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**PUBLIC SERVICE
COMMISSION**

July 24, 2009

Mr. Jeff DeRouen
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: *In the Matter of the Applications of Big Rivers Electric Corporation, E.ON U.S., LLC, Western Kentucky Energy Corp. and LG&E Energy Marketing, Inc., P.S.C. Case No. 2007-00455*

Dear Mr. DeRouen:

Please refer to Commitment 11 in Appendix A to the March 6, 2009 order in this matter, which states:

Big Rivers commits to file a report with the Commission within 10 days after the closing of the Unwind Transaction stating that all of the conditions precedent to the closing of the Unwind Transaction have been satisfied or, if any of the conditions have been waived, the terms on which each waiver was granted.

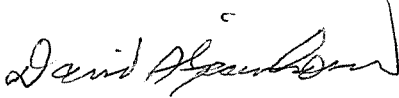
This letter and the enclosed report on satisfaction or disposition of the closing conditions to the Unwind Transaction are the Big Rivers Electric Corporation ("Big Rivers") compliance filing for this condition.

As you will note, all closing conditions except those identified in the Transaction Termination Agreement Sections 10.3 (u) and (hh), and in the Third Amendment to the Transaction Termination Agreement, Sections 11 and 16, were satisfied as contemplated. Those closing conditions were either waived or accepted under changed circumstances as described in the Closing Memorandum entered into between Big Rivers and LG&E Energy Marketing Inc., Western Kentucky Energy Corp. and E.ON U.S. LLC on July 16, 2009, the date of the Unwind Transaction closing. Big Rivers has agreed in Section 4.2 of the Closing Memorandum that all conditions to closing have been met or waived.

Mr. Jeff DeRouen, Executive Director
Kentucky Public Service Commission
July 24, 2009
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The Closing Memorandum is a voluminous document. To reduce the volume of this filing, Big Rivers has placed the exhibits to the Closing Memorandum on CD-ROM. Please contact me if you have any questions or comments on this compliance filing.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David A. Spainhoward". The signature is written in a cursive style with a large, sweeping initial "D".

David A. Spainhoward
Senior Vice President
External Relations and Chief Procurement Officer

DAS/bh

Conditions Precedent to Closing for Big Rivers Electric Corporation – Final Report

I. Transaction Termination Agreement dated as of March 26, 2007

Section 10.1 Conditions to Each Party's Obligations:

The respective obligations of each Party to consummate the Transaction at the Closing shall be subject to the satisfaction (or waiver by that party in its sole discretion) at or prior to the Closing of the following condition precedent:

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

Status: Closing condition satisfied

Section 10.3(a) WKE Party Representations:

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

Status: Closing condition satisfied

Section 10.3(b) Secretary's Certificate:

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

Status: Closing condition satisfied

Section 10.3(c) Organizational Documents:

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

Status: Closing condition satisfied

Section 10.3(d) Governmental Approvals:

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

Status: Closing condition satisfied

Section 10.3(e) Termination and Release:

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

Status: Closing condition satisfied

Section 10.3(f) Inventory Bill of Sale:

The Inventory Bill of Sale shall have been executed and delivered by WKEC;

Status: Closing condition satisfied

Section 10.3(g) Personal Property Bill of Sale:

The Personal Property Bill of Sale shall have been executed and delivered by WKEC;

Status: Closing condition satisfied

Section 10.3(h) Assignment and Assumption of Contracts:

The Assignment and Assumption of Contracts shall have been executed and delivered by WKEC;

Status: Closing condition satisfied

Section 10.3(i) Deeds of Real Property:

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

Status: Closing condition satisfied

Section 10.3(j) Assignment of Owned Intellectual Property:

The Assignment of Owned Intellectual Property shall have been executed and delivered by WKEC;

Status: Closing condition satisfied

Section 10.3(k) Assignment and Assumption of Permits:

The Assignment and Assumption of Permits shall have been executed and delivered by WKEC;

Status: Closing condition satisfied

Section 10.3(l) H1 Boiler Event:

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

Status: Closing condition satisfied

Section 10.3(m) Tax Rulings:

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

Status: Closing condition satisfied

Section 10.3(n) Creditor Termination and Release:

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

Status: Closing condition satisfied

Section 10.3(o) Station Two Termination and Release:

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

Status: Closing condition satisfied

Section 10.3(p) Texas Gas Release:

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

Status: Closing condition satisfied

Section 10.3(q) Definitive Documentation and Other Documents:

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

Status: Closing condition satisfied

Section 10.3(r) Consents and Approvals:

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

Status: Closing condition satisfied

Section 10.3(s) Termination Payment Calculated:

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

Status: See Closing Memorandum, Sections 1 and 5; closing condition satisfied

Section 10.3(t) True Up Payments:

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

Status: See Closing Memorandum; closing condition satisfied

Section 10.3(u) Big Rivers Debt Ratings:

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

Status: Big Rivers acquired debt ratings from Standard & Poor's ("S&P"), Moody's and Fitch. Those ratings are all investment grade ratings. S&P said Big Rivers may be assigned a "BBB-" rating with a stable outlook "if BREC completes the unwind transaction on the specified terms." Moody's assigned a "Baa1" rating to a proposed offering of \$83.3 million of County of Ohio, Kentucky Pollution Control Revenue Refunding Bonds, also with a stable outlook. Fitch assigned a "BBB-" rating to Big Rivers with a stable outlook. While the S&P rating is one notch below the rating stated in the condition, this was acceptable to Big Rivers and the ratings received met the condition imposed by the Commission in its order of March 6, 2009.

Section 10.3(v) E.ON Debt Rating:

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

Status: Closing condition satisfied

Section 10.3(w) No Damage to Generating Plants:

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

Status: Closing condition satisfied

Section 10.3(x) Assignment of Permits:

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

Status: Closing condition satisfied

Section 10.3(y) Environmental Conditions:

Big Rivers shall not, in its sole and absolute discretion, by written notice delivered to WKEC: (A) at any time more than 45 days prior to the Scheduled Unwind Closing Date, have refused to consummate the Closing of the transactions contemplated by this Termination Agreement, on the basis of one or more facts or circumstances described in the following sentence; or (B) at any time less than 45 days prior to the Scheduled Unwind Closing Date, have refused to consummate the Closing of the transactions contemplated by this Termination Agreement, on the basis of one or more facts or circumstances described in the following sentence (1) of which it had no Knowledge at any time prior to the date which is 45 days prior to the Scheduled Unwind Closing Date, and (2) the Damages associated with which that are reasonably likely to be suffered or incurred by any one or more of the Parties in connection with the Remediation or other corrective action required to address such fact(s) or circumstance(s) under Applicable Law would exceed \$1,000,000.00. The facts or circumstances which permit delivery of notice described in the preceding sentence are as follows: (i) any actual, alleged or perceived (by Big Rivers) violation of any Environmental Law occurring at any time, howsoever caused, and associated in any manner with any Generating Plant, any Site, the Real Property or the use or operation by any Person of any Generating Plant, any Site or the Real Property; (ii) any actual, alleged or perceived (by Big Rivers) Environmental Release occurring at any time, howsoever caused, and associated with any Generating Plant, any Site or the use or operation by any Person of any Generating Plant or Site; (iii) any Baseline Environmental Condition, Disclosed Environmental Condition or other Excepted Condition; (iv) any actual, alleged or perceived (by Big Rivers) violation of any Permit occurring at any time, howsoever caused, and associated with any Generating Plant, any Site or the use or operation by any Person of any Generating Plant or Site; or (v) any other actual, alleged or perceived (by Big Rivers) condition, release, circumstance, action, omission, Proceeding, operation, failure to comply, violation or other event occurring at any time, howsoever caused, and associated with any Generating Plant, any Site or the use or operation by any Person of any Generating Plant or Site that, if known to any Governmental Entity, would or could reasonably be expected to give rise to any liability for fines, penalties, modifications to a Generating Plant, Remediation or compensation for Damages

of any kind on the part of Big Rivers or any WKE Party under any Environmental Law; in each case regardless of whether or not any of the foregoing would or could reasonably be expected to result in Big Rivers suffering or incurring any Damages following the Closing, and regardless of whether any Damages associated with, resulting from or arising out of any of the foregoing would be the subject of an indemnification or hold harmless covenant in favor of Big Rivers provided for in Article 15 or elsewhere in this Termination Agreement or in any other Definitive Document. **Note: The 45 days time period referenced in 10.3(y) was changed to 30 days in the Second Amendment dated June 19, 2008, to the Transaction Termination Agreement filed as Exhibit 1 to Big Rivers' June 11, 2008, Motion to Amend and Supplement Application.**

Status: See Third Amendment to Transaction Termination Agreement, and Closing Memorandum. The Third Amendment addressed Big Rivers' concerns relating to known environmental conditions at the time. Environmental schedules were updated as of the Unwind closing date, and are attached to the Closing Memorandum. Closing condition satisfied.

Section 10.3(z) Smelter Contracts:

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

Status: Closing condition satisfied

Section 10.3(aa) Conveyance of Allowances:

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

Status: Closing condition satisfied. Note the Closing Memorandum reflects the "year-round" NO_x allowances conveyed to Big Rivers (meeting the provision of "all other allowances" in this closing condition.

Section 10.3(bb) Member Contract Extension:

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

Status: Closing condition satisfied

Section 10.3(cc) Gypsum Facilities of Plant Green:

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

Status: Closing condition satisfied

Section 10.3(dd) Condition of Generating Plants:

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

Status: Closing condition satisfied. On the day of Closing, all units, with the exception of the Reid unit 1, were operated. The combustion turbine was started for a short time to test its availability. Reid Unit 1 was on standby and considered by Big Rivers to be operable. Big Rivers determined it was not necessary to ask WKEC to start the Reid Unit 1 on the day of Closing.

Section 10.3(ee) Capabilities of Generating Plants:

Within 90 days of the Scheduled Unwind Closing Date, WKEC shall have demonstrated to Big Rivers' reasonable satisfaction through actual performance data or physical testing, that the Generating Plants are physically capable of generating the net output specified below. The demonstration contemplated above shall be at WKEC's sole cost; provided, that in the event Big Rivers insists on physical testing of any Generating Plant(s) as the means for satisfying this condition, Big Rivers agrees to reimburse WKEC for 50% of its out of pocket costs and expenses incurred to conduct that testing. The scope and method of any such test shall be acceptable to

Big Rivers in its reasonable discretion, and, prior to conducting any such test, WKEC and Big Rivers shall agree upon the “out-of- pocket” costs appropriate to such test, including the cost of fuel to be utilized in connection with such test. Measurement and testing of net output shall be conducted in accordance with East Central Area Reliability (ECAR) “Procedures for the Uniform Rating and Testing Generation Equipment,” dated May, 1998. Testing will utilize coal (or, in the case of the Reid combustion turbine unit, fuel oil or natural gas) having characteristics that meet or exceed the fuel box design for each Generating Plant to maximize the capacity output of the Generating Plant. Big Rivers shall be provided the opportunity to have a representative present to observe the testing. The operation of the Generating Plants during the testing shall conform to all Permits and other Applicable Law. The net output for the Generating Plants which must be demonstrated (depending on the time of year of such testing) are:

Net Output of Generating Plants

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

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

Status: Closing condition satisfied. WKEC demonstrated to Big Rivers’ reasonable satisfaction through actual performance data collected prior to the Scheduled Unwind Closing Date and by physical testing as noted below that the Generating Plants are

physically capable of generating the net output specified in the Termination Agreement.

	May 1 – September 30	Oct. 1— April 30	Test Date	Test Results
3 Unit Plant Coleman	440MW	443MW	7/25/08	450MW
Plant Wilson	417MW	419MW	5/23/08	422MW
2 Unit Plant Green	454MW	454MW	5/16/08	458MW
2 Unit Plant Reid	130MW	130MW	***	130MW
2 Unit Station Two	310MW	311MW	6/11/08	319MW

*** (Reid Unit 1 tested 7/18/08 & Reid CT tested 4/1/09)

Section 10.3(ff) No Forced Outage at Generating Plants:

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

Status: Closing condition satisfied. See also entry regarding Section 10.3 (dd).

Section 10.3(gg) Reserved:

Section 10.3(hh) Gypsum Offtake:

Either the Synthetic Purchase Agreement shall be in full force and effect, or a gypsum offtake contract with an entity reasonably acceptable to Big Rivers and having provisions similar (in the reasonable opinion of Big Rivers) to the Synthetic Purchase Agreement shall be in effect.

Status: WKEC negotiated a gypsum off-take contract which is different than the referenced Synthetic Purchase Agreement. The new gypsum off-take contract was accepted and assigned to Big Rivers at the Closing. See Closing Memorandum Section 5.2 (h) regarding a \$1,250,000 payment by WKEC to Big Rivers at the Closing in exchange for Big Rivers' agreement to waive this condition.

Section 10.3(ii) Operating Plans:

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

Status: Closing condition satisfied

Section 10.3(ji) Clean Out of Wilson Ponds:

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

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

Status: Closing condition satisfied. The listed ponds were cleaned out prior to Closing.

Section 10.3(kk) Prior Rent and Monthly Margin Payments:

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

Status: In light of the fact that the Closing occurred prior to the 25th day of the month, the Monthly Margin Payment for the month immediately preceding the Closing Month was paid to Big Rivers at the Closing rather than “prior to the Closing.” The “Prior Rent” closing condition was satisfied.

Section 10.3(ll) SERC and NERC Standards:

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

Status: Closing condition satisfied

Section 10.3(mm) No Unresolved Disputes:

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

Status: Closing condition satisfied

Section 10.3(nn) Interconnection:

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

Status : The interconnection is complete. Closing condition satisfied

Section 10.3(oo) Transmission:

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

Status: Approvals received from Commission; construction has begun. Closing condition satisfied.

Section 10.3(pp) Performance of WKE Party Covenants:

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

Status: Closing condition satisfied

Section 10.3(qq) Opinions of Counsel:

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

Status: Closing condition satisfied

II. Third Amendment to Transaction Termination Agreement, filed as Exhibit 80 to Big Rivers' October 9, 2008 Motion to Amend and Supplement Application

THIRD AMENDMENT, Section 3:

COLEMAN TITLE V AIR PERMIT. Following the Closing, and expiring at such time as the Kentucky Energy and Environment Cabinet shall have issued or entered into an agreed order in the form (in all material respects) of the Draft Agreed Order (but with paragraph 14 thereof in the form set forth in the Draft Agreed Order), WKEC shall indemnify and hold harmless Big Rivers from and against any claims, demands, losses, damages, liabilities, costs, expenses, obligations and deficiencies (including without limitation, any costs of corrective or remedial actions, fines, civil or criminal penalties,

settlements or attorney's fees) that have been or may be suffered or incurred by Big Rivers to the extent (but only to the extent) resulting from or arising out of any failure of WKEC to apply for the renewal of the Air Quality Title V permit number V-02-003 issued on October 24, 2003, Source ID# 21-091-00003, for Coleman Station (the "*Coleman Title V Permit*"), on or before the date such application was required in order to authorize continued operation of Plant Coleman under the Coleman Title V Permit after it would otherwise expire on October 24, 2008, including any operation of Plant Coleman prior to the renewal of the Coleman Title V Permit that was not authorized by the provisions of Section 8 of 410 KAR 52:020. The covenants and agreements set forth in this Section 3 are covenants and agreements of the type contemplated in Subsection 15.3(e) of the Termination Agreement. The provisions of this Section 3 shall be deemed for all purposes of the Termination Agreement to be included in and a part of Section 15.3 of the Termination Agreement, as contemplated in Subsection 15.3(e) of the Termination Agreement, and all provisions of this Section 3 shall be and remain subject to the last sentence of that Subsection 15.3(e).

Status: Agreed order and new Title V Permit received; condition satisfied.

THIRD AMENDMENT, Section 4:

WILSON KPDES PERMIT. Following the Closing, and expiring at such time as the Kentucky Energy and Environment Cabinet shall have issued or entered into an agreed order in the form (in all material respects) of the Draft Agreed Order (but with paragraph 15 thereof in the form set forth in the Draft Agreed Order), WKEC shall indemnify and hold harmless Big Rivers from and against any claims, demands, losses, damages, liabilities, costs, expenses, obligations and deficiencies (including without limitation, any costs of corrective or remedial actions, fines, civil or criminal penalties, settlements or attorney's fees) that have been or may be suffered or incurred by Big Rivers to the extent (but only to the extent) resulting from or arising out of any failure of WKEC to apply for the renewal of Kentucky Pollutant Discharge Elimination System ("*KPDES*") permit number KY0054836 for Wilson Station (the "*Wilson KPDES Permit*") on or before the date such application was required in order to authorize continued operation of Plant Wilson under the Wilson KPDES Permit after its original expiration date of October 31, 2004, including any discharges from Plant

Wilson that are subject to the Wilson KPDES Permit and are not authorized by 401 KAR 5:060, Section 1(5)(c). The covenants and agreements set forth in this Section 4 are covenants and agreements of the type contemplated in Subsection 15.3(e) of the Termination Agreement. The provisions of this Section 4 shall be deemed for all purposes of the Termination Agreement to be included in and a part of Section 15.3 of the Termination Agreement, as contemplated in Subsection 15.3(e) of the Termination Agreement, and all provisions of this Section 4 shall be and remain subject to the last sentence of that Subsection 15.3(e).

Status: Agreed order received; condition satisfied.

THIRD AMENDMENT, Section 5: WILSON CONVEYOR BELT RUN-OFF BASINS.

Following the Closing, and expiring at such time as the Kentucky Energy and Environment Cabinet shall have issued or entered into an agreed order in the form (in all material respects) of the Draft Agreed Order (but with paragraph 16 thereof in the form set forth in the Draft Agreed Order), WKEC shall indemnify and hold harmless Big Rivers from and against any claims, demands, losses, damages, liabilities, costs, expenses, obligations and deficiencies (including without limitation, any costs of corrective or remedial actions, fines, civil or criminal penalties, settlements or attorney's fees) that have been or may be suffered or incurred by Big Rivers to the extent (but only to the extent) resulting from or arising out of any failure of WKEC to apply for or obtain an amendment to the Wilson KPDES Permit on a timely basis in order to construct, maintain and operate the Wilson conveyor belt runoff ponds. The covenants and agreements set forth in this Section 5 are covenants and agreements of the type contemplated in Subsection 15.3(e) of the Termination Agreement. The provisions of this Section 5 shall be deemed for all purposes of the Termination Agreement to be included in and a part of Section 15.3 of the Termination Agreement, as contemplated in Subsection 15.3(e) of the Termination Agreement, and all provisions of this Section 5 shall be and remain subject to the last sentence of that Subsection 15.3(e).

Status: Agreed order received; condition satisfied.

THIRD AMENDMENT, Section 9: **GREEN RIVER DREDGING PROCESS AT WILSON STATION.** From and after the date of this Third Amendment through the Closing (or the earlier termination of the Termination Agreement), WKEC agrees to continue to maintenance dredge the Green River adjacent to Wilson Station (at such times as WKEC shall deem appropriate, consistent with Prudent Utility Practice) in a manner and using methods consistent with the past practices of WKEC. As of the Closing, WKEC shall ensure that no material amount of Green River sediment that was dredged by WKEC since the Effective Date is still located at any sediment stockpile on the east bank of the Green River adjacent to Wilson Station.

Status: Closing condition satisfied

THIRD AMENDMENT, Section 10: **CLEAN-OUT OF PONDS.** The Parties agree that, as additional conditions precedent to Big Rivers' obligation to consummate the transactions contemplated in the Termination Agreement at the Closing (but not as a covenant or agreement on the part of WKEC), WKEC must clean out each of the ponds identified below in a manner consistent with WKEC's previous practices and to the reasonable satisfaction of Big Rivers:

10.1 The metal cleaning waste pond at Sebree Complex that was sampled by the Environmental Consultant at point SD-1;

10.2 The settling pond associated with controlling runoff from the stack-out pad and areas around the FGD waste handling system, commonly known as the CSI Building, at the Sebree Complex, which was sampled by the Environmental Consultant at point SD-2 (the outfall from which is identified as KPDES Discharge Point 011);

10.3 The coal pile runoff pond at Coleman Station that was sampled by the Environmental Consultant at point SD-2;

10.4 The wastewater ponds at Wilson Station, which were sampled by the Environmental Consultant at points SD-1, SD- 2 and SD-3; and (Also see TA Section 10.3(jj)

10.5 The Reid Station ash pond, but limited, in the case of that pond and WKEC's obligation to clean out the same under this Section 10, to the removal of materials

sufficient to provide Big Rivers thirty (30) days of capacity in that pond following the Closing, assuming normal operations of Station Two and Plant Reid following the Closing consistent with the past practices of WKEC.

Status: The ponds listed were cleaned out. Closing condition satisfied.

THIRD AMENDMENT, Section 11: **CLEANUP OF SURFACE SPILLS.** As an additional condition to the Closing (but not as a covenant or agreement on the part of WKEC), WKEC shall clean up and remove all visible surface staining resulting from the spills identified on Appendix E attached hereto. As a condition to the Closing only, such areas shall be excavated to remove all visually detectable evidence of contamination and, upon Big Rivers' request, the adequacy of the removal shall be demonstrated by post-excavation sampling (for target contaminants involved in the release) indicating that residual levels of contamination, if any, meet the USEPA Region IX Preliminary Remediation Goals for industrial property or such other standards for industrial property as may be satisfactory to the Kentucky Energy and Environment Cabinet. Excavations shall be backfilled with clean fill, and removed soil shall be disposed of lawfully off-site, or at an on-site location approved by Big Rivers (which approval shall not be unreasonably withheld, conditioned or delayed). Any other surface staining identified by Big Rivers to WKEC in writing prior to Closing shall, upon Big Rivers' request and as an additional condition to the Closing (but not as a covenant or agreement on the part of WKEC), be excavated and removed in accordance with the procedures and requirements of this Section 11.

Status: Closing condition satisfied except for contaminated soil at Coleman around Unit 1 and Unit 3 step-up transformers, which was not removed due to timing of Closing. Materials are in the process of being removed.

THIRD AMENDMENT, Section 15: **BARGE PURCHASE.** WKEC hereby agrees to sell and convey to Big Rivers at the Closing (but not before), and Big Rivers hereby agrees to purchase and accept from WKEC at the Closing, all (but not less than all) of the barges identified on Appendix F attached hereto (the "**Barges**"), for an aggregate purchase price

payable by Big Rivers to WKEC at the Closing (in immediately available funds) equal to the net book value of the Barges for the month in which the Closing occurs, as reflected in the regular books of account of WKEC. Upon tender of the purchase price described above, WKEC shall execute and deliver to Big Rivers at the Closing such instruments of conveyance, assignment and transfer as shall be reasonably required in order for WKEC to transfer to and vest in Big Rivers of all of WKEC's rights, title and interests in and to the Barges; provided, that the Barges shall be so conveyed and transferred to Big Rivers in "AS IS", "WHERE IS" condition as of October 6, 2008, subject to reasonable wear and tear after such date and prior to Closing, and with no representation or warranty of any nature whatsoever, including without limitation, with no representation or warranty with respect to the condition or state of repair of the Barges AND NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Status: The barges were purchased at Closing. Closing condition satisfied.

THIRD AMENDMENT, Section 16:

WILSON STACK BUILD-UP RISKS.

Status: Post-Closing obligation.

THIRD AMENDMENT, Section 17:

PAYMENT FOR CERTAIN COSTS. Upon

the termination of the Termination Agreement in accordance with its terms at any time prior to a Closing (but not in the event a Closing occurs), WKEC shall remit and pay to Big Rivers in immediately available funds the amount of One Hundred Thousand Dollars (\$100,000.00), in consideration of certain administrative and personnel costs theretofore or thereafter to be undertaken or incurred by Big Rivers. The provisions of this Section 17 shall survive the termination of the Termination Agreement for any reason and shall continue to be binding upon WKEC and to inure to the benefit of Big Rivers.

Status: Closing occurred, no closing condition.

THIRD AMENDMENT, Section 21: **SOLID FUEL STOCK INVENTORY LEVELS. (a)**

Section 10.3 of the Termination Agreement is hereby amended by adding the following condition precedent as a new Subsection 10.3(rr) thereto:

(rr) Solid Fuel Stock Inventory Levels. The quantities of Solid Fuel Stock constituting Inventory (as determined in accordance with Section 4.1) for each Generating Plant as of the date of Closing shall be at least an amount (on a Btu basis) equal to the following:

Generating Plant	Solid Fuel Stock Inventory Amount as of Closing (in GBtus)
Plant Wilson	2,791
Plant Green	3,389
Station Two/Plant Reid	2,142
Plant Coleman	3,156

Note: Much of the text was eliminated to eliminate volume. This essentially assures BREC of a 30 day supply of fuel at Closing.

Status: Closing condition satisfied. Solid Fuel Stock Inventory exceeded the total required and exceeded the coal minimums at each generating plant at Closing.

Dated: July 24, 2009

CLOSING MEMORANDUM

THIS CLOSING MEMORANDUM ("*Closing Memorandum*") dated as of July 16, 2009, by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric generation and transmission cooperative ("*Big Rivers*"), LG&E ENERGY MARKETING INC., an Oklahoma corporation ("*LEM*"), WESTERN KENTUCKY ENERGY CORP., a Kentucky corporation ("*WKEC*"), and E.ON U.S. LLC, a Kentucky limited liability company ("*E.ON*") (collectively the "*Parties*").

PREAMBLE:

Reference is made to that certain Transaction Termination Agreement dated as of March 26, 2007, as amended (the "*Termination Agreement*"), by and among Big Rivers, LEM and WKEC. The Closing of the transactions contemplated in the Termination Agreement has occurred on the date hereof, and the Parties desire to execute and deliver this Closing Memorandum in order to acknowledge that Closing and to acknowledge certain actions taken and additional agreements reached by the Parties at that Closing or in connection therewith. Capitalized terms used but not defined in this Closing Memorandum shall have their same respective meanings as in the Termination Agreement. This Closing Memorandum shall constitute a Definitive Document.

ACKNOWLEDGEMENTS AND AGREEMENTS:

1. **CLOSING; INCREASE OF TERMINATION PAYMENT.** The Parties hereby acknowledge that (a) the Closing has occurred on the date of this Closing Memorandum, July 16, 2009, at 11:59:59 P.M. Central Daylight Time (the "*Effective Time*"), at the offices of Orrick, Herrington & Sutcliffe LLP, 666 Fifth Avenue, New York, New York 10103 (with certain portions of the Closing relating to the Station Two Contracts, the Station Two Agreement and the parties thereto also occurring at the offices of the City Utility Commission in Henderson, Kentucky (the "*Henderson Closing*")), contemporaneous with the execution and delivery of this Closing Memorandum, and (b) July 16, 2009 is the Unwind Closing Date. In accordance with the Order of the KPSC issued on March 6, 2009, conditionally approving the Closing of the transactions contemplated in the Termination Agreement, the Parties agree that at the Closing the Termination Payment contemplated in Section 3.3(a) of the Termination Agreement was

Execution Original

increased by Sixty Million, Eight Hundred Fifty Five Thousand, Seven Hundred Ninety Dollars and Ninety-Four Cents (\$60,855,790.94), which additional amount was paid by WKEC to Big Rivers at the Closing as described in Section 5 below.

2. EXECUTION AND DELIVERY OF DOCUMENTS AT THE CLOSING. The Parties further acknowledge that the relevant Parties (and such other persons or entities described below) executed and delivered the following agreements, instruments and documents at the Effective Time on the Closing Date, the receipt of which are hereby acknowledged by the relevant Parties, and such agreements, instruments and documents as between or among only Big Rivers, E.ON, WKEC and/or LEM became effective as of the Effective Time on the Closing Date:

(a) the Termination and Release;

(b) the Inventory Bill of Sale;

(c) the Personal Property Bill of Sale;

(d) the Assignment and Assumption of Contracts;

(e) the Deed of Real Property attached to the Termination Agreement as Exhibit F-1 (which was previously delivered to Big Rivers in Henderson, Kentucky);

(f) the Deed of Real Property attached to the Termination Agreement as Exhibit F-2 (which was previously delivered to Big Rivers in Henderson, Kentucky);

(g) [Reserved];

(h) the License of Owned Intellectual Property (Licensed);

(i) the Assignment and Assumption of Permits;

(j) the Conveyance of Allowances;

(k) a Conveyance of Allowances (Station Two) dated as of the Unwind Closing Date, by and between WKEC and Big Rivers, whereby WKEC conveyed any and all rights, title and interests in and to certain SO₂ Allowances, NO_x Allowances and Annual NO_x Allowances relating to Station Two to Big Rivers at the Closing;

(l) the Alcan Termination and Release (which was also executed and delivered at the Closing by Alcan, Alcan PPC and Kenergy);

(m) the Century Termination and Release (which was also executed and delivered at the Closing by Century Aluminum Company, Century Aluminum of Kentucky General Partnership, Southwire Company and Kenergy);

(n) the Creditor Termination and Release (which was also executed and delivered at the Closing by the other parties to the Existing Non-Disturbance Agreement);

(o) the Settlement Agreement and Release of even date herewith among the City, the City Utility Commission, WKEC, LEM and E.ON (which was delivered at the Henderson Closing);

(p) the Second Amendatory Agreement of even date herewith among Big Rivers, LEM, WKEC, the City and the City Utility Commission (which was delivered at the Henderson Closing);

(q) the Station Two Termination and Release;

(r) the Texas Gas Release (which was also executed and delivered at or prior to the Closing by Texas Gas Transmission Corporation);

(s) Jackson Purchase Energy Corporation executed and delivered in favor of WKEC, LEM and E.ON the written waiver of third-party beneficiary and similar rights contemplated in Subsection 3.2(o) of the Termination Agreement;

(t) Meade County Rural Electric Cooperative Corporation executed and delivered in favor of WKEC, LEM and E.ON the written waiver of third-party beneficiary and similar rights contemplated in Subsection 3.2(o) of the Termination Agreement;

(u) the RUS executed and returned to LEM the originally-executed Demand Promissory Note marked as "Cancelled", thereby releasing and discharging the same as contemplated in Subsection 3.2(p) of the Termination Agreement;

(v) the Transmission Agreement;

(w) the Assignment of Unemployment Reserve;

(x) the Assigned Contract Indemnity;

(y) the certification of the Responsible Officer of Big Rivers (“bring-down” of Big Rivers’ representations and warranties) contemplated in Subsection 10.2(a) of the Termination Agreement;

(z) the Secretary’s Certificate of Big Rivers contemplated in Subsection 10.2(b) of the Termination Agreement;

(aa) the certification of the Responsible Officer of Big Rivers contemplated in Subsection 10.2(c) of the Termination Agreement;

(bb) the certifications of the Responsible Officers of WKEC and LEM (“bring-down” of WKEC and LEM representations and warranties) contemplated in Subsection 10.3(a) of the Termination Agreement;

(cc) the Secretary’s Certificates of WKEC, LEM and E.ON contemplated in Subsection 10.3(b) of the Termination Agreement;

(dd) the certifications of the Responsible Officers of WKEC, LEM and E.ON contemplated in Subsection 10.3(c) of the Termination Agreement;

(ee) the opinion of counsel for Big Rivers contemplated in Subsection 10.2(gg) of the Termination Agreement;

(ff) the opinion(s) of counsel for E.ON, WKEC and LEM contemplated in Subsection 10.3(qq) of the Termination Agreement;

(gg) an Amended and Restated Guarantee of even date herewith between E.ON and Big Rivers;

(hh) a Release of Mortgage and Security Agreement (and related UCC-3 Terminations) dated as of the Unwind Closing Date (which was previously delivered to Big Rivers in Henderson, Kentucky);

(ii) a Release of Mortgage and Security Agreement (LEM Mortgage) (and related UCC-3 Terminations) dated as of the Unwind Closing Date (which was previously delivered to Big Rivers in Henderson, Kentucky);

(jj) a Termination of Lease and Operating Agreement (Short Form Lease) dated as of the Unwind Closing Date;

(kk) a Termination of Third Amended and Restated Subordination, Nondisturbance, Attornment and Intercreditor Agreement dated as of the Unwind Closing Date (which was also executed by the other secured creditors of Big Rivers);

(ll) a Termination and Release of Deed of Easement and Right of Way dated as of the Unwind Closing Date, terminating certain easements and right of way previously granted to WKEC and LEM by the City and the City Utility Commission (which was delivered at the Henderson Closing);

(mm) a Termination and Release of Deed of Easement and Right of Way dated as of the Unwind Closing Date, terminating certain easements and rights of way previously granted to WKEC and LEM by Big Rivers;

(nn) Releases of Greg Black and Ralph Bowling under the two Designated Representative Agreements;

(oo) the Sublease Agreement and Parking Space Sublease, each of even date herewith, between WKEC and Big Rivers;

(pp) a Purchase Agreement between WKEC and Big Rivers of even date herewith, pursuant to which sixteen (16) barges were sold and conveyed by WKEC to Big Rivers; an Assignment and Assumption Agreement between WKEC and Big Rivers, pursuant to which WKEC assigned and Big Rivers assumed certain rights and obligations under an October, 2005 Bareboat Charter and Lease Agreement and an October, 2005 Transportation Agreement; sixteen (16) Bills of Sale from WKEC to Big Rivers on DHS-USCG Form CG-1340, effecting the conveyance of the sixteen barges described above; two (2) Acknowledgments of Assignment and Release of Contracts dated April 7, 2009, among WKEC, Big Rivers and Ohio Valley Marine Service, Inc., relating to the October, 2005

Bareboat Charter and Lease Agreement and Transportation Agreement described above; and three (3) Bills of Sale from WKEC to Big Rivers on DHS-USCG Form CG-1340, relating to three WKEC-owned tug boats that were conveyed to Big Rivers;

(qq) A Release Agreement between Domtar Paper Company and WKEC, which was consented to by Big Rivers and Kenergy Corp.;

(rr) [Reserved];

(ss) a Letter Agreement for Computer Hardware Replacement and Information Transfer dated June 29, 2009, among WKEC, LEM and Big Rivers;

(tt) an Indemnification Agreement of even date herewith between WKEC and Big Rivers, and a related Guarantee from E.ON to and in favor of Big Rivers of even date herewith;

(uu) a Letter Agreement among Big Rivers, Kenergy and E.ON regarding the E.ON U.S. LLC Payment Covenant of even date herewith; and

(vv) a Irrevocable Standby Letter of Credit in the principal amount of \$7,500,000.00, drawn on JP Morgan Chase Bank, N.A. and payable to Big Rivers and Kenergy.

3. CERTAIN CALCULATIONS AND DETERMINATIONS. The Parties further acknowledge the following calculations and agree to the following determinations, each as contemplated in the Termination Agreement:

3.1 Incremental Environmental O&M Costs. The Parties hereby acknowledge that, notwithstanding the methodology contemplated in Section 2.3.3 of the Lease, WKEC has never recouped from Big Rivers any portion of Big Rivers' agreed share (20%) of Incremental Environmental O&M costs through the application of the Environmental Rent Reduction. Rather, each month since the Effective Date WKEC has paid to Big Rivers the full monthly rental payment applicable to such month as contemplated in Section 2.3.2 of the Lease, and has separately billed Big Rivers for Incremental Environmental O&M costs owing under Section 2.3.3 of the Lease. In light of this practice, and for the purpose of the determinations undertaken

and to be undertaken as contemplated in Subsection 3.5(a) of the Termination Agreement, the Parties agree that all references in that Subsection 3.5(a) to the "aggregate Environmental Rent Reduction taken by WKEC for and during" a particular portion of the Closing Year (or a previous year, as contemplated in Subsection 3.5(a)) shall be deemed to refer to and include only the aggregate amount of all payments and reimbursements for Incremental Environmental O&M costs that have actually been made by Big Rivers to WKEC during that portion of the Closing Year (or such previous year). The Parties further acknowledge that a substantial number of days have past since the Scheduled Unwind Closing Date, and as a result it was not practical for the Parties to attempt to determine, agree upon and pay at the Closing the aggregate amount payable for and attributable to all Incremental Environmental O&M costs incurred through the 45th day preceding the Scheduled Unwind Closing Date, as contemplated in Section 3.5(a) of the Termination Agreement. For this reason, the Parties have agreed to dispense with the requirement that such a determination be made, agreement be reached and payment be made, as conditions precedent to the Closing, and Big Rivers and WKEC have agreed upon the aggregate amount payable by Big Rivers to WKEC as of May 31, 2009, under Section 2.3.3 of the Lease, for and attributable to all Incremental Environmental O&M costs incurred through that date, such amount being \$156,540.38 (the "*Section 3.5(a) Closing Payment*"). At the Closing, Big Rivers paid the Section 3.5(a) Closing Payment to WKEC as contemplated in Section 5.1(c) below. The Parties agree that they shall not, following the Closing, undertake to mutually agree upon the amount for the Final Calculation Period contemplated in the seventh (7th) sentence of Section 3.5(a) of the Termination Agreement. Instead, the Parties shall, promptly following the receipt of all invoices in respect of products and services constituting Incremental Environmental O&M costs incurred during the period following May 31, 2009, and through the Closing (the "*Calculation Period*"), attempt in good faith to mutually agree upon the aggregate amount payable by Big Rivers to WKEC for and attributable to all Incremental Environmental O&M costs incurred during the Calculation Period. Within two (2) Business Days following such mutual agreement or, in the absence of such agreement, following the final, non-appealable determination of the amount owing by a court of competent jurisdiction, Big Rivers shall pay to WKEC in immediately available funds the relevant amount so determined. The Parties agree that the foregoing obligation of Big Rivers to make the payment for the Calculation Period contemplated above shall survive the Closing and the Parties' execution of this Closing

Memorandum and the Termination and Release, and shall continue to be binding upon Big Rivers, and to inure to the benefit of WKEC, until paid and discharged in full.

3.2 Incremental Capital Costs, Etc. The Parties acknowledge that a substantial number of days have past since the Scheduled Unwind Closing Date. As a result it was not practical for the Parties to attempt to determine, agree upon and pay at the Closing the aggregate amounts payable by Big Rivers and WKEC with respect to all costs for Capital Assets and Station Two Improvements which constitute Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs and Henderson Major Capital Repairs, that have actually been incurred (a) through the 120th day prior to the Scheduled Unwind Closing Date, and (b) from that 120th day through the 45th day prior to the Scheduled Unwind Closing Date, each as contemplated in Section 3.5(b)(i) of the Termination Agreement. For this reason, the Parties have agreed to dispense with the requirement that such determinations be made, agreements be reached and payments be made, as conditions precedent to the Closing, and Big Rivers and WKEC have:

(i) agreed upon the aggregate amount owed by Big Rivers as of May 31, 2009, under the Lease or the Station Two Agreement (as applicable), with respect to all costs for Capital Assets and Station Two Improvements which constitute Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs and Henderson Major Capital Repairs incurred through that date, such amount being \$607,388.36; and

(ii) agreed that no amounts were owed by WKEC as of May 31, 2009, under the Lease or the Station Two Agreement (as applicable), with respect to any costs for Capital Assets or Station Two Improvements which constitute Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs and Henderson Major Capital Repairs incurred through that date.

At the Closing, Big Rivers paid the amount contemplated in Subparagraph (i), above, to WKEC as contemplated in Section 5.1(d) below. The Parties agree that they shall not, following the Closing, undertake to mutually agree upon the amount for the Final Calculation Period contemplated in the first (1st) sentence of Section 3.5(b)(ii) of the Termination Agreement. Instead, the Parties shall, promptly following the receipt of all invoices in respect of products and

services constituting Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs costs and Henderson Major Capital Repairs costs incurred during the Calculation Period, attempt in good faith to mutually agree upon the aggregate amounts owing by Big Rivers and WKEC under or pursuant to the Lease or the Station Two Agreement with respect to all costs for Capital Assets and Station Two Improvements which constitute Incremental Capital Costs, Henderson Incremental Capital Costs, Major Capital Repairs and Henderson Major Capital Repairs incurred during the Calculation Period. Within two (2) Business Days following such mutual agreement or, in the absence of such agreement, following the final, non-appealable determination of the amount owing by a court of competent jurisdiction, Big Rivers shall pay to WKEC in immediately available funds the amount determined (as contemplated above) to be owing by it for that period, and WKEC shall pay to Big Rivers the amount determined (as contemplated above) to be owing by it for that period. The Parties agree that the foregoing obligation of Big Rivers or WKEC (as applicable) to make the payments for the Calculation Period contemplated above shall survive the Closing and the Parties' execution of this Closing Memorandum, the Termination and Release and the Station Two Termination and Release, and shall continue to be binding upon, and to inure to the benefit of, those Parties until paid and discharged in full.

3.3 Non-Incremental Capital Costs, Etc. The Parties acknowledge that a substantial number of days have past since the Scheduled Unwind Closing Date. As a result it was not practical for the Parties to attempt to determine and agree upon the aggregate amounts that had been incurred by WKEC in the Closing Year for costs for Capital Assets and Station Two Improvements which constitute Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs through and including the 45th day prior to the Scheduled Unwind Closing Date, as contemplated in Section 3.5(b)(iii) of the Termination Agreement. For this reason, the Parties have agreed to dispense with the requirement that such determination be made and agreement be reached as conditions precedent to the Closing, and Big Rivers and WKEC have:

(i) agreed upon the aggregate costs that have been incurred by WKEC as of May 31, 2009, for Capital Assets and Station Two Improvements which constitute Non-Incremental

Capital Costs and Henderson Non-Incremental Capital Costs incurred through that date, such amount being \$16,930,419.30;

(ii) agreed (A) that the determinations to be made as contemplated in Section 3.5(b)(iii) and Section 3.5(b)(iv) of the Termination Agreement shall be made based upon the costs incurred by WKEC as contemplated in Subparagraph (i) above, and not based upon costs incurred by WKEC as of the 45th day prior to the Scheduled Unwind Closing Date, (B) that Sections 3.5(b)(iii) and 3.5(b)(iv) of the Termination Agreement shall be interpreted and implemented accordingly, and (C) that all references in Section 3.5(b)(iv) of the Termination Agreement to the "Final Calculation Period" shall be deemed to refer to the Calculation Period; and

(iii) agreed that the Big Rivers Contribution for the Closing Year is \$6,871,000.00, and agreed that the portion of the Big Rivers Contribution paid by Big Rivers to WKEC through the date hereof is \$4,008,083.31.

In light of the facts that the aggregate amount described in Subparagraph (i), above, equals or exceeds the Big Rivers Contribution for the Closing Year and Big Rivers has not fully funded that Big Rivers Contribution prior to the Closing, each as contemplated in Subsection 3.5(b)(iii) of the Termination Agreement, the amount payable by Big Rivers to WKEC at the Closing under that Subsection 3.5(b)(iii) is \$2,862,916.69.

3.4 Rent and Monthly Margin Payment. The amount payable by Big Rivers to WKEC at the Closing pursuant to the first sentence of Subsection 3.5(c) of the Termination Agreement, representing a return of a prorated portion of the rent paid by WKEC for the Closing Month under the Lease, is \$1,331,823.17. The amount payable by WKEC to Big Rivers at the Closing pursuant to the second sentence of that Subsection 3.5(c), representing a prorated portion of the Monthly Margin Payment payable for the Closing Month under the Lease, is \$669,677.42. In light of the fact that the Closing occurred on or before the 25th day of the Closing Month, the amount of \$1,384,000.00, representing the Monthly Margin Payment for the month immediately preceding the Closing Month, was also payable by WKEC to Big Rivers at the Closing in accordance with the third sentence of that Subsection 3.5(c).

3.5 Power and Transmission Payments. The Parties acknowledge that the "Calculation Month" contemplated in Section 3.5(d) of the Termination Agreement (and as referred to in this Section 3.5) was May, 2009. The Parties' agreed estimate of the aggregate of the Power Value Amounts and other amounts owing by Big Rivers for all periods up to and including the Calculation Month under the Power Purchase Agreement, as contemplated in Subsection 3.5(d) of the Termination Agreement, is \$7,774,227.18. The Parties' agreed estimate of the aggregate of the amounts owing by Big Rivers for services from LEM or WKEC for all periods up to and including the Calculation Month under the Transmission Services and Interconnection Agreement, as contemplated in that Subsection 3.5(d), is \$72,106.64. The Parties' agreed estimate of the aggregate of the amounts owing by the WKE Parties for transmission services received for all periods up to and including the Calculation Month under the Transmission Services and Interconnection Agreement, as contemplated in that Subsection 3.5(d), is \$336,739.09. The foregoing amounts were paid to the relevant party at the Closing as described in Section 5.1 or 5.2 (as applicable) below. Notwithstanding the calculations made in accordance with Subsection 3.5(d) of the Termination Agreement and reflected in the estimated amounts described above in this Section 3.5, at the Closing, and based on the date in the Closing Month on which the Closing occurred, Big Rivers or the WKE Parties (as applicable) made additional payments to the other(s) at the Closing of the types contemplated in the preceding three sentences, representing estimates of certain amounts owing by the relevant Party under the Power Purchase Agreement or the Transmission Services and Interconnection Agreement (as applicable) for the period following the Calculation Month through the Closing, such payments being as follows: (a) the additional amount paid by Big Rivers at the Closing, representing amounts estimated as owing by it under the Power Purchase Agreement, was \$3,939,722.66, (b) the additional amount paid by Big Rivers at the Closing, representing amounts estimated as owing by it under the Transmission Services and Interconnection Agreement, was \$46,822.88, and (c) the additional amount paid by the WKE Parties at the Closing, representing amounts estimated as owing by one or more of them under the Transmission Services and Interconnection Agreement, was \$385,251.36. The Parties agree that the post-Closing calculations of amounts still owing by Big Rivers or the WKE Parties (as applicable) as contemplated in Section 3.5(d) of the Termination Agreement shall account for each of the estimated payments made at the Closing as contemplated in the preceding sentences.

3.6 Henderson Incremental Environmental O&M Costs. The Parties further acknowledge that a substantial number of days have past since the Scheduled Unwind Closing Date, and as a result it was not practical for the Parties to attempt to determine, agree upon and pay at the Closing the aggregate amount payable for and attributable to all Henderson Incremental Environmental O&M costs incurred through the 45th day preceding the Scheduled Unwind Closing Date, as contemplated in Section 3.5(e) of the Termination Agreement. For this reason, the Parties have agreed to dispense with the requirement that such a determination be made, agreement be reached and payment be made, as conditions precedent to the Closing, and Big Rivers and WKEC have agreed upon the aggregate amount payable by Big Rivers to WKEC as of May 31, 2009, under Section 9.9 of the Station Two Agreement, for and attributable to all Henderson Incremental Environmental O&M costs incurred through that date, such amount being \$24,240.06 (the "*Section 3.5(e) Closing Payment*"). At the Closing, Big Rivers paid the Section 3.5(e) Closing Payment to WKEC as contemplated in Section 5.1(h) below. The Parties agree that they shall not, following the Closing, undertake to mutually agree upon the amount for the Final Calculation Period contemplated in the seventh (7th) sentence of Section 3.5(e) of the Termination Agreement. Instead, the Parties shall, promptly following the receipt of all invoices in respect of products and services constituting Henderson Incremental Environmental O&M costs incurred during the Calculation Period, attempt in good faith to mutually agree upon the aggregate amount payable by Big Rivers to WKEC for and attributable to all Henderson Incremental Environmental O&M costs incurred during the Calculation Period. Within two (2) Business Days following such mutual agreement or, in the absence of such agreement, following the final, non-appealable determination of the amount owing by a court of competent jurisdiction, Big Rivers shall pay to WKEC in immediately available funds the relevant amount so determined. The Parties agree that the foregoing obligation of Big Rivers to make the payment for the Calculation Period contemplated above shall survive the Closing and the Parties' execution of this Closing Memorandum and the Station Two Termination and Release, and shall continue to be binding upon Big Rivers, and to inure to the benefit of WKEC, until paid and discharged in full.

3.7 Taxes. The Parties agree that the provisions of Section 13.2 of the Termination Agreement, as amended by Section 2 of the Second Amendment to Transaction Termination

Agreement dated as of June 19, 2008, shall be implemented in accordance with the methodology set forth on Exhibit A attached to this Closing Memorandum.

3.8 [Reserved].

3.9 Inventory Quantities. Attached to this Closing Memorandum as Exhibit B is Schedule 4.1 to the Termination Agreement, setting forth the agreed quantities of coal (including coal fines), synthetic fuel, petroleum coke, fuel oil, lime, limestone, spare parts, materials and supplies determined in accordance with Section 4.1 of the Termination Agreement (subject to receipts, burns and usages from the dates of the relevant physical inventories or measurements through the Closing as contemplated in that Section 4.1).

3.10 Inventory Valuation. Subject to the post-Closing adjustment and payment contemplated in the second paragraph of Section 4.2 of the Termination Agreement, the total value of the Inventory contemplated in that Section 4.2 as to be included in the Inventory Value for the purpose of the calculation contemplated in Subsection 3.3(a) of that agreement is as follows:

Coal (Including Coal Fines) and Synthetic Fuel:	\$30,690,325.05
Coal Third Amendment Section 21 Adjustment:	\$ (546,634.37)
Coal in Transit:	\$ 2,419,473.42
Petroleum Coke:	\$ 2,899,459.83
Petroleum Coke in Transit:	\$ 181,150.21
Pre-Paid Petroleum Coke:	\$ 0.00
Fuel Oil:	\$ 1,868,750.13
Lime:	\$ 1,610,830.97
Limestone:	\$ 729,509.36
Spare Parts, Materials & Supplies:	\$20,349,251.75
Materials & Supplies Accounting Adjustment:	\$ (3,000,000.00)
TOTAL INVENTORY VALUE	\$57,202,116.35

3.11 Personal Property List. Attached to this Closing Memorandum as Exhibit C is final Schedule 4.3 to the Termination Agreement, setting forth all items of tangible personal property (exclusive of Inventory) that were conveyed by WKEC to Big Rivers at the Closing as contemplated in Section 4.3 of the Termination Agreement.

3.12 Personal Property Valuation. Subject to the post-Closing adjustment and payment contemplated in the second paragraph of Section 4.4 of the Termination Agreement, the total value of the Personal Property contemplated in that Section 4.4 as to be included in the Personal Property Value for the purpose of the calculation contemplated in Subsection 3.3(a) of that Agreement is \$5,719,691.10.

3.13 Assigned Contracts. Attached to this Closing Memorandum as Exhibit D is final Schedule 5.1 to the Termination Agreement, setting forth the Assigned Contracts as contemplated in Subsection 5.1(a) of the Termination Agreement. The Parties acknowledge that WKEC did not attempt to terminate any of the contract(s), agreement(s), lease(s), sublease(s), license(s), sublicense(s) or other instruments identified on Schedule 5.1(A) to the Termination Agreement since the Execution Date without the prior written consent of Big Rivers as contemplated in the final sentence of Section 5.1 of the Termination Agreement.

3.14 Owned Intellectual Property (Assigned). The Parties acknowledge that: there was no Owned Intellectual Property (Assigned) that was assigned by WKEC to Big Rivers at the Closing; Schedule 6.1 to the Termination Agreement was intentionally left blank by Big Rivers, WKEC and LEM; and the Assignment of Owned Intellectual Property (Assigned) (Exhibit G-1 to the Termination Agreement) was not executed by any of the Parties at the Closing.

3.15 Owned Intellectual Property (Licensed). Attached to this Closing Memorandum as Exhibit E is final Schedule 6.2 to the Termination Agreement, setting forth the Owned Intellectual Property (Licensed) as contemplated in Section 6.2 of the Termination Agreement.

3.16 Intellectual Property License Agreements – No Consent Required. Attached to this Closing Memorandum as Exhibit F is final Schedule 6.3 to the Termination Agreement, reflecting that there were no Intellectual Property License Agreements that were assigned to Big

Rivers at the Closing for which no consents were required as contemplated in Section 6.3 of the Termination Agreement.

3.17 Intellectual Property License Agreements – Consent Required. Attached to this Closing Memorandum as Exhibit G is final Schedule 6.4 to the Termination Agreement, setting forth the Intellectual Property License Agreements for which consents to assignment were required, and which were assigned to Big Rivers at the Closing following the receipt of such consents, as contemplated in Section 6.4 of the Termination Agreement.

3.18 Permits. Attached to this Closing Memorandum as Exhibit H is final Schedule 7.1 to the Termination Agreement, setting forth the Permits as of the Closing as contemplated in Section 7.1 of the Termination Agreement.

3.19 Section 12.2(a)(vi). Attached to this Closing Memorandum as Exhibit L is final Schedule 12.2(a)(vi) of the Termination Agreement, setting forth certain Scheduled Amounts through and including the Closing Month as contemplated in Section 12.2(a)(vi) of the Termination Agreement. Big Rivers acknowledges and agrees that WKEC has expended at least ninety percent (90%) of the cumulative total of the Scheduled Amounts set forth on Schedule 12.2(a)(vi) of the Termination Agreement through and including the Closing Month (pro-rated as contemplated in Section 12.2(a)(vi) of the Termination Agreement), for Non-Incremental Capital Costs and Henderson Non-Incremental Capital Costs, and for this reason WKEC has fulfilled its spending obligation under Section 12.2(a)(vi) of the Termination Agreement and did not owe Big Rivers the payment contemplated in the last sentence of that Section.

3.20 Schedules 8.2 and 8.3. Attached to this Closing Memorandum as Exhibit M are final Schedules 8.2 and 8.3 to the Termination Agreement, setting forth the SO₂ Allowances, NO_x Allowances and “Annual NO_x Allowances” (as defined in Section 3.21) associated with the Generating Plants (other than Station Two) for the Closing Year that are to be allocated between WKEC and Big Rivers as contemplated in Section 8.2 or 8.3 of the Termination Agreement or Section 3.21 of this Closing Memorandum.

3.21 Annual NO_x Allowances

(a) Conveyance of Annual NO_x Allowances.

(i) Entitlement. Subject to the allocation of allowances attributable to the Closing Year set forth in Subsection (b) below, effective as of the Closing, and other than "Excluded Annual NO_x Allowances" (as defined below), Big Rivers shall be entitled to the full and exclusive use, enjoyment and benefit (free of all Liens), including the right to sell, exchange or otherwise dispose of for Big Rivers' account, all allowances of oxides of nitrogen allotted by EPA or any applicable state agency to the Generating Plants pursuant to the Clean Air Interstate Rule ("*Annual NO_x Allowances*"), to the extent in the "facilities accounts" or "unit accounts," as applicable, established and maintained for the Generating Plants under the Clean Air Interstate Rule (the "*CAIR Accounts*") as of the Closing, including any future years' allotment (subject to any limitations on such use, enjoyment or benefit that may be imposed under any 1970 Station Two Contract, as amended, or under Applicable Laws).

(ii) Representation. WKEC represents and warrants to Big Rivers that WKEC has not, at any time prior to the Closing, sold, assigned or conveyed any Annual NO_x Allowances having a vintage year of the Closing Year or a subsequent year, and has not caused or permitted the CAIR Designated Representative to authorize any transfers of such allowances at any time in advance of the Unwind Closing Date.

(iii) Definitions. As used in this Section 3.21, the following terms shall have the meanings set forth below:

(A) "*CAIR Designated Representative*" shall mean the individual appointed (and the alternate when acting in the place of the appointed individual) as designated representative pursuant to the requirements in the Clean Air Interstate Rule program (as codified in 40 CFR Part 96) of the federal Clean Air Act and federal and state implementing regulations.

(B) "*Consumed Annual NO_x Allowances*" shall mean any Annual NO_x Allowances that have already been consumed by any of the Generating Plants (that is, allocated to the emissions of any Generating Plant so

that those emissions will comply with Applicable Laws, whether or not the EPA has been notified of the use of such allowances for that purpose) for any relevant periods prior to the Closing Year.

(C) "*Clean Air Interstate Rule*" or "*CAIR*" shall mean the rule as codified in 40 CFR Part 96, and any amendment to or replacement of that rule promulgated as a result of the United States Court of Appeals for the D.C. Circuit's July 11, 2008 ruling in *State of North Carolina, et. al v. EPA* that affects the Closing Year Annual NOx Allotment.

(D) "*Closing Year Annual NOx Allotment*" shall mean all Annual NOx Allowances that were allotted by the EPA (or any applicable state agency) to the Generating Plants for the Closing Year (other than the Annual NOx Allowances allotted to the City's or the City Utility Commission's portion of the capacity and/or energy of Station Two, or allocated by contract to the City or the City Utility Commission pursuant to the 1970 Station Two Contracts). In the event all Station Two Annual NOx Allowances are allotted by law to, and are controlled by, the City or the City Utility Commission (or their respective Designated Representative), then the portion of the Closing Year Annual NOx Allotment relating to Station Two shall include only the Station Two Annual NOx Allowances that are allocated by contract (including without limitation, pursuant to the 1970 Station Two Contracts or the Station Two Agreement) to WKEC and/or Big Rivers.

(E) "*Excluded Annual NOx Allowances*" shall mean:

- (1) any Consumed Annual NOx Allowances;
- (2) the WKE Annual NOx Allocation; and
- (3) such Annual NOx Allowances as are the property of the City or the City Utility Commission or allocated by agreement to the City or the City Utility Commission.

(F) “*Station Two Annual NOx Allowances*” shall mean the allowances of oxides of nitrogen allotted to Station Two pursuant to the Clean Air Interstate Rule;

(b) Closing Year Allotment.

(i) Allocation.

(A) Only a portion of the Closing Year Annual NOx Allotment shall be allocated to Big Rivers effective as of the Closing, which portion shall equal the sum of a pro-rata portion of such allotment attributable to the Closing Month determined as contemplated below, and such allotments attributable to all subsequent months in the Closing Year, and Big Rivers’ allocated portion of the Station Two Annual NOx Allowances for the Closing Year, determined as contemplated below (collectively, the “*Big Rivers Annual NOx Allocation*”).

(B) Schedule 8.3 attached as part of Exhibit M to this Closing Memorandum (“Schedule 8.3”) sets forth the monthly portions of the Closing Year Annual NOx Allotment for the Closing Year attributable or relating to the Generating Plants leased from Big Rivers pursuant to the Lease (the “*Leased Generators*”), but not Station Two.

(C) The Parties acknowledge that the determination of the Station Two Annual NOx Allowances included in the Closing Year Annual NOx Allotment will, by necessity, be based in part on a determination of the sum of the number of those Station Two Annual NOx Allowances that are required to be used for compliance with Applicable Laws of the NOx emissions associated with the energy from Station Two taken by the City or the City Utility Commission during the Closing Year pursuant to one or more of the 1970 Station Two Contracts, as amended (collectively, the “*City Reserved Annual NOx Allowances*”). The Parties further acknowledge that the above-described determination of the City Reserved Annual NOx Allowances may not be possible until after the end of the Closing Year and the determination of, among other factors, the total NOx emissions attributable to the energy taken from Station Two by the City or the City Utility Commission during the Closing Year (the “*City*”).

Closing Year NOx Emissions”). In light of the foregoing, at such time following the Closing Year as the City Closing Year NOx Emissions and the City Reserved Annual NOx Allowances can reasonably be determined or calculated as contemplated in the relevant 1970 Station Two Contract, as amended, the portion of the Closing Year Annual NOx Allotment that is attributable to or relates to Station Two and is not reserved by or allocated to the City or the City Utility Commission (as contemplated above) shall promptly thereafter be allocated between WKEC and Big Rivers on a pro-rata basis, determined on the basis of the total number of days from January 1 of the Closing Year through and including the Unwind Closing Date (in the case of the allowances allocated to WKEC) as compared with the total number of days thereafter in the Closing Year (in the case of the allowances allocated to Big Rivers). In the absence of the Parties’ agreement on the portion of the Closing Year Annual NOx Allotment that is attributable to or relates to Station Two, any Party may resort to litigation or other means of dispute resolution that may be available to it under Applicable Laws for the resolution of that dispute.

(D) The Annual NOx Allowances allocated to Big Rivers for the Closing Month (exclusive of the Annual NOx Allowances attributable to or relating to Station Two) shall be limited to a portion of the amount of Annual NOx Allowances designated in Schedule 8.3 for the Closing Month determined by multiplying (i) the amount designated in Schedule 8.3 for the Closing Month by (ii) a fraction, the numerator of which is the number of days following the Unwind Closing Date through the end of the Closing Month and the denominator of which is the total number of days in the Closing Month.

(E) Annual NOx Allowances that are included in the Closing Year Annual NOx Allotment, but that are not allocated to Big Rivers (or, if applicable, the City or the City Utility Commission) in accordance with the foregoing provisions of this Subsection (b) (including the 1970 Station Two Contracts referenced therein), shall be allocated to WKEC (the “**WKE Annual NOx Allocation**”).

(F) At the Closing, WKEC conveyed to Big Rivers all of WKEC's right, title and interest in and to the Annual NOx Allowances which WKEC was obligated to convey to Big Rivers at the Closing pursuant to this Section 3.21, and Big Rivers assumed all obligations under Applicable Laws with respect to the ownership and use of those Annual NOx Allowances arising after the Closing, in each case by executing and delivering a Conveyance of Allowances of even date herewith.

(ii) Responsibility for Compliance.

(A) Big Rivers agrees to cause all Annual NOx Allowances (and any other allowances) that have been made available by WKEC in accordance with this Subsection (ii)(A) to be submitted to applicable Governmental Entities to the extent required for the compliance under the Clean Air Interstate Rule of the actual NOx emissions of the Generating Plants subject to those rules (excluding NOx emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods of the Closing Year through and including the Unwind Closing Date. If EPA or other relevant agencies notify Big Rivers that the Annual NOx Allowances submitted from amounts available in the CAIR Accounts for those actual NOx emissions for the Closing Year are not sufficient to authorize those NOx emissions during such period, and if such deficiency is attributable, in whole or in part, to a failure by WKEC to provide sufficient Annual NOx Allowances for those emissions through the Unwind Closing Date, then WKEC shall, within 15 days after receiving written notification thereof (or as soon thereafter as is permissible by Applicable Laws), transfer to the CAIR Accounts for any of the Generating Plants eighty percent (80%) of any additional Annual NOx Allowances required to authorize all NOx emissions (subject to the Clean Air Interstate Rule) during the period of the Closing Year through the Unwind Closing Date (excluding NOx emissions attributable to energy taken from Station Two by the City or City Utility Commission), Big Rivers, consistent with its general obligation set forth in the Participation Agreement (prior to its termination and release on the date hereof) and in Section 3.5 of the Termination Agreement with respect to the funding of

Incremental Environmental O&M costs and Henderson Incremental Environmental O&M costs, shall provide at its own cost the remaining twenty percent (20%) of such additional Annual NOx Allowances required to authorize those NOx emissions, and Big Rivers shall cause all such additional Annual NOx Allowances provided by WKEC or Big Rivers to be submitted to EPA or other relevant agencies with respect to such emissions, together with any additional allowances required to be provided by Big Rivers with respect to the period after the Unwind Closing Date, or by the City or City Utility Commission with respect to emissions attributable to energy from Station Two taken by it during the Closing Year (if made available to Big Rivers by the City or City Utility Commission, respectively).

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

(C) To the extent the WKE Annual NOx Allocation exceeds the number of allowances of oxides of nitrogen required under the Clean Air Interstate Rule for the actual NOx emissions of the Generating Plants subject to those rules (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for all periods during the Closing Year up to and including the Unwind Closing Date, and provided that WKEC shall have complied with the provisions of Subsections (a)(ii) and (b)(ii)(A) hereof, WKEC shall be entitled to receive from the CAIR Designated Representative with

respect to the Generating Plants (and Big Rivers shall cause that CAIR Designated Representative to transfer to WKEC) eighty percent (80%) of all such excess Annual NOx Allowances (the "*WKE Excess Annual NOx Allowances*") for its own account (with Big Rivers being entitled to retain the remaining twenty percent (20%) for its own account), and to sell or otherwise utilize the same in its sole discretion and without obligation to Big Rivers, promptly after such time as EPA (or the other relevant agency) has "unlocked" the relevant CAIR Accounts (that is, no longer blocks transactions associated with allowances) in the year following the Closing Year.

(iii) EPA Compliance – Leased Generators. Big Rivers shall be solely responsible for submitting to the EPA (or any applicable state agency) all Annual NOx Allowances or other allowances of oxides of nitrogen that are required under the Clean Air Interstate Rule for compliance of the NOx emissions of the Generating Plants subject to those rules (other than Station Two) throughout the Closing Year, by the deadline for that submission under Applicable Laws, including without limitation, of the NOx emissions of the Generating Plants subject to those rules (other than Station Two) for the portion of the Closing Year up to and including the Unwind Closing Date (but only to the extent WKEC makes available in the relevant Accounts as contemplated in Subsection (ii)(A) above a sufficient number of CAIR NOx Allowances or other allowances of oxides of nitrogen for the NOx emissions of the Generating Plants (other than Station Two) for the portion of the Closing Year up to and including the Unwind Closing Date).

(iv) EPA Compliance - Station Two. Big Rivers agrees that if it controls (as employer or by agreement) the CAIR Designated Representative for Station Two Annual NOx Allowance compliance, it shall be solely responsible for submitting to the EPA (or any applicable state agency) all Annual NOx Allowances or other allowances of oxides of nitrogen required under the Clean Air Interstate Rule for compliance of the NOx emissions of Station Two (subject to those rules) throughout the Closing Year, by the deadline for that submission under Applicable Laws (but only to the extent WKEC makes available in the relevant Station Two Account as contemplated in Subsection (ii)(A) above a sufficient number of Annual NOx Allowances or other

allowances of oxides of nitrogen for the NOx emissions of Station Two (excluding emissions attributable to energy taken from Station Two by the City or the City Utility Commission) for the portion of the Closing Year up to and including the Unwind Closing Date, and only to the extent the City or the City Utility Commission makes sufficient Annual NOx Allowances available to Big Rivers in accordance with the 1970 Station Two Contracts, it being understood that neither Big Rivers nor WKEC shall be responsible for the compliance of any NOx emissions associated with the energy from Station Two taken by the City or the City Utility Commission). In the event the CAIR Designated Representative for Station Two shall have submitted to the EPA (or other applicable state agency) the portion of the Closing Year Annual NOx Allotment required for compliance of the NOx emissions attributable to the energy from Station Two taken by any WKE Party or by Big Rivers during the Closing Year (that are subject to the Clean Air Interstate Rule), and such CAIR Designated Representative holds or controls Annual NOx Allowances that are WKE Excess Annual NOx Allowances on or past the date on which all such WKE Excess Annual NOx Allowances are required to be transferred to WKEC under Subsection (b)(ii)(C) hereof, then Big Rivers shall either: (i) cause that CAIR Designated Representative to promptly thereafter transfer to WKEC any WKE Excess Annual NOx Allowances then held or controlled by that CAIR Designated Representative; or (ii) promptly thereafter acquire and transfer to WKEC, at Big Rivers' expense, substitute annual allowances of NOx having a vintage year of the Closing Year and in an amount equal to the WKE Excess Annual NOx Allowances so held or controlled by that CAIR Designated Representative, in which event Big Rivers' obligation hereunder to ensure delivery to WKEC of the WKE Excess Annual NOx Allowances (if any) attributable to Station Two shall be deemed to be fulfilled, and WKEC shall be deemed to have assigned to Big Rivers its rights in and to those WKE Excess Annual NOx Allowances held by that CAIR Designated Representative.

(v) **No Sale of Allowances.** Big Rivers shall not attempt to sell, convey, assign or transfer (and shall not permit its CAIR Designated Representative to sell, convey, assign or transfer) any portion of the Closing Year Annual NOx Allotment, or any right or interest of Big Rivers therein, to any Person, whether before or after the Closing, until that allotment has first been used for compliance of the NOx emissions of

the Generating Plants (subject to the Clean Air Interstate Rule) for the periods contemplated above.

(c) No Applicability Under Section 8.3. The Parties agree that the provisions of Section 8.3 of the Termination Agreement have no applicability to any Annual NOx Allowances related to the Clean Air Interstate Rule.

4. ADDITIONAL ACKNOWLEDGEMENTS AND AGREEMENTS.

4.1 WKE Parties Closing Conditions. The WKE Parties acknowledge and agree that each of the conditions precedent to the Closing set forth in Section 10.1 of the Termination Agreement that were applicable to the WKE Parties, each of the conditions precedent to the Closing set forth in Section 10.2 of the Termination Agreement, and any other conditions precedent to the consummation by the WKE Parties of the Closing (including without limitation, any relevant conditions precedent set forth in the Third Amendment to Transaction Termination Agreement dated November 3, 2008, among Big River LEM and WKEC), have been satisfied (or waived by the WKE Parties).

4.2 Big Rivers Closing Conditions. Big Rivers acknowledges and agrees that each of the conditions precedent to the Closing set forth in Section 10.1 of the Termination Agreement that were applicable to Big Rivers, each of the conditions precedent to the Closing set forth in Section 10.3 of the Termination Agreement, and any other conditions precedent to the consummation by Big Rivers of the Closing (including without limitation, any relevant conditions precedent set forth in the Third Amendment to Transaction Termination Agreement dated November 3, 2008, among Big Rivers, LEM and WKEC), have been satisfied (or waived by Big Rivers).

4.3 Pre-Closing Operations Condition. Big Rivers further acknowledges and agrees, as contemplated in Subsection 10.2(hh) of the Termination Agreement, that the provisions of Section 12.5 of the Termination Agreement have been fulfilled by WKEC, LEM or E.ON with results satisfactory to Big Rivers, and any conditions precedent to Big Rivers' obligation to consummate the Transaction that are contemplated in Article 12 of the Termination Agreement have been waived or satisfied.

4.4 Termination Agreement Schedules. The Parties further acknowledge and agree that Exhibit I attached hereto contains a complete copy of all Schedules to the Termination Agreement as those Schedules exist as of the Closing, including without limitation, copies of the Schedules described in Section 3 above. To the extent any Schedule attached as Exhibit I and referred to in Article 11 of the Termination Agreement differs in any respect from such Schedule as it existed as of the Execution Date, Big Rivers hereby approves and accepts such differences for purposes of the certification of the Responsible Officers of the WKE Parties made and delivered to Big Rivers at the Closing as contemplated in Section 10.3(a) of the Termination Agreement, and Big Rivers agrees that the relevant representation and warranty set forth in Section 11.1 of the Termination Agreement to which that modified or updated Schedule relates was made by the WKE Parties at the Closing solely on the basis of that modified or updated Schedule and not on the basis of that Schedule as it existed on the Execution Date.

4.5 Approval of Significant Contracts, Etc. Big Rivers hereby acknowledges and agrees that to the extent any contract, agreement or other instrument set forth or described on Schedule 5.1 of the Termination Agreement (and attached to this Closing Memorandum) was required to be approved or consented to prior to the Closing under or as contemplated in Subsection 12.4(b) of the Termination Agreement, then Big Rivers has so approved or consented to such contract, agreement or other instrument.

4.6 Exhibit S. The Parties acknowledge that Exhibit J attached to this Closing Memorandum constitutes final Exhibit S to the Termination Agreement setting forth the Definitive Documents.

4.7 Subsection 11.1(g). The Parties acknowledge that they have dispensed with Part A of Schedule 11.1(g) of the Termination Agreement and have agreed to substitute therefor that portion of Schedule 5.1 that lists or identifies any Assigned Contracts that are to be assumed or undertaken by Big Rivers as of the Closing. Consistent with the foregoing, and for purposes of Subsection 10.3(a) of the Termination Agreement and the certification of the Responsible Officer of each of the WKE Parties contemplated in that Subsection (including without limitations, the certification relating to Subsection 11.1(g) of the Termination Agreement), all references to "Part A of Schedule 11.1(g)" set forth in the Termination Agreement shall be deemed to refer to that portion of Schedule 5.1.

4.8 Schedule 15.3(d). The Parties acknowledge and agree that Exhibit K attached to this Closing Memorandum constitutes final Schedule 15.3(d) to the Termination Agreement, which sets forth certain conditions that the Parties have agreed shall be deemed for all purposes to be included in, made a part of and incorporated by reference in Subsection 15.3(d) of the Termination Agreement (subject to the terms, conditions and limitations set forth in that Subsection 15.3(d) or elsewhere in the Termination Agreement).

4.9 Schedule 15.4. The Parties acknowledge and agree that Exhibit N attached to this Closing Memorandum constitutes final Schedule 15.4 to the Termination Agreement, which sets forth certain Secondary Conditions that the Parties have agreed shall be the subject of Section 15.4 of the Termination Agreement following the Closing (subject to the terms, conditions and limitations set forth in that Section 15.4 or elsewhere in the Termination Agreement). The Parties further agree that the requirement, set forth in the first sentence of Section 15.4 of the Termination Agreement, that they identify any Secondary Conditions no later than forty-five (45) days prior to the Scheduled Unwind Closing Date is hereby dispensed with as it may relate to the Secondary Conditions set forth on Schedule 15.4. The Parties further acknowledge and agree that the Secondary Conditions identified on Schedule 15.4 are Disclosed Environmental Conditions.

4.10 Farm Leases. Reference is made to the Farm Lease and Security Agreement dated March 1, 2008, between LCC LLC and Steve Ogle, and to the Farm Lease and Security Agreement dated March 1, 2008, between LCC LLC and Aaron Payne (collectively, the "*Farm Leases*"), which Farm Leases are the same leases referred to in Sections 3.2(d) and 3.2(e) of the Termination Agreement. The Parties acknowledge that the Farm Leases expired and terminated effective as of February 28, 2009 and were not in effect as of the Closing and will not be conveyed or assigned to Big Rivers.

4.11 Joint Use Agreement. Reference is made to that certain Joint Use Agreement dated as of February 8, 2000, between Big Rivers and WKEC, pursuant to which, among other transactions, Big Rivers granted WKEC certain rights to install and maintain certain fiber optic communications facilities on certain utility poles of Big Rivers for the term and upon the other terms and conditions set forth therein (the "*Joint Use Agreement*"). Notwithstanding anything contained in the Joint Use Agreement to the contrary, Big Rivers and WKEC agree that the Joint

Use Agreement shall survive the Closing and continue in force and effect in accordance with its terms until the latter to occur of (a) the expiration or termination for any reason of the Information Technology Support Services Agreement or (b) the expiration or termination for any reason of the Generation Dispatch Support Services Agreement, at which time the Joint Use Agreement shall immediately expire and become null, void and of no further force or effect whatsoever, without notice or further obligation thereunder on the part of either Big Rivers or WKEC other than for a breach or default thereunder by such party occurring prior to that expiration.

4.12 *Transmission Deposits.* The Parties acknowledge and agree that there were no prepayments for transmission services as contemplated in Article 3 of the Transmission Agreement, and that no payments as contemplated in that Article 3 were required at the Closing.

4.13 *Certain Payments to City.* Notwithstanding anything to the contrary set forth in any Cost Share Agreement, the Parties acknowledge and agree that: (a) no amounts that may be paid by Big Rivers to the City or the City Utility Commission following the Closing under or pursuant to Section 3.8 of the Power Sales Contract or otherwise in respect of, for or on account of any Excess Henderson Energy or energy associated with Excess Henderson Capacity (including without limitation, any "Big Rivers Funding Requirement" as contemplated in the Indemnification Agreement described in Subsection 2(tt) above); (b) no other consideration that may have been or may hereafter be paid or given by Big Rivers to the City or the City Utility Commission (or on their behalf) in exchange for or as a condition to the City's or City Utility Commission's (i) execution and delivery of the Second Amendatory Agreement described in Section 2(p) above, or (ii) consent to or approval of any of the transactions contemplated by the Termination Agreement; and (c) none of the amounts described in Subsection 5.1(r) below; shall constitute "Fees" or "Transaction Costs" under and as defined in the Cost-Share Agreements (or any of them), or shall otherwise be reimburseable by WKEC, LEM or E.ON to Big Rivers under or pursuant to any Cost-Share Agreement.

4.14 *Coordination with Other Instruments.* The Parties acknowledge and agree that: (a) the provisions of Articles 3, 4 and 5 of the Creditor Termination and Release are intended by E.ON, LEM, WKEC and Big Rivers as being consistent with the provisions of the Termination and Release and of the Station Two Termination and Release, and not in lieu of or

in substitution for any of the provisions of the Termination and Release or of the Station Two Termination and Release; and (b) in the event of a conflict between any of the provisions of Article 3, 4 or 5 of the Creditor Termination and Release (or any other provision hereof) and any of the provisions of the Termination and Release or the Station Two Termination and Release, then as between the E.ON, LEM and WKEC, on the one hand, and Big Rivers, on the other hand, the provisions of the Termination and Release or the Station Two Termination and Release (as applicable) shall control.

4.15 401(k) Company Match. The Parties acknowledge that in November of 2007 E.ON and its Affiliates implemented certain increases in the matching contributions to be made by them to the individual accounts maintained on behalf of certain of their employees under the 401(k) retirement savings plan sponsored by E.ON and/or those Affiliates, including certain of the employees of WKEC who are becoming employees of Big Rivers on the date hereof (the details of which increases were previously provided by WKEC to Big Rivers) (the "**Company Match Increases**"). Big Rivers acknowledges that it has consented for all purposes to the Company Match Increases, and agrees that the Company Match Increases (a) do not constitute a breach or default on the part of WKEC, LEM or E.ON under or pursuant to the Termination Agreement or any other Definitive Document, and (b) have not caused or resulted in a misrepresentation or breach of warranty on the part of WKEC, LEM or E.ON under or pursuant to the Termination Agreement or any other Definitive Document.

4.16 Consulting Service. Big Rivers hereby agrees that in the event Gregory Black, an employee of E.ON or its Affiliate, performs any consulting or advisory services to or for the benefit of Big Rivers or any of its personnel (at Big Rivers' request) at any time following the date hereof, neither Gregory Black, E.ON nor any of its Affiliates shall have any obligation, responsibility or liability of any nature whatsoever to Big Rivers or its personnel with respect to such consulting or advisory services or Big Rivers' or its personnel's reliance upon or use of the same, or for any consequence of such services, it being agreed that (a) Big Rivers and its personnel hereby accept any such services without any warranty of any nature whatsoever, (b) Big Rivers hereby releases and discharges Gregory Black, E.ON and its Affiliates of and from any and all such obligations, responsibilities and liabilities (if any), and (c) Big Rivers hereby agrees to indemnify and hold harmless Gregory Black, E.ON and its Affiliates from and against any claims, demands, actions, suits or proceedings that may be asserted or commenced

by any personnel of Big Rivers, any governmental authority or regulatory body, or any other person or entity (other than E.ON or its Affiliate) resulting from or arising out of any such services. Nothing contained in this Section 4.16 shall obligate Big Rivers to request or use any such consulting or advisory services, nor shall it obligate Gregory Black or E.ON to provide such services. Gregory Black, E.ON and its Affiliates that are not signatories to this Closing Memorandum shall be third party beneficiaries of Big Rivers' covenants and agreements set forth in this Section 4.16.

4.17 SERC Investigation. WKEC and LEM hereby acknowledge that the current compliance violation investigation SERCCV109001 of Big Rivers by the SERC Reliability Corporation is not included within the scope of the provisions of Section 3 (Indemnity Regarding SERC Audit) of Schedule 15.3(e) to the Termination Agreement (attached as Appendix B to the Third Amendment to Transaction Termination Agreement).

4.18. Actions Simultaneous. Notwithstanding the order of execution or delivery of the documents identified in Section 2 or any other document executed and delivered in connection with the consummation of the transaction contemplated by the Termination Agreement, (i) the execution and delivery of all documents set forth in Section 2 and of all other documents executed and delivered in connection with the consummation of the transactions contemplated by the Termination Agreement, (ii) the conveyance of all property interests and releases of all interests in property contemplated by this Closing Memorandum, (iii) the payment by WKEC of the Termination Payment, (iv) the payment by any Party of any amounts required by this Closing Memorandum to be paid on the Unwind Closing Date, and (v) the consummation of the other transactions contemplated by the Termination Agreement and this Closing Memorandum, occurred simultaneously.

4.19 Tug Boat Liens. E.ON and WKEC agree that, to the extent the Miss Debbie Tug Boat conveyed by WKEC to Big Rivers on the date hereof was not as of the Closing free and clear of all Liens, then E.ON and WKEC shall cause any such Liens to be released and discharged promptly following the Closing at their expense.

4.20 Employee Indemnity. Big Rivers shall fully indemnify, defend, save and hold harmless WKE and its parent company, affiliates, agents, representatives, attorneys and employees against and from any and all claims, causes of action, grievances, lawsuits and

liability, including back pay, other damages of any nature, attorneys' fees and costs, arbitrator fees, reinstatement orders and expenses, arising out of, resulting from, or related to WKE's discharge of one or more employees from July 15, 2009 through the Effective Time on the Closing Date; provided however, Big Rivers' obligation to indemnify WKE under this Section 4.20 shall not apply with respect to any particular discharged employee unless WKE has notified Big Rivers of its intent to discharge such employee and Big Rivers has confirmed it is aware of such termination or pending termination and does not object to such termination. Big Rivers' indemnification of WKE in this Section 4.20 shall survive the Closing and shall include, but is not limited to, Big Rivers' agreement and promise to be bound by any adverse arbitral award, including reinstatement of any such employees.

5. CLOSING PAYMENTS. At or prior to the Closing WKEC remitted and paid to Big Rivers the sum of FOUR HUNDRED EIGHTY ONE MILLION FOUR HUNDRED NINETY EIGHT THOUSAND FIVE HUNDRED EIGHTY-ONE DOLLARS AND EIGHTY-NINE CENTS (\$481,498,581.89) in immediately available funds, by wire transfer to the account of Big Rivers set forth below, representing the net payment owing to Big Rivers as of the Closing following the offset of the respective amounts payable by Big Rivers to WKEC at the Closing as contemplated in Subsection 5.1 below against the respective amounts payable by WKEC to Big Rivers at the Closing as contemplated in Subsection 5.2 below, the receipt of which amounts are hereby acknowledged by the relevant Parties:

Bank Name: Old National Bank

ABA Number:

Account Number:

Account Name: Big Rivers Electric General Fund

5.1 Amounts Payable by Big Rivers. The Parties acknowledge that the following amounts were payable by Big Rivers to WKEC (or to WKEC on behalf of LEM) at the Closing:

(a) \$442,799.00, representing the return of the deposit (and accrued interest) to LEM as contemplated in Subclause (ii) of Section 3.3(b) of the Termination Agreement (it being acknowledged by the Parties that the deposit (and accrued interest) contemplated in Subclause (i) of that Section 3.3(b) was previously returned to WKEC);

(b) \$1,025,000.00, representing the aggregate purchase price for the Real Property as contemplated in Section 3.4 of the Termination Agreement;

(c) \$156,540.38, representing the Section 3.5(a) Closing Payment described in Section 3.1 of this Closing Memorandum;

(d) \$607,388.36, representing the amount described in subparagraph (i) of Section 3.2 of this Closing Memorandum;

(e) \$1,331,823.17, representing the return of a pro-rata portion of the rent paid by WKEC for the Closing Month as contemplated in Section 3.4 above;

(f) \$7,774,227.18 and \$3,939,722.66, representing the Power Value Amounts and other amounts estimated as owing by Big Rivers to WKEC under the Power Purchase Agreement as contemplated in Section 3.5 of this Closing Memorandum;

(g) \$72,106.64 and \$46,822.88, representing the amounts estimated as owing by Big Rivers under the Transmission Services and Interconnection Agreement as contemplated in Section 3.5 of this Closing Memorandum;

(h) \$24,240.06, representing the Section 3.5(e) Closing Payment payable by Big Rivers to WKEC as described in Section 3.6 of this Closing Memorandum;

(i) \$276,164.38, representing the amount payable by Big Rivers to WKEC as contemplated in Section 3.7 of this Closing Memorandum and on Exhibit A attached hereto;

(j) \$2,862,916.69, representing the amount payable by Big Rivers to WKEC as contemplated in Section 3.3 of this Closing Memorandum;

(k) \$125,000.00, representing the initial "Fixed Fee" installment due by Big Rivers to WKEC under Subsection 1.2(a) of the Information Technology Support Services Agreement;

(l) \$1,000,000.00, representing the payment owing by Big Rivers to E.ON or its Affiliate contemplated in the letter agreement dated June 24, 2008, between Big Rivers and E.ON, related to the previous termination of The Bank of America lease transactions;

(m) \$7,905,854.26, representing the amount owing by Big Rivers to WKEC under Section 9 of the November 1, 2004 Cost-Share Agreement between Big Rivers and WKEC (as successor of WKE Corp.), which Section 9 was added pursuant to the May 1, 2008 amendments to that Cost-Share Agreement;

(n) \$16,663.63, representing an agreed amount paid by Big Rivers to WKEC to reimburse WKEC for certain loans previously made to certain of its employees in connection with WKEC's personal computer purchase assistance program, it being understood that Big Rivers shall have the sole right to collect and retain all loan balances (outstanding as of the Closing) of the employees hired by Big Rivers at the Closing that are then owing by them to WKEC under that assistance program;

(o) \$33,124.06, representing the amounts owing to E.ON by Big Rivers for its share of the transaction costs incurred by The Bank of America in connection with the termination of its defeased lease transactions, which obligation is reflected in the February 9, 2007 cost-share letter agreement among E.ON, Big Rivers and the Smelters;

(p) \$1,186,252.75, representing the purchase price owing by Big Rivers to WKEC at the Closing for certain barges purchased by Big Rivers as contemplated in Section 15 of the Third Amendment to Transaction Termination Agreement dated November 3, 2008, among Big Rivers, LEM and WKEC;

(q) \$8,618.95, representing an agreed reimbursement by Big Rivers to WKEC of a pro-rated portion of the rent previously paid by WKEC under its lease of office space in the Soaper Building in Henderson, Kentucky, which lease is being subleased by WKEC to Big Rivers as of the Closing by a sublease agreement of even date herewith;

(r) \$262,516.41, representing Big Rivers' agreed share of the transaction costs incurred by the City and/or the City Utility Commission in connection with the portion of the transactions contemplated in the Termination Agreement relating to Station Two (and

certain related issues), all of which transaction costs were paid by WKEC or E.ON to the City and/or the City Utility Commission as of the Closing as a condition precedent to their willingness to consummate the portion of the Closing relating to Station Two; and

(s) \$125,000.00, representing Big Rivers' agreed reimbursement to WKEC or E.ON for its funding of the filing fee required to be made by Big Rivers in connection with its previous application for an early termination of the waiting period under the Hart Scott Rodino Antitrust Improvements Act.

5.2 Amounts Payable by WKEC. The Parties acknowledge that the following amounts were payable by WKEC to Big Rivers at the Closing:

(a) \$497,462,274.43, representing the aggregate Termination Payment contemplated in Subsection 3.3(a) of the Termination Agreement;

(b) [Reserved];

(c) \$669,677.42, representing the payment by WKEC to Big Rivers of a prorated portion of the Monthly Margin Payment as contemplated in Section 3.4 above, and \$1,384,000.00, representing the Monthly Margin Payment for the month immediately preceding the Closing Month as contemplated in Section 3.4 above;

(d) \$336,739.09 and \$385,251.36, representing the amounts owing by the WKE Parties under the Transmission Services and Interconnection Agreement as contemplated in Section 3.5 of this Closing Memorandum;

(e) \$291,452.05, representing the amount payable by WKEC to Big Rivers as contemplated in Section 3.7 of this Closing Memorandum and on Exhibit A attached hereto;

(f) [Reserved];

(g) \$5,500,000.00, representing the amount owing by WKEC (as successor of WKE Corp.) to Big Rivers under Section A.3 of the November 1, 2004 Cost-Share Agreement between Big Rivers and WKEC;

(h) \$1,250,000.00, representing an amount paid by WKEC to Big Rivers at the Closing pursuant to the letter agreement dated April 28, 2009, between WKEC and Big Rivers, as amended, in exchange for Big Rivers' agreement to waive the condition precedent to the Closing set forth in Section 10.3(hh) of the Termination Agreement;

(i) \$2,253,923.90, representing the sum total of the amounts owing by WKEC to Big Rivers at the Closing for unused sick leave, vacation and personal days of Transferred Employees as of the close of the pay period ended prior to the Unwind Closing Date under Subparagraph (i) and (ii) of Subsection 14.4(j) of the TTA, it being understood and agreed that promptly following the date hereof the Parties shall cooperate in good faith to determine the total amounts owing by WKEC to Big Rivers under Subsection 14.4(j) for unused sick leave, vacation and personal days of Transferred Employees accruing during the period from the close of that pay period through the Unwind Closing Date, and WKEC shall remit and pay such amounts to Big Rivers promptly following that determination without set-off or deduction;

(j) \$91,523.00, representing the total lump-sum payment contemplated in the second sentence of Subsection 14.4(l) of the Termination Agreement, it being agreed that neither WKEC nor any of its Affiliates shall have any further obligation or liability to Big Rivers for the cost of providing health plan benefits to former Big Rivers employees who remain on Big River's medical plan as contemplated in that Section 14.4(l);

(k) \$1,096,522.10, representing the amounts owing by E.ON to Big Rivers at the Closing under Section 3 of the March 9, 2004 cost-share letter agreement between those parties; and

(l) \$26,005.14, representing E.ON's agreed share of certain transaction costs required to be paid by Big Rivers to Ambac Credit Products Corp. or its affiliate.

6. NO AMENDMENTS. Nothing contained in this Closing Memorandum shall be deemed to amend or modify any other Definitive Document, including without limitation, any Definitive Document that has been approved by the Kentucky Public Service Commission.

IN WITNESS WHEREOF, the parties have entered into this Closing Memorandum as of the

date first written above.

BIG RIVERS ELECTRIC CORPORATION

BY: Mark A. T. Bailey
TITLE: President & CEO

LG&E ENERGY MARKETING INC.

BY: [Signature]
TITLE: sup

WESTERN KENTUCKY ENERGY CORP.

BY: [Signature]
TITLE: President

E.ON U.S. LLC

BY: [Signature]
TITLE: sup