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June 26, 2009

RECEIVED

JUN 29 2009

PUBLIC SERVICE  
COMMISSION

**VIA EXPEDITED COURIER and EMAIL**

Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

**RE: 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

Dear Mr. DeRouen:

The purpose of this letter is to submit the enclosed documents for the information of the Commission and to request the Commission Staff to schedule an informal conference in this proceeding for Thursday, July 2, 2009 at 1:00 p.m. E.S.T at the offices of the Commission. E.ON U.S LLC. will circulate by email to the parties a conference call phone number.

E.ON U.S. LLC encloses the following documents:

1. Escrow Agreement between Alcan, Century and Escrow Agent (revised to accommodate the contingent and delayed funding of the Century Fuel Subaccount and to eliminate the Century Reserve Subaccount A).
2. Backstop Commodity Swap Transaction Confirmation and ISDA Master Agreement between E.ON U.S. and Century Aluminum of Kentucky (This agreement addresses Century's concerns by providing for (i) backstop payments to Century in the event certain costs are not covered by the proceeds of sales, if any, with respect to certain volumes curtailed by Century, and (ii) payment to Century of Aluminum Production Credits to the extent Century consumes electric energy in the production of aluminum).

3. Guarantee by Century Aluminum Company in favor of E.ON US LLC. (Parent Guarantee of Century Aluminum of the obligations of Century Aluminum of Kentucky under the Backstop Commodity Swap Transaction Confirmation described in item No. 2 above and under the Letter of Credit Reimbursement Agreement described in item No. 5 below).
4. Letter Agreement between Alcan, Century and E.ON U.S. (This letter amends the Memorandum of Understanding by eliminating the funding at Closing of the Century Fuel Subaccount, to capture the contingent, deferred funding by E.ON U.S. of the Century Fuel Subaccount, and to capture the contingent funding by E.ON U.S. of the \$4.25 million into the Alcan Fuel Subaccount)
5. Letter Agreement between Alcan, Century and Western Kentucky Energy Corp. (This letter amends the November 2007 Closing Date Payment Agreement to eliminate the closing date payment to Century).
6. Letter from E.ON U.S. LLC to Big Rivers Electric Corporation setting forth the arrangement regarding the Hart-Scott-Rodino filing fees.
7. Southwire Company consent to Unwind transaction.

The first five documents are still under review by the parties and Big Rivers. Big Rivers may require changes to these documents to make them conform with the agreements to resolve Century's credit issues. Information previously afforded confidential protection by the Commission in this case has been redacted from the public version of the documents. The confidential version of the documents will be filed under separate cover on Monday, June 29, 2009.

In addition, as discussed at the June 16, 2009 Informal Conference, E.ON U.S. LLC has agreed to provide half (up to a maximum of \$15 million) in credit support for Century's credit support arrangement with Big Rivers Electric Corporation. The credit support will be consistent with the terms of the proposed power supply agreement in this case. The details for this credit support arrangement are in the process of being arranged. The documents will be filed with the Commission as soon as they are available.

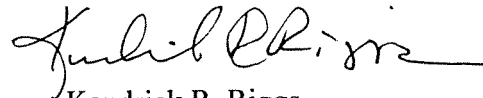
E.ON U.S. and Big Rivers Electric Corporation continue to target July 8, 2009 as the closing date for the transaction.

Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Jeff DeRouen  
June 26, 2009  
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Should you have any questions please contact me at your convenience.

Yours very truly,



Kendrick R. Riggs

KRR:ec  
Enclosures  
cc: Parties of Record

**ATTACHMENT 1**

**Escrow Agreement (Revised) between Alcan, Century  
and Escrow Agent**

## ESCROW AGREEMENT

This ESCROW AGREEMENT (as amended from time to time, this "Agreement") is made as of \_\_\_\_\_, 2009 ("Effective Date"), by ALCAN PRIMARY PRODUCTS CORPORATION, a Texas corporation ("Alcan"), CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership ("Century") (collectively, the "Smelters" and each, individually, a "Smelter"), and [\_\_\_\_\_] (the "Escrow Agent"). *[DRAFTING NOTE: The final form of Escrow Agreement will need to be approved by the Escrow Agent.]*

### **Background**

A. This Agreement is entered into in connection with the closing ("Closing") of certain transactions contemplated by (i) the Transaction Termination Agreement originally dated as of March 26, 2007 and thereafter amended (as amended, the "Termination Agreement"), among Big Rivers Electric Corporation, a Kentucky corporation ("Big Rivers"), and certain affiliates of E.ON U.S. LLC, a Kentucky limited liability company ("E.ON") and (ii) certain agreements for electric service by and between the Smelters on the one hand and Big Rivers and Kenergy Corp., a Kentucky retail cooperative corporation ("Kenergy") on the other hand (collectively, the "Unwind Transaction").

B. As part of the Unwind Transaction, Alcan and Century are entering into various agreements, dated as of the date hereof, including the Alcan Retail Agreement (as defined in the Termination Agreement) and the Century Retail Agreement (as defined in the Termination Agreement) (the "Smelter Retail Agreements").

C. This Agreement provides for the establishment of the Smelter Escrow contemplated in the Memorandum of Understanding dated June 23, 2008, among E.ON U.S. LLC ("E.ON"), Alcan and Century, as amended by the letter agreement regarding "Escrow Funding Arrangements" dated \_\_\_\_\_, 2009, among E.ON, Alcan and Century (collectively, the "MOU"), and is the Escrow Agreement contemplated in that letter agreement (the "Letter Agreement").

D. The execution and delivery of this Agreement is one of the conditions to the Closing, and the parties wish to enter into this Agreement on the terms and conditions set forth herein.

### **Agreement**

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

**1. Appointment of Escrow Agent; Escrow Account and Subaccounts.**

(a) **Appointment of Escrow Agent.** The Smelters hereby appoint the Escrow Agent as escrow agent under this Agreement, and the Escrow Agent hereby accepts such appointment.

(b) **Escrow Funds and Escrow Account.** The Escrow Agent has established a [securities account] [custodian account] [deposit account] as described on Exhibit A hereto (the “Escrow Account”), and shall administer, hold, invest and disburse all funds deposited in, and financial assets credited to, the Escrow Account at any time (collectively, the “Escrow Funds”) solely in accordance with the terms of this Agreement. The Escrow Agent has no interest in the Escrow Funds or Escrow Account and has no right of setoff, deduction, banker’s lien, or any other right in favor of the Escrow Agent or any other person in respect of the Escrow Account, any Subaccounts or any of the Escrow Funds, except as provided in Section 7 hereof. *[DRAFTING NOTE: The Escrow Account should be a securities account, subject to confirmation by the Escrow Agent. The nature and structure of the account(s) depend in part on the internal procedures of the bank maintaining the account(s). This Section and other Sections may need to be modified accordingly.]*

(c) **Subaccounts.** The Escrow Account shall include four sub-accounts (“Subaccounts”): (i) a fuel subaccount for the benefit of Century (the “Century Fuel Subaccount”), (ii) a fuel subaccount for the benefit of Alcan (the “Alcan Fuel Subaccount”), (iii) a reserve subaccount for the benefit of Alcan (the “Alcan Reserve Subaccount A”), and (iv) a second reserve subaccount for the benefit of Alcan (the “Alcan Reserve Subaccount B”), as described herein. The Escrow Agent shall maintain separate accounting for each Subaccount.

(d) **Escrow Agent’s Duties.** The Escrow Agent’s duties under this Agreement are limited solely to the holding and disbursement of the Escrow Funds as provided herein, the giving of notices as provided herein and such other duties as are specifically set forth herein. The Escrow Agent shall not have any duties or obligations not expressly set forth herein. The Escrow Agent shall not be bound in any way by the Smelter Agreements, the Termination Agreement or any other agreement between or among any of the Smelters, Big Rivers, E.ON, its affiliates, or any other parties. Escrow Funds shall be disbursed as provided in Sections 3 and 4 below, in accordance with wiring instructions delivered to the Escrow Agent from time to time.

## 2. **Escrow Funds.**

(a) **Initial Funding.** Contemporaneously with the Closing, E.ON or an affiliate has delivered to the Escrow Agent, by wire transfers of immediately available funds, for deposit into the Escrow Account, the aggregate amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), consisting of \$ \_\_\_\_\_ delivered as provided in the MOU, and \$ \_\_\_\_\_ delivered as provided in Section 2 of the Letter Agreement. The Escrow Agent hereby acknowledges receipt of the Escrow Funds. The initial Escrow Funds shall be allocated as follows: (i) \$ \_\_\_\_\_ to the Alcan Fuel Subaccount, (ii) \$ \_\_\_\_\_ to the Alcan Reserve Subaccount A and (v) \$15,000,000.00 to the Alcan Reserve Subaccount B. None of these amounts shall be allocated to the Century Fuel Subaccount. The Smelters may reallocate the Escrow Funds as between the Alcan Fuel Subaccount and the Century Fuel Subaccount (the “Fuel Subaccounts”) at any time by joint written instruction to the Escrow Agent identifying the amounts to be reallocated and the affected Subaccounts.

(b) **Future Funding of Century Fuel Account.** After the Effective Date, pursuant to separate agreements between E.ON and Century, any of E.ON, Century or their respective

affiliates may deliver to the Escrow Agent additional funds designated for deposit into the Century Fuel Reserve. In such event, the Escrow Agent shall accept those amounts for deposit into the Escrow Account, shall acknowledge in writing to E.ON and the Smelters that it has received such funds, and shall allocate all such amounts solely to the Century Fuel Subaccount.

(c) Future Funding of Alcan Fuel Account. After the Effective Date, pursuant to separate agreements between E.ON and Alcan, any of E.ON, Alcan or their respective affiliates may deliver to the Escrow Agent additional funds designated for deposit into the Alcan Fuel Reserve. In such event, the Escrow Agent shall accept those amounts for deposit into the Escrow Account, shall acknowledge in writing to E.ON and the Smelters that it has received such funds, and shall allocate all such amounts solely to the Alcan Fuel Subaccount.

### **3. Disbursement of Escrow Funds from Fuel Subaccounts.**

(a) Monthly Disbursements from Fuel Subaccounts to Smelters. Either Smelter may instruct the Escrow Agent to disburse funds from its Fuel Subaccount from time to time by submitting to the Escrow Agent a Disbursement Instruction substantially in the form of *Exhibit B* hereto (“Disbursement Instruction”), stating the amount of Escrow Funds to be disbursed and the disbursement date (“Disbursement Date”). Upon receipt of a Disbursement Instruction from a Smelter, the Escrow Agent shall promptly disburse the designated amount of Escrow Funds (or as much of such designated amount as may then be available in the applicable Fuel Subaccount) to the Smelter signing the Disbursement Instruction on the Disbursement Date. Neither Smelter shall issue Disbursement Instructions for any amount in excess of the amount held in such Smelter’s Fuel Subaccount on the date such Disbursement Instructions are issued.

(b) Disbursement of Fuel Subaccount Upon a Smelter’s Withdrawal. If either Smelter (a “Withdrawing Smelter”) delivers a “Notice of Termination for Closure” (as defined in its Retail Agreement), the Withdrawing Smelter shall deliver to the Escrow Agent and the other Smelter a written notice substantially in the form of *Exhibit C* hereto (“Withdrawal Notice”). On the date (the “Final Date”) that is the sixtieth (60<sup>th</sup>) calendar day after the “Termination Date” stated in the Withdrawal Notice, the Escrow Agent shall transfer all funds then held in all Subaccounts of the Withdrawing Smelter to the Fuel Subaccount of the other Smelter, and close the Subaccounts of the Withdrawing Smelter. Until such Final Date, the Escrow Agent shall continue to make disbursements as otherwise provided herein. After the Withdrawing Smelter’s Subaccounts are closed, the Withdrawing Smelter shall no longer be a party to this Agreement or have any rights or obligations under this Agreement, and all references in this Agreement to both Smelters shall be deemed to refer to the remaining Smelter only.

(c) Disbursement of Fuel Subaccounts Upon Termination of Escrow Agreement. If the Escrow Agent has received Withdrawal Notices from both Smelters, this Agreement shall terminate on the Final Date for the second Withdrawal Notice. Upon termination, the Escrow Agent shall promptly disburse all Escrow Funds in the Fuel Subaccounts to the remaining Smelter.

(d) Disbursement of Fuel Subaccounts Upon Expiration. This Agreement shall expire on December 31, 2018, if not earlier terminated as provided herein. Upon such expiration,

the Escrow Agent shall promptly disburse all Escrow Funds in each Fuel Subaccount to the applicable Smelter.

**4. Disbursements from Other Subaccounts.**

(a) Alcan Reserve Subaccount A. On the date that is six (6) months from the Effective Date, the Escrow Agent shall disburse all the Escrow Funds in the Alcan Reserve Subaccount A to Alcan (including all accrued interest, to be disbursed as soon as practicable). If the Escrow Agent receives a Withdrawal Notice from Alcan during the six (6) month period, the Escrow Agent shall disburse all Escrow Funds in the Alcan Reserve Subaccount A on the day after the Termination Date to the Northwest Kentucky Forward Economic Development Authority. *[Wire Instructions to be provided]*

(b) Alcan Reserve Subaccount B. The Escrow Agent shall disburse Escrow Funds in the Alcan Reserve Subaccount B to Alcan as follows, as long as no Withdrawal Notice has been received from Alcan:

(i) Five Million Dollars (\$5,000,000.00) on the date that is six (6) months from the Effective Date;

(ii) Five Million Dollars (\$5,000,000.00) on the date that is eighteen (18) months from the Effective Date;

(iii) Five Million Dollars (\$5,000,000.00), plus all accrued interest (to be disbursed as soon as practicable), on the date that is thirty (30) months from the Effective Date.

If the Escrow Agent receives a Withdrawal Notice from Alcan and has not previously received a Withdrawal Notice from Century, the Escrow Agent shall transfer all Escrow Funds in the Alcan Reserve Subaccount B on the day after the Alcan Termination Date to the Century Fuel Subaccount in the same manner as provided in Section 3(b) above. If the Escrow Agent has previously received a Withdrawal Notice from Century, the Escrow Agent shall disburse all Escrow Funds in the Alcan Reserve Subaccount B on the day after the Alcan Termination Date to Alcan, in the same manner as provided in Section 3(c) above.

**5. Investment of Escrow Funds.**

(a) With respect to each Subaccount, the applicable Smelter will be the “entitlement holder,” the Escrow Agent will be the “securities intermediary,” the Escrow Agent will treat the applicable Smelter as entitled to exercise the rights that comprise the financial assets credited to the Subaccount. The Escrow Agent shall invest the Escrow Funds in a Subaccount only as directed by the applicable Smelter in writing, and only in the types of financial assets described on Exhibit D hereto (“Permitted Investments”).

(b) The Escrow Agent shall have no duty to assess the risks inherent in the investment of the Escrow Funds or to provide investment advice with respect to such investments and each Smelter shall bear any risks attendant to such investments. The Escrow Agent shall have no responsibility as to the validity, collectability or value of the Escrow Funds



or for any related investment losses, as long as the Escrow Funds have been invested in Permitted Investments.

6. **Earnings.** Any and all interest, dividends and other earnings on the funds in each Subaccount of the Escrow Account at any time shall become part of the Escrow Funds in such Subaccount and shall be reinvested and distributed in accordance with this Agreement. The Escrow Agent will not be responsible for tax reporting for the interest earned or for any other tax reporting duty associated with the Escrow Account.

7. **Escrow Agent Fees and Expenses.** The Escrow Agent shall be entitled to be paid a fee for its services as provided on the Fee Schedule attached hereto as *Exhibit E*. Each Smelter agrees to pay its proportionate amount of such fees to the Escrow Agent promptly after being invoiced. Each Smelter's proportionate amount at any time will be equal to the ratio between the amount of the Escrow Funds in its Subaccounts and the aggregate amount of all the Escrow Funds (assuming that the Escrow Agent does not charge any initial set-up fees). The Escrow Agent may debit each Smelter's Fuel Subaccount for its portion of such fees, to the extent that sufficient funds are then available in such Subaccount. The Escrow Agent shall also be entitled to reimbursement from the Smelters, upon request, for reasonable expenses, including reasonable attorneys' fees and expenses, incurred by it in the performance of its duties under this Agreement, which shall be paid in the same manner as the Escrow Agent's fees. The Escrow Agent will notify both Smelters in writing before debiting the Escrow Account for any such expenses or fees.

8. **Reporting.** The Escrow Agent shall deliver to the Smelters monthly reports of the activity in the Escrow Account during the prior month.

9. **Security Interests.**

(a) The Smelters and the Escrow Agent acknowledge and agree that (i) contemporaneously with the execution of this Agreement, each Smelter is entering into a security agreement ("Security Agreement"), granting to *[Big Rivers] [Kenergy] [to be determined]* ("Secured Party") a security interest in such Smelters' present and future rights under this Agreement, including its rights in and to the Escrow Account, the Escrow Funds and its Subaccounts, (ii) contemporaneously with the execution of this Agreement, the Secured Party, the Escrow Agent and the Smelters are entering into a control agreement ("Control Agreement") with respect to the Escrow Account, (iii) the Security Agreement and the Control Agreement (the "Collateral Documents") permit the Secured Party, on the terms and conditions set forth therein, to provide notices (each, a "Threshold Notice") to the Escrow Agent, restricting the extent to which Escrow Funds may be disbursed under this Agreement.

(b) The Escrow Agent agrees to enter into additional collateral documents, including any consents or acknowledgements relating to the Collateral Documents, as either Big Rivers or Kenergy may reasonably request in connection with the creation, documentation, perfection or enforcement of any such security interest.

(c) Notwithstanding anything else herein to the contrary, (i) neither Smelter may instruct the Escrow Agent to disburse any Escrow Funds to it, pursuant to Section 3, 4 or 6

hereof or otherwise, and (ii) the Escrow Agent will not disburse any Escrow Funds to a Smelter or transfer funds from a Subaccount of one Smelter to a Subaccount of the other Smelter, if in either case the aggregate amount of Escrow Funds remaining in such Smelter's Subaccounts after any such disbursement would be less than the amount set forth in the most recent Threshold Notice provided to the Escrow Agent.

(d) In the event of a conflict between the terms of this Agreement and the terms of the Control Agreement regarding the right of a Smelter to request or receive any disbursement hereunder or the obligations of the Escrow Agent to honor or make any requested disbursement, the terms of the Control Agreement shall control.

***[NOTE: The final form of Control Agreement is subject to approval by the Escrow Agent.]***

**10. Dispute Resolution.**

(a) **Disagreements and Adverse Claims.** In the event of any disagreement or conflicting claims between the Smelters, or in the event any other person claims an interest in the Escrow Funds, and such disagreement or claim results in adverse claims and demands being made to or for any of the Escrow Funds, the Escrow Agent may, at its option, refuse to comply with the instructions or demands of the Smelters as long as such disagreement continues. In such event, the Escrow Agent may continue to refrain from acting and to refuse to act under this Agreement, unless and until (i) the rights of such parties have been finally settled by binding arbitration or duly adjudicated in a court having jurisdiction of the parties; or (ii) the parties have reached an agreement resolving their differences, have notified the Escrow Agent in writing of such agreement, and have provided the Escrow Agent with indemnity satisfactory to the Escrow Agent against any liability, claims or damages resulting from its compliance with such agreement. The Escrow Agent shall not be liable to the Smelters or any other person for its failure or refusal to comply with the conflicting or adverse demands of the Smelters or of any other persons claiming an interest in the Escrow Funds.

(b) **Interpleader.** In addition to the foregoing, in the event of any such disagreement or adverse claim or demand to or for the Escrow Funds, the Escrow Agent may, at its option, tender into the registry or custody of any state or federal court sitting in the Commonwealth of Kentucky, any or all of the Escrow Funds or interplead the conflicting claims of the Smelters. Upon any such tender, the parties agree that the Escrow Agent shall be discharged from all further duties under this Agreement, but the filing of any such legal proceedings shall not deprive the Escrow Agent of its compensation earned under this Agreement prior to such filing.

(c) **Notice of Claims.** The Escrow Agent shall promptly send written notice to both Smelters if it receives any adverse claims or demands with respect to the Escrow Account or the Escrow Funds.

**11. Escrow Agent's Limited Duties.**

(a) **Limited Liability.** The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any Disbursement Instruction or other written notice, instruction or request furnished to it under this Agreement by the Smelters. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such

document. The Escrow Agent may execute any of its powers and perform any of its duties under this Agreement directly or through agents or attorneys (and shall be liable only for its reasonable care in the selection of any such agent or attorney) and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for events or persons beyond its reasonable control. Except to the extent caused by the Escrow Agent's own bad faith, gross negligence or willful misconduct, the Escrow Agent shall not be liable for special, indirect or consequential loss or damages of any kind whatsoever (including lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage, and regardless of the form of action.

(b) **Legal Action.** The Escrow Agent shall have no obligation to take any legal action in connection with this Agreement or towards its enforcement, or to appear in, prosecute or defend any action or legal proceeding that would or might involve it in any cost, expense, loss or liability unless security and indemnity, is furnished as provided in this Agreement.

(c) **Reliance.** The Escrow Agent shall be entitled to rely conclusively upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it in connection with this Agreement without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. For all purposes under this Agreement, the Escrow Agent may act in reliance upon any instrument or signature reasonably believed by it to be genuine and may assume that any person signing such instrument or purporting to give any notice under this Agreement has been duly authorized to do so.

**12. Indemnification.** The Smelters jointly and severally agree to indemnify and hold the Escrow Agent harmless from and against any and all taxes, expenses (including reasonable attorneys' fees), assessments, liabilities, claims, damages, actions, suits or other charges incurred by or assessed against it for anything done or omitted by it in the performance of its duties under this Agreement, except as a result of its own bad faith, gross negligence or willful misconduct. This Section shall survive any termination of the duties of the Escrow Agent under this Agreement. The Smelters reserve their respective rights to seek contribution, reimbursement or other repayment from each other upon any indemnification payment.

**13. Successor Escrow Agents.**

(a) **Resignation of Escrow Agent.** The Escrow Agent may resign as escrow agent by giving sixty (60) days prior written notice to the other parties hereto (the "Resignation Notice"). If, prior to the expiration of sixty (60) days after the delivery of the Resignation Notice, the Escrow Agent shall not have received joint written instructions from the Smelters designating a successor escrow agent (which successor escrow agent shall be a banking corporation or trust company organized under the laws of the United States or any state thereof having a minimum equity of \$250,000,000.00) and accepted in writing by such successor escrow agent, the Escrow Agent may apply to a court of competent jurisdiction to appoint a successor escrow agent. Alternatively, if the Escrow Agent shall have received such written instructions, it shall promptly deliver the Escrow Funds to such successor escrow agent. Upon the appointment of a successor escrow agent and the delivery of the Escrow Funds thereto, the duties of the original Escrow Agent under this Agreement shall terminate and the successor escrow agent

shall thereafter be the “Escrow Agent” under this Agreement. The resignation of the Escrow Agent shall become effective only upon the acceptance of appointment by the successor Escrow Agent. The Escrow Agent shall have no responsibility to appoint a successor Escrow Agent under this Agreement.

(b) **Replacement of Escrow Agent.** The Smelters may, by mutual agreement at any time, remove the Escrow Agent as escrow agent under this Agreement, and substitute a bank or trust company as successor escrow agent, in which event, upon receipt of written notice thereof from both Smelters, and payment of the Escrow Agent’s fees in accordance with Section 7 hereof, the Escrow Agent shall deliver to such substituted escrow agent the Escrow Funds held by it. Upon such delivery, the duties of the original Escrow Agent under this Agreement shall terminate and the successor escrow agent shall thereafter be the “Escrow Agent” under this Agreement.

(c) **Successors to Escrow Agent.** Any banking association or corporation into which the Escrow Agent may be merged or converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent may be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent may be transferred, will succeed to all the Escrow Agent’s rights, obligations and immunities under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto. If the Escrow Agent is dissolved, or if its property or affairs is taken under the control of any state or federal court or administrative body or agency because of insolvency or bankruptcy or for any other reason, a vacancy shall automatically exist in the office of Escrow Agent, and within a period of thirty (30) days thereafter, the Smelters shall jointly appoint a successor escrow agent as provided above.

(d) **Escrow Agent in Individual Capacity.** In its individual capacity, the bank acting as Escrow Agent hereunder may accept deposits from, lend money to, and generally engage in any kind of business with the Smelters as if it were not the Escrow Agent hereunder.

**14. Representations.** Each party to this Agreement represents to the other parties that its execution, delivery and performance of this Agreement has been duly authorized by all appropriate action, the individual execution and delivering this Agreement on its behalf has been duly and properly empowered to do so, and this Agreement does not violate any other agreement to which it is a party or by which it is bound.

**15. Notices.** All notices and communications required under this Agreement shall be in writing (including communication by facsimile transmission) and shall be personally delivered, or sent by registered or certified mail return receipt requested, by overnight courier service maintaining records of receipt, or by facsimile transmission with confirmation in writing mailed first-class, in all cases with charges prepaid. All notices shall be effective and shall be deemed delivered (i) if by personal delivery or facsimile transmission, on the date of delivery or transmission if delivered or transmitted during normal business hours of the recipient, and if not delivered or transmitted during such normal business hours, on the next business day; (ii) if by courier service, on the first business day after dispatch thereof; and (iii) if by mail, on the third (3d) business day after being mailed. All notices shall be addressed to the parties at the

following addresses. Any party may change its address by notice to all parties in accordance with this Section.

If to Century: Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Facsimile: (270) 852-2882

If to Alcan: Sebree Smelter  
Alcan Primary Products Corporation  
9404 State Route 2096  
Henderson, Kentucky 42452-9735  
Facsimile: \_\_\_\_\_  
Attn: Plant Manager

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

If to Escrow Agent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**16. Assignment.** None of the parties may assign its rights under this Agreement, or assign or delegate its obligations hereunder, without the other parties' prior written consent, except that either Smelter may assign its rights, or assign or delegate its obligations hereunder (i) as provided in Section 10 hereof, and/or (ii) to an assignee permitted under Section 16.1 or 16.2 of its Retail Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

**17. Rules of Interpretation.** The following rules apply to the interpretation of this Agreement, in each case unless the particular context expressly requires otherwise:

(a) The term "business day" means any day other than a Saturday, Sunday or day on which commercial banks in Kentucky are authorized or required by applicable law to remain closed.

(b) The term "person" means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization, government, or any agency or political subdivision thereof, or any other form of organization.

(c) The terms “includes” and “including” and similar words are inclusive and not exclusive terms, and are not intended to create any limitation.

(d) All defined terms apply to both singular and plural forms, and all references to any gender include all other genders.

(e) The captions in this Agreement are for convenience only, and do not limit or amplify the provisions hereof.

(f) All exhibits, attachments, appendices and schedules attached hereto are by reference made a part of this Agreement.

(g) All defined terms and references as to any agreements, notes, instruments, certificates or other documents shall be deemed to refer to such documents as they may from time to time be amended, modified, renewed, extended, replaced, restated, supplemented or substituted.

(h) Unless otherwise provided, all references to statutes and related regulations shall include any amendments and successor statutes and regulations.

(i) The term “UCC” means the Uniform Commercial Code as in effect on the date hereof in the Commonwealth of Kentucky, and terms that are defined in Article 8 or Article 9 of the UCC shall have the same meanings herein, unless the context otherwise requires.

**18. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, such provision shall be automatically replaced by other provisions that are as similar as possible in terms to such provision but are valid and enforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

**19. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflict of laws rules. The Commonwealth of Kentucky shall be the securities intermediary’s jurisdiction for purposes of Article 8 of the UCC.

**20. Amendments and Waivers.** This Agreement may not be modified, supplemented or amended except in writing signed by the parties, and none of its provisions may be waived except in writing signed by the party whose rights are waived. No waivers shall be implied, whether from any custom or course of dealing or any delay or failure in a party’s exercise of its rights and remedies under this Agreement or otherwise. Any waiver granted by a party shall not obligate the party to grant any further, similar, or other waivers, or constitute a continuing waiver unless expressly stated.

**21. Third Party Beneficiaries. [UNDER DISCUSSION]**

**22. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to constitute an original, but all of which shall constitute one and

the same instrument, and shall become effective when counterparts have been signed by each of the parties hereto.

23. **Entire Agreement.** This Agreement, including all exhibits attached hereto, constitutes the entire agreement of the parties hereto with respect to the matters set forth herein and supersedes all prior verbal and written agreements or understandings pertaining to such matters.

*[SIGNATURE PAGES TO FOLLOW]*

Signature Page to Escrow Agreement

The parties have executed this Escrow Agreement as of \_\_\_\_\_, 2009.

Alcan:

**ALCAN PRIMARY PRODUCTS  
CORPORATION**

By: \_\_\_\_\_

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

Century:

**CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP**

By: METALSCO, LLC, General Partner

By: \_\_\_\_\_

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

Escrow Agent:

**PNC BANK, N.A.**

By: \_\_\_\_\_

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



**Acknowledgment and Consent**

Subject to the provisions of the MOU and the Letter Agreement, E.ON hereby acknowledges and consents to the foregoing Escrow Agreement. E.ON agrees and confirms that neither E.ON nor any of its affiliates has any further right, title or interest in or to any of the funds delivered by E.ON to the Escrow Agent for credit to or deposit into the Escrow Account.

**E.ON U.S. LLC**

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

**Exhibit A to Escrow Agreement**

**ESCROW ACCOUNT**

**[To be completed with description of type of account(s), account number(s), account name designation(s) and name of bank, as applicable]**

**EXAMPLE:**

Type Of Account: [Custodian Account] [Securities Account]

Bank: \_\_\_\_\_

Bank Customer(s): Alcan Primary Products Corporation

Century Aluminum of Kentucky General Partnership

Account Name: [Escrow Account F/B/O Alcan Primary Products Corporation and Century Aluminum of Kentucky General Partnership]

Account Number: \_\_\_\_\_

**Exhibit B to Escrow Agreement**

**FORM OF DISBURSEMENT INSTRUCTION**

Date of Request: \_\_\_\_\_

Disbursement Amount: \_\_\_\_\_

Disbursement Date: \_\_\_\_\_

This Disbursement Instruction is submitted to \_\_\_\_\_ (“Escrow Agent”), by [Alcan Primary Products Corporation, a Texas corporation (“Alcan”)] [Century Aluminum Of Kentucky General Partnership, a Kentucky general partnership (“Century”)] pursuant to the Escrow Agreement dated \_\_\_\_\_, 2009 (as amended, the “Escrow Agreement”) among Alcan, Century and Escrow Agent. Capitalized terms used herein without definition have the same meanings as in the Escrow Agreement or in the [Alcan] [Century] Retail Agreement, as applicable.

[Alcan] [Century] certifies that (i) it is entitled to withdraw the disbursement amount from the Escrow Account, based on the following calculation, and (ii) such withdrawal does not violate the Collateral Documents or any Threshold Notice:

	Billing Month and Year *	_____
	Actual FAC Factor for Billing Month:	_____
(a)	Excess of Actual FAC Factor over Index Factor in table below:	_____
(b)	Total Monthly Energy:	_____
<b>Disbursement Amount</b>	<b>(a) x (b):</b>	_____

**\* Disbursement Instruction issued by Century are limited to Billing Months occurring after December 31, 2010.**

<u>Year</u>	<u>Index Factor per MWH Sales</u>	<u>Year</u>	<u>Index Factor per MWH Sales</u>
2009	5.84	2016	9.41
2010	7.05	2017	9.45
2011	7.60	2018	9.75
2012	7.81	2019	9.64
2013	8.31		
2014	8.99		
2015	9.01		

Payment instructions are as follows:

[Alcan / Century] : Account No. \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Bank No. \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
Reference: \_\_\_\_\_

*[Alcan Signature] or [Century Signature]*

**Exhibit C to Escrow Agreement**

**FORM OF WITHDRAWAL NOTICE**

Date: \_\_\_\_\_

This Withdrawal Notice is submitted to \_\_\_\_\_ (“Escrow Agent”), by [Alcan Primary Products Corporation, a Texas corporation (“Alcan”)] [Century Aluminum Of Kentucky General Partnership, a Kentucky general partnership (“Century”)] pursuant to the Escrow Agreement dated \_\_\_\_\_, 2009 (as amended, the “Escrow Agreement”) among Alcan, Century and Escrow Agent. Capitalized terms used herein without definition have the same meanings as in the Escrow Agreement.

[Alcan] [Century] hereby certifies that (i) the [Alcan] [Century] Retail Agreement has been or will be terminated effective as of \_\_\_\_\_ (“Termination Date”), and (ii) such withdrawal does not violate the Collateral Documents or any Threshold Notice.

Payment instructions are as follows:

[Alcan / Century] : Account No. \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Bank No. \_\_\_\_\_  
Bank Name: \_\_\_\_\_  
Reference: \_\_\_\_\_

*[Alcan Signature] or [Century Signature]*

**Exhibit D to Escrow Agreement**

**PERMITTED INVESTMENTS**

**Exhibit E to Escrow Agreement**

**ESCROW AGENT FEES**

**ATTACHMENT 2**

**Backstop Commodity Swap Transaction Confirmation  
and ISDA Master Agreement between E.ON U.S.  
and Century Aluminum of Kentucky**



CONFIRMATION

Backstop Commodity Swap Transaction between  
E.ON U.S., LLC ("Party A")  
and Century Aluminum of Kentucky General Partnership ("Party B")

July \_\_, 2009

To: Century Aluminum Kentucky General Partnership  
P.O. Box 500  
State Route 271 North  
Hawesville, KY 42348

From: E.ON U.S., LLC  
220 West Main Street  
Louisville, Kentucky 40202

The purpose of this letter agreement (this "Confirmation") is to confirm the terms and conditions of the Backstop Commodity Swap Transaction entered into between us on the trade date specified below (the "Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the Master Agreement defined below.

This Confirmation is subject to and incorporates the terms of the 1992 ISDA Master Agreement and Schedule dated as of the date hereof between Party A and Party B (such 1992 ISDA Master Agreement and Schedule, collectively, the "Master Agreement", and the Master Agreement, together with this Confirmation, the "Agreement"). All provisions contained in, or incorporated by reference to, the Master Agreement shall govern this Confirmation except as expressly modified below. In the event of any inconsistency between the provisions of that Master Agreement and this Confirmation, this Confirmation shall prevail for the purpose of this Transaction.

Capitalized terms used herein and not otherwise defined herein or in the Master Agreement shall have their corresponding terms in the Retail Electric Service Agreement by and between Kenergy Corp. ("Kenergy") and Party B dated as of even date herewith (the "Century Retail Agreement") as such agreement exists on the date hereof, and shall not include any amendment, modification or novation thereof unless Party A expressly agrees in writing to the inclusion of such amendment, modification or novation. All calculations shall be made and all amounts shall be determined in accordance with the Accounting Principles.

The terms of the Transaction to which this Confirmation relates are as follows:

### 1. Terms of the Transaction

Trade Date: July \_\_, 2009

Effective Date: The "Effective Date" as defined in the Century Retail Agreement.

Swap Termination Date: December 31, 2010; provided that, in the event that (a) Alcan Primary Products Corporation ("Alcan") gives a "Notice of Termination for Closure" under the Alcan Retail Agreement between Alcan and Kenergy dated as of even date herewith prior to the delivery of such a notice by Party B pursuant to Section 7.3 of the Century Retail Agreement and prior to December 31, 2009, and (b) the Transmission Upgrade (as defined in the Coordination Agreement) (the "Transmission Upgrade") is not completed by December 31, 2010, the Termination Date shall automatically be extended to the earlier of (i) the date of the completion of the Transmission Upgrade and (ii) December 31, 2011. ***[NOTE: we wanted this definition to be clear in this confirmation rather than trying to rely on the Century Retail Agreement; this language also tracks the language in the MOU]***

Swap Term: The period from and including the Effective Date to and including the Swap Termination Date.

Underlying Commodity: Energy

Fixed Payment Payer: Party A

Floating Payment Payer: Party B

***[NOTE: Floating Price/Fixed Price changed to Floating Payment/Fixed Payment because they really are payments rather than prices that will be multiplied with a Notional Amount]***

Floating Payment: For each Billing Month under the Century Retail Agreement: (a) the amounts credited to Party B pursuant to Section 4.13.1 of the Century Retail Agreement (including, without limitation, the amounts credited with respect to the Net Proceeds arising from any Surplus Sales and from any Potline Reduction Sales), plus (b) any credits to the TIER Adjustment Charge related to profits from Actual Sales, less (c) the amounts credited to Party B with respect to the Net Proceeds arising from any Undeliverable Energy Sales (after being reduced by \$0.25 per MWh as administrative fee with respect to such Undeliverable Energy Sales), and less (d) any amounts payable which are described in Section 4.14 of the Century Retail Agreement (other than the amounts payable pursuant to Section 10.2.3 of the Century Retail Agreement).

Fixed Payment:

For each Billing Month under the Century Retail Agreement:

$(\text{Base Backstop Energy} \times (\text{Base Rate} + \text{Variable Retail Factor})) +$   
 $((\text{Actual Sales} - \text{Base Backstop Energy}) \times \text{Base Variable Rate}) +$   
 $(\text{Actual Sales} \times (\text{FAC Factor} + \text{Environmental Surcharge Factor} +$   
 $\text{Non-FAC Purchased Power Adjustment Factor})) + \text{Allocated}$   
 $\text{Fixed Charges} - \text{Fixed Payment Cap Credit}$

Where:

Actual Sales (in terms of MWh) = the sum of (a) the Surplus Sales pursuant to Section 10.1 of the Century Retail Agreement and (b) the Potline Reduction Sales pursuant to Section 10.3 of the Century Retail Agreement made in a particular Billing Month.

All-in Rate (in terms of \$/MWh) = the sum of (a) the Base Rate, (b) the FAC Factor, (c) the Environmental Surcharge Factor, (d) the Variable Retail Factor, (e) the Non-FAC Purchased Power Adjustment Factor, and (f) Backstop Fixed Charges, divided by Base Fixed Energy.

Allocated Fixed Charges (in terms of dollars) = Backstop Fixed Charges x (Base Backstop Energy divided by Base Fixed Energy).

Backstop Fixed Charges (in terms of dollars) = the sum of the charges or credits (or any portions thereof) determined pursuant to the following subsections of Section 4.1 of the Century Retail Agreement: (a) Section 4.1.6, the TIER Adjustment Charge calculated pursuant to Section 4.7.1 but excluding any credits to the TIER Adjustment Charge related to profits from Actual Sales, plus or minus (b) Section 4.1.10, the monthly amortization of the Restructuring Amount calculated pursuant to Section 16.5.1, minus (c) Section 4.1.11, the Rebate calculated pursuant to Section 4.9, minus (d) Section 4.1.12, the Equity Development Credit calculated pursuant to Section 4.10, plus (e) Section 4.1.13, the Surcharge calculated pursuant to Section 4.11.

Base Backstop Energy (in terms of MWh) = the product of (a) the portion of Base Demand per Hour for which sales are requested by Party B pursuant to Sections 10.1.1 and 10.3.1 of the Century Retail Agreement (as evidenced by written notice from Party B to Kenergy and Big Rivers), (b) the number of Hours in the Billing Month, and (c) 0.98.

Fixed Payment Cap =

(a) \$52.50/MWh (applicable from the Effective Date until December 31, 2009), or

(b) \$55.00/MWh (applicable from January 1, 2010 until December 31, 2010), or

(c) \$57.50/MWh (applicable from January 1, 2011 until the Swap Termination Date, if such Swap Termination Date is extended beyond December 31, 2010).

Fixed Payment Cap Credit (in terms of dollars) = an amount calculated as follows:

The Fixed Payment Cap Credit will be zero unless (a) the Floating Payment Rate is less than or equal to the All-in Rate and (b) the All-in Rate is greater than the Fixed Payment Cap, in which case the Fixed Payment Cap Credit shall equal:  $(\text{All-in Rate} - \text{Fixed Payment Cap}) \times (\text{Base Backstop Energy})$ .

Floating Payment Rate = Floating Payment  $\div$  Actual Sales.

Variable Retail Factor = \$0.045 / MWh, being the number set forth in Section 4.12(a)(i) of the Century Retail Agreement, multiplied by 1000 to convert it to \$/MWh.

For the avoidance of doubt, in no event shall the Fixed Payment ever include any of the following charges or credits (or any portions thereof) determined pursuant to the following subsections of Section 4.1 of the Century Retail Agreement: (a) 4.1.2 (Supplemental Energy Charge), (b) 4.1.3 (Back-Up Energy Charge), and (c) 4.1.5 (Excess Reactive Demand Charge).

Product:

Financial Swap

Aluminum Production  
Credit:

For the period from the Effective Date through December 31, 2010, Party B shall be entitled to receive a payment (calculated and payable on a Billing Month basis) based on the amount of Energy purchased by Party B pursuant to the Century Retail Agreement in order to produce aluminum, but shall exclude purchases, if any, for delivery or resale to Southwire Company (such amount of Energy purchased is herein called the "Qualifying Energy"); provided, however, that in no event shall the aggregate amount of all of the Aluminum Production Credits paid to Party B ever exceed the Base Amount. Such "Aluminum Production Credit" shall be calculated as follows:

Qualifying Energy in any Billing Month x (Base Amount divided by (377 MW x .98 x 24 hours x the number of days during the period from the Effective Date through December 31, 2010)).

Base Amount = the sum of (a) \$ [REDACTED], and (b) (\$2.5 million less the Alcan Reserve Subaccount A as defined in the Escrow Agreement between Alcan and Party B dated as of even date herewith).

Refund Term: From and including the day after the Swap Termination Date through December 31, 2028.

Refund Payment: In the event that the Total Payments exceed the Base Amount, then Party B shall make refund payments during the Refund Term according to the following provisions:

During the Refund Term, Party B will be obligated to make up to 72 monthly payments (to commence in the first calendar month following the Swap Termination Date) to Party A each equal to the Refund Payment plus Accrued Interest. Party B's obligation will be to make such payments plus interest in each month of the Refund Term where the Monthly Refund Payment Conditions are met.

Accrued Interest = interest that accrues, from and after the Swap Termination Date, at an annual rate equal to 11.5% (based on a 30/360 day count methodology and compounded monthly) multiplied by (the Refund Amount less the aggregate of the Refund Payments actually paid). ***[NOTE: given the undetermined nature of making payments, compounded monthly makes the most sense]***

LME Index = the daily averages of the Cash Seller & Settlement Price on the London Metal Exchange as published at [www.lme.co.uk/aluminum.asp](http://www.lme.co.uk/aluminum.asp) for prompt delivery of Primary Aluminum for the month prior to the month in which a particular Refund Payment is due.

LME Multiplier = the greater of (a) LME Index divided by \$2600/tonne, and (b) 1.0.

Refund Amount = Total Payments less the Base Amount.

Refund Payment = the lesser of (a) (the Refund Amount divided by 72) multiplied by the LME Multiplier and (b) the Refund Amount less the aggregate Refund Payments actually paid.

Total Payments = the total amount paid by Party A to Party B under this Confirmation during the Swap Term (both with respect to the Financial Swap and the Aluminum Production Credit).  
***[NOTE: the Refund Payment is the principal and Accrued Interest is its own item; the multiplier does not work right if Accrued Interest included here]***

Party B's obligation to make a Refund Payment plus Accrued Interest in any particular month shall be subject to the following two conditions (the "Monthly Refund Payment Conditions"): (i) the Hawesville Smelter producing a minimum 16,267 tonnes ***[NOTE: what is the monthly potential production of the 4 potlines currently in operation?]*** during such month (as evidenced by a certificate from an officer of Party B as to the production of the Hawesville Smelter in such month); and (ii) the LME Index being equal to or greater than \$2,600/tonne. If either Monthly Refund Payment Condition is not met with respect to any month, then, at Party B's option exercised on or before the second Local Business Day of the following calendar month, Party B's obligation to make the Refund Payment plus Accrued Interest in that month will be suspended; *provided*, however, that if such suspension occurs, interest will continue to accrue against the unpaid balance of the Refund Amount.

Termination Payments:

If an Event of Default with respect to Party B occurs under the Agreement and an Early Termination Date is designated by Party A, the determination of the amounts to be paid shall be made as follows:

(1) If an Event of Default with respect to Party B occurs prior to the end of the Swap Term, then the following shall apply:

- (a) Any Unpaid Amounts due from Party A under the Confirmation shall be paid into the Lockbox Account (as defined below) and will not be netted with the Settlement Amount.
- (b) The Settlement Amount shall be determined on the basis of "Loss" and so that "Loss" means the difference between the Base Amount and the Total Payments made prior to the Early Termination Date; provided that such calculation cannot be less than zero; and provided further that such amount shall be paid by Party A into the Lockbox Account.

(2) If an Event of Default with respect to Party B occurs during the Refund Term, then the following shall apply:

- (a) Any Unpaid Amounts due from Party A with respect to payments owed during the Swap Term under the Confirmation shall be paid into the Lockbox Account and will not be netted with the Settlement Amount.
- (b) The Settlement Amount shall be determined on the basis of "Loss" and so that "Loss" means the Refund Amount less the aggregate of the Refund Payments actually paid (if any) plus Accrued Interest.

(3) If an Event of Default with respect to Party A occurs under the Agreement and an Early Termination Date is designated by Party B, the determination of the amounts to be paid by Party A shall be made pursuant to Section 6 of the Agreement on the basis of "Loss".

(4) If a Termination Event occurs under the Agreement and an Early Termination Event is designated, payments pursuant to Section 6(e)(ii) of the Agreement shall be determined in the basis of "Loss".

### **Commercial Terms Applicable to the Transaction**

Escrow Agreement: The "Escrow Agreement" means the Escrow Agreement among Alcan, Party B and the Escrow Agent as defined therein dated as of even date herewith.

Coordination Agreement: The "Coordination Agreement" means the Coordination Agreement between Big Rivers and Party B dated as of even date herewith.

Settlement: For the Transaction hereunder, a financial settlement month will occur for each calendar month of the Swap Term and the Refund Term. For the financial swap part of the Transaction, each settlement month the parties agree to financially settle the difference between the Fixed Payment and the Floating Payment for the Transaction in respect of the preceding month. If the Floating Payment exceeds the Fixed Payment, the Floating Payment Payer will pay to the Fixed Payment Payer the excess of the Floating Payment over the Fixed Payment. If the Floating Payment is less than the Fixed Payment, the Fixed Payment Payer will pay to the Floating Payment Payer the excess of the Fixed Payment over the Floating Payment. Additionally, any Aluminum Production Credit (for all days of the prior month) will be paid during each month of the Swap Term, as applicable and subject to

the provisions above. Any Refund Payment plus Accrued Interest will be paid on a monthly basis, as applicable and subject to the provisions above. As provided herein, the financially settled amounts in respect of the Transaction shall be netted against each other, and the party owing the greater amount will pay the other party such amount.

Lockbox:

Party A agrees to make such payment to Party B into a lockbox account (the "Lockbox Account") that will be subject to that certain Security and Lockbox Agreement by and between Kenergy, Party B, Big Rivers and Old National Bank dated as of date hereof (the "Lockbox Agreement") to the extent the invoice calculated by the Calculation Agent for any month indicates that payment is due from Party A to Party B. Party B hereby irrevocably directs Party A to make all payments into the Lockbox Account and waives any claims it may have (and indemnifies Party A against any claims made by third parties) in connection with such direction. ***[NOTE: changes to this section per Big Rivers comments]***

Payment Due Date:

All payments with respect to amounts owed during the Swap Term (with respect to the Financial Swap and Aluminum Production Credits) will be due on the first Local Business Day after the 24<sup>th</sup> day of a Billing Month, subject to a day-for-day extension to the extent Party A does not receive a copy of the invoice and supporting information as is reasonably required for Party A to determine the components of the Fixed Payment, Floating Payment and the Aluminum Production Credits (including, without limitation, hourly scheduling and meter data and price and volume for Surplus Sales and Potline Reduction Sales) that is provided to Party B pursuant to the Century Retail Agreement (such invoice and supporting information, the "Retail Agreement Invoice") from Big Rivers or Kenergy on or before the 10<sup>th</sup> Local Business Day of such Billing Month. The provision of sufficient supporting information shall be a condition to Party A's payment of any invoice. ***[NOTE: several changes to this section per Big Rivers comments]***

Disputed Payments:

If any portion of an invoice is disputed, the disputed amount must still be paid when due and the parties shall use Commercially Reasonable Efforts to resolve such dispute as soon as practicable thereafter. In the event a payment is found to be incorrect, any refund or additional payment shall be paid to a party together with interest at the Prime Rate commencing on the first day after the date of payment and accruing on each day thereafter until the date the refund or additional payment is made. ***[NOTE: this conforms to Century Retail Agreement disputed payments provision]***



Local Business Day: Any day on which Federal Reserve member banks in New York City are open for business, and a Local Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Standard (or Daylight) time.

Business Day Convention: Modified Following

Contractual Currency: All units denominated in a currency shall refer to, and all payments shall be made in, United States Dollars (USD).

Calculation Agent: Party A. ***[NOTE: we recognize that during the Swap Term we are most likely to make payments, but E.ON will need to verify and do the math anyway and this facilitates the process]***

Information Requirements: Party B, through its audit rights or otherwise, shall obtain from Big Rivers and Kenergy all information and data required by Party A in order to render an invoice to Party B for this Confirmation. Within 5 days of receiving the Retail Agreement Invoice, Party B will independently, and agrees to cooperate and work with Party A in order to, verify the accuracy of the Retail Agreement Invoice as soon as practicable after receipt of the Retail Agreement Invoice by both parties. Party A shall calculate and provide such invoice to each party within 3 days after completion of such verification process above.

In the event Party A requests additional supporting information, or if any Retail Agreement Invoice is disputed by Party A as being potentially erroneous, inconsistent or inconclusive, Party B agrees to use Commercially Reasonable Efforts to enforce its rights, including the right to dispute such payments, under the Century Retail Agreement. Additionally, in the event of any valid billing adjustments under the Century Retail Agreement with respect to any particular month due to miscalculations, recalculations, disputes or other invoice issues, Party A will recalculate any invoice provided hereunder and refunds or credits shall be provided in future invoices. Such recalculation will be consistent with the terms hereof.

During the Refund Period, Party B shall provide information substantiating the fact that it either has or has not met the Monthly Refund Payment Conditions on or before the third Local Business Day of each calendar month during the Refund Term.

**“Commercially Reasonable Efforts”** means, with respect to any decision or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such

decision or other action, without taking into account the benefits of this Agreement to Party B.

Performance Covenant: Party B agrees to:

(a) perform all of its obligations under the Retail Electric Service Agreement by and between Kenergy and Party B dated as of even date herewith, the Coordination Agreement, the Lockbox Agreement and under any other agreements related thereto (as such agreements may be amended or modified from time to time hereafter and any novation thereof) (collectively, the “Century Transaction Documents”), and

(b) use Commercially Reasonable Efforts to require the performance by each of Kenergy and Big Rivers of all of their respective obligations under the Century Transaction Documents. In the event of a breach by Kenergy and/or Big Rivers with respect to any Century Transaction Document, Party B agrees to use Commercially Reasonable Efforts to exercise and prosecute any rights and remedies it may have under such Century Transaction Document, at law or in equity. Party B shall provide notice, as soon as practicable, of any dispute, consent, issues raised, default or event of default under any Century Transaction Document, whether applicable to Party B or another party to such document.

It shall be an Event of Default under the Agreement if Party B fails to perform any material obligation under subsection (a) above or fails to comply with its obligations under subsection (b) above.

***[NOTE: we agreed to the deletion of the Additional Events of Default in the Schedule, but wanted to make clear the Event of Default with respect to this Performance Covenant; E.ON recognizes that Century’s failure for its own performance will be an Event of Default for material covenants of Century under the Century Transaction Documents]***

No Third Party Beneficiaries: Nothing in the Agreement may be construed to create any third party beneficiary rights in any third party (including Big Rivers and Kenergy). Nothing in the Agreement may be construed to create any obligation, duty, standard of care or liability of Party A under any of the Century Transaction Documents (including, without limitation, the payment of any invoices under any Century Transaction Document).

2. Account Details:

Party A: Bank of America  
ABA# 026-0095-93  
E.ON U.S. LLC  
Acct# 3752102075

Party B: The Lockbox Account identified in the Lockbox Agreement.

Please confirm that the foregoing correctly sets forth the terms of our agreement with respect to this Transaction by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending it to us by telecopy to telecopy number 502-627-3950. It is the intention of the parties hereto that one or more executed counterparts hereof, transmitted by telecopy, be deemed to be, and be, an original or originals hereof.

Yours sincerely,

E.ON U.S., LLC

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

Confirmed as of the date first above written:

CENTURY ALUMINUM KENTUCKY  
GENERAL PARTNERSHIP

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

(Multicurrency-Cross Border)

# ISDA®

International Swaps and Derivatives Association, Inc.

## MASTER AGREEMENT

dated as of

\_\_\_\_\_ and \_\_\_\_\_

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

### 1. Interpretation

(a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

(a) **General Conditions.**

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such

delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of

determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a

party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.



(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: -

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7)

(inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If:—

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

X If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by



law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by

such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) ***Separate Indemnities.*** To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) ***Evidence of Loss.*** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## **9 Miscellaneous**

(a) ***Entire Agreement.*** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) ***Amendments.*** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) ***Survival of Obligations.*** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) ***Remedies Cumulative.*** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) ***Counterparts and Confirmations.***

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for

all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## **10 Offices; Multibranch Parties**

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(b) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## **11 Expenses**

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including but not limited to, costs of collection.

## **12 Notices**

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;

- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received;

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

### 13 Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for

notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### **14 Definitions**

As used in this Agreement:—

**"Additional Termination Event"** has the meaning specified in Section 5(b).

**"Affected Party"** has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"Burdened Party"** has the meaning specified in Section 5(b).

**"Change in Tax Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**"law"** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **"lawful"** and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**"Loss"** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:—

- (a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and
- (b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar



transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**"Tax Event"** has the meaning specified in Section 5(b).

**"Tax Event Upon Merger"** has the meaning specified in Section 5(b).

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Currency"** has the meaning specified in the Schedule.

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**"Termination Event"** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for

Section 2(a)(iii) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

.....

By: .....  
Name:  
Title:  
Date:

By: .....  
Name:  
Title:  
Date:

**SCHEDULE  
to the  
Master Agreement**

dated as of July \_\_, 2009

between

E.ON U.S. LLC ("Party A")

and

Century Aluminum of Kentucky General Partnership  
("Party B")

This Agreement only applies to that certain Confirmation executed by Party A and Party B dated as of even date herewith (the "Confirmation"). This Agreement will terminate upon the termination of the Confirmation.

**Part 1. Termination Provisions.**

(a) "**Specified Entity**" means in relation to Party A for the purpose of:

Section 5(a)(v)	Not Applicable
Section 5(a)(vi)	Not Applicable
Section 5(a)(vii)	Not Applicable
Section 5(b)(iv)	Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v)	Not Applicable
Section 5(a)(vi)	Not Applicable
Section 5(a)(vii)	Not Applicable
Section 5(b)(iv)	Not Applicable

(b) The "**Default Under Specified Transaction**" provisions of Section 5(a)(v) will not apply to either party.

(c) The "**Cross Default**" provisions of Section 5(a)(vi) will not apply to Party A and will not apply to Party B.

(d) The "**Credit Event Upon Merger**" provisions of Section 5(b)(iv) will not apply to Party A and will not apply to Party B.

(e) The “*Automatic Early Termination*” provision of Section 6(a) will not apply to Party A and will not apply to Party B.

(f) *Payments on Early Termination.* For the purpose of Section 6(e) of this Agreement any such payments shall be as determined pursuant to the terms of the Confirmation.

(g) “*Termination Currency*” means United States Dollars.

(h) *Additional Termination Event.* Will not apply.

(i) The parties agree that this Agreement and the Confirmation are a part of a larger transaction by and among the parties to the Transaction Documents and that this Agreement and Confirmation are an integral part of the transaction contemplated by the Transaction Documents.

(j) *Inapplicability of Events of Default.* For purposes of this Agreement, Sections 5(a)(iv) and (viii) shall not apply to either party.

## Part 2. **Tax Representations.**

(a) *Payer Representations.* For the purpose of Section 3(e) of this Agreement, Party A will make the following representation and Party B will make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement; provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) *Payee Representations.* For the purpose of Section 3(f) of this Agreement, Party A and Party B make the representations specified below, if any:

(i) Party A is a limited liability company duly organized and validly existing under the laws of the Commonwealth of Kentucky and is a resident of the United States of America.

(ii) Party B is a general partnership duly organized and validly existing under the laws of the State of Kentucky and is a resident of the United States of America.

## Part 3. **Agreement to Deliver Documents.**

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

- (a) Tax forms, document or certificates to be delivered are:

<b>Party Required To Deliver Document</b>	<b>Form/Document/Certificate</b>	<b>Date By Which To Be Delivered</b>
Party A & Party B	Party A and Party B each agree to complete (accurately and in a manner reasonably satisfactory to the other), execute and deliver such form or forms as are deemed necessary to permit a party to make payments free and clear of, or at a reduced rate of, any deduction or withholding for or on account of any present or future Tax.	As soon as practicable following demand.

- (b) Other documents to be delivered are:

<b>Party Required To Deliver Document</b>	<b>Form/Document/Certificate</b>	<b>Date By Which To Be Delivered</b>	<b>Covered By Section 3(d) Representation</b>
Party B	Duly executed Credit Support Documents specified in Part 4(f) of this Agreement	Upon execution of this Agreement	Yes
Party A & Party B	Evidence of authority and specimen signatures with respect to the signatories executing this Agreement, including the Confirmation, and a certified copy of resolutions of an authorized body authorizing execution, delivery and performance of this Agreement	Upon execution of this Agreement	Yes
Party B	Evidence of authority and specimen signatures with respect to the signatories executing the Credit Support Document to be provided by the Credit Support Provider of Party B, and a certified copy of resolutions of an authorized body authorizing	Upon execution of Agreement	Yes

	execution and delivery of such Credit Support Document and performance of its obligations thereunder		
Party A and Party B	Annual audited financial statements prepared in accordance with generally accepted accounting principles (provided that, in the case of Party B, such financial statements shall be the financial statements of its Credit Support Provider)	As soon as practicable after demand but in no event later than 120 days after the end of each fiscal year of each party or its Credit Support Provider, if such financial statements are not publicly accessible such as on "EDGAR"	Yes
Party A and Party B	Quarterly unaudited financial statements prepared in accordance with generally accepted accounting principles (provided that, in the case of Party B, such financial statements shall be the financial statements of its Credit Support Provider)	As soon as practicable after demand, if such financial statements are not publicly accessible such as on "EDGAR"	Yes

**Part 4. Miscellaneous.**

(a) **Addresses for Notices.** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A:

Address: E.ON U.S. LLC  
220 West Main Street, 7<sup>th</sup> Floor  
Louisville, Kentucky 40202  
Attention: Manager Credit and Contract Administration

Telephone No.: 502-627-4253  
Facsimile No.: 502-627-3950

With additional notice of an Event of Default or Termination Event to:

Address: E.ON U.S. LLC  
220 West Main Street  
Louisville, KY 40202  
Attention: General Counsel  
Facsimile No.: 502-627-3950

Address for notices or communications to Party B:

Address: Century Aluminum Company  
P.O. Box 500  
State Route 271 North  
Hawesville, KY 42348  
Attention: Plant Manager  
Facsimile No.: 270-852-2882

With a copy to:

Address: Century Aluminum Company  
2511 Garden Road  
Building A, Suite 200  
Monterey, CA 93940  
Attention: General Counsel  
Facsimile No.: 831-642-9328

- (b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:
- Party A appoints as its Process Agent: Not applicable  
Party B appoints as its Process Agent: Not applicable
- (c) **Offices.** The provisions of Section 10(a) will apply to this Agreement.
- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:
- Party A is not a Multibranch Party.  
Party B is not a Multibranch Party.
- (e) **Calculation Agent.** The Calculation Agent shall be specified in the Confirmation.
- (f) **Credit Support Document(s).** With respect to Party B, the performance guaranty in favor of Party A supporting the obligations of Party B under this Agreement.
- (g) **Credit Support Provider.**  
Credit Support Provider means in relation to Party A: None  
Credit Support Provider means in relation to Party B: Century Aluminum Company
- (h) **Governing Law.** This Agreement will be governed by and construed in accordance with the law of the State of New York, without reference to choice of law principles (other than Section 5-1401 and 5-1402 of the New York General Obligations Law).
- (i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply. For avoidance of doubt, the parties hereby acknowledge and agree that the provisions of Section 2(c) shall not apply to any transaction or agreement not covered by this Agreement.
- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement. For the purposes of Section 3(c) both parties will be deemed to have no Affiliates.

Part 5. **Other Provisions.**

- (a) **Jurisdiction.** Section 13(b) of this Agreement is hereby deleted in its entirety and replaced with the following:

With respect to any suit, action, claim or proceeding relating to this Agreement (“Proceedings”), neither party waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any court, waives any claim that such Proceedings have been brought in an inconvenient forum, nor waives the right to object, with respect to such Proceedings, that a court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any jurisdiction, nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

The above provisions shall be subject to the following:

**WAIVER OF JURY TRIAL. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR ANY CREDIT SUPPORT PROVIDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND PROVIDE ANY CREDIT SUPPORT DOCUMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

- (b) **Absence of Litigation.** Section 3(c) of this Agreement is hereby amended by: (i) adding in the second line thereof after the word “governmental” the words “or regulatory” and (ii) adding the words “in any material respect” immediately prior to the end of the section.
- (c) **Accuracy of Specified Information.** Section 3(d) of this Agreement is hereby amended by adding in the third line thereof after the word “respect” and before the period the words “or, in the case of audited or unaudited financial statements, a presentation of the financial condition of the relevant party in accordance with generally accepted accounting principles, consistently applied.”
- (d) **Additional Representations.** Section 3 of this Agreement is hereby amended by adding at the end thereof the following Subparagraphs (g), (h), (i), and (j):

“(g) **Eligible Contract Participant.** It qualifies as an “eligible contract participant” as defined at Section 101(12) of the Commodity Futures Modernization Act of 2000 (7 U.S.C.A. Section 1a(12) (West Supp. 2001).



(h) **Safe Harbors.** Each party to this Agreement acknowledges that:

(i) This Agreement (and any associated Credit Support Document) is a "master netting agreement" as defined in the U.S. Bankruptcy Code (the "Code"), and this Agreement and each Transaction hereunder is of a type set forth in Section 561(a)(1)-(5) of the Code;

(ii) Party A is a "master netting agreement participant," a "forward contract merchant" and a "swap participant" as defined in the Code;

(iii) The remedies provided herein, and in any Credit Support Document, are the remedies referred to in Section 561(a), Sections 362(b)(6), (7), (17) and (27), and Section 362(o) of the Code;

(iv) All transfers of cash, securities or other property under or in connection with this Agreement, any Credit Support Document or any Transaction hereunder are "margin payments," "settlement payments" and "transfers" under Sections 546(e), (f), (g) or (j), and under Section 548(d)(2) of the Code; and

(v) Each obligation under this Agreement, any Credit Support Document or any Transaction hereunder is an obligation to make a "margin payment," "settlement payment" and "payment" within the meaning of Sections 362, 560 and 561 of the Code.

(i) **Standardization, Creditworthiness, and Transferability.** The economic terms of this Agreement, any Credit Support Document to which it is a party, and each Transaction have been individually tailored and negotiated by it; it has received and reviewed financial information concerning the other party and has had a reasonable opportunity to ask questions of and receive answers and information from the other party concerning such other party, this Agreement, such Credit Support Document, and such Transaction; the creditworthiness of the other party was a material consideration in its entering into or determining the terms of this Agreement, such Credit Support Document, and such Transaction; and the transferability of this Agreement, such Credit Support Document, and such Transaction is restricted as provided herein and therein.

(j) **No Reliance.** In connection with the negotiation of, the entering into, and the confirming of the execution of this Agreement, any Credit Support Document to which it is a party, and each Transaction: (i) it is acting as principal (and not as agent or in any other capacity, fiduciary or otherwise); (ii) the other party is not acting as a fiduciary or financial or investment advisor for it; (iii) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement and in such Credit Support Document; (iv) the other party has not given to it (directly or indirectly through any other person) any advice, counsel, assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (either legal, regulatory, tax, financial, accounting, or otherwise) of this Agreement, such Credit Support Document, or such Transaction; (v) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging, and trading decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary, and not upon any view expressed by the other party; (vi) all trading decisions have been the result of arm's length negotiations between the parties; and (vii) it is entering into this Agreement, such Credit Support Document, and such Transaction with a full understanding of all of the risks hereof and thereof (economic and otherwise),

and it is capable of assuming and willing to assume (financially and otherwise) those risks.”

- (e) **Reference Market Makers.** The definition of “Reference Market-makers” in Section 14 of this Agreement is hereby amended by: (i) deleting “(a)” from the second line thereof, (ii) deleting in the fourth line thereof after the word “credit” the words “and (b) to the extent practicable, from among such dealers having an office in the same city” and (iii) replacing such words with the words “or to enter into transactions similar in nature to Transactions.”
- (f) **ISDA Definitions.** Unless otherwise specified in a Confirmation, this Agreement, each Confirmation and each Transaction incorporates, and is subject to and governed by, the 2006 ISDA Definitions (“2006 Definitions”) and the 2005 ISDA Commodity Definitions (“Commodity Definitions”), as amended, supplemented, updated and restated from time to time, each as published by the International Swaps and Derivatives Association, Inc. (collectively, the “Definitions”). In the event of any inconsistency between the provision of the 2006 Definitions and Commodity Definitions, the Commodity Definitions shall prevail. In the event of any inconsistency between the provisions of this Agreement and the Definitions, this Agreement will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Agreement or the Definitions, such Confirmation will prevail for the purpose of the relevant Transaction.
- (g) **Accounts.** If a Confirmation does not state the account to which payments are to be made, they shall be made to the following:

**Party A**

Pay by Wire: Bank of America, New York, NY  
For the Account of: E.ON U.S. LLC  
Account No.: 3752102075  
Fed. ABA No.: 026-0095-93

**Party B**

Lockbox Account established pursuant to the Lockbox Agreement (as defined in the Confirmation).

- (h) **Set-off.** Without affecting or prejudicing the provisions of this Agreement requiring the calculation and payment of certain net payment amounts on Scheduled Payment Dates, all payments will be made without setoff or counterclaim; provided, however, that upon the designation of an Early Termination Date, in addition to and not in limitation of any other right or remedy (including any right to setoff, counterclaim, or otherwise withhold payment) under applicable law, the Non-defaulting Party or the non-Affected Party (in either case, “X”) may, at its option and in its discretion, setoff, against any amounts owed to the Defaulting Party or Affected Party (in either case, “Y”) in Dollars or any other currency by X under this Agreement, any amounts owed in Dollars or any other currency by Y to X under this Agreement . The obligations of Y and X under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff. For this purpose, the amounts subject to the set off may be converted at the applicable prevailing exchange rate into the Termination Currency by the Non-defaulting Party or non-Affected Party. If the amount of an obligation has not been ascertained, X may, in good faith estimate that obligation and setoff in respect of the estimate, subject to

X or Y, as the case may be, accounting to the other party when the obligation is ascertained. X will give Y notice of any setoff effected under this section provided that failure to give such notice shall not affect the validity of the setoff. Nothing in this paragraph shall be deemed to create a charge or other security interest.

- (i) **Limitation of Rate.** Notwithstanding any provision to the contrary contained in this Agreement, in no event shall the Default Rate, Non-default Rate, or Termination Rate exceed the Highest Lawful Rate. For purposes hereof, “Highest Lawful Rate” shall mean, with respect to each party, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged, or received on the subject indebtedness under the law applicable to such party which is presently in effect or, to the extent allowed by law, may hereafter be in effect and which allows a higher maximum non-usurious interest rate than applicable law presently allows.
- (j) **Limitation of Liability.** WITH RESPECT TO CLAIMS UNDER THIS AGREEMENT, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.
- (k) **Confidentiality.** Any information made available by one party or its Credit Support Provider to the other party or its Credit Support Provider (if any) with respect to this Agreement or any Transaction hereunder is confidential and shall not be discussed with or disclosed to any third party, except for such information (i) as may become generally available to the public other than as a result of a violation of this Agreement, (ii) as may be required or appropriate in response to any summons, subpoena, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, or ruling; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the other party or its Credit Support Provider (if any) in making such disclosure, (iv) as may be furnished to any person or entity (including, without limitation, that party’s auditors, attorneys, advisors, or financial institutions) with which the party has a written agreement or which are otherwise required to keep the information that is disclosed in confidence, or (v) as may be required by the securities exchange on which the Credit Support Provider of Party B is listed. With respect to information provided with respect to a Transaction, this obligation shall survive for a period of three (3) years following the expiration or termination of such Transaction. With respect to information provided with respect to this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement.
- (l) **Procedures for Entering Transactions.**  
The Parties agree to amend Section 9(e) (ii) by deleting the second and third sentences

and replacing with the following:

“A Confirmation shall be entered into as soon as practicable and fully executed by Party A and Party B. Upon full execution of a Confirmation, such Confirmation shall control in the event of any conflict with this Agreement.

- (m) **Default Rate.** The Default Rate means a rate of interest equal to the “Federal Funds Effective” rate in effect for such day, as published in the most recent weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System plus three percent (3%). Interest at the Default Rate shall accrue and compound daily based on a 360-day year.
- (n) **Credit Support Default.** Subparagraph (3) of Section 5(a)(iii) is hereby amended by adding in the second line thereof after the word "Document" the words "(or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf)".

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

E.ON U.S. LLC

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

CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP

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

**ATTACHMENT 3**

**Guarantee by Century Aluminum Company in favor  
of E.ON U.S.**

**GUARANTEE**

**(Century)**

This GUARANTEE (this "Guarantee") is made and entered into as of [\_\_\_\_], 2008, by CENTURY ALUMINUM COMPANY, a Delaware corporation ("Guarantor"), and indirect parent of Century by way of its 100% interest in Century Kentucky Inc. ("Century Kentucky") and Century Kentucky's 80% interest in Century, in favor of E.ON U.S. LLC ("Beneficiary").

RECITALS

WHEREAS, Century Aluminum of Kentucky General Partnership, a Kentucky general partnership ("Century"), an affiliate of Guarantor, and Beneficiary are parties to the 1992 ISDA Master Agreement dated \_\_\_\_\_ and the Backstop Commodity Swap Transaction Confirmation dated \_\_\_\_\_ (whether one or more, the "Swap Agreement")

WHEREAS, Century and Beneficiary are also parties to a certain Letter of Credit Reimbursement Agreement dated July \_\_, 2009 (the "Reimbursement Agreement" and together with the "Swap Agreement", collectively the "Agreement"), relating to the obligations of Century to Beneficiary arising from a Letter of Credit obtained by Beneficiary to enhance the credit of Century, all as more particularly described in the Agreement; and

WHEREAS, Guarantor, as an indirect parent of Century, has benefited and in the future will directly or indirectly benefit from the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Capitalized terms used herein but not otherwise defined are used as defined in the Agreement.
2. Guaranteed Obligations. As used herein, "Guaranteed Obligations" shall mean any and all obligations of the Century under the Agreement.
3. Guarantee. Guarantor hereby absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, the prompt performance and payment in full when due, of all the Guaranteed Obligations. Guarantor acknowledges that the Guaranteed Obligations may arise or be created, incurred or assumed at any time and from time to time and in such manner and such circumstances and with such terms and provisions as Century and Beneficiary may agree without notice or demand of any kind or nature whatsoever to, or the consent of, Guarantor.
4. Preservation of Century's Substantive Defenses. Notwithstanding any of Guarantor's waivers hereunder, Beneficiary agrees and acknowledges that Guarantor shall be entitled to assert (separately or jointly with Century) any substantive defenses, or claims in recoupment or setoff, with

respect to the Guaranteed Obligations that Century would be entitled to assert against Beneficiary, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Century, the invalidity, enforceability or illegality of the Agreement, ultra vires, lack of good standing or qualification, lack of corporate authority or due approval, or any other defenses specifically waived in this Guarantee or the Agreement. This Section shall not permit Guarantor to assert any defenses in its own right, and Guarantor waives any defense, based on impairment of Guarantor's rights of subrogation, reimbursement, exoneration, contribution or indemnification, or other suretyship defenses.

5. Nature of Guarantee Continuing, Absolute and Unconditional.

(a) This Guarantee is and is intended to be a continuing guarantee of payment and performance when due of the Guaranteed Obligations, and not of collection, and is independent of and in addition to any other guarantee, endorsement, collateral or other agreement held by Beneficiary therefor or with respect thereto, whether or not furnished by Guarantor. Guarantor hereby waives any right to require that any resort be had by Beneficiary to any other person or to any of the security held for payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of Beneficiary in favor of Century or any other person. All Guaranteed Obligations shall be conclusively presumed to have been created in reliance hereon.

(b) This Guarantee shall not be changed or affected by any representation, oral agreement, act or thing whatsoever, except as herein provided. This Guarantee is intended by Guarantor to be the final, complete and exclusive expression of the agreement between Guarantor and Beneficiary with respect to the subject matter hereof.

(c) Guarantor hereby agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from Guarantor, that Guarantor will remain bound upon this Guarantee notwithstanding any extension, renewal or other alteration of any Guaranteed Obligation and the Guarantee herein made shall apply to the Guaranteed Obligations as so amended, renewed or altered.

(d) Subject to Section 4 above, the obligations of Guarantor under this Guarantee are irrevocable, absolute and unconditional and Guarantor hereby irrevocably waives any defense it may now have or hereafter acquire relating to:

(i) the failure of Beneficiary to assert any claim or demand or to exercise or enforce any right or remedy under the Agreement, or against Century;

(ii) any extension, renewal or other alteration of, or any rescission, waiver, amendment or modification of, any term or provision of the Agreement;

(iii) the settlement or compromise of any of the Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, or any subordination of the payment of all or any part thereof to the payment of any liability (whether due or not) of Century to its creditors, other than Beneficiary;

(iv) the application of any sums by whomsoever paid or howsoever realized to any liability of Century to Beneficiary regardless of what liabilities of Century remain unpaid;

(v) the act or failure to act in any manner referred to in this Guarantee which may deprive Guarantor of its right to subrogation against Century to recover any payments made pursuant to this Guarantee;

(vi) any change, restructuring or termination of the organizational structure or existence of Century; or

(vii) any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of Guarantor' or that would otherwise operate as a discharge of Guarantor as a matter of law or equity.

(e) Guarantor's obligation hereunder is to pay and perform the Guaranteed Obligations in full when due in accordance with the terms of the Agreement, and such obligation shall not be affected by any stay or extension of time for performance by Century resulting from any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended or replaced, or any similar federal or state law. Subject to Section 4, the obligations of Guarantor hereunder are independent of the Guaranteed Obligations under or in respect of the Agreement, and a separate action may be brought and prosecuted against Guarantor to enforce this Guarantee, irrespective of whether any action is brought against Century or whether Century is joined in any such action.

6. Waivers and Acknowledgments.

(a) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand of performance or payment, notice of nonperformance or non-payment, default, protest, acceleration or dishonor and any filing of claims with a court in the event of insolvency or bankruptcy of Century, any right to require a proceeding first against Century, protest, notice and all demands whatsoever and any requirement that Beneficiary protect, secure, perfect or insure any lien or any property subject thereto or exhaust any right or take any action against Century or any other person.

(b) Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guarantee and acknowledges that this Guarantee is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by Beneficiary that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of Guarantor or other rights of Guarantor to proceed against Century or any other person and (ii) subject to Section 4, any defense based on any right of set off or counterclaim against or in respect of the obligations of Guarantor hereunder.

(d) Guarantor hereby unconditionally and irrevocably waives any duty on the part of Beneficiary to disclose to Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Century now or hereafter known by Beneficiary,

(e) Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Agreement and that the waivers set forth in Section 4 and this Section 6 are knowingly made in contemplation of such benefits.

7. No Discharge or Diminishment of Guarantee. Except as provided in Section 4 above, the obligations of Guarantor under this Guarantee shall not be subject to any reduction, limitation, impairment or termination for any reason (other than if the Guaranteed Obligations have been indefeasibly performed in full), including any claim of waiver, release, surrender, alteration or compromise of any of the Guaranteed Obligations, and shall not be subject to any defense or set-off,



counterclaim, recoupment or termination whatsoever by reason of any discharge of Century from any of the Guaranteed Obligations in bankruptcy proceedings or otherwise. Without limiting the generality of the foregoing, the obligations of Guarantor under this Guarantee shall not be discharged or impaired or otherwise affected by the failure of Beneficiary to assert any claim or demand or to enforce any remedy under any Transaction Document or any other agreement or otherwise, by any waiver or modification of any such agreement, by any default, waiver or delay, or by any other act or agreement or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of Guarantor or that would otherwise operate as a discharge of a Guarantor as a matter of law or equity.

8. Reinstatement. Guarantor agrees that this Guarantee shall continue to be effective or be reinstated, as the case may be, with respect to any payment, or any part thereof, of principal of, interest on or any other amount with respect to the Guaranteed Obligations that is at any time rescinded or must otherwise be restored by Beneficiary upon the bankruptcy, insolvency or reorganization of Century, or any other Person, or otherwise.

9. No Waiver: Remedies. No failure on the part of Beneficiary to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by hereunder, at law or in equity.

10. Covenant. Guarantor covenants and agrees that, without the prior written consent of Beneficiary, so long as any part of the Guaranteed Obligations shall remain outstanding, Guarantor shall not liquidate, wind up or dissolve itself, or suffer any liquidation or dissolution, or convey, sell, lease, assign, transfer or otherwise dispose of all or substantially all of its property, assets or business, whether now owned or hereafter acquired, and shall preserve and maintain in full force and effect its legal existence and all of its rights, privileges and franchises necessary for the fulfillment of its obligations under this Guarantee. Beneficiary shall not withhold its prior written consent to any such liquidation or dissolution, or any such sale or other disposition of substantially all of Guarantor's property and business, occurring in connection with a strategic restructuring of Guarantor if (a) a wholly owned direct or indirect subsidiary of Guarantor has a ratio of debt to equity of no more than [\_\_\_\_]:1.0 and a net worth of not less than \$[\_\_\_\_] million (a "Substitute Guarantor") and executes in favor of Beneficiary, a substitute guarantee containing terms and conditions substantially the same as those contained herein (a "Substitute Guarantee"), and (b) the Substitute Guarantor shall provide to Beneficiary such reasonable legal opinions and other documentation as either Beneficiary shall reasonably request in connection therewith. Upon compliance with the provisions of Section 10(a) and (b) hereof, the Substitute Guarantor shall be the "Guarantor" for all purposes hereunder and the prior Guarantor shall be released from its obligations arising hereunder after the date on which the Substitute Guarantee shall be effective.

11. Representations and Warranties. Guarantor hereby represents and warrants as of the date of execution and delivery of this Guarantee as follows:

(a) Organization and Existence. Guarantor (i) is duly organized, validly existing and in good standing under the laws of the State of Texas, and 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, including the Commonwealth of Kentucky; and (ii) 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 Guarantee.

(b) *Authorization, Execution and Binding Effect.* This Guarantee has been duly authorized, executed and delivered by Guarantor, and assuming the due authorization, execution and delivery of this Guarantee by Beneficiary, constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with the terms hereof, 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 the Guarantee by Guarantor and the compliance by Guarantor with the terms and provisions hereof do not and will not (i) contravene any law applicable to Guarantor or its organizational documents or bylaws, 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 Guarantor is a party or by which Guarantor, or its property, is bound.

(d) *No Required Consents, Approvals or Conditions.* 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 law applicable to Guarantor is required for the due execution, delivery or performance by Guarantor of this Guarantee. There are no conditions to the effectiveness of this Guarantee that have not been satisfied or waived.

(e) *Absence of Litigation.* There is no pending or, to Guarantor's knowledge, threatened any litigation, action, suit, proceeding, arbitration, investigation or audit against Guarantor or Century by any Person before any Governmental Entity which: (i) questions the validity of this Guarantee or the ability of Guarantor to perform its obligations hereunder, or (ii) if determined adversely to Guarantor, would materially adversely affect its ability to perform this Guarantee.

(f) *Independent Decision.* Guarantor has, independently and without reliance upon Beneficiary and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guarantee.

12. Amendment. Except as otherwise expressly provided in this Guarantee, any provision of this Guarantee may be amended or modified only by an instrument in writing signed by Guarantor, Beneficiary, and any provision of this Guarantee may be waived only by Beneficiary in writing.

13. Continuing Guarantee; Successors and Assigns. This Guarantee is a continuing Guarantee and shall remain in full force and effect until the payment in full of the Guaranteed Obligations, and shall be binding upon Guarantor and its respective successors and assigns; *provided, however,* that Guarantor may not assign or transfer any of its rights, benefits, obligations or duties hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of Beneficiary which consent shall not be unreasonably withheld, subject to Section 10. Any purported assignment in violation of this Section 13 shall be void. This Guarantee shall inure to the benefit of the respective successors and assigns of Beneficiary permitted under the Agreement, and, in the event of any transfer or assignment of rights by Beneficiary, the rights and privileges herein conferred upon the transferring entity shall automatically extend to and be vested in such permitted transferee or assignee, all subject to the terms and conditions hereof.

14. 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 Guarantor: Century Aluminum Company  
P.O. Box 500  
State Route 271  
Hawesville, Kentucky 42348  
Facsimile:  
Attention: Plant Manager

If to Beneficiary:

Any party hereto 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 hereto 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.

15. Severability. Any term or provision of this Guarantee 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 Guarantee or affecting the validity or enforceability of any of the terms or provisions of this Guarantee in any other jurisdiction.

16. Expenses. Guarantor agrees to pay to Beneficiary on demand all reasonable costs and expenses (including, without limitation, attorneys' fees) in any way relating to the enforcement or protection of the rights of the Beneficiary hereunder.

17. Governing Law. This Guarantee shall be governed by and construed and enforced in accordance with the laws of the State of New York, without regard to its conflicts of laws rules (except for Sections 5-1401 and 5-1402 of the New York General Obligations Law). Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of New York in any action or proceeding arising out of or relating to this Guaranty. Guarantor waives any objection to such jurisdiction on the grounds that it is an inconvenient forum or any similar grounds. Guarantor consents to the service of process in any action or proceeding relating to this Guaranty by notice to Guarantor in accordance with the notice provisions of this Guaranty. Nothing shall prevent the Beneficiary from enforcing any related judgment against Guarantor in any other jurisdiction.

18. WAIVER OF RIGHT TO TRIAL BY JURY. EACH OF GUARANTOR AND BENEFICIARY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY.

19. Headings. The article and section headings contained in this Guarantee are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Guarantee.

20. Counterparts. This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Guarantee may execute this Guarantee by signing any such counterpart.

[Signature pages follow]

IN WITNESS WHEREOF, Guarantor has caused this Guarantee to be duly executed by its duly authorized officer as of the day and year first written above.

CENTURY ALUMINUM COMPANY

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

**ATTACHMENT 4**

**Letter Agreement between Alcan, Century and E.ON U.S.**

**DRAFT: June 26, 2009**

**[TO BE TRANSCRIBED ON E.ON U.S. STATIONERY]**

July \_\_, 2009

Alcan Primary Products Corporation  
P.O. Box 44  
Sebree, Kentucky 42419

Century Aluminum of Kentucky  
General Partnership  
Hawesville Plant  
P.O. Box 500  
1627 St. Rt 271 North  
Hawesville, Kentucky 42348

Re: Escrow Funding Arrangements

Gentlemen:

Reference is made to the Memorandum of Understanding dated June 23, 2008 (the "MOU") by and among E.ON U.S. LLC ("E.ON"), Alcan Primary Products Corporation ("Alcan") and Century Aluminum of Kentucky General Partnership ("Century"). Pursuant to the MOU, among other transactions, E.ON agreed to fund a fuel reserve in the aggregate amount of \$ [REDACTED] for the benefit of Alcan and Century, collectively (to be allocated to two fuel subaccounts, \$ [REDACTED] in a subaccount for the benefit of Alcan and \$39,694,117.60 in a subaccount for the benefit of Century) (collectively, the "Reserve Payment"), but only upon the closing of the transactions contemplated in the Transaction Termination Agreement dated as of March 26, 2007, as amended (the "Termination Agreement"), among Big Rivers Electric Corporation, WKEC and LG&E Energy Marketing Inc. (the "Closing").

Reference is also made to the Escrow Agreement to be entered into as of the Closing among Alcan, Century and \_\_\_\_\_, as Escrow Agent, pursuant to which, among other transactions, those parties will agree to the administration and distribution of certain escrow amounts to be funded by E.ON at or, potentially, following the Closing, upon the terms and subject to the conditions set forth therein (the "Escrow Agreement"). A copy of the Escrow Agreement is attached to this letter agreement as Exhibit A. Capitalized terms used but not defined in this letter agreement shall have their same respective meanings as in the MOU or, if not defined in the MOU, then in the Escrow Agreement.

Alcan Primary Products Corporation  
Century Aluminum of Kentucky  
General Partnership  
July \_\_, 2009  
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Reference is also made to (a) the Retail Electric Service Agreement to be entered into as of the Closing by Century and Kenergy Corp., pursuant to which, among other transactions, Kenergy Corp. will agree to sell and deliver certain quantities of power to Century upon the terms and subject to the conditions set forth therein (the "Century Retail Agreement"), and (b) the Retail Electric Service Agreement to be entered into as of the Closing by Alcan and Kenergy Corp., pursuant to which, among other transactions, Kenergy Corp. will agree to sell and deliver certain quantities of power to Alcan upon the terms and subject to the conditions set forth therein (the "Alcan Retail Agreement").

Reference is also made to the ISDA Master Agreement (including the Schedule thereto) and the related Backstop Commodity Swap Transaction Confirmation to be entered into as of the Closing by E.ON and Century, pursuant to which E.ON will provide Century certain limited financial protections following the Closing upon the terms and subject to the conditions set forth therein (the "Hedge Agreement").

The Closing is occurring on the date hereof. In light of certain changes in circumstances and their resulting impact on the transactions contemplated in the Termination Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, Alcan, Century and E.ON desire to amend and supplement the MOU effective immediately, in order to: (a) reduce the amount of the Reserve Payment, and eliminate the allocation or payment of any portion of the Reserve Payment to Century, or to any subaccount for the benefit of Century; (b) evidence the agreement of E.ON to pay certain additional amounts into escrow for the benefit of Alcan as of the Closing, to be held by the Escrow Agent in accordance with the Escrow Agreement; (c) establish a mechanism by which E.ON could become obligated for the payment of certain amounts to the Escrow Agent for deposit into the Century Fuel Subaccount under the Escrow Agreement; and (d) establish a mechanism by which E.ON could become obligated for the payment of certain additional amounts to the Escrow Agent for deposit into the Alcan Fuel Subaccount under the Escrow Agreement; in each case upon and subject to the terms and conditions set forth in this letter agreement.

1. Reduction in Reserve Payment.

The parties hereto agree that notwithstanding anything contained in the MOU to the contrary:

(a) any references in the MOU to "\$ [REDACTED]", including without limitation, in reference to the amount of the fuel reserve contemplated in clause (ii) of Section 1 of the MOU and in clause (ii) of Section 2 of the MOU, and the amount contemplated in the third (3<sup>rd</sup>) sentence of Section 3 of the MOU as to be funded by E.ON (all being references to the same amount), are hereby changed to read "\$ [REDACTED]";



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Century Aluminum of Kentucky  
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July \_\_, 2009  
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(b) all amounts contemplated in the MOU (excluding the amounts, if any, contemplated in Sections 2, 3 and 4 of this letter agreement) as to be funded by E.ON as of the Closing into a "fuel reserve" or "Smelter Escrow", or as to be paid by E.ON as of the Closing directly to one or both of the Smelters (being collectively limited to the \$ [REDACTED] amount referred to in Subsection (a) above), shall instead be paid by E.ON as of the Closing solely to the Escrow Agent for allocation to and deposit into the Alcan Fuel Subaccount maintained pursuant to the Escrow Agreement, and not to Century or to any reserve account, subaccount or escrow account maintained for the benefit of Century; and

(c) Century hereby irrevocably waives and disclaims any right that it may have to any portion of the amounts contemplated in Subsections (a) and (b) above, including without limitation, any portion of the \$ [REDACTED] funding amount that was originally contemplated in the MOU; provided, that nothing contained in this Subsection (c) shall be deemed to affect or limit any funding or payment obligations of E.ON set forth in Section 3 below or in the Hedge Agreement.

Consistent with the foregoing:

(i) Alcan hereby acknowledges and agrees that its (and its relevant affiliates') willingness to support the Unwind Transaction, to execute and deliver at the Closing the agreements contemplated in the Termination Agreement as to be executed and delivered by Alcan (or its relevant affiliates), and to consummate the transactions contemplated in those agreements, shall not be conditioned upon the payment to Century of any of the amounts contemplated in Subparagraph (a), (b) or (c) above;

(ii) Century hereby acknowledges and agrees that (A) its (and its relevant affiliates') willingness to support the Unwind Transaction, to execute and deliver at the Closing the agreements contemplated in the Termination Agreement as to be executed and delivered by Century (or its relevant affiliates), and to consummate the transactions contemplated in those agreements, shall not be conditioned upon the payment to Century of any of the amounts contemplated in Subparagraph (a), (b) or (c) above, and (B) such a payment shall not be required as an inducement for or in consideration of the execution, delivery or performance by Century and its relevant affiliates of such agreements at and after the Closing (it being understood and agreed that other adequate consideration for such agreements will have been delivered to Century and its relevant affiliates at or as a result of the Closing or the transactions contemplated in the Termination Agreement);

(iii) Century hereby fully and forever remises, releases and discharges E.ON of and from any further obligation or liability whatsoever, whether under the MOU or otherwise, to pay to

Alcan Primary Products Corporation  
Century Aluminum of Kentucky  
General Partnership  
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Century of any of the amounts contemplated in Subparagraph (a), (b) or (c) above; provided, that nothing contained in this Subsection (iii) shall be deemed to affect or limit any funding or payment obligations of E.ON set forth in Section 3 below or in the Hedge Agreement; and

(iv) any reference in subclause (ii) of Section 1 of the MOU or in subclause (ii) of Section 2 of the MOU to “for the benefit of the Smelters” shall be deemed to mean “for the benefit of Alcan”.

2. Additional Payments into Escrow.

(a) E.ON hereby agrees to deliver to the Escrow Agent at the Closing (but not before), for the benefit of Alcan, the aggregate sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) in immediately available funds [**This number will be Alcan’s portion of the \$2.5 million originally earmarked for the Smelters’ Reserve Subaccounts A**], to be deposited into the escrow account designated as the Alcan Reserve Subaccount A pursuant to Section 2(a) of the Escrow Agreement, said sum to be held, administered and distributed in accordance with the terms of the Escrow Agreement and the MOU as they may relate to the Alcan Reserve Subaccount A; and

(b) E.ON further agrees to deliver to the Escrow Agent at the Closing (but not before), for the benefit of Alcan, the aggregate sum of FIFTEEN MILLION DOLLARS (\$15,000,000) in immediately available funds, to be deposited into the escrow account designated as Alcan Reserve Subaccount B pursuant to Section 2(a) of the Escrow Agreement, said sum to be held, administered and distributed in accordance with the terms of the Escrow Agreement and the MOU as they may relate to the Alcan Reserve Subaccount B.

3. Conditional Funding of Century Fuel Subaccount. In the event (a) the Closing occurs, (b) Century has executed and delivered to Kenergy the Century Retail Agreement as contemplated in the Termination Agreement, (c) the Century Retail Agreement remains in effect as of December 31, 2010, and (d) neither Century nor its successors or permitted assigns has delivered a “Notice of Termination for Closure” (as defined in the Century Retail Agreement) to Kenergy on or prior to December 31, 2010, then E.ON agrees to deliver to the Escrow Agent on or prior to January 31, 2011, for deposit into the Century Fuel Subaccount and administration and distribution in accordance with the Escrow Agreement, the amount determined by reference to the following formula, but only to the extent that amount is a positive number:

**\$39,694,117.60 minus ((a) \$39,694,117.60/\$\_\_\_\_\_ [This number will be \$39,694,117.60 plus the amount originally earmarked for deposit into the Century Reserve Subaccount A, plus \$41,000,000.00] multiplied by (b) the cumulative total of all Aluminum**

Alcan Primary Products Corporation  
Century Aluminum of Kentucky  
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July \_\_, 2009  
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Production Credits that have become payable by E.ON to Century during the period from the date of the Closing through December 31, 2010 pursuant to the Hedge Agreement);

where "Aluminum Production Credit" has the meaning set forth in the Hedge Agreement.

4. Conditional Additional Funding of Alcan Fuel Subaccount. In the event (a) the Closing occurs, (b) Alcan has executed and delivered to Kenergy the Alcan Retail Agreement as contemplated in the Termination Agreement, (c) the Alcan Retail Agreement remains in effect as of December 31, 2010, (d) neither Alcan nor its successors or permitted assigns has delivered a "Notice of Termination for Closure" (as defined in the Alcan Retail Agreement) to Kenergy as of December 31, 2010, and (e) *either* E.ON has no obligation to deliver any amounts to the Escrow Agent on or prior to January 31, 2011 (for deposit into the Century Fuel Subaccount) pursuant to Section 3 of this letter agreement, *or* the amount that E.ON is obligated to deliver to the Escrow Agent on or prior to January 31, 2011 (for deposit into the Century Fuel Subaccount) pursuant to Section 3 of this letter agreement is less than Thirteen Million Five Hundred Thousand Dollars (\$13,500,000.00), then E.ON agrees to deliver to the Escrow Agent in immediately available funds, on or prior to January 31, 2011, Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.000), for deposit into the Alcan Fuel Subaccount and administration and distribution in accordance with the Escrow Agreement.

This letter agreement is for the sole and exclusive benefit of the signatories hereto, and shall not create or vest in any person or entity not a signatory hereto any rights of enforcement, other rights or benefits whatsoever, including without limitation, any third-party beneficiary or other similar rights. This letter agreement, together with the MOU and the Escrow Agreement, constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof, superseding any other prior or contemporaneous oral or written agreements or understandings with respect to such subject matter. This letter agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Kentucky, but without regard to its conflicts of laws rules or principles.

Except as amended, modified or supplemented pursuant to this letter agreement, the MOU shall continue in full force and effect from and after the date hereof in accordance with its terms. Nothing contained in this letter agreement shall be deemed to amend, modify or supplement the Escrow Agreement, or shall obligate E.ON or any of its affiliates to consummate the Closing.

If the foregoing is consistent with our agreement, please execute multiple copies of this

Alcan Primary Products Corporation  
Century Aluminum of Kentucky  
General Partnership  
July \_\_, 2009  
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Letter Agreement in the space provided below and return them to each of the other parties.  
Thank you for your cooperation.

Sincerely yours,

**E.ON U.S. LLC**

By: \_\_\_\_\_  
Paul W. Thompson  
Senior Vice President, Energy Services

ACKNOWLEDGED AND AGREED:

**ALCAN PRIMARY PRODUCTS  
CORPORATION**

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

**CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP**

**BY: METALSCO, LLC, GENERAL  
PARTNER**

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

EXHIBIT A  
ESCROW AGREEMENT

See attached

LOU: 3455929-3

**ATTACHMENT 5**

**Letter Agreement between Alcan, Century and E.ON U.S.**

**DRAFT: June 26, 2009**

**[To be Transcribed on WKE Letterhead]**

July \_\_\_\_\_, 2009

Alcan Primary Products Corporation  
P.O. Box 44  
Henderson, Kentucky 42419

Century Aluminum of Kentucky General Partnership  
Hawesville Plant  
P.O. Box 500  
1627 State Route 271 North  
Hawesville, Kentucky 42348

Subject: Amendments to Closing Date Payment Agreement

Gentlemen:

Reference is made to the letter agreement dated November 5, 2007, among Alcan Primary Products Corporation (“Alcan”), Century Aluminum of Kentucky General Partnership (“Century”, and together with Alcan, the “Smelters”), and Western Kentucky Energy Corp. (“WKEC”, and together with the Smelters, the “Parties”), pursuant to which, among other transactions, WKEC agreed to make a certain payment for the benefit of the Smelters at the Closing contemplated therein (the “Closing Date Payment Agreement”). Capitalized terms used but not defined in this letter agreement shall have their same respective meanings as in the Closing Date Payment Agreement.

The Closing is occurring on the date hereof. In light of certain changes in circumstances and their resulting impact on the transactions contemplated in the Termination Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties desire to amend the Closing Date Payment Agreement in the manner contemplated below, and to make certain additional covenants, agreements and acknowledgments upon the terms and subject to the conditions set forth below, in each case effective immediately.

The Parties agree that the fourth (4<sup>th</sup>) full paragraph of the Closing Date Payment Agreement (being the second (2<sup>nd</sup>) full paragraph on page 2 of that agreement) is hereby amended to be and read in its entirety as follows:

WKEC, Alcan and Century hereby agree that, upon the Closing and, as contemplated in the Termination Agreement: (i) the corresponding execution and delivery by E.ON U.S. LLC, WKEC, LEM, Kenergy Corp., Alcan and its relevant affiliates of the Alcan Termination and Release in form satisfactory to those parties; and (ii) the corresponding execution and delivery by E.ON U.S. LLC, WKEC, LEM,

Kenergy Corp., Century, its relevant affiliates, and Southwire Company of the Century Termination and Release in form satisfactory to those parties; WKEC shall pay to Alcan for its sole account (but not to Century) the aggregate sum of [REDACTED] DOLLARS (\$ [REDACTED]) in immediately available funds (the "Closing Payment").

Consistent with the foregoing: (a) Alcan hereby acknowledges and agrees that its (and its relevant affiliates') willingness to execute and deliver the Alcan Termination and Release at the Closing, and to consummate the transactions contemplated therein, shall not be conditioned upon the payment of any portion of the Closing Payment to Century; (b) Century hereby acknowledges and agrees that its (and its relevant affiliates') willingness to execute and deliver the Century Termination and Release at the Closing, and to consummate the transactions contemplated therein, shall not be conditioned upon the payment of any portion of the Closing Payment to Century, and such a payment shall not be required as an inducement for or in consideration of the execution, delivery or performance by Century and its relevant affiliates of the Century Termination and Release at and after the Closing (it being understood and agreed that other adequate consideration for the Century Termination and Release Agreement (including without limitation, as set forth in the ISDA Master Agreement (including the Schedule thereto) and the related Backstop Commodity Swap Transaction Confirmation to be entered into on the date hereof by E.ON and Century, in the Retail Electric Service Agreement to be entered into on the date hereof by Century and Kenergy Corp., and in the Century Termination and Release Agreement) will have been delivered to Century and its relevant affiliates at or as a result of the Closing or the transactions contemplated in the Termination Agreement); and (c) Century hereby fully and forever remises, releases and discharges WKEC of and from any further obligation or liability whatsoever under the Closing Date Payment Agreement to pay any portion of the Closing Payment (including, without limitation, any portion of the Closing Payment as defined in the original Closing Date Payment Agreement) to Century.

This letter agreement is for the sole and exclusive benefit of the signatories hereto, and shall not create or vest in any person or entity not a signatory hereto any rights of enforcement, other rights or benefits whatsoever, including without limitation, any third-party beneficiary or other similar rights. This letter agreement, together with the Closing Date Payment Agreement, constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof and thereof, superseding any other prior or contemporaneous oral or written agreements or understandings with respect to such subject matter. This letter agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Kentucky, but without regard to its conflicts of laws rules or principles.

Except as amended, modified or supplemented pursuant to this letter agreement, the Closing Date Payment Agreement shall continue in full force and effect from and after the date hereof in accordance with its terms.

If the foregoing is consistent with our agreement, please execute multiple copies of this



Alcan Primary Products Corporation  
Century Aluminum of Kentucky General Partnership  
July \_\_\_\_, 2009  
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letter agreement in the spaces provided below and return them to each of the other Parties.  
Thank you for your cooperation.

Sincerely yours,

**WESTERN KENTUCKY ENERGY CORP.**

By: \_\_\_\_\_  
Paul W. Thompson, President

**ACKNOWLEDGED AND AGREED**  
as of the date first written above:

**ALCAN PRIMARY PRODUCTS CORPORATION**

By: \_\_\_\_\_

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

**CENTURY ALUMINUM OF KENTUCKY GENERAL  
PARTNERSHIP**

By: **METALSCO, LLC**, General Partner

By: \_\_\_\_\_

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

**ATTACHMENT 6**

**Letter from E.ON U.S. LLC to Big Rivers Electric Corporation  
Setting Forth the Arrangement Regarding the Hart-Scott-Rodino  
Filing Fees**



**David S. Sinclair**

Vice President  
Energy Marketing

220 West Main Street  
P. O. Box 32030 (40232)  
Louisville, Kentucky 40202

T (502) 627-4653

F (502) 627-4175

[david.sinclair@eon-us.com](mailto:david.sinclair@eon-us.com)

April 15, 2009

David A. Spainhoward  
Vice President  
External Relations and  
Interim Chief Production Officer  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42419-0024

Dear David:

I am writing to confirm the recent discussions and agreement between our companies regarding Big Rivers' cost associated with its Hart-Scott-Rodino filing. As you know, per the terms of the Section A.9 of the Cost Share letter agreement dated November 1, 2004, as amended, E.ON U.S. would normally reimburse Big Rivers for 75 percent (75%) of this cost, subject to refund when the unwind transaction closes. For this particular transaction cost, E.ON U.S. will reimburse Big Rivers for 100 percent (100%), in accordance with that Section A.9, of its cost with the entire amount being subject to refund when the unwind transaction closes.

Regards,

A handwritten signature in cursive script that reads "David S. Sinclair".

Cc: Paul W. Thompson  
Tim Dowdy

**ATTACHMENT 7**

**Southwire Company Consent to Unwind Transaction**



Paul W. Thompson  
Senior Vice President  
Energy Services

220 West Main Street  
Louisville, Kentucky 40202  
T (502) 627-3861  
F (502) 627-2995  
paul.thompson@eon-us.com

June 16, 2009

Southwire Company  
One Southwire Drive  
Carrollton, GA 30119

Attention: Mr. Jeff Herrin, Executive Vice President Operations

Gentlemen:

This letter agreement shall evidence our mutual agreement that, at such time as E.ON U.S. LLC (“E.ON”) and its affiliates, Big Rivers Electric Corporation (“Big Rivers”), Alcan Corporation and its affiliates, Century Aluminum Company and its affiliates (collectively “Century”), Kenergy Corporation (“Kenergy”), the City of Henderson, Kentucky, the City of Henderson Utility Commission, and the creditors of Big Rivers, are prepared to consummate the transactions at the “Closing” as contemplated in the Transaction Termination Agreement dated as of March 26, 2007, as amended:

(a) Southwire Company shall execute and deliver to Western Kentucky Energy Corp., LG&E Energy Marketing Inc., E.ON, Century and Kenergy at that closing a Termination and Release Agreement (Century Parties) in the form attached hereto as Exhibit A (against the execution and delivery of that agreement by those other parties) (the “Termination Agreement”); and

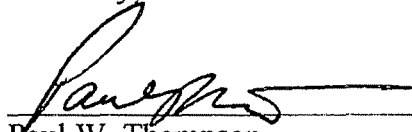
Substantially [Signature]

(b) upon its receipt of that Termination Agreement executed by Southwire Company, E.ON shall deliver to Southwire Company at that Closing in immediately available funds the amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00), as compensation for Southwire Company’s agreement to enter into the Termination Agreement.

If the foregoing is consistent with our agreement, please execute a copy of this letter

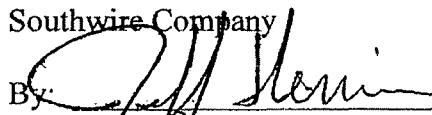
agreement in the space provided below and return it to the undersigned. Thank you for your cooperation as we work to complete these important transactions.

Sincerely,

  
\_\_\_\_\_  
Paul W. Thompson  
Sr. Vice President, Energy Services

Accepted and agreed to as of the date first written above.

Southwire Company

By:   
\_\_\_\_\_

Title: Executive Vice President Operations

**TERMINATION AND RELEASE AGREEMENT**  
**(Century Parties)**

THIS TERMINATION AND RELEASE AGREEMENT (the "*Termination and Release*"), dated as of \_\_\_\_\_, 2009, by and among (a) E.ON U.S. LLC ("*E.ON*"), a Kentucky limited liability company f/k/a LG&E Energy LLC, and the successor to LG&E Energy Corp., a Kentucky corporation ("*LEC*"), LG&E ENERGY MARKETING INC., an Oklahoma corporation ("*LEM*"), and WESTERN KENTUCKY ENERGY CORP., a Kentucky corporation ("*WKEC*") (WKEC, together with E.ON and LEM, the "*E.ON Parties*"), (b) KENERGY CORP., a Kentucky rural electric cooperative corporation ("*Kenergy*") and the successor by merger of Green River Electric Corporation ("*GREC*"), (c) SOUTHWIRE COMPANY, a Delaware corporation ("*Southwire*"), and (d) CENTURY ALUMINUM COMPANY, a Delaware corporation ("*Century*"), and CENTURY ALUMINUM OF KENTUCKY GENERAL PARTNERSHIP, a Kentucky general partnership (formerly NSA, LTD., a Kentucky limited partnership) ("*Century Kentucky GP*") (Century and Century Kentucky GP being collectively referred to in this Termination and Release as the "*Century Parties*") (collectively, the "*Parties*").

**RECITALS:**

A. Big Rivers Electric Corporation ("*Big Rivers*"), LEM, WKEC and certain other Affiliates of E.ON entered into a New Participation Agreement, dated April 6, 1998 (as amended, the "*Participation Agreement*"), and certain of those parties subsequently entered into certain other "Operative Documents" (as defined in the Participation Agreement) on July 15, 1998.

B. Also on July 15, 1998, E.ON, LEM, certain other Affiliates of E.ON, Kenergy and/or one or more of the Century Parties (or their predecessors), among other parties, entered into certain agreements and instruments more particularly described below, in connection with the sale by LEM and the purchase by Kenergy (for resale to one or more of the Century Parties) of certain quantities of electric energy.

C. Big Rivers, E.ON and its relevant Affiliates have concluded that it is in their mutual best interests to terminate and release the contractual relationships created by the Participation Agreement and the other Operative Documents among them, and have executed

and delivered a Transaction Termination Agreement dated as of March 26, 2007, as amended (the "*Termination Agreement*"), setting forth the terms and conditions upon which Big Rivers, E.ON and its Affiliates are willing to terminate and release such contractual relationships. A condition precedent to the consummation of the transactions contemplated in the Termination Agreement is the execution and delivery of this Termination and Release by Kenergy, the Century Parties, Southwire and the E.ON Parties.

D. Prior to the date hereof, and pursuant to various transactions between or among certain of the Century Parties and their predecessors, Southwire, certain of the E.ON Parties and/or Kenergy, each of the Century Parties became signatories or parties to, beneficiaries of and/or obligors under or pursuant to one or more of the "Terminated Agreements" (as hereinafter defined). However, Southwire thereafter remained a party to, and an obligor under, certain of the Terminated Agreements.

E. Also prior to the date hereof, LEM assigned and transferred to WKEC, among other agreements and rights, all rights, title and interests of LEM under or pursuant to one or more of the Terminated Agreements. However, LEM was not, by reason of such assignments and transfers, relieved from its debts, obligations or liabilities under or pursuant to those Terminated Agreements.

F. Each of Kenergy, the Century Parties, Southwire and the E.ON Parties has concluded that it is in its best interests to terminate and release substantially all of the contractual obligations and relationships created by the Terminated Agreements, upon the terms and subject to the conditions set forth in this Termination and Release.

G. Kenergy, Southwire and the Century Parties have agreed to execute and deliver this Termination and Release, and to perform their respective obligations provided for herein, as a material inducement for E.ON, LEM and WKEC to consummate the transactions contemplated in the Termination Agreement.

H. E.ON has agreed to execute and deliver this Termination and Release, and to perform its obligations provided for herein, as a material inducement for Kenergy, Southwire and the Century Parties to consummate the transactions contemplated in this Termination and Release.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements set forth below, and for other valuable consideration, the receipt of which is



hereby acknowledged, the E.ON Parties, Kenergy, Southwire and the Century Parties each agree as follows:

## ARTICLE 1

### DEFINITIONS

Section 1.1 Definitions. Capitalized terms used in this Termination and Release (including the Recitals) and not otherwise defined in any provision hereof shall have the meanings set forth in Exhibit A to this Termination and Release or, if not so defined in that Exhibit A, in Schedule 2.1 attached to this Termination and Release. The rules of interpretation set forth in Exhibit A to this Termination and Release shall apply to this Termination and Release and to the Parties' respective rights and obligations hereunder.

## ARTICLE 2

### TERMINATED AGREEMENTS AND INSTRUMENTS

Section 2.1 Acknowledgment; Terminated Agreements. The Parties, for themselves and their respective successors, predecessors and assigns, and for all other persons or entities claiming by, through or under them, hereby acknowledge and agree that the "Two Year Tier 3 Agreement" and the "Five Year Tier 3 Agreement" (each as defined in Schedule 2.1 attached to this Termination and Release) each expired in accordance with their respective terms prior to the date of this Termination and Release, and are null and void and of no further force or effect whatsoever. Subject to Section 3.1 below and to the limitations set forth in this Section 2.1, effective immediately, and without notice or further action on the part of any Party, each of the Parties, for itself and its respective successors, predecessors and assigns, and for all other persons or entities claiming by, through or under it, hereby agrees with each of the other Parties that each of the agreements, guaranties and other instruments and documents set forth or identified on Schedule 2.1 hereto (collectively, the "*Terminated Agreements*") is irrevocably terminated and discharged and is of no further force or effect whatsoever, except that any consents or approvals of any Party heretofore granted or evidenced by any of the Terminated Agreements shall not be terminated, discharged or otherwise affected by this Termination and Release.

Section 2.2 Filing of Releases and Termination Statements. Each Party agrees to promptly execute, deliver, record and/or file in the appropriate filing offices all such Uniform Commercial Code termination statements and other instruments of termination, discharge or release (in form reasonably satisfactory to the relevant Parties) as shall be reasonably requested by any Party to evidence the termination, release and discharge of the Lock Box Agreement or security interests evidenced thereby, subject to Section 3.1 below.

Section 2.3 Releases by Kenergy. Effective immediately, and without notice or further action on the part of any Party, Kenergy, for itself and its successors, predecessors and assigns, and for all other persons or entities claiming by, through or under any of them, hereby fully, irrevocably and forever remises, releases, acquits and discharges each of the Century Parties, Southwire, LEC, E.ON, LEM, WKEC and Station Two Subsidiary, and their respective members, shareholders, directors, officers, employees, agents, representatives, advisors, successors, predecessors and assigns, and each of them (collectively, the "*Kenergy Released Parties*"), of and from any and all manner of actions, causes of action, suits, sums of money, accounts, reckonings, covenants, controversies, agreements, promises, remedies, amounts paid in settlement, compromises, losses, levies, rights of contribution, rights of set-off or recoupment, other rights, damages, judgments, executions, debts, obligations, liabilities, claims and demands of any nature whatsoever, whether or not in contract, in equity, in tort or otherwise, whether pursuant to any statute, ordinance, regulation, rule of common law or otherwise, whether direct or indirect, whether punitive or compensatory, whether known or unknown, whether presently discoverable or undiscoverable, whether threatened, pending, suspected or claimed, and whether fixed, accrued, contingent or otherwise (collectively, "*Claims*"), which Kenergy ever had, now has, may now have or may hereafter have against any one or more of the Kenergy Released Parties, resulting from, arising out of or in any manner relating to: (i) any Terminated Agreement; or (ii) the Systems Disturbance Agreement, dated April, 2001, among Kenergy, Big Rivers, WKEC, Station Two Subsidiary and Willamette Industries, Inc. (the "*Systems Disturbance Agreement (2001)*"); or (iii) any performance or non-performance by a Kenergy Released Party under or pursuant to any Terminated Agreement or the Systems Disturbance Agreement (2001); or (iv) any breach or default by a Kenergy Released Party under or

pursuant to any Terminated Agreement or the Systems Disturbance Agreement (2001), howsoever caused and whenever occurring; or (v) in the case of LEC, E.ON, LEM, WKEC and Station Two Subsidiary (and their respective members, shareholders, directors, officers, employees, agents, representatives, advisors, successors, predecessors and assigns) only (A) their respective (including without limitation, their respective employees', officers', agents', representatives', advisors', contractors' and/or predecessors' respective) lease, operation, maintenance, repair, upkeep, occupation, generation, use, closure, abandonment, retirement, replacement or possession of, or the condition or state of repair of, any electric generating plant or other asset or property of Big Rivers (or any components thereof, including without limitation, any components installed or constructed following the date of the Agreement for Electric Service identified in paragraph 1 of Schedule 2.1), or any electric energy generated by or capacity associated with any such electric generating plant, or (B) the Participation Agreement or any other "Operative Document" contemplated in the Participation Agreement; provided, however, that nothing contained in this Section 2.3 shall be deemed to affect, limit, waive or eliminate any covenant or agreement on the part of any Kenergy Released Party set forth in this Termination and Release, it being understood that such covenants and agreements set forth in this Termination and Release shall survive the execution and delivery hereof and the transactions contemplated herein in accordance with the terms of this Termination and Release.

Section 2.4 Releases by the E.ON Parties. Effective immediately, and without notice or further action on the part of any Party, each E.ON Party, for itself and its successors, predecessors and assigns, and for all other persons or entities claiming by, through or under any of them, hereby fully, irrevocably and forever remises, releases, acquits, waives and discharges Kenergy, Southwire and each of the Century Parties, and their respective members, shareholders, directors, officers, employees, agents, representatives, advisors, successors, predecessors and assigns, and each of them (collectively, the "*E.ON Released Parties*"), of and from any and all Claims which such E.ON Party ever had, now has, may now have or may hereafter have against any one or more of the E.ON Released Parties, resulting from, arising out of or in any manner relating to: (i) any Terminated Agreement; or (ii) the Systems Disturbance Agreement (2001); or (iii) any performance or

non-performance by an E.ON Released Party under or pursuant to any Terminated Agreement or the Systems Disturbance Agreement (2001); or (iv) any breach or default by an E.ON Released Party under or pursuant to any Terminated Agreement or the Systems Disturbance Agreement (2001); provided, however, that nothing contained in this Section 2.4 shall be deemed to affect, limit, waive or eliminate any covenant or agreement on the part of any E.ON Released Party set forth in this Termination and Release, it being understood that such covenants and agreements set forth in this Termination and Release shall survive the execution and delivery hereof and the transactions contemplated herein in accordance with the terms of this Termination and Release.

Section 2.5 Releases by Century Parties. Effective immediately, and without notice or further action on the part of any Party, each Century Party, for itself and its successors, predecessors and assigns, and for all other persons or entities claiming by, through or under any of them, hereby fully, irrevocably and forever remises, releases, acquits, waives and discharges Kenergy and each of the LEC, E.ON, LEM, WKEC and Station Two Subsidiary, and their respective members, shareholders, directors, officers, employees, agents, representatives, advisors, successors, predecessors and assigns, and each of them (collectively, the "*Century Released Parties*"), of and from any and all Claims which such Century Party ever had, now has, may now have or may hereafter have against any one or more of the Century Released Parties, resulting from, arising out of or in any manner relating to: (i) any Terminated Agreement; or (ii) any performance or non-performance by a Century Released Party under or pursuant to any Terminated Agreement; or (iii) any breach or default by a Century Released Party under or pursuant to any Terminated Agreement; provided, however, that nothing contained in this Section 2.5 shall be deemed to affect, limit, waive or eliminate any covenant or agreement on the part of any Century Released Party set forth in this Termination and Release, it being understood that such covenants and agreements set forth in this Termination and Release shall survive the execution and delivery hereof and the transactions contemplated herein in accordance with the terms of this Termination and Release.

Section 2.6 Releases by Southwire. Effective immediately, and without notice or further action on the part of any Party, Southwire, for itself and its successors, predecessors

and assigns, and for all other persons or entities claiming by, through or under any of them, hereby fully, irrevocably and forever remises, releases, acquits, waives and discharges Kenergy and each of the LEC, E.ON, LEM, WKEC and Station Two Subsidiary, and their respective members, shareholders, directors, officers, employees, agents, representatives, advisors, successors, predecessors and assigns, and each of them (collectively, the "*Southwire Released Parties*"), of and from any and all Claims which Southwire ever had, now has, may now have or may hereafter have against any one or more of the Southwire Released Parties, resulting from, arising out of or in any manner relating to: (i) any Terminated Agreement; or (ii) any performance or non-performance by a Southwire Released Party under or pursuant to any Terminated Agreement; or (iii) any breach or default by a Southwire Released Party under or pursuant to any Terminated Agreement; provided, however, that nothing contained in this Section 2.6 shall be deemed to affect, limit, waive or eliminate any covenant or agreement on the part of any Southwire Released Party set forth in this Termination and Release, it being understood that such covenants and agreements set forth in this Termination and Release shall survive the execution and delivery hereof and the transactions contemplated herein in accordance with the terms of this Termination and Release.

Section 2.7 Release from Depository Bank. Each Party agrees, upon the written request delivered by any other Party at any time following the final disbursements from the Lock Box Account as contemplated in Section 3.1 below, to use its reasonable best efforts to cause the Depository Bank to (a) acknowledge in writing for the benefit of Kenergy, LEM, WKEC, Southwire, Century and Century Kentucky GP, the termination of the Lock Box Agreement and (b) agree in writing with those Parties to release and discharge any further obligation or liability of any of those Parties to the Depository Bank under or pursuant to the Lock Box Agreement, in each case in form reasonably satisfactory to those Parties. Until the execution of such a release by the Depository Bank, the indemnity obligations of the E.ON Parties to the Century Parties and Southwire under the last sentence of Section 6 of the Lock Box Agreement shall remain in effect and shall not be released by this Termination and Release.

ARTICLE 3

OTHER COVENANTS AND COMMITMENTS

Section 3.1 Final Pro-Rations, Payments and Distributions.

(a) Notwithstanding anything contained in this Termination and Release to the contrary, and subject to the provisions of Subsection 5(b) of the Lock Box Agreement, in the event, immediately prior to the execution and delivery of this Termination and Release, any amounts remained owing by Kenergy to WKEC (as assignee of LEM) pursuant to the "GREC Power Agreement" (as defined in Schedule 2.1) or the Lock Box Agreement, in either case on account of any services rendered by WKEC to Kenergy under either such instrument through the execution and delivery of this Termination and Release, the obligation of Kenergy to pay such amounts to WKEC shall survive the execution and delivery hereof, and such amounts shall be paid by Kenergy to WKEC in immediately available funds at the time(s) contemplated in the following sentence (or promptly following the date hereof if not contemplated in the following sentence). The amounts contemplated in the preceding sentence as owing to WKEC shall include, without limitation, amounts owing to WKEC for services rendered through the date hereof (but only to the extent not recovered by WKEC through the Smelter Payments made by the Century Parties or Southwire (or any of them) to the Depository Bank in accordance with the Lock Box Agreement and Subsection 3.1(b) below ("*Smelter Payment Recoveries*")):

(i) pursuant to Section 7.02, 7.03, 10.01, 10.02, 11.01, 11.03 or Schedule A of the GREC Power Agreement (with the final "Billing Month" of that agreement (including without limitation, for the purpose of calculating the "Minimum Purchase Obligation" under Section e. of that Schedule A) being deemed to be the period from and including \_\_\_\_\_ 1, 2009 through and including the date of this Termination and Release), it being understood and agreed that (A) WKEC shall be entitled to issue its final bill for such services (and associated amounts owing) at any time following the date hereof, and Kenergy shall remit payment for the same (exclusive of Smelter Payment Recoveries) within five (5) days after the date of delivery of that bill, and (B) the provisions of Section 28.06 of the GREC Power

Agreement shall survive the execution and delivery of this Termination and Release to the extent they may apply or relate to any of the amounts owing to WKEC as contemplated in this Subclause (i) (exclusive of Smelter Payment Recoveries); and

(ii) pursuant to Section 1 or 4, or Subsection 5(a), of the Lock Box Agreement, it being understood and agreed by the Parties that (A) WKEC shall, from and after the date hereof, continue to have exclusive dominion and control over, and the right to withdraw or to direct the withdrawal of amounts from, the Lock Box Account provided for in the Lock Box Agreement (including upon a final closing of that account) to the extent required to secure from that account all amounts owing to WKEC as contemplated in this Subsection (a), and (B) Kenergy shall continue to be entitled, from and after the date hereof, to receive from that Lock Box Account the amounts contemplated in Subsection 4(a) of the Lock Box Agreement accruing for services provided by Kenergy to the relevant Century Party or Century Parties or Southwire through the date hereof.

(b) Notwithstanding anything to the contrary contained in this Termination and Release or in any other agreement or instrument between or among Kenergy, Southwire and/or any of the Century Parties, in the event, immediately prior to the execution and delivery of this Termination and Release, any amounts remained owing by any Century Party or Southwire to Kenergy or WKEC (as assignee of LEM) pursuant to the Agreement for Electric Service, dated as of July 15, 1998, as amended, among Kenergy, Southwire and one or more of the Century Parties, pursuant to the Lock Box Agreement, pursuant to the Assurances Agreement dated as of July 15, 1998, as amended, among WKEC (as assignee of LEM), LEM, Southwire and one or more of the Century Parties (the "*Assurances Agreement*"), or pursuant to the Consent and Agreement dated December 23, 2005, among the Century Parties, LEM and WKEC (as assignee of LEM) (the "*2005 Consent and Agreement*"), in any such case on account of any services rendered by Kenergy to any Century Party or Century Parties or Southwire pursuant to such instruments (or any of them) through the execution and delivery of this Termination and Release, the obligation of such Century Party or Century Parties or Southwire to pay such amounts to Kenergy or WKEC shall survive the execution and delivery hereof (and such other agreements or

instruments), and such amounts shall be paid by such Century Party or Century Parties or Southwire by payment into the Lock Box Account pursuant to the Lock Box Agreement at the time(s) contemplated in the relevant agreement described above (for distribution by WKEC in accordance with the Lock Box Agreement). If any such amounts remain outstanding after the Century Parties and Southwire have made all required payments into the Lock Box Account, then the Century Parties or Southwire (as applicable) will pay WKEC such amounts in immediately available funds within five (5) days following the date of delivery of WKEC's bill for the same to Kenergy and Century Aluminum of Kentucky General Partnership. The amounts contemplated in the preceding sentence as owing to Kenergy or WKEC shall include, without limitation, amounts owing to Kenergy or WKEC for services rendered through the date hereof: (i) pursuant to Subclause (vi) of Subsection 2.a of the Assurances Agreement; and (ii) pursuant to Section 4 of the 2005 Consent and Agreement. The provisions of the Lock Box Agreement shall survive the execution and delivery of this Termination and Release for the purposes of the receipt, administration and distribution of the amounts required to be paid into the Lock Box Account as contemplated above.

(c) Subject to the rights and obligations of the Parties contemplated in Subsections (a) and (b) above, each of WKEC, LEM, Kenergy, Southwire and the Century Parties hereby agree to terminate the Lock Box Agreement as contemplated in Section 12 of the Lock Box Agreement. WKEC and LEM are each hereby authorized by the Parties to notify the Depository Bank of the termination of the Lock Box Agreement (and to deliver a copy of this Termination and Release to the Depository Bank), and are further authorized to effect a final closing of the Lock Box Account, in each case following the distribution of the remaining balance of that account as contemplated in Subsections 3.1(a)(ii) and 3.1(b) above.

(d) Contemporaneous with the execution and delivery of this Termination and Release, WKEC paid to Century Kentucky GP the amount of \$29,166.00 in immediately available funds, representing the final installment of the payments owing by WKEC or LEM to any of the Century Parties or Southwire pursuant to Subsection 3.i(i) of the Assurances Agreement, the receipt of which is hereby acknowledged by Century Kentucky GP.



(e) The provisions of this Section 3.1 shall survive the Parties' execution and delivery of this Termination and Release until the amounts contemplated herein are paid and discharged in full by the relevant Party or Parties.

Section 3.2 Waiver of Third Party Beneficiary Rights.

(a) Effective immediately, each of the Century Parties and Southwire, for itself and its respective predecessors, successors and assigns, and for all persons or entities claiming by, through or under any of them, hereby fully and irrevocably waives and releases for the benefit of the E.ON Parties any and all third-party beneficiary rights and other similar rights and interests that the Century Parties or Southwire may now have under or pursuant to (i) the GREC Power Agreement and/or (ii) the GREC Guaranty.

(b) Effective immediately, Kenergy, for itself and its predecessors, successors and assigns, and for all persons or entities claiming by, through or under them, hereby fully and irrevocably waives and releases for the benefit of the E.ON Parties any and all third-party beneficiary rights and other similar rights and interests (if any) that Kenergy may now have under or pursuant to: (i) the Power Purchase Agreement, dated July 15, 1998, as amended, among Big Rivers, LEM and WKEC (as successor or assignee of LEM) (the "*Power Purchase Agreement*"); and/or (ii) the New Guarantee Agreement, dated April 6, 1998, by E.ON (as successor to LEC) to and in favor of Big Rivers, to the extent relating to the Power Purchase Agreement or the obligations of LEM and/or WKEC thereunder.

Section 3.3 Consents. To the extent their consent may be required, each of Kenergy, Southwire and the Century Parties, for itself and its respective predecessors, successors and assigns, and for all other persons or entities claiming by, through or under any of them, hereby consents to the termination and discharge (as contemplated in Article 2 above) of each of the Terminated Agreements to which it is not a signatory or a party, and consents to the releases of the other relevant Parties of and from Claims as contemplated in that Article 2.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties of the E.ON Parties. Each of the E.ON Parties hereby severally represents and warrants to Kenergy, Southwire and the Century Parties that:

(a) Organization and Existence. Each of the E.ON Parties is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to do business as a foreign corporation in any jurisdiction where the nature of its business and its activities require it to be so qualified. Each of the E.ON Parties has the requisite power and authority to conduct its business as presently conducted and to enter into and perform its obligations under this Termination and Release in accordance with its terms.

(b) Authorization, Execution, Delivery and Binding Effect. This Termination and Release has been duly authorized, executed and delivered by each E.ON Party and, assuming the due authorization, execution and delivery hereof by Kenergy, Southwire and each Century Party, constitutes a legal, valid and binding obligation of each E.ON Party, enforceable against each such E.ON Party in accordance with its 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 and Release by each E.ON Party, the consummation by each E.ON Party of the transactions contemplated hereby, and the compliance by each E.ON Party with the terms and provisions hereof, do not and will not contravene any Applicable Law or its organizational documents.

(d) No Required Consents. All consents, approvals, resolutions, authorizations, actions or orders, including those which must be obtained from any governmental entities or regulatory bodies, required for the authorization, execution and

delivery of, and for the consummation of the transactions contemplated by, this Termination and Release by any E.ON Party have been obtained prior to the date hereof.

Section 4.2 Representations and Warranties of the Century Parties. Each of the Century Parties hereby severally represents and warrants to Kenergy, Southwire and the E.ON Parties that:

(a) Organization and Existence. Each of the Century Parties is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to do business as a foreign corporation in any jurisdiction where the nature of its business and its activities require it to be so qualified. Each of the Century Parties has the requisite power and authority to conduct its business as presently conducted and to enter into and perform its obligations under this Termination and Release in accordance with its terms.

(b) Authorization, Execution, Delivery and Binding Effect. This Termination and Release has been duly authorized, executed and delivered by each Century Party and, assuming the due authorization, execution and delivery hereof by Kenergy, Southwire and each E.ON Party, constitutes a legal, valid and binding obligation of each Century Party, enforceable against each such Century Party in accordance with its 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 and Release by each Century Party, the consummation by each Century Party of the transactions contemplated hereby, and the compliance by each Century Party with the terms and provisions hereof, do not and will not contravene any Applicable Law or its organizational documents.

(d) No Required Consents. All consents, approvals, resolutions, authorizations, actions or orders, including those which must be obtained from any governmental entities or regulatory bodies, required for the authorization, execution and

delivery of, and for the consummation of the transactions contemplated by, this Termination and Release by any Century Party have been obtained prior to the date hereof.

Section 4.3 Representations and Warranties of Southwire. Southwire hereby represents and warrants to Kenergy, the Century Parties and the E.ON Parties that:

(a) Organization and Existence. Southwire is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to do business as a foreign corporation in any jurisdiction where the nature of its business and its activities require it to be so qualified. Southwire has the requisite power and authority to conduct its business as presently conducted and to enter into and perform its obligations under this Termination and Release in accordance with its terms.

(b) Authorization, Execution, Delivery and Binding Effect. This Termination and Release has been duly authorized, executed and delivered by Southwire and, assuming the due authorization, execution and delivery hereof by Kenergy, the Century Companies and each E.ON Party, constitutes a legal, valid and binding obligation of Southwire, enforceable against Southwire in accordance with its 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 and Release by Southwire, the consummation by Southwire of the transactions contemplated hereby, and the compliance by Southwire with the terms and provisions hereof, do not and will not contravene any Applicable Law or its organizational documents.

(d) No Required Consents. All consents, approvals, resolutions, authorizations, actions or orders, including those which must be obtained from any governmental entities or regulatory bodies, required for the authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Termination and Release by Southwire have been obtained prior to the date hereof.

Section 4.4 Representations and Warranties of Kenergy. Kenergy hereby represents and warrants to each of the E.ON Parties, Southwire and the Century Parties that:

(a) Organization and Existence. Kenergy is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to do business as a foreign corporation in any jurisdiction where the nature of its business and its activities require it to be so qualified. Kenergy has the requisite power and authority to conduct its business as presently conducted and to enter into and perform its obligations under this Termination and Release in accordance with its terms.

(b) Authorization, Execution, Delivery and Binding Effect. This Termination and Release has been duly authorized, executed and delivered by all necessary corporate action on the part of Kenergy and, assuming the due authorization, execution and delivery hereof by each E.ON Party, Southwire and each Century Party, constitutes the legal, valid and binding obligation of Kenergy, enforceable against Kenergy in accordance with its 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 Kenergy of this Termination and Release, the consummation by Kenergy of the transactions contemplated hereby, and the compliance by Kenergy with the terms and provisions hereof, do not and will not contravene any Applicable Law or its organizational documents.

(d) No Required Consents. All consents, approvals, resolutions, authorizations, actions or orders, including, those which must be obtained from any governmental entities or regulatory bodies, required for the authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Termination and Release by Kenergy have been obtained prior to the date hereof.

Section 4.5 Additional Representations and Warranties of the Parties. Each Party hereby severally represents and warrants to all other Parties that it has not assigned to any person or entity not a signatory to this Termination and Release, at any time prior to the date

hereof, any rights or interests arising under or pursuant to any Terminated Agreement or, in the case of the Parties other than Southwire and the Century Parties, the Systems Disturbance Agreement (2001), and that none of its Affiliates (not a signatory to this Termination and Release) presently holds or controls, or has the right to exercise, any rights or interests arising under or pursuant to any Terminated Agreement or the Systems Disturbance Agreement (2001). The Century Parties jointly and severally represent and warrant to Kenergy and the E.ON Parties that (a) notwithstanding the descriptions of the signatories or parties to the Terminated Agreements set forth or described on Schedule 2.1, prior to the date hereof Century Kentucky GP succeeded to all of the rights, interests and obligations (if any) of each of NSA, Ltd., Hancock Aluminum LLC, Century Aluminum of Kentucky LLC, Metalsco, Ltd., Skyliner, Inc. and Century Kentucky, Inc. (collectively, the "*Predecessors*"), under or pursuant to the Terminated Agreements, including without limitation, any Claims that any of the Predecessors may have had or may now have against Kenergy or any of the E.ON Parties under or pursuant to any Terminated Agreement, (b) none of the Predecessors previously conveyed, assigned or transferred to any person or entity (other than Century Kentucky GP) any such Claims, and (c) Century Kentucky GP has the sole and absolute right, authority and capacity to release and discharge all such Claims pursuant to this Termination and Release without the consent or approval of any Predecessor or other person or entity.

## ARTICLE 5

### MISCELLANEOUS

Section 5.1 Successors and Assigns. This Termination and Release shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties named herein and their respective members, shareholders, directors, officers, employees, agents, representatives, advisors, successors, predecessors and assigns, and all other persons or entities claiming by, through or under any of them.

Section 5.2 Notices. All notices, requests, demands, claims or other communications required or permitted to be given or made under this Termination and Release shall be in writing and shall be deemed duly given or made if 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 any E.ON Party:

E.ON U.S. LLC  
220 West Main Street  
Louisville, KY 40202  
Facsimile: 502-627-4622  
Telephone: 502-627-3665  
Attn: Executive Vice President,  
General Counsel & Corporate Secretary

With a Copy to:

Patrick R. Northam, Esq.  
Greenebaum Doll & McDonald PLLC  
3500 National City Tower  
101 South Fifth Street  
Louisville, Kentucky 40202  
Facsimile: 502-587-3695  
Telephone: 502-587-3774

If to Kenergy:

Kenergy Corp.  
P. O. Box 18  
Henderson, Kentucky 42419  
Attn: President  
Facsimile: 270-826-3999

With a Copy to:

Frank N. King, Jr.  
318 Second Street  
Henderson, Kentucky 42420  
Facsimile: 270-826-6672  
Telephone: 270-826-3965

If to any Century Party:

Century Aluminum Company  
P. O. Box 500  
State Route 271 North  
Hawesville, Kentucky 42348  
Attn: Plant Manager  
Facsimile: 270-852-2882

If to Southwire:

Southwire Company

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Telephone: \_\_\_\_\_

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 5.3 Governing Law. THIS TERMINATION AND RELEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, BUT WITHOUT REGARD TO THE CONFLICTS OF LAWS RULES OR PRINCIPLES OF THE COMMONWEALTH OF KENTUCKY.

Section 5.4 Amendments and Waivers. This Termination and Release shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the Parties. No waiver of any of the provisions of this Termination and Release shall be deemed to or shall constitute a continuing waiver or 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 5.5 Severability. Any term or provision of this Termination and Release which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such invalidity or unenforceability, without rendering invalid



or unenforceable the remaining terms and provisions of this Termination and Release or affecting the validity or enforceability of any of the terms or provisions of this Termination and Release in any other jurisdiction.

Section 5.6 Construction. The Parties have participated jointly in the negotiation and drafting of this Termination and Release. In the event an ambiguity or question of intent or interpretation arises, this Termination and Release 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 and Release.

Section 5.7 Incorporation. The Exhibits and Schedules identified in this Termination and Release are incorporated herein by reference and made a part hereof.

Section 5.8 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 AND RELEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 5.9 Headings. The article and section headings contained in this Termination and Release are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Termination and Release.

Section 5.10 Counterparts. This Termination and Release 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 5.11 Further Assurances. Each of the Parties shall, at all times, and from time to time, 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 as may be reasonably required to consummate the transactions contemplated in this Termination and Release as they are herein contemplated. Each Party shall, and shall use its commercially reasonable efforts to assure that any necessary third party shall, execute and deliver 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 and Release, and as may be reasonably required to complete the transactions contemplated in this Termination and Release.

Section 5.12 Third Party Beneficiaries. This Termination and Release is entered into for the sole benefit of the Parties hereto and the other persons and entities expressly contemplated herein, and except as specifically provided herein, shall not confer any rights or remedies upon any person or entity other than the Parties, such other identified persons and entities and their respective successors, predecessors and permitted assigns.

Section 5.13 No Other Representations. Each Party represents to the others that it has not executed this Termination and Release upon the basis of any agreement, promise, representation or warranty not specifically contained in this Termination and Release.

Section 5.14 Time of the Essence. Time shall be of the essence in the Parties' performance of their respective obligations under this Termination and Release.

Section 5.15 Survival. The provisions of this Termination and Release shall survive the execution and delivery hereof and the consummation of the transactions contemplated herein, and shall continue to be binding on and enforceable by the Parties hereto in accordance with its terms.

Section 5.16 Acknowledgment and Representation. Each Party has fully read the terms of this Termination and Release and has been represented by competent legal counsel in connection with the negotiation and execution hereof, and the effect and legal consequences of this Termination and Release have been fully explained to each Party by its legal counsel. Each Party hereby further represents and warrants to the other Parties that such Party has not at any time assigned or transferred to any other person or entity in any manner, including by way of subrogation, operation of law or otherwise, any Claim or portion thereof that it may have had, has, may now have or may hereafter have, against any other Party hereto of the type(s) contemplated in this Termination and Release as to be released and discharged by this Termination and Release.

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

**KENERGY CORP.**

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

**E.ON U.S. LLC**

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

**LG&E ENERGY MARKETING INC.**

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

**WESTERN KENTUCKY ENERGY CORP.**

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

**SOUTHWIRE COMPANY**

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

**CENTURY ALUMINUM COMPANY**

By: \_\_\_\_\_

Name:

Title:

**CENTURY ALUMINUM OF KENTUCKY  
GENERAL PARTNERSHIP**

By: METALSCO, LLC, General Partner

By: \_\_\_\_\_

Name:

Title:

## EXHIBIT A

### RULES OF INTERPRETATION AND DEFINITIONS

RULES OF INTERPRETATION. In this Termination and Release, unless otherwise expressly provided herein:

1. Any term defined in this Termination and Release (including this Exhibit A and Schedule 2.1 hereto) by reference to another document, instrument or agreement shall continue to have the meaning ascribed thereto whether or not such other document, instrument or agreement remains in effect;

2. Words importing the singular include the plural and vice versa;

3. Words importing a gender include either gender;

4. A reference in this Termination and Release to a part, clause, section, paragraph, article, party, annex, appendix, exhibit, schedule or other attachment is a reference to a part, clause, section, paragraph, or article of, or a party, annex, appendix, exhibit, schedule or other attachment to, this Termination and Release unless, in any such case, otherwise expressly provided herein;

5. A definition of or reference to any document, instrument or agreement set forth in this Termination and Release (including in this Exhibit A or Schedule 2.1 hereto) includes all amendments and/or supplements to, and any restatements, replacements, modifications or novations of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used;

6. A reference to any person or entity includes such person's or entity's successors and permitted assigns (in the designated capacity);

7. Any reference to "days" shall mean calendar days unless Business Days are expressly specified;

8. If the date as of which any right, option or election is exercisable, or the date upon which any amount is due and payable, is stated to be on a date or day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding Business Day);

9. Words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context clearly requires otherwise, refer to the

whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof; and

10. A reference to “including” means including without limiting the generality of any description preceding such term, and for purposes hereof the rule of *ejusdem generis* shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

#### DEFINITIONS

“*Affiliate*” shall mean, with respect to any Party, any other person or entity controlled by, controlling or under common control with, such Party.

“*Applicable Laws*” shall mean all federal, state and local laws, rules, regulations, ordinances, codes, orders and directives of any court or other governmental entity or regulatory body, or any office or agency thereof.

“*Business Day*” shall mean any day other than Saturday or Sunday or another day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in Louisville, Kentucky.

The terms “*Depository Bank*,” “*Lock Box Account*” and “*Smelter Payments*” have the same meanings in this Termination and Release as in the Lock Box Agreement.

## SCHEDULE 2.1

### TERMINATED AGREEMENTS

1. Agreement for Electric Service, dated July 15, 1998, as amended, between LEM and Kenergy (as successor to GREC) (the "*GREC Power Agreement*");
2. Agreement for Tier 3 Electric Service (2001-2002), dated July 15, 1998, between LEM and Kenergy (as successor to GREC) (the "*Two Year Tier 3 Agreement*");
3. Agreement for Tier 3 Electric Service (2001-2005), dated July 15, 1998, between LEM and Kenergy (as successor to GREC) (the "*Five Year Tier 3 Agreement*");
4. Security and Lockbox Agreement, dated as of July 15, 1998, among PNC Bank, N.A., LEM, Kenergy (as successor to GREC), Southwire Company, Century Aluminum Company (as successor to Southwire Company), Century Aluminum of Kentucky LLC (as successor of Southwire Company and Century Aluminum Company), Hancock Aluminum LLC (as successor to Century Aluminum of Kentucky LLC), and Century Aluminum of Kentucky General Partnership (as successor to Hancock Aluminum LLC and NSA, Ltd.) (the "*Lock Box Agreement*");
5. Assurances Agreement, dated July 15, 1998, among LEM, Southwire Company, Century Aluminum Company (as successor to Southwire Company), Century Aluminum of Kentucky LLC (as successor to Century Aluminum Company), Hancock Aluminum LLC (as successor to Century Aluminum of Kentucky LLC), and Century Aluminum of Kentucky General Partnership (as successor to Hancock Aluminum LLC and NSA, Ltd.);
6. Special Assignment Agreement, dated as of March 26, 2001, among LEM, Southwire Company, Century Aluminum of Kentucky LLC and Century Aluminum Company;
7. Consent and Agreement, dated December 23, 2005, among Century Aluminum of Kentucky LLC, Century Aluminum Company, Hancock Aluminum LLC, NSA, Ltd., Century Aluminum of Kentucky General Partnership, Metalsco, Ltd., Skyliner, Inc., Century Kentucky, Inc. and LEM (the "*2005 Consent and Agreement*");
8. Systems Disturbance Agreement, dated as of July 15, 1998, among Big Rivers, Western Kentucky Energy Corp. (for itself and as successor to WKE Station Two Inc.), Kenergy (as successor to Henderson Union and GREC), Alcan Corporation (as successor to Alcan Aluminum

Corporation), Alcan Primary Products Corporation (as successor to Alcan Corporation), Southwire Company, Century Aluminum Company (as successor to Southwire Company), Century Aluminum of Kentucky LLC (as successor to Century Aluminum Company), Hancock Aluminum LLC (as successor to Century Aluminum of Kentucky LLC), and Century Aluminum of Kentucky General Partnership (as successor to Hancock Aluminum LLC and NSA, Ltd.) (the "*1998 Systems Disturbance Agreement*");

9. Load Management Agreement for Electric Power Supply, dated as of July 15, 1998, among LEM, Southwire Company, Century Aluminum Company (as successor to Southwire Company), Century Aluminum of Kentucky LLC (as successor to Century Aluminum Company), Hancock Aluminum LLC (as successor to Century Aluminum of Kentucky LLC), and Century Aluminum of Kentucky General Partnership (as successor to Hancock Aluminum LLC and NSA, Ltd.);
10. Guaranty, dated July 15, 1998, by E.ON (as successor to LG&E Energy Corp.) to and in favor of Kenergy (as successor to GREC) (the "GREC Guaranty");
11. Guaranty, dated as of July 15, 1998, of E.ON (as successor to LG&E Energy Corp.) to and in favor of Southwire Company, Century Aluminum Company (as successor to Southwire Company), Century Aluminum of Kentucky LLC (as successor of Southwire Company or Century Aluminum Company), Hancock Aluminum LLC (as successor to Century Aluminum of Kentucky LLC), and Century Aluminum of Kentucky General Partnership (as successor to Hancock Aluminum LLC and NSA, Ltd.) (which Guaranty is appended to the Assurances Agreement described in 5 above);

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