN KENTUCKY ENERGY CORP.

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TRANSACTION TERMINATION AGREEMENT, dated as of March 26, 2007 (this "*Termination Agreement*"), among BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric generation and transmission cooperative ("*Big Rivers*"), LG&E ENERGY MARKETING INC., an Oklahoma corporation ("*LEM*"), and WESTERN KENTUCKY ENERGY CORP., a Kentucky corporation and the successor by merger of Western Kentucky Leasing Corp., Station Two Subsidiary and WKE ("*WKEC*"), and together with LEM, the "*WKE Parties*").

RECITALS:

A. Big Rivers owns certain electric generating plants in the Commonwealth of Kentucky, including the three unit Plant Coleman, the two unit Plant Green, the one unit Plant Wilson and Plant Reid.

B. Prior to the effectiveness of the Plan of Reorganization (defined below), Big Rivers operated a two unit electric Generating Plant owned by the City of Henderson, Kentucky (the "*City*"), and purchased a certain portion of the output of such facility.

C. In accordance with the First Amended Plan of Reorganization in Big River's bankruptcy proceeding, as modified and restated on June 9, 1997 (as so modified, the "*Plan of Reorganization*"), Big Rivers, LEM, Western Kentucky Leasing Corp., Station Two Subsidiary and WKEC entered into the Original Participation Agreement, which was subsequently superseded by the New Participation Agreement, dated April 6, 1998, as amended, among LEM, Western Kentucky Leasing Corp., Station Two Subsidiary, WKEC and Big Rivers (the "*Participation Agreement*").

D. In accordance with the Plan of Reorganization, the Participation Agreement and the "Operative Documents" contemplated in the Participation Agreement, among other transactions:

1. Big Rivers leased the Generating Plants owned by it, including the real estate upon which such Generating Plants are situated, to WKEC pursuant to the Lease,
2. Big Rivers and LEM entered into the Power Purchase Agreement having a term coextensive with the term of the Lease, under which LEM sells to Big Rivers certain quantities of power and energy,
3. Big Rivers, Station Two Subsidiary, LEM and WKEC entered into the Transmission Services and Interconnection Agreement, having a term coextensive with the term of the Lease, under which Big Rivers provides certain transmission services to LEM and WKEC,
4. Big Rivers executed and delivered the Mortgage and Security Agreements, and

5. Big Rivers executed and delivered
 - a. the Settlement Promissory Note and
 - b. the Promissory Note (LEM Advances).

E. In connection with and at or near the time of entering into the transactions contemplated by the Participation Agreement, Big Rivers and one or more of the WKE Parties (among other parties) entered into the following documents (among others):

1. Software License Agreement,
2. Lease and Option Agreement (Central Lab),
3. Transformer Operation and Maintenance Agreement,
4. Meter and Telemetry Equipment Operation and Maintenance Agreement,
5. Generation Dispatching Services Agreement,
6. Telecommunications Agreement,
7. System Disturbance Agreement (1998),
8. Assignment and Assumption Agreement,
9. Designated Representative/Alternate Designated Representative Appointment Agreement (Dewey),
10. Baseline Study Agreement,
11. Agreement for Professional and Environmental Services,
12. Economic Development Agreement,
13. Interim Wholesale Marketing Assistance Agreement, and
14. Short Form Lease.

F. In connection with the consummation of the transactions contemplated by the Participation Agreement, Big Rivers conveyed to certain of the WKE Parties all of its right, title and interest in certain inventories of fuel, scrubber reagent, spare parts, materials and supplies held for use in connection with the operation of the Generating Plants.

G. In connection with the consummation of the transactions contemplated by the Participation Agreement, Big Rivers conveyed to certain of the WKE Parties all of its

right, title and interest in certain personal property used or held at that time exclusively for use in connection with the operation of the Generating Plants.

H. In connection with the transactions contemplated by the Participation Agreement, Big Rivers assigned to certain of the WKE Parties all of its right, title and interest in certain contracts relating to the operation, maintenance and repair of the Generating Plants, including contracts relating to fuel, scrubber reagent, spare parts and outside services.

I. In connection with the consummation of the transactions contemplated by the Participation Agreement, Big Rivers assigned to certain of the WKE Parties its interest as lessee under certain equipment leases of personal property used in connection with the operation, maintenance or repair of the Generating Plants.

J. In connection with the consummation of the transactions contemplated by the Participation Agreement, Big Rivers assigned to certain of the WKE Parties all of its rights in certain intellectual property used in connection with the operation, maintenance or repair of the Generating Plants.

K. In connection with the transactions contemplated by the Participation Agreement, Big Rivers assigned to certain of the WKE Parties certain permits, licenses, authorizations and allowances relating to the Generating Plants or to emissions from the Generating Plants, issued by Governmental Entities in respect of such Generating Plants.

L. In connection with the transactions contemplated by the Participation Agreement, Big Rivers, the City, the City Utility Commission, Station Two Subsidiary, LEM and WKEC entered into the Station Two Agreement, pursuant to which, *inter alia*, Station Two Subsidiary was assigned certain rights and assumed certain obligations previously held or owed by Big Rivers with respect to the use and operation of Station Two, and with respect to the power and energy generated by Station Two (certain of which rights and obligations were subsequently assigned by Station Two Subsidiary to LEM).

M. In connection with the transactions contemplated by the Participation Agreement and the Station Two Agreement, Big Rivers and one or more of the WKE Parties (among other parties) entered into the following agreements (among others):

1. Station Two G&A Allocation Agreement,
2. Agreement with Respect to Operating Reserves,
3. Station Two Assignment and Assumption Agreement,
4. Deed of Easement and Right-of-Way (Big Rivers),
5. Deed of Easement and Right-of-Way (City),
6. Station Two Acknowledgement and Consent,

7. Designated Representative/Alternate Designated Representative Appointment Agreement (Station Two), and
8. Deed of Easement (Reid Station).

N. In connection with the transactions contemplated by the Participation Agreement and the Station Two Agreement, the City and WKEC entered into the Supplementary Allowances Agreement.

O. In connection with the transactions contemplated by the Participation Agreement, LEM assumed responsibility for providing certain quantities of wholesale electric power to certain distribution cooperative members of Big Rivers in order to serve the needs of certain aluminum smelters located within the service territories of such distribution cooperatives.

P. In connection with the replacement by LEM of Big Rivers as the wholesale power supplier to service the smelters' requirements described in paragraph O above, the following documents were entered into by one or more of the WKE Parties and/or LG&E Energy Corp., or by one or more third parties in favor of one or more WKE Parties (among other documents):

1. Henderson Union Agreement for Electric Service,
2. Green River Agreement for Electric Service,
3. Agreement for Tier 3 Electric Service (2001-2002),
4. Agreement for Tier 3 Electric Service (2001-2005),
5. Century Security and Lock Box Agreement,
6. Alcan Security and Lock Box Agreement,
7. Century Assurances Agreement,
8. Special Assignment Agreement,
9. Consent and Agreement (2005),
10. Assumption and Consent Agreement,
11. Alcan Assurances Agreement,
12. Systems Disturbance Agreement (1998),
13. Century Load Management Agreement,
14. Alcan Load Management Agreement,

15. Systems Disturbance Agreement (2001),
16. Green River Guaranty,
17. Henderson Union Guaranty,
18. Century Guaranty, and
19. Alcan Guaranty.

Q. Subsequent to the consummation of the transactions contemplated by the Participation Agreement, Big Rivers and LEM or WKEC entered into the following documents (among others):

1. Settlement and Release Agreement,
2. Operating Assumptions and Practices Agreement,
3. October 20, 2003 Letter Agreement,
4. Agreement for Settlement and Release of Claims, and
5. NOx Compliance Letter.

R. Prior to the date hereof, Western Kentucky Leasing Corp., Station Two Subsidiary and WKE were merged with and into WKEC, with WKEC being the surviving corporation in such mergers, and LEM assigned and transferred to WKEC certain of the agreements and instruments referenced above in these Recitals.

S. Big Rivers and the WKE Parties have concluded that it is in their mutual best interest to terminate the property interests and contractual relationships created by the Operative Documents and the other transactions contemplated by the Plan of Reorganization and/or the Participation Agreement, including, but not limited to, the agreements and instruments described in the preceding clauses of the Recitals of this Termination Agreement (but subject to certain reservations of rights more particularly described in this Termination Agreement, in the Exhibits hereto or in the other Definitive Documents), upon the terms and subject to the conditions set forth in this Termination Agreement and the other agreements and instruments contemplated herein as to be executed and delivered in connection herewith.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth below, the WKE Parties and Big Rivers agree as follows:

ARTICLE 1

DEFINITIONS

Capitalized terms used in this Termination Agreement (including the Recitals) and not otherwise defined herein shall have the meanings set forth in Exhibit A to this Termination Agreement. References in this Termination Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Termination Agreement unless otherwise indicated. The rules of interpretation set forth in Exhibit A to this Termination Agreement shall apply to this Termination Agreement and to the other Definitive Documentation.

ARTICLE 2

UNWIND CLOSING DATE; CLOSING

Section 2.1 Setting of Scheduled Unwind Closing Date. The WKE Parties and Big Rivers shall mutually agree in writing upon a date, based on the facts and circumstances known at the time, that all conditions precedent to the Closing set forth in Article 10 will be likely to have been satisfied or waived and the Closing will likely occur (the "*Scheduled Unwind Closing Date*"); provided that the establishment of that mutually agreed date shall not itself be a condition precedent to the Closing. The Scheduled Unwind Closing Date shall be a Business Day occurring not earlier than four (4) months after the date the WKE Parties and Big Rivers agree upon such Scheduled Unwind Closing Date. The WKE Parties and Big Rivers recognize that facts and circumstances occurring subsequent to the date at which the Parties establish the Scheduled Unwind Closing Date may result in the Closing occurring on a Business Day prior to, or subsequent to, the date established as the Scheduled Unwind Closing Date. Nonetheless, for all purposes of the provisions of this Termination Agreement and the other Definitive Documents which reference the Scheduled Unwind Closing Date, the Scheduled Unwind Closing Date shall mean the Scheduled Unwind Closing Date established by agreement of the Parties in accordance with this Section 2.1, unless the WKE Parties and Big Rivers shall mutually agree in writing upon a revision of the Scheduled Unwind Closing Date.

Section 2.2 Occurrence of Closing. The closing of the transactions contemplated by this Termination Agreement (the "*Closing*") shall occur on the second (2nd) Business Day following such time, prior to the termination of this Termination Agreement in accordance with its terms, when (i) all conditions to Closing set forth in Section 10.1 and Section 10.2 are either satisfied or waived by the WKE Parties and (ii) all conditions to Closing set forth in Section 10.1 and Section 10.3 are either satisfied or waived by Big Rivers. Big Rivers agrees to use its reasonable best efforts (x) to cause the conditions to Closing set forth in Section 10.2 that are within its reasonable control to be satisfied or waived by the WKE Parties and (y) to cause the Closing to occur. Each of the WKE Parties agrees to use its reasonable best efforts (1) to cause the conditions to

Closing set forth in Section 10.3 that are within its reasonable control to be either satisfied or waived by Big Rivers and (2) to cause the Closing to occur. In no event shall the Closing occur on a date earlier than the Scheduled Unwind Closing Date without the written consent of Big Rivers.

Section 2.3 The Closing. The Closing shall take place at the offices of Orrick, Herrington & Sutcliffe LLP, 666 Fifth Avenue, New York, New York 10103, commencing at 10:00 a.m. local time on the date when all requirements set forth in the first and last sentences of Section 2.2 have been met.

ARTICLE 3

ACTIONS AT THE CLOSING

Section 3.1 Actions Simultaneous. Notwithstanding the order of execution or delivery of the items identified in Section 3.2 or any other Definitive Documents, if the Closing shall occur (i) the execution and delivery of all documents set forth in Section 3.2 and of all other Definitive Documents (other than this Termination Agreement, the E.ON Guaranty, the Cost-Share Agreements and the Confidentiality Agreement), (ii) the conveyance of all property interests contemplated by Section 3.2, (iii) the payment by WKEC of the Termination Payment, (iv) the payment of the amounts contemplated by Section 3.3(b) and Section 3.4, (v) the payment of the amounts contemplated by Section 3.5 as to be paid at the Closing, and (vi) the consummation of the other transactions contemplated in this Termination Agreement, shall be deemed to occur simultaneously, and shall not be deemed to have been completed until each of the steps and transactions set forth in this Article 3 or elsewhere in this Termination Agreement contemplated as to be completed at or before the Closing have been completed, or have been waived by the Party which is required to waive the same.

Section 3.2 Execution and Delivery of Documents at the Closing. At the Closing, the appropriate Parties or other Persons will execute and deliver the following documents and take the following actions:

(a) Termination and Release. Big Rivers, the WKE Parties and E.ON shall execute and deliver the Termination and Release in the form attached hereto as Exhibit B;

(b) Conveyance of Inventory. WKEC shall convey to Big Rivers, free and clear of all Liens created by, through or on behalf of, any WKE Party, all of WKEC's right, title and interest in and to the Inventory determined and valued in accordance with Article 4, by executing and delivering the Inventory Bill of Sale in the form attached hereto as Exhibit C;

(c) Conveyance of Personal Property. WKEC shall convey to Big Rivers, free and clear of all Liens created by, through or on behalf of, any WKE Party, all of WKEC's right, title and interest in and to the Personal Property determined and valued in accordance with Article 4 below, by executing and delivering the Personal Property Bill of Sale in the form attached hereto as Exhibit D;

(d) Assignment and Assumption of Contracts. Subject to the receipt of all consents or approvals that may be required for the same as contemplated in Section 5.2, and subject to the receipt of the relevant releases of WKEC from the other parties thereto as contemplated in Section 5.2 (or, with respect to any Assigned Contract, to the receipt of an Assigned Contract Indemnity from Big Rivers), WKEC shall assign to Big Rivers, free and clear of all Liens created by, through or on behalf of, any WKE Party, all of WKEC's right, title and interest in the Assigned Contracts identified in accordance with Article 5, and LCC, LLC, an Affiliate of WKEC, shall assign to Big Rivers, free and clear of all Liens, all of LCC, LLC's right, title and interest in the two Farm Lease and Security Agreements, each dated March 1st, 2006, between LCC, LLC and (i) Steve and Rona Ogle and (ii) Sean Taylor, respectively (both relating to the Hancock County parcel referred to in clause (e) below), and Big Rivers shall assume all of WKEC's and LCC, LLC's respective obligations under such Assigned Contracts and Farm Lease and Security Agreements, in each case by executing and delivering the Assignment and Assumption of Contracts in the form attached hereto as Exhibit E;

(e) Conveyance of Real Property. WKEC shall, or shall cause its relevant Affiliate to, convey to Big Rivers (i) all of WKEC's (or such Affiliate's) right, title and interest in the Real Property contemplated in the Deed attached hereto as Exhibit F-1 (the Central Lab parcel) free and clear of all Liens, rights of way or servitudes of any kind, created by, through or on behalf of, WKEC (or such Affiliate) (other than any Lien, right of way or servitude of any kind of record on the close of business on the day which is 5 Business Days prior to the Execution Date relating to rights of way, easements, licenses, other access rights or other rights of use that burden the Real Property), and (ii) all of WKEC's (or such Affiliate's) right, title and interest in the Real Property contemplated in the Deed attached hereto as Exhibit F-2 (the Hancock County parcel) free and clear of all Liens, rights of way or servitudes of any kind created by, through or on behalf of WKEC (or such Affiliate) (other than the unrecorded Farm Lease and Security Agreements referred to in clause (d) above, and other than any Lien, right of way or other servitude of any kind of record on the close of business on the day which is 5 Business Days prior to on the Execution Date relating to rights of way, easements, licenses, other access rights or other rights of use that burden the Real Property) for the aggregate purchase price provided for in Section 3.4, by executing and delivering the Deeds of Real Property in the forms attached hereto as Exhibits F-1 and F-2;

(f) Assignment and Licensing of Owned Intellectual Property. WKEC or an Affiliate of a WKE Party, as applicable, shall assign to Big Rivers, free and clear of all Liens created by, through or on behalf of, any WKE Party, all of WKEC's (or the

applicable Affiliate's, as the case may be) right, title and interest in and to the Owned Intellectual Property (Assigned) identified on Schedule 6.1, and Big Rivers shall accept such Owned Intellectual Property, in each case upon the terms and subject to the conditions of the agreement referred to in the following sentence. WKEC (or the applicable Affiliate) shall execute and deliver the Assignment of Owned Intellectual Property (Assigned) in the form attached hereto as Exhibit G-1. WKEC or an Affiliate of a WKE Party, as applicable, shall license to Big Rivers, free and clear of all Liens created by, through or on behalf of, any WKE Party or an Affiliate of a WKE Party, that would interfere in any way with the non-exclusive license rights for Big Rivers to use the Owned Intellectual Property (Licensed) identified on Schedule 6.2, WKEC's (or the applicable Affiliate's, as the case may be) right, title and interest in and to that Owned Intellectual Property (Licensed), and Big Rivers shall accept such license, in each case upon the terms and subject to the conditions of the license referred to in the following sentence. WKEC (or the applicable Affiliate) and Big Rivers shall execute and deliver the License of Owned Intellectual Property (Licensed) in the form attached hereto as Exhibit G-2.

(g) Assignment and Assumption of Permits. Subject to the receipt of all consents or approvals that may be required as contemplated in Section 7.2, WKEC shall assign or transfer to Big Rivers, free and clear of all Liens created by, through or on behalf of any WKE Party, WKEC's right, title and interest in and to the Permits identified in accordance with Article 7 which may be conveyed to Big Rivers as of the Closing, and Big Rivers shall assume all of WKEC's obligations under such Permits (and under Applicable Laws relating to such Permits) arising prior to the Effective Date or after the Closing, in each case by executing and delivering the Assignment and Assumption of Permits in the form attached hereto as Exhibit H;

(h) Conveyance of SO₂ Allowances and NO_x Allowances. WKEC shall convey to Big Rivers all of WKEC's right, title and interest in and to the Allowances which WKEC is obligated to convey to Big Rivers at the Closing pursuant to Article 8, and Big Rivers shall assume all obligations under Applicable Laws with respect to the ownership and use of those Allowances arising after the Closing, in each case by executing and delivering the Conveyance of Allowances in the form attached hereto as Exhibit I;

(i) Reserved;

(j) Alcan Termination and Release. Alcan, Alcan PPC, LEM, Kenergy and E.ON shall execute and deliver the Alcan Termination and Release in the form attached hereto as Exhibit K, with such changes to that form as shall be acceptable to LEM and E.ON in their sole discretion (the "*Alcan Termination and Release*");

(k) Century Termination and Release. Century, Century Kentucky, Hancock Aluminum LLC, NSA, Ltd., Century Aluminum of Kentucky General Partnership, Metalsco, LLC, Skyliner, LLC, Century Kentucky, Inc., Southwire Company, LEM, Kenergy and E.ON shall execute and deliver the Century Termination and Release in the form attached hereto as Exhibit L, with such changes to that form as shall be acceptable to LEM and E.ON in their sole discretion (the “*Century Termination and Release*”);

(l) Creditor Termination and Release. All parties to the Third Amended and Restated Subordination, Non-Disturbance, Attornment and Inter-Creditor Agreement dated as of August 1, 2001, as amended, among Big Rivers, the WKE Parties and certain other secured creditors of Big Rivers (including without limitation, RUS and the Economically Defeated Lease Parties) (the “*Existing Non-Disturbance Agreement*”), together with E.ON, shall execute and deliver a Creditor Termination and Release in form and substance satisfactory to those parties, thereby releasing and discharging the WKE Parties and E.ON from further obligation or liability under or pursuant to the Existing Non-Disturbance Agreement and under or pursuant to any Operative Document to which any such Big Rivers secured creditor is a party or beneficiary or in which such Big Rivers secured creditor holds a Lien (among other transactions) (the “*Creditor Termination and Release*”), and Big Rivers, certain of the parties to the Existing Non-Disturbance Agreement, and certain other parties shall amend and restate the Existing Non-Disturbance Agreement or, alternatively, execute and deliver a new intercreditor agreement (in form and substance reasonably satisfactory to E.ON) (in either case, the “*Intercreditor Agreement*”);

(m) Station Two Termination and Release. The City, the City Utility Commission, Big Rivers, the WKE Parties and E.ON shall execute and deliver a Station Two Termination and Release in form and substance as shall be acceptable to the City, the City Utility Commission, Big Rivers, the WKE Parties and E.ON in their sole discretion, for the purpose of terminating and releasing the rights and obligations of the WKE Parties and E.ON under or pursuant to the Station Two Agreement and the other agreements and instruments executed and/or assumed by the WKE Parties or E.ON in connection therewith (among other transactions) (the “*Station Two Termination and Release*”);

(n) Texas Gas Agreement. Big Rivers, WKEC and Texas Gas Transmission Corporation shall execute and deliver the Texas Gas Release contemplated in Section 10.2(r);

(o) Member Cooperative Waivers. Each Member Cooperative shall execute and deliver to LEM and WKEC a written waiver in form satisfactory to LEM and WKEC, waiving any third-party beneficiary and similar rights that the Member Cooperatives may have under the Power Purchase Agreement or the Guaranty;

(p) Discharge of LEM Note to RUS. RUS shall execute and deliver to LEM a written discharge and release in form satisfactory to LEM, releasing and discharging in full the Demand Promissory Note payable to the United States of America dated July 15, 1998, in the original principal amount of \$933,333.33;

(q) Execution of Transmission Agreement. LEM and Big Rivers shall execute and deliver the Transmission Agreement in the form attached hereto as Exhibit N;

(r) Assignment of Unemployment Reserve. The relevant WKE Party or Parties and Big Rivers shall execute and deliver the Assignment of Unemployment Reserve in the form attached hereto as Exhibit O; and

(s) Support Services Agreements. The relevant WKE Parties and Big Rivers shall execute and deliver the Support Services Agreements.

Section 3.3 Payments.

(a) Termination Payment. At the Closing, WKEC shall pay to Big Rivers the sum of three hundred one million five hundred thousand dollars and no cents (\$301,500,000.00) in immediately available funds, subject to the adjustment provided for in the following two sentences (as adjusted, the "***Termination Payment***"). If, as of the Closing, the sum of the aggregate Inventory Value (as calculated in accordance with Sections 4.1 and 4.2) and the aggregate Personal Property Value (as calculated in accordance with Sections 4.3 and 4.4) is less than fifty-five million dollars (\$55,000,000), the amount of such shortfall shall be added to the Termination Payment by WKEC to Big Rivers. If, as of the Closing, the sum of the aggregate Inventory Value and the aggregate Personal Property Value is greater than fifty-five million dollars (\$55,000,000), the amount of such overage shall be credited against and shall correspondingly reduce the Termination Payment.

(b) Transmission Deposits. At the Closing, (i) the deposit in the amount of \$237,500.00 previously paid by LEM to Big Rivers in accordance with the letter agreement dated August 1, 2002, between Big Rivers and LEM (for the use of 50 MW of firm transmission capacity across the TVA transmission system), together with the accrued interest in the amount contemplated in that letter agreement, shall be returned by Big Rivers to LEM (or to WKEC on behalf of LEM), in immediately available funds, and (ii) the deposit in the amount of \$322,350 previously paid by LEM to Big Rivers as a Transmission Reserved Capacity Deposit on March 31, 1999, together with the accrued interest in the amount contemplated in Big Rivers Open Access Transmission Tariff, shall be returned by Big Rivers to LEM (or to WKEC on behalf of LEM), in immediately available funds.

Section 3.4 Payment of Real Property Purchase Price. At the Closing, Big Rivers shall pay to WKEC the sum of One Million Twenty-Five Thousand Dollars (\$1,025,000.00), representing the aggregate purchase price payable by Big Rivers to WKEC or its relevant Affiliate for the Real Property to be conveyed at the Closing as contemplated in Section 3.2(e) (the “*Real Property Purchase Price*”).

Section 3.5 True-up Payments under Operative Documents. In connection with the termination of the Operative Documents which will occur at the Closing in consequence of the execution and delivery by the Parties of the Termination and Release and the Station Two Termination and Release, the Parties (i) shall calculate the amounts due under certain Operative Documents as set forth in paragraphs (a) through (e) of this Section 3.5, and (ii) shall make the payments (in immediately available funds) in the amounts and at the times provided in paragraphs (a) through (e) of this Section 3.5 (the amounts payable pursuant to paragraphs (a) through (e) of this Section 3.5, collectively, the “*True-Up Payments*”):

(a) Payment for Incremental Environmental O&M. If 20% of the Actual Environmental O&M costs incurred for and during the portion of the Closing Year through and including the Closing (and for and during any previous year if not already the subject of an adjustment for Incremental Environmental O&M in accordance with Section 2.3.3 of the Lease or invoiced to and paid by Big Rivers) shall exceed the aggregate Environmental Rent Reduction taken by WKEC for and during that portion of the Closing Year (or, as applicable, for such previous year(s)) pursuant to Section 2.3.3 of the Lease, the amount of such excess shall be paid by Big Rivers to WKEC at the Closing or, as applicable, shall be paid by Big Rivers to WKEC following the Closing as contemplated below. If 20% of the Actual Environmental O&M costs incurred for and during that portion of the Closing Year (and for and during any previous year if not already the subject of an adjustment for Incremental Environmental O&M in accordance with Section 2.3.3 of the Lease or invoiced to and paid by Big Rivers) shall be less than the aggregate Environmental Rent Reduction taken by WKEC for and during that portion of the Closing Year (or, as applicable, for such previous year(s)) pursuant to Section 2.3.3 of the Lease, the amount of such shortfall shall be paid by WKEC to Big Rivers at the Closing or, as applicable, shall be paid by WKEC to Big Rivers following the Closing as contemplated below. Capitalized Terms used in this paragraph (a) but not defined in this Termination Agreement shall have their same respective meanings as in the Lease or the Participation Agreement, as applicable. All calculations to be undertaken as contemplated herein shall be made in accordance with the methodologies and protocols contemplated in the Lease, which methodologies and protocols shall be deemed to survive the Closing solely for purposes of such calculations. Big Rivers and WKEC shall attempt in good faith to mutually agree on the aggregate amount payable by Big Rivers or WKEC, as the case may be, (as contemplated above) for and attributable to all Incremental Environmental O&M costs incurred through the 45th day preceding the Scheduled Unwind Closing Date, and any such agreed amount shall be paid by Big Rivers or WKEC, as the case may be, at the Closing as contemplated above. Failure by Big Rivers and WKEC to agree on that aggregate amount shall constitute a dispute as

contemplated in Section 10.2(ee) and Section 10.3(mm). Promptly following the receipt of all invoices in respect of products and services constituting Environmental O&M costs incurred in the period following the 45th day preceding the Scheduled Unwind Closing Date through the Closing (the "*Final Calculation Period*"), Big Rivers and WKEC shall attempt in good faith to mutually agree upon the aggregate amount (if any) by which 20% of the Actual Environmental O&M costs incurred for the Final Calculation Period exceeds or is less than the aggregate Environmental Rent Reduction taken by WKEC for and during the Final Calculation Period. Within two (2) Business Days following such mutual agreement or, in the absence of such agreement, following the final, non-appealable determination of the amount owing by a court of competent jurisdiction, Big Rivers shall pay to WKEC in immediately available funds (in the case of any excess amount) or WKEC shall pay to Big Rivers in immediately available funds (in the case of any deficiency) the relevant amount so determined. The Parties agree that the foregoing obligation to make any such payment due following the Closing arising pursuant to this Termination Agreement shall survive the Closing and the Parties' execution of this Termination Agreement and the Termination and Release, and shall continue to be binding upon, and to inure to the benefit of, the Parties until paid and discharged in full.

(b) Final Capital Asset Cost Payment. Capitalized Terms used in this paragraph (b) but not defined in this Termination Agreement shall have their same respective meanings as in the Lease, the Station Two Agreement or the Participation Agreement, as applicable. All calculations to be undertaken as contemplated herein shall be made in accordance with the methodologies and protocols contemplated in the Lease or the Station Two Agreement, as applicable, which methodologies and protocols shall be deemed to survive the Closing solely for purposes of such calculations.

(i) On or prior to the date 90 days prior to the Scheduled Unwind Closing Date, WKEC (A) shall identify all amounts that WKEC believes remain owing on that date by Big Rivers and by WKEC (including without limitation, as the successor by merger of Station Two Subsidiary) under or pursuant to the Lease or the Station Two Agreement, in respect of all costs for Capital Assets and Station Two Improvements which constitute Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs and Henderson Major Capital Repairs that have actually been incurred through and including the 120th day prior to the Scheduled Unwind Closing Date, and (B) shall deliver a notice to Big Rivers advising it of all such outstanding amounts owed by Big Rivers and WKEC through such date 120 days prior to the Scheduled Unwind Closing Date in respect of such Capital Assets and Station Two Improvements. On or prior to the 35th day prior to the Scheduled Unwind Closing Date, WKEC (1) shall identify all amounts that WKEC believes remain owing on that date by Big Rivers and by WKEC (including without limitation, as the successor by merger of Station Two Subsidiary) under or pursuant to the Lease or the Station Two Agreement in respect of all costs for Capital Assets and Station Two Improvements which constitute Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs and Henderson Major Capital

Repairs that have actually been incurred from the 120th day prior to the Scheduled Unwind Closing Date through the 45th day prior to the Scheduled Unwind Closing Date, and (2) shall deliver a notice to Big Rivers advising it of all such outstanding amounts owed by Big Rivers and WKEC through such 45th day. Promptly after WKEC's delivery of the notices to Big Rivers as contemplated in the preceding two sentences of this subparagraph (i) above, Big Rivers and WKEC shall attempt in good faith to mutually agree upon the aggregate amounts so owed by Big Rivers and WKEC through that 120th or that 45th day preceding the Scheduled Unwind Closing Date in respect of Capital Assets and Station Two Improvements which constitute Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs and Henderson Major Capital Repairs, as applicable. Such agreed amounts shall be paid by Big Rivers to WKEC at the Closing (in the case of such amounts agreed as being owed by Big Rivers), or shall be paid by WKEC to Big Rivers at the Closing (in the case of such amounts agreed as being owed by WKEC). Failure by Big Rivers and WKEC to agree on such aggregate amounts (if any) owed by Big Rivers and/or WKEC shall constitute a dispute as contemplated in Section 10.2(ee) and Section 10.3(mm).

(ii) Promptly following the receipt of all invoices in respect of products and services constituting Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs and Henderson Major Capital Repairs incurred in the Final Calculation Period, Big Rivers and WKEC shall attempt in good faith to mutually agree upon the aggregate amounts (if any) that remained owing by Big Rivers and WKEC immediately prior to the Closing under or pursuant to the Lease or the Station Two Agreement, in respect of all costs for Capital Assets and Station Two Improvements which constitute Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs and Henderson Major Capital Repairs that have actually been incurred for and during the Final Calculation Period. Within two (2) Business Days following such mutual agreement or, in the absence of such agreement, following the final, non-appealable determination of the amount owing by a court of competent jurisdiction, Big Rivers shall pay to WKEC any amount determined (as contemplated above) to be owing by it for that period, and WKEC shall pay to Big Rivers any amount determined (as contemplated above) to be owing by it for that period.

(iii) On or prior to the date 35 days prior to the Scheduled Unwind Closing Date, WKEC (A) shall identify the amount that WKEC believes it (including, without limitation, as the successor by merger of Station Two Subsidiary) shall have incurred in the Closing Year (including amounts funded with portions of the Big Rivers Contribution for the Closing Year provided by Big Rivers) for costs for Capital Assets and Station Two Improvements which constitute Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs, through and including the 45th day prior to the Scheduled Unwind Closing Date, and (B) shall deliver a notice to Big Rivers advising it of such amount. Promptly after WKEC's delivery of the notice to Big Rivers as

contemplated in the preceding sentence of this subparagraph (iii), Big Rivers and WKEC shall attempt in good faith to mutually agree upon the amount of such costs incurred by WKEC through that 45th day preceding the Scheduled Unwind Closing Date in respect of Capital Assets and Station Two Improvements which constitute Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs. Failure by Big Rivers and WKEC to agree on the amount (if any) of such costs incurred by WKEC shall constitute a dispute as contemplated in Section 10.2(ec) and Section 10.3(mm).

If, as of such 45th day prior to the Scheduled Unwind Closing Date, the aggregate costs incurred by WKEC in the Closing Year for Capital Assets and Station Two Improvements which constitute Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs equal or exceed the Big Rivers Contribution for the Closing Year and:

(A) if Big Rivers shall not have fully funded that Big Rivers Contribution prior to the Closing (including any payments in respect thereof made by Big Rivers in the Final Calculation Period), then as of the Closing Big Rivers shall pay to WKEC the difference, if any, between that Big Rivers Contribution and the portion of that Big Rivers Contribution actually funded by Big Rivers prior to the Closing, or

(B) if Big Rivers shall have fully funded that Big Rivers Contribution prior to the Closing (including any payments in respect thereof made by Big Rivers in the Final Calculation Period), then no further amounts shall be owing by any Party to any other Party on account of expenditures made prior to the Closing in respect of Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs (unless such payment(s) by a Party are required as a consequence of an indemnification, hold harmless or other covenant set forth in Article 15 or Article 16 of this Termination Agreement).

(iv) If, as of the 45th day prior to the Scheduled Unwind Closing Date, the aggregate costs incurred by WKEC for Capital Costs and Station Two Improvements which constitute Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs are less than the Big Rivers Contribution for the Closing Year, then promptly following the receipt of all invoices in respect of products and services constituting Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs incurred in the Final Calculation Period, Big Rivers and WKEC shall attempt in good faith to mutually agree upon the aggregate amount in respect of Capital Assets and Station Two Improvements which constitute Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs that have actually been incurred for and during the Final Calculation Period, which costs (once so determined) shall be aggregated with the costs incurred by WKEC in the Closing Year for Capital Costs and Station Two Improvements which constitute Non-Incremental Capital Costs and Henderson Non-Incremental (such aggregated amounts, the “*Aggregate Non-Incremental*

Capital Costs”). In the event Big Rivers and WKEC are unable to mutually agree upon the aggregate amount of such costs incurred for and during the Final Calculation Period within ninety days following the Unwind Closing Date, then either of those Parties may resort to a court of competent jurisdiction in order to resolve that dispute, so that the determination of the Aggregate Non-Incremental Capital Costs can be made and applied as contemplated below. If the Aggregate Non-Incremental Capital Costs equal or exceed the Big Rivers Contribution for the Closing Year and:

(C) if Big Rivers shall not have fully funded that Big Rivers Contribution as of the Closing, then Big Rivers shall pay to WKEC the difference between that Big Rivers Contribution and the amount actually funded by Big Rivers in respect of that Big Rivers Contribution as of the Closing within two (2) Business Days following mutual agreement on the amount of the Aggregate Non-Incremental Capital Costs as contemplated above, or, in the absence of such mutual agreement, following the final, non-appealable determination of the Aggregate Non-Incremental Capital Costs by a court of competent jurisdiction as contemplated above; or

(D) if Big Rivers shall have fully funded that Big Rivers Contribution as of the Closing, then no further amounts shall be owing by any Party to any other Party on account of expenditures made prior to the Closing in respect of Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs (unless such payment(s) by a Party are required as a consequence of an indemnification, hold harmless or other covenant set forth in Article 15 or Article 16 of this Termination Agreement).

If the Aggregate Non-Incremental Capital Costs are less than the Big Rivers Contribution for the Closing Year and:

(E) if the Aggregate Non-Incremental Capital Costs exceed all amounts actually funded by Big Rivers as of the Closing in respect of that Big Rivers Contribution, then Big Rivers shall pay to WKEC the difference between the Aggregate Non-Incremental Capital Costs and the total amount actually funded by Big Rivers in respect of that Big Rivers Contribution as of the Closing, within two (2) Business Days following mutual agreement on the amount of the Aggregate Non-Incremental Capital Costs as contemplated above, or, in the absence of such mutual agreement, following the final, non-appealable determination of the Aggregate Non-Incremental Capital Costs by a court of competent jurisdiction as contemplated above; or

(F) if the Aggregate Non-Incremental Capital Costs are less than all amounts actually funded by Big Rivers as of the Closing in respect of that Big Rivers Contribution, then WKEC shall pay to Big Rivers the difference between all amounts actually funded by Big Rivers as of the Closing in respect of that Big Rivers Contribution and the amount of the Aggregate Non-Incremental Capital Costs, within two (2) Business Days following mutual agreement on the amount of the Aggregate Non-Incremental Capital Costs as contemplated above, or, in the absence of such mutual agreement, following the final, non-appealable determination of the Aggregate Non-Incremental Capital Costs by a court of competent jurisdiction as contemplated above.

The Parties agree that the foregoing obligations to make any such payments due following the Closing arising pursuant to this Termination Agreement, shall survive the Closing and the Parties' execution of this Termination Agreement, the Termination and Release and the Station Two Termination and Release, and shall continue to be binding upon, and to inure to the benefit of, the Parties until paid and discharged in full.

(c) Pro-Ration of Rent and Monthly Margin Payment. An amount equal to the product of (i) the monthly installment of the annual rental payment payable under the Lease for the Closing Month and (ii) a fraction, the numerator of which is the number of days following the Unwind Closing Date through and including the last day of the Closing Month, and the denominator of which is the number of days in the Closing Month, shall be paid by Big Rivers to WKEC at the Closing. An amount equal to the product of (y) the Monthly Margin Payment for the Closing Month and (z) a fraction, the numerator of which is the number of days from and including the first day of the Closing Month through and including the Unwind Closing Date, and the denominator of which is the number of days in the Closing Month, shall be paid by WKEC to Big Rivers at the Closing. If the Closing occurs on or before the 25th day of the Closing Month, the Monthly Margin Payment for the month immediately preceding the Closing Month will also be paid by WKEC to Big Rivers at the Closing. The calculations contemplated above in this paragraph (c) assume that the monthly installment of the annual rental payment due for the Closing Month was paid by WKEC prior to the Closing, and assume that the Monthly Margin Payment for the Closing Month and, as applicable, for the month immediately preceding the Closing Month have not yet been paid by WKEC to Big Rivers as of the Closing. In the event the opposite of any such assumption is true, the Parties agree that the relevant calculation(s) contemplated above shall be made in the inverse, with a corresponding payment by WKEC to Big Rivers (in the case of the monthly installment of the annual rental payment), or payment by Big Rivers to WKEC (in the case of the relevant Monthly Margin Payment(s)) being made at the Closing.

(d) Amounts Payable Under Power Purchase Agreement and Transmission Services and Interconnection Agreement. Notwithstanding any provision of the Power Purchase Agreement, the Transmission Services and Interconnection Agreement, the Operating Assumptions and Practices Agreement and/or the Participation Agreement that

may contemplate that the Power Value Amount or any other amounts owing thereunder for services rendered by LEM for or on behalf of Big Rivers, or by Big Rivers for or on behalf of a WKE Party, through the Closing are to be calculated, or are to first accrue and become payable, only following the Closing Month, the Parties agree that all such amounts shall nonetheless accrue and become due and owing effective as of the Closing, and shall be determined and paid in the manner provided for in this paragraph (d). Capitalized terms used in this paragraph (d) but not defined in this Termination Agreement shall have their same respective meanings as in the Power Purchase Agreement or the Transmission Services and Interconnection Agreement, as applicable. Power Value Amounts and other amounts owing (i) by Big Rivers for all periods up to and including the month prior to the Closing Month (unless the Unwind Closing Date shall occur before the 15th day of the Closing Month in which case the second preceding month shall be used) (the "*Calculation Month*") under the Power Purchase Agreement (including without limitation, for Base Power, operating reserve-spinning reserve service and operating reserve-supplemental reserve service delivered or rendered during that period), and (ii) by Big Rivers for services from LEM or WKEC for all periods up to and including the Calculation Month as contemplated in the Transmission Services and Interconnection Agreement, shall be paid by Big Rivers to WKEC at the Closing. Amounts owing by the WKE Parties for transmission services received for all periods up to and including the Calculation Month under the Transmission Service and Interconnection Agreement shall be paid by WKEC to Big Rivers at the Closing. As soon as reasonably practicable following the Closing, Big Rivers and WKEC shall calculate the amounts due for the period from and after the Calculation Month through the Closing under the Power Purchase Agreement and the Transmission Service and Interconnection Agreement. Within two (2) Business Days following such calculation or, in the absence of such agreement, following the final, non-appealable determination of the amount owing by a court of competent jurisdiction, Big Rivers shall pay to WKEC or WKEC shall pay to Big Rivers, as applicable, in immediately available funds the relevant amount so determined. The Parties agree that the foregoing obligation to make any such payment due following the Closing arising pursuant to this Termination Agreement shall survive the Closing and the Parties' execution of this Termination Agreement, the Termination and Release and the Station Two Termination and Release, and shall continue to be binding upon, and to inure to the benefit of, the Parties until paid and discharged in full. Subject to the provisions set forth below in this paragraph (d), any determination of amounts owing by Big Rivers or any WKE Party hereunder shall be made in accordance with the methodologies and protocols set forth in the Power Purchase Agreement or the Transmission Service and Interconnection Agreement, as applicable, which methodologies and protocols shall be deemed to survive the Closing solely for purposes of such calculations. In determining the amounts owing as contemplated above under the Transmission Services and Interconnection Agreement for purposes of the payments contemplated by this paragraph (d), the Transmission Use Credit contemplated by Section 9.6 of the Participation Agreement and Section 6.6(c) of the Power Purchase Agreement shall be pro-rated based on the number of days elapsed from the commencement of the Closing Year up to and including the Unwind Closing Date, for the purpose of determining whether LEM (or WKEC) or Big Rivers is owed any credit for payments owing by Big Rivers or LEM (or by WKEC, including without limitation,

as a permitted assignee of LEM), respectively, under the Transmission Services and Interconnection Agreement or the Power Purchase Agreement as of the Closing. The pro-rata portion of the Transmission Use Credit so calculated shall be utilized in determining amounts owing under the Transmission Service and Interconnection Agreement and the Power Purchase Agreement as of the Closing.

(e) Payment for Henderson Incremental Environmental O&M. If 20% of the Actual Henderson Environmental O&M costs incurred for and during the Contract Year in which the Closing occurs through the Closing (and for and during any previous Contract Year if not already the subject of an adjustment for Henderson Incremental Environmental O&M in accordance with Section 9.9 of the Station Two Agreement or invoiced to and paid by Big Rivers) shall exceed the aggregate payments made by Big Rivers pursuant to Section 9.9 of the Station Two Agreement for and during the Contract Year which includes the Unwind Closing Date (or, as applicable, for and during such previous Contract Year(s)), the amount of such excess shall be paid by Big Rivers to WKEC at the Closing or, as applicable, shall be paid by Big Rivers to WKEC following the Closing as contemplated below. If 20% of the Actual Henderson Environmental O&M costs incurred for and during the Contract Year in which the Closing occurs (and for and during any previous Contract Year if not already the subject of an adjustment for Henderson Incremental Environmental O&M in accordance with Section 9.9 of the Station Two Agreement or invoiced to and paid by Big Rivers) shall be less than the aggregate payments made by Big Rivers pursuant to Section 9.9 of the Station Two Agreement for and during the Contract Year which includes the Unwind Closing Date (or, as applicable, for such previous Contract Year(s)), the amount of such shortfall shall be paid by WKEC to Big Rivers at the Closing or, as applicable, shall be paid by WKEC to Big Rivers following the Closing as contemplated below. Capitalized terms used in this paragraph (e) but not defined in this Termination Agreement shall have their same respective meanings as in the Station Two Agreement or the Participation Agreement, as applicable. All calculations to be undertaken as contemplated herein shall be made in accordance with the methodologies and protocols contemplated in the Station Two Agreement, which methodologies and protocols shall be deemed to survive the Closing solely for purposes of such calculations. Big Rivers and WKEC shall attempt in good faith to mutually agree on the amounts to be paid by WKEC to Big Rivers or by Big Rivers to WKEC (as contemplated above) for and attributable to all Henderson Incremental Environmental O&M costs incurred through the 45th day preceding the Scheduled Unwind Closing Date, and any such agreed amounts shall be paid at the Closing as contemplated above. Failure by Big Rivers and WKEC to agree on that aggregate amount shall constitute a dispute as contemplated in Section 10.2(ee) and Section 10.3(mm). Promptly following the receipt of all invoices in respect of products and services constituting Henderson Incremental Environment O&M costs in the Final Calculation Period, Big Rivers and WKEC shall attempt in good faith to mutually agree on the aggregate amount (if any) by which 20% of the Actual Henderson Environmental O&M costs incurred for and during the Final Calculation Period exceeds or is less than the aggregate payments made by Big Rivers pursuant to Section 9.9 of the Station Two Agreement for and during the Final Calculation Period. Within two (2) Business Days following such mutual agreement or, in the absence of such agreement, following the

final, non-appealable determination of the amount owing by a court of competent jurisdiction, Big Rivers shall pay to WKEC in immediately available funds (in the case of any excess amount) or WKEC shall pay to Big Rivers in immediately available funds (in the case of any deficiency) the relevant amount so determined. The Parties agree that the foregoing obligation to make any such payment due following the Closing arising pursuant to this Termination Agreement shall survive the Closing and the Parties' execution of this Termination Agreement, the Termination and Release and the Station Two Termination and Release, and shall continue to be binding upon, and to inure to the benefit of, the Parties until paid and discharged in full.

Section 3.6 No Accounts Receivable; No Big Rivers Payment Obligation. No accounts receivable, cash on hand or in bank accounts or other intangible current assets of the WKE Parties as of the Closing shall be included in the assets to be transferred to Big Rivers as of the Closing as contemplated herein, nor shall Big Rivers assume any obligations of the WKE Parties for (a) the payment to any vendor for commodities or services delivered to any WKE Party through the Closing or for commodities included in Personal Property or Inventory, or (b) the payment of rental amounts owing to lessors of equipment, furniture or fixtures under any Assigned Contracts and attributable to any period following the Effective Date and through the Closing.

Section 3.7 Apportionment of Consideration. Eighty-nine percent (89%) of the entire consideration received by Big Rivers in connection with the Transaction (including without limitation, the Termination Payment, the Inventory, the Personal Property, the Allowances and the Assigned Contracts to be assigned to Big Rivers as contemplated herein, and the waivers and releases of the debts, obligations and liabilities of Big Rivers owing to WKEC to be effected pursuant to the Termination and Release and the Station Two Termination and Release (but specifically excluding the deposit contemplated in Section 3.3(b), the Real Property Purchase Price and any True Up Payments received or to be received by Big Rivers)), shall be allocated by the Parties to the release and discharge of WKEC (as the successor in interest of LEM) from its debts, obligations and liabilities as of the Closing under or pursuant to the Power Purchase Agreement, the payment or delivery of such portion of the entire consideration to Big Rivers to be made by WKEC at the Closing. The remaining eleven percent (11%) of the entire consideration to be received by Big Rivers in connection with the Transaction shall be allocated by the Parties to Big Rivers' assumption of the responsibility to supply electric energy and other services to Kenergy (for resale to the Smelters) pursuant to one or more new agreements to be entered into by Big Rivers and Kenergy at (or effective as of) the Closing, thereby securing the release by Kenergy and the Smelters of WKEC (as the successor in interest of LEM) from further obligation under the Green River Agreement for Electric Service and the Henderson Union Agreement for Electric Service, respectively, the payment or delivery of such portion of the entire consideration to Big Rivers to be made by WKEC at the Closing.

ARTICLE 4

CONFIRMATION OF QUANTITY OF INVENTORY AND PERSONAL
PROPERTY; VALUATION OF INVENTORY AND PERSONAL PROPERTY

Section 4.1 Confirmation of Inventory as of Closing. Prior to the Closing, the quantities of certain Inventory to be conveyed pursuant to the Inventory Bill of Sale from WKEC to Big Rivers shall be determined as set forth in this Section 4.1. The types of Inventory for which the quantities shall be determined are coal (including coal fines), synthetic fuel and petroleum coke, fuel oil, lime, and limestone, and spare parts, materials and supplies. Once so determined, the quantities of the aforementioned types of Inventory shall be set forth in Schedule 4.1 to this Termination Agreement to be developed by the mutual agreement of WKEC and Big Rivers and attached to this Termination Agreement at or prior to the Closing; provided, that the Inventory quantities reflected in that Schedule 4.1 shall be subject to Inventory receipts, burns and usages from the date(s) of the relevant physical inventories or measurements through the Closing as contemplated below. None of the quantities determined or the adjustments for receipts, burns or usages determined shall include any quantities or portions thereof that are owned by, or received, burned or used by or for the account of, the City or the City Utility Commission. Big Rivers, as part of its due diligence, may determine the quantities of other types of Inventory, namely DBA (reagent), fixation lime, hydrated lime, sodium sulfite and ammonia, but the quantities of these types of Inventory shall not be included on Schedule 4.1.

(a) Coal, Synthetic Fuel and Petroleum Coke. Coal (including coal fines), synthetic fuel and petroleum coke (collectively, the "***Solid Fuel Stock***") constituting Inventory to be conveyed by WKEC to Big Rivers at the Closing shall only include the total amount of all Solid Fuel Stock at each Generating Plant on the ground, in conveyors, in chutes and in bunkers at any Generating Plant as of the Closing, and all Solid Fuel Stock which is reflected in the books and records of WKEC as inventory in transit to any Generating Plant as of the Closing. Such Solid Fuel Stock which is inventory in transit shall be included in Inventory whether being shipped FOB loading point or FOB Generating Plant; provided, however, that for any such Solid Fuel Stock to be included in Inventory as inventory in transit, all payments to the vendors and common carriers for the purchase and transportation of such Solid Fuel Stock to the Generating Plant shall remain for the account of WKEC and shall be made by WKEC at the times and in the manner contemplated in the contracts with such vendors and common carriers, without recourse against Big Rivers for recoupment of the same; and provided further that no Solid Fuel Stock shall be included in the Inventory as inventory in transit that is not delivered pursuant to an Assigned Contract. The quantities of Solid Fuel Stock at each Generating Plant constituting Inventory as of the Closing shall be determined pursuant to a physical inventory, conducted at least forty-five (45) days prior to the Scheduled Unwind Closing Date, but adjusted for Solid Fuel Stock receipts (including inventory in transit) and burns at all Generating Plants from the date of such physical inventory up to and including the Closing. The physical inventory shall be conducted at each Generating Plant (including sampling and analysis of such Solid Fuel Stock adequate to determine the specifications in respect of Btu/lb, moisture, ash and sulfur

content) by L. Robert Kimball & Associates, Inc. in the manner, within the scope and according to the procedures set forth in Exhibit P. Big Rivers may elect to have a representative present to observe the physical inventory. Following the date of the aforementioned physical inventory and prior to Closing, WKEC shall monitor the Solid Fuel Stock delivered to each Generating Plant (including sampling and analysis of such Solid Fuel Stock adequate to determine the specifications in respect of Btu/lb, moisture, ash and sulfur content) and shall provide such results promptly to the Big Rivers Representative. In the event that any such Solid Fuel Stock shipments received prior to the Closing but after the aforementioned physical inventory are Off Specification, Big Rivers shall have the right to request that WKEC reject, or to the extent not otherwise provided for in the applicable contract, negotiate a reduced price for, any such Off Specification Solid Fuel Stock shipments in accordance with the terms of, and to the extent provided in, the applicable contract. Big Rivers shall provide WKEC with written notice of its request for rejection of, or a renegotiation of a reduced price for, such shipment in a prompt and timely manner such that WKEC may have sufficient time to exercise the right of rejection or price renegotiation within any time period required in the applicable contract. If Big Rivers does not request (or does not timely request) that the Off Specification Solid Fuel Stock shipment be rejected or a reduced price negotiated, then such shipment shall be included in the Solid Fuel Stock constituting Inventory. If Big Rivers provides such timely request, but WKEC elects not to reject such shipment or negotiate a reduced price, then such shipment shall not be included in the Solid Fuel Stock constituting Inventory and, to the extent such non-rejected shipment was burned by WKEC prior to Closing, the amount of such non-rejected shipment so burned shall not be included as part of the adjustment for receipts and burns provided herein following the date of the physical inventory. WKEC agrees that, following the Closing, it shall cooperate with Big Rivers and take such actions as Big Rivers shall reasonably request, to reject, or renegotiate a reduced price for, any Off Specification Solid Fuel Stock shipments included as Inventory in transit as of the Closing or received under Assigned Contracts following the Closing. The covenant set forth in the preceding sentence shall survive the Closing. Nothing in this paragraph shall impair or diminish WKEC's rights under any fuel supply contract, including its right to reject a shipment and its right to terminate a contract for repeated failure to meet the specifications, whether or not Big Rivers makes a request for rejection.

(b) Fuel Oil. The fuel oil constituting Inventory to be conveyed by WKEC to Big Rivers at the Closing shall only include the total amount of all fuel oil at each Generating Plant in storage facilities at any Generating Plant as of the Closing, and all fuel oil which is reflected in the books and records of WKEC as inventory in transit to any Generating Plant as of the Closing. Such fuel oil which is inventory in transit shall be included in Inventory whether being shipped FOB loading point or FOB Generating Plant; provided, however, that for any such fuel oil to be included in Inventory, all payments to the vendors and common carriers for the purchase and transportation of such fuel oil to the Generating Plants shall remain for the account of WKEC and shall be made by WKEC at the times and in the manner contemplated in the contracts with such vendors and common carriers, without recourse against Big Rivers for recoupment of the same. The level of fuel oil in storage facilities at the Generating Plants shall be jointly

measured at least seven (7) days prior to the Scheduled Unwind Closing Date by representatives of Big Rivers and WKEC. The measurement shall be corrected for weather, gravity and/or other factors to the extent such correction is in accordance with WKEC's normal protocols which protocols shall not be revised following the Execution Date. The quantities of fuel oil constituting Inventory as of the Closing shall be comprised of the result of the measurement of fuel oil conducted pursuant to the two preceding sentences, but adjusted for fuel oil receipts and usage at all Generating Plants for the period from the date of the measurement up to and including the Closing.

(c) Lime and Limestone. The lime and limestone constituting Inventory to be conveyed by WKEC to Big Rivers at the Closing shall only include the total amount of all lime and limestone at each Generating Plant as of the Closing. The volume of lime and limestone at the Generating Plants shall be jointly measured at least seven (7) days prior to the Scheduled Unwind Closing Date by representatives of Big Rivers and WKEC using WKEC's normal method of measurement, which method of measurement shall not be revised following the Execution Date. The volume of lime and limestone constituting Inventory as of the Closing shall be comprised of the measurement of lime and limestone conducted pursuant to the preceding sentence, but adjusted for lime and limestone receipts and usage at all Generating Plants from the date of the measurement up to and including the Closing.

(d) Spare Parts, Materials and Supplies. The spare parts, materials and supplies constituting Inventory to be conveyed by WKEC to Big Rivers at the Closing shall include only the spare parts, materials and supplies (identified through the physical inventory contemplated below) held exclusively for use by WKEC as of the Closing in connection with its operation of the Generating Plants wherever located, including without limitation, (i) those at the Generating Plants, (ii) those at WKEC's headquarters building, (iii) those at the Central Lab, and (iv) those maintained by the environmental and fuels groups of WKEC (but not including any spare parts, materials and supplies maintained by those groups in Louisville, Kentucky), but, in each case, excluding any parts, materials and supplies, or portion thereof, (A) that may be owned by the City or the City Utility Commission, or (B) that were excluded as obsolete from the payment made by WKEC to Big Rivers for its inventory pursuant to the closing of the transactions contemplated by the Participation Agreement. A physical inventory of spare parts, materials and supplies shall be jointly conducted by representatives of WKEC and Big Rivers at least seven (7) days prior to the Scheduled Unwind Closing Date in accordance with WKEC's normal protocols, which protocols shall not be revised following the Execution Date. Spare parts, materials and supplies comprising Inventory as of the Closing shall be comprised of the result of the physical inventory of parts, materials and supplies conducted pursuant to the two preceding sentences, but shall be adjusted for spare parts, materials and supplies receipts and usage at all locations for the period from the date of such physical inventory up to and including the Closing. Big Rivers shall have no right to reject as obsolete or on any other basis any items of spare parts, materials or supplies comprising Inventory as of the Closing, whether for purposes of the Inventory Value or otherwise.

Section 4.2 Valuation of Items of Inventory. Irrespective of the specific quantities of Inventory determined in accordance with Section 4.1 above, the value of the coal (including coal fines), synthetic fuel and petroleum coke, fuel oil, lime and limestone, and spare parts, materials and supplies, and Inventory in transit to be included in the Inventory Value for the purpose of the calculation contemplated in Subsection 3.3(a) shall be deemed to be the "book value" of such classifications of Inventory as reflected in the financial books and records of WKEC as of the Closing. WKEC agrees not to change any method or practice used by it to calculate the "book value" of such classifications of Inventory from the methods or practices in use as of the Execution Date at any time through the Closing or the earlier termination of this Termination Agreement, without the prior written consent of Big Rivers. With respect to Inventory in transit, the cost of all or some portion of the transportation with respect to Solid Fuel Stock in transit may not be reflected upon the financial books and records of WKEC until sometime after the Closing. The cost of transportation of such Solid Fuel Stock in transit will nevertheless be included in the Inventory Value provided that payments to the common carriers and vendors for such transportation shall remain for the account of WKEC and shall be made by WKEC at the times and in the manner contemplated in the contracts with such common carriers and vendors, without recourse against Big Rivers for recoupment of the same. The balance of any prepayments made by WKEC with respect to any Inventory that is to be delivered after the Closing, as reflected on the financial books and records of WKEC, shall be included in the Inventory Value provided that Big Rivers assumes the contract or contracts pursuant to which such prepayments were made. Except as otherwise provided in the paragraph below, the conveyance of Inventory contemplated in Subsection 3.2(b) shall not result in any additional compensation paid to WKEC (other than the potential credit against the Termination Payment contemplated in paragraph (a) of Section 3.3). The DBA (reagent), fixation lime, sodium sulfite, hydrated lime and ammonia at the Generating Plants as of the Closing are items of Inventory that shall be conveyed to Big Rivers hereunder; provided however, the value of such items of Inventory shall not be included in the determination of Inventory Value nor shall the conveyance of such items result in any additional consideration to WKEC.

Notwithstanding the Parties' intention to determine the total Inventory Value prior to the Closing, and to utilize the amount so determined in the calculations contemplated in Subsection 3.3(a) at the Closing, the Parties acknowledge that it may be impossible to account for all items of Inventory that may be delivered to the Generating Plants through the Closing or shortly after Closing in that pre-Closing determination. For this reason, within 30 days after the Closing, the Parties agree to meet and to attempt to arrive at a final accounting of the Inventory Value as of the Closing. To the extent any items of Inventory should have been but were not reflected in the Inventory Value as of the Closing, those items shall be valued in accordance with this Section 4.2. Additionally, the Inventory Value in the final accounting shall be adjusted in the following circumstances: (i) reduced for any payments made after the Closing by Big Rivers to an Inventory vendor or to a common carrier for transportation with respect to any Inventory conveyed hereunder the value of which was already included in the Inventory Value, and (ii) increased for any payments made by WKEC (A) to an Inventory vendor or to a common carrier for transportation with respect to any Inventory conveyed hereunder the

value of which was not included in the Inventory Value, or (B) to an Inventory vendor or to a common carrier for transportation as a prepayment or advance for Inventory to be delivered after the Closing the value of which was not included in the Inventory Value. To the extent the foregoing final accounting results in an amount owing from Big Rivers to WKEC, then Big Rivers shall pay to WKEC such amount in immediately available funds within 45 days after the Closing or, in the event the Parties were unable to agree upon the final accounting of the Inventory Value as of the Closing as contemplated above, within ten (10) days after resolution of that dispute by a final, non-appealable decision on the matter by a court of competent jurisdiction. To the extent the foregoing final accounting results in an amount owing from WKEC to Big Rivers, then WKEC shall pay to Big Rivers such amount in immediately available funds within 45 days after the Closing or, in the event the Parties were unable to agree upon the final accounting of the Inventory Value as of the Closing as contemplated above, within ten (10) days after resolution of that dispute by a final, non-appealable decision on the matter by a court of competent jurisdiction. The Parties agree that the foregoing obligations to make any payments as set forth in this Section 4.2 following the Closing shall survive the Closing and the Parties' execution of this Termination Agreement, the Termination and Release and the Station Two Termination and Release, and shall continue to be binding upon, and to inure to the benefit of, the Parties until paid and discharged in full.

Section 4.3 Determination of Personal Property as of Closing. Schedule 4.3 attached hereto identifies various items of tangible personal property (other than Inventory) that the Parties agree shall be conveyed by WKEC to Big Rivers at the Closing pursuant to the Personal Property Bill of Sale contemplated in Subsection 3.2(c), subject to the exclusions and additions contemplated below. One or more items of tangible personal property currently set forth on Schedule 4.3 may be removed by WKEC, from time-to-time in its sole discretion, by written notice thereof delivered to Big Rivers prior to the Unwind Closing Date, only in the event such item(s) are retired from service in the ordinary course of business by WKEC between the Execution Date and the Closing. One or more items of tangible personal property (other than Inventory) may be added by WKEC to Schedule 4.3 from time-to-time in its sole discretion, upon written notice thereof delivered to Big Rivers prior to the Unwind Closing Date, in the event such items of tangible personal property are purchased or otherwise acquired by WKEC, following the Execution Date hereof and prior to the Closing, exclusively for use in connection with its operation of any Generating Plant(s), and such purchases are made pursuant to (i) an operating budget with respect to such Generating Plant(s), (ii) an Operating Plan, or (iii) a permissible deviation from such an operating budget or Operating Plan. All items of tangible personal property identified on Schedule 4.3 as of the Execution Date (other than those items as shall be removed by WKEC from that Schedule as contemplated above), together with all items of tangible personal property that may be added by WKEC to Schedule 4.3 as contemplated in the preceding sentence, are collectively referred to in this Termination Agreement as the "**Personal Property.**" In no event shall the Atrita pulverizers owned by WKEC be included in the Personal Property. The Atrita pulverizers may be removed and retained by WKEC in its discretion before or within a reasonable period of time following the Closing.

Section 4.4 Valuation of Personal Property. All Personal Property to be conveyed by WKEC to Big Rivers at the Closing shall be valued for all purposes under this Termination Agreement (including without limitation, for purposes of the calculation provided for in Subsection 3.3(a)) at WKEC's depreciated book value of such Personal Property reflected in its financial books and records as of the Closing. WKEC agrees not to change any method or practice used by it to calculate the depreciated book value of such Personal Property from the methods or practices in use as of the Execution Date at any time through the Closing or the earlier termination of this Termination Agreement, without the prior written consent of Big Rivers. Except as otherwise provided in the paragraph below, the conveyance of Personal Property contemplated in Subsection 3.2(c) shall not result in any additional compensation paid to WKEC (other than the potential credit against the Termination Payment contemplated in paragraph (a) of Section 3.3).

To the extent any item of tangible personal property to be included in the Personal Property to be transferred to Big Rivers at the Closing, as contemplated in Section 4.3, is not yet reflected for accounting purposes in the financial books and records of WKEC as of the Closing, the Personal Property Value shall nonetheless factor in that item of tangible personal property for the purpose of determining the total Personal Property Value as of the Closing, including without limitation, for purposes of the calculation provided for in Subsection 3.3(a). Notwithstanding the Parties' intention to determine the total Personal Property Value prior to the Closing, and to utilize the amount so determined in the calculations contemplated in Subsection 3.3(a) at the Closing, the Parties acknowledge that it may be impossible to account for all items of Personal Property that may be delivered to the Generating Plants through the Closing in that pre-Closing determination. For this reason, within 30 days after the Closing the Parties agree to meet and to attempt to arrive at a final accounting of the Personal Property Value as of the Closing, on the basis of all items of Personal Property (in addition to those items that may have been reflected on Schedule 4.3 as of the Closing) that were at the Generating Plants as of the Closing. To the extent any items of Personal Property determined on the basis of that final accounting were not reflected on Schedule 4.3 at the Closing, those items shall be valued in accordance with this Section 4.4 and Big Rivers will pay to WKEC within 45 days after the Closing (or, in the event the Parties were unable to agree upon the final accounting of the Personal Property Value as of the Closing as contemplated above, within ten (10) days after resolution of that dispute by a final, non-appealable decision on the matter by a court of competent jurisdiction) an amount in immediately available funds equal to that value. To the extent any items of Personal Property which were reflected on Schedule 4.3 as of the Closing are determined on the basis of that final accounting not to be in existence at the Generating Plants, those items shall be valued in accordance with this Section 4.4 and WKEC will pay to Big Rivers within 45 days after the Closing (or, in the event the Parties were unable to agree upon the final accounting of the Personal Property Value as of the Closing as contemplated above, within ten (10) days after resolution of that dispute by a final, non-appealable decision on the matter by a court of competent jurisdiction) an amount in immediately available funds equal to that value. The Parties agree that the foregoing obligations to make any payments as set forth in this Section 4.4 following the Closing shall survive the Closing and the Parties' execution of this Termination Agreement, the Termination and Release and the Station Two Termination and Release, and shall continue to be binding

upon, and to inure to the benefit of, the Parties until paid and discharged in full.

ARTICLE 5

ASSIGNED CONTRACTS

Section 5.1 Identification and Assignment of Assigned Contracts.

(a) Identification of Assigned Contracts. Schedule 5.1 attached hereto identifies various contracts, agreements, leases, subleases, licenses, sublicenses and/or other instruments to which WKEC (including without limitation, as successor by merger with Station Two Subsidiary or WKE) or, with respect to certain Intellectual Property License Agreements, an Affiliate of WKEC, is a party as of the Execution Date, relating to the Generating Plants, to the Sites, to the Inventory, to the Personal Property, to the Intellectual Property, or to the operation, maintenance, repair or upkeep thereof (including, without limitation, contracts relating to the purchase of fuel, scrubber reagent, fuel oil, ammonia, spare parts, capital construction projects, and outside services, among others). The Parties agree that each of the contracts, agreements, leases, subleases, licenses, sublicenses and other instruments set forth on Schedule 5.1 (as that Schedule may be modified as hereinafter provided) shall be assigned by WKEC to Big Rivers at the Closing, and shall be assumed by Big Rivers at the Closing, in each case pursuant to the Assignment and Assumption of Contracts contemplated in Subsection 3.2(d), subject to the receipt of all relevant consents or approvals from any relevant Assigned Contract Counterparty as contemplated in Section 5.2. One or more contracts, agreements, leases, subleases, licenses, sublicenses or other instruments may be added by WKEC to Schedule 5.1 from time to time in its sole discretion (upon written notice thereof (attaching a copy of such contract) delivered to Big Rivers at least thirty (30) days prior to the Scheduled Unwind Closing Date), in the event such contract(s), agreement(s), lease(s), sublease(s), license(s), sublicense(s) or other instrument(s) are entered into by WKEC and the relevant Assigned Contract Counterparty following the Execution Date and prior to the Closing, and they relate to the Generating Plants, to the Sites, to the Inventory, to the Personal Property, to the Intellectual Property or to the operation, maintenance, repair or upkeep thereof; provided that Big Rivers shall have the right to object to the addition of that contract, agreement, lease, sublease, license, sublicense or other instrument to Schedule 5.1 by written notice of objection delivered to WKEC within thirty (30) days after the delivery of WKEC's notice contemplated above, but in any event prior to the Closing. In the event of such an objection, if the same is not resolved to the satisfaction of the Parties, a dispute shall be deemed to exist as contemplated in Section 10.2(ee) and Section 10.3(mm). Big Rivers will have no obligation to assume any contract, agreement, lease, sublease, license or sublicense not provided to it, reviewed by it, and incorporated in Schedule 5.1 in accordance with the provisions of this Section 5.1. All contracts, agreements, leases, subleases, licenses, sublicenses and other instruments set forth on Schedule 5.1 as of the Execution Date (other than those instruments as shall be removed by WKEC as contemplated below), together with all other instruments that may be added to Schedule 5.1 as contemplated in the preceding sentence, together with the two Farm Lease and Security Agreements referred to in Section 3.2(d), are collectively

referred to in this Termination Agreement as the “*Assigned Contracts*.” One or more contracts, agreements, leases, subleases, licenses, sublicenses or other instruments set forth on Schedule 5.1 (whether as of the Execution Date or by reason of a subsequent addition to that Schedule as contemplated herein) may be removed by WKEC, from time-to-time, from that Schedule in its sole discretion, by written notice thereof delivered to Big Rivers prior to the Closing, in the event such contract(s), agreement(s), lease(s), sublease(s), license(s) or sublicense(s) expire in accordance with their respective terms prior to the Closing, or are terminated by WKEC or the relevant Assigned Contract Counterparty or Counterparties prior to the Closing; provided, that WKEC shall not, following the Execution Date and prior to the Closing or the earlier termination of this Termination Agreement in accordance with its terms, attempt to terminate any of the contract(s), agreement(s), lease(s), sublease(s), license(s), sublicense(s) or other instrument(s) identified on Schedule 5.1(A) hereto without the prior written consent of Big Rivers, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 5.2 Assigned Contract Counterparty Consents to Assignment and Release. Subject to Article 9, WKEC and Big Rivers agree to use their respective reasonable best efforts to obtain at the earliest practicable time following the Execution Date (a) the consent or approval of any Assigned Contract Counterparty that may be required under the terms of any Assigned Contract for the assignment by WKEC to Big Rivers of, and for the assumption by Big Rivers of, that Assigned Contract at the Closing, and (b) a release of WKEC from further debts, obligations or liabilities under or pursuant to each Assigned Contract at the Closing, in each case to the extent provided in the form of Contract Counterparty Consent attached to this Termination Agreement as Exhibit Q or in such other form of acknowledgement, release and discharge as may be satisfactory to WKEC and Big Rivers. The Parties agree that the receipt of all consents and releases contemplated in this Section shall be a condition precedent to the Closing as provided in Section 10.2(v) and Section 10.3(r), subject to the provisions of Section 5.3.

With respect to any Intellectual Property License Agreement constituting an Assigned Contract, in the event that consent to, or approval of, the assignment of such Intellectual Property License Agreement to Big Rivers, by a specific Assigned Contract Counterparty is not obtained after the exercise of their respective reasonable best efforts by WKEC and Big Rivers to obtain the same, WKEC (or an Affiliate, where appropriate) agrees to use its reasonable best efforts, consistent with and subject to its rights and obligations under such Intellectual Property License Agreement, to (i) grant Big Rivers a sublicense pursuant to the Intellectual Property License Agreement for which consent or approval has not been obtained, or (ii) subject to the limitations provided in Section 5.3 and Article 9, negotiate with the relevant Assigned Contract Counterparty(ies) such that Big Rivers, either directly or through WKEC, may obtain license rights under such Intellectual Property License Agreement comparable in scope and duration to that provided to WKEC in such Intellectual Property License Agreement, or (iii) provide Big Rivers with the benefits of the Intellectual Property that is the subject of such Intellectual Property License Agreement through the Information Technology Support Services Agreement in a manner comparable to the access to the data and information developed by such Intellectual Property provided to the licensee for WKEC's benefit under such

Intellectual Property License Agreement. Big Rivers will cooperate with WKEC in determining which of options (i)-(iii), above, are most feasible and economical to implement with respect to those Intellectual Property License Agreements constituting Assigned Contracts where the consents or approvals contemplated above are not obtained from Assigned Contract Counterparties. The provisions of this paragraph shall not affect or eliminate the right of the WKE Parties to insist on a release from the Assigned Contract Counterparties under the Intellectual Property License Agreements as contemplated in this Section 5.2, subject to the provisions of Section 5.3.

Section 5.3 Limited Payments to Assigned Contract Counterparties; Assigned Contract Indemnity. The limited commitment of WKEC to make payments to one or more Assigned Contract Counterparties in order to obtain their consent to the assignment to Big Rivers of such Assigned Contract, and in order to obtain their release of WKEC from further debts, obligations and liabilities under their respective Assigned Contract, is set forth in Article 9. Notwithstanding any other provision of this Termination Agreement that may require the release by the Assigned Contract Counterparties of WKEC from any and all further debts, obligations and liabilities under or pursuant to their respective Assigned Contracts (whether pursuant to a Contract Counterparty Consent or otherwise) as a condition precedent to the obligation of the WKE Parties to consummate the transactions contemplated in this Termination Agreement, the Parties agree that Big Rivers shall be entitled, in its sole discretion, to execute and deliver to WKEC prior to the Closing an Assigned Contract Indemnity in the form attached hereto as Exhibit R with respect to any one or more Assigned Contracts, which Assigned Contract Indemnity shall serve to eliminate the Assigned Contract(s) which are the subject thereof from the list of Assigned Contracts for which the above-described releases of WKEC must be obtained as a condition precedent to the Closing.

ARTICLE 6

INTELLECTUAL PROPERTY

Section 6.1 Assignment of Owned Intellectual Property. Set forth on Schedule 6.1 is a listing, as of the Execution Date, of all Owned Intellectual Property which will be assigned by the applicable WKE Party or an Affiliate of a WKE Party to Big Rivers as of the Closing as contemplated in Section 3.2(f) (the “*Owned Intellectual Property (Assigned)*”). Such assignment shall be without warranty (except for those specific warranties contained in Section 11.1(o)) or any continuing obligation of any nature whatsoever of the applicable WKE Party or Affiliate of a WKE Party with respect to such Owned Intellectual Property (Assigned). Schedule 6.1 shall be updated by mutual agreement of the Parties between the Execution Date and the Closing. If Big Rivers is not reasonably satisfied as to the contents of Schedule 6.1 based on performance of diligence by Big Rivers, it shall so notify WKEC by the date 45 days prior to the Scheduled Unwind Closing Date, and the Parties shall use their reasonable efforts to resolve any such disagreement. If such disagreement is not resolved to the reasonable

satisfaction of the Parties, an unresolved dispute shall be deemed to exist as contemplated in Section 10.2(ee) and Section 10.3(mm).

Section 6.2 Licensing of Owned Intellectual Property. Set forth on Schedule 6.2 is a listing, as of the Execution Date, of all Owned Intellectual Property which will be licensed by the applicable WKE Party or an Affiliate of a WKE Party to Big Rivers as of the Closing as contemplated in Section 3.2(f) (the “*Owned Intellectual Property (Licensed)*”). Such license shall be without warranty (except for those specific warranties contained in Section 11.1(o)) or any continuing obligation of any nature whatsoever of the applicable WKE Party or Affiliate of a WKE Party with respect to such Owned Intellectual Property (Licensed). Schedule 6.2 shall be updated by mutual agreement of the Parties between the Execution Date and the Closing. If Big Rivers is not reasonably satisfied as to the contents of Schedule 6.2 based on performance of diligence by Big Rivers it shall so notify WKEC by the date 45 days prior to the Scheduled Unwind Closing Date, and the Parties shall use their reasonable efforts to resolve any such disagreement. If such disagreement is not resolved to the reasonable satisfaction of the Parties, an unresolved dispute shall be deemed to exist as contemplated in Section 10.2(ee) and Section 10.3(mm).

Section 6.3 Assignment or Sublicense of Intellectual Property License Agreements- No Consent Required. Set forth on Schedule 6.3 is a listing, as of the Execution Date, of all Intellectual Property License Agreements which will be assigned or sublicensed by the applicable WKE Party or an Affiliate of a WKE Party to Big Rivers as of the Closing (the “*Intellectual Property License Agreements – No Consent Required*”). The assigned Intellectual Property License Agreements – No Consent Required are considered to be Assigned Contracts and will be assigned to Big Rivers in accordance with the provisions of Article 5 of this Termination Agreement. Schedule 6.3 shall be updated by mutual agreement of the Parties between the Execution Date and the Closing. If Big Rivers, is not reasonably satisfied as to the contents of Schedule 6.3 based on performance of diligence by Big Rivers it shall so notify WKEC by the date 45 days prior to the Scheduled Unwind Closing Date, and the Parties shall use their reasonable efforts to resolve any such disagreement. If such disagreement is not resolved to the reasonable satisfaction of the Parties, an unresolved dispute shall be deemed to exist as contemplated in Section 10.2(ee) and Section 10.3(mm).

Section 6.4 Assignment or Sublicense of Intellectual Property License Agreements- Consent Required. Set forth on Schedule 6.4 is a listing, as of the Execution Date, of all Intellectual Property License Agreements which, provided required third party consents are obtained, will be assigned or sublicensed by the applicable WKE Party or an Affiliate of a WKE Party to Big Rivers as of the Closing (the “*Intellectual Property License Agreements – Consent Required*”). The assigned Intellectual Property License Agreements – Consent Required (i) will be considered to be Assigned Contracts and (ii) once all consents or approvals from relevant Assigned Contract Counterparties are received as contemplated in Section 5.2, will be assigned to Big Rivers in accordance

with the provisions of Article 5 of this Termination Agreement. Schedule 6.4 shall be updated by mutual agreement of the Parties between the Execution Date and the Closing. If Big Rivers is not reasonably satisfied as to the contents of Schedule 6.4, based on performance of diligence by Big Rivers it shall so notify WKEC by the date 45 days prior to the Scheduled Unwind Closing Date, and the Parties shall use their reasonable efforts to resolve any such disagreement. If such disagreement is not resolved to the reasonable satisfaction of the Parties, an unresolved dispute shall be deemed to exist as contemplated in Section 10.2(ee) and Section 10.3(mm).

Section 6.5 Provision of Intellectual Property through the Information Technology Support Services Agreement. Commencing with the Closing the WKE Parties shall, for a time period specified by Big Rivers but not to exceed eighteen (18) months, provide Big Rivers with certain intellectual property services pursuant to the Information Technology Support Services Agreement to be negotiated by the Parties prior to the Unwind Closing Date, enabling Big Rivers to obtain the benefit of certain Intellectual Property which has not and will not be transferred, assigned, licensed or sublicensed to Big Rivers pursuant to Sections 6.1 to 6.4 (the “***Support Services Intellectual Property***”). If at any time prior to the Closing Big Rivers is not reasonably satisfied as to the form or substance of the Information Technology Support Services Agreement, based on performance of diligence by Big Rivers, it shall so notify WKEC by the date forty-five (45) days prior to the Scheduled Unwind Closing Date, and the Parties shall use their reasonable efforts to resolve any such disagreement prior to the Closing; provided, that in the event an Information Technology Support Services Agreement is entered into prior to the Closing, Big Rivers’ dissatisfaction with that agreement (or any portion(s) thereof) shall not be deemed to release or absolve Big Rivers of or from any breach or default on the part of Big Rivers occurring thereunder, nor shall it be deemed to amend or modify such agreement absent the written agreement of the WKE Parties to such amendment or modification. If such disagreement is not resolved to the reasonable satisfaction of the Parties, an unresolved dispute shall be deemed to exist as contemplated in Section 10.2(ee) and Section 10.3(mm).

Section 6.6 Preparation for Services. From the Execution Date through the Closing, Big Rivers will, at its expense, use its reasonable effort to prepare its information systems, communications systems, information security systems and other systems, equipment, processes and technology, and to train Big Rivers’ relevant personnel (or the relevant WKEC personnel to become employees of Big Rivers at the Closing), so that the same are capable of functional integration with the relevant systems, equipment, processes and technology of E.ON, WKEC or E.ON’s other relevant Affiliate(s), and the ability to accept and use data and information from such systems, equipment, processes and technology, so that the services to be provided to Big Rivers pursuant to the Information Technology Support Services Agreement can begin as of the Closing and continue thereafter in accordance with the terms of the Information Technology Support Services Agreement; it being understood that neither E.ON, WKEC nor E.ON’s other Affiliates shall be responsible to Big Rivers for (or for the consequences of) any inability of Big Rivers, its Member Cooperatives or their respective

customers to receive any of the benefits of the Information Technology Support Services Agreement by reason of the inability of Big Rivers' information systems, communications systems, information security systems or other systems, equipment, processes or technology, or of Big Rivers' personnel, to accept, receive or use any of the services, data or information compiled, transmitted or otherwise made available by the systems, equipment, processes and technology of E.ON or its relevant Affiliate(s). WKEC shall, and shall cause E.ON and its relevant Affiliate(s) to, reasonably cooperate with Big Rivers and its personnel through the Closing (or the earlier termination of this Termination Agreement) in Big Rivers' efforts to prepare its information systems, communications systems, information security systems and other systems, equipment, processes and technology, and in Big Rivers' efforts to train its relevant personnel or the relevant personnel of WKEC to be employed by Big Rivers at the Closing, with a view toward fulfilling the requirements of the preceding sentence.

ARTICLE 7

PERMITS

Section 7.1 Assignment of Permits. Set forth on Schedule 7.1 is a listing or summary of all permits, licenses and allowances (if any) (including any pending applications or registrations for permits, licenses and allowances or amendments to existing permits, licenses and allowances) specifically issued or allotted by any Governmental Entity to or in respect of any of the Generating Plants and in the possession or control of WKEC (including without limitation, as successor by merger of Station Two Subsidiary and WKE) as of the Execution Date, other than (a) SO₂ Allowances and NO_x Allowances, (b) such allowances (including without limitation, SO₂ Allowances and NO_x Allowances) as are the property of, or allocated by the Supplementary Allowance Agreement to, the City or the City Utility Commission, and (c) Consumed Allowances. One or more permits, licenses and allowances (other than NO_x Allowances and SO₂ Allowances), and pending applications or registrations for the same, may be added by WKEC to Schedule 7.1 from time-to-time upon written notice thereof delivered to Big Rivers prior to the Closing, in the event such permits, licenses, allowances, applications or registrations are obtained by or issued to WKEC following the Execution Date through the Closing and relate to the Generating Plants, to the Sites, to the Inventory, to the Personal Property or to the Assigned Contracts, or to the operation, maintenance, repair or upkeep thereof. Notwithstanding the preceding sentence, if within fifteen (15) Business Days after its receipt of the notice from WKEC contemplated in the preceding sentence, but prior to the Closing, Big Rivers shall object (by written notice delivered to WKEC) to the addition of any one or more permits, licenses, allowances, applications or registrations by WKEC to Schedule 7.1 as contemplated above, that objection shall be deemed to give rise to a dispute as contemplated in Section 10.2(ee) and Section 10.3(mm). WKEC agrees to keep Big Rivers apprised of any efforts by or on behalf of WKEC following the Execution Date to secure or obtain any new or additional permits, licenses, allowances, applications or registrations of the types described above, which WKEC intends to add to Schedule 7.1 if obtained or received prior to the Closing, and Big Rivers shall have the opportunity to

review and comment on any application for a Permit that WKEC proposes to file or submit in the Pre-Closing Period for a period of fifteen (15) Business Days prior to such filing or submission. Any conflict between WKEC and Big Rivers or objection by Big Rivers regarding any application or registration for a Permit proposed to be filed or submitted by WKEC during the Pre-Closing Period shall be deemed to give rise to a dispute as contemplated in Section 10.2(ee) and Section 10.3(mm). One or more permits, licenses, allowances, applications or registrations identified on Schedule 7.1 (whether as of the Execution Date or by reason of a subsequent addition to that Schedule as contemplated herein) may be removed by WKEC from that Schedule from time-to-time in WKEC's sole discretion, by written notice thereof delivered to Big Rivers prior to the Closing, in the event such permit(s), license(s) or allowance(s) expire in accordance with their respective terms prior to the Closing, are revoked by the relevant Governmental Entity that granted or issued the same prior to the Closing, are surrendered by WKEC to the relevant Governmental Entity prior to the Closing, or, in the case of applications or registrations, are rejected or denied by the relevant Governmental Entities, consistent with its obligations under the Lease, the Station Two Agreement and the other Operative Documents. Notwithstanding the preceding sentence, if within 15 days after its receipt of the notice from WKEC contemplated in the preceding sentence, but prior to the Closing, Big Rivers shall object (by written notice delivered to WKEC) to the removal of any one or more permits, licenses or allowances by WKEC from Schedule 7.1 as contemplated above, that objection shall be deemed to give rise to a dispute as contemplated in Section 10.2(ee) and Section 10.3(mm). WKEC agrees to keep Big Rivers apprised of any actual or threatened revocation of a permit, license or allowance identified on Schedule 7.1, or of any planned surrender of the same by WKEC, each as contemplated above. All permits, licenses and allowances (if any), and all pending applications or registrations for the same, set forth on Schedule 7.1 as of the Execution Date hereof (other than those as shall be removed by WKEC as contemplated above), together with all other permits, licenses, allowances, applications and registrations that may be added by WKEC to Schedule 7.1 as contemplated above, are collectively referred to in this Termination Agreement as the "*Permits*".

Section 7.2 Consents and Releases of Government Entities: Limited Payments. Subject to Article 9, WKEC and Big Rivers agree to use their respective reasonable best efforts to obtain at the earliest practicable time following the Execution Date the consents or approvals of all Governmental Entities, or, alternatively, issuance of a replacement permit to Big Rivers by the appropriate Governmental Entity (if so contemplated by the regulatory scheme under which the permit is issued), that may be required under the terms of the Permits or Applicable Law for the assignment or transfer by WKEC to Big Rivers of each Permit (including any amendments or modifications to the Permits required to effect such assignment or transfer). The Parties agree that the receipt of all consents and approvals required from Governmental Entities under Applicable Laws for the transfer, amendment or issuance of a replacement permit, or the absence of objection by any Governmental Entity to the Permit transfer or amendment or the issuance of the replacement permit to Big Rivers prior to the Closing, each as contemplated in this Section 7.2, shall be a condition to the Closing as provided for in Section 10.2(v) and Section 10.3(r). The limited commitment of WKEC to make payments to one or more

Persons in order to obtain the consent or approval of any Governmental Entity, or the Permit transfer or the issuance of the replacement permit, as contemplated above is set forth in Article 9; provided, that WKEC shall have no obligation to make any such payments to any Person to the extent WKEC believes, in the exercise of its reasonable judgment on the advice of its legal counsel, that such payments would violate any Applicable Laws.

Section 7.3 Post-Closing Permit Transfer or Substitution. To the extent that the final transfer or assignment (with appropriate consent(s) or approval(s) of relevant Governmental Entities) of any Permit by WKEC to Big Rivers, or the final issuance by the relevant Governmental Entity to Big Rivers of a new permit in place of a Permit to be surrendered or relinquished by WKEC, cannot be completed as of or prior to the Closing and the Closing shall nonetheless occur, then WKEC shall be deemed as of the Closing to have authorized Big Rivers to operate, maintain and utilize the relevant Generating Plant (or portion thereof) or Site (or portion thereof) following the Closing under or pursuant to that Permit (a "**Continuing Permit**"), solely at Big Rivers' risk and expense (including without limitation, for any permit fees, license fees or similar fees that may thereafter become owing to any Governmental Entity in order to maintain such Continuing Permit in force and effect), but then only to the extent that Big Rivers' operation, maintenance and/or use of that Generating Plant (or portion thereof) or Site (or portion thereof) under or pursuant to that Continuing Permit, and Big Rivers' reliance generally on WKEC's authorization to operate under the terms of any Continuing Permit in connection with such operation, maintenance and/or use, is not prohibited under the terms and conditions of that Continuing Permit or under Applicable Law, or by any Governmental Entity responsible for administering any such Applicable Law.

Following the Closing, WKEC and Big Rivers each agrees to use its reasonable best efforts to cause the final transfer or assignment of that Continuing Permit to Big Rivers (with all appropriate consent(s) or approval(s) of all relevant Governmental Entities) at the earliest practicable time or, as applicable, to cause the final issuance by the relevant Governmental Entity to Big Rivers of a new permit in place of that Continuing Permit (thereby rendering that Continuing Permit of no further force or effect) at the earliest practicable time. Notwithstanding anything to the contrary set forth in this Article 7 or elsewhere in this Agreement, if, despite the efforts of WKEC and Big Rivers described in the preceding sentence, any Governmental Entity shall fail or refuse for any reason (other than by reason of a breach by WKEC of the preceding sentence of this paragraph or by reason of a violation of that Continuing Permit by WKEC occurring prior to the Closing) to consent to or approve the final transfer or assignment of that Continuing Permit by WKEC to Big Rivers or, as applicable, to finally issue to Big Rivers a new permit in place of that Continuing Permit, in either case on or prior to the second (2nd) anniversary of the Unwind Closing Date, then WKEC shall be entitled to abandon and relinquish that Continuing Permit (and to file all necessary instruments and information with relevant Governmental Entities to accomplish the same) at any time thereafter in its sole discretion, without further obligation whatsoever to Big Rivers in respect of such actions or that Continuing Permit.

— Big Rivers agrees to operate, maintain and use the Generating Plants and Sites at

all times in material compliance with the terms and conditions of each Continuing Permit. Big Rivers hereby agrees to indemnify and hold harmless WKEC and its Affiliates, directors, officers, employees, agents, successors and assigns from and against any and all Damages attributable to periods after the Closing that may be suffered or incurred by them (or any of them), directly or indirectly resulting from, arising out of or in any manner connected with (i) any operation, maintenance and/or use by Big Rivers of any Generating Plant (or portion thereof) or any Site (or portion thereof) under or pursuant to, or in reliance upon, any Continuing Permit following the Closing, or (ii) any violation by Big Rivers (or its employees, agents or representatives) of any Continuing Permit following the Closing, or (iii) any action or activity on the part of Big Rivers (or its employees, agents or representatives) following the Closing that causes or results in a violation of any Continuing Permit by or on the part of WKEC.

ARTICLE 8

SO₂ ALLOWANCES AND NO_x ALLOWANCES

Section 8.1 Conveyance of SO₂ Allowances and NO_x Allowances

(a) Entitlement. Subject to the allocations of allowances attributable to the Closing Year set forth in Section 8.2 and Section 8.3, effective as of the Closing, and other than Excluded Allowances, Big Rivers shall be entitled to the full and exclusive use, enjoyment and benefit (free of all Liens), including the right to sell, exchange or otherwise dispose of for Big Rivers' account, all of the SO₂ Allowances and NO_x Allowances in the "facilities accounts" or "unit accounts," as applicable, established and maintained for the Generating Plants under applicable Environmental Law (the "*Accounts*") as of the Closing, including any future years' allotment (subject to any limitations on such use, enjoyment or benefit that may be imposed under any 1970 Station Two Contract, as amended, the Supplementary Allowances Agreement or under Applicable Laws).

(b) Substitute Allowances. In the event that prior to the Closing WKEC (including without limitation, as successor by merger of Station Two Subsidiary) sells, assigns or conveys, or has sold, assigned or conveyed, any NO_x Allowances or SO₂ Allowances having a vintage year of the Closing Year or a subsequent year, then on or prior to 14 days in advance of the Unwind Closing Date WKEC shall purchase (if necessary) at its sole cost, and transfer into the relevant Accounts (for use or allocation as provided below in this Article 8), substitute allowances for the emission of oxides of nitrogen or sulfur dioxide (as applicable) having vintage year(s) identical to, or earlier than (to the extent that allowances of such earlier vintage years may be utilized in the vintage year and authorize the same emissions for the same time periods of allowances that were sold), the vintage years of the Allowances that were sold, assigned or conveyed, to replace the NO_x Allowances or SO₂ Allowances so sold, assigned or conveyed.

WKEC shall maintain in the relevant Accounts through the Closing, all substitute allowances, if any, required to be deposited in the Accounts pursuant to this Section 8.1(b), and shall not cause or permit the Designated Representative to authorize any transfers of such substitute allowances at any time on or after the date 14 days in advance of the Unwind Closing Date.

Section 8.2 SO₂ Allowances.

(a) SO₂ Allocation.

(i) Only a portion of the Closing Year SO₂ Allotment shall be allocated to Big Rivers effective as of the Closing, which portion shall equal the sum of a pro-rata portion of such allotment attributable to the Closing Month determined as contemplated below, and such allotments attributable to all subsequent months in the Closing Year, and Big Rivers' allocated portion of the SO₂ Allowances for the Closing Year attributable to or relating to Station Two, determined as contemplated below (collectively, the "**Big Rivers SO₂ Allocation**").

(ii) Assuming the Closing occurs in 2007 resulting in 2007 becoming the Closing Year, Schedule 8.2 sets forth (among other data) the monthly portions of the Closing Year SO₂ Allotment for that assumed Closing Year attributable or relating to the Generating Plants leased from Big Rivers pursuant to the Lease (the "**Leased Generators**"), but not Station Two. In the event the Closing is to occur after December 31, 2007, resulting in 2008 becoming the Closing Year, Schedule 8.2 will, as an additional condition precedent to the Closing, be modified by the mutual agreement of the Parties, on or before the Unwind Closing Date, to reflect the monthly portions of the Closing Year SO₂ Allotment for that Closing Year attributable or relating to the Leased Generators.

(iii) The Parties acknowledge that the determination of the Station Two SO₂ Allowances included in the Closing Year SO₂ Allotment will, by necessity, be based in part on a determination of the sum of the number of those Station Two SO₂ Allowances that are required to be used for compliance with Applicable Laws of the SO₂ emissions associated with the energy from Station Two taken by the City or the City Utility Commission during the Closing Year, and the additional number (if any) of those Station Two SO₂ Allowances that the City or the City Utility Commission is entitled to retain and utilize for its own account, in each case pursuant to one or more of the 1970 Station Two Contracts, as amended, and/or the Supplementary Allowances Agreement (collectively, the "**City Reserved SO₂ Allowances**"). The Parties further acknowledge that the above-described determination of the City Reserved SO₂ Allowances may not be possible until after the end of the Closing Year and the determination of, among other factors, the total SO₂ emissions attributable to the energy taken from Station Two by the City or the City Utility Commission during the Closing Year (the "**City Closing Year SO₂ Emissions**").

In light of the foregoing, at such time following the Closing Year as the City Closing Year SO₂ Emissions and the City Reserved SO₂ Allowances can reasonably be determined or calculated as contemplated in the relevant 1970 Station Two Contract, as amended, and the Supplementary Allowances Agreement, the portion of the Closing Year SO₂ Allotment that is attributable to or relates to Station Two and is not reserved by or allocated to the City or the City Utility Commission (as contemplated above) shall promptly thereafter be allocated between WKEC and Big Rivers on a pro-rata basis, determined on the basis of the total number of days from January 1 of the Closing Year through and including the Unwind Closing Date (in the case of the allowances allocated to WKEC) as compared with the total number of days thereafter in the Closing Year (in the case of the allowances allocated to Big Rivers). In the absence of the Parties' agreement on the portion of the Closing Year SO₂ Allotment that is attributable to or relates to Station Two, any Party may resort to litigation or other means of dispute resolution that may be available to it under Applicable Laws for the resolution of that dispute. Big Rivers agrees that it shall not following the Closing, without the prior written consent of WKEC, cause or permit any amendment to any 1970 Station Two Contract, as amended, or to the Supplementary Allowances Agreement, or enter into any other agreement with the City or the City Utility Commission, in either case that would modify the means or method(s) by which the City's or the City Utility Commission's contractual right or entitlement to the Station Two SO₂ Allowances allotted for the Closing Year or for any previous year is determined, except for such modifications as do not and will not affect the rights or entitlements of WKEC to receive the benefit of the "WKE SO₂ Allocation" (as defined below) determined as contemplated in this Section 8.2 as if such amendment(s) or other agreement(s) with the City or the City Utility Commission had not been implemented or entered into.

(iv) The SO₂ Allowances allocated to Big Rivers for the Closing Month (exclusive of the SO₂ Allowances attributable to or relating to Station Two) shall be limited to a portion of the amount of allowances designated in Schedule 8.2 for the Closing Month determined by multiplying (i) the amount designated in Schedule 8.2 for the Closing Month by (ii) a fraction, the numerator of which is the number of days following the Unwind Closing Date through the end of the Closing Month and the denominator of which is the total number of days in the Closing Month.

(v) SO₂ Allowances (and as applicable substitute allowances of sulfur dioxide purchased as contemplated in paragraph 8.1(b) for the Closing Year) that are included in the Closing Year SO₂ Allotment, but that are not allocated to Big Rivers in accordance with the foregoing provisions of this Section 8.2, shall be allocated to WKEC (the "*WKE SO₂ Allocation*").

(b) Adjustments. The Big Rivers SO₂ Allocation shall be adjusted to account for any modification to an Operating Plan that is mutually agreed upon by WKEC and Big Rivers, but not otherwise.

(c) Responsibility for Compliance.

(i) WKEC shall be solely responsible for maintaining and providing to Big Rivers, at or prior to the Closing, a sufficient number of allowances, as required by Applicable Law for the actual SO₂ emissions of the Generating Plants (excluding SO₂ emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods (A) after the Effective Date and prior to the Closing Year, and (B) from January 1 of the Closing Year up to and including the Unwind Closing Date. In particular with respect to clause (B) of the preceding sentence, WKEC shall be responsible for: ensuring that a sufficient number of SO₂ Allowances (or such other allowances) are available in the Accounts at least 14 days prior to and at all times thereafter through Closing for that purpose, including the WKE SO₂ Allocation (subject to recoupment by WKEC as provided in clause (c)(iii) below), which may include SO₂ Allowances allotted to the Generating Plants for the Closing Year, plus substitute allowances purchased for the Closing Year pursuant to Section 8.1(b) hereof and, if necessary, additional allowances required to authorize the actual SO₂ emissions from the Generating Plants (excluding SO₂ emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods during the Closing Year up to and including the Unwind Closing Date to the extent that the foregoing are not sufficient for that purpose; maintaining in the relevant Accounts through the Closing, all allowances deposited in the Accounts pursuant to this Section 8.2(c)(i); and ensuring that the Designated Representative shall not authorize any transfers of such substitute allowances at any time on or after the date 14 days in advance of the Unwind Closing Date through the Closing. Once the SO₂ Allowances (and any other allowances) contemplated above have been made available by WKEC in accordance with this Subsection (i), Big Rivers agrees to cause such allowances to be submitted to applicable Governmental Entities to the extent required for the compliance under Applicable Law of the actual SO₂ emissions of the Generating Plants (excluding SO₂ emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods of the Closing Year through and including the Unwind Closing Date. If EPA or other relevant agencies notify Big Rivers that the allowances submitted from amounts available in the Accounts for actual SO₂ emissions for the Closing Year are not sufficient to authorize the SO₂ emissions during such period, and if such deficiency is attributable, in whole or in part, to a failure by WKEC to provide sufficient allowance for emissions through the Unwind Closing Date, as contemplated above, then WKEC shall, within 15 days after receiving written notification thereof (or as soon thereafter as is permissible by Applicable Laws), transfer to the Accounts for any of the Generating Plants any additional allowances required to authorize all SO₂ emissions during the period of the Closing Year through the Unwind Closing Date (excluding SO₂ emissions attributable to energy taken from Station Two by the City or City Utility Commission), and Big Rivers shall cause such additional allowances to be submitted to EPA or other relevant agencies with respect to such emissions, together with any additional allowances required to be provided by Big Rivers with respect to the period after the Unwind Closing Date, or by the City or City Utility Commission with respect to emissions attributable to energy from Station Two taken by it during the Closing Year (if made available to Big Rivers by the City or City Utility Commission, respectively).

(ii) Big Rivers shall be responsible for maintaining in the Accounts the number of allowances provided by WKEC in the Accounts at the Closing, and for supplying (from such Accounts or other sources) a sufficient number of allowances, as required by Applicable Law for the actual SO₂ emissions of the Generating Plants (excluding SO₂ emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods following the Unwind Closing Date, and Big Rivers shall be responsible for ensuring that a sufficient number of SO₂ Allowances (or such other allowances) are available in the Accounts or are transferred to the Accounts by Big Rivers and are submitted for that purpose as and when required in the year following the Closing Year.

(iii) To the extent the WKE SO₂ Allocation exceeds the number of allowances of sulfur dioxide required for the actual SO₂ emissions of the Generating Plants (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods during the Closing Year up to and including the Unwind Closing Date, and provided that WKEC shall have complied with the provisions of Sections 3.2(h), 8.1(b), 8.2(c)(i) and 8.2(d) hereof, WKEC shall be entitled to receive from the Designated Representative with respect to the Generating Plants (and Big Rivers shall cause that Designated Representative to transfer to WKEC) all such excess allowances (the "*WKE Excess SO₂ Allowances*") for its own account, and to sell or otherwise utilize the same in its sole discretion and without obligation to Big Rivers, promptly after such time as EPA (or the other relevant agency) has "unlocked" the relevant Accounts (that is, no longer blocks transactions associated with allowances that are the vintage year of the Closing Year) in the year following the Closing Year. Notwithstanding the preceding sentence, on or prior to February 28 of the year following the Closing Year, Big Rivers shall cause the Designated Representative for the Generating Plants to transfer to WKEC the number (if any) of WKE Excess SO₂ Allowances determined by subtracting from the WKE SO₂ Allocation the number of allowances of sulfur dioxide required to authorize one hundred and five percent (105%) of the actual SO₂ emissions of the Generating Plants (excluding emissions attributable to energy taken from Station Two by the City or City Utility Commission) for all periods during the Closing Year up to and including the Unwind Closing Date, with any remaining WKE Excess SO₂ Allowances being transferred to WKEC at the time contemplated in the preceding sentence. To the extent the Big Rivers SO₂ Allocation exceeds the number of allowances of sulfur dioxide required for the actual SO₂ emissions of the Generating Plants (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for the portion of the Closing Year following the Unwind Closing Date, Big Rivers shall be entitled to all such excess allowances for its own account, and to sell or otherwise utilize the same in its sole discretion without obligation to WKEC.

(d) Big Rivers Supplemental Allowances. In the event the Closing shall occur, WKEC shall transfer to Big Rivers, on or prior to February 15 of the year immediately following the Closing Year, and in addition to the Big Rivers SO₂ Allocation, 14,000 allowances of sulfur dioxide allotted by the EPA pursuant to the Clean

Air Act and other Environmental Laws, which additional allowances shall have a vintage year which permits them to be used for SO₂ emissions resulting from operations in calendar year 2007 and thereafter (subject to such limitations on the duration or usage of such additional allowances as shall be imposed under Applicable Laws generally with respect to SO₂ allowances), at no cost or expense to Big Rivers (such additional allowances of sulfur dioxide being referred to in this Termination Agreement as the “*Big Rivers Supplemental Allowances*”).

(e) EPA Compliance – Leased Generators. Big Rivers agrees to be solely responsible for submitting to the EPA (or any applicable state agency) all SO₂ Allowances or other allowances of sulfur dioxide that are required for compliance of the SO₂ emissions of the Generating Plants (other than Station Two) throughout the Closing Year, by the deadline for that submission under Applicable Laws, including without limitation, of the SO₂ emissions of the Generating Plants (other than Station Two) for the portion of the Closing Year up to and including the Unwind Closing Date (but only to the extent WKEC makes available in the relevant Accounts as contemplated in Subsection (c)(i) above a sufficient number of SO₂ Allowances or other allowances of sulfur dioxide for the SO₂ emissions of the Generating Plants (other than Station Two) for the portion of the Closing Year up to and including the Unwind Closing Date).

(f) EPA Compliance - Station Two. Big Rivers agrees that if it controls (as employer or by agreement) the Designated Representative for Station Two SO₂ Allowance compliance, it shall be solely responsible for submitting to the EPA (or any applicable state agency) all SO₂ Allowances or other allowances of sulfur dioxide required for compliance of the SO₂ emissions of Station Two throughout the Closing Year, by the deadline for that submission under Applicable Laws (but only to the extent WKEC makes available in the relevant Station Two Account as contemplated in Subsection (c)(i) above a sufficient number of SO₂ Allowances or other allowances of sulfur dioxide for the SO₂ emissions of Station Two (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for the portion of the Closing Year up to and including the Unwind Closing Date, and only to the extent the City or the City Utility Commission makes sufficient SO₂ Allowances available to Big Rivers in accordance with the 1970 Station Two Contracts, it being understood that neither Big Rivers nor WKEC shall be responsible for the compliance of any SO₂ emissions associated with the energy from Station Two taken by the City or the City Utility Commission). In the event the Designated Representative for Station Two shall have submitted to the EPA (or other applicable state agency) the portion of the Closing Year SO₂ Allotment required for compliance of the SO₂ emissions attributable to the energy from Station Two taken by any WKE Party or by Big Rivers during the Closing Year, and such Designated Representative holds or controls SO₂ Allowances (plus any substitute allowances provided pursuant to Section 8.1(b) hereof) that are WKE Excess SO₂ Allowances on or past the date on which all such WKE Excess SO₂ Allowances are required to be transferred to WKEC under paragraph 8.2(c)(iii) hereof, then Big Rivers shall either: (i) cause that Designated Representative to promptly thereafter transfer to WKEC any WKE Excess SO₂ Allowances then held or controlled

by that Designated Representative; or (ii) promptly thereafter acquire and transfer to WKEC, at Big Rivers' expense, substitute allowances of SO₂ having a vintage year of the Closing Year and in an amount equal to the WKE Excess SO₂ Allowances so held or controlled by that Designated Representative, in which event Big Rivers' obligation hereunder to ensure delivery to WKEC of the WKE Excess SO₂ Allowances (if any) attributable to Station Two shall be deemed to be fulfilled, and WKEC shall be deemed to have assigned to Big Rivers its rights in and to those WKE Excess SO₂ Allowances held by that Designated Representative.

Section 8.3 NO_x Allowances.

(a) Availability of NO_x Allotment. WKEC shall be responsible for supplying or administering sufficient allowances required for emissions of oxides of nitrogen relating to operation of the Generating Plants (other than emissions attributable to energy taken from Station Two by the City or City Utility Commission) from the Effective Date until the Unwind Closing Date, subject to the provisions below with respect to the administration of allowances for the Closing Year. At least 14 days prior to the Unwind Closing Date, WKEC shall ensure that the Closing Year NO_x Allotment is available to and under the control of the Designated Representative for the Generating Plants at no additional cost to Big Rivers for compliance of the NO_x emissions of the Generating Plants (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods during the Closing Year through and including the Unwind Closing Date; provided, that WKEC makes no representations or warranties, whether expressed, implied or otherwise, that the Closing Year NO_x Allotment will be sufficient for the full compliance of all NO_x emissions of the Generating Plants (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) throughout that period. WKEC shall maintain in the relevant Accounts through the Closing, all allowances, if any, required to be deposited in the Accounts pursuant to this Section 8.3(a), and shall ensure that the Designated Representative does not authorize any transfers of such substitute allowances at any time on or after the date 14 days in advance of the Unwind Closing Date through the Closing. Big Rivers agrees that it shall not attempt to sell, convey, assign or transfer (and shall not permit its Designated Representative to sell, convey, assign or transfer) any portion of the Closing Year NO_x Allotment, or any right or interest of Big Rivers therein, to any Person, whether before or after the Closing, until that allotment has first been used for compliance of the NO_x emissions of the Generating Plants for the periods contemplated above.

(b) NO_x Allocation.

(i) The Closing Year NO_x Allotment shall be allocated between WKEC, on the one hand, and Big Rivers, on the other hand, on the basis of the Unwind Closing Date and, in the case of NO_x Allowances associated with the Leased Generators, agreed-upon monthly forecasted NO_x emissions from those Generating Plants for the Closing Month

and each month thereafter during the remainder of the Closing Year (as more particularly described below), without regard to the actual NOx emissions for those months of the Closing Year; provided, that if the Closing shall occur on a date that is not within the NOx Season of the Closing Year, then if the Unwind Closing Date precedes that NOx Season Big Rivers shall be allocated the entire Closing Year NOx Allotment, and if the Unwind Closing Date follows the NOx Season WKEC shall be allocated the entire Closing Year NOx Allotment.

(ii) Assuming the Closing occurs in either May, June, July, August or September of 2007, Schedule 8.3 sets forth the monthly portions of the Closing Year NOx Allotment corresponding with (and required for compliance of) the parties' agreed-upon monthly forecasted NOx emissions for those months from the Leased Generators (but not from Station Two). In the event the Closing is to occur after December 31, 2007, resulting in 2008 becoming the Closing Year, Schedule 8.3 will, as an additional condition precedent to the Closing, be modified by the mutual agreement of the Parties, on or before the Unwind Closing Date, to reflect the monthly portions of the Closing Year NOx Allotment for that Closing Year attributable or relating to the Leased Generators.

(iii) The Parties acknowledge that the determination of the Station Two NOx Allowances included in the Closing Year NOx Allotment will, by necessity, be based in part on a determination of the sum of the number of those Station Two NOx Allowances that are required to be used for compliance with Applicable Laws of the NOx emissions associated with the energy taken from Station Two by the City or the City Utility Commission during the Closing Year, and the additional number (if any) of those Station Two NOx Allowances that the City or the City Utility Commission is entitled to retain and utilize for its own account, in each case pursuant to one or more of the 1970 Station Two Contracts (collectively, the "*City Reserved NOx Allowances*"). The Parties further acknowledge that the above-described determination of the City Reserved NOx Allowances may not be possible until November of the Closing Year or later and the determination of, among other factors, the total NOx emissions attributable to the energy taken from Station Two by the City or the City Utility Commission during the Closing Year (the "*City Closing Year NOx Emissions*"). In light of the foregoing (but subject to Subparagraph (i) above), at such time following the Closing as the City Closing Year NOx Emissions and the City Reserved NOx Allowances can reasonably be determined or calculated as contemplated in the relevant 1970 Station Two Contract, as amended, the portion of the Closing Year NOx Allotment that is attributable to or relates to Station Two and is not reserved by or allocated to the City or the City Utility Commission (as contemplated above) shall promptly thereafter be allocated between WKEC and Big Rivers on a pro rata basis determined (assuming the Closing occurs during the NOx Season) on the basis of the number of days from May 1 of the Closing Year through and including the Unwind Closing Date (in the case of the allowances allocated to WKEC) as compared with the total number of days thereafter in the NOx Season of the Closing Year (in the case of the allowances allocated to Big Rivers). In the absence the Parties' agreement on the portion of the Closing Year NOx Allotment that is attributable to or

relates to Station Two, any Party may resort to litigation or other means of dispute resolution that may be available to it under Applicable Laws for the resolution of that dispute. Big Rivers agrees that it shall not following the Closing, without the prior written consent of WKEC, cause or permit any amendment to any 1970 Station Two Contract, as amended, or enter into any other agreement with the City or the City Utility Commission, in either case that would modify the means or method(s) by which the City's or the City Utility Commission's contractual right or entitlement to the Station Two NOx Allowances allotted for the Closing Year or for any previous year is determined, except for such modifications as do not and will not affect the rights or entitlements of WKEC to receive the "WKE NOx Allocation" (as defined below) determined as contemplated in this Section 8.3 as if such amendment(s) or other agreement(s) with the City or the City Utility Commission had not been implemented or entered into.

(iv) At such time following the Closing as the total number of NOx Allowances for each of the months in the NOx Season (as set forth on Schedule 8.3), together with the NOx Allowances for the NOx Season of the Closing Year attributable or relating to Station Two, in each case that are available for allocation, in whole or in part, to Big Rivers pursuant to this Section 8.3, have been determined as contemplated above, the portion of those allowances of oxides of nitrogen emissions that shall be allocated to Big Rivers shall equal the sum of a pro-rata portion of the available NOx Allowances (including any substitute allowances required to be provided by WKEC under Section 8.1(b) hereof) attributable to the Closing Month (exclusive of the NOx Allowances attributable to or relating to Station Two), determined as contemplated in the following sentence, and the available NOx Allowances (exclusive of the NOx Allowances attributable to or relating to Station Two but including any substitute allowances required to be provided by WKEC under Section 8.1(b) hereof) attributable to all subsequent months in the Closing Year, and Big Rivers' allocated portion of the NOx Allowances for the Closing Year attributable to or relating to Station Two, determined as contemplated above (collectively, the "**Big Rivers NOx Allocation**"). The NOx Allowances (exclusive of the NOx Allowances attributable to or relating to Station Two) allocated to Big Rivers for the Closing Month shall be limited to a portion of the amount designated in Schedule 8.3 for the Closing Month, determined by multiplying (i) the amount so designated in Schedule 8.3 for the Closing Month by (ii) a fraction, the numerator of which is the number of days following the Unwind Closing Date through the end of the Closing Month and the denominator of which is the total number of days in the Closing Month.

(v) NOx Allowances (and, as applicable, substitute allowances of oxides of nitrogen purchased as contemplated in paragraph 8.1(b) for the Closing Year) that are included in the Closing Year NOx Allotment, but that are not allocated to Big Rivers in accordance with the foregoing provisions of this Section 8.3, shall be allocated to WKEC (the "**WKE NOx Allocation**").

(c) Responsibility for Compliance.

(i) WKEC shall be solely responsible for maintaining and providing to Big Rivers, at or prior to the Closing, a sufficient number of allowances, as required by Applicable Law for the actual NOx emissions of the Generating Plants (excluding NOx emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods (A) after the Effective Date and prior to the Closing Year, and (B) from January 1 of the Closing Year up to and including the Unwind Closing Date. In particular with respect to clause (B) of the preceding sentence, WKEC shall be responsible for: ensuring that a sufficient number of NOx Allowances (or such other allowances) are available in the Accounts at least 14 days prior to and at all times thereafter through Closing for that purpose, including without limitation, for purchasing additional NOx Allowances (or such other allowances) to the extent the NOx Allowances allotted to the Generating Plants for the Closing Year (including any substitute allowances purchased pursuant to Section 8.1(b) hereof for the Closing Year and transferred to the Accounts prior to the Closing) included within the WKE NOx Allocation are not sufficient for that purpose; maintaining in the relevant Accounts through the Closing, all allowances deposited in the Accounts pursuant to this Section 8.3(c)(i); and ensuring that the Designated Representative shall not authorize any transfers of such substitute allowances at any time on or after the date 14 days in advance of the Unwind Closing Date through the Closing. Once the NOx Allowances (and any other allowances) contemplated above have been made available by WKEC in accordance with this Subsection (i), Big Rivers agrees to cause such allowances to be submitted to applicable Governmental Entities to the extent required for the compliance under Applicable Law of the actual NOx emissions of the Generating Plants (excluding NOx emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods of the Closing Year through and including the Unwind Closing Date. If EPA or other relevant agencies notify Big Rivers that the allowances submitted from amounts available in the Accounts for actual NOx emissions for the Closing Year are not sufficient to authorize the NOx emissions during such period, and if such deficiency is attributable, in whole or in part, to a failure by WKEC to provide sufficient allowance for emissions through the Unwind Closing Date, as contemplated above, then WKEC shall, within 15 days after receiving written notification thereof (or as soon thereafter as is permissible by Applicable Laws), transfer to the Accounts for any of the Generating Plants any additional allowances required to authorize all NOx emissions during the period of the Closing Year through the Unwind Closing Date from such Generating Plants (excluding NOx emissions attributable to energy taken from Station Two by the City or City Utility Commission), and Big Rivers shall cause such additional allowances to be submitted to EPA or other relevant agencies with respect to such emissions, together with any additional allowances required to be provided by Big Rivers with respect to the period after the Unwind Closing Date, or by the City or City Utility Commission with respect to emissions attributable to energy from Station Two taken by it during the Closing Year (if made available to Big Rivers by the City or City Utility Commission, respectively).

(ii) If the Unwind Closing Date falls within a NOx Season, Big Rivers shall be responsible for maintaining in the Accounts the number of allowances provided by WKEC in the Accounts at the Closing, and for supplying (from such Accounts or other sources) a sufficient number of allowances, as required by Applicable Law for the actual NOx emissions of the Generating Plants (excluding NOx emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods in the NOx Season of the Closing Year following the Unwind Closing Date, and Big Rivers shall be responsible for ensuring that a sufficient number of NOx Allowances (or such other allowances) are available in the Accounts or are transferred to the Accounts by Big Rivers and are submitted for that purpose by the compliance deadline following the Closing.

(iii) To the extent the WKE NOx Allocation exceeds the number of allowances of oxides of nitrogen required for the actual NOx emissions of the Generating Plants (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods during the Closing Year up to and including the Unwind Closing Date, and provided that WKEC has complied with the provisions of Sections 3.2(h), 8.1(b) and 8.3(c)(i), WKEC shall be entitled to receive from the Designated Representative with respect to the Generating Plants (and Big Rivers shall cause that Designated Representative to transfer to WKEC) all such excess allowances (the "*WKE Excess NOx Allowances*") for its own account, and to sell or otherwise utilize the same in its sole discretion and without obligation to Big Rivers, promptly after such time as EPA (or the other relevant agency) has "unlocked" the relevant Accounts (that is, no longer blocks transactions associated with allowances that are the vintage year of the Closing Year) for the NOx Season of the Closing Year. Notwithstanding the preceding sentence, on or prior to November 30 of the Closing Year, Big Rivers shall cause the Designated Representative for the Generating Plants to transfer to WKEC the number (if any) of WKE Excess NOx Allowances determined by subtracting from the WKE NOx Allocation the number of allowances for oxides of nitrogen required to authorize one hundred five percent (105%) of the actual NOx emissions of the Generating Plants (excluding emissions attributable to energy taken from Station Two by the City or City Utility Commission) for the portion of the Closing Year NOx Season that precedes (and, as applicable, includes) the Unwind Closing Date, with any remaining WKE Excess NOx Allowances being transferred to WKEC at the time contemplated in the preceding sentence. To the extent the Big Rivers NOx Allocation exceeds the number of allowances of oxides of nitrogen required for the actual NOx emissions of the Generating Plants (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for the portion of the Closing Year following the Unwind Closing Date, Big Rivers shall be entitled to all such excess allowances for its own account, and to sell or otherwise utilize the same in its sole discretion, whether before or after the end of the Closing Year and without obligation to WKEC.

(d) EPA Compliance – Leased Generators. Big Rivers agrees to be solely responsible for submitting to the EPA (or any applicable state agency) all NOx Allowances or other allowances of oxides of nitrogen that are required for compliance of

the NOx emissions of the Generating Plants (other than Station Two) throughout the NOx Season of the Closing Year, by the deadline for that submission under Applicable Laws, including without limitation, of the NOx emissions of the Generating Plants (other than Station Two) for the portion of the Closing Year up to and including the Unwind Closing Date (but only to the extent WKEC makes available in the relevant Accounts as contemplated in Subsection (c)(i) above a sufficient number of NOx Allowances or other allowances of oxides of nitrogen for the NOx emissions of the Generating Plants (other than Station Two) for the portion of the Closing Year up to and including the Unwind Closing Date).

(e) EPA Compliance - Station Two. Big Rivers agrees that if controls (as employer or by agreement) the Designated Representative for Station Two NOx Allowance compliance, it shall be solely responsible for submitting to the EPA (or any applicable state agency) all NOx Allowances or other allowances of oxides of nitrogen required for compliance of the NOx emissions of Station Two throughout the Closing Year, by the deadline for that submission under Applicable Laws (but only to the extent WKEC makes available in the relevant Station Two Account as contemplated in Subsection (c)(i) above a sufficient number of NOx Allowances or other allowances of oxides of nitrogen for the NOx emissions of Station Two (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for the portion of the Closing Year up to and including the Unwind Closing Date, and only to the extent the City or the City Utility Commission makes sufficient NOx Allowances available to Big Rivers in accordance with the 1970 Station Two Contracts, it being understood that neither Big Rivers nor WKEC shall be responsible for the compliance of any NOx emissions associated with the energy taken from Station Two by the City or the City Utility Commission). In the event the Designated Representative for Station Two shall have submitted to the EPA (or other applicable state agency) the portion of the Closing Year NOx Allotment required for compliance of the NOx emissions attributable to the energy from Station Two taken by any WKE Party or by Big Rivers during the Closing Year, and such Designated Representative holds or controls NOx Allowances (plus any substitute allowances provided pursuant to Section 8.1(b) hereof) that are WKE Excess NOx Allowances on or past the date on which all such WKE Excess NOx Allowances are required to be transferred to WKEC under Section 8.3(c)(iii) hereof, then Big Rivers shall either: (i) cause that Designated Representative to promptly thereafter transfer to WKEC any WKE Excess NOx Allowances then held or controlled by that Designated Representative; or (ii) promptly thereafter acquire and transfer to WKEC, at Big Rivers' expense, substitute Allowances for oxides of nitrogen having a vintage year of the Closing Year and in an amount equal to the WKE Excess NOx Allowances so held or controlled by that Designated Representative, in which event Big Rivers' obligation hereunder to ensure delivery to WKEC of the WKE Excess NOx Allowances (if any) attributable to Station Two shall be deemed to be fulfilled, and WKEC shall be deemed to have assigned to Big Rivers its rights in and to those WKE Excess NOx Allowances held by that Designated Representative.

ARTICLE 9

CONSENTS AND RELEASE COMMITMENTS

Section 9.1 No Payment by Big Rivers. The assignment of the Assigned Contracts contemplated by Article 5 and the assignment of the Permits contemplated by Article 7, shall not result in any payment by Big Rivers to any WKE Party or to any Assigned Contract Counterparty or Governmental Entity.

Section 9.2 Limited Payment Commitment. The WKE Parties shall not be required to make payments in excess of one million dollars (\$1,000,000) in the aggregate (the "*Consent Commitment*") to all Assigned Contract Counterparties, Governmental Entities and other Persons, collectively (whether directly or through Big Rivers), in order to obtain:

(a) the consents of Assigned Contract Counterparties to the assignment of the Assigned Contracts to Big Rivers, and the releases by such counterparties of the WKE Parties from further liability under the Assigned Contracts, each as contemplated in Section 5.2;

(b) the consents of any licensors of any Intellectual Property License Agreements – Consent Required to the sublicense of those agreements (or of the relevant WKE Party's rights thereunder) to Big Rivers, or to the use of the Support Services Intellectual Property by WKEC for the benefit of Big Rivers pursuant to the Information Technology Support Services Agreement; and

(c) the consents or approvals of any Governmental Entities to the transfers to Big Rivers of the Permits as contemplated in Section 7.2.

There shall be credited to and aggregated toward the Consent Commitment any payments the WKE Parties may make to Assigned Contract Counterparties, Governmental Entities and/or other Persons (whether directly or through Big Rivers) in order to obtain the consents, approvals and releases described in clauses (a) through (c) above. To the extent the WKE Parties (or any of them) have made any payments described in clauses (a) through (c) above (whether directly or through Big Rivers) as of the Closing in order to obtain such consents and/or releases as contemplated above, WKEC (as successor by merger of WKE) shall be entitled to offset the aggregate of all such payments against any amounts that have or may become payable by WKEC to Big Rivers pursuant to Section A.4. of the letter agreement dated as of November 1, 2004, between Big Rivers and WKEC (as successor by merger of WKE), as amended. In the event WKEC shall fail to so offset those amounts as of the Closing, and Big Rivers shall receive the corresponding amounts from WKEC under that Section A.4, Big Rivers shall

promptly thereafter reimburse WKEC for the payments described in the preceding sentence.

ARTICLE 10

CLOSING CONDITIONS FOR UNWIND CLOSING DATE

Section 10.1 Conditions to Each Party's Obligations. The respective obligations of each Party to consummate the Transaction at the Closing shall be subject to the satisfaction (or waiver by that Party in its sole discretion) at or prior to the Closing of the following condition precedent:

(a) Injunctions; Etc.; Changes in Law. There shall not have been any action taken by any Governmental Entity, or any statute, law, rule or regulation enacted by any Governmental Entity, or any Proceeding commenced by any Governmental Entity, that would render any Party unable to consummate the Transaction, or that would make the Transaction illegal, or that would prohibit the consummation of the Transaction.

Section 10.2 Closing Conditions for WKE Parties. The obligation of the WKE Parties to consummate the Transaction at the Closing shall be subject to the satisfaction (or waiver by the WKE Parties in their sole discretion) at or prior to the Closing of the following conditions precedent:

(a) Big Rivers Representations. All representations and warranties of Big Rivers set forth in Section 11.2 shall be true and correct in all material respects on and as of the Execution Date and as of the Closing (except to the extent any such representation and warranty shall have been specifically made only as of the Execution Date or the Closing), and the WKE Parties shall have received a certificate of a Responsible Officer of Big Rivers to such effect in form reasonably satisfactory to the WKE Parties.

(b) Secretary's Certificate. The WKE Parties shall have received a certificate of the Secretary or Assistant Secretary of Big Rivers certifying as to the incumbency of all of its officers signing any of the Definitive Documentation on behalf of Big Rivers.

(c) Organizational Documents. The WKE Parties shall have received copies of the by-laws and organizational documents of Big Rivers and resolutions of the Board of Directors of Big Rivers duly authorizing the Transaction and the execution, delivery and performance of the Definitive Documentation, certified as true, complete and in force and effect as of the Closing by a Responsible Officer of Big Rivers.

(d) Governmental Approvals. All consents, approvals and waivers of Governmental Entities required for the consummation of the Transaction by any WKE Party, Big Rivers, any Member Cooperative, or any other party to the Definitive Documentation, including without limitation, the consents, approvals and waivers of the SEC, FERC and KPSC, shall have been obtained, all notices to and filings with Governmental Entities (in forms reasonably acceptable to the WKE Parties), including without limitation, the SEC, FERC and KPSC, that the WKE Parties determine in their sole discretion are necessary or appropriate to be made prior to the Closing in connection with the consummation of the Transaction shall have been given to (in the case of notices), or filed with and accepted by, the applicable Governmental Entities without objection by the Governmental Entities or the initiation of any adverse Proceedings; and any required filings with and waivers from the Federal Trade Commission or the U.S. Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 shall have been made and received, each in form satisfactory to the WKE Parties.

(e) Termination and Release. The Termination and Release shall have been executed and delivered by Big Rivers to the WKE Parties and E.ON;

(f) Reserved;

(g) Reserved;

(h) Assignment and Assumption of Contracts. The Assignment and Assumption of Contracts shall have been executed and delivered by Big Rivers;

(i) Deeds of Real Property. The Deeds of Real Property shall have been executed and delivered by Big Rivers;

(j) Assignment of Owned Intellectual Property. The Assignment of Owned Intellectual Property shall have been executed and delivered by Big Rivers;

(k) Assignment and Assumption of Permits. The Assignment and Assumption of Permits shall have been executed and delivered by Big Rivers;

(l) Conveyance of Allowances. The Conveyance of Allowances shall have been executed and delivered by Big Rivers;

(m) Reserved;

(n) Alcan Termination and Release. The Alcan Termination and Release shall have been executed and delivered by the parties described in Section 3.2(j);

(o) Century Termination and Release. The Century Termination and Release shall have been executed and delivered by the parties described in Section 3.2(k);

(p) Creditor Termination and Release. The Creditor Termination and Release shall have been executed and delivered as contemplated in Section 3.2(l) and the form of Intercreditor Agreement shall be reasonably acceptable to WKEC;

(q) Station Two Termination and Release. The Station Two Termination and Release shall have been executed and delivered by City, the City Utility Commission, WKEC, LEM, E.ON and Big Rivers;

(r) Texas Gas Release. Big Rivers, WKEC, E.ON and Texas Gas Transmission Corporation shall have executed and delivered a release agreement in form satisfactory to each of them, effecting a release of WKEC and E.ON only from that certain letter agreement dated December 20, 2000, among those parties, and effecting a release of WKEC and E.ON from that certain Facilities Agreement, dated May 17, 2000, among Texas Gas Transmission Corporation, WKEC and the predecessor to E.ON (the "*Texas Gas Release*");

(s) Member Cooperative Waivers. Each Member Cooperative shall have executed and delivered to LEM and WKEC a written waiver in form satisfactory to LEM and WKEC, waiving any third-party beneficiary and similar rights that the Member Cooperatives may have under or pursuant to the Power Purchase Agreement;

(t) Release of Demand Promissory Note. The RUS shall have executed and delivered the written discharge and release contemplated in Section 3.2(p), and there shall have been no drawings made by the RUS on the Demand Promissory Note described in that Section 3.2(p);

(u) Definitive Documentation and Other Documentation. All other Definitive Documentation, and all other agreements, instruments and documents described elsewhere in this Article 10, in each case contemplated as to be executed and delivered by Big Rivers or any other Persons (in addition to the WKE Parties and E.ON) at or before the Closing shall have been so executed and delivered by them.

(v) Consents and Releases. Any other consents and releases of or from any Person required for the consummation of the Transaction (or any portion(s) thereof) by any WKE Party, E.ON or Big Rivers shall have been obtained in form satisfactory to the

WKE Parties, including without limitation, the consents and releases contemplated in Section 5.2 and Section 7.2.

(w) Performance of Big Rivers Covenants. All covenants and agreements required to be performed or complied with by Big Rivers under or pursuant to this Termination Agreement or any other Definitive Documentation at or prior to the Closing shall have been duly performed and complied with by Big Rivers.

(x) Big Rivers Debt Ratings. The debt obligations of Big Rivers secured by a first lien and security interest in the Generating Plants, the Sites and most of the other tangible assets of Big Rivers shall be rated (or it shall be demonstrated to WKEC's reasonable satisfaction that following the consummation of the Transaction will be rated) at least BBB- by S&P and Baa3 by Moody's.

(y) Assignment of Permits. Big Rivers shall have submitted all notices, applications, amendments, consents and other communications with Governmental Entities in form reasonably acceptable to WKEC required to be submitted by the proposed recipient of an assigned or transferred permit with respect to the transfer or assignment of the Permits by WKEC to Big Rivers or the reissuance of permits to Big Rivers, as contemplated in Section 7.2, and no Governmental Entity shall have indicated an unwillingness to consent to the transfer of any Permit, or an unwillingness to issue a substitute permit to Big Rivers, required for the operation and maintenance of any Generating Plant in compliance with all Applicable Laws, or shall have imposed any conditions or limitations on any such transfer of a Permit or issuance of a substitute permit that are not acceptable to the WKE Parties in their reasonable discretion.

(z) Termination Payment Calculated. The Termination Payment shall have been calculated in accordance with Section 3.3, and WKEC and Big Rivers shall have executed and delivered a written acknowledgment of the Parties' mutual agreement regarding the aggregate amount of the Termination Payment (after all adjustments contemplated in Section 3.3).

(aa) True Up Payments. The True Up Payments shall have been calculated and (to the extent possible prior to the Closing as contemplated in Section 3.5) agreed upon in accordance with Section 3.5, and WKEC and Big Rivers shall have executed and delivered a written acknowledgment of the Parties' mutual agreement regarding the aggregate amount to be paid to WKEC or Big Rivers, as applicable in respect of such True-Up Payments as of the Closing (subject to the post-Closing calculations and payments contemplated in Section 3.5).

(bb) Environmental Conditions. WKEC shall not, in its sole and absolute discretion, by written notice delivered to Big Rivers: (A) at any time more than 45 days

prior to the Scheduled Unwind Closing Date, have refused to consummate the Closing of the transactions contemplated by this Termination Agreement, on the basis of one or more facts or circumstances described in the following sentence; or (B) at any time less than 45 days prior to the Scheduled Unwind Closing Date, have refused to consummate the Closing of the transactions contemplated by this Termination Agreement, on the basis of one or more facts or circumstances described in the following sentence (1) of which it had no Knowledge at any time prior to the date which is 45 days prior to the Scheduled Unwind Closing Date, and (2) the Damages associated with which that are reasonably likely to be suffered or incurred by any one or more of the Parties in connection with the Remediation or other corrective action required to address such fact(s) or circumstance(s) under Applicable Law would exceed \$1,000,000.00. The facts or circumstances which permit delivery of notice described in the preceding sentence are as follows: (i) any actual, alleged or perceived (by WKEC) violation of any Environmental Law occurring at any time, howsoever caused, and associated in any manner with any Generating Plant, any Site, the Real Property or the use or operation by any Person of any Generating Plant, any Site or the Real Property; (ii) any actual, alleged or perceived (by WKEC) Environmental Release occurring at any time, howsoever caused, and associated with any Generating Plant, any Site or the use or operation by any Person of any Generating Plant or Site; (iii) any Baseline Environmental Condition, Disclosed Environmental Condition or other Excepted Condition; (iv) any actual, alleged or perceived (by WKEC) violation of any Permit occurring at any time, howsoever caused, and associated with any Generating Plant, any Site or the use or operation by any Person of any Generating Plant or Site; or (v) any other actual, alleged or perceived (by WKEC) condition, release, circumstance, action, omission, Proceeding, operation, failure to comply, violation or other event occurring at any time, howsoever caused, and associated with any Generating Plant, any Site or the use or operation by any Person of any Generating Plant or Site that, if known to any Governmental Entity, would or could reasonably be expected to give rise to any liability for fines, penalties, modifications to a Generating Plant, Remediation or compensation for Damages of any kind on the part of Big Rivers or any WKE Party under any Environmental Law; in each case regardless of whether or not any of the foregoing would or could reasonably be expected to result in WKEC suffering or incurring any Damages following the Closing, and regardless of whether any Damages associated with, resulting from or arising out of any of the foregoing would be the subject of an indemnification or hold harmless covenant in favor of WKEC provided for in Article 15 or elsewhere in this Termination Agreement or in any other Definitive Document.

(cc) Tax Rulings. WKEC shall have received a ruling from the Internal Revenue Service in form satisfactory to WKEC in its sole discretion, to the general effect that WKEC is entitled to an ordinary deduction with respect to: (i) the payment of the Termination Payment at the Closing; (ii) the transfer of the Inventory contemplated by Section 3.2(b) at the Closing; (iii) the transfer of the Personal Property contemplated by Section 3.2(c) at the Closing; (iv) the waiver and release by WKEC at the Closing of the Settlement Promissory Note owing by Big Rivers to WKEC (as successor in interest to LEM), (v) WKEC's adjusted basis in any property which was purchased or funded by WKEC (or its predecessors-in-interest) since the Effective Date and which, pursuant to

the terms of any Operative Document, is owned by Big Rivers, the City of Henderson or the City of Henderson Utility Commission, (vi) WKEC's waiver or relinquishment at the Closing of its right to receive the "LG&E Parties Residual Value Payment" (as defined in the Participation Agreement) pursuant to the Termination and Release or the Station Two Termination and Release, and (vii) WKEC's adjusted basis in any other property which is to be transferred to Big Rivers at the Closing for which Big Rivers is not required to make a payment to WKEC at the Closing. E.ON and/or the relevant WKE Party or WKE Parties shall also have received the other federal, state and local tax rulings (including without limitation, such rulings with respect to the income, sales, use, property or other Tax treatment of the Transaction or any designated portion(s) thereof) set forth or described on Schedule 10.2(cc) hereto, each in a form satisfactory to E.ON or such WKE Party or WKE Parties in their sole discretion.

(dd) [Reserved]

(ee) No Unresolved Disputes. There shall be no outstanding unresolved disputes, Claims or Proceedings between E.ON and the WKE Parties (or any of them), on the one hand, and Big Rivers, on the other hand, that the aggrieved party or parties are not willing to waive or release in connection with the Closing.

(ff) Payment of Certain Amounts. The relevant WKE Party or WKE Parties shall have received (or, arrangements satisfactory to the WKE Parties shall have been made for the relevant WKE Party or Parties to receive) all amounts owing to them by Kenergy, the City and/or the City Utility Commission for energy services, ancillary services and/or other services provided by either WKE Party to such other Persons through the Closing, under the Power Purchase Agreement, the Transmission Service and Interconnection Agreement, any other agreements with Kenergy or any other agreements with the City and/or the City Utility Commission, respectively.

(gg) Opinions of Counsel. The WKE Parties and E.ON shall have received such opinions of counsel for Big Rivers, Kenergy, the Smelters, and the City and City Utility Commission, respectively, each dated the Unwind Closing Date, reasonably satisfactory in form and substance to the WKE Parties and E.ON.

(hh) Pre-Closing Operations Condition. Big Rivers shall have acknowledged in writing for WKEC that the provisions of Section 12.5 of this Termination Agreement have been fulfilled by WKEC, LEM or E.ON with results satisfactory to Big Rivers, and that any conditions precedent to Big Rivers' obligation to consummate the Transaction that are contemplated in Article 12 of this Termination Agreement have been waived or satisfied by Big Rivers.

(ii) Subordination Agreement. The WKE Parties shall have been fully released and discharged of and from that certain Agreement (commonly referred to as the "Subordination Agreement") dated as of April 1, 2005, among one or more of the WKE Parties (and/or their predecessors), Big Rivers, the City of Henderson, the City Utility Commission and certain other secured creditors of Big Rivers, by all such other secured creditors of Big Rivers (in form satisfactory to the WKE Parties), it being understood that the release of such WKE Parties by Big Rivers, the City of Henderson and the City Utility Commission shall be effected at the Closing pursuant to the Station Two Termination and Release.

(jj) Alstom Agreements Release. The relevant WKE Party or Parties shall have been released of and from any further obligations or liabilities under or pursuant to the Alstom Agreements (on terms satisfactory to the WKE Parties) by Alstom Power Inc., Zachry Construction Corporation, the consortium comprised of Alstom Power Inc. and Zachry Construction Corporation pursuant to that certain Consortium Agreement dated effective April 2, 2002, the City Utility Commission and Big Rivers.

Section 10.3 Closing Conditions for Big Rivers. The obligation of Big Rivers to consummate the Transaction at the Closing shall be subject to the satisfaction (or waiver by Big Rivers in its sole discretion) at or prior to the Closing of the following conditions precedent:

(a) WKE Party Representations. All representations and warranties of the WKE Parties set forth in Section 11.1 shall be true and correct in all material respects on and as of the Execution Date (except to the extent a representation and warranty expressly states that it is being made as of the Closing only) and as of the Closing, and Big Rivers shall have received a certificate of a Responsible Officer of each of the WKE Parties to such effect in form reasonably satisfactory to Big Rivers.

(b) Secretary's Certificate. Big Rivers shall have received a certificate of the Secretary or Assistant Secretary of each WKE Party and E.ON certifying as to the incumbency of all officers signing any of the Definitive Documents on behalf of that WKE Party or E.ON (as applicable).

(c) Organizational Documents. Big Rivers shall have received copies of the by-laws, if applicable, and organizational documents of each of the WKE Parties and E.ON, and resolutions of the Board of Directors or other governing body of each WKE Party and E.ON, duly authorizing the Transaction and the execution, delivery and performance of the Definitive Documents to which that WKE Party or E.ON (as applicable) is a signatory, certified as true, complete and in force and effect as of the Closing by a Responsible Officer of that WKE Party or E.ON, as applicable.

(d) Governmental Approvals. All consents, approvals and waivers of Governmental Entities required for the consummation of the Transaction by Big Rivers, any Member Cooperative, any WKE Party or any other party to the Definitive Documentation, including without limitation, the consents, approvals and waivers of the SEC, FERC and KPSC, shall have been obtained, all notices to and filings with Governmental Entities (in forms reasonably acceptable to Big Rivers), including without limitation, the SEC, FERC and KPSC, that Big Rivers determines in its sole discretion are necessary or appropriate to be made prior to the Closing in connection with the consummation of the Transaction shall have been given to (in the case of notices), or filed with and accepted by, the applicable Governmental Entities without objection by the Governmental Entities or the initiation of any adverse Proceedings, and any required filings with and waivers from the Federal Trade Commission or the U.S. Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 shall have been made and received, each in form satisfactory to Big Rivers.

(e) Termination and Release. The Termination and Release shall have been executed and delivered by the WKE Parties and E.ON to Big Rivers;

(f) Inventory Bill of Sale. The Inventory Bill of Sale shall have been executed and delivered by WKEC;

(g) Personal Property Bill of Sale. The Personal Property Bill of Sale shall have been executed and delivered by WKEC;

(h) Assignment and Assumption of Contracts. The Assignment and Assumption of Contracts shall have been executed and delivered by WKEC;

(i) Deeds of Real Property. The Deeds of Real Property shall have been executed and delivered by WKEC or its relevant Affiliate;

(j) Assignment of Owned Intellectual Property. The Assignment of Owned Intellectual Property shall have been executed and delivered by WKEC;

(k) Assignment and Assumption of Permits. The Assignment and Assumption of Permits shall have been executed and delivered by WKEC;

(l) H1 Boiler Event. Big Rivers shall be satisfied, in its sole discretion, with the condition of Unit 1 of Station Two in light of the H1 Boiler event which occurred on January 29, 2007;

(m) Tax Rulings. Big Rivers shall have received such federal, state and local tax rulings (including, without limitation, such rulings with respect to the income, sales, use, property and other Tax treatment of the Transaction or any designated portion(s) thereof) set forth or described on Schedule 10.3(m) hereto, each in a form satisfactory to Big Rivers in its sole discretion;

(n) Creditor Termination and Release. The Creditor Termination and Release shall have been executed and delivered as contemplated in Section 3.2(1);

(o) Station Two Termination and Release. The Station Two Termination and Release shall have been executed and delivered by the City, the City Utility Commission, WKEC, LEM, E.ON and Big Rivers;

(p) Texas Gas Release. Big Rivers, WKEC and Texas Gas Transmission Corporation shall have executed and delivered the Texas Gas Release.

(q) Definitive Documentation and Other Documents. All other Definitive Documentation, and all other agreements, instruments and documents described elsewhere in this Section 10, in each case contemplated as to be executed and delivered by WKEC, LEM, E.ON or any other Persons (in addition to Big Rivers) at or before the Closing shall have been so executed and delivered by them.

(r) Consents and Approvals. Any other consents or approvals of or from any Person required for the consummation of the Transaction by any WKE Party, E.ON or Big Rivers shall have been obtained in form satisfactory to Big Rivers, including without limitation, the consents contemplated in Section 5.2 and Section 7.2.

(s) Termination Payment Calculated. The Termination Payment shall have been calculated in accordance with Section 3.3, and WKEC and Big Rivers shall have executed and delivered a written acknowledgment of the Parties' mutual agreement regarding the aggregate amount of the Termination Payment (after all adjustments contemplated in Section 3.3).

(t) True Up Payments. The True Up Payments shall have been calculated and (to the extent possible prior to the Closing as contemplated in Section 3.5) agreed upon in accordance with Section 3.5, and WKEC and Big Rivers shall have executed and delivered a written acknowledgment of the Parties' mutual agreement regarding the aggregate amount to be paid to WKEC or Big Rivers, as applicable, in respect of such True-Up Payments as of the Closing (subject to the post-Closing calculations and payments contemplated in Section 3.5).

(u) Big Rivers Debt Ratings. The debt obligations of Big Rivers secured by a first lien and security interest in the Generating Plants, the Sites and most of the other tangible assets of Big Rivers shall be rated (or it shall be demonstrated to Big Rivers' reasonable satisfaction that following the consummation of the Transaction will be rated) at least BBB by S&P and Baa2 by Moody's.

(v) E.ON Debt Rating. The corporate credit rating and long term issuer rating of E.ON shall be at least the minimum "investment grade" rating, issued by S&P and Moody's.

(w) No Damage to Generating Plants. No Material Casualty Damage to any Generating Plant shall have occurred that shall not have been repaired or otherwise corrected by WKEC or Station Two Subsidiary (as applicable) (i) to the reasonable satisfaction of Big Rivers if such Material Casualty Damage occurred less than 180 days prior to the Unwind Closing Date, or (ii) in accordance with the relevant Operative Document or 1970 Station Two Contract, as amended, if such Material Casualty Damage occurred 180 or more days prior to the Unwind Closing Date. As used in this paragraph (w), "**Material Casualty Damage**" shall mean any event or circumstance, regardless of the cause, resulting in a casualty damage, destruction or loss to or of any generating unit of a Generating Plant, which directly results in a forced or unscheduled outage of that generating unit having a duration in excess of seven (7) consecutive days.

(x) Assignment of Permits. WKEC shall have submitted all notices, applications, amendments, consents and other communications with Government Entities in a form reasonably acceptable to Big Rivers required to be submitted with respect to the transfer or assignment of the Permits by WKEC to Big Rivers or the reissuance of permits as contemplated in Section 7.2, and no Governmental Entity shall have indicated an unwillingness to consent to the transfer of any Permit, or an unwillingness to issue a substitute permit to Big Rivers, required for the operation and maintenance of any Generating Plant in compliance with all Applicable Laws, or shall have imposed any conditions or limitations on any such transfer of a Permit or issuance of a substitute permit to Big Rivers that are not acceptable to Big Rivers in its reasonable discretion.

(y) Environmental Conditions. Big Rivers shall not, in its sole and absolute discretion, by written notice delivered to WKEC: (A) at any time more than 45 days prior to the Scheduled Unwind Closing Date, have refused to consummate the Closing of the transactions contemplated by this Termination Agreement, on the basis of one or more facts or circumstances described in the following sentence; or (B) at any time less than 45 days prior to the Scheduled Unwind Closing Date, have refused to consummate the Closing of the transactions contemplated by this Termination Agreement, on the basis of one or more facts or circumstances described in the following sentence (1) of which it had no Knowledge at any time prior to the date which is 45 days prior to the Scheduled Unwind Closing Date, and (2) the Damages associated with which that are reasonably likely to be suffered or incurred by any one or more of the Parties in connection with the

Remediation or other corrective action required to address such fact(s) or circumstance(s) under Applicable Law would exceed \$1,000,000.00. The facts or circumstances which permit delivery of notice described in the preceding sentence are as follows: (i) any actual, alleged or perceived (by Big Rivers) violation of any Environmental Law occurring at any time, howsoever caused, and associated in any manner with any Generating Plant, any Site, the Real Property or the use or operation by any Person of any Generating Plant, any Site or the Real Property; (ii) any actual, alleged or perceived (by Big Rivers) Environmental Release occurring at any time, howsoever caused, and associated with any Generating Plant, any Site or the use or operation by any Person of any Generating Plant or Site; (iii) any Baseline Environmental Condition, Disclosed Environmental Condition or other Excepted Condition; (iv) any actual, alleged or perceived (by Big Rivers) violation of any Permit occurring at any time, howsoever caused, and associated with any Generating Plant, any Site or the use or operation by any Person of any Generating Plant or Site; or (v) any other actual, alleged or perceived (by Big Rivers) condition, release, circumstance, action, omission, Proceeding, operation, failure to comply, violation or other event occurring at any time, howsoever caused, and associated with any Generating Plant, any Site or the use or operation by any Person of any Generating Plant or Site that, if known to any Governmental Entity, would or could reasonably be expected to give rise to any liability for fines, penalties, modifications to a Generating Plant, Remediation or compensation for Damages of any kind on the part of Big Rivers or any WKE Party under any Environmental Law; in each case regardless of whether or not any of the foregoing would or could reasonably be expected to result in Big Rivers suffering or incurring any Damages following the Closing, and regardless of whether any Damages associated with, resulting from or arising out of any of the foregoing would be the subject of an indemnification or hold harmless covenant in favor of Big Rivers provided for in Article 15 or elsewhere in this Termination Agreement or in any other Definitive Document.

(z) Smelter Contracts. Kenergy and each of the Smelters shall have executed agreements (or amendments to existing agreements) for retail electric service, satisfactory to each party thereto and Big Rivers, reflecting the replacement by Big Rivers of WKEC and LEM as the wholesale supplier to Kenergy of power and energy to service each of the Smelter loads (or such portions of those loads as shall be satisfactory to Big Rivers), and Big Rivers and Kenergy shall have executed power sales agreements (or amendments to existing agreements), satisfactory to each, to reflect the obligation of Big Rivers to sell power to Kenergy to serve the respective Smelter loads (or such portions of those loads as shall be satisfactory to Big Rivers).

(aa) Conveyance of Allowances. The Conveyance of Allowances shall have been executed and delivered by the parties thereto, and all SO₂ Allowances, NO_x Allowances, any substitute allowances required under Section 8.1(b) and all other allowances for the emission of SO₂ or NO_x required to be conveyed to Big Rivers as of the Closing pursuant to Article 8, shall have been conveyed to Big Rivers.

(bb) Member Contract Extension. Each Member Cooperative shall have consented to the Transaction, and each Member Cooperative shall have extended its Member Contract as required to permit the condition set forth in paragraph (u) of this Section 10.3 to be satisfied.

(cc) Gypsum Facilities of Plant Green. The facilities on the Plant Green site which were installed to produce gypsum shall have been removed, and the site on which Plant Green is situated shall be restored to the condition which existed prior to the construction of such gypsum facilities (subject to other changes in the condition of that Site unrelated to the installation or removal of those gypsum facilities).

(dd) Condition of Generating Plants. Solely in the reasonable judgment of Big Rivers, each Generating Plant shall be in all material respects in good condition and state of repair, ordinary wear and tear excepted, consistent with Prudent Utility Practice.

(ee) Capabilities of Generating Plants. Within 90 days of the Scheduled Unwind Closing Date, WKEC shall have demonstrated to Big Rivers' reasonable satisfaction through actual performance data or physical testing, that the Generating Plants are physically capable of generating the net output specified below. The demonstration contemplated above shall be at WKEC's sole cost; provided, that in the event Big Rivers insists on physical testing of any Generating Plant(s) as the means for satisfying this condition, Big Rivers agrees to reimburse WKEC for 50% of its out of pocket costs and expenses incurred to conduct that testing. The scope and method of any such test shall be acceptable to Big Rivers in its reasonable discretion, and, prior to conducting any such test, WKEC and Big Rivers shall agree upon the "out-of-pocket" costs appropriate to such test, including the cost of fuel to be utilized in connection with such test. Measurement and testing of net output shall be conducted in accordance with East Central Area Reliability (ECAR) "Procedures for the Uniform Rating and Testing Generation Equipment," dated May, 1998. Testing will utilize coal (or, in the case of the Reid combustion turbine unit, fuel oil or natural gas) having characteristics that meet or exceed the fuel box design for each Generating Plant to maximize the capacity output of the Generating Plant. Big Rivers shall be provided the opportunity to have a representative present to observe the testing. The operation of the Generating Plants during the testing shall conform to all Permits and other Applicable Law. The net output for the Generating Plants which must be demonstrated (depending on the time of year of such testing) are:

Net Output of Generating Plants

	May 1 – September 30	Oct. 1 – April 30
3 Unit Plant Coleman	440MW	443 MW
Plant Wilson	417MW	419 MW
2 Unit Plant Green	454MW	454 MW
2 Unit Plant Reid	130MW	130 MW
2 Unit Station Two	310MW	311 MW

Net outputs for Plant Green, Plant Reid and Station Two may be revised in accordance with the procedure set forth in Section 12.7. If, notwithstanding such reasonable and practicable efforts provided in Section 12.7, the Parties shall be unable to confirm the net outputs set forth above for Plant Green, Plant Reid and Station Two prior to the Closing, the net outputs of Plant Green, Plant Reid and Station Two set forth above shall be aggregated for purposes of the demonstrated capability referred to in the first sentence of this paragraph (ee).

(ff) No Forced Outage at Generating Plants. No forced outage of any Generating Plant shall have occurred for a period greater than five (5) consecutive days during the 30-day period immediately preceding the Unwind Closing Date, and no forced outage of any Generating Plant shall be pending. Any Generating Plant which is not operating by reason of a scheduled outage of the same shall be readily capable of operating to Big Rivers' reasonable satisfaction at its then-rated capacity (determined in accordance with the parameters set forth in paragraph (ee) of this Section 10.3) following the work, repairs or upgrades contemplated in connection with that scheduled outage, and no permanent derating of any Generating Plant (below the operating capabilities described in paragraph (ee) of this Section 10.3) shall have occurred. Big Rivers may request that any Generating Plant which is not operating on the Unwind Closing Date, but which is in "stand-by mode", be restarted at the sole cost of Big Rivers prior to the Closing for a period not longer than 24 hours, provided that Big Rivers shall be entitled to the power produced during such test period.

(gg) [Reserved].

(hh) Gypsum Offtake. Either the Synthetic Purchase Agreement shall be in full force and effect, or a gypsum offtake contract with an entity reasonably acceptable to Big

Rivers and having provisions similar (in the reasonable opinion of Big Rivers) to the Synthetic Purchase Agreement shall be in effect.

(ii) Operating Plans. Big Rivers shall have approved in good faith any material deviations from or modifications to an Operating Plan made by WKEC between the Execution Date and the Closing as contemplated in Section 12.2 below, and WKEC shall have operated the Generating Plants in accordance with its covenants set forth in Section 12.2 other than its covenant set forth in Section 12.2(a)(vi). WKEC shall have complied with its covenant set forth in Section 12.2(a)(vi) to expend amounts in performance of its obligations under Section 12.2 of this Termination Agreement or to make a payment in respect of its failure to expend the required amounts.

(jj) Clean Out of Wilson Ponds. Each of the four ponds at Plant Wilson identified in the succeeding sentence shall have been cleaned out in accordance with the scope anticipated in the 2007 Operating Plan to the reasonable satisfaction of Big Rivers. The four ponds at Plant Wilson described in the preceding sentence are:

- (1) the "New Scrubber Run-Off Pond" (cement pond next to parking lot),
- (2) "Waste Water Pond" (west of cooling tower and south of water treatment building),
- (3) "Waste Impoundment Pond – East", and
- (4) "Waste Impoundment Pond – West".

(kk) Prior Rent and Monthly Margin Payments. WKEC shall have paid Big Rivers all installments of the Rent owing for any month prior to the Closing Month, and WKEC shall have paid Big Rivers all Monthly Margin Payments that have become due and owing (in accordance with the provisions of the Lease) to Big Rivers prior to the Closing.

(ll) SERC and NERC Standards. Solely in the reasonable judgment of Big Rivers, each of the Generating Plants shall be operating in compliance with all SERC and NERC generation reliability compliance standards (specifically, those portions of NERC Control Performance Standard 1 (CPS1), NERC Control Performance Standard 2 (CPS2), and NERC Disturbance Control Standard (DCS)) that are applicable to that Generating Plant, including those obligations incurred by WKEC in respect thereof pursuant to Section 8.1.2 of the Transmission Service and Interconnection Agreement.

(mm) No Unresolved Disputes. There shall be no outstanding unresolved disputes, Claims or Proceedings between E.ON and the WKE Parties (or any of them), on

the one hand, and Big Rivers, on the other hand, that the aggrieved Party or Parties are not willing to waive or release in connection with the Closing.

(nn) Interconnection. Big Rivers' Wilson to Coleman 345 kV circuit shall be interconnected to E.ON's Elmer Smith to Hardin County 345 kV circuit or an alternative reasonably acceptable solely to Big Rivers shall have been effected.

(oo) Transmission. Big Rivers shall have obtained all Governmental Entity consents and approvals required for the construction of transmission facilities necessary for the transmission of 1550 MW of power and energy to Big Rivers' border, taking into account all of Big Rivers' other transmission assets.

(pp) Performance of WKE Party Covenants. All covenants and agreements required to be performed or complied with by any WKE Party under or pursuant to this Termination Agreement or any other Definitive Documentation at or prior to the Closing shall have been duly performed and complied with by the WKE Parties.

(qq) Opinions of Counsel. Big Rivers shall have received such opinions of counsel for E.ON and the WKE Parties, each dated the Unwind Closing Date, reasonably satisfactory in form and substance to Big Rivers.

ARTICLE 11

REPRESENTATIONS AND WARRANTIES

Section 11.1 Representations and Warranties of WKE Parties. Each of the WKE Parties hereby severally represents and warrants that, except for representations and warranties which expressly state they are made as of the Closing, as of the Execution Date:

(a) Organization and Existence. Each of the WKE Parties and E.ON is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and WKEC is duly qualified to transact business as a foreign corporation in any jurisdiction where the nature of its business and its activities require it to be so qualified. LEM is qualified to transact business as a foreign corporation in (i) any jurisdiction where the nature of its business and its activities require it to be so qualified, except to the extent that the failure to be so qualified in any jurisdiction other than the Commonwealth of Kentucky could not be expected to result in the imposition of any Lien on any of the rights or property assigned to Big Rivers by the WKE Parties pursuant to this Termination Agreement or any other Definitive Document, and (ii) the Commonwealth of Kentucky. Each of the WKE Parties and E.ON has the requisite power and authority to conduct its business as presently conducted, to own or hold under

lease its properties, and to enter into and perform its obligations under this Termination Agreement and each of the other Definitive Documents to which it is, or will become, a party. Station Two Subsidiary and WKE have effectively merged with and into WKEC in accordance with the general corporate law of Kentucky and all rights, obligations and liabilities of Station Two Subsidiary and WKE have become rights, obligations and liabilities of WKEC.

(b) Authorization, Execution and Binding Effect. This Termination Agreement and each other Definitive Document to which any WKE Party or E.ON is, or will become, a party has been or will be duly authorized, executed and delivered by that WKE Party or E.ON (as applicable), and assuming the due authorization, execution and delivery of this Termination Agreement and every other Definitive Document to which any WKE Party or E.ON is, or will become, a party by every other Person which is, or is to become, a party hereto or thereto, constitutes or will constitute a legal, valid and binding obligation of each such WKE Party or E.ON (as applicable), enforceable against it in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) No Violation. The execution and delivery of this Termination Agreement and each other Definitive Document by each WKE Party and, as applicable, E.ON, to which it is, or is to become, a party, the consummation by each such WKE Party and, as applicable, by E.ON, of the transactions contemplated hereby and thereby, and the compliance by each WKE Party and, as applicable, E.ON, with the terms and provisions hereof and thereof, do not and will not (i) contravene any Applicable Law or its organizational documents or by-laws, or (ii) contravene the provisions of, or constitute a default (or an event which, with notice or passage of time, or both would constitute a default) by it under, any indenture, mortgage or other material contract, agreement or instrument to which any WKE Party or E.ON is a party or by which any WKE Party or E.ON, or its property, is bound, or result in the creation of any Lien on the property of any WKE Party, in each case (1) subject to the execution and delivery of the Definitive Documents by all parties thereto other than the WKE Parties and E.ON and (2) subject to the receipt of all consents and approvals from Persons (including without limitation, Governmental Entities) contemplated elsewhere in this Termination Agreement or in any other Definitive Document as being required prior to the Closing.

(d) No Required Consents or Approvals. No authorization, consent, approval or other action by, and no notice to or filing or registration with, and no new license or permit from, any Person (including without limitation, any Governmental Entity) or under any Applicable Law is required for the due execution, delivery or performance by each WKE Party of this Termination Agreement or by any WKE Party or E.ON of any other Definitive Document to which it is, or is to become, a party, in each case (1) other than such authorizations, consents, approvals, notices or filings from, to or with Persons (including without limitation, Governmental Entities) as are contemplated elsewhere in

this Termination Agreement or in any other Definitive Document as being required prior to the Closing, (2) other than such authorizations, consents, approvals, notices or filings, the failure of which to obtain, give or make will not have a Material Adverse Effect, (3) other than the Creditor Termination and Release and any other instrument(s) contemplated in this Termination Agreement as to be executed and delivered by RUS or any other parties to the Creditor Termination and Release, (4) other than the Station Two Termination and Release and any other instruments contemplated in this Termination Agreement as to be executed and delivered by the City and/or the City Utility Commission, (5) other than the Alcan Termination and Release, the Century Termination and Release, and any other instruments contemplated in this Termination Agreement as to be executed and delivered by any party or parties to such termination and release instruments, (6) other than the other Definitive Documents contemplated in this Termination Agreement as to be executed and delivered by any Person or Persons (in addition to a WKE Party or E.ON, as applicable), and (7) other than the state and federal tax rulings contemplated in Section 10.2(cc) (the exclusions described in Subclauses (1) through (7) above being collectively referred to as the “*Excluded Items*”).

(e) Absence of Litigation. Except as set forth on Schedule 11.1(e) there is no pending or, to the Knowledge of any WKE Party, threatened Proceeding against any WKE Party or E.ON by any Person (other than Big Rivers) before any Governmental Entity which: (i) questions the validity of this Termination Agreement or any other Definitive Document or the ability of any WKE Party or E.ON to perform its obligations under any such agreement; (ii) if determined adversely to E.ON, would materially adversely affect its ability to perform the E.ON Guaranty; or (iii) if determined adversely to any WKEC Party, would materially adversely affect the ability of such WKE Party to perform its obligations under this Termination Agreement or any other Definitive Document (as applicable) to which it is, or is to become, a party or would materially adversely affect any Generating Plant, any Site or any interest therein or part thereof.

(f) Liens. Except as set forth on Schedule 11.1(f), the Generating Plants, the Sites, the Personal Property and the Assigned Contracts are free of any Liens created by, through or on behalf of, any WKE Party.

(g) Assigned Contracts. Part A of Schedule 11.1(g) lists each Assigned Contract that involves obligations of any WKE Party or WKE Parties in excess of \$100,000 or extends beyond September 30, 2007. Except as set forth in Part B of Schedule 11.1(g), no WKE Party has Knowledge of any intent on the part of any party to any Assigned Contract set forth on Part A of Schedule 11.1(g) to cancel any such Assigned Contract prior to its expiration in accordance with its terms, nor to the Knowledge of any WKE Party is any party (other than a WKE Party) to any Assigned Contract set forth on Part A of Schedule 11.1(g) in material default under such Assigned Contract. Except as set forth in Part B of Schedule 11.1(g), no WKE Party is in default under any Assigned Contract set forth on Part A of Schedule 11.1(g) as would permit any

other party thereto to terminate, curtail its performance under or make a claim for Damages under such Assigned Contract.

(h) Assigned Equipment Leases. Schedule 11.1(h) lists each lease or sublease of equipment, furniture or fixtures that is included in the Assigned Contracts and that requires any WKE Party or WKE Parties to make lease payments in excess of \$20,000 annually under such lease. Except as disclosed on Schedule 11.1(h), (i) each such lease or sublease is in full force and effect, (ii) no WKE Party is in material default under any such lease or sublease and (iii) the WKE Parties hold their respective interest in each such lease or sublease free and clear of any Liens.

(i) Zoning and Condemnation. Except as set forth on Schedule 11.1(i), and except for such threats as have been made by the City or the City Utility Commission to condemn or take by power of eminent domain any portion of Plant Green or Plant Reid, or any portion of the Sites on which those Generating Plants are located, in connection with the negotiations regarding the 2005 Amendments to Contracts, the 2005 Amendatory Station Two Agreement or the transactions contemplated therein, the WKE Parties have received no written notice of any pending or threatened Proceeding to modify the zoning classification of, or to condemn or take by power of eminent domain or to classify as a landmark, all or any part of the Sites, which, if decided adversely, would be reasonably likely to result in a Material Adverse Effect.

(j) Infringement. The WKE Parties have not infringed or violated any patent, copyright, license or other similar legal right of any vendor under any Assigned Contract.

(k) Environmental Conditions. As of the Closing, to the Knowledge of the WKE Parties, and except for Disclosed Environmental Conditions, (A) Schedule 7.1 contains a listing of all material Permits required as of the Closing to operate the Generating Plants, (B) each of those Permits is in full force and effect, and (C) there are no underground storage tanks at any Generating Plant, including at Station Two, or on or under the Sites or the land subject to the Rights-of-Way, in each case other than underground storage tanks that were at a Generating Plant, including at Station Two, or on or under the Sites or the land subject to the Rights-of-Way on the Effective Date. As of the Closing, except to the extent (x) constituting, attributable to, resulting from or arising out of Environmental Releases, conditions, events, circumstances, actions, omissions, Proceedings, operations, violations, failures to comply and other matters existing or occurring as of or prior to the Effective Date which, to the Knowledge of the WKE Parties, have not been materially aggravated and have not materially expanded following the Effective Date, or (y) constituting, attributable to, resulting from or arising out of an Excepted Condition:

(i) to the Knowledge of the WKE Parties, the WKE Parties, or the Generating Plants, as applicable, are in compliance with the terms of each Permit

relating to the operation or maintenance of the Generating Plants, except for noncompliance the continuation or correction of which does not and will not materially interfere with the operation of the Generating Plants and which does not and will not result in the imposition of any material civil or criminal fines or penalties against Big Rivers or any WKE Party;

(ii) to the Knowledge of the WKE Parties, the WKE Parties' operation of the Generating Plants and use of the Generating Plants and the Sites are in material compliance with all Applicable Laws, except for noncompliance the continuation or correction of which does not and will not materially interfere with the operation of the Generating Plants and which does not and will not result in the imposition of any material civil or criminal fines or penalties on Big Rivers or any WKE Party;

(iii) no WKE Party has received any notice of material violation or notice of material noncompliance with Applicable Laws with respect to the Generating Plants or the Sites, or the operation or condition thereof, other than violations or noncompliances which have been remedied or cured in compliance with Applicable Laws and with respect to which there are no continuing obligations or conditions imposed upon any WKE Party or Big Rivers;

(iv) to the Knowledge of the WKE Parties, (A) there is no pending agency investigation, administrative or judicial proceeding or action or any outstanding claim, demand, order, administrative or legal proceeding or settlement or consent decree or order under or relating to any Environmental Law and relating to or involving any Generating Plant, with the exception of the Section 114 Information Request dated September 11, 2000, received from the U.S. Environmental Protection Agency, and (B) there is not now, nor has there been, any pattern of violations that would lead to any of the foregoing; and

(v) to the Knowledge of the WKE Parties, no Environmental Release has occurred at, on, under or from the Generating Plants, including Station Two, the Sites, or the land subject to the Rights-of-Way, or any other properties, other than (x) such Environmental Releases as would not reasonably be expected to result in a material liability for Remediation under Environmental Laws, and (z) such Environmental Releases which have been cured, remediated, removed and disposed of in compliance with Applicable Laws.

(l) Correctness and Completion of Certain Materials. The materials identified on Schedule 11.1(l) as of the Closing (as mutually agreed upon by the Parties prior to the Closing) do not as of the Closing contain any misstatement of a material fact, nor do they fail to make any statement necessary to make the statements in such materials, in light of the purpose for which they were made, not misleading. The Parties agree that Schedule 11.1(l) was blank as of the Execution Date.

(m) Delivery of Materials. To the WKE Parties' Knowledge, after reasonable inquiry, the WKE Parties have delivered to Big Rivers, or otherwise provided appropriate meaningful access to Big Rivers for, all reports and studies performed by third parties since the Effective Date for the account or at the request of a WKE Party or E.ON, and addressing material operational or maintenance matters involving the Generating Plants or the Sites on which they are situated or the actual condition of the Generating Plants or the Sites on which they are situated (but excluding any legal conclusions or legal advice relating to or included in any materials or information which is subject to attorney-client privilege). All such reports and studies provided to Big Rivers on or after July 3, 2003 are identified in Schedule 11.1(m) hereto. No such third party reports that were in the possession of WKE Parties on January 18, 2007 have been destroyed. If a WKE Party shall propose to withhold any such report or study, or portion thereof, in accordance with the parenthetical in the first sentence of this Section 11.1(m), it shall notify Big Rivers of such fact. Such reports or studies, or any portion thereof, which are proposed to be withheld may be made subject to a common interest or joint defense agreement satisfactory to Big Rivers, on the one hand, and the WKE Parties and E.ON, on the other hand, and, if made subject to such a common interest or joint defense agreement, will be disclosed to other parties subject to such agreement in accordance with the terms of such common interest or joint defense agreement. Big Rivers and the WKE Parties acknowledge that as of the Execution Date no common interest or joint defense agreement exists between Big Rivers, on the one hand, and any WKE Party or E.ON, on the other hand, other than the Joint Defense Privilege and Confidentiality Agreement between WKEC and Big Rivers effective September 11, 2000, which itself does not contemplate the disclosure of such reports or studies. Big Rivers acknowledges that it shall have no claim for breach by the WKE Parties of the representation or warranty contained in the first sentence of this Section 11.1(m) if a WKE Party can establish that at the time that such representation or warranty was made to Big Rivers the information in any such third party report or study which may not have been delivered, disclosed or made available to Big Rivers by the WKE Parties in contravention of such representation or warranty was in the possession of one or more senior officers of Big Rivers or members of the Contract Administration Department of Big Rivers.

(n) No Material Dispute. To the Knowledge of the WKE Parties after reasonable inquiry, no material dispute or proceeding exists between any WKE Party and the City or the City Utility Commission other than such disputes or proceedings as shall be released and discharged as of the Closing, or as are identified in Schedule 11.1(n) hereto.

(o) Intellectual Property.

(i) Except as set forth on Schedule 11.1(o)(i), as of the Closing (i) WKEC has the right to assign the Owned Intellectual Property (Assigned) (as set forth on Schedule 6.1 as that schedule is constituted at the Closing) to Big Rivers, and to license the Owned Intellectual Property (Licensed) (as set forth on Schedule 6.2 as that schedule is constituted at the Closing) to Big Rivers, and (ii)

such Owned Intellectual Property (Assigned) and such Owned Intellectual Property (Licensed) are not subject to any Liens created by, through or on behalf of any WKE Party.

(ii) Except as set forth on Schedule 11.1(o)(ii), as of the Closing (i) the relevant WKE Party or an Affiliate of a WKE Party has the right to assign or sublicense the Intellectual Property License Agreements – No Consent Required (as set forth on Schedule 6.3 as that schedule is constituted as of the Closing) to Big Rivers, and (ii) such Intellectual Property License Agreements – No Consent Required are not subject to any Liens created by, through or on behalf of any WKE Party or an Affiliate of a WKE Party.

(iii) Except as set forth on Schedule 11.1(o)(iii), and subject to obtaining the required consents or approvals of the relevant vendors, as of the Closing (i) the relevant WKE Party or an Affiliate of a WKE Party has the right to assign or sublicense the Intellectual Property License Agreements – Consent Required (as set forth on Schedule 6.4 as that schedule is constituted as of the Closing) to Big Rivers, and (ii) such Intellectual Property License Agreements – Consent Required are not subject to any Liens created by, through or on behalf of any WKE Party or an Affiliate of a WKE Party.

(iv) Except as set forth on Schedule 11.1(o)(iv), as of the Closing (i) the WKE Parties or an Affiliate of a WKE Party have the right to provide to Big Rivers the benefit of the Support Services Intellectual Property pursuant to the Information Technology Support Services Agreement, and (ii) such Support Services Intellectual Property is not subject to any Liens created by, through or on behalf of any WKE Party or any Affiliate of a WKE Party.

(v) Except as set forth on Schedule 11.1(o)(v), the Owned Intellectual Property (Assigned), the Owned Intellectual Property (Licensed), the Intellectual Property License Agreements, the Support Services Intellectual Property (all as set forth on the relevant schedules as of the Closing), and the Intellectual Property used for the performance of the Generation Dispatch Support Services Agreement collectively will constitute as of the Closing all of the Computer Software that the WKE Parties used in connection with the operation and or dispatch of the Generating Plants immediately prior to the Closing.

(vi) Except as set forth on Schedule 11.1(o)(vi), all Intellectual Property (other than Computer Software) owned by WKEC or its Affiliate and located at the Generating Plants as of the Closing (the “*Other IP*”) shall, as of the Closing and thereafter, continue to be fully available for use by Big Rivers on a non-exclusive basis, without restriction or limitation, and at no further cost to Big Rivers, in connection with the operation and or dispatch of the Generating Plants, but for no other purpose. The Parties understand that the rights in the Other IP described in this Subsection (vi) that shall be reserved by WKEC or its relevant Affiliate following the Closing, and the non-exclusive nature of Big Rivers’ right to use the Other IP described in this Subsection (vi), shall not entitle WKEC or

any of its Affiliates to access or utilize any physical copies of the Other IP that are located at any Generating Plant(s) following the Closing.

(p) THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 11.1 ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES OF THE WKE PARTIES OR E.ON, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, UNDER, PURSUANT TO OR WITH RESPECT TO THIS TERMINATION AGREEMENT OR THE DEFINITIVE DOCUMENTS, OR WITH RESPECT TO THE OWNED INTELLECTUAL PROPERTY, THE ASSIGNED CONTRACTS, THE PERMITS, THE GENERATING PLANTS, THE REAL PROPERTY, THE SITES (INCLUDING WITHOUT LIMITATION, THE REAL PROPERTY ON WHICH STATION TWO IS SITUATED), THE PERSONAL PROPERTY, THE INVENTORY, THE OPERATIVE DOCUMENTS OR THE "STATION TWO CONTRACTS" CONTEMPLATED THEREIN, THE SO₂ ALLOWANCES AND NO_x ALLOWANCES, AND ANY OTHER ALLOWANCES OF SULFUR DIOXIDE OR OXIDES OF NITROGEN (NO_x), OR WITH RESPECT TO THE STATUS, CONDITION OR EXISTENCE OF ANY SUCH TANGIBLE OR INTANGIBLE ASSETS OR PROPERTIES. THE FOREGOING PROVISIONS OF THIS SECTION 11.1 ARE INTENDED TO BE TO THE COMPLETE EXCLUSION AND NEGATION OF ANY OTHER REPRESENTATIONS OR WARRANTIES BY THE WKE PARTIES OR E.ON, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE ASSIGNED CONTRACTS, THE PERMITS, THE GENERATING PLANTS, THE REAL PROPERTY, THE SITES (INCLUDING THE REAL PROPERTY ON WHICH STATION TWO IS SITUATED), THE PERSONAL PROPERTY, THE INVENTORY, THE OPERATIVE DOCUMENTS OR THE "STATION TWO CONTRACTS" CONTEMPLATED THEREIN, THE SO₂ ALLOWANCES AND NO_x ALLOWANCES, AND ANY OTHER ALLOWANCES OF SULFUR DIOXIDE OR OXIDES OF NITROGEN. BIG RIVERS ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SUBSECTION 11.1(k), NOTHING CONTAINED IN THIS SECTION 11.1, ELSEWHERE IN THIS TERMINATION AGREEMENT OR IN ANY OTHER DEFINITIVE DOCUMENT SHALL CONSTITUTE OR BE CONSTRUED IN ANY MANNER AS A REPRESENTATION OR WARRANTY BY E.ON OR ANY WKE PARTY, WHETHER EXPRESS OR IMPLIED, REGARDING THE CONDITION, STATE OF REPAIR, UTILITY OR OPERATING PERFORMANCE, CAPABILITIES OR CAPACITY OF ANY ONE OR MORE OF THE GENERATING PLANTS, THE REAL PROPERTY, THE OWNED INTELLECTUAL PROPERTY, THE SITES (INCLUDING WITHOUT LIMITATION, THE REAL PROPERTY ON WHICH STATION TWO IS SITUATED), THE PERSONAL PROPERTY OR THE INVENTORY, OR ANY COMPONENT OR UNIT THEREOF, AND BIG RIVERS ACCEPTS ALL SUCH ASSETS IN "AS IS" CONDITION WITH NO SUCH REPRESENTATION OR WARRANTY BY THE WKE PARTIES OR E.ON FOR ANY PURPOSE. THE WKE PARTIES HEREBY DISCLAIM, AND BIG RIVERS HEREBY ACKNOWLEDGES THE DISCLAIMER OF, ANY AND ALL IMPLIED WARRANTIES WITH RESPECT TO THE ASSETS AND PROPERTIES DESCRIBED

ABOVE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 11.2 Representations and Warranties of Big Rivers. Big Rivers represents and warrants to each of the WKE Parties that, except for representations and warranties which expressly state that they are made specifically as of the Closing, as of the Execution Date:

(a) Organization and Existence. Big Rivers is a rural electric cooperative duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky, and is duly licensed or qualified and in good standing in each jurisdiction where the nature of its business and its activities requires it to be so qualified. Big Rivers has the requisite cooperative power and authority to carry on its business as now conducted, to own or hold under lease its property and to enter into and perform its obligations under this Termination Agreement and each of the Definitive Documents to which it is, or is to become, a party.

(b) Authorization, Execution, and Binding Effect. This Termination Agreement and each other Definitive Document to which Big Rivers is, or is to become a party, has been or will upon its execution and delivery be, duly authorized, executed and delivered by all necessary cooperative action by Big Rivers and, assuming the due authorization, execution and delivery of this Termination Agreement and each other Definitive Document to which Big Rivers is, or is to become, a party by each other party hereto or thereto, constitutes, or will constitute, the legal, valid and binding obligation of Big Rivers, enforceable against Big Rivers in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) No Violation. The execution, delivery and performance by Big Rivers of this Termination Agreement and each of the Definitive Documents to which it is or is to become a party, the consummation by Big Rivers of the transactions contemplated hereby and thereby, and the compliance by Big Rivers with the terms and provisions hereof and thereof, do not and will not (i) contravene any Applicable Law, or Big Rivers' Articles of Incorporation or By-Laws, or (ii) constitute a default (or an event which, with notice or passage of time, or both would constitute a default) by Big Rivers under, any indenture, mortgage or other material contract, agreement or instrument to which Big Rivers is a party or by which Big Rivers or any of its property is bound or result in the creation of any Lien upon the property of Big Rivers, in each case (1) subject to the execution and delivery of the Definitive Documents by all parties thereto other than Big Rivers, and (2) subject to the receipt of all consents and approvals from Persons (including without limitation, Governmental Entities) contemplated elsewhere in this Termination Agreement or in any other Definitive Document as being required prior to the Closing.

(d) Required Creditor Consents. The execution, delivery and performance of this Termination Agreement and the other Definitive Documentation to which Big Rivers is, or is to become, a party, does not and will not require any approval or consent of, or notice to, any trustee or holders of any indebtedness or obligations of Big Rivers or any lessor under any lease to Big Rivers or any other Person, other than (i) the consents of the RUS, Ambac and CFC, as First Mortgagees, (ii) the consents of the Economically Defeased Lease Parties, and (iii) the consent of the City.

(e) Governmental Approvals. No authorization or approval or other action by, and no notice to or filing or registration with, or license or permit from any Governmental Entity or under any Applicable Law is required for the due execution, delivery or performance by Big Rivers of this Termination Agreement or any other Definitive Documents to which it is, or is to become, a party, except the consent of the KPSC.

(f) Absence of Litigation. Except as set forth on Schedule 11.2(f), there is no pending or, to the Knowledge of Big Rivers, threatened action, suit, investigation or proceeding against Big Rivers by any Person (other than the WKE Parties or E.ON) before any Governmental Entity which (i) questions the validity of this Termination Agreement or any other Definitive Document or the ability of Big Rivers to perform its obligations under this Termination Agreement or any other Definitive Document or (ii) if determined adversely to it, would materially adversely affect Big Rivers' ability to perform its obligations under this Termination Agreement or any other Definitive Document to which it is, or is to become, a party.

(g) THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 11.2 ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES OF BIG RIVERS WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, UNDER, PURSUANT TO OR WITH RESPECT TO THIS TERMINATION AGREEMENT OR THE DEFINITIVE DOCUMENTS, OR WITH RESPECT TO THE ASSIGNED CONTRACTS, THE PERMITS, THE GENERATING PLANTS, THE REAL PROPERTY, THE SITES (INCLUDING WITHOUT LIMITATION, THE REAL PROPERTY ON WHICH STATION TWO IS SITUATED), THE PERSONAL PROPERTY, THE INVENTORY, THE SO₂ ALLOWANCES AND NO_x ALLOWANCES, AND ANY OTHER ALLOWANCES OF SULFUR DIOXIDE OR OXIDES OF NITROGEN (NO_x), OR WITH RESPECT TO THE STATUS, CONDITION OR EXISTENCE OF ANY SUCH TANGIBLE OR INTANGIBLE ASSETS OR PROPERTIES. THE FOREGOING PROVISIONS OF THIS SECTION 11.2 ARE INTENDED TO BE TO THE COMPLETE EXCLUSION AND NEGATION OF ANY OTHER REPRESENTATIONS OR WARRANTIES BY BIG RIVERS, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE ASSIGNED CONTRACTS, THE PERMITS, THE GENERATING PLANTS, THE REAL PROPERTY, THE SITES (INCLUDING THE SITES ON WHICH STATION TWO IS SITUATED), THE PERSONAL PROPERTY, THE INVENTORY, THE SO₂

ALLOWANCES AND NO_x ALLOWANCES, AND ANY OTHER ALLOWANCES OF SULFUR DIOXIDE OR OXIDES OF NITROGEN (NO_x).

Section 11.3 Expiration of Representations. The representations set forth in paragraph (k) of Section 11.1 will expire on the fifth annual anniversary of the Unwind Closing Date. The representations set forth in paragraphs (f), (j), and (l) of Section 11.1 will expire on the third annual anniversary of the Unwind Closing Date. All other representations and warranties of the Parties set forth in Article 11 will expire on the first annual anniversary of the Unwind Closing Date.

Section 11.4 Limitation on Damages for Representations. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TERMINATION AGREEMENT OR ANY OTHER DEFINITIVE DOCUMENT TO THE CONTRARY, NO PARTY (NOR ANY OTHER PERSON CONTEMPLATED IN ARTICLE 15 OR ARTICLE 16) SHALL BE ENTITLED TO RECOVER ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES OR OTHER SIMILAR RELIEF (INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOST BUSINESS OPPORTUNITY) BY REASON OF A BREACH BY ANY OTHER PARTY OF ANY REPRESENTATION AND WARRANTY SET FORTH IN THIS ARTICLE 11, OTHER THAN, IN THE LIMITED CASE OF A BREACH BY THE WKE PARTIES OF ANY REPRESENTATION OR WARRANTY IN SECTION 11.1(k) (SUBJECT TO SECTION 11.3 ABOVE), DAMAGES CONSTITUTING THE COST OF REPLACEMENT POWER ATTRIBUTABLE TO ANY OUTAGE OR CURTAILMENT OF OPERATION OF ANY GENERATING PLANT REASONABLY REQUIRED IN CONSEQUENCE OF THE CONDITIONS OR CIRCUMSTANCES CONSTITUTING A BREACH OF SUCH REPRESENTATION OR WARRANTY IN SECTION 11.1(k). Big Rivers agrees to use its commercially reasonable efforts to mitigate any such required replacement power costs by completing the remedial action requiring (or to address the condition or circumstance requiring) such outage or curtailment at the earliest practicable time consistent with Prudent Utility Practice (but subject to the provisions of Sections 16.7 and 16.8). For purposes of this Section 11.4, the phrase "replacement power" means such power as is necessary for Big Rivers to meet all of its contractual obligations to its member cooperatives and its obligations under all other wholesale contracts for the sale by Big Rivers of power, in each case existing at the time of the required outage or curtailment, which shall be measured by the net incremental cost, if any, of replacing the generation from the Generating Plant affected by the circumstances or conditions constituting the breach of the representation or warranty in Section 11.1(k). Notwithstanding anything to the contrary set forth herein or elsewhere in this Termination Agreement, the WKE Parties shall not be responsible or liable in any manner (whether for Damages or otherwise) under this Article 11 or under Article 16, for a breach of their representation or warranty set forth in Section 11.1(k) (or for the Damages or other consequences of that breach) if the conditions, events or circumstances giving rise to that breach, or the Damages or other consequences resulting therefrom, are the subject of an indemnification obligation of the WKE Parties (and/or

any limitation(s) on indemnification or other limitation(s) on recoveries or remedies) provided for in Article 15 of this Termination Agreement.

ARTICLE 12

PRE-UNWIND CLOSING DATE COVENANTS AND RIGHTS

Section 12.1 Big Rivers Representative at Generating Plants.

(a) Rights of Big Rivers Representative. During the Pre-Closing Period, the WKE Parties shall provide to a representative of Big Rivers (each, a “**Big Rivers Representative**”) situated on each of the Sites of each Generating Plant an office, telephone and other appropriate communications and clerical services, and the Big Rivers representative shall be afforded reasonable access at all times during that period to the Generating Plants, and reasonable access during normal business hours during that period to all books, records, data, contracts and other documents ((a) other than attorney-client privileged information, (b) other than information the subject of a confidentiality agreement with one or more third parties, and (c) other than information (i) containing data or information considered by a WKE Party or E.ON in good faith to constitute or contain competitively sensitive information the disclosure of which to Big Rivers or a Big Rivers Representative could compromise a competitive advantage of that WKE Party or E.ON in the marketplace, or (ii) produced by a WKE Party or E.ON in contemplation of the Transaction or the analysis, development or negotiation thereof, or produced by a WKE Party or E.ON for the purpose of facilitating the WKE Party’s or E.ON’s consideration or pursuit of the Transaction or other alternatives for restructuring, terminating, amending or modifying (or ending a WKE Party’s or E.ON’s involvement in) any existing agreement or relationship between any WKE Party or E.ON, on the one hand, and Big Rivers, any Smelter, Kenergy, the City and/or City Utility Commission, RUS, any Ambac Entity, CFC, any Economically Defeased Lease Party or any Affiliate of any of the foregoing, on the other hand (including without limitation, any information obtained or developed by or for any WKE Party in connection with their efforts to develop, explore or pursue one or more transactions designed to secure the support of any Economically Defeased Lease Party (or its Affiliate) for the Transaction)), then in the possession or control of the WKE Parties and relating to the operation of such Generating Plants (including the right to make copies of such books, record, data, contracts or other documents at the expense of Big Rivers, which shall remain subject to any confidentiality agreements among the Parties then in effect). Each Big Rivers Representative shall have the right to confer with the employees of WKEC responsible for the operation and maintenance of the Generating Plants during that period, so long as the rights of Big Rivers do not interfere with the operation of the Generating Plants. The Big Rivers Representative shall have the right during that period to be present at the performance of all maintenance and the making of all capital repairs and replacements, whether in connection with a Generating Plant outage or otherwise. Big Rivers will be solely responsible for the costs and expenses of the Big Rivers Representatives (with the exception of office space, electric usage, and other incidentals which do not constitute

out-of-pocket costs) and of such inspection of books, records, data, contracts and other documents.

(b) No Transfer of Control of Generating Plants. Notwithstanding anything contained in this Termination Agreement to the contrary, the Parties agree that nothing contained in this Article 12 is intended to, nor shall it, constitute a transfer of control over utilities or utility assets as contemplated in KRS 278.020(4) and (5), and the rights of Big Rivers contemplated herein shall be suspended to the extent they at any time are deemed by the KPSC to constitute such a transfer of control or to otherwise require the prior approval of the KPSC.

Section 12.2 Operating Plans and Operation of Generating Plants.

(a) Operating Plans and Operation of Generating Plants during the Pre-Closing Period. On or about December 15, 2006, WKEC provided to Big Rivers copies of WKEC's "Coleman 2007-2009 Business Plan," "Sebree 2007-2009 Business Plan" and "Wilson Station 2007-2009 Business Plan" as internally approved by WKEC and E.ON (each an "*Operating Plan*" and collectively, the "*Operating Plans*"). Big Rivers acknowledges and agrees that these Operating Plans contain various tasks, projects and other items that WKEC intends to complete, procure or perform during the relevant period set forth therein, but that due to the occurrence of unforeseen outages, events or circumstances, all of these tasks, projects and other items planned during the relevant period (including those planned during the Pre-Closing Period) may not be completed, procured or performed during such relevant period (including during the Pre-Closing Period) and that resources may be diverted to other tasks, projects or items. Big Rivers also acknowledges and agrees that the cost and expenditure information set forth in the Operating Plans are estimates and that the actual costs and expenditures may be more or less than the estimates and that it is not practical for WKEC to covenant that it will complete, procure or perform each task, project, or item set forth in the Operating Plan in the time period provided in the Operating Plans, or that it will spend the precise amount of the estimated costs and expenditures set forth in the Operating Plans. WKEC acknowledges and agrees that Big Rivers has a concern, during the Pre-Closing Period, that WKEC not materially deviate from one or more of the Operating Plans in a manner that is not consistent with Prudent Utility Practice, without recourse hereunder. Therefore, to address this concern of Big Rivers, WKEC agrees, during the Pre-Closing Period, as follows:

(i) WKEC shall operate the Generating Plants in the ordinary course of business in accordance with its obligations under the Operative Documents;

(ii) WKEC shall use commercially reasonable efforts to operate in accordance with the Operating Plans, subject to a right to deviate (materially or otherwise) from such Operating Plans, at any time and in WKEC's sole judgment,

so long as each deviation is consistent with Prudent Utility Practice, without taking into account that the Transaction is imminent);

(iii) WKEC shall consult with Big Rivers prior to making any material deviations from an Operating Plan;

(iv) WKEC shall provide Big Rivers with monthly reports comparing the actual non-labor operation and maintenance expenditures and capital expenditures incurred in the operation of the Generating Plant with those in the Operating Plans;

(v) WKEC shall use commercially reasonable efforts to accommodate reasonable requests by Big Rivers for WKEC to deviate from the Operating Plans, for WKEC to modify its plan with respect to any task, project or other item, or for WKEC to modify its plan to deviate, so long as Big Rivers shall pay or reimburse WKEC for any costs and expenditures incurred by WKEC in excess of the costs and expenditures that WKEC would have incurred if not for the deviation or modification requested by Big Rivers; and

(vi) During 2007, and provided Big Rivers funds the Big Rivers Contribution for 2007 in accordance with the relevant Operative Document(s), WKEC shall spend not less than ninety percent (90%) of the cumulative total of the amounts (collectively, the “*Scheduled Amounts*”) set forth on Schedule 12.2(a)(vi) through and including the Closing Month (pro-rated as contemplated below) for Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs. Notwithstanding the preceding sentence, only a portion of the amount set forth on Schedule 12.2(a)(vi) for the Closing Month shall be included in the Scheduled Amounts for the purpose of determining whether WKEC has fulfilled the spending requirement of that preceding sentence, which portion shall be determined by multiplying that amount for the Closing Month by a fraction, the numerator of which is the total number of days in the Closing Month through and including the Unwind Closing Date, and the denominator of which is the total number of days in the Closing Month. If WKEC shall not have complied with the requirements of the preceding two sentences as of the Closing, then WKEC shall pay Big Rivers an amount equal to the difference between (A) the Scheduled Amounts through the Unwind Closing Date, and (B) the amounts actually expended by WKEC through the Unwind Closing Date for Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs.

(b) Notice of Forced Outages. From and after the date 90 days prior to the Scheduled Unwind Closing Date, WKEC shall give Big Rivers notice of any forced outage of any Generating Plant within 24 hours of the occurrence of such forced outage.

Section 12.3 Employee Matters. During the Pre-Closing Period, WKEC shall not implement any general wage increase outside the ordinary course of business with

respect to employees involved in the operation of the Generating Plants. WKEC may continue normal salary and benefit administrative practices in the ordinary course of business, however. WKEC shall attempt to maintain employee levels at each of the Generating Plants at levels consistent with those set forth in the Operating Plans, from the date of this Termination Agreement through the expiration of the period of the relevant Operating Plan (or any earlier Closing or termination of this Termination Agreement); provided, however, that from and after the date 120 days prior to the Scheduled Unwind Closing Date through the Closing (or such a termination), Big Rivers shall have the right to approve the hiring of any person to fill the position of Vice-President of Operations of WKEC (currently occupied by Ralph Bowling) or the positions that directly report to the Vice-President of Operations of WKEC. From and after the Execution Date through the Closing (or such a termination), WKEC shall not, without the prior written approval of Big Rivers, create any new positions which are not provided for in the Operating Plans. Except as otherwise provided herein, WKEC shall not, during the Pre-Closing Period, implement or agree to any implementation of, or amendment or supplement to, any pension, commission, retirement medical reimbursement, life insurance, or any other similar employee compensation or benefit plan or arrangement as and to the extent the same may be applicable to any employee of WKEC, except for (i) non-material modifications or amendments, (ii) modifications or amendments which are required by Applicable Laws, (iii) modifications or amendments required by employment agreements or collective bargaining agreements in existence on November 28, 2005 or to be negotiated upon expiration of such agreements, and (iv) modifications or amendments approved by Big Rivers. WKEC shall inform Big Rivers as soon as practicable of any general wage increase, change in employee levels, hiring of any person, creation of a new position, implementation of an amendment or supplement to any pension plan, etc., or other action that may be the subject to a Big Rivers' consent as contemplated in this Section 12.3.

Section 12.4 Contracts.

(a) Performance of Contracts. During the Pre-Closing Period, WKEC shall perform its obligations under, and otherwise use its reasonable best efforts, consistent with sound business practices, to keep in full force and effect, all fuel supply contracts, contracts for reagent, fuel oil or natural gas, and any other vendor contracts for supplies or services at any of the Generating Plants (limited, in the case of such other vendor contracts, to contracts involving aggregate payments for goods or services over their term by WKEC (including without limitation, as successor by merger of Station Two Subsidiary) in excess of \$500,000), but in each case only to the extent the relevant contract:

- (i) is an Assigned Contract, or
- (ii) is entered into by WKEC following the Execution Date.

Nothing contained in this Termination Agreement or in any other Definitive Document, however, shall require WKEC to extend the original term or any renewal term of any contract in order to comply with this paragraph (a) of Section 12.4.

(b) Limits on Entry Into Contracts and Equipment Leases. During the Pre-Closing Period WKEC shall obtain Big Rivers' prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed), before WKEC shall enter into any maintenance, fuel supply, materials or transportation contract or equipment lease with respect to any of the Generating Plants, or make any commitment to do so, in each case involving the payment of an amount in excess of \$500,000 annually and having an expiration date after the Scheduled Unwind Closing Date; *provided*, that the foregoing shall not apply to any sales by LEM or WKEC in the ordinary course of business of power generated by the Generating Plants, or to any purchases by LEM or WKEC of power from other sources, in either case at any time up to and including the Unwind Closing Date. WKEC shall inform Big Rivers as soon as practicable of any contract or equipment lease, the execution of which may be the subject of Big Rivers' approval as contemplated in this Subparagraph (b).

Section 12.5 Pre-Closing Report.

(a) Big Rivers' Preparation of Pre-Closing Report. In order for Big Rivers to ensure that the conditions to closing and covenants set forth in Sections 12.2 and 12.4 have been satisfied or fulfilled, and to ensure that Big Rivers' requests for the production of due diligence information regarding the Generating Plants, the Sites, the Personal Property, and the contracts, agreements, leases, etc. of WKEC relating to the same have been fulfilled, the procedure set forth in this Section 12.5 shall occur prior to the Unwind Closing Date. At least 45 days prior to the Scheduled Unwind Closing Date (if one shall be established by the Parties), but not more than 75 days prior to that Scheduled Unwind Closing Date, Big Rivers shall be permitted to (but not required to) submit to WKEC a written report (the "*Pre-Closing Report*"):

(i) identifying in reasonable detail all matters which Big Rivers believes, in good faith, (A) constitutes a failure by WKEC to comply, in all material respects, with its obligations under Section 12.2 ("*Operating Plan Non-Compliance Matters*"), the basis for such good faith belief, and the proposed remedy, or (B) constitutes a circumstance which would permit Big Rivers to elect not to consummate the Closing under Subsection 10.3(ii), the basis of such good faith belief, and the proposed remedy; and/or

(ii) identifying with particularity additional items of information that Big Rivers desires in order to complete its due diligence regarding the Generating Plants, the Sites, the Personal Property or the contracts, agreements, leases, etc. of WKEC or LEM relating to the same, or in order for Big Rivers to confirm the

satisfaction of one or more of the conditions precedent to Big Rivers' obligation to consummate the Transaction (as set forth in Section 10.1 or Section 10.3 or in this Article 12), but which were not previously delivered by a WKE Party or E.ON to Big Rivers.

(b) WKEC Response to Pre-Closing Report. Upon its receipt of the Pre-Closing Report delivered in a timely manner as set forth in Section 12.5(a), WKEC shall respond to Big Rivers in writing within 20 days thereafter:

(i) whether WKEC agrees or disagrees in good faith, as applicable, (A) with Big Rivers' allegation of non-compliance, the basis of Big Rivers' belief with respect to each Operating Plan Non-Compliance Matter identified in the Pre-Closing Report, and/or Big Rivers' proposed remedy, and the basis for such disagreement and an alternate remedy, if applicable, or (B) with Big Rivers' allegation in respect of the circumstances that would permit Big Rivers not to consummate the Closing under Subsection 10.3(ii), and the basis for such disagreement and an alternate remedy, if applicable, and

(ii) whether WKEC, LEM or E.ON are able to disclose to Big Rivers (within 20 days after WKEC's receipt of the Pre-Closing Report, if not before) the additional items of information requested by Big Rivers in the Pre-Closing Report (other than such information which is not in the possession of the WKE Parties or E.ON as of WKEC's receipt of the Pre-Closing Report and not anticipated as to be prepared or generated by or for any WKE Party or E.ON in the ordinary course of business prior to that 20th day, and other than sensitive corporate financial information relating to the WKE Parties or E.ON or information subject to the attorney-client privilege, which information would in any event not have to be prepared, secured or disclosed by WKEC, LEM or E.ON in response to one or more requests made by Big Rivers in the Pre-Closing Report).

In the event the Parties come to a mutually acceptable resolution with respect to any such Operating Plan Non-Compliance Matters, the WKE Parties shall be deemed to be in compliance with Section 12.2 hereof with respect to such Operating Plan Non-Compliance Matter(s) and WKEC shall have no further obligation under Section 12.2 or otherwise with respect to such Operating Plan Non-Compliance Matter(s). In the event the Parties come to a mutually acceptable resolution with respect to any such alleged circumstance that would permit Big Rivers to elect not to consummate the Closing pursuant to Section 10.3(ii), then such alleged circumstance may not be used as a circumstance that would permit Big Rivers to elect not to so close. In the event a WKE Party or E.ON discloses to Big Rivers (within the 20-day period contemplated above) all additional items of information (other than those expressly excluded as contemplated above) specifically requested by Big Rivers in the Pre-Closing Report, the provisions contemplated in this Section 12.5 shall not thereafter serve as a condition to Big Rivers'

obligation to consummate the Transaction in accordance with the other provisions of the Definitive Documentation.

(c) Procedure to Address Operating Plan Non-Compliance Matters. In order to attempt, in good faith, to address the Operating Plan Non-Compliance Matters or any circumstance alleged by Big Rivers which would permit it to elect not to consummate the Closing pursuant to Section 10.3(ii), in either case as identified in the Pre-Closing Report, representatives of WKEC and Big Rivers will meet promptly (but in no event more than 10 days following the delivery by WKEC to Big Rivers of its response as contemplated above). If despite those good faith efforts the Parties are not able to reach agreement within 10 days, a dispute shall exist and either WKEC or Big Rivers shall be entitled to elect (by written notice thereof delivered to the other party) to maintain its right pursuant to Section 10.2(ee) or Section 10.3(ii) hereof, as the case may be, not to permit the Closing to occur or to delay the Closing and the consummation of the Transaction until that dispute is finally settled or resolved, or until this Termination Agreement is otherwise terminated in accordance with its terms. In addition to its rights to delay the Closing set forth in the preceding sentence, if, following the dispute resolution procedure set forth in this Section 12.5(c) above, one or more Operating Plan Non-Compliance Matters remain unresolved, then, upon the request of Big Rivers, such unresolved matters shall be listed on Schedule 12.5(c) attached hereto prior to the Closing. Notwithstanding anything herein or in any other Transaction Document to the contrary, in the event the Transaction is consummated, the Parties agree that, with respect to Operating Plan Non-Compliance Matters set forth on Schedule 12.5(c), Big Rivers shall not have waived or released any rights it may have with respect to such scheduled Operating Plan Non-Compliance Matters and WKEC shall not have waived or released any defenses or counterclaims it may have with respect to such Operating Plan Non-Compliance Matters.

(d) Postponement of Unwind Closing Date. In the event WKEC, LEM or E.ON does not disclose to Big Rivers the additional items of information specifically requested by it in the Pre-Closing Report (other than information expressly excluded as contemplated above) within the 20-day period contemplated above, Big Rivers shall thereafter be entitled (by written notice thereof delivered to the other Parties) to elect to delay the Closing and the consummation of the Transaction beyond the Scheduled Unwind Closing Date until the date that is 20 days after the date on which that information is disclosed to Big Rivers, but subject to the satisfaction of the other conditions provided for in Article 10, and subject to the earlier termination of this Termination Agreement in accordance with its terms. In the event Big Rivers fails to deliver the Pre-Closing Report on a timely basis as contemplated above, or fails to include in a submitted Pre-Closing Report one or more matters or items, or one or more items of requested information, each as contemplated above, Big Rivers shall not thereafter be permitted to condition or delay the Closing or the consummation of the Transaction, or to assert any Claim, on the basis that any WKE Party or E.ON has not complied with its obligations in Section 12.2 above or has not undertaken and completed any items as contemplated above (or, as applicable, have not undertaken and completed any such matters or items not specifically identified in the Pre-Closing Report), and as

applicable shall not be permitted to condition or delay the Closing or the consummation of the Transaction until 20 days after its receipt of any particular items of information from WKEC (or, as applicable, its receipt of any items of information not identified with particularity in a submitted Pre-Closing Report), and no such matters, items or failures to receive information may be claimed by Big Rivers to be the subject of a non-compliance, unresolved dispute, circumstance, Claim or Proceeding as contemplated in Section 10.2(ii) or Section 10.3(mm).

Section 12.6 TVA Transmission. Upon the terms, but subject to the conditions and limitations (if any), set forth in the letter agreement between Big Rivers and LEM dated August 1, 2002, Big Rivers shall continue to sell to LEM, and LEM shall continue to pay Big Rivers for, the right to use 50 MW of firm transmission across the TVA Transmission System through the Closing, at which time, pursuant to Section 3.3(b), the deposit paid by LEM to Big Rivers, together with accrued interest thereon, shall be returned to LEM (or to WKEC on LEM's behalf), and LEM shall have no further rights to the use of that firm transmission under or pursuant to that letter agreement.

Section 12.7 Net Outputs of Plant Green, Reid Station Turbine and Station Two. After the Execution Date, the Parties, using all reasonable and practicable means, shall attempt to confirm by mutual agreement the net outputs for Plant Green, the Reid Station Turbine and Station Two as set forth in paragraph (ee) of Section 10.3, and to the extent the agreed net output for each such Generating Plant differs from the net outputs set forth in paragraph (ee) of Section 10.3, paragraph (ee) of Section 10.3 shall be amended to reflect such confirmed net outputs without further action on the part of any Party.

ARTICLE 13

TAX MATTERS

Section 13.1 Apportionment of Sales and Use Taxes. WKEC shall pay any and all sales and use Taxes imposed on the transfers of Inventory, Personal Property, Assigned Contracts, the Real Property, Permits, SO₂ Allowance and NO_x Allowances as contemplated by Article 3. WKEC shall become responsible for sales or use taxes, if any, imposed because WKEC has at the Closing relinquished its rights under or pursuant to the 1970 Station Two Contracts.

Section 13.2 Apportionment of Property Taxes. Taxes assessed, levied or exacted on the Sites, the Generating Plants, the Personal Property or the Real Property for the Closing Year shall be apportioned between the portion of the Closing Year prior to and including the Unwind Closing Date and the portion of the Closing Year after the Unwind Closing Date, based on the number of days in each such period. WKEC shall pay 30 percent of an amount equal to all such property taxes multiplied by a fraction, the numerator of which is the number of days in the portion of the Closing Year up to and including the Unwind Closing Date and the denominator of which is 365. The remainder

of such property Taxes for the Closing Year shall be paid by Big Rivers. The apportionment provided by this Section 13.2 shall be effected regardless of when such property Taxes are invoiced or paid. Big Rivers shall be solely responsible for all property Taxes assessed, levied or exacted on the above-described assets and properties for all periods following the Closing Year. Any property taxes assessed, levied or exacted on any of the above-described assets or properties for any periods prior to the Closing Year, to the extent not paid by the appropriate Party prior to the Closing in accordance with the relevant Operative Documents, shall continue to be the responsibility of such Party or parties following the Closing in the manner contemplated by those Operative Documents, which obligation(s) shall survive the Closing and shall continue to be binding on such Party or Parties until satisfied or discharged in full

Section 13.3 Unemployment and Worker's Compensation Taxes. The WKE Parties shall be responsible for all unemployment Taxes and workers' compensation premiums for the period from the Effective Date through the Closing in respect of all employees hired by Big Rivers regardless of when such Taxes and premiums are invoiced or paid. Big Rivers shall be responsible for all unemployment Taxes and worker's compensation premiums for the period from and after the Closing in respect of all employees hired by Big Rivers, regardless of when such Taxes and premiums are invoiced or paid.

Section 13.4 Review of Requests for Tax Rulings. Each of the WKE Parties, on the one hand, and Big Rivers, on the other Hand (each, a "**Filing Party**") shall permit the other of those Party or Parties (the "**Non-Filing Parties**") to review and comment upon any ruling requests to be filed by the Filing Party for local, state or federal tax rulings in connection with the Transactions prior to filing such requests, provided, that in the event the Filing Party shall not have received the Non-Filing Party's comment(s) with respect to such requests within ten (10) Business Days after the delivery of the same by the Filing Party to the Non-Filing Party, the Filing Party may proceed in its discretion to file such requests with the relevant Governmental Entities without further delay.

ARTICLE 14

ADDITIONAL COVENANTS AND ACTIONS

Section 14.1 Coleman Scrubber Liquidated Damages. In the event the Closing shall occur, (a)(i) all liquidated damages payable pursuant to Sections 7.1(a), 7.1(b) and 7.1(c) of the Coleman Scrubber EPC Contract and (ii) all liquidated damages payable pursuant to Section 7.1(e) of the Coleman Scrubber EPC Contract which are attributable to the period prior to the Unwind Closing Date, shall be paid to WKEC, and (b)(i) all liquidated damages payable pursuant to Section 7.1(d) and 7.2 of the Coleman Scrubber EPC Contract and (ii) all liquidated damages payable pursuant to Section 7.1(e) of the Coleman Scrubber EPC Contract which are attributable to the period on and after the Unwind Closing Date, shall be paid to Big Rivers. If the Coleman Scrubber Contractor's

liability shall be limited by Section 7.7 of the Coleman Scrubber EPC Contract in circumstances where amounts remain payable to Big Rivers in accordance with the preceding sentence, each WKE Party shall remit to Big Rivers all amounts of liquidated damages actually received by such WKE Party under the Coleman Scrubber EPC Contract in excess of \$5 million until Big Rivers shall receive the lesser of: (i) the full amount of the liquidated damages described in the preceding sentence as payable to Big Rivers, or (ii) such excess over \$5 million of liquidated damages actually received by the WKE Parties.

Section 14.2 Further Assurances. Each of the Parties shall, at all times, and from time to time, either before or after the Closing, upon the request of the appropriate Party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, conveyances and assurances as may be required to complete the Transaction. After the Closing each Party shall, and shall use its commercially reasonable efforts to assure that any necessary third party shall, execute such documents and do such other acts and things as any other Party may reasonably require for the purpose of giving to that other Party the full benefit of all the provisions of this Termination Agreement and the other Definitive Documents, and as may be reasonably required to complete the transactions contemplated in this Termination Agreement and the other Definitive Documents.

Section 14.3 Woodward-Clyde Agreement. The Parties agree that nothing contained in this Termination Agreement, in the Termination and Release, in the Station Two Termination and Release or in any other Definitive Document shall be deemed to affect, limit or eliminate any rights or remedies that WKEC, Big Rivers, the City of Henderson or the City of Henderson Utility Commission may have against or with respect to Woodward-Clyde International-Americas, or its successors or assigns (collectively, "*WCI*"), under or pursuant to the Agreement for Professional and Environmental Services, dated as of October 15, 1997 (the "*WCI Agreement*"), among WKEC, Big Rivers and WCI, it being understood and agreed that any and all such rights and remedies of WKEC, Big Rivers, the City of Henderson or the City of Henderson Utility Commission, respectively, shall survive the execution and delivery of the Definitive Documents and the Closing in accordance with the terms of the WCI Agreement. Each of WKEC and Big Rivers further agrees not to attempt to terminate the WCI Agreement pursuant to Section 17 thereof without the prior written consent of the other of those Parties.

Section 14.4 Personnel Matters.

(a) Offers of Employment.

(i) WKEC Employees in Henderson or at Generating Plants. Big Rivers affirms its intent to make offers of employment to all WKEC employees

whose normal work location is in Henderson, Kentucky or at one of the Generating Plants and who are "Actively Employed" (as described in this section) as of the Closing; provided however, such offers may be conditioned upon the pre-employment requirements of Big Rivers. Big Rivers shall use its best efforts to offer such employees positions substantially similar to those held by the respective employees with WKEC, with base pay at least equivalent to that provided by WKEC to such employees, but will not be obligated to offer any such employees such position and base pay if such offer would be duplicative of the responsibilities of a current employee of Big Rivers. Big Rivers and WKEC will agree on the method to be used to communicate offers of employment. Notices of intent to offer employment shall be made by Big Rivers as soon as practicable following the execution of this Termination Agreement, in a manner agreed upon by WKEC and Big Rivers. Big Rivers shall notify WKEC (or other appropriate E.ON Affiliate) of any WKEC employee not offered employment for positions substantially similar to those held by the respective employees at WKEC, with a base pay at least equivalent to that provided by WKEC to those employees. E.ON and any of its Affiliates shall have the right to make offers of employment at any time to any WKEC employee for employment beyond the Closing, including concurrently with any offers by Big Rivers. "Actively Employed" for purposes of this section includes employees who on the date of Closing:

- (1) are actively at work;
- (2) are not scheduled to work, but who were actively at work on their last normally scheduled work day prior to the date of Closing;
- (3) are on paid vacation under the WKEC fringe benefits;
- (4) are utilizing a paid floating holiday under the WKEC fringe benefits;
- (5) are on paid sick leave, but who are released by their physician to return to work within thirty (30) days of the Closing;
- (6) are utilizing a paid personal day under the WKEC fringe benefits;
- (7) are on Family and Medical Leave Act leave;
- (8) are on military duty leave;
- (9) are on jury duty leave; or
- (10) are on paid funeral leave under the WKEC fringe benefits.

(ii) WKEC Employees Not in Henderson or at Generating Plants or Employees of Other E.ON Affiliates. Big Rivers shall have the right to make offers of employment to any or all WKEC employees whose normal work location is in a location other than Henderson, Kentucky or at one of the

Generating Plants, or to any or all employees of an E.ON Affiliate who spends substantially all of his or her time supporting WKEC. Big Rivers and WKEC shall agree on the method to be used and timing to communicate the offers of employment. E.ON and any of its Affiliates shall also have the right to make offers of employment at any time to any WKEC or other E.ON Affiliate employee for employment beyond the Closing, including concurrently with any offers made by Big Rivers.

(b) Transferred Employees. WKEC employees who accept employment with Big Rivers shall be referred to as “*Transferred Employees*”, and shall become employees of Big Rivers effective as of the Closing.

(c) Service Credit. Transferred Employees shall receive credit for their service with WKEC, and any prior service with Big Rivers, for purposes of determining eligibility for enrollment or participation in any Big Rivers employee benefit plan or program to be made available to them, and entitlement to those benefits, including vesting (but not benefit accrual except to the extent expressly provided in the respective benefit plan or program for new hires of Big Rivers). A Transferred Employee who chooses coverage under Big Rivers’ health plan shall receive a pro rata portion of the annual employer credit to the flexible benefits plan for health care, based on the employee’s full months of employment with Big Rivers in the calendar year of Closing. Transferred Employees shall not receive prior service credit in determining their eligibility to participate in Big Rivers’ incentive pay plan.

(d) Employee Training and Health and Safety Files. WKEC shall provide Big Rivers with copies of all training and health and safety records for the Transferred Employees. In the event WKEC or Big Rivers determines that any of these records legally require a release by the employee in order for WKEC to provide such record, then such records shall only be released after the required release has been provided by the Transferred Employee.

(e) Benefit Claims. WKEC (or other appropriate E.ON Affiliate) shall retain responsibility for all workers’ compensation, health and life insurance, dependent care, and disability benefit claims of Transferred Employees pending as of Closing, or made after Closing but relating to events occurring prior to Closing. WKEC (or other appropriate E.ON Affiliate) shall be responsible for any legal obligation arising under the Consolidated Omnibus Budget Reconciliation Act (COBRA) for notification and continued coverage with regard to WKEC employees’ pre-Closing health benefits.

(f) Labor Issues. Big Rivers shall not adopt, assume, or undertake responsibility for any collective bargaining agreement of WKEC or other E.ON Affiliate with the International Brotherhood of Electrical Workers (IBEW), Local 1701, or any other bargaining representative. Big Rivers’ own labor agreement with IBEW Local

1701 (the “*Union*”), which expires no later than April 14, 2008, contains a provision whereby the Union will be recognized as the representative of WKEC bargaining employees at Closing, and WKEC agrees to cooperate with and make available to Big Rivers, at such reasonable times and places, during the sixty (60) day period prior to Closing, the appropriate WKEC employees to prepare for, and participate in, any Big Rivers’ negotiations with the Union. Big Rivers hereby releases and discharges WKEC with respect to any liabilities, claims, or damages that may arise out of the preparation and participation by said WKEC employees in such negotiations.

(g) WARN Act. WKEC (or other appropriate E.ON Affiliate) shall be responsible for compliance with the Worker Adjustment and Retraining Notification (WARN) Act as applicable in connection with the Closing. With respect to action over which Big Rivers has control, Big Rivers agrees to indemnify and hold harmless WKEC (or other appropriate E.ON Affiliate) from and against all liability arising under the WARN Act with respect to the termination of WKEC employees. This indemnification shall survive the Closing and shall remain effective concurrent with the legal limitations period applicable to such WARN Act liability. In the event it becomes necessary, WKEC and Big Rivers agree to cooperate reasonably with each other in their efforts to comply with the WARN Act in connection with the transactions contemplated by the Definitive Documents, including, without limitation, the actions to be taken on or after Closing.

(h) Employment-Related Matters. WKEC and Big Rivers agree to cooperate reasonably with each other in any and all employment-related legal matters, such as employment litigation, charges, grievances or other employment-related claims. WKEC (or other appropriate E.ON Affiliate) shall be solely responsible for resolving all WKEC employment-related legal matters. Big Rivers shall not be responsible for costs incurred in processing or resolving such WKEC employment-related legal matters.

(i) Severance Benefits. It is contemplated that certain WKEC or other appropriate E.ON Affiliate employees may become eligible for severance benefits from WKEC or such E.ON Affiliate. Big Rivers shall not be liable for any severance benefits paid in respect of such employees, except that if such a former employee not employed by Big Rivers at the Closing receives a severance benefit from WKEC or other appropriate E.ON Affiliate and is hired by Big Rivers following the Closing and within one (1) year of the employee’s separation of employment with WKEC or other appropriate E.ON Affiliate as a result of the Closing, then Big Rivers shall reimburse WKEC or other appropriate E.ON Affiliate the value of the severance benefit within thirty (30) days after receiving a demand for payment from WKEC or other appropriate E.ON Affiliate identifying the employee and the amount of the severance benefit. Following the Closing, WKEC shall provide a list of all employees of WKEC or other appropriate E.ON Affiliate who receive such severance benefits and the value of the severance benefits received by each such employee. Big Rivers shall promptly notify WKEC if Big Rivers hires a former employee who is on such list within one (1) year following the Closing.

(j) Benefit Obligations. As of the Closing, Big Rivers shall assume the obligation of WKEC to provide to each Transferred Employee employed by Big Rivers immediately following the Closing the amount of unused sick leave, personal days and vacation days credited to such employee by WKEC as of the Closing. Such unused sick leave, personal days and vacation shall be provided in accordance with Big Rivers' sick leave, personal day and vacation policies as in effect from time to time. Following the Closing, WKEC shall provide to Big Rivers the amount of unused sick leave, personal days and vacation days credited to each Transferred Employee. The items described in Subsections 14.4(j)(i) and 14.4(j)(ii) below shall be paid by WKEC to Big Rivers at or prior to the Closing.

(i) Sick Leave. The following costs of the obligation to provide sick leave to the Transferred Employees shall be paid by WKEC. Such cost shall be the product resulting from multiplying the number of sick leave hours for each Transferred Employee as of the Closing times the employees' hourly pay rate with WKEC on the Unwind Closing Date, times 10 percent.

(ii) Vacation and Personal Days. The following cost of the obligation to provide vacation and personal days to the Transferred Employees shall be paid by WKEC. Such cost shall be determined by multiplying the number of vacation hours or personal day hours, as the case may be, for each Transferred Employee as of the Closing, times the employee's hourly pay rate with WKEC on the Unwind Closing Date.

(k) Certain Retiree Medical Benefits. In July 1998, Big Rivers paid WKEC the present value of Big Rivers' obligation at that time to provide retiree medical benefits to Big Rivers' employees being hired by WKEC, as determined in accordance with FAS 106. For those now former Big Rivers employees included in the 1998 FAS 106 present value calculation, who do not elect, within 60 days following the Closing, retiree medical benefits pursuant to the WKEC plan, WKEC shall reimburse Big Rivers the amount so paid by Big Rivers to WKEC for such employees not later than 90 days following the Closing.

(l) Certain Additional Medical Benefits. WKEC (or other appropriate E.ON Affiliate) shall continue to reimburse Big Rivers for the cost of providing health plan benefits to certain former Big Rivers employees who remain on Big Rivers' medical plan and were originally identified in 1998 as employees not to be hired by WKEC, but whose health claims under Big Rivers' medical plans were to be reimbursed by WKEC. At WKEC's option, WKEC may elect to provide a lump-sum payment representing the net present value of such liability. Such payment amount shall be calculated using a method that is mutually agreeable to the Parties.

Section 14.5 Letter of Intent. Big Rivers and the WKE Parties (for themselves and on behalf of E.ON) hereby acknowledge that this Termination Agreement constitutes the "mutually-satisfactory 'Definitive Documentation'" contemplated in the Letter of

Intent, that the Execution Date constitutes the “Letter of Intent Termination Date” contemplated in the Letter of Intent, and that the Letter of Intent became null and void in accordance with its terms (subject to the reservation of rights with respect to a party’s prior breach of the Letter of Intent as contemplated therein) effective immediately upon the execution and delivery of this Termination Agreement by the Parties.

Section 14.6 E.ON U.S. Guaranty. Contemporaneous with the execution and delivery of this Termination Agreement, E.ON and Big Rivers executed and delivered a Guaranty of even date herewith in form satisfactory to E.ON and Big Rivers (the “*E.ON Guaranty*”).

Section 14.7 Emissions Fees. The Parties acknowledge that Big Rivers will be billed during the month of December following the Unwind Closing Date by the Kentucky State Treasurer for the air emissions fees payable (pursuant to Chapter 401 of the Kentucky Revised Statutes and KAR 50:038) on account of the air emissions of the Generating Plants for the Kentucky Division of Air Quality’s fiscal year commencing on July 1 of the preceding calendar year, and expiring on June 30 of the year in which such fees are billed (a “*State Fiscal Year*”). The Parties agree that if the Closing occurs, Big Rivers shall receive the invoice for the State Fiscal Year emissions fees from the Kentucky State Treasurer and shall be responsible for making (and shall promptly make) payment of all such emissions fees by the deadline therefore, in accordance with Applicable Laws. In the event the Closing shall have occurred during the State Fiscal Year to which the December bill relates, Big Rivers shall be entitled to reimbursement from WKEC within 30 days of demand therefore for a portion of those emissions fees equal to the sum of, for each pollutant for which emissions fees are assessed:

(a) For each pollutant for which emissions fees are payable based on the amount of emissions, that portion of emissions fees determined by multiplying the total emission fees for such pollutant by a fraction, the numerator of which is the total emissions of such pollutant (in integral tons) measured or reported to occur prior to the Unwind Closing Date during such State Fiscal Year, and the denominator of which is the total emissions of such pollutant (in integral tons) emitted during such State Fiscal Year; and

(b) For each pollutant for which emissions fees are not paid based upon amounts emitted, or for which the actual emissions are not recorded or reported, an amount determined by multiplying the total emissions fees paid with respect to State Fiscal Year by a fraction, the numerator of which is the total number of days during such State Fiscal Year preceding the Unwind Closing Date, and the denominator of which is the total number of days in the same State Fiscal Year.

In the event the Closing shall have occurred after June 30 of the Closing Year but before December 1 of that year, and the bill received by Big Rivers relates to a State Fiscal Year prior to the State Fiscal Year in which the Unwind Closing Date occurs, then WKEC

shall reimburse Big Rivers (within 30 days of demand therefor) for the entire assessed fee for that prior State Fiscal Year, and the emissions fees billed to Big Rivers during the following calendar year for the State Fiscal Year in which the Closing occurred shall be pro-rated as provided above.

ARTICLE 15

ENVIRONMENTAL AUDIT AND INDEMNITIES

Section 15.1 Unwind Environmental Audit.

(a) Parameters for Unwind Environmental Audit. WKEC and Big Rivers have retained or shall jointly retain the Environmental Consultant to commence and complete an environmental survey of the Generating Plants and the Sites following the Execution Date and prior to the Closing (the “*Unwind Environmental Audit*”). The Unwind Environmental Audit shall have a scope and shall be conducted in accordance with the scope of work, specifications, methods and protocols set forth or reflected on Schedule 15.1. The report shall be issued by the Environmental Consultant on the basis of the Unwind Environmental Audit (the “*Unwind Environmental Audit Report*”), and shall be delivered to each of the Parties, both in final form and in any draft forms. The Unwind Environmental Audit Report shall not contain an opinion or assessment by the Environmental Consultant.

(i) as to the time or period of time at or during which any particular Environmental Release, condition, waste or violation of Environmental Laws identified, disclosed, reflected or alluded to in the Unwind Environmental Audit Report occurred,

(ii) as to which Party or other Person was responsible for causing or permitting to occur, or was or is responsible for the Remediation of (or for any costs, fines, penalties, other Damages or other relief associated with), any particular Environmental Release, condition, waste or violation identified, disclosed, reflected or alluded to in the Unwind Environmental Audit Report, or

(iii) as to whether any such Environmental Release, condition, waste or violation was identified, disclosed, reflected or alluded to in the Baseline Environmental Audit Report, in any disclosure schedule to the Participation Agreement, or in any agreed stipulations between the parties as contemplated in the Participation Agreement.

Big Rivers and WKEC shall instruct the Environmental Consultant to prepare the Unwind Environmental Audit Report solely in accordance with the foregoing criteria and limitations. Notwithstanding the foregoing, nothing in this Section 15.1 shall be construed to limit the discussion by and between Big Rivers and the Environmental Consultant concerning the matters set forth in clauses (i), (ii) and (iii) above or other topics pertinent to the fact-gathering activities of the Environmental Consultant, or to be

interpreted to restrict the Environmental Consultant from gathering and reporting in the Unwind Environmental Audit Report any factual information concerning the condition of the Generating Plants and related real property, so long as conclusions, opinions and other analysis set forth in clauses (i), (ii) and (iii) are not included in the Unwind Environmental Audit Report. WKEC is entitled to participate in any material discussions concerning the matters discussed in clauses (i), (ii) and (iii) above and shall be given a reasonable opportunity to do so.

(b) Responsibilities of Environmental Consultant. Big Rivers and the WKE Parties agree that neither the Environmental Consultant nor any of its employees, officers or contractors involved in either the Baseline Environmental Audit or the Unwind Environmental Audit, or in the development of the Baseline Environmental Audit Report or the Unwind Environmental Audit Report, shall be called by any of the Parties or their respective Affiliates, or by any of their respective shareholders or members, to testify (whether as an expert witness or material witness) in any Proceeding between any WKE Party and Big Rivers (or between or among any Party and any Affiliate, shareholder or member of any other Party, or between any of their respective successors or assigns, or between any Party and any Governmental Entity or other Person) regarding the respective obligations as between or among any two or more Parties (if any) under any representation, warranty, covenant, or indemnity set forth in this Termination Agreement or any other Definitive Document, or regarding any Claim hereunder or thereunder, in either case other than testimony given for the sole limited purposes of explaining the contents of the Baseline Environmental Audit Report or the Unwind Environmental Audit Report, or explaining the methodologies or procedures followed in conducting the Baseline Environmental Audit or the Unwind Environmental Audit, nor shall any Party submit or seek to submit (or cause or permit its Affiliate or any of their respective shareholders, members, successors or assigns to submit or seek to submit) as evidence in any such Proceeding any work papers or data assembled or distributed by Woodward-Clyde International-Americas, URS Corporation or any other Environmental Consultant pursuant to the Baseline Environmental Audit or the Unwind Environmental Audit, other than the Baseline Environmental Audit Report and the Unwind Environmental Audit Report (in each case including the attachments thereto).

(c) Costs of Audit and Consultant. Big Rivers and WKEC agree to share equally, and to correspondingly pay or fund as and when incurred or due to the Environmental Consultant, all fees, retainers, other consideration, costs and expenses that may be incurred or may become due by reason of or in connection with the retention of the Environmental Consultant, the undertaking and completion of the Unwind Environmental Audit, and the issuance of the Unwind Environmental Audit Report (but not the costs or expenses associated with matters identified in the Unwind Environmental Audit Report itself). Notwithstanding the preceding sentence, Big Rivers shall be entitled at the Closing (but not before) to seek reimbursement from WKEC for its share of the fees, retainers, other consideration, costs and expenses contemplated in that preceding sentence under or pursuant to the letter agreement dated as of November 1, 2004, as

amended, between Big Rivers and WKEC (as successor by merger of WKE), but subject to the limitations set forth in that letter agreement.

Section 15.2 Preliminary Acknowledgments and Agreements. The Parties acknowledge that Big Rivers will be retaking and reassuming the Generating Plants (and possession of and operating control over the Generating Plants) at the Closing in “AS IS” condition, subject to any and all physical and operational limitations, conditions, defects or deficiencies that may adversely affect the operation or utility of any or all of the Generating Plants (or that may render any of them incapable of operation or use at any particular level or capacity in compliance with any Applicable Laws, including without limitation, any Environmental Laws), and without recourse against any WKE Party following the Closing for, by reason of, or associated with, the physical condition or state of repair of any Generating Plant (or any component(s) thereof) as of the Closing, in each case subject to: (a) the express obligations of WKEC, if any, to indemnify or hold harmless Big Rivers under subclause (a) of Section 16.3 (to the extent it pertains to the WKE Parties’ express representations and warranties set forth in Section 11.1); and (b) the express obligations of WKEC, if any, to indemnify or hold harmless Big Rivers under Subsection 15.3(c) and Subsection 15.3(e) of this Termination Agreement from and against any Damages resulting from or arising out of the physical condition of, or any conditions, defects or deficiencies associated with, the Generating Plants. Consistent with the preceding sentence, except as contemplated in Subclause (a) or (b) of that preceding sentence, and notwithstanding anything to the contrary set forth elsewhere in this Article 15, in Article 16, in Article 11 or elsewhere in this Termination Agreement or any other Definitive Document, Big Rivers agrees that, effective as of the Closing, the WKE Parties shall not at any time thereafter have any obligation or liability whatsoever to Big Rivers (or its successors or assigns) for, and the Termination and Release and/or the Station Two Termination and Release shall effect an unconditional release and discharge of the WKE Parties and E.ON of and from any responsibility or liability to Big Rivers (or its successors or assigns) for, (i) the physical condition or state of repair of any Generating Plant (or any component(s) thereof) as of the Closing, howsoever caused, (ii) the failure or inability of any Generating Plant (or any component(s) thereof) to be capable of operation at any level or capacity in compliance with Applicable Laws following the Closing, howsoever caused, or (iii) the non-compliance of any emissions or discharges of or from any Generating Plant (or any conditions or component(s) thereof) following the Closing with any Applicable Laws, howsoever caused, in each case other than such Damages associated with the physical condition or state of repair of any Generating Plant (or any component(s) thereof), if any, as may be recoverable under this Termination Agreement (A) by reason of a misrepresentation or breach of warranty on the part of a WKE Party under Section 11.1, or (B) by reason of an indemnification or other covenant of WKEC for the benefit of Big Rivers in Subsection 15.3(c) or Subsection 15.3(e) hereof. By way of example and not of limitation, and except in the case of such costs or expenses that may constitute Damages, if any, of the type(s) that may be recoverable by Big Rivers from WKEC under or pursuant to Subsection 15.3(c) or Subsection 15.3(e), or under or pursuant to Section 16.3 by reason of a misrepresentation or breach of warranty under Section 11.1, the preceding sentences shall constitute, effective as of the Closing, an absolute bar against any pursuit or recovery by

Big Rivers from any WKE Party, or from any of their respective Affiliates, directors, officers, employees, agents, predecessors, successors or assigns, whether pursuant to this Termination Agreement, pursuant to any other Definitive Document, pursuant to Applicable Laws or otherwise, of:

(A) any costs or expenses associated with the design, construction, installation or completion of any improvement, retrofitting, reconfiguration, enhancement, upgrading or replacement of any Generating Plant (or any component(s) thereof), or associated with the design, construction, purchase, installation or completion of any capital assets or additions, betterments or improvements for, of or to any Generating Plant (or any component(s) thereof), in either case for the purpose(s) (whether primary or secondary) of (a) enhancing the physical capabilities, pollution controls, capacity, outputs or utility of any Generating Plant (or any component(s) thereof) or any Site following the Closing above their capabilities, controls, capacity, outputs or utility as of the Closing, (b) reducing the costs to use, operate, maintain or repair any Generating Plant (or any component(s) thereof) or any Site following the Closing, (c) addressing or repairing any physical defect or deficiency (howsoever caused) in or with respect to any Generating Plant (or any component(s) thereof) or any Site as of the Closing, (d) correcting or remedying any failure of any Generating Plant (or any components thereof) or Site, or the use or operation thereof, to comply with any Applicable Law as of or following the Closing, (e) rendering any Generating Plant (or any component(s) thereof) capable of operation or use following the Closing in compliance with Applicable Laws, (f) rendering the emissions or discharges of any Generating Plant (or any component(s) thereof) following the Closing compliant with Applicable Laws, or (g) retiring from service, shutting down, closing or removing any Generating Plant (or component(s) thereof) following the Closing; and

(B) any operation or maintenance costs or expenses associated with the use, operation, maintenance, repair or upkeep of any Generating Plant (or any component(s) thereof) following the Closing other than operation or maintenance costs or expenses which constitute direct, out-of-pocket costs and expenses required for the Remediation of any condition with respect to Hazardous Substances or other waste on, under or from a Generating Plant or Site, but then only to the extent WKEC is required to indemnify and hold harmless Big Rivers from and against, or to fund or reimburse Big Rivers for, such direct out of pocket costs and expenses under any other Section of this Article 15 or of Article 16.

Section 15.3 Indemnities for Certain Known or Potential Environmental Conditions.

(a) Opacity Indemnities. In lieu of any other indemnification or hold harmless covenants or other relief set forth or contemplated elsewhere in this Article 15 (other than Section 15.3(c)), in Article 16, or in any other provision of this Termination Agreement or any other Definitive Document for or with respect to Opacity Damages (as hereinafter defined) and any failures to comply, other failures, acts, omissions and other matters of the types contemplated, addressed or described in this Section 15.3(a):

(i) Opacity Indemnity of Big Rivers. Following the Closing, Big Rivers shall indemnify and hold harmless the WKE Parties and E.ON from and against any claims, demands, losses, damages, liabilities, costs, expenses, obligations and deficiencies (including without limitation, costs of corrective or remedial actions, fines, civil or criminal penalties, settlements and attorneys fees), including any personal injury, property damage or nuisance (collectively, "*Opacity Damages*"), that have been or may be asserted by any person or imposed against, or incurred by, the WKE Parties or E.ON, directly or indirectly, in connection with:

(A) any failure of any one or more of the Generating Plants to comply with applicable opacity limitations under Environmental Law prior to the Effective Date or following the Closing;

(B) any failure of Plant Green or Plant Wilson to comply with applicable opacity limitations under Environmental Law at any time from the Effective Date through and including the date on which Big Rivers received its final original Title V Air Quality Permits for Plant Green and Plant Wilson (the "Original Title V Permits") from the predecessor to the KEPPC (exclusive of violations resulting from the operation of Plant Green and Plant Wilson by WKEC during that period in a manner that is materially different than the operation of those facilities by Big Rivers immediately prior to the Effective Date); and

(C) any failure of Big Rivers to take all such actions, and to make all such repairs (at its expense and consistent with Prudent Utility Practice), in respect of the Plant Coleman facility as were necessary to eliminate the opacity issues or problems identified in the letter from Big Rivers to the predecessor to the KEPPC dated February 11, 1998, relating to opacity exceedances at Plant Coleman;

including in the case of clauses (A), (B), and (C) above, without limitation, any Opacity Damages incurred by any of the WKE Parties or E.ON following the Effective Date, and prior to the issuance of the Original Title V Permits.

(ii) Opacity Indemnity of WKEC. Following the Closing, WKEC shall indemnify and hold harmless Big Rivers from and against any Opacity Damages asserted or imposed against, or incurred by, Big Rivers, directly or indirectly, in connection with any failure of the Generating Plants to comply with applicable opacity limitations under Environmental Laws during the Lease Period,

other than (x) the Opacity Damages that have been or may be asserted or imposed against, or incurred by, Big Rivers in connection with any failure, challenge or operation of the type described in subparagraph (i) above, (y) Opacity Damages for which Big Rivers has an indemnification obligation under subparagraph (i) above, and (z) Opacity Damages constituting, resulting from or arising out of (A) Baseline Environmental Conditions, or (B) Excluded Circumstances with respect to Subsection 15.3(b), Subsection 15.3(c), Subsection 15.3(e) or Section 15.4.

(iii) Mutual Waivers. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING PROVISIONS OF THIS SUBSECTION 15.3(a) OR ANY OTHER LIMITATIONS CONTEMPLATED ELSEWHERE IN THIS ARTICLE 15 OR IN ARTICLE 16, EXCEPT PURSUANT TO SUBCLAUSE 15.3(c) AS CONTEMPLATED ABOVE, THE REMEDIES AFFORDED BIG RIVERS UNDER THIS SUBSECTION 15.3(a) ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO BIG RIVERS WITH RESPECT TO THE MATTERS EXPRESSLY DESCRIBED THEREIN. THE WKE PARTIES AGREE THAT THE REMEDIES AFFORDED TO THE WKE PARTIES AND E.ON UNDER PARAGRAPH (i) OF THIS SUBSECTION 15.3(a) ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO THE WKE PARTIES AND E.ON WITH RESPECT TO THE MATTERS EXPRESSLY DESCRIBED THEREIN. The indemnities and other covenants contained in this Subsection 15.3(a) shall not apply to, and following the Closing, no Party shall be obligated hereunder for, any costs and expenses which constitute Incremental Environmental O&M, Henderson Incremental Environmental O&M, or costs or expenses for Capital Assets or Station Two Improvements that were or are necessary to comply with any requirement of any Environmental Law or any environmental regulatory authority (including without limitation, any change in position of the KEPPC regarding compliance with applicable opacity limitations based on concurrent measurement of particulate matter emissions affecting the Plant Green and Plant Wilson).

(b) Indemnity and/or Reservation of Rights for Certain Landfill and Ash Pond Issues. Notwithstanding anything contained elsewhere in this Article 15, in Article 16 or elsewhere in this Termination Agreement to the contrary, and in lieu of any other indemnification or hold harmless covenants or other relief therefor set forth or contemplated elsewhere in this Article 15 or in Article 16 or in any other provision of this Termination Agreement or any other Definitive Document:

(i) Green and Wilson Landfill Issues. Following the Closing, Big Rivers shall indemnify and hold harmless the WKE Parties and E.ON from and against all claims, demands, losses, damages, liabilities, costs, expenses, obligations and deficiencies (including without limitation, costs of corrective or remedial actions, fines, civil or criminal penalties, settlements and attorney's fees) that have been or may be suffered or incurred by any of them resulting from or arising out of any failure of the Plant Green landfill and/or the Plant Wilson

landfill to comply with applicable permits and/or conditions thereof at any time prior to (A) the Effective Date, (B) the completion of the construction work described in Section 23.3 of the Participation Agreement, or (C) the approval by the predecessor to the KEPPC of all changes in permits as of the Effective Date (as contemplated in that Section 23.3) required for the full and lawful use and operation of the Plant Green landfill (as expanded) and the Plant Wilson landfill by WKEC following the Effective Date, whichever is later, unless such failure was caused by any of the WKE Parties or any of their Affiliates, successors or assigns or their respective officers, employees, consultants or agents. In the event changes in the permits as of the Effective Date (as contemplated in Section 23.3 of the Participation Agreement), that would have allowed Big Rivers or any WKE Party to forgo the removal action contemplated in that Section 23.3, could not be obtained despite Big Rivers' efforts to do so, Big Rivers shall remain solely responsible, at its expense, for ensuring that any landfill materials that had been placed or disposed of outside the permitted boundaries of the Plant Green landfill or the Plant Wilson landfill prior to the Effective Date are removed along with any affected soil or debris, and are disposed of in compliance with Applicable Laws at the earliest practicable time. In addition to the indemnity provided above in this Subparagraph (i), following the Closing, Big Rivers shall indemnify and hold harmless the WKE Parties and E.ON from and against all claims, demands, losses, damages, liabilities, costs, expenses, obligations, deficiencies (including, without limitation, costs or corrective or remedial actions, fines, civil or criminal penalties, settlements and attorney's fees), and operating costs associated with the loss (in whole or in part) of use of the Wilson landfill, the partial or complete closure of the same, or the location, preparation and securing of alternative disposal locations, in each case resulting from or arising out of the matters described in Item 157 of Section (ii) of Schedule 11.1(k).

(ii) Coleman Ash Pond Issues. Big Rivers agrees that, to the extent not heretofore undertaken and completed, Big Rivers shall be solely responsible, at its expense and as and when required by Applicable Laws, for promptly taking all actions, and duly filing all instruments and documents with federal, state and local governmental agencies, as shall be required to officially close the "Southern Ash Pond" and the "Former Ash Pond" at Plant Coleman (as identified on the Coleman facility site map prepared in connection with the Baseline Environmental Audit Report) in accordance with all Applicable Laws, permits and Prudent Utility Practice. Notwithstanding the foregoing, in the event WKEC elected, in its discretion, to dispose of materials in the "Southern Ash Pond" or the "Former Ash Pond" (as identified on the Coleman site map prepared in connection with the Baseline Environmental Audit Report) at Plant Coleman prior to the Closing, WKEC shall, at such time such ash pond is closed, be responsible for a pro rata portion of all closure costs of that ash pond based on the total amount (in tons) of ash disposed of in those ash ponds by the WKE Parties as compared with the total amount of ash in the ponds at their closure. From and after the Closing, Big Rivers agrees to indemnify and hold harmless the WKE Parties and E.ON from and against all claims, demands, losses, damages, liabilities, costs, expenses, obligations, and deficiencies (including without

limitation, costs of corrective or remedial actions, fines, civil or criminal penalties, settlements and attorney's fees) that may be suffered or incurred by any WKE Party or E.ON resulting from or arising out of (A) any failure of the remaining active ash pond at the Plant Coleman to comply with all applicable permits at any time prior to the Effective Date or the completion of the dredging and excavation of the remaining active ash pond at the Plant Coleman as contemplated in Section 23.4 of the Participation Agreement, whichever was later, (B) any use or disturbance of the "Southern Ash Pond" or the "Former Ash Pond" by Big Rivers at any time prior to the Effective Date, or any failure of those ash ponds to comply with all applicable permits at any time prior to the closure of the same by Big Rivers in accordance with Applicable Laws (except to the extent that such non-compliance is caused by the use of or the failure to permit (assuming they are otherwise permissible) those ash ponds by WKEC following the Effective Date), and (C) any delay in the closure of the "Southern Ash Pond" or the "Former Ash Pond" at Plant Coleman (except to the extent that such delay is caused by the WKE Parties or any of their Affiliates, successors or assigns or their respective officers, employees, consultants or agents).

(c) Responsibility for Costs Associated with "New Source Review" Provisions of Clean Air Act. Notwithstanding anything contained elsewhere in this Article 15, in Article 16 or elsewhere in this Termination Agreement to the contrary, in lieu of any other indemnification or hold harmless covenants or other relief therefor set forth or contemplated elsewhere in this Article 15 or in Article 16, and subject to the limitations contemplated in this Subsection 15.3(c), following the Closing, WKEC and Big Rivers shall share responsibility for all Net Costs and Expenses that may become due by reason of a failure of any Generating Plant to have complied with the New Source Review provisions of the Clean Air Act (including Nonattainment New Source Review or Prevention of Significant Deterioration Programs, as applicable) as a result of changes in the method of operating, maintaining, repairing or replacing any Generating Plant (or component(s) thereof) without obtaining a permit or permit amendment covering such change or changes during the period through the Closing, regardless of whether such conditions, circumstances or methods of operation are attributable, in whole or in part, to the period prior to the Effective Date, or between the Effective Date and the Closing, in accordance with this Subsection 15.3(c). As used in this Subsection 15.3(c), "**Net Costs and Expenses**" shall mean any net costs and expenses (including any fines or penalties, the cost of any pollution control equipment, such as wet scrubbers, selective catalytic reduction controls, low NO_x burners or baghouses, the costs of mitigation projects, the present value of allowances that may be forfeited and the increased costs or lost revenues associated with any reductions in generation of electricity) that may become due and are required under Environmental Law by reason of a failure to comply with the New Source Review ("**NSR**") provisions of the Clean Air Act at any time through the Closing, less the amount of NSR Benefits that are or will be realized by Big Rivers, but in any event shall not include costs or expenses (or NSR Benefits as hereinafter defined) associated with any power generating stations or generating units other than the Generating Plants. "**NSR Benefits**" shall mean all net reductions in operating and capital costs realized or to be realized as a result of the installation of pollution control equipment, the implementation

of changes in operating methods or practices, or other changes required or otherwise undertaken to remedy an NSR noncompliance, including, but not limited to, reduced or avoided maintenance costs and fuel costs, and reduced or avoided capital costs that achieve compliance with regulatory obligations imposed under Environmental Law which are in effect and known and quantifiable when the New Source Review noncompliance is established. Net Costs and Expenses shall not include any costs incurred by the Parties in defending against NSR noncompliance Claims. WKEC shall not be responsible for sharing in Net Costs and Expenses for New Source Review noncompliances under this Subsection 15.3(c), however, to the extent that: (1) one or more physical or operational changes occurring after the Closing are identified by a Governmental Entity as a significant basis for the asserted New Source Review noncompliance; (2) a New Source Review non-compliance claim has not been asserted by a Governmental Entity; (3) Big Rivers has taken actions not required by Applicable Law or any Permit (i) to disclose the potential existence of a New Source Review noncompliance to any Governmental Entity or other Person or (ii) to request guidance from any Governmental Entity regarding the occurrence or existence of a New Source Review noncompliance that potentially occurred prior to the Closing; (4) the New Source Review noncompliance has not been established within five (5) years after the Unwind Closing Date; (5) those costs or expenses are used to achieve compliance with obligations under Environmental Law (other than New Source Review) following the Closing; or (6) those costs or expenses would have necessarily been incurred following the Closing in any event as a consequence of a new Environmental Law, or a revision or change to an existing Environmental Law, in any such case that has occurred following the Closing. Subject to the preceding sentence and the succeeding sentences, WKEC shall be responsible under this Subsection 15.3(c) only for funding 80% of all Net Costs and Expenses for or attributable to the least cost alternative, on a net present value basis, for fulfilling the requirements of Environmental Law by reason of the relevant failure to comply with NSR, and Big Rivers shall be responsible for funding all other Net Costs and Expenses. Following a Closing, Big Rivers shall be entitled to implement such remedy or other resolution of an NSR noncompliance of the type(s) contemplated in this Subsection 15.3(c) as Big Rivers shall deem appropriate, and may apply toward such remedy or other resolution the amount of Net Costs and Expenses required to be funded by WKEC hereunder; provided, that Big Rivers shall be solely responsible for all Net Costs and Expenses associated with such remedy or other resolution in excess of the amounts so required to be funded by WKEC hereunder. The responsibility of WKEC for Net Costs and Expenses associated with compliance with New Source Review in this Subsection 15.3(c) shall be Big Rivers' sole and exclusive remedy as against either WKE Party for, and shall be in lieu of any other indemnification rights, rights in consequence of a misrepresentation or other rights or remedies as against either WKE Party that may otherwise be available to Big Rivers with respect to, a noncompliance of the New Source Review provisions of the Clean Air Act concerning any modifications to the method of operating or maintaining, or concerning any repair, upgrade or replacement of, any Generating Plant (or any component(s) thereof) without a new construction permit or a revision to an existing construction permit as contemplated by New Source Review, whether such rights or remedies are contemplated in this Termination Agreement or in any other Definitive Document, or arise under Environmental Laws. In the event a

Governmental Entity or other Person provides notice to Big Rivers alleging that a New Source Review non-compliance has occurred at or with respect to any Generating Plant or any component(s) thereof (a “*Non-Compliance Notice*”) and such noncompliance event is covered by this Subsection 15.3(c), Big Rivers shall provide written notice thereof (together with a copy of that Non-Compliance Notice) to WKEC within ten (10) days thereafter in accordance with Section 18.4. Within twenty (20) days of receipt of such notice, WKEC may notify Big Rivers that WKEC will assume or participate in the Defense of or concerning any such claim in the manner contemplated in Section 16.6. Regardless of whether WKEC exercises its right hereunder to assume or participate in the Defense of or concerning any such claim, Big Rivers and WKEC shall reasonably cooperate in good faith in opposing and defending against any such claim. A New Source Review noncompliance is established upon the settlement of any such claim with the relevant Governmental Entity by the mutual agreement of the Parties or the entry of a final, non-appealable ruling or order by a state or federal court finding that a New Source Review noncompliance occurred. Big Rivers and WKEC shall use their respective commercially reasonable efforts to minimize the Net Costs and Expenses that are incurred to remedy an established New Source Review noncompliance that is the subject of this Subsection 15.3(c). Except in connection with the enforcement of this Subsection 15.3(c), Big Rivers shall not, nor shall it permit its members, Affiliates, directors, officers, employees, successors or assigns to, at any time (whether before or after the Closing) initiate or assert any claim or Proceeding (whether or not against a WKE Party or E.ON) alleging a violation of or non-compliance with New Source Review at any Generating Plant (or any component(s) thereof). A breach by Big Rivers of the preceding sentence shall relieve WKEC from any further obligation or liability under or pursuant to this Subsection 15.3(c).

(d) Indemnification for Certain Conditions. Following the Closing, but subject to the limitations provided for below, WKEC shall indemnify and hold harmless Big Rivers from and against any claims, demands, losses, damages, liabilities, costs, expenses, obligations and deficiencies (including without limitation, any costs of corrective or remedial actions, fines, civil or criminal penalties, settlements or attorney’s fees) that have been or may be suffered or incurred by Big Rivers to the extent (but only to the extent) resulting from or arising out of:

(i) the Notice of Violation received from Division of Water on May 25, 1999, for total suspended solids exceeding limits in runoff pond at the Sebree Complex;

(ii) the Notice of Violation received from Division of Water on January 6, 2006, for TSS excursion of Green Ash Pond – January 2005 and pH excursion of Green Ash Pond – August, September 2005 at the Sebree Complex;

(iii) the Notice of Violation received from Division of Water on October 20, 2006, for five excursions of TSS and pH at the Sebree Complex;

(iv) the Notice of Violation received from Division of Water on November 22, 2006, for three excursions of TSS and pH at the Sebree Complex;

(v) any sulfur trioxide emissions, sulfuric acid mist emissions, blue plume, and plume impacts associated with the installation of selective catalytic reduction (SCR) and/or flue gas desulfurization (FGD) controls at the Wilson Plant, Station Two, and the Coleman Plant, in any such case occurring at any time from the Effective Date through the Execution Date;

(vi) the complaints from persons or governmental officials in the vicinity of the Coleman Plant, including Tell City and Cannerton, Indiana, asserted at any time from the Effective Date through the Execution Date, regarding particulate matter emissions from the Coleman Plant that occurred at any time from the Effective Date through the Execution Date;

(vii) the complaints received from Mr. Jackie Coffman, 4255 State Road 85, Centertown, KY, for periods including 2003 to 2005 regarding particulate matter and plume impacts from the Wilson Plant that occurred at any time from the Effective Date through the Execution Date;

(viii) quarterly electronic data reports (EDR's) submitted to U.S. EPA and KEPPC which contain recorded values for the period from the Effective Date through the Execution Date: (a) from Continuous Emissions Monitoring Systems (CEMS) at the Wilson, Coleman, Green/Reid, and Sebree Plants that are in excess of applicable emission standards including sulfur dioxide; or (b) in excess of heat input values contained in the facilities' Title V air permits; provided, however, that WKEC shall be obligated to indemnify and hold Big Rivers harmless under or pursuant to this Subsection 15.3(d) with respect any of the exceedances of applicable emissions standards or exceedances of values identified in this Subparagraph (viii) from and against only fines and civil and criminal penalties that may have been or may be suffered or incurred by Big Rivers, not from or against any other claims, demands, losses, damages, liabilities, costs, expenses, obligations or deficiencies;

(ix) any failure by WKEC, at any time from the Effective Date through the Execution Date, to perform Method 9 visual emissions tests in response to an excess opacity monitor reading in accordance with the permit for the relevant Generating Plant;

(x) (1) the request from the Division of Waste Management dated December 12, 2006, to conduct a groundwater assessment of statistically significant increases in constituents in the groundwater adjacent to the special waste landfill at the Green Plant, but only to the extent those increases occurred from the Effective Date through the Execution Date; or (2) actions required to comply with the groundwater assessment requirements of 401 KAR 45:160 or 401 KAR 48:300, as applicable, as a result of groundwater monitoring reports indicating above background concentrations of constituents in the groundwater which are attributable to migration, occurring from the

Effective Date through the Execution Date, from ash ponds at the Coleman and Wilson Plants and Sebree Complex; and

(xi) the releases identified below to the extent not remediated prior to Closing:

1. April 13, 2004 spill of fuel oil in the site drainage ditch at the Wilson plant.
2. March 15, 2006 spill of oil in the crusher tower at the Wilson plant.
3. March 12, 2004 spill of oil from the transformer adjacent to the main office building at the Wilson plant.
4. March 8, 2004 spill of scrubber material from a broken line associated with the No. 2 scrubber module at the Wilson plant.
5. February 24, 2005 spill of emulsified sulfur from a silo at the Wilson plant.
6. February 10, 2005 spill of gear compound near No. 1 mill lube oil pump at the Wilson plant.
7. August 28, 2004 spill of turbine oil from the No. 2 ID fan lube oil cooling fans at the Wilson plant.
8. December 27, 2006 spill of turbine oil from the auxiliary boiler feed pump at the Wilson plant.
9. December 22, 2004 spill of oil from a boiler feed pump at the Wilson plant.
10. November 11, 2004 spill of hydraulic oil at the plant intake at the Wilson plant.
11. Discharge of water from the new impoundment pond at the Wilson plant during the period of November 2 – 4, 2004 with an iron level above the permit limit
12. November 2, 2004 incident involving water overflowing the earthen dam associated with site drainage at the Wilson plant
13. October 30, 2004 spill of diesel fuel at portable diesel tank at the Wilson plant.
14. September 29, 2006 spill of 50% ferric sulfate at potable water plant at Wilson plant.

15. August 28, 2004 spill of fuel oil at the fuel oil storage tanks at the Wilson plant.
16. August 27, 2004 spill of cooling tower basin overflow at the Wilson plant.
17. July 22, 2006 spill of oil from an oil line associated with the No. 1 boiler feed pump at the Wilson plant.
18. June 7, 2005 spill of diesel fuel in the bottom ash bin area at the Wilson plant.
19. April 14, 2004 spill of No. 2 fuel oil from a temporary supply hose connection near the tripper tower at the Wilson plant.
20. April 14, 2004 spill of No. 2 fuel oil from a temporary supply hose connection near the bulk fuel oil storage tanks at the Wilson plant.
21. April 16, 2004 spill of No. 2 fuel oil from a temporary supply hose connection near the bulk fuel oil storage tanks at the Wilson plant.
22. May 19, 2002 spill of FGD thickener material, primarily calcium sulfite and calcium, from a pipe run from thickeners to IU West and to the north of outfall at the Sebree Complex.
23. May 16, 2003 spill of turbine oil at the Henderson 2 turbine west end to basement floor at the Sebree Complex.
24. May 11, 2005 spill of hydraulic fluid in the area of the Green coal conveyers at the Sebree Complex.
25. April 29, 2006 spill of non-PCB transformer dielectric fluid at the Henderson 2 main step up transformer at the Sebree Complex.
26. April 14, 2006 spill of Zinkan DT-10 (surfactant) from a coal dust suppression tank at the Reid/Henderson crusher tower at the Sebree Complex.
27. April 11, 2005 spill of turbine lube oil at Green 2 bowser filter at the Sebree Complex.
28. April 7, 2005 spill of diesel fuel from a portable diesel tank on the east side of Green 2 at the Sebree Complex.

29. April 15, 2004 spill of ignition oil at the Henderson 2 wet bottom sump pit at the Sebree Complex.
30. March 30, 2004 spill of turbine lube oil at the Henderson 2 lube oil cooler at the Sebree Complex.
31. March 20, 2004 spill of sulfuric acid at the Henderson cooling tower acid bulk storage tank at the Sebree Complex.
32. March 10, 2006 spill of No. 2 diesel fuel at the Reid/Henderson silo sump pit at the Sebree Complex.
33. March 4, 2005 spill of hydraulic fluid at the combustion turbine hydraulic fluid storage tank at the Sebree Complex.
34. February 23, 2006 spill of filtrate from the FGD process and sulfite/sulfate solids at the west end of the IU building at the Sebree Complex.
35. February 3, 2006 spill of No. 2 fuel oil from the drain tank of the combustion turbine at the Sebree Complex.
36. A fork truck fuel spill on or about January 23, 2004 at the Sebree Complex.
37. January 25, 2006 spill of sulfuric acid at the Reid Henderson water plant bulk sulfuric acid storage tank at the Sebree Complex.
38. January 21, 2004 spill of diesel fuel from fork lift at the southeast corner of the Reid service building at the Sebree Complex.
39. December 31, 2000 spill of turbine oil at the Green 2 main turbine oil tank at the Sebree Complex.
40. December 31, 2000 spill of ignition oil at the Green 1 burner deck at the Sebree Complex.
41. A spill of No. 2 fuel oil on or about December 1, 2003 at the gas turbines of the Sebree Complex.
42. December 29, 2000 spill of Betz CDP 91702 at the Green makeup clarifiers at the Sebree Complex.
43. December 25, 2000 spill of ignition oil at the Green 2 burner deck at the Sebree Complex.

44. December 11, 2000 spill of turbine lube oil at the Green 2 first floor at the Sebree Complex.
45. December 5, 2000 spill of turbine lube oil at the Green 2 turbine oil cooler at the Sebree Complex.
46. October 15, 2003 spill of non-PCB mineral oil from a transformer associated with a gas turbine at the Sebree Complex.
47. September 23, 2005 spill of sulfuric acid from the acid bulk storage tank at the Green water plant at the Sebree Complex
48. September 23, 2004 spill of diesel fuel from a tanker truck crossing the scale at the Sebree Complex.
49. September 17, 2003 spill of fuel oil from fuel oil filters for Green 1 and 2 at the Sebree Complex.
50. August 3, 2005 spill of ethylene glycol based coolant and water at the combustion turbine cooling system at the Sebree Complex.
51. July 15, 2003 spill of synthetic hydraulic fluid from the Henderson 2 EHC unit at the Sebree Complex.
52. July 7, 2005 spill of fuel oil at the Green ignition oil fuel skid at the Sebree Complex.
53. July 5, 2003 spill of synthetic hydraulic fluid from the Henderson 2 EHC unit at the Sebree Complex.
54. June 20, 2003 spill of sulfuric acid from the Henderson cooling tower acid feed system at the Sebree Complex.
55. June 9, 2003 spill of fuel oil from a coal truck at the coal handling truck unloading hopper at the Sebree Complex.
56. August 7, 2005 spill of hydraulic fluid from a crane in the FGD area at the Coleman plant.
57. June 22, 2005 spill of untreated sanitary sewer waste from lift station overflow bypass at the Coleman plant.
58. May 7, 2005 spill of diesel fuel at temporary fuel station at fuel tank at the Coleman plant.

59. April 3, 2005 spill of sulfuric acid from the sulfuric acid bulk storage tank at the Coleman plant.
60. February 21, 2006 spill of [electro-hydraulic] fluid from No. 2 turbine enclosure left governor valve at the Coleman plant.
61. February 14, 2006 spill of gear compound from 1B mill oil filter [differential] at Coleman plant.
62. November 5, 2005 spill of hydraulic fluid at the east side of the No. 3 stack at the Coleman plant.
63. November 3, 2005 spill of hydraulic fluid at the south edge of the reclaimer hopper at the Coleman plant.
64. October 6, 2005 spill of hydraulic oil on the road north of the absorber construction site at the Coleman plant.
65. August 29, 2005 spill of diesel fuel on the east side of the east side of the absorber construction site at the Coleman plant.
66. August 28, 2005 spill of hydraulic fluid from a crane at the scrubber construction site at the Coleman plant.

Notwithstanding the foregoing provisions of this Subsection 15.3(d), WKEC shall have no obligation to indemnify or hold harmless Big Rivers under or pursuant to this Subsection 15.3(d) from or against any claims, demands, losses, damages, liabilities, costs, expenses, obligations, deficiencies, costs, fines, penalties, settlements or attorney's fees in respect of or resulting from or arising out of (i) any Baseline Environmental Condition, or (ii) any Excluded Circumstance with respect to Subsection 15.3(a), Subsection 15.3(b) or Subsection 15.3(c). In addition, the obligation of WKEC to indemnify and hold harmless Big Rivers under or pursuant to this Subsection 15.3(d) shall only apply to the extent the matter giving rise to the relevant damages or other amounts (i) violated one or more Environmental Laws before or as of the Closing and are required to be remedied or addressed by Environmental Laws as of the Closing, or in the case of an Environmental Release, are required to be remedied or otherwise addressed by Environmental Laws as of the Closing, or (ii) in the case of the items in Section 15.3(d)(v)-(vii), constitutes a common law tort. Notwithstanding the preceding provisions of this Section 15.3(d), the obligation of WKEC hereunder to indemnify and hold harmless Big Rivers from and against any claims, demands, losses, damages, liabilities, costs, expenses, obligations, deficiencies, costs, fines, penalties, settlements and attorney's fees, shall expire without further notice or other action on the part of any Party on the fifth (5th) anniversary of the Unwind Closing Date, unless Big Rivers shall have asserted a claim against WKEC in respect thereof pursuant to Section 16.6 prior to such expiration. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING PROVISIONS OF THIS SUBSECTION 15.3(d) OR ANY OTHER LIMITATIONS CONTEMPLATED ELSEWHERE IN THIS ARTICLE 15 OR IN ARTICLE 16

BELOW, THE REMEDIES AFFORDED BIG RIVERS UNDER THIS SUBSECTION 15.3(d) ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO BIG RIVERS WITH RESPECT TO THE MATTERS EXPRESSLY DESCRIBED HEREIN. The Parties acknowledge and agree that Big Rivers shall not be deemed to have delivered notice of an indemnification claim to WKEC as contemplated in Subsection 16.6(a), 16.6(b) or 16.6(c), or a Remediation Notice as contemplated in Section 16.7, with respect to any of the events, circumstances or matters identified in this Subsection 15.3(d), by virtue of the identification of those events, circumstances or matters in this Subsection 15.3(d), and that Big Rivers will be required to subsequently deliver such a notice to WKEC as contemplated in Section 16.6 and, to the extent applicable, as contemplated in Section 16.7, as a pre-condition to any indemnification or hold harmless obligation of WKEC under this Section 15.3(d) with respect to such events, circumstances or matters, provided that Big Rivers shall not be required to deliver a notice within a specific time period (other than prior to the fifth anniversary as contemplated above) with respect to events, circumstances or matters identified in Subparagraphs (i) through (xi) above of this Subsection 15.3(d) existing as of the Closing.

(e) Post-Execution Date Environmental Conditions. In the event, following the Execution Date but prior to the Closing, a Party shall refuse to consummate the transactions contemplated in this Termination Agreement at the Closing (as contemplated in Subsection 10.2(bb) or Subsection 10.3(y), as applicable) on the basis of any one or more violations, Environmental Releases, conditions, releases, circumstances, actions, omissions, Proceedings, operations, failures to comply or other events of the type(s) contemplated in that subsection, but the Parties are thereafter able to agree in writing on mutually-satisfactory indemnification and hold harmless covenant(s), risk allocation covenant(s) or other covenants, agreements, representations or warranties (to be effective only as of a Closing) that are deemed by the Parties (in their sole and absolute discretion) to be satisfactory to address their individual or collective concerns regarding the matter that was the subject of or basis for that refusal, then those mutually-satisfactory covenants, agreements, representations and/or warranties (to be effective only as of a Closing) shall be set forth in one or more amendments or addenda to this Termination Agreement (in form satisfactory to the Parties in their sole and absolute discretion) to be entered into and become effective prior to or as of the Closing. Any such amendments or addenda shall be deemed for all purposes of this Termination Agreement to be included in and a part of this Section 15.3. Notwithstanding the foregoing, the obligation of a Party to indemnify and hold harmless another Party pursuant to this Subsection (e) shall only apply to the extent the matter giving rise to the relevant damages or other amounts violated one or more Environmental Laws before or as of the Closing and is required to be remedied or addressed by Environmental Laws as of the Closing, or in the case of an Environmental Release is required to be remedied or otherwise addressed by Environmental Laws as of the Closing.

Section 15.4 Certain Additional Indemnities for Identified Environmental Conditions. Schedule 15.4 to this Termination Agreement (as the same may be amended,

modified or supplemented by the mutual agreement of the Parties from time-to-time following the Execution Date and no later than forty-five (45) days prior to the Scheduled Unwind Closing Date) sets forth, describes or identifies certain environmental issues, conditions, circumstances or other matters that have been identified by one or more Parties as being of concern to them, but which the Parties agree are not worthy of individual, unique mutually-satisfactory indemnification and hold harmless covenant(s) or other covenants, agreements, representations or warranties of the type(s) contemplated in Section 15.3 (each a "**Secondary Condition**"). WKEC hereby agrees that following the Closing WKEC shall indemnify and hold harmless Big Rivers from and against any and all claims, demands, losses, damages, liabilities, costs, expenses, obligations and deficiencies (including without limitation, costs of responding to an Environmental Release, costs of other corrective or remedial actions, fines, civil or criminal penalties, settlements and attorneys' fees) (collectively, "**Subject Claims**") that may be asserted or imposed against, or incurred by, Big Rivers, resulting from, arising out of or in connection with any Secondary Condition, but only if and to the extent (i) that Secondary Condition first occurred or arose following the Effective Date and prior to the Closing, or (ii) that Secondary Condition (if first occurring prior to the Effective Date) was materially aggravated or expanded following the Effective Date and prior to the Closing. Big Rivers hereby agrees that following the Closing Big Rivers shall indemnify and hold harmless the WKE Parties and E.ON from and against any and all Subject Claims that may be asserted or imposed against, or incurred by, any WKE Party or E.ON, resulting from, arising out of or in connection with any Secondary Condition, but only if and to the extent (y) that Secondary Condition first occurred or arose prior to the Effective Date or following the Closing, or (z) that Secondary Condition (if first occurring following the Effective Date and prior to the Closing) was materially aggravated or expanded following the Closing. Notwithstanding anything contained in this Section 15.4 to the contrary, the obligation of a Party to indemnify and hold harmless another Party hereunder shall not apply to: (A) costs and expenses which constituted Incremental Environmental O&M, Henderson Incremental Environmental O&M, or costs and expenses for Capital Assets or Station Two Improvements that were or are necessary to comply with any requirement of any Environmental Law or any Governmental Entity; and (B) Subject Claims constituting, resulting from or arising out of Excluded Circumstances with respect to Subsection 15.3(a), Subsection 15.3(b), Subsection 15.3(c), Subsection 15.3(d) or Subsection 15.3(e). Notwithstanding the foregoing, the obligation of a Party to indemnify and hold harmless another Party pursuant to this Section 15.4 shall only apply to the extent the matter giving rise to the relevant damages or other amounts violated one or more Environmental Laws before or as of the Closing and are required to be remedied or addressed by Environmental Laws as of the Closing, or in the case of an Environmental Release are required to be remedied or otherwise addressed by Environmental Laws as of the Closing. Notwithstanding the preceding provisions of this Section 15.4, the obligation of a Party hereunder to indemnify and hold harmless any other Party under this Section 15.4 from and against any Subject Claims shall expire without further notice or other action on the part of any Party on the first (1st) anniversary of the Unwind Closing Date, unless the claiming Party shall have asserted a claim against that other Party in respect thereof pursuant to Section 16.6 prior to such expiration. Notwithstanding anything contained in this Section 15.4 to the contrary, in the event a

Party (the “*First Party*”) shall assert a claim against any other Party (the “*Second Party*”) for indemnification or other relief under this Section 15.4 at any time within thirty (30) days of the first (1st) anniversary of the Unwind Closing Date, the period of time contemplated in the preceding sentence by which the Second Party must assert a claim against the First Party, on the basis of any fact, event or circumstance which is the subject of that claim by the First Party, shall be extended to the thirtieth (30th) day following that anniversary date.

Section 15.5 Indemnities for Unidentified Conditions. WKEC agrees that following the Closing WKEC shall indemnify and hold harmless Big Rivers from and against all Subject Claims that may be suffered or incurred by Big Rivers in consequence of any Environmental Releases on, under or from any Generating Plant or any Site to the extent (but only to the extent) such Environmental Releases (i) are not Excepted Conditions, and (ii) did not constitute, result from or arise out of Excluded Circumstances with respect to Subsection 15.3(a), Subsection 15.3(b), Subsection 15.3(c), Subsection 15.3(d), Subsection 15.3(e) or Section 15.4, and then only to the extent such Environmental Releases (a) were not within the Knowledge of Big Rivers as of the Closing and (b) emanated from conditions or releases caused or materially contributed to by WKEC or any of its Affiliates, employees, agents, representatives or contractors. Big Rivers agrees that following the Closing Big Rivers shall indemnify and hold the WKE Parties and E.ON harmless from and against all Subject Claims that may be suffered or incurred by any WKE Party or E.ON in consequence of any Environmental Releases on, under or from any Generating Plant or any Site to the extent (but only to the extent) such Environmental Releases (1) are not Excepted Conditions, and (2) did not constitute, result from or arise out of Excluded Circumstances with respect to Subsection 15.3(a), Subsection 15.3(b), Subsection 15.3(c), Subsection 15.3(d), Subsection 15.3(e) or Section 15.4, and then only to the extent such Environmental Releases (y) were not within the Knowledge of a WKE Party as of the Closing and (z) emanated from conditions or releases caused or materially contributed to by Big Rivers or any of its Affiliates, employees, agents, representatives or contractors. Notwithstanding the foregoing, the obligation of a Party to indemnify and hold harmless another Party pursuant to this Section 15.5 shall only apply with respect to Environmental Releases to the extent such Environmental Releases (A) are required to be remedied or addressed by Environmental Laws as of the Closing, and (B) are made the subject of a claim for indemnification from that other Party pursuant to Section 16.6 prior to the fifth (5th) anniversary of the Unwind Closing Date. Notwithstanding anything contained in this Section 15.5 to the contrary, in the event a Party (the “*First Party*”) shall assert a claim against any other Party (the “*Second Party*”) for indemnification or other relief under this Section 15.5 at any time within thirty (30) days of the fifth (5th) anniversary of the Unwind Closing Date, the period of time contemplated in the preceding sentence by which the Second Party must assert a claim against the First Party on the basis of any fact, event, circumstance which is the subject of that claim by the First Party shall be extended to the thirtieth (30th) day following that anniversary date. The indemnities and other covenants contemplated or contained in this Section 15.5 shall not apply to, and no Party shall be obligated hereunder for, any costs or expenses which constitute Incremental Environmental O&M, Henderson Incremental Environmental O&M, or costs or expenses for Capital Assets or

Station Two Improvements that were or are necessary to comply with any requirement of any Environmental Law or any environmental regulatory authority.

Section 15.6 No Effect on Insurance. The provisions of this Article 15 shall not be construed to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible casualty and liability insurance maintained in respect of the Generating Plants and the ownership, operation, and maintenance thereof.

Section 15.7 Areas Expressly Excluded from Scope of Indemnities. Notwithstanding anything contained in this Termination Agreement or in any other Definitive Document to the contrary, Big Rivers and WKEC agree that the provisions of this Article 15 and of Article 16 below shall not apply to (a) any release or threat of release of Hazardous Substances or other waste in or beneath the Green River or the Ohio River (as measured by the ordinary high water mark), whether occurring before or after the Effective Date; and (b) Comer, et al. v. Murphy Oil USA, et al., U.S. District Court for the Southern District of Mississippi, Case No. 1:05-cv-00436-LG-RHW, in which Plaintiffs allege that certain emissions from electric generating facilities contribute to global warming which increased the intensity of Hurricane Katrina. With regard to any such releases or threats of releases identified in clause (a) above, or the litigation identified in clause (b) above, Big Rivers and WKEC hereby reserve all rights, whether at law or in equity, each may have against the other or against any third party.

Section 15.8 Exclusive Remedy. THE PARTIES, FOR THEMSELVES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS, HEREBY AGREE THAT THE INDEMNIFICATIONS AND OTHER RIGHTS AND/OR RELIEF PROVIDED FOR OR CONTEMPLATED IN, OR UNDER OR PURSUANT TO, THIS ARTICLE 15 AND ARTICLE 16 BELOW (AS THE SAME MAY BE LIMITED BY ANY OTHER PROVISION(S) OF THIS TERMINATION AGREEMENT) SHALL BE THE PARTIES' RESPECTIVE SOLE LIABILITY TO ONE ANOTHER, AND THEIR RESPECTIVE SOLE AND EXCLUSIVE RIGHTS AND REMEDIES AS AGAINST ONE ANOTHER, BY REASON OF, RESULTING FROM OR ARISING OUT OF (IN THE CASE OF SUBCLAUSE (B) BELOW, EFFECTIVE ONLY AS OF THE CLOSING) (A) ANY MISREPRESENTATION, BREACH OF WARRANTY OR NON-FULFILLMENT OF ANY COVENANT OR AGREEMENT ON THE PART OF ANY PARTY CONTAINED IN THIS TERMINATION AGREEMENT OR IN ANY OTHER DEFINITIVE DOCUMENT, OR (B) ANY OF THE FACTS, CIRCUMSTANCES, STATE OF FACTS, CLAIMS, LOSSES, PROCEEDINGS, EVENTS, CONDITIONS, FAILURES, VIOLATIONS, DAMAGES, LIABILITIES, ENVIRONMENTAL RELEASES, OTHER RELEASES, ACTIONS, OMISSIONS, OPERATIONS, COSTS, EXPENSES, OBLIGATIONS OR OTHER MATTERS REFERRED TO OR IDENTIFIED IN THIS ARTICLE 15, IN ARTICLE 16 BELOW, OR IN ARTICLE 11 ABOVE, AND EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY AND

ABSOLUTELY DISCLAIMS AND DISAVOWS ANY AND ALL OTHER RIGHTS OR REMEDIES THAT IT MAY HAVE AGAINST ANY OTHER PARTY OR SUCH OTHER PERSONS (IN THE CASE OF SUBCLAUSE (B) ABOVE, EFFECTIVE ONLY AS OF A CLOSING).

Section 15.9 Minimizing Costs, Expenses and Liabilities. WKEC shall during the Lease Period, and Big Rivers shall after the Closing, use reasonable efforts to minimize costs, expenses and liabilities of the type described in this Article 15 or Article 16.

Section 15.10 Limitation on Indemnification. The obligations of the WKE Parties and Big Rivers under this Article 15 shall also be subject to any and all limitations on such obligations set forth in Article 16 below.

Section 15.11 Limitation on Remedies. NOTWITHSTANDING ANYTHING CONTAINED IN THIS ARTICLE 15, IN ARTICLE 16 BELOW, ELSEWHERE IN THIS TERMINATION AGREEMENT OR IN ANY OTHER DEFINITIVE DOCUMENT TO THE CONTRARY, AND EXCEPT AS EXPRESSLY CONTEMPLATED IN SECTION 11.4, NEITHER THE WKE PARTIES, ON THE ONE HAND, NOR BIG RIVERS, ON THE OTHER HAND, SHALL AT ANY TIME BE ENTITLED TO RECOVER FROM THE OTHER(S) ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES OR OTHER SIMILAR RELIEF (INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST BUSINESS OPPORTUNITY) (A) BY REASON OF ANY BREACH OR DEFAULT ON THE PART OF SUCH OTHER PARTY OR PARTIES OF ANY OF ITS OR THEIR RESPECTIVE REPRESENTATIONS, WARRANTIES OR COVENANTS SET FORTH IN THIS TERMINATION AGREEMENT OR IN ANY OTHER DEFINITIVE DOCUMENT, OR (B) UNDER OR PURSUANT TO THIS ARTICLE 15 OR ARTICLE 16 BELOW.

ARTICLE 16

GENERAL INDEMNITIES; INDEMNITY CLAIM PROCEDURES

Section 16.1 WKEC General Indemnity of Big Rivers for Operations. Except as otherwise expressly provided below or elsewhere in this Termination Agreement, from and after the Closing, WKEC shall indemnify and hold harmless Big Rivers, its Affiliates, successors and assigns, or their respective officers, employees, consultants or agents, from and against any and all claims, demands, losses, liabilities, damages, costs (including court costs), expenses, obligations and deficiencies (including without limitation, reasonable attorneys' and accountants' fees) (collectively, "**Damages**") that may be suffered or incurred by Big Rivers or its Affiliates, successors and assigns, or by their respective officers, employees, consultants or agents, as a result of, or with respect

to, WKEC's or any of its Affiliates', successor's or assign's (or any of their respective officer's, employee's, consultant's or agent's), operation and/or use of the Generating Plants or the Personal Property during the Lease Period, except to the extent that any such Damages arise or arose as a result of (a) the gross negligence or willful misconduct of, or a breach of any Operative Document or any Definitive Document by, Big Rivers or its Affiliates, successors or assigns, (or their respective officers, employees, consultants or agents) seeking indemnification or other relief hereunder (which act or omission contemplated in this subclause (a) is or was itself not the direct result of an act or omission of any WKE Party or any of its Affiliates, successors or assigns (or their respective officers, employees, consultants or agents)), or (b) any action, event or circumstance for which Big Rivers has an indemnification and hold harmless obligation pursuant to Article 15, pursuant to this Article 16, or pursuant to any other provision of this Termination Agreement or any other Definitive Document, or for which Big Rivers has expressly assumed responsibility in any Definitive Document. The indemnification provided by this Section 16.1 shall specifically include, without limitation (other than claims for costs, expenses or damages of the type(s) contemplated in Section 15.2 or Section 15.11), (x) any claims of the City against Big Rivers arising out of a breach or default by a WKE Party under or pursuant to the Station Two Agreement or any 1970 Station Two Contract, as amended, occurring during the Lease Period, to the extent that breach or default did not result from the action or omission of Big Rivers or its employee, agent, representative or contractor, (y) any claims of Assigned Contract Counterparties under any Assigned Contracts, but only to the extent relating to commodities, services or leasehold interests provided under such Assigned Contracts during the Lease Period, and (z) any claims of Big Rivers' employees, WKEC employees or third parties in respect of the occurrence of Legionelle pneumophia or other bacteria to the extent (but only to the extent) emanating from the operation of the cooling towers or spray mist eliminators at Plant Wilson or Plant Green during the Lease Period. Notwithstanding anything contained in this Section 16.1 to the contrary, the provisions of this Section 16.1 shall not at any time have any applicability to, and neither Big Rivers nor any other Person shall be entitled to seek or pursue any Damages or other relief from WKEC under or pursuant to this Section 16.1 for or with respect to, or to the extent resulting from or arising out of (A) any Excepted Conditions, (B) any Excluded Circumstances with respect to Subsection 15.3(a), Subsection 15.3(b), Subsection 15.3(c), Subsection 15.3(d), Subsection 15.3(e), Section 15.4 or Section 15.5, or (C) any conditions, events, circumstances, actions, omissions, disposal, storage, contamination, spills, emissions constituting violations of Environmental Law (other than fines and penalties imposed by any Government Entity after the Unwind Closing Date in respect of the operation of the Generating Plants during the Lease Period), Environmental Releases, "**Release**" (as defined in 42 USC §9601(22)), or the presence of Hazardous Substances or other wastes at any site other than as provided in clause (z) of the preceding sentence.

Section 16.2 Big Rivers General Indemnity of WKE Parties for Operations. Big Rivers shall indemnify the WKE Parties, their Affiliates, successors and assigns, and their respective officers, employees, consultants or agents, from and against any Damages that may be suffered or incurred by the WKE Parties or such other Persons, as a result of, or with respect to, Big Rivers' or any of its Affiliate's, successor's or assign's (or any of

their respective officer's, employee's, consultant's or agent's) operation and/or use of the Generating Plants or any Personal Property at any time prior to the Effective Date or from and after the Closing, except to the extent any of such Damages arise or arose as a result of (a) the gross negligence or willful misconduct of a WKE Party (which act or omission is itself not the direct result of an act or omission of Big Rivers or any of its Affiliates, successors or assigns (or any of their respective officers, employees, consultants or agents)), or (b) any act, event or circumstance for which WKEC has an indemnification and hold harmless obligation pursuant to Article 15, pursuant to this Article 16, or pursuant to any other provision of this Termination Agreement or any other Definitive Documents, or for which WKEC has assumed responsibility in accordance with the terms of such Definitive Document.

Section 16.3 Indemnification for Breach. WKEC agrees to defend, indemnify and hold harmless Big Rivers and its directors, officers, members, Affiliates, successors and assigns, from and against any and all Damages that may be suffered or incurred by them (or any of them), resulting from or arising out of or in connection with: (a) any misrepresentation or breach of warranty on the part of any WKE Party in this Termination Agreement or in any other Definitive Document; or (b) any breach by any WKE Party of any covenant, agreement or obligation of that WKE Party in this Termination Agreement (other than Subclause (a) of this Section 16.3 above) or in any other Definitive Document. Notwithstanding Subclause (a) of the preceding sentence, WKEC shall not have an obligation to indemnify and hold harmless Big Rivers (and the other persons contemplated above) pursuant to this Section 16.3, for Damages that may be suffered or incurred by them (or any of them) resulting from or arising out of or in connection with a misrepresentation or breach of warranty on the part of a WKE Party in Section 11.1(k) of this Termination Agreement, unless and to the extent the matter or circumstance giving rise to that misrepresentation or breach of warranty (or to the relevant Damages) violated one or more Environmental Laws before or as of the Closing and are required to be remedied or addressed by Environmental Laws as of the Closing, or in the case of an Environmental Release are required to be remedied or otherwise addressed by Environmental Laws as of the Closing. Big Rivers agrees to defend, indemnify and hold harmless each WKE Party and their respective directors, officers, shareholders, Affiliates, successors and assigns, from and against any and all Damages that may be suffered or incurred by them (or any of them), resulting from or arising, out of or in connection with: (i) any misrepresentation or breach of warranty on the part of Big Rivers in this Termination Agreement or in any other Definitive Document; or (ii) any breach by Big Rivers of any covenant, agreement or obligation of Big Rivers in this Termination Agreement or in any other Definitive Document.

Section 16.4 Indemnification Limitations.

(a) Threshold. Notwithstanding any provision to the contrary set forth in this Article 16, in Article 15, elsewhere in this Termination Agreement or in any other Definitive Document, Big Rivers shall not have any obligation to indemnify or hold

harmless the WKE Parties or E.ON pursuant to the indemnification and hold harmless covenants set forth in Article 15 or this Article 16 until such time as the cumulative sum of all damages and other amounts that have been incurred by all WKE Parties and E.ON, collectively, for which indemnification shall otherwise be recoverable pursuant to all of those covenants collectively exceeds \$1,000,000. At such time as the damages and other amounts that would be payable to the WKE Parties and E.ON, collectively, but for the operation of the previous sentence of this Section 16.4, under the provisions identified in that previous sentence exceed \$1,000,000 (but not before), Big Rivers shall indemnify and hold harmless the WKE Parties and E.ON (pursuant to those other provisions of Article 15 and/or this Article 16, as applicable) for all such damages and other amounts in excess of \$1,000,000 (but not that initial \$1,000,000), it being agreed that the initial \$1,000,000 in damages and other amounts so incurred shall never be recoverable by the WKE Parties or E.ON from Big Rivers. Notwithstanding any provision to the contrary set forth in this Article 16, in Article 15, elsewhere in this Termination Agreement or in any other Definitive Document, WKEC shall not have any obligation to indemnify or hold harmless Big Rivers pursuant to the indemnification and hold harmless covenants set forth in Article 15 or this Article 16, or to fund any Net Costs and Expenses under Subsection 15.3(c), until such time as the cumulative sum of all damages and other amounts that have been incurred by Big Rivers and for which indemnification or other funding shall otherwise be recoverable pursuant to all of those covenants collectively exceeds \$1,000,000. At such time as the damages and other amounts that would be payable to Big Rivers, but for the operation of the previous sentence of this Section 16.4, under the provisions identified in that previous sentence exceed \$1,000,000 (but not before), WKEC shall indemnify Big Rivers (pursuant to those other provisions of Article 15 and/or this Article 16, as applicable) for or, as applicable, shall fund all such damages and other amounts in excess of \$1,000,000 (but not that initial \$1,000,000), it being agreed that the initial \$1,000,000 in damages and other amounts so incurred shall never be recoverable by Big Rivers from any WKE Party or E.ON.

(b) Maximum Liability. Notwithstanding any provision set forth in this Termination Agreement or in any other Definitive Document to the contrary (it being understood and agreed that this Subsection (b) shall take precedence over every other provision in this Termination Agreement or in any other Definitive Document, whether in the event of a conflict or otherwise), the maximum aggregate amount of all damages and other amounts (other than the Termination Payment and any amounts payable by WKEC (if any) under Sections 3.3(a), 3.5, 4.1(a), 4.2, 4.4, 9.2, 10.3(kk), 12.2(a)(vi), 13.1, 13.2, 13.3, 14.1, 14.4(e), 14.4(j), 14.4(k), 14.4(l), 14.7, and 15.1(c) of this Termination Agreement), and the maximum aggregate value of any other relief that may be awarded in lieu of or in addition to damages or other amounts, collectively, that may at any time be sought or recovered by Big Rivers from the WKE Parties and/or E.ON, collectively, under or pursuant to any and all provisions of this Termination Agreement and all other Definitive Documents, collectively, shall not exceed Two Hundred Million Dollars (\$200,000,000.00), and Big Rivers, for itself and its successors and assigns, hereby fully and forever waives and releases the recovery from any WKE Party or E.ON of any such amounts in excess of that aggregate amount. Excluded from the limitation provided by the preceding sentence shall be (i) all fines and penalties assessed by any Governmental

Entity included in any damages or any other amounts payable by any WKE Party or E.ON pursuant to the Termination Agreement or other Definitive Document, (ii) the aggregate value attributable to any Allowances (including substitute allowances provided by WKEC under Subsection 8.1(b) hereof or any other allowances acquired by Big Rivers subsequent to the Closing) which Big Rivers or any WKE Party might be required to expend, forfeit or remit to any Governmental Entity, including any reduction in allotments for future years, as part of any damages or other amounts (including, without limitation, pursuant to Section 15.3(c) hereof) for which any WKE Party or E.ON is liable pursuant to the provisions of this Termination Agreement or any other Definitive Document or as part of any settlement of any Proceeding (subject to the limitations on such a settlement under this Article 16) relating to any costs or responsibilities which WKEC is obligated to share or contribute pursuant to the provisions of the Termination Agreement or any other Definitive Document, and (iii) any transaction costs, consent fees and other amounts that may have been paid or reimbursed, or may be paid or reimbursed, by a WKE Party or its Affiliate to Big Rivers under any of the Cost-Share Agreements.

(c) Other Limitations. In addition to the limitations set forth in the preceding paragraphs of this Section 16.4, and notwithstanding any provision to the contrary set forth elsewhere in this Termination Agreement or any other Definitive Document, neither WKEC nor Big Rivers shall have any obligation to indemnify or hold harmless (or provide other relief to) Big Rivers, on the one hand, or the WKE Parties or E.ON, on the other hand, pursuant to Article 15 or this Article 16:

(i) with respect to any claim for indemnification or other relief on the basis of a misrepresentation or breach of warranty under this Termination Agreement, unless the Party or Person seeking such indemnification or other relief has given the Party from which indemnification or other relief is sought written notice of such claim, setting forth in reasonable detail the facts and circumstances pertaining thereto, prior to the applicable survival expiration for such representation or warranty set forth in Section 11.3;

(ii) with respect to any claim for indemnification or other relief on the basis of a misrepresentation or breach of warranty under this Termination Agreement, in the event the Party from which indemnification or other relief is sought can establish that the Party or Person seeking such indemnification or other relief had actual knowledge as of Execution Date or, in the event the Closing shall have occurred, as of the Closing that such misrepresentation or breach of warranty on the part of that other Party would occur upon its execution and delivery of this Termination Agreement or upon the Closing (as applicable); or

(iii) to the extent of any insurance proceeds (after the cost of recovery) that are actually recovered by the Party or Person seeking indemnification or other relief hereunder or thereunder, with respect to the Damages or other costs or expenses giving rise to such claim for indemnification or other relief, it being

understood and agreed that any Party or other Person seeking indemnification or other relief under Article 15 or under this Article 16 shall use its commercially reasonable efforts to seek full recovery under all insurance policies of which it is aware covering any such Damages, costs or expenses.

Section 16.5 No Precedent. None of the respective covenants of the Parties set forth in Article 15, in this Article 16 or elsewhere in this Termination Agreement or in any other Definitive Document, and no representation or warranty of the WKE Parties set forth in paragraph (k) of Section 11.1 or elsewhere in this Termination Agreement or any other Definitive Document, shall serve as evidence of the Parties' agreed interpretation, meaning or intent of any provisions of the Operative Documents in the event the Closing does not occur, nor shall any provision of this Termination Agreement or any other Definitive Document serve to amend, modify, supplement or terminate any of the Operative Documents or any provision thereof unless the Closing occurs.

Section 16.6 Procedure for Indemnification Claims.

(a) Notice of Claims. Promptly after receipt by a Party (the "**Claiming Party**") of notice of the commencement or assertion of any Claim, action, suit, Proceeding, arbitration, audit, hearing, investigation, order or litigation (each, an "**Indemnifiable Claim**") against it or any other Person for which indemnification or other relief may be sought under Article 15 or under this Article 16 (to the extent a claim is to be made by that Claiming Party (for itself or for such other Person(s)) against any other Party (the "**Indemnifying Party**") for indemnification or other relief with respect to that Indemnifiable Claim pursuant to Article 15 or pursuant to this Article 16 (as applicable)), the Claiming Party shall give written notice to the Indemnifying Party of the commencement, assertion or receipt of that Indemnifiable Claim. Notwithstanding the foregoing, the failure to so notify the Indemnifying Party of the commencement, assertion or receipt of an Indemnifiable Claim will not relieve the Indemnifying Party of any liability that it may have under Article 15 or this Article 16 (as applicable) with respect to that Indemnifiable Claim, except to the extent that the Indemnifying Party demonstrates that the Defense of or concerning that Indemnifiable Claim was materially prejudiced by the Claiming Party's failure to give such notice; provided that, as a condition to seeking indemnification or other relief for such Indemnifiable Claim from the Indemnifying Party pursuant to this Termination Agreement, the Claiming Party shall not settle or compromise any Indemnifiable Claim, admit to responsibility or liability for any Indemnifiable Claim, attempt to contest, defend or litigate any Indemnifiable Claim (other than denying any allegations in a formal answer or response to a complaint or cause of action containing such allegations) or consent to judgment, confess judgment or permit a default judgment with respect to any Indemnifiable Claim, in each case for which the Claiming Party has, intends to or may seek indemnification or other relief from the Indemnifying Party pursuant to this Termination Agreement, without first *either* (i) giving the Indemnifying Party notice of that Indemnifiable Claim as contemplated herein and the opportunity to participate in and, in the discretion of the Indemnifying Party, to assume the entire Defense of or concerning that Indemnifiable Claim as contemplated in,

and subject to the conditions of, Subsection (b) below, *or* (ii) fully and irrevocably releasing and discharging in writing any and all responsibility and liability of the Indemnifying Party to the Claiming Party for that Indemnifiable Claim (and for any Damages or other relief resulting from, arising out of or relating to that Indemnifiable Claim) under or pursuant to this Termination Agreement. The notice contemplated herein from a Claiming Party shall describe the Indemnifiable Claim and the specific facts and circumstances in reasonable detail, shall include a copy of any related notices or written claims regarding that Indemnifiable Claim from third-parties, and shall indicate the amount, if known, or an estimate, if possible, of the Damages that have been or may be suffered or incurred as a result of that Indemnifiable Claim.

(b) Assumption of Defense. With respect to any Indemnifiable Claim for which a Claiming Party may bring or pursue a claim for indemnification or other relief against any other Party under or pursuant to Article 15 or this Article 16 (whether for itself or on behalf of any other Person entitled to indemnification or other relief under Article 15 or this Article 16, it being expressly understood that no such other Person may bring a claim for indemnification or other relief under Article 15 or this Article 16 on its own behalf), the Indemnifying Party will be entitled to participate in the contest, defense, settlement, settlement negotiations and litigation (collectively, the “*Defense*”) of or concerning such Indemnifiable Claim and, to the extent that it wishes (for as long as (a) the Indemnifying Party acknowledges (in writing) its obligation to indemnify and hold harmless the Claiming Party from and against such Indemnifiable Claim under this Termination Agreement (subject to the limitations on such obligation set forth in this Termination Agreement), and (b) in the case when the WKE Parties are the Indemnifying Party, the aggregate amount of such Indemnifiable Claim, together with the aggregate amount of all other Indemnifiable Claims then asserted against the WKE Parties, does not exceed the total remaining amount of the maximum liability of the WKE Parties and E.ON set forth in Section 16.4(b)) to assume the entire Defense of or concerning such Indemnifiable Claim with counsel reasonably satisfactory to the Claiming Party and, after notice from the Indemnifying Party to the Claiming Party of its election to assume the Defense of or concerning such Indemnifiable Claim, the Indemnifying Party will not, as long as it diligently conducts such Defense, be liable to the Claiming Party or any other relevant Persons under Article 15 or this Article 16 for any fees of other counsel or any other expenses of conducting the Defense of or concerning such Indemnifiable Claim, in each case subsequently incurred by the Claiming Party or such other relevant Persons in connection with the Defense of or concerning that Indemnifiable Claim, other than their reasonable costs incurred by the Claiming Party in assisting with the Defense as requested by the Indemnifying Party or as otherwise required by Applicable Law in connection with the Indemnifiable Claim. If the Indemnifying Party assumes the Defense of or concerning an Indemnifiable Claim, no compromise or settlement of that Indemnifiable Claim may be effected by the Indemnifying Party without the Claiming Party’s prior written consent unless (i) there is no finding or admission of any violation of Applicable Law or any violation of the rights of any Person on the part of the Claiming Party or such other Persons, and (ii) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party. The Claiming Party shall be entitled to participate (at its expense) in the Defense of or concerning any Indemnifiable Claim assumed by the

Indemnifying Party as contemplated herein. If notice is given to an Indemnifying Party of any Indemnifiable Claim and the Indemnifying Party does not, within fifteen (15) days after receipt of the Claiming Party's notice, give notice to the Claiming Party of its election to assume the Defense of or concerning such Indemnifiable Claim, the Indemnifying Party will no longer have the right to assume that Defense.

(c) Other Claims. A claim for indemnification or other relief under Article 15 or under this Article 16 for any matter not involving a third-party Indemnifiable Claim against the Claiming Party or other relevant Person may be asserted only by written notice delivered to the Party from which such indemnification or other relief is sought (and within the relevant time period or period(s) contemplated elsewhere in this Termination Agreement, as applicable).

(d) Cooperation of Parties. Any Party assuming the Defense of or concerning an Indemnifiable Claim as contemplated above, shall keep the Claiming Party(s) reasonably informed of the progress and development of the Indemnifying Party's Defense of or concerning, and compromise efforts with respect to, such Indemnifiable Claim, and shall furnish the Claiming Party(s) with copies of all relevant pleadings, correspondence and other papers. In addition, the Parties shall cooperate with each other, and make available to each other and their representatives all available relevant records or other materials required by them for their use in defending, compromising or contesting any Indemnifiable Claim.

Section 16.7 Control Over Remediation Activities. Without limiting the generality of a Party's obligations to any other Party under Section 15 hereof, WKEC shall have the right to make an election to plan, design, engineer, control and implement any Remediation activities for an Environmental Release on, under or from a Generating Plant or the Site on which a Generating Plant is located in the event WKEC has accepted responsibility for the same to the extent contemplated in Article 15. Any such election to assume responsibility and control over Remediation activities must be made by providing written notice to Big Rivers: (i) within twenty (20) days after WKEC receives notice from Big Rivers (following the Closing) of the circumstances or events for which such Remediation may be required (a "**Remediation Notice**"), which Remediation Notice will be delivered to WKEC within a reasonable period of time following Big Rivers' obtaining Knowledge of such circumstances or events; or (ii) within ten (10) days after WKEC has agreed to be responsible for any relevant claim for indemnification asserted by Big Rivers under Article 15. In the event Remediation activities have already commenced at the time such an election must be made under the preceding sentence, WKEC shall have the right to take over and assume control of the ongoing Remediation activities. In the event WKEC elects to assume responsibility and control of Remediation activities as provided for under this Section, Big Rivers shall have the right to review and provide comment and input to WKEC on any such Remediation activities. In the event WKEC elects not to assume responsibility and control of Remediation activities as provided for under this Section, WKEC shall have the right to review and provide

comment and input to Big Rivers on any such Remediation activities. Prior to implementing any Remediation in accordance with this Section 16.7, WKEC shall submit for Big Rivers' approval an on-site operations plan covering the specific activities proposed to be conducted by WKEC, including such issues as notice, safety, insurance, Remediation standards, communications with Governmental Entities and security. WKEC shall not conduct on-site operations prior to the approval of such operations plan, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, WKEC shall not be authorized under this Section 16.7 to take any action (except with Big Rivers' prior written consent) (a) with respect to equipment owned or operated by Big Rivers, (b) that would unreasonably interfere with the operation of any Generating Plant, (c) that would cause or contribute to a violation of Applicable Law or an Environmental Release, or (d) that is inconsistent with Big Rivers' health or safety plans or procedures. With respect to any of Big Rivers' costs and expenses for Remediation of an environmental condition that is subject to an indemnification obligation of WKEC under Article 15, WKEC's liability for indemnification of such Remediation costs and expenses which are incurred before a Remediation Notice therefor is given, and before WKEC has had the opportunity to make the election contemplated in this Section 16.7, shall be limited to the reasonable and necessary costs and expenses of Remediation required (i) to address emergency conditions, (ii) to undertake initial investigations required to determine whether Remediation thereof is required and an indemnification obligation of WKEC therefor exists, and (iii) to implement the least-cost Remediation measures required with respect to the environmental conditions that are the subject of that indemnification obligation.

Section 16.8 Control Over New Source Review Remedial Activities. Without limiting the generality of the Parties' respective responsibilities for sharing costs associated with NSR noncompliances subject to Section 15.3(c), WKEC shall have the right to make an election to plan, design, engineer, and determine the least cost remedy for any NSR noncompliances that are subject to cost sharing under Section 15.3(c). Any such election to assume responsibility and control over the determination of the least cost remedy for potential NSR noncompliances must be made by providing written notice to Big Rivers within twenty (20) days of WKEC's receipt from Big Rivers of a "Noncompliance Notice" under Section 15.3(c). Such an election shall not be construed as an admission that an NSR noncompliance claim has merit or is subject to cost sharing under Section 15.3(c) and shall not otherwise limit WKEC's rights to assume or participate in the Defense of or concerning any such claim under Section 16.6. In the event WKEC elects to plan, design, engineer, and determine the least cost remedy for a NSR noncompliance as provided for under this Section, Big Rivers shall have the right to review and provide comment and input to WKEC on any such remedial activities. In the event WKEC elects not to assume responsibility for determining the least cost remedy for a potential NSR noncompliance as provided for under this Section, WKEC shall have the right to review and provide comment and input to Big Rivers on any such remedial activities to ensure that any remedial activity is the least cost option for resolving the NSR noncompliance.

Section 16.9 Other Limitation. The provisions of this Article 16 shall be subject to any provisions of Article 15 which by their terms affect or limit the provisions of this Article 16 or the Damages or other remedies that may be available hereunder.

ARTICLE 17

TERMINATION

Section 17.1 Termination of Agreement. This Termination Agreement, including the obligation of the Parties to use their respective reasonable best efforts to cause the Closing to occur and to cause any conditions precedent set forth in Article 10 to be satisfied or waived, may be terminated at the option of Big Rivers, on the one hand, or the WKE Parties, on the other hand, if the Closing shall not have occurred on or prior to September 30, 2007, upon two Business Days' prior notice given to the other Parties to this Termination Agreement. Neither the WKE Parties nor Big Rivers shall be permitted to exercise the option to terminate provided by this Section 17.1 if the failure of the Closing to occur on or prior to September 30, 2007, shall be in consequence of a material breach by the Party seeking to terminate its obligations under this Termination Agreement. If this Termination Agreement shall be terminated in accordance with this Section 17.1, this Termination Agreement shall immediately become null and void and of no further force or effect whatsoever, and each Party shall be fully released and discharged of all of its debts, obligations and liabilities hereunder. No Party shall be entitled to terminate this Termination Agreement following the Closing absent the prior written agreement of all Parties to terminate this Termination Agreement.

ARTICLE 18

MISCELLANEOUS

Section 18.1 No Third Party Beneficiaries. This Termination Agreement is entered into for the sole benefit of the Parties hereof and the other Persons identified in Article 15 and Article 16, and except as specifically provided herein, shall not confer any rights or remedies upon any Person other than the Parties, such other identified Persons and their respective successors and permitted assigns.

Section 18.2 Entire Agreement. This Termination Agreement and the other Definitive Documents (together with all Exhibits and Schedules hereto and thereto) constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter hereof. Nothing in this Section 18.2 or elsewhere in this Termination Agreement shall affect the Parties' responsibility under the Confidentiality Agreement or the Cost-Share Agreements, each of which shall remain in full force and effect in accordance with the terms and subject to the conditions thereof.

Section 18.3 Successors and Assigns. This Termination Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign its rights under either this Termination Agreement or under any other Definitive Document, or delegate any of its obligations hereunder or thereunder, without the prior written consent of the other Parties, and any attempt to make any such assignment or delegation without such consent shall be null and void; provided, however, that the preceding restriction on assignments and delegations shall not apply to any transfers or assignments of this Termination Agreement or any other Definitive Document by a WKE Party to any of its Affiliates prior to the Closing.

Section 18.4 Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed duly given if (and then two Business Days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to the WKE Parties: Western Kentucky Energy Corp.
c/o E.ON U.S. LLC
220 West Main Street
Louisville, KY 40202
Facsimile: 502-627-2995
Telephone: 502-627-3861
Attn: President

Copy to: John R. McCall
Executive Vice President & General Counsel
E.ON U.S. LLC
220 West Main Street
Louisville, Kentucky 40202
Facsimile: 502-627-4622
Telephone: 502-627-3665

Copy to: Patrick R. Northam, Esq.
Greenebaum Doll & McDonald PLLC
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202
Direct: (502) 587-3774
Main: (502) 589-4200
Fax: (502) 540-2296

If to Big Rivers: Big Rivers Electric Corporation
201 Third Street
P.O. Box 24
Henderson Kentucky 42419

Attention: CEO and President
Attention: Vice President of External Relations
Facsimile: 502-827-2558
Telephone: 502-827-2561

Copy to: James M. Miller, Esq.
Sullivan, Mountjoy, Stainback & Miller, P.S.C.
100 St. Ann Building
Post Office Box 727
Owensboro, Kentucky 42302-0727
Facsimile: 502-683-6694
Telephone: 502-936-4000

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

Section 18.5 Governing Law. This Termination Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules or principles.

Section 18.6 Amendments and Waivers. This Termination Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the WKE Parties and Big Rivers. No waiver of any of the provisions of this Termination Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar). No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 18.7 Severability. Any term or provision of this Termination Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Termination Agreement or affecting the validity or enforceability of any of the terms or provisions of this Termination Agreement in any other jurisdiction.

Section 18.8 Construction. The Parties have participated jointly in the negotiation and drafting of this Termination Agreement. In the event an ambiguity or

question of intent or interpretation arises, this Termination Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Termination Agreement.

Section 18.9 Incorporation. The Exhibits and Schedules identified in this Termination Agreement are incorporated herein by reference and made a part hereof.]

Section 18.10 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS TERMINATION AGREEMENT OR THE RELATED INSTRUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 18.11 Headings. The article and section headings contained in this Termination Agreement and the other Definitive Documents are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Termination Agreement.

Section 18.12 Risk of Loss. All risk of loss or damage to any of the Generating Plants, the Sites, the Real Property, the Personal Property or the Inventory, shall pass to Big Rivers effective as of the Closing. To the extent, following the Closing through the remainder of the Unwind Closing Date, Big Rivers shall desire to use any employees of WKEC to assist Big Rivers in the operation, maintenance or repair of any Generating Plant, such use by Big Rivers of those employees of WKEC shall be at Big Rivers' sole risk, and Big Rivers hereby fully and forever remises, releases and discharges WKEC and its directors, officers, employees, agents and affiliates of and from any and all Claims, Proceedings and/or Damages that may be suffered or incurred by Big Rivers in connection with the activities of those employees of WKEC while working at any Generating Plant or on any Site following the Closing on the Unwind Closing Date.

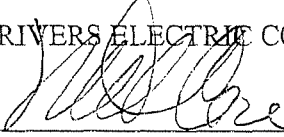
Section 18.13 Counterparts. This Termination Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

Section 18.14 Venue. Any legal action or proceeding by or against any party hereto arising out of this Agreement or any other Definitive Documents may be brought in or removed to the state or federal courts of the Commonwealth of Kentucky.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Transaction Termination Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

By: 
Name: Michael Core
Title: President

LG&E ENERGY MARKETING INC.

By: _____
Name: Paul W. Thompson
Title: Senior Vice President

WESTERN KENTUCKY ENERGY CORP.


By: _____
Name: Paul W. Thompson
Title: President

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LG&E ENERGY MARKETING INC.

By: _____
Name: Paul W. Thompson
Title: Senior Vice President

WESTERN KENTUCKY ENERGY CORP.

By: _____
Name: Paul W. Thompson
Title: President