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VIA FEDERAL EXPRESS

July 3, 2008

Hon. Stephanie Stumbo
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

RECEIVED

JUL 08 2008

**PUBLIC SERVICE
COMMISSION**

Re: The Applications of Big rivers Electric Corporation for: (I) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (II) Approval of Transactions, (III) Approval to Issue Evidences of Indebtedness, and (IV) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc. for Approval of Transactions, PSC Case No. 2007-00455

Dear Ms. Stumbo:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("Big Rivers") are an original and ten copies of Big Rivers' motion for rehearing of (i) the denial of the Petition of Big Rivers Electric Corporation for Confidential Protection filed March 31, 2008, as stated in a letter from the Public Service Commission dated June 17, 2008, and (ii) the denial of the Petition of Big Rivers Electric Corporation for Confidential Protection filed April 23, 2008, as stated in a letter from the Public Service Commission dated June 17, 2008. As part of its motion, Big Rivers is refileing a letter agreement and the Supplemental Testimony of C. William Blackburn that Big Rivers originally filed on April 23, 2008. In that April 23 filing, Big Rivers sought confidential treatment of the entire letter agreement and portions of the testimony. Big Rivers is refileing the letter agreement and the pages of the testimony containing confidential information to seek confidential treatment of less information, as described in the motion. One copy of the letter agreement and the applicable pages of the testimony with the confidential information highlighted, and ten copies of the letter agreement and the applicable pages of the testimony with the confidential information redacted, are attached to this letter.

I certify that a copy of this letter, a copy of the motion, a redacted copy of the letter agreement, and a redacted copy of the applicable pages of the testimony have been served on the attached service list. Also, the unsigned affidavit of C. William

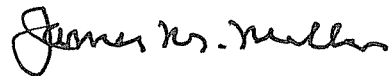
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Hon. Stephanie Stumbo
July 3, 2008
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Blackburn is attached to the motion. Mr. Blackburn is out of town and was unable to sign the affidavit in time for it to be filed. He will sign the affidavit when he returns, and the signed affidavit will be filed, with copies served on the parties of record.

Sincerely yours,

A handwritten signature in black ink that reads "James M. Miller". The signature is written in a cursive style with a small dot above the letter 'i' in "Miller".

James M. Miller

Enclosures

cc: Michael H. Core
David Spainhoward
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PSC CASE NO. 2007-00455

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

RECEIVED

JUL 08 2008

PUBLIC SERVICE
COMMISSION

THE APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR:)
(I) APPROVAL OF WHOLESALE TARIFF)
ADDITIONS FOR BIG RIVERS ELECTRIC)
CORPORATION, (II) APPROVAL OF)
TRANSACTIONS, (III) APPROVAL TO)
ISSUE EVIDENCES OF INDEBTEDNESS,)
AND (IV) APPROVAL OF AMENDMENTS)
TO CONTRACTS; AND)
)
OF E.ON U.S., LLC, WESTERN)
KENTUCKY ENERGY CORP. AND)
LG&E ENERGY MARKETING, INC.)
FOR APPROVAL OF TRANSACTIONS)

CASE NO. 2007-00455

**BIG RIVERS ELECTRIC CORPORATION'S MOTION FOR REHEARING AND
PETITION FOR CONFIDENTIAL TREATMENT**

Comes Big Rivers Electric Corporation ("Big Rivers"), by counsel, and, among other things, moves the Public Service Commission ("Commission") for rehearing pursuant to KRS 278.400 of (i) the denial of the Petition of Big Rivers Electric Corporation for Confidential Protection filed March 31, 2008 (the "March Petition"), as stated in a letter from the Commission dated June 17, 2008 (the "March Petition Denial Letter"), and (ii) the denial of the Petition of Big Rivers Electric Corporation for Confidential Protection filed April 23, 2008 (the "April Petition"), as stated in a letter from the Commission dated June 17, 2008 (the "April Petition Denial Letter").

More specifically, Big Rivers seeks the following relief from the Commission in this motion:

1. A rehearing on the Commission's denial of the March Petition, and either approval by the Commission of the March Petition, or an evidentiary hearing on the March Petition;

2. A rehearing on the Commission's denial of the April Petition, and either (i) approval by the Commission of the April Petition, as proposed to be amended herein, or an evidentiary hearing on the March Petition, as proposed to be amended herein; or in the alternative, (ii) permission from the Commission to withdraw the information sought to be protected in the April Petition (as amended) as being no longer material to any request of Big Rivers pending before the Commission, and to supplement its Application by refiling the Supplemental Testimony of C. William Blackburn with the entries related to early termination of the Bank of America lease removed; and

3. That the Commission treat the revisions to the confidential information under the April Petition submitted with this motion as being subject to the April Petition and this motion, or grant separate confidential treatment to those documents pursuant to 807 KAR 5:001 §7 on the grounds set forth in the April Petition and this motion.

As grounds for this motion, Big Rivers states as follows.

I. INTRODUCTION

The information for which Big Rivers sought confidential treatment in its March Petition and its April Petition (the "Confidential Information") is contained in five documents. The March Petition involved Big Rivers' request for confidential treatment of certain specified terms contained in two revolving line of credit agreements, one between Big Rivers and National Rural Utilities Cooperative Finance Corporation ("CFC"), and the other between Big Rivers and CoBank ACB ("CoBank") (together, the "Revolving Credit Agreements"). The Revolving

Credit Agreements are described in Paragraphs 11-15 of Big Rivers' First Amendment and Supplement to Application, filed March 31, 2008 (the "First Amendment"). Big Rivers filed the CFC agreement confidentially as Exhibit 45 to the First Amendment, and Big Rivers filed the CoBank agreement confidentially as Exhibit 46 to the First Amendment. The March Petition also involved Big Rivers' request for confidential treatment of a description of the confidential terms of the Revolving Credit Agreements. Big Rivers filed that description confidentially as Exhibit 44 to the First Amendment.

The April Petition involved Big Rivers' request for confidential treatment of (i) the entirety of a form of letter agreement ("Letter Agreement") between Big Rivers and Bank of America Leasing Corporation ("Bank of America") (Bank of America, CFC, and CoBank are hereinafter collectively referred to as the "Creditors"), which Big Rivers' filed confidentially as Exhibit 67 to its Third Amendment and Supplement to Application ("Third Amendment") on April 23, 2008, and (ii) portions of the description of the terms of the Letter Agreement contained in the Supplemental Testimony of C. William Blackburn ("Blackburn Testimony"), attached as Exhibit 77 to the Third Amendment. The Letter Agreement is described in Paragraph 4 of the Third Amendment and in the Blackburn Testimony.

The Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1). As discussed below, the Commission should grant a rehearing on each denial of confidential treatment because (i) the Commission's decisions are based upon mistaken factual assumptions, (ii) the Confidential Information is generally

recognized as confidential or proprietary, and (iii) disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors.

II. THE COMMISSION'S DENIAL OF THE MARCH PETITION IS BASED UPON AN INCORRECT FACTUAL ASSUMPTION

The sole basis given for the Commission's denial of the March Petition is the single, erroneous conclusion that "Big Rivers operates as a regulated monopoly and it does not have competitors for the electric service it provides to its three distribution cooperative members." April Petition Denial Letter, page 1. The Commission essentially concludes, in its rulings on both the March Petition and the April Petition, that a generating and transmission cooperative ("G&T") cannot obtain confidential treatment for information that could adversely affect its costs, because it does not "compete" for the load of its three member distribution cooperatives (the "Members," or individually, a "Member"). Implicit in this assumption is the further assumption that increases in Big Rivers' costs do not affect its ability to "compete" for sales to its Members, because there is no competition for those sales that could be affected by higher costs at Big Rivers. The discussion below and the Affidavit of C. William Blackburn ("Blackburn Affidavit"), attached, demonstrate beyond question that Big Rivers does compete, on the basis of its costs, for service it provides to its Members. A rehearing should be granted on the March Petition, and the Commission should grant the March Petition for confidential treatment.

The only thing for which an electric utility can "compete" is consumer load. Its other activities simply support the effort to achieve the goal of selling its product.

Increases in costs at Big Rivers affect Big Rivers' ability to sell more power to its Members. The amount of Big Rivers' Member load depends upon its Members' retail load level.

Those three Members are served by Big Rivers under “all requirements” contracts¹; if Member load increases, Big Rivers is required to meet that demand, and its load increases. If Member load diminishes, Big Rivers’ load decreases without recourse against the Members for the load reduction.

The Members are required by contract to pay for the electricity they purchase from Big Rivers at rates set by the Commission based upon Big Rivers’ costs. The Member cooperatives compete daily with other electric utilities for new commercial and industrial customers. The competition is stiff for a new industry which brings jobs and economic growth to a utility’s service area. As Commissioner Robert Spurlin noted in his dissent from an order in PSC Case No. 2003-00226 denying the motions of a number of utilities to intervene in a territorial dispute over service to an industrial facility:

The cooperatives have a vital interest in proceedings that will affect whether they will be able to protect their right to serve large industrial customers that locate within their respective territories. Without such large customers, the cooperatives’ residential rates will remain higher, in general, than those of investor-owned electric companies.

Order dated November 13, 2003, in *Re CTA Acoustics, Inc.*, PSC Case No. 2003-00226 (Commissioner Robert E. Spurlin, dissenting).

A principal factor in the ability of a Member to compete for those commercial and industrial customers is the tariff rate at which the Member can offer service. The wholesale rate a Member is required to pay Big Rivers is a major determinant of the Member’s retail rate. If Big Rivers’ costs increase, the Member’s rates increase, and the Member’s ability to increase its load and the load of Big Rivers is diminished. In other words, Big Rivers’ ability to compete

¹ One of Big Rivers’ Members, Kenergy Corp., has a carve-out from its all-requirements contract that authorizes it to purchase power for resale to its aluminum smelter customers from any wholesale source.

with other utilities for Member load growth is affected by increases in its expenses. This is a fundamental economic relationship between a G & T and each of its members.

Big Rivers also directly competes on the basis of price with all other wholesale power sources for Tier 3 Power sales to one of its Members, Kenergy Corp., for resale to Kenergy Corp.'s two aluminum smelter customers.² And who would argue that rates are not the unspoken catalyst in many territory disputes heard by the Commission? Large industrials, in particular, have obviously tried to select their electric supplier on the basis of rates. See for example, *Re Matrix Energy, LLC*, PSC Case No. 2003-00228, Order dated May 3, 2004 (mine operation located in two adjacent certified territories sought service from utility with lower rates).

Big Rivers would remind the Commission that Big Rivers was created to provide electric service to its Members in competition with all other sources. *Kentucky Utilities Co. v. Public Service Commission*, 390 S.W.2d 168, 170 (Ky. 1965). While it has the comfort of contracts with its Members, those contracts are for a defined term, and have expiration dates. If Big Rivers' rates are not expected to be competitive with those of power suppliers, can there be any doubt that Big Rivers' Members will take the steps necessary to secure a lower-cost power supply? In fact, does not the Commission require a jurisdictional utility to exercise such prudence in the selection of its power supply?

The single premise cited by the Commission for denying confidential treatment to the information filed with the March Petition is clearly erroneous. On this basis alone, the Commission should grant rehearing on the March Petition, and enter an order granting the confidential treatment sought in that petition.

² See Application ¶ 40, filed December 28, 2007.

**III. THE COMMISSION’S DENIAL OF THE APRIL PETITION IS ALSO BASED
UPON INCORRECT FACTUAL ASSUMPTIONS**

The explanation given by the Commission for denial of the April Petition suffers from incorrect factual assumptions, some of which overlap the factual errors discussed above in connection with the denial of the March Petition. The three conclusions given by the Commission as the reason for denial of the April Petition are:

- “Big Rivers operates as a regulated monopoly and it does not have competitors for the electric service it provides to its three [Members].”
- With respect to Big Rivers’ participation in the wholesale power market, the disclosure would create no demonstrated competitive disadvantage to Big Rivers “since all of its revenues and expenses are already publicly available in its financial statements and the financial unwind model filed in this case.”
- “[T]he fees to be paid under the letter agreement have been disclosed in Big Rivers’ June 2, 2008 filing of updated data response, Tab 2, Item 17.”

The first issue has been thoroughly argued, above. Big Rivers clearly competes for the electric service it provides to its Members, and that effort would be adversely affected by cost increases that increase Big Rivers’ rates.

Big Rivers also competes in the wholesale power market to sell energy excess to its Members’ needs at the highest possible price, which will produce the highest possible sales margin. By definition, that margin is the difference between its cost of the energy sold and the sales price of that energy. Big Rivers’ ability to successfully compete in the wholesale power market is dependant upon a combination of its ability to get the maximum price for the power sold, and keeping the cost of producing that power as low as possible. Fundamentally, if Big

Rivers' cost of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with other utilities is adversely affected.

These basic economic principals did not change because Big Rivers publicly disclosed the financial information it has filed in this proceeding. Big Rivers is currently and actively in competition with other utilities to sell energy in the wholesale market at the highest price. A potential buyer of energy from Big Rivers in the wholesale power market cannot take the information Big Rivers has filed in this case and predict the price at which Big Rivers will sell energy in any particular wholesale transaction. In any event, the ability of Big Rivers to reduce an expense that affects the cost of producing that energy can only make Big Rivers more competitive in its ability to obtain a sale of energy, and the best margin on a sale of energy in the wholesale power market.

Big Rivers agrees in part, and states in accordance with 807 KAR 5:001 §7(9)(a), that the consent fees disclosed in Big Rivers' June 2, 2008 filing of updated data response, Tab 2, Item 17, no longer require confidential treatment. Big Rivers further updates the April Petition by refileing the Letter Agreement with only the Bank of America lease total purchase price redacted, and refileing the section of the Blackburn Testimony for which confidential treatment was sought, redacting only the total purchase price and the estimated value of the GIC.

Big Rivers moves that the refiled Letter Agreement and the refiled Blackburn Testimony either be treated as subject to the pending April Petition, or that the Commission grant separate confidential treatment to those documents pursuant to 807 KAR 5:001 §7 for the grounds set forth in the April Petition and this motion.³ That information has not been disclosed, and is the most sensitive information for which confidential treatment was sought in the April Petition.

³ A copy of this motion and a redacted copy of the revised Blackburn Testimony have been served on all parties to this proceeding.

Using that information, Big Rivers' other lease equity party, Philip Morris Capital Corporation ("PMCC"), could determine the exact price at which Big Rivers is willing to buy out its lease. This is highly confidential information, particularly when Big Rivers is in the beginning stages of trying to resolve the effects of the financial rating downgrade of Ambac Assurance Corporation on the PMCC leveraged lease.⁴ One option to resolve that problem is for Big Rivers to buy out the PMCC lease as it did, with the assistance of E.ON U.S. LLC ("E.ON"), in the case of the Bank of America lease. Giving PMCC the exact price at which Big Rivers and E.ON were willing to agree to buy out the Bank of America lease would be fatal to any attempts by Big Rivers to better the those terms in a buyout of the PMCC lease. Any adverse financial impact of that disclosure on the terms on which Big Rivers might buy out the PMCC lease will be reflected in Big Rivers' costs, and in turn will have a direct effect on Big Rivers' competitiveness in the wholesale power market, whether it is selling energy to its Members, to Kenergy Corp. for resale to the smelters, or to some other counterparty in the wholesale market.

Based upon the incorrect factual assumptions on which the April Petition Denial Letter was based, the additional information provided in this motion and in the Blackburn Affidavit, and the significant reduction in the amount of information for which confidential treatment is now sought under the April Petition, the Commission should grant rehearing on the April Petition denial, and sustain the request for confidential treatment sought therein, as amended by the refiling of the Letter Agreement and Blackburn Testimony.

In the alternative, Big Rivers should be permitted to withdraw the confidential information for which it is now seeking protection under the April Petition because that

⁴ The downgrade of the Moody's Financial Service rating of Ambac Assurance Corporation has triggered a mandatory obligation on Big Rivers to either replace Ambac Assurance Corporation in the PMCC lease, or reach an accommodation with PMCC on some alternative arrangement acceptable to PMCC. This problem is described in the June 26, 2008 Joint Motion for a continuance, and in the June 24, 2008 letter from counsel for Big Rivers to the Commission regarding the Bank of America lease early termination.

information is immaterial to any approvals Big Rivers is seeking from the Commission. That information was originally filed in connection with the application of Big Rivers for approval from the Commission to terminate early the Bank of America leveraged lease. By letter to the Commission dated June 24, 2008, Big Rivers withdrew (at page 2) its request for approval of early termination of the Bank of America leveraged lease and the related cost share agreement, leaving only a request that the Commission approve a new cost share agreement that would require Big Rivers, upon closing of the Unwind Transaction, to pay E.ON \$1 million of E.ON's costs incurred for the early termination of the Bank of America lease (the "B of A Cost Share Letter Agreement"). The total purchase price of the Bank of America lease, and the value of the GIC in that transaction are immaterial to the request for approval of the B of A Cost Share Letter Agreement, and Big Rivers is prepared to seek Commission approval of the B of A Cost Share Letter Agreement without the benefit of that information in evidence.

So in the alternative, Big Rivers requests that it be permitted to withdraw the filing of the Letter Agreement, and be permitted to withdraw the Blackburn Testimony previously filed with Big Rivers' April Petition on April 23, 2008, and to supplement its Application by refileing the Blackburn Testimony with the entries related to early termination of the Bank of America lease removed.

**IV. THE CONFIDENTIAL INFORMATION IS GENERALLY RECOGNIZED AS
CONFIDENTIAL OR PROPRIETARY**

Aside from the the Commission's decisions to deny the confidential treatment of information sought by Big Rivers in the March Petition and the April Petition being based on mistaken assumptions of fact, which alone justify the relief sought by Big Rivers, the Confidential Information should be protected from disclosure because it is the type of

information that is generally recognized as confidential or proprietary under Kentucky law. The Confidential Information is the product of extensive negotiations between Big Rivers and its Creditors. These commercially sensitive provisions represent the prices, costs, concessions, terms, and conditions that Big Rivers has been able to negotiate for its and its Members' benefit. The Confidential Information is derived from Big Rivers and its Creditor's internal examinations, criteria and related analytical methods which should not be disclosed, and it involves estimates and evaluations with respect to financial instruments that are proprietary and should not be disclosed. *See* March Petition; April Petition; Blackburn Affidavit.

The Confidential Information is precisely the sort of information meant to be protected by KRS 61.878(1)(c)(1), and the Commission and Kentucky courts have often found that such information about a company, including confidential financial data and the confidential terms of a company's contracts, are generally recognized as confidential and proprietary. *See, e.g., Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary'"); *Marina Management Service, Inc. v. Com. Of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995) (finding that a marina's financial records, including information on asset values, notes payable, rental amounts on houseboats, related party transactions, profit margins, net earnings, and capital income, were entitled to confidential protection); Order dated April 3, 2006, in *In the Matter of: The Joint Application of Nuon Global Solutions USA, BV, Nuon Global Solutions USA, Inc., AIG Highstar Capital II, LP, Hydro Star, LLC, Utilities, Inc. and Water Service Corporation of Kentucky for Approval of an Indirect Change in Control of a Certain Kentucky Utility Pursuant to the Provisions of KRS 278.020(5) and (6) and 807 KAR 5:001, Section 8*, PSC Case No. 2005-

00433 (finding that certain terms contained in a Stock Purchase Agreement were confidential and proprietary and that disclosure could result in competitive harm).

The Confidential Information is not publicly available, it is not disseminated within Big Rivers except to those employees and professionals with a legitimate business need to know and act upon the information, it is not disseminated to others unless they have a legitimate need to know and act upon the information, and when it is disseminated to others (such as to certain other parties in this proceeding), it is done so only under a confidentiality agreement. As such, the Confidential Information is generally recognized as confidential and proprietary. *See* March Petition; April Petition; Blackburn Affidavit.

V. DISCLOSURE OF THE CONFIDENTIAL INFORMATION WOULD PERMIT AN UNFAIR COMMERCIAL ADVANTAGE TO BIG RIVERS' COMPETITORS

Disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors. First, Big Rivers faces actual competition. Big Rivers operates in a competitive marketplace for wholesale power, and Big Rivers sells power in the wholesale market in direct competition with other wholesale power producers. *See* April Petition; Blackburn Affidavit. The Commission has recognized this fact in a number of Big Rivers' petitions for confidential treatment that the Commission has granted. For example, in this proceeding, by letter dated April 29, 2008, the Commission granted Big Rivers' petition for confidential treatment dated February 14, 2008, which sought confidential treatment of information contained in Big Rivers' responses to the initial data requests of the Commission Staff, the Attorney General, and Henderson Municipal Power & Light. *See* Letter from Stephanie Stumbo to Big Rivers' counsel, dated April 29, 2008. That letter granted confidential protection "on the grounds relied upon in the Petition." *Id.* One of the grounds relied upon by

Big Rivers in the petition was that “Big Rivers and WKEC operate in a competitive marketplace for wholesale power and the public disclosure of sensitive records and information relating to the operation and maintenance of Station Two would place them at a severe competitive disadvantage among other wholesale power generators with which they compete.” Petition of Big Rivers Electric Corporation for Confidential Treatment dated February 14, 2008. The Commission’s letter granting confidential treatment operates as a finding that Big Rivers operates in a competitive marketplace for wholesale power because such a finding was necessary in order for the Commission to grant confidential protection as requested in Big Rivers’ February 14 petition for confidential treatment. There is no basis in fact or in law for the Commission to make a finding in response to Big Rivers’ March Petition or April Petition that is inconsistent with the implicit finding in the Commission’s April 29 letter that Big Rivers operates in a competitive marketplace for wholesale power.

Second, it is likely that Big Rivers would suffer competitive injury if the Confidential Information is publicly disclosed. In PSC Case No. 2003-00054, the Commission granted confidential protection for bids submitted to Union Light Heat & Power (“ULH&P”). ULH&P’s argued, and the Commission implicitly accepted, that the bidding contractors would not want their bid information publicly disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which would drive up ULH&P’s costs, hurting its ability to compete with other gas suppliers. Order dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054. In PSC Case No. 2005-00433, the Commission recognized that public disclosure of confidential information contained in a company’s financial statements could shrink the pool of investors available to that company, resulting in competitive harm to that company. Order dated April 3,

2006, in *In the Matter of: The Joint Application of Nuon Global Solutions USA, BV, Nuon Global Solutions USA, Inc., AIG Highstar Capital II, LP, Hydro Star, LLC, Utilities, Inc. and Water Service Corporation of Kentucky for Approval of an Indirect Change in Control of a Certain Kentucky Utility Pursuant to the Provisions of KRS 278.020(5) and (6) and 807 KAR 5:001, Section 8*, PSC Case No. 2005-00433. And in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without protection for confidential information provided to a public agency, “companies would be reluctant to apply for investment tax credits for fear the confidentiality of financial information would be compromised. *Hoy v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 769 (Ky. 1995).

In Big Rivers’ case, the Creditors and others in the financial industry do not favor public disclosure of the pricing and concessions that they agreed to because those contractual terms could then be used against them in future negotiations with other customers. The confidentiality of the Letter Agreement was a requirement for Bank of America to enter into that agreement, and it is a requirement of many other financial institutions to enter into similar agreements. Financial institutions often rely on the confidentiality of their agreements with their customers, and if they believe those agreements will be publicly disclosed, it is likely that many of them will decline to enter into future agreements with Big Rivers. As such, public disclosure of the Confidential Information would likely reduce the pool of financial institutions willing to enter into transactions with Big Rivers, or at best affect the terms to which a financial institution would be willing to agree knowing that those terms would become public. This would result in increased prices for Big Rivers and its Members and less favorable contracts for Big Rivers. Big Rivers operates in a competitive marketplace for wholesale power, and if Big Rivers is subject to higher prices and less favorable contracts in connection with its financing transactions, Big Rivers will

be at a severe competitive disadvantage compared to other wholesale power generators with which it competes but which are not similarly burdened. *See* March Petition; April Petition; Blackburn Affidavit.

In addition, public disclosure of the Confidential Information would put other financial institutions in a position to determine which terms and conditions Big Rivers is willing to accept. *See* March Petition; April Petition; Blackburn Affidavit. Those financial institutions still willing to negotiate with Big Rivers would then have an important competitive advantage because they could use that publicly-available information in future negotiations or proposals with Big Rivers. *See* March Petition; April Petition; Blackburn Affidavit. In PSC Case No. 2003-00054, the Commission granted confidential protection to bids submitted to ULH&P. In addition to the other arguments discussed above, ULH&P argued, and the Commission implicitly accepted, that if the bids it received were publicly disclosed, contractors on future work could use the bids as a benchmark, which would likely lead to the submission of higher bids. Order dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054. The Commission also implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's ability to compete with other gas suppliers. *Id.*

In Big Rivers' case, financial institutions could use the amounts and terms agreed upon Big Rivers in the Letter Agreement and the Revolving Credit Agreements as a benchmark or starting point in their negotiations (since they would know Big Rivers is willing to accept them), which would likely lead to higher prices for Big Rivers and its Members and less favorable agreements for Big Rivers. For an example, the Commission need only look to the Revolving Credit Agreements. The Revolving Credit Agreements have different terms. If each of the

banks in those agreements had known the terms Big Rivers had given the other, Big Rivers would have been terribly disadvantaged in its negotiations, and would certainly not have achieved terms as financially favorable as those reflected in the Revolving Credit Agreements. Big Rivers competes in the wholesale power market, and as its costs rise (including financing costs), and with less favorable agreements, it is less competitive in that market. *See* March Petition; April Petition; Blackburn Affidavit.

IV. THE COMMISSION IS REQUIRED TO HOLD AN EVIDENTIARY HEARING

The Confidential Information should be given confidential protection. If the Commission continues to disagree that Big Rivers is entitled to confidential protection, due process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v. Kentucky Water Service Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, Big Rivers moves the Commission as follows:

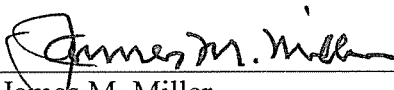
1. That the Commission grant a rehearing on the Commission's denial of the March Petition, and either approve the March Petition, or hold an evidentiary hearing on the March Petition;

2. That the Commission grant a rehearing on the Commission's denial of the April Petition, and either (i) approve the April Petition, as proposed to be amended herein, or hold an evidentiary hearing on the March Petition, as proposed to be amended herein; or in the alternative, (ii) grant permission to Big Rivers to withdraw the information sought to be protected in the April Petition (as amended) as being no longer material to any request of Big Rivers pending before the Commission, and to allow Big Rivers to supplement its Application by refileing the Supplemental Testimony of C. William Blackburn with the entries related to early termination of the Bank of America lease removed;

3. That the Commission allow the filing of the revisions to the confidential information under the April Petition submitted with this motion, and treat those revised documents as being subject to the April Petition and this motion, or grant separate confidential treatment to those revised documents pursuant to 807 KAR 5:001 §7; and

4. That the Commission grant Big Rivers all other relief to which it may appear entitled.

On this the 3rd day of July, 2008.



James M. Miller
Tyson Kamuf
Sullivan, Mountjoy, Stainback
& Miller, P.S.C.
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COUNSEL FOR BIG RIVERS
ELECTRIC CORPORATION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

THE APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR:)
(I) APPROVAL OF WHOLESALE TARIFF)
ADDITIONS FOR BIG RIVERS ELECTRIC)
CORPORATION, (II) APPROVAL OF)
TRANSACTIONS, (III) APPROVAL TO)
ISSUE EVIDENCES OF INDEBTEDNESS,)
AND (IV) APPROVAL OF AMENDMENTS)
TO CONTRACTS; AND)
)
OF E.ON U.S., LLC, WESTERN)
KENTUCKY ENERGY CORP. AND)
LG&E ENERGY MARKETING, INC.)
FOR APPROVAL OF TRANSACTIONS)

CASE NO. 2007-00455

AFFIDAVIT OF C. WILLIAM BLACKBURN

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

Comes the affiant, C. William Blackburn, and after being duly sworn, states as follows:

1. I am employed by Big Rivers Electric Corporation ("Big Rivers") as its Vice President Financial Services, Chief Financial Officer ("CFO"), and Interim Vice President Power Supply. I have held this position since November 2005. Prior to servicing as CFO, I held the position of Vice President Power Supply for 9 years, and I remain in this position on an interim basis.

2. This affidavit relates to Big Rivers' requests made in this proceeding for confidential treatment of (i) certain terms contained in two revolving line of credit agreements, one between Big Rivers and National Rural Utilities Cooperative Finance Corporation ("CFC"), and the other between Big Rivers and CoBank ACB ("CoBank") (together, the "Revolving

Credit Agreements”); (ii) a description of the confidential terms of the Revolving Credit Agreements that Big Rivers confidentially filed as Exhibit 44 to its First Amendment and Supplement to Application on March 31, 2008; (iii) a letter agreement (“Letter Agreement”) between Big Rivers and Bank of America Leasing Corporation (“Bank of America”), which Big Rivers’ filed confidentially as Exhibit 67 to its Third Amendment and Supplement to Application (“Third Amendment”) on April 23, 2008; (iv) a description of the terms of the Letter Agreement contained in the Supplemental Testimony of C. William Blackburn (“Blackburn Testimony”), attached as Exhibit 77 to the Third Amendment. Bank of America, CFC, and CoBank are hereinafter collectively referred to as the “Creditors.” The information contained in those documents for which Big Rivers is seeking confidential treatment is hereinafter referred to as the “Confidential Information.”

3. The Confidential Information is the product of extensive negotiations between itself and its Creditors. These commercially sensitive provisions represent the prices, costs, concessions, terms, and conditions that Big Rivers has been able to negotiate for its and its members’ benefit. The Confidential Information is derived from Big Rivers and its Creditor's internal examinations, criteria and related analytical methods which should not be disclosed, and it involves estimates and evaluations with respect to financial instruments that are proprietary and should not be disclosed.

4. The Confidential Information is not publicly available, it is not disseminated within Big Rivers except to those employees and professionals with a legitimate business need to know and act upon the information, it is not disseminated to others without a legitimate need to know and act upon the information, and when it is disseminated to others (such as to certain

other parties in this proceeding), it is done so only under a confidentiality agreement. As such, the Confidential Information is generally recognized as confidential and proprietary.

5. Big Rivers competes for the electric service it provides to its Members. Increases in costs at Big Rivers affect Big Rivers' ability to sell more power to its three members ("Members"). The amount of Big Rivers' Members' loads depend upon its Members' retail load level. Those three Members are served by Big Rivers under "all requirements" contracts¹; if Member load increases, Big Rivers is required to meet that demand, and its load increases. If Member load diminishes, Big Rivers' load decreases without recourse against the Members for the load reduction.

6. The Members are required by contract to pay for the electricity they purchase from Big Rivers at rates set by the Commission based upon Big Rivers' costs. The Member cooperatives compete daily with other electric utilities for new commercial and industrial customers. The competition is stiff for a new industry which brings jobs and economic growth to a utility's service area.

7. A principal factor in the ability of a Member to compete for those commercial and industrial customers is the tariff rate at which the Member can offer service. The wholesale rate a Member is required to pay Big Rivers is a major determinant of the Members' retail rate. If Big Rivers' costs increase, the Member's rates increase, and the Member's ability to increase its load and the load of Big Rivers is diminished. In other words, Big Rivers' ability to compete with other utilities for Member load growth is affected by increases in its expenses. This is a fundamental economic relationship between a G & T and each of its Members.

¹ One of Big Rivers' Members, Kenergy Corp., has a carve-out from its all-requirements contract that authorizes it to purchase power for resale to its aluminum smelter customers from any wholesale source.

8. Big Rivers also directly competes on the basis of price with all other wholesale power sources for Tier 3 Power sales to one of its Members, Kenergy Corp., for resale to Kenergy Corp.'s two aluminum smelter customers.

9. While it has the comfort of contracts with its Members, those contracts are for a defined term, and have expiration dates.

10. Big Rivers also competes in the wholesale power market to sell energy excess to its Members' needs at the highest possible price, which will produce the highest possible sales margin. By definition, that margin is the difference between its cost of the energy sold and the sales price of that energy. Big Rivers' ability to successfully compete in the wholesale power market is dependent upon a combination of its ability to get the maximum price for the power sold, and keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with other utilities is adversely affected.

11. These basic economic principals did not change because Big Rivers publicly disclosed the financial information it has filed in this proceeding. Big Rivers is currently and actively in competition with other utilities to sell energy in the wholesale market at the highest price. A potential buyer of energy from Big Rivers in the wholesale power market cannot take the information Big Rivers has filed in this case and predict the price at which Big Rivers will sell energy in any particular wholesale transaction. In any event, the ability of Big Rivers to reduce an expense that affects the cost of producing that energy can only make Big Rivers more competitive in its ability to obtain a sale of energy, and the best margin on a sale of energy in the wholesale power market.

12. Big Rivers is refileing the Letter Agreement with only the Bank of America lease total purchase price redacted, and refileing the section of the Blackburn Testimony, redacting only the total purchase price and the estimated value of the GIC, because other information contained in the Letter Agreement and the Blackburn Testimony has already been publicly disclosed. The redacted information in the refiled Letter Agreement and Blackburn Testimony has not been disclosed, and is the most sensitive information for which confidential treatment was sought in the petition for confidential treatment that Big Rivers filed on April 23, 2008. Using that information, Big Rivers' other lease equity party, Philip Morris Capital Corporation ("PMCC"), could determine the exact price at which Big Rivers is willing to buy out its lease. This is highly confidential information, particularly when Big Rivers is in the beginning stages of trying to resolve the effects of the financial rating downgrade of Ambac Assurance Corporation on the PMCC leveraged lease. One option to resolve that problem is for Big Rivers to buy out the PMCC lease as it did, with the assistance of E.ON U.S. LLC ("E.ON"), in the case of the Bank of America lease. Giving PMCC the exact price at which Big Rivers and E.ON were willing to agree to buy out the Bank of America lease would be fatal to any attempts by Big Rivers to better the those terms in a buyout of the PMCC lease. Any adverse financial impact of that disclosure on the terms on which Big Rivers might buy out the PMCC lease, will obviously be reflected in Big Rivers' costs, which in turn have a direct effect on its competitiveness in the wholesale power market, whether it is selling to its Members, to Kenergy Corp. for resale to the smelters, or to some other counterparty in the wholesale market. The total purchase price of the Bank of America lease, and the value of the GIC in that transaction are immaterial to Big Rivers' request for approval of the B of A Cost Share Letter Agreement made in this proceeding.

13. Based on discussions with the Creditors and other financial institutions and on my experience as Big Rivers' CFO and Vice President Power Supply, the Creditors and others in the financial industry would not favor public disclosure of the pricing and concessions that they agreed to because those contractual terms could then be used against them in future negotiations with other customers. The confidentiality of the Letter Agreement was a requirement for Bank of America to enter into that agreement, and it is a requirement for many other financial institutions to enter into similar agreements. Financial institutions often rely on the confidentiality of their agreements, and if they believed that the Commission would deny confidential treatment for their agreements with Big Rivers, and that those agreements would be publicly disclosed, it is likely that many of them would not enter into future agreements with Big Rivers. As such, public disclosure of the Confidential Information would likely reduce the pool of financial institutions willing to enter into agreements with Big Rivers, resulting in increased prices for Big Rivers and its members and less favorable contracts for Big Rivers.

14. Public disclosure of the Confidential Information would put other financial institutions in a position to determine which terms and conditions Big Rivers is willing to accept. Those financial institutions still willing to negotiate with Big Rivers would then have an important competitive advantage because they could use that information in future negotiations or proposals with Big Rivers. Financial institutions could use the amounts and terms agreed upon Big Rivers in the Letter Agreement and the Revolving Credit Agreements as a benchmark or starting point in their negotiations (since they would know Big Rivers is willing to accept them), which would likely lead to higher prices for Big Rivers and its members and less favorable agreements for Big Rivers. For an example, the Commission need only look to the Revolving Credit Agreements. The Revolving Credit Agreements have different terms. If each

of the banks in those agreements had known the terms Big Rivers had given the other, Big Rivers would have been terribly disadvantaged in its negotiations, and would certainly not have achieved terms as financially favorable as those reflected in the Revolving Credit Agreements.

15. Big Rivers competes in the wholesale power market, and as its costs rise (including financing costs), and with less favorable agreements, it is less competitive in that market. As such, public disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors.

C. William Blackburn

SUBSCRIBED AND SWORN TO before me by C. William Blackburn on this the ____ day of July, 2008.

Notary Public, Ky. State at Large
My Commission Expires _____

BANK OF AMERICA LETTER AGREEMENT

(REDACTED)

STRICTLY CONFIDENTIAL

April 18, 2008

Michael H. Cores
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420

Dear Sirs:

This letter (the "Letter Agreement") sets forth the agreement and mutual understanding between Bank of America Leasing Corporation (successor-in-interest to Fleet Real Estate, Inc.), a Delaware corporation (the "Owner Participant") and Big Rivers Electric Corporation, a Kentucky rural electric cooperative ("Big Rivers") to terminate (the "Termination") the two leverage lease transactions entered into in 2000 by Big Rivers, FBR-1 Statutory Trust, a Connecticut statutory trust, acting through U.S. Bank National Association, a national banking association organized under the laws of the United States, not in its individual capacity but solely as Trustee of a Connecticut statutory trust created by the Trust Agreement (FBR-1) ("FBR-1 Trust"), FBR-2 Statutory Trust, a Connecticut statutory trust, acting through U.S. Bank National Association, a national banking association organized under the laws of the United States, not in its individual capacity but solely as Trustee of a Connecticut statutory trust created by the Trust Agreement (FBR-2) ("FBR-2 Trust" and collectively with the FBR-1 Trust, the "Owner Trusts"), the Owner Participant, AME Investments, LLC and CoBank, ACB through the execution and delivery of two separate Participation Agreements, each dated as of April 1, 2000 (each a "Participation Agreement" and, collectively, the "Participation Agreements") and the other Operative Documents (as defined in the Participation Agreement), pursuant to which Big Rivers leased to each Owner Trust an undivided interest in the D.B. Wilson Unit No. 1 pursuant to two separate Head Leases, each dated as of April 1, 2000, between Big Rivers and an Owner Trust (each a "Head Lease" and, collectively, the "Head Leases") and then simultaneously leased-back each Undivided Interest (as defined in the respective Participation Agreement) from the respective Owner Trust pursuant to two separate Facility Leases, each dated as of April 1, 2000 (each a "Facility Lease" and, collectively, the "Facility Leases"). Capitalized terms used in this Letter Agreement which are not otherwise defined herein have the meanings assigned to them in Appendix A to the Participation Agreement.

1. Transaction; Purchase Price.

(a) Subject to the terms and conditions to be set forth in a definitive termination agreement (the "Termination Agreement") to be negotiated by the Owner Participant and Big Rivers, Big Rivers will purchase from each Owner Trust its

respective Undivided Interest for an aggregate purchase price of [REDACTED] [REDACTED] (the "Purchase Price").

(b) The Purchase Price will be payable on the Closing Date (as defined below) by Big Rivers to the Owner Participant in immediately available funds.

(c) Upon payment of the Purchase Price and subject to the terms and conditions of the Termination Agreement, on the Closing Date, the Owner Participant and Big Rivers have agreed that (i) each of the Owner Trusts will transfer to Big Rivers its Undivided Interest, on an "as-is, where-is" and "with all faults" basis and without any recourse, representations or warranty (except as to the absence of Facility Lessor's Liens and Owner Participant's Liens), (ii), Big Rivers shall assume all obligations and duties of the Head Lessee under each respective Head Lease, (iii) each Head Lease and each Facility Lease will be terminated and (iv) except as set forth in the Termination Agreement, all of the Operative Documents will be terminated. The Termination and the Purchase described in Section 1 of this Letter Agreement and the transactions contemplated hereby being referred to as the "Proposed Transaction".

2. Definitive Agreement.

(a) The Owner Participant and Big Rivers agree to promptly negotiate in good faith the terms and conditions of the Termination Agreement and related agreements (collectively, the "Termination Documents") necessary or advisable, in the discretion of each party, to consummate the termination of the Proposed Transaction.

(b) In addition to the terms and conditions contemplated by this Letter Agreement, the Termination Documents will be governed by New York law and will contain such terms, provisions, representations, warranties, indemnities, covenants and conditions as are customary in transactions of the type contemplated by this Letter Agreement and as otherwise satisfactory to Owner Participant in its sole discretion, including, without limitation, indemnity coverage by Big Rivers arising from or in connection with the Proposed Transaction and the execution, delivery, performance and non-performance of the Termination Documents.

(c) Each party hereto will use its best efforts to consummate the Proposed Transaction (the "Closing") no later than June __, 2008, unless otherwise agreed in a writing signed by the parties hereto (the "Closing Date").

3. Conditions to Execution of the Termination Agreement.

Notwithstanding the foregoing, the obligations of the Owner Participant to execute and deliver the Termination Agreement and consummate the Proposed Transaction are subject to the following conditions:

- (a) receipt by the Owner Participant of the Purchase Price;
- (b) receipt by the Owner Participant of all necessary internal approvals;

(c) the parties shall have received all third-party and governmental approvals and consents to the consummation of the Proposed Transaction; and

(d) the negotiation, execution and delivery of satisfactory Termination Documents.

4. Confidentiality. The parties agree that (a) no party to this Letter Agreement shall disclose in any way the existence of this Letter Agreement, any of its contents or any prior or contemporaneous discussions between the parties regarding the Proposed Transaction except to those officers, employees, directors, attorneys or accountants who need to know such information for the purpose of assisting such party in connection with the Proposed Transaction or except as may be required (upon advice of counsel) to be in compliance with applicable law; (b) each party shall consult with the other party before making any disclosure which may be so required; and (c) each party will use its commercially reasonable efforts to cause all persons (including any affiliates) to whom any such information is disclosed not to disclose any of such information to others in violation of the foregoing restrictions. No party will make any public announcement concerning this Letter Agreement or the Proposed Transaction without the consent of the other parties.

5. Governing Law; Jury Trial. (a) This Letter Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of New York, without regard to conflict of laws principles. Each party agrees that it will not bring any action relating to this Letter Agreement or the Proposed Transaction in any court other than the United States Federal District Court in New York or state court sitting in New York County, that it will submit to the jurisdiction of such court, and that it will not seek to change the venue of such action.

(b) EACH PARTY HEREBY UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS LETTER AGREEMENT, ANY OTHER TERMINATION DOCUMENT, ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS LETTER AGREEMENT OR ANY OTHER TERMINATION DOCUMENT, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BY THE PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE AND MAY NOT BE MODIFIED ORALLY OR IN WRITING, AND SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS AND MODIFICATIONS TO THIS LETTER AGREEMENT. IN THE EVENT OF LITIGATION, THIS LETTER AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.

6. Fees and Expenses. Whether or not the transactions contemplated by this Letter Agreement or the Termination Agreement are consummated, Big Rivers shall promptly pay all of the fees and expenses incurred in connection with the negotiation,

execution and delivery of this Letter Agreement and the Termination Documents and the transactions contemplated hereby and thereby, including, without limitation, the fees and expenses of the Owner Participant (including, without limitation, its counsel), any party to the Termination Agreement, any other transaction party or any other third party.

7. Entire Agreement. This Letter Agreement, including the schedule hereto, represents the entire agreement of the parties hereto and supersedes all prior agreements and understandings of the parties with respect to the subject matter covered hereby.

8. Counterparts. This Letter Agreement may be executed by facsimile and may be executed contemporaneously in two or more identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9. Termination, Survival. This Letter Agreement will terminate upon the date of execution and delivery of the Termination Agreement by the parties hereto. Upon termination in accordance with this paragraph, all obligations of the parties (other than those obligations provided for in paragraphs 4, 5 and 6 that are by their nature continuing) shall terminate as of such date.

10. Non-Binding Letter of Intent. This Letter of Intent is a statement of intent only and, except for the provisions of paragraphs 4, 5 and 6, hereof, does not constitute a binding legal commitment of the parties; provided, however, that the parties each agree to use their best efforts to proceed towards consummation of the Proposed Transaction and the other transactions contemplated in the Termination Agreement.

[SIGNATURE PAGE FOLLOWS]

April 18, 2008

Page 5

Please indicate your agreement with the terms of this Letter Agreement by signing in the space provided below and returning the signed Letter Agreement to us.

Very truly yours,

**BANK OF AMERICA LEASING
CORPORATION**

By: _____
Name:
Title:

**Acknowledged, Accepted and Agreed
as of this ____ day of April, 2008:**

BIG RIVERS ELECTRIC CORPORATION

By: _____
Name:
Title:

**SELECTED PAGES OF THE SUPPLEMENTAL TESTIMONY OF C. WILLIAM
BLACKBURN**

(REDACTED)

1 letter,” which will document the consent fee negotiated with the Ambac
2 entities for giving their consent to the transaction. Big Rivers anticipates
3 that the Ambac consent fee will be no more than \$2.5 million.
4

5 Q. Please explain the agreement to terminate the B of A lease interests for
6 which Big Rivers is seeking Commission approval at this time?
7

8 A. Yes. B of A holds lease interests under the existing Lease Transaction that
9 Big Rivers has agreed to terminate on the terms stated in the letter
10 agreement attached as Exhibit 67. The terms for termination of the B of A
11 lease interests, which will be eventually translated into a definitive
12 termination agreement, are highly confidential, and are subject to a pending
13 petition for confidential treatment, so the balance of the response to this
14 question will be redacted in the public version of my testimony, along with
15 the entirety of Exhibit 67. Big Rivers seeks Commission approval to
16 terminate these lease interests, the creation of which was approved by the
17 Commission in 2000 as noted above.
18

19 The only obligation Big Rivers will ultimately have under the terms of the
20 letter agreement with B of A is to pay its share of the “purchase price.” The
21 total purchase price of [REDACTED] will be paid with a combination of the
22 proceeds from the leveraged lease guaranteed investment contract (“GIC”), \$1

1 million from Big Rivers, \$1 million from the Smelters, and the balance from
2 one of the E.ON entities. The GIC is currently valued at [REDACTED]

3
4 Q. Please describe the nature and purpose of the Creditor Consent, Termination
5 and Release Agreement attached as Exhibit 68.

6
7 A. The Creditor Consent, Termination and Release Agreement (the "Creditor
8 Consent Agreement") is described in detail in paragraph 20 on page 9 of the
9 First Amendment. As stated in that description, Big Rivers seeks
10 Commission approval of that Agreement.

11
12 Q. Are there other agreements for which Big Rivers seeks Commission approval
13 in the Application?

14
15 A. Yes. Big Rivers seeks Commission approval to issue the First Amendment to
16 ISDA Master Agreement (PBR-1), the First Amendment to ISDA Master
17 Agreement (PBR-2) and the First Amendment to ISDA Master Agreement
18 (PBR-3), which are identified as the "Big Rivers Swaps." Because each of
19 these documents is identical except for the trust that is a party, Big Rivers
20 provides only a copy of First Amendment to ISDA Master Agreement (PBR-1)
21 as Exhibit 69 to the Application. Big Rivers does not seek Commission
22 approval to issue amendments to the "Qualifying Swaps," which are First