



Big Rivers Electric Corporation
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April 14, 2026

VIA Electronic Tariff Filing System

RECEIVED

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**PUBLIC SERVICE
COMMISSION**

Ms. Linda C. Bridwell
Executive Director
Public Service Commission
211 Sower Boulevard, P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: *Justified DataPower LLC/TeraWulf Inc. Retail Electric Service Agreement*

Dear Ms. Bridwell:

With this cover letter, Big Rivers Electric Corporation (“Big Rivers”) respectfully submits for filing a proposed Retail Electric Service Agreement (the “Agreement”) among Big Rivers, Kenergy Corp. (“Kenergy”), and Justified DataPower LLC, a subsidiary of TeraWulf Inc. (“TeraWulf”). The Agreement governs retail electric service for TeraWulf’s proposed Justified data center campus to be located at the former Century Aluminum smelter site in Hancock County, Kentucky (“Century Hawesville”). As discussed below, the Agreement protects existing member-consumers, provides meaningful financial benefits, and supports system reliability.

Background

As the Commission is aware, Century Hawesville is currently served under a unique arrangement whereby Century participates in the MISO markets through an affiliate, securing its own power supply that is transferred to Kenergy for retail service to Century Hawesville. Unfortunately, the Century Hawesville smelter has been closed since 2022, resulting in the loss of over 600 local jobs and the loss of significant transmission revenue to Big Rivers. Nevertheless, Big Rivers continues to operate and maintain 482 MW of transmission capacity available to the site, and the site has now been acquired by TeraWulf for redevelopment to make use of that available transmission capacity.

The New Agreement

The new Agreement with TeraWulf does away with that unique Century arrangement and instead utilizes the same market-based, pass-through structure that Big Rivers and its Members have utilized for other large industrial customers, such as the Block Mining contracts recently approved by the Commission.¹ Under this Commission-approved structure, Big Rivers will supply the wholesale energy and capacity to Kenergy necessary for Kenergy to provide retail service to TeraWulf. Big Rivers will secure this energy and capacity from the MISO energy and capacity

¹ See TFS 2026-00038 and TFS 2026-00037.

markets, and all market-based energy and capacity costs will be passed through to TeraWulf, minimizing any financial risks associated with Big Rivers and Kenergy serving this large load.

Core Objectives

The Agreement has been carefully designed to achieve three core objectives: (1) protect existing member-consumers, (2) provide meaningful financial benefits to Big Rivers and Kenergy, and (3) support long-term system reliability. Consistent with these objectives, the Agreement ensures that TeraWulf is not subsidized by other customers and requires appropriate financial and operational commitments to support system reliability.

Protecting Existing Member-Consumers

To protect existing member-consumers, the new Agreement contains typical credit support requirements requiring TeraWulf to provide credit support equal to two times the estimated highest monthly bill.² Given the size and nature of the load, the Agreement incorporates additional protections that are not typically required for customers served under tariff rates. For example, Big Rivers will secure the capacity to serve the TeraWulf load from the MISO Planning Resource Auction, and each year, Big Rivers will be committed to purchasing that capacity for the entire following Planning Year. The new Agreement requires that TeraWulf either prepay or provide and maintain credit support in an amount equal to the capacity obligation Big Rivers is committed to for the entire Planning Year.³

Another protective provision in the Agreement requires TeraWulf to pay any disputed amounts if a billing dispute is not resolved within 10 days,⁴ thereby protecting Big Rivers while disputes are resolved.

The Agreement also has an Emergency Billing provision that allows Big Rivers to invoice TeraWulf daily if outstanding bills exceed the amount of credit support provided for the monthly billing obligation, and it requires TeraWulf to pay the daily invoices by the following Business Day (whether undisputed or disputed).⁵ This provision protects Big Rivers, its Members, and the Members' other member-consumers in times of high market energy prices, such as during winter storms.

The Agreement is designed so that TeraWulf bears all identified risks and costs associated with Big Rivers obtaining, transmitting, and delivering the capacity and energy necessary for Kenergy to provide service to TeraWulf, including all energy, capacity, transmission, congestion, uplift, regulatory, credit support, and other out-of-pocket costs incurred by Kenergy or Big Rivers. There is also a mechanism to increase the Kenergy and Big Rivers adders (discussed below) due to

² See Section 3.04(b) of the Agreement.

³ See Section 3.04(a) of the Agreement.

⁴ See Section 3.03(a) of the Agreement.

⁵ See Section 3.03(b) of the Agreement.

changes in law, MISO rules, or the MISO market that result in Big Rivers or Kenergy incurring additional costs.⁶

Providing Meaningful Financial Benefits

In addition to these protections, the Agreement is expected to deliver substantial economic and financial benefits. The Agreement has an initial term of 15 years⁷ with a minimum 482 MW take or pay obligation for the first 6 years.⁸ The Agreement includes significant but reasonable wholesale and distribution adders based on the scale of the project and the risk mitigation provided by TeraWulf. At a load of 482 MW, the Big Rivers adder will start at [REDACTED] and the Kenergy adder will start at [REDACTED]. The adders escalate by [REDACTED]. These adders will directly benefit other member-consumers through the Big Rivers Member Rate Stability Mechanism (“MRSM”), under which 60% of Big Rivers’ margins in excess of the margin required to achieve a 1.30 TIER are used to pay down regulatory assets that would otherwise need to be recovered through base rates, and the remaining 40% of Big Rivers’ margins in excess of the margins required to achieve a 1.30 TIER are credited to member-consumers through bill credits. TeraWulf is not eligible for the MRSM credit.

TeraWulf will also pay a separate charge for transmission at the rate in Big Rivers’ Open Access Transmission Tariff (“OATT”), times the amount of transmission capacity reserved for TeraWulf, which is 482 MW for at least the first 6 years of the contract.⁹

Supporting Long-Term System Reliability

In addition to the protections for member-consumers and the financial benefits to Big Rivers, Kenergy, and the member-consumers, the Agreement is also designed to support long-term system reliability. Most significantly, the Agreement gives Big Rivers and Kenergy the right to curtail TeraWulf’s load before any non-interruptible load to resolve local voltage issues, to preserve system integrity, to comply with MISO rules or directives, or in the event MISO declares an Energy Emergency Alert (“EEA”) Level 3.¹⁰ Under this provision, if MISO directs Big Rivers to curtail load due to an EEA Level 3 event, TeraWulf would be curtailed before any Rural load on the Big Rivers system.

The Agreement also allows TeraWulf to participate in MISO demand response programs, such as MISO’s Load Modifying Resource and Demand Response Resource programs, with Big Rivers having the right of first refusal to administer TeraWulf’s participation in such programs.¹¹

⁶ See Agreement, Exhibit A, Sections A(7), A(10), (C).

⁷ See Section 12.01 of the Agreement.

⁸ See Agreement, Exhibit A, Section A(5).

⁹ See Agreement, Exhibit A, Section A(6).

¹⁰ See Section 2.12 of the Agreement.

¹¹ See Section 2.13 of the Agreement; and Exhibit A, Section A(9).

Broader Economic Benefits

The TeraWulf project represents a significant capital investment and is expected to bring substantial broader economic development benefits. TeraWulf estimates:

- a \$3.5-\$4.0 billion capital investment by TeraWulf, plus >\$10 billion investment from a data center tenant
- 800 – 1000 construction jobs at job site at peak of construction period
- 80 – 100 permanent jobs employed by TeraWulf
- [REDACTED]
- approximately \$7 million per year school tax contribution (depending on MISO market pricing)
- approximately \$14.5 million per year state sales tax impact (depending on MISO market pricing)

Conclusion

As discussed above, the Agreement protects existing member-consumers while providing significant economic benefits to Big Rivers, Kenergy, and the member-consumers. Further, by enabling the redevelopment of a retired industrial facility, the Agreement brings broader economic benefits, leverages existing energy infrastructure, and supports long-term system reliability. Accordingly, Big Rivers respectfully requests that the Commission approve the Agreement without delay.

Pursuant to KRS 278.160, 807 KAR 5:001 Section 13(3), and 807 KAR 5:011 Sections 2 and 13-14, Big Rivers is electronically filing the following via the Public Service Commission's Electronic Tariff Filing System:

- this cover letter;
- the Retail Electric Service Agreement (with confidential information redacted, as applicable); and
- a motion for confidential treatment of designated confidential information.

The electronic filing does not contain an unredacted copy of the Confidential Information. Pursuant to the Commission's Orders in Case No. 2020-00085, Big Rivers will file the Confidential Information with the Commission via email to PSCED@ky.gov.

Ms. Linda C. Bridwell
April 14, 2026
Page 5

Should you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

/s/ Tyson Kamuf

General Counsel
Big Rivers Electric Corporation

Encl.

cc: Tim Lindahl, President & CEO Kenergy Corp.
Nick Kafer, General Counsel, Kenergy Corp.
John Horne, Executive Director, Kentucky Attorney General's Office of Rate Intervention
Mike Kurtz, Counsel for TeraWulf Inc.

1 and August 20, 2021. As reflected in the Commission’s October 14, 2021 Order in
2 Case No. 2021-00282, the Commission granted those requests.¹

3 3. Pursuant to the Commission’s Emergency Orders *In the Matter of:*
4 *Electronic Emergency Docket Related to the Novel Coronavirus Covid-19*, Case
5 No. 2020-00085 (March 16, 2020 and March 24, 2020), one (1) copy of the
6 Confidential Information highlighted with transparent ink, printed on yellow
7 paper, or otherwise marked “CONFIDENTIAL,” is being filed with this request
8 via electronic mail sent to PSCED@ky.gov. One (1) copy of the documents with
9 the Confidential Information redacted is also being electronically filed with this
10 request. 807 KAR 5:001 Section 13(3)(a)(3).

11 4. If and to the extent the Confidential Information becomes generally
12 available to the public, whether through filings required by other agencies or
13 otherwise, Big Rivers will notify the Commission and request that its
14 confidential status be removed. 807 KAR 5:001 Section 13(10)(b),

15 5. Pursuant to 807 KAR 5:001 Section 13(3)(a)(1), as discussed *infra*,
16 the Confidential Information is entitled to confidential protection and is being
17 submitted confidentially under the purview of KRS 61.878(1)(c)(1).

¹ See *In the Matter of: Electronic Tariff Filing of Big Rivers Electric Corporation and Jackson Purchase Energy Corporation for Approval and Confidential Treatment of a Special Contract and Cost Analysis Information and a Request for Deviation from the Commission’s September 24, 1990 Order in Administrative Case No. 327.*, Case No. 2021-00282, Order (Oct. 14, 2021).

1 I. **The Confidential Information is entitled to**
2 **confidential protection based upon KRS 61.878(1)(c)(1)**

3 6. KRS 61.878(1)(c)(1), protects “records confidentially disclosed to an
4 agency or required by an agency to be disclosed to it, generally recognized as
5 confidential or proprietary, which if openly disclosed would permit an unfair
6 commercial advantage to competitors of the entity that disclosed the records.”
7 *See* 807 KAR 5:001 Section 13(3)(a)(1). In support for this ground of granting
8 confidential protection, Subsection A *infra* describes how Big Rivers and Kenergy
9 operate in competitive environments; Subsection B *infra* explains that the
10 Confidential Information is generally recognized as confidential or proprietary;
11 and Subsection C *infra* demonstrates that public disclosure of the Confidential
12 Information would permit an unfair commercial advantage to Big Rivers’ and
13 Kenergy’s competitors. As such, the Commission should grant confidential
14 treatment to the Confidential Information.

15 A. ***Big Rivers and Kenergy Face Actual Competition***

16
17 7. Big Rivers must successfully compete in the wholesale power
18 market in order to sell excess energy to meet its members’ needs, including
19 competition in: term bilateral energy markets, day-ahead and real-time energy
20 and ancillary services markets, the annual capacity market, and forward
21 bilateral long-term wholesale agreements with utilities and industrial customers.
22 Big Rivers’ ability to successfully compete in these wholesale power markets is
23 dependent upon an effective combination of a) obtaining the maximum price for
24 the power it sells and the best contract terms, and b) keeping its cost of

1 production as low as possible. Fundamentally, if Big Rivers' cost of producing a
2 kilowatt hour or its business risk increases, its ability to sell that kilowatt hour
3 in competition with other utilities is adversely affected.

4 8. Big Rivers also competes for reasonably-priced credit in the credit
5 markets, and its ability to compete is directly impacted by the financial results it
6 obtains and the business risks it assumes. Any event that adversely affects Big
7 Rivers' financial results or increases its business risks may adversely affect the
8 price it pays for credit. A competitor armed with Big Rivers' proprietary and
9 confidential information will be able to increase Big Rivers' costs or decrease Big
10 Rivers' revenues, which could in turn affect Big Rivers' apparent
11 creditworthiness. Impediments to Big Rivers' obtaining the best contract terms
12 could likewise affect its apparent creditworthiness. A utility the size of Big
13 Rivers that operates generation and transmission facilities will always have
14 periodic cash and borrowing requirements for both anticipated and unanticipated
15 needs. Big Rivers expects to be in the credit markets on a regular basis in the
16 future, and it is imperative that Big Rivers improve and maintain its credit
17 profile.

18 9. Kenergy competes with other retail electric suppliers for economic
19 development prospects such as TeraWulf.

20 10. Accordingly, Big Rivers faces competition in the wholesale power
21 and capital markets, Kenergy faces competition with regard to economic
22 development prospects, and the Confidential Information should be afforded

1 confidential treatment to prevent the imposition of an unfair competitive
2 advantage to those competitors.

3 **B. *The Confidential Information is Generally Recognized as***
4 ***Confidential or Proprietary***
5

6 11. The Confidential Information for which Big Rivers and Kenergy
7 seek confidential treatment under KRS 61.878 is generally recognized as
8 confidential or proprietary under Kentucky law.

9 12. As noted above, the Confidential Information consists of
10 confidential, negotiated terms. KRS 278.160(3) specifically recognizes that terms
11 of a special contract are not required to be publicly disclosed if such terms are
12 entitled to protection under KRS 61.878(1)(c)(1).

13 13. The Confidential Information is not publicly available, nor is such
14 information known or disseminated within the TeraWulf, Kenergy, or Big Rivers
15 organizations except to those employees and professionals with a legitimate
16 business need to know and act upon the information.

17 14. Further under Kentucky law, it is well recognized that the
18 information about a company's detailed inner workings, such as the Confidential
19 Information, is generally recognized as confidential or proprietary. *See, e.g., Hoy*
20 *v. Kentucky Indus. Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“[i]t
21 does not take a degree in finance to recognize that such information concerning
22 the inner workings of a corporation is ‘generally recognized as confidential or
23 proprietary”).

1 15. Additionally, the Commission has a long history of granted
2 confidential treatment to similar information. *See, e.g. In the Matter of: Joint*
3 *Application of Big Rivers Electric Corporation and Meade County Rural Electric*
4 *Cooperative Corporation for Approval of Contracts for Electric Service with Nucor*
5 *Corporation*, P.S.C. Case No. 2019-00365, Order (Jan. 22, 2020) (granting
6 confidential treatment of the negotiated terms of the retail electric service
7 agreement between Meade County Rural Electric Cooperative Corporation and
8 Nucor Corporation for an indefinite period); *In the Matter of: Big Rivers Electric*
9 *Corporation Filing of Wholesale Contracts Pursuant to KRS 278.180 and KAR*
10 *5:001 §13*, P.S.C. Case No. 2014-00134, Order (Sept. 10, 2014) (granting
11 confidential treatment to the confidential terms of the Nebraska contracts for an
12 indefinite time period); *In the Matter of: Filing of Agreement for the Purchase and*
13 *Sale of Firm Capacity and Energy Between Big Rivers Electric Corporation and*
14 *the Kentucky Municipal Energy Agency*, P.S.C. Case No. 2016-00306, Order (Jan.
15 2, 2019) (granting confidential treatment to the confidential terms of the KyMEA
16 contract for an indefinite time period).

17 16. Based on the foregoing, the Confidential Information is generally
18 recognized as confidential or proprietary under Kentucky law.

19

1 **C. *Disclosure of the Confidential Information Would Permit an***
2 ***Unfair Commercial Advantage to Big Rivers' Competitors***
3

4 17. Disclosure of the Confidential Information would permit an unfair
5 commercial advantage to Big Rivers' and Kenergy's competitors. As discussed
6 *supra*, Big Rivers faces actual competition in the wholesale power and credit
7 markets, and Kenergy faces actual competition in the effort to secure economic
8 development prospects. It is likely that Big Rivers' and Kenergy's ability to
9 compete in these markets would be adversely affected if the Confidential
10 Information were publicly disclosed, and they seek protection from such
11 competitive injury.

12 18. Big Rivers is actively engaged in buying and selling power in the
13 wholesale markets, Kenergy is actively engaged in discussion with other
14 economic development prospects, and Big Rivers and Kenergy expect to engage in
15 negotiations with such counterparties in the future. If confidential treatment of
16 the confidential terms of the Agreement is denied, potential counterparties would
17 know that the confidential terms of their contracts would be publicly disclosed,
18 which could reveal information to their competitors about their competitiveness.
19 Because many companies would be reluctant to have such information disclosed,
20 public disclosure of the Confidential Information in this case would likely reduce
21 the pool of counterparties willing to negotiate with Big Rivers or Kenergy,
22 reducing Big Rivers' ability to buy and sell power at favorable prices and
23 Kenergy's ability to secure economic development prospects. Further, any
24 competitive pressure that adversely affects Big Rivers' revenue and margins

1 could make the company appear less creditworthy and thus impair its ability to
2 compete in the credit markets.

3 19. TeraWulf had choices about where it located its new facility. If
4 TeraWulf knew that it would be risking the disclosure of extremely confidential
5 project information that could endanger the ultimate competitiveness of the
6 company, TeraWulf may have made a different decision about the location.

7 20. Public disclosure of the Confidential Information would provide
8 potential purchasers of energy or capacity from Big Rivers; potential sellers of
9 energy or capacity to Big Rivers; and other providers competing against Big
10 Rivers for purchases or sales of energy or capacity with insight into the terms
11 under which Big Rivers is willing to buy and sell energy and capacity. These
12 market participants could use that information to manipulate the bidding
13 process, leading to higher costs or lower revenues for Big Rivers and impairing
14 its ability to compete in the wholesale power markets.

15 21. Thus, Big Rivers' and Kenergy's competitiveness will be adversely
16 affected if other suppliers are given such an unfair competitive advantage or if
17 potential counterparties are given a negotiating advantage. Accordingly, the
18 public disclosure of the Confidential Information would provide competitors of
19 Big Rivers with an unfair commercial advantage.

20 **II. Time Period**

21 22. Big Rivers and Kenergy request that the Confidential Information
22 remain confidential indefinitely consistent with Commission precedent, because

1 it reveals confidential contract terms, which public disclosure of such information
2 would cause competitive harm to Big Rivers and Kenergy for the above reasons,
3 for so long as they are buying and selling power or competing for economic
4 development prospects. *See* 807 KAR 5:001 Section 13(3)(a)(2).

5 **III. Conclusion**

6 23. Based on the foregoing, the Confidential Information is entitled to
7 confidential protection. If the Commission disagrees that Big Rivers is entitled
8 to confidential protection, due process requires the Commission to hold an
9 evidentiary hearing. *See Utility Regulatory Com'n v. Kentucky Water Service Co.,*
10 *Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

11 WHEREFORE, Big Rivers and Kenergy respectfully request that the
12 Commission classify and protect as confidential the Confidential Information.

13 On this the 14th day of April, 2026.
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Respectfully submitted,

/s/ Tyson Kamuf

Tyson Kamuf
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Counsel for Big Rivers Electric Corporation

AGREEMENT FOR ELECTRIC SERVICE

THIS AGREEMENT FOR ELECTRIC SERVICE (“Agreement”) is made and entered into as of the 20th day of March, 2026, among **KENERGY CORP.**, a Kentucky rural electric cooperative corporation, with its principal office located at 6402 Old Corydon Road, P.O. Box 18, Henderson, KY 42419-0018 (“Seller”), **BIG RIVERS ELECTRIC CORPORATION**, a Kentucky rural electric cooperative corporation, with its principal office located at 710 W. 2nd Street, Owensboro, KY 42301 (“Big Rivers”), and **JUSTIFIED DATAPOWER LLC** a Delaware limited liability company with its principal office located at 9 Federal Street, Easton, MD 21601 (“Customer”) and with a service address at which Customer intends to take retail electric service under this Agreement for a new data center (the “Facility”) to be constructed and located at 1627 State Route 3543, Hawesville, Kentucky 42348 (the “Real Property”). Seller, Big Rivers and Customer are individually referred to herein as a “Party” and collectively as the “Parties.” Seller and Big Rivers are referred to herein collectively as “Utilities.”

WHEREAS, on February 2, 2026, Century Aluminum of Kentucky General Partnership (“Century”) sold the Real Property to Customer

WHEREAS, Century previously received retail electric service for its pre-existing industrial facility at the Real Property from Seller pursuant to an electric service agreement dated August 19, 2013, as amended, and several related agreements, including but not limited to the Load Curtailment Agreement dated January 31, 2014, among Big Rivers, Seller, and Century, and the Protective Relays Agreement dated August 12, 2013, among Big Rivers, Seller, and Century (the “Existing Century Agreements”);

WHEREAS, Seller will provide retail electric service to the Facility under the terms of this Agreement;

WHEREAS, Seller will purchase the electric capacity and energy for resale to Customer from Big Rivers under a wholesale power contract dated October 14, 1977, as has been and may be amended from time to time (the “Wholesale Power Contract”);

WHEREAS, the Delivery Point of electric capacity and energy to Customer will be the Hawesville Commercial Pricing Node (currently identified as “BREC.Century”) (or successor node(s)), which will continue to be designated as Network Load of the Utilities under the applicable provisions of the Tariff of the Midcontinent Independent System Operator, Inc. (“MISO”); and

WHEREAS, the Parties desire that Big Rivers hold, and Big Rivers is willing to hold, Customer’s credit support under the terms set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I
GENERAL OBLIGATIONS

1.01 Basic Obligations of the Parties. Seller shall supply, sell, and deliver to Customer, and Customer shall accept and pay for all of the electric capacity and energy Customer may need for the operation of the Facility, up to the Maximum Contract Demand as defined in Section 2.03(b), subject to the terms and conditions set forth herein. Electric capacity and energy for Customer's operational needs will be supplied by Big Rivers and Seller from the energy and capacity markets operated by MISO, unless Customer requests Alternative Supply Arrangements pursuant to Exhibit A. The electric service provided by Big Rivers and Seller hereunder is subject to the rules, regulations, and orders of the Public Service Commission of Kentucky (the "Commission") as may be applicable and effective from time to time. Except as otherwise provided herein, this Agreement contains the exclusive terms on which Big Rivers and Seller will provide electric service to the Facility during the term of this Agreement.

1.02 Membership. Customer shall be a member of Seller and shall be bound by applicable rules and regulations as may from time to time be adopted by Seller, including with respect to the allocation and rotation of patronage capital.

1.03 Performance by Seller. Big Rivers shall be entitled to the benefit of each covenant undertaken by Customer in this Agreement, and Big Rivers may enforce any such covenant by action in its own name or may require Seller to enforce such covenant for and on behalf of Big Rivers.

ARTICLE II
SERVICE CHARACTERISTICS

2.01 Delivery Point and Character of Service. The "Delivery Point" of the electric capacity and energy made available under this Agreement shall be the point of connection of Customer's bus with Big Rivers' five (5) 161 kV circuits that serve the Facility (the "Hawesville Commercial Pricing Node" currently identified as "BREC.Century"). The Hawesville Commercial Pricing Node (or successor node(s)) will continue to be designated as Network Load of the Utilities pursuant to the applicable provisions of the MISO Tariff. The electric capacity and energy delivered under this Agreement will be in the form of three-phase alternating current (60 hertz) at nominal 161 kV voltage level.

2.02 Service Restriction. Except as provided by Section, 2.14, Customer shall not use the electric capacity and energy furnished hereunder as an auxiliary or supplement to any other source of capacity and shall not sell electric capacity and energy purchased hereunder.

2.03 Contract Demand.

- (a) "Billing Demand" for service under this Agreement is established in Exhibit A.
- (b) Customer's maximum contract demand that Seller is required to provide in any month during the Term of this Agreement (the "Maximum Contract Demand") shall be 482 MW, subject to adjustment as provided in Exhibit A.

2.04 System Disturbances; Obligation for Damages.

- (a) A “System Disturbance” shall be deemed to exist if the use of power by Customer directly results in a risk of harm to human beings or material damage to or substantial interference with the functioning of Big Rivers’ generating system or transmission system, Seller’s distribution system, or the plant, facility, equipment or operations of any customer of one of Big Rivers’ distribution cooperative members. A System Disturbance includes, but is not limited to: (i) a level of current harmonic total demand distortion (“TDD”) measured at the Delivery Point that exceeds the limits on TDD described in IEEE Standard 519, Section 10; and (ii) a use of capacity and energy in such a manner that causes a current imbalance between phases greater than five percent at the Delivery Point.
- (b) In its role as Local Balancing Area Operator in MISO and reader of the meters serving Seller, Big Rivers shall have primary responsibility for determining the existence and source of System Disturbances. If Big Rivers reasonably believes that Customer is responsible for a System Disturbance, it shall provide notice to Seller and Customer, and Customer may take, but shall not be obligated to take, appropriate action at its sole expense to cure, correct or suppress such System Disturbance. If the Customer declines for any reason to take action to correct the System Disturbance, then Seller shall undertake, or cause Big Rivers to undertake, appropriate action to cure, correct or suppress such System Disturbance. If Customer is determined to be the source of the System Disturbance, Customer shall be obligated to reimburse Seller for all reasonable Costs incurred by Seller or Big Rivers to cure, correct or suppress such System Disturbance.
- (c) Neither Seller nor Big Rivers shall have any responsibility for damage to any property, or to any equipment or devices connected to Customer’s electrical system on Customer’s side of the Delivery Point to the extent that such damage results from acts or omissions of Customer, its employees, agents, contractors or invitees, or malfunction of any equipment or devices connected to Customer’s electrical system on Customer’s side of the Delivery Point. The electric capacity and energy supplied under this Agreement is supplied upon the express condition that after it passes the Delivery Point it becomes the responsibility of Customer, and neither Seller nor Big Rivers shall be liable for loss or damage to any person or property whatsoever, resulting directly or indirectly from the use, misuse or presence of said electric capacity and energy on Customer’s premises, or elsewhere, after it passes the Delivery Point except where such loss or damage shall be shown to have been occasioned by negligence of Seller or Big Rivers, their agents or employees.

2.05 Power Factor. Customer shall maintain a power factor at the Delivery Point as nearly as practicable to unity. Power factor during normal operation may range from unity to ninety-five percent (95%). If Customer’s power factor is less than 95% at time of maximum load, Seller reserves the right to require Customer to choose either (a) installation at Customer’s

expense of equipment which will maintain a power factor of 95% or higher; or (b) adjustment of the Maximum Contract Demand for billing purposes in accordance with the following formula:

$$\frac{\text{Maximum Actual Measured Kilowatts} \times 95\%}{\text{Power Factor (\%)}}$$

2.06 Metering.

- (a) The metering equipment necessary to register the electric demand and energy for this service shall be furnished, installed, operated, and maintained by Big Rivers on behalf of Seller, and shall be and remain the property of Big Rivers.
- (b) Each meter shall be read on or about the first day of each month, or such other day as the Parties may mutually agree upon, by a representative of Seller and may be simultaneously read by a representative of Customer should Customer so elect.
- (c) All inspections and testing of metering equipment shall be performed in accordance with the Commission's applicable rules and regulations. Customer has the right to test metering equipment for accuracy at its own expense. If metering equipment is found to not be accurate, then Customer has the right to have more accurate metering equipment installed at its own expense.

2.07 Easements and Facilities Provided by Customer.

- (a) Customer shall furnish, operate, and maintain (or cause to be furnished, operated, and maintained) such facilities and equipment as may be necessary to enable it to receive and use electric capacity and energy purchased hereunder at and from the Delivery Point.
- (b) Customer shall provide or cause to be provided, without cost to Seller or Big Rivers, the following facilities which are or may be necessary for Seller to supply the electric consuming facilities of Customer with retail electric service and for Big Rivers to supply Seller with the corresponding wholesale electric service:
 - (i) Adequate sites for the construction and erection of such new substations and other facilities and future alterations to such new facilities as may from time to time be necessary to serve Customer, at such locations and of such dimensions as mutually agreed upon with the fee simple title thereto, rough graded to Seller's or Big Rivers' requirements, as may be from time to time required by Seller or Big Rivers;
 - (ii) Easements for rights-of-way upon Customer's property, at such locations and of such dimensions as determined by Seller and which are necessary for the construction of facilities which Seller or Big Rivers must furnish to provide electric service under this Agreement. If Customer wishes to move any such facilities in the future, Seller and Big Rivers will cooperate in identifying alternate satisfactory locations so long as any relocation is at Customer's expense;

- (iii) An easement for ingress and egress for the exercise by Seller and Big Rivers of their rights under this Agreement; and
- (iv) Facilities for Big Rivers' metering equipment.

2.08 Facilities Provided by Seller and Big Rivers. Seller has caused Big Rivers to furnish all of the facilities required for the delivery of electric capacity up to the Maximum Contract Demand and the associated energy to the Delivery Point, including the metering, communications, relaying, control circuits, and associated equipment necessary to properly measure, control, and coordinate the delivery of electrical capacity and energy between Utilities' and Customer's facilities (the "Existing Facilities"). In the event service to Customer under this Agreement requires the upgrading or addition of any new facilities (the "New Facilities"), Customer shall be required to deposit with Big Rivers Big Rivers' estimated cost of the New Facilities. Upon completion of the New Facilities or if this Agreement is terminated prior to the completion of the New Facilities, the estimated cost will be trued-up to Big Rivers' actual costs. If the actual costs exceed the deposited amount, Seller will cause Big Rivers to apply the deposit, and Customer will promptly pay the shortage to Big Rivers. If the actual costs are less than the deposited amount, Seller will cause Big Rivers to promptly refund the excess to Customer and apply the remaining deposit.

2.09 Operation and Maintenance of Facilities.

- (a) Seller shall cause Big Rivers to construct, operate, and maintain all facilities and equipment owned by Big Rivers and required to supply retail electric service to Customer in accordance with the terms of this Agreement, the rules of the Commission and the requirements of MISO.
- (b) Customer shall construct, operate, and maintain, or cause to be constructed, operated, and maintained, all facilities and equipment owned by it in accordance with the applicable provisions of the National Electrical Safety Code and all other applicable laws, codes, and regulations; provided, however, that Seller shall have no duty to inspect such facilities for compliance therewith.
- (c) Nothing in this Agreement shall be construed to render any Party liable for any claim, demand, cost, loss, cause of action, damage, or liability of whatsoever kind or nature arising out of or resulting from the construction, operation, or maintenance of such Party's electric system or electric systems connected to such Party's electric system.

2.10 Right of Removal. Any and all equipment, apparatus, devices, or facilities placed or installed, or caused to be placed or installed, by a Party on or in the premises of another Party shall be and remain the property of the Party owning and installing such equipment, apparatus, devices, or facilities regardless of the mode or manner of annexation or attachment to real property of the other. Upon the termination of this Agreement, the owner thereof shall have the right to enter upon the premises of the other and shall within a reasonable time remove such equipment, apparatus, devices, or facilities.

2.11 Ancillary Services; Transmission. Big Rivers (on Seller's behalf) shall be responsible for procuring transmission and ancillary services, at Customer's cost, needed to deliver capacity and energy to Customer under this Agreement, subject to the rates and other terms hereunder. Service to the Facility at the Hawesville Commercial Pricing Node (or successor node(s)) will continue to be considered Network Load in MISO. Pricing for transmission and ancillary services shall be pursuant to Big Rivers' Open Access Transmission Tariff ("OATT") and this Agreement. Customer shall be required to pay for such transmission and ancillary services at Big Rivers' OATT rates.

2.12 Curtailment; Interruption. Big Rivers and Seller shall have the right to curtail any load as needed to resolve local voltage issues, to preserve system integrity (both on Big Rivers' system and on the interconnected electric network), or to comply with MISO rules or directives; provided, however, that all of the customers of Big Rivers' Members on interruptible rates shall be curtailed before Customer to the extent the curtailment of such interruptible customers would address, in whole or in part, the need for the curtailment. Except for customers of Big Rivers' members on interruptible rates, Customer may be curtailed before any other load on Big Rivers' or Seller's system in the event of an Energy Emergency Alert Level 3 alert.

2.13 Demand Response Programs. Big Rivers shall have the right of first refusal to administer on behalf of Customer the Facility's participation in any demand response programs and/or wholesale markets operated by MISO at the rates and terms set forth herein. Customer may also participate in other demand response programs offered by Seller for which Customer qualifies, at the rates and terms of any applicable tariff of Seller. For the avoidance of doubt, in the event that Seller or Big Rivers refuses or is otherwise unqualified, unable, or unwilling to administer on Customer's behalf Customer's participation in any wholesale market operated by MISO or other demand response programs, including, without limitation, ancillary services, load management response, price response, or the like, then Customer shall always have the right to directly or indirectly self-manage, source, or engage a third party broker in its discretion to facilitate Customer's market participation at its own rates and terms independently agreed to by Customer with such broker.

2.14 Behind The Meter Generation. With the consent of Big Rivers, Customer may install behind the meter generation ("BTMG") to serve all or part of the energy or capacity needs of the Facility. Any BTMG must comply with the National Electrical Safety Code and all other applicable laws, codes, and regulations. If Customer desires to install BTMG, the Parties shall negotiate in good faith amendments to this Agreement to address the different service characteristics associated with the BTMG.

ARTICLE III PAYMENT

3.01 Rates. During the Term of this Agreement, Customer shall take service from Seller at the rates set forth in Exhibit A hereto and under any applicable tariffs of Seller, as they may be amended from time to time, or any successor tariff(s), all of which are incorporated herein by reference. Seller shall take service from Big Rivers under Big Rivers' Large Industrial Customer Expansion Rate ("LICX") tariff, as such tariff may be amended from time to time, and any other applicable tariffs of Big Rivers, or any successor tariff(s), all of which are incorporated

herein by reference. Notwithstanding the foregoing, to the extent any provision of this Agreement, including the exhibits hereto, are inconsistent with the tariffs referenced in this section, the provisions of the Agreement shall prevail.

3.02 Taxes. Customer shall pay all taxes, charges, fees, or assessments now or hereafter applicable to electric service hereunder.

3.03 Billing.

- (a) Monthly billing. Bills for service hereunder shall be paid electronically or at the office of the Seller as follows:

Kenergy Corp.
6402 Old Corydon Road
P.O. Box 18
Henderson, KY 42419-0018

Such payments shall be due on the “Due Date,” which shall be: (i) the 20th day of each month for service furnished during the preceding monthly billing period, or (ii) the next Business Day following the 20th if the 20th day is on a day other than a Business Day, provided Big Rivers has sent the monthly invoice to Customer. “Business Day” means any day other than a Saturday, Sunday, or legal holiday on which state-chartered commercial banking institutions in Kentucky are authorized by law to be closed. If payment in full is not received by Seller on or before the Due Date, or if Customer fails to maintain the Collateral (as defined in Section 3.04(a) below) required hereunder, Seller may discontinue service to the Customer without further action on the part of Seller by giving the Customer written notice at least ten (10) calendar days in advance of its intention to do so; provided, however, that such discontinuance of service shall not relieve the Customer of any of its obligations under this Agreement or limit Seller’s other remedies under this Agreement. Simple interest equal to the then-effective prime commercial lending rate as published in the “Money Rates” section of *The Wall Street Journal* plus one percent (1%) shall apply to any unpaid amounts from the Due Date until paid.

In the event any portion of the bill is in bona fide dispute, as a result of metering-related issues, MISO related issues or otherwise, Customer shall notify Seller on or before the Due Date of the disputed amount and the reason therefor and shall pay the undisputed amount. The parties shall attempt in good faith to resolve the dispute. If the Parties are unable to agree upon a correct amount within ten (10) calendar days of Customer’s written notice of the dispute, then the disputed amount shall become due on the later of the Due Date or the end of that ten (10) calendar day period. Any of the Parties may petition the Commission to resolve any billing dispute.

- (b) Emergency Billing. Notwithstanding any other provision of this Agreement, in the event that Customer’s outstanding bills exceed the amount of Collateral required under Section 3.04(b) (the “Monthly Billing Credit Support Obligation”), Big

Rivers will invoice Customer daily for any amounts incurred in excess of the Monthly Billing Credit Support Obligation, and Customer shall pay such amounts (whether disputed or undisputed) on or before the following Business Day (such day being the “Emergency Billing Due Date” for each such daily billing). If payment of such an invoice does not arrive in Seller’s bank account on or before the Emergency Billing Due Date for that invoice, Seller may discontinue service to Customer without further action or notice by Seller or Big Rivers. Such discontinuance of service shall not relieve the Customer of any of its obligations under this Agreement or limit Seller’s other remedies under this Agreement. Simple interest equal to the then-effective prime commercial lending rate as published in the “Money Rates” section of *The Wall Street Journal* plus one percent (1%) shall apply to any unpaid amounts from the Emergency Billing Due Date until paid. Any of the Parties may petition the Commission to resolve any Emergency Billing dispute.

3.04 Credit Support.

- (a) Prepayment or Credit Support for Demand Charges. Big Rivers will secure the capacity necessary for Seller to provide service to Customer under this Agreement in the MISO Planning Resource Auction (“MISO PRA”) or through Alternative Supply Arrangements pursuant to Exhibit A. Once Big Rivers determines the cost of such capacity for a Planning Year, Big Rivers will notify Customer of such cost, and within forty-five (45) calendar days of such notification, Customer shall either prepay for the capacity for the entire Planning Year or shall provide to Big Rivers and maintain an irrevocable bank standby letter of credit or surety bond, or any other security deposit, payment security, or credit support mutually acceptable to Customer and Big Rivers (the “Collateral”) in an amount equal to the cost of the capacity for the entire Planning Year. For the MISO PRA, the cost of the capacity is the Demand Charges for the entire Planning Year, calculated pursuant to Paragraph A(1)(d) of Exhibit A. If Customer elects to provide Collateral under this subsection, Customer may reduce the amount of the Collateral after each month of the Planning Year so long as the remaining Collateral is equal to Big Rivers’ then-remaining Capacity Obligation for the Planning Year. If Customer elects to prepay any portion of the Demand Charges, then the prepayment which has not yet been paid by Big Rivers to MISO will earn interest at the prevailing short-term commercial paper rate.
- (b) Credit Support for other Monthly Billing Obligations. Within forty-five (45) calendar days of the Effective Date of this Agreement, Customer shall provide to Big Rivers and maintain Collateral in an amount equal to two times Big Rivers’ estimate of the highest monthly bill for the then current Planning Year (excluding any Demand Charges covered by the prepayment or Collateral required by subsection 3.04(a)) as security for the payment of Customer’s monthly billing obligations. In the event Customer fails to pay any monthly billing invoice by the Due Date, after providing Customer with at least five (5) calendar days prior written notice of its intent to do so, Seller and/or Big Rivers may, in addition to and without limiting any other remedies available to them, call on the Collateral

for payment provided by Customer to satisfy any unpaid invoices. The amount of the Collateral required by this section will be recalculated by Big Rivers at the start of each Planning Year and six months thereafter; provided that Big Rivers shall have the option to additionally recalculate the amount of the Collateral at the start of any calendar quarter. In the event any such recalculation differs by more than 10% from the amount of Collateral previously required at the time of the recalculation, then the required amount of Collateral under this subsection shall be adjusted upward or downward, as applicable, based on the new calculation. Customer shall provide the amount of Collateral required hereunder within forty-five (45) calendar days after each such reset. For avoidance of doubt, Customer's payment for any monthly billing invoice must arrive in Seller's bank account on or before the Due Date Seller to avoid application of this subsection.

ARTICLE IV CONTINUITY OF SERVICE

4.01 Continuity of Service. Big Rivers and Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric capacity and energy during Customer's construction period, ramp schedule and full operations requirements. However, Big Rivers and Seller do not guarantee uninterrupted service from maintenance and similar temporary outages or a Force Majeure Event, and neither Seller nor Big Rivers shall be responsible for damages to Customer occasioned by maintenance and similar temporary outages or a Force Majeure Event, as defined in Section 4.02 of this Agreement. When operating and maintaining their systems, Seller and Big Rivers shall make commercially reasonable efforts to coordinate with Customer to minimize Facility downtime.

4.02 Force Majeure. In the event any Parties' performance of this Agreement is limited or prevented in whole or in part by Acts of God, strikes, labor trouble, acts of the public enemy, wars, blockades, insurrections, riots, pandemics, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the government (whether federal, state, or local, or civil or military), civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, inability to obtain necessary materials, supplies, or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (whether federal, state, or local, or civil or military), or any other cause beyond the reasonable control of the Parties whether or not specifically provided herein (each a "Force Majeure Event"), the obligations (other than payment obligations) of the Parties shall be suspended to the extent made necessary by such Force Majeure Event; provided that Seller, Customer or Big Rivers gives notice and reasonably full particulars of such Force Majeure Event, first by telephone and then confirmed in writing, to the other Parties within a reasonable time after the occurrence of the Force Majeure Event. Each of the Parties will, in the event it experiences a Force Majeure Event, use all commercially reasonable efforts to eliminate the effects of such Force Majeure Event on its performance as soon as reasonably possible; provided that nothing contained herein may be construed to require any of the Parties to prevent or to settle a labor dispute against its will.

ARTICLE V
RIGHT OF ACCESS AND TO INFORMATION

5.01 Duly authorized representatives of the Seller (including Big Rivers) shall be permitted to enter the Customer's premises upon reasonably prior written notice and during regular business hours (except in case of emergency, in which case, such representatives may enter the premises outside of regular business hours with reasonably prior written notice) in order to carry out the provisions hereof. Customer's premises includes substation equipment, metering equipment and other equipment necessary to provide electric service, but does not include the data center itself.

5.02 Customer shall furnish to Seller such reports and information concerning the matters addressed in or matters arising out of this Agreement or any exhibit hereto as the Seller may reasonably request from time to time.

5.03 Upon request of Customer, Seller and Big Rivers shall provide all accounting and back-up information to support the accuracy of rates and charges to Customer. To ensure billing accuracy, Big Rivers will establish a separate MISO subaccount at the Hawesville Commercial Pricing Node.

ARTICLE VI
EVENTS OF DEFAULT AND REMEDIES

6.01 Events of Default. Each of the following constitutes an "Event of Default" under this Agreement:

- (a) Failure by Customer to make any payment in accordance with this Agreement on or before its Due Date or Emergency Billing Due Date;
- (b) Written notice by one Party to any of the other Parties of a failure of such Party to perform any material duty imposed on it by this Agreement, including but not limited to the failure to maintain Collateral as required in Section 3.04;
- (c) Any attempt by any of the Parties to transfer an interest in this Agreement other than as permitted under Article X or XI;
- (d) Any filing of a petition in bankruptcy or insolvency, or for reorganization or arrangement under any bankruptcy or insolvency laws, or voluntarily taking advantage of any such laws by answer or otherwise, or the commencement of involuntary proceedings under any such laws by any of the Parties and such petition has not been withdrawn or dismissed within 60 days after filing;
- (e) Assignment by any of the Parties for the benefit of its creditors; or
- (f) Allowance by any of the Parties of the appointment of a receiver or trustee of all or a material part of its property and such receiver or trustee has not been discharged within sixty (60) days after appointment.

6.02 Remedies. Following the occurrence and during the continuance of an Event of Default by any of the Parties, a non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon ten (10) days written notice to the other Parties, or to seek enforcement of its terms at the Commission. Remedies provided in this Agreement are cumulative. Nothing contained in this Agreement may be construed to abridge, limit, or deprive any of the Parties of any means of enforcing any remedy at the Commission for the breach or default of any of the provision herein, except as provided in Section 6.03 of this Agreement.

6.03 LIMITATION OF DAMAGES. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL CUSTOMER, SELLER, OR BIG RIVERS, OR THEIR RESPECTIVE AFFILIATES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, REPRESENTATIVES OR AGENTS BE LIABLE HEREUNDER, WHETHER IN TORT, CONTRACT, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, PUNITIVE EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS. EACH PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES. THE EXCLUSION OF ALL OTHER DAMAGES SPECIFIED IN THIS SECTION IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATING THERETO. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.04 Survival. Any obligations of any of the Parties that have accrued under this Agreement on or before the date this Agreement is terminated or otherwise expires shall survive that termination or expiration.

ARTICLE VII INDEMNIFICATION

7.01 Each Party shall indemnify and hold any other Party harmless from and against any and all claims, demands, damages, judgments, losses or expenses, including reasonable attorney fees (collectively, "Losses"), asserted against any other Party arising out of, related to or concerning damage to Big Rivers' generation or transmission facilities or the transmission facilities of any other entity resulting from the indemnifying Party's operations, activities, or usage of electric capacity and energy hereunder, unless and to the extent such Losses arise out of the negligence or intentional misconduct of the indemnified Party. Additionally, and except as otherwise provided herein, each Party assumes all responsibility for the electric service at and from the such Party's side of the Delivery Point of electricity and for the wires and equipment used in connection therewith, and will indemnify and hold any other Party harmless from any and all claims for injury or damage to persons or property occurring at and from the indemnifying Party's side of the Delivery Point of electricity, occasioned by such electricity or said wires and equipment, except to the extent said injury or damage to persons or property is occasioned by the negligence or intentional misconduct of the indemnified Party. The obligations of the Parties under this Article shall survive the termination of this Agreement.

ARTICLE VIII
NOTICE

8.01 Except as herein otherwise expressly provided, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered by email and by any qualified and recognized delivery service to the persons specified below unless otherwise provided for in this Agreement.

TO CUSTOMER:

Justified DataPower LLC
Attn: Nazar Khan, Chief Technology Officer
9 Federal Street
Easton, MD 21601
Email: [REDACTED]

With a copy to:
Justified DataPower LLC
Attn: Chief Legal Officer
9 Federal Street
Easton, MD 21601
Email: [REDACTED]

With a copy to:
Boehm, Kurtz & Lowry
Attn: Michael L. Kurtz, Esq.
425 Walnut Street, Suite 2400
Cincinnati, OH 45202
Email: [REDACTED]

TO SELLER:

President and CEO
Kenergy Corp.
6402 Old Corydon Road
P.O. Box 18
Henderson, KY 42419-0018
[REDACTED]

With a copy to:
General Counsel
Kenergy Corp.
6402 Old Corydon Road
P.O. Box 18
Henderson, KY 42419-0018
[REDACTED]

TO BIG RIVERS:

President and CEO
Big Rivers Electric Corporation
710 West 2nd Street
Owensboro, Kentucky 42301
Telephone: (270) 827-2561
[REDACTED]

With a copy to:
VP Member Services & Economic Development
Big Rivers Electric Corporation
710 West 2nd Street
Owensboro, Kentucky 42301
Telephone: (270) 827-2561
[REDACTED]

With a copy to:
General Counsel
Big Rivers Electric Corporation
710 West 2nd Street
Owensboro, Kentucky 42301
Telephone: (270) 827-2561
[REDACTED]

Each Party shall have the right to change the name of the person or location to whom or where notice shall be given or served by notifying the other Party of such change in accordance with this section.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES

9.01 Representations of Seller. Seller hereby represents and warrants to the other Parties as follows:

- (a) Seller is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the term hereof.
- (b) The execution, delivery, and performance of this Agreement by Seller have been duly and effectively authorized by all requisite corporate action.

9.02 Representations and Warranties of Customer. Customer hereby represents and warrants to the other Parties as follows:

- (a) Customer is a limited liability company duly organized and validly existing and in good standing under its state of formation, will be authorized to do business in the Commonwealth of Kentucky as of the Effective Date, and has the power and authority to execute deliver, and perform its obligations under this Agreement, and to carry on its business as such business is now being conducted and as is contemplated under this Agreement to be conducted during the term hereof.
- (b) The execution, delivery, and performance of this Agreement by Customer have been duly and effectively authorized by all requisite limited liability company action.
- (c) The rates and transmission service offered to Customer and incorporated into this Agreement were a necessary factor in the decision of Customer to locate its operations in Kentucky.

9.03 Representations and Warranties of Big Rivers. Big Rivers hereby represents and warrants to the other Parties as follows:

- (c) Big Rivers is an electric cooperative corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as such business is now being conducted and as is contemplated hereunder to be conducted during the term hereof.
- (d) The execution, delivery, and performance of this Agreement by Big Rivers have been duly and effectively authorized by all requisite corporate action.

ARTICLE X ASSIGNMENT AND SUCCESSION

10.01 No Party shall assign its rights hereunder without the prior written consent of all other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, any Party may withhold approval of a proposed assignment until it has been provided with all information it may reasonably require regarding the proposed assignee, and it has determined that the proposed assignee has the ability to fulfill assignor's obligations hereunder to the reasonable satisfaction of the Party following the proposed assignment; provided that Customer may assign this Agreement and its rights hereunder to an affiliate controlled or under common control with Customer. No assignment by a Party shall relieve the assignor of its obligations hereunder without the written consent of the other Parties to accept the assignee as a substitute obligor. This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives, and permitted assigns of the respective Parties hereto.

ARTICLE XI
BIG RIVERS' RELATIONSHIP TO THE OTHER PARTIES

11.01 Relationship of this Agreement to the Wholesale Power Contract.

(a) Big Rivers will make available to Seller under the Wholesale Power Contract the electric capacity and energy required for Seller to perform the power supply obligations assumed by it in this Agreement, and Seller shall take and pay for such service from Big Rivers pursuant to the Wholesale Power Contract, this Agreement, and Big Rivers' tariffs on file with the Commission, as such tariffs may be amended from time to time, or any successor tariff(s), all of which are incorporated herein by reference. The terms of the Wholesale Power Contract shall continue in full force and effect except as expressly modified by this Agreement.

(b) Customer acknowledges and agrees that Big Rivers has no obligation to serve or supply any electric services to or for Customer from Big Rivers' system resources (including but not limited to its owned or leased electric generation facilities, its contract with the Southeastern Power Administration, any power purchase agreement with a solar developer, or any other contractual arrangements in effect currently or that may become effective in the future that were not entered into to supply power under this Agreement).

(c) Big Rivers and Seller have an obligation to provide electric capacity and energy to Customer for the operational needs of the Facility up to the Maximum Contract Demand from the MISO energy and capacity markets (or through Alternative Supply Arrangements if requested by Customer), subject to the provisions of this Agreement.

(d) Seller agrees to bill Customer for any other amounts due under this Agreement and agrees to pay over to Big Rivers all funds actually collected under such billings, except for Seller's adders. Seller will pay to Big Rivers a pro rata share of any partial payment made to Seller by or on behalf of Customer.

(e) Customer acknowledges and agrees that, to the extent Big Rivers has a corresponding or related obligation to Seller under the Wholesale Power Contract, Seller's performance of an obligation under this Agreement (i) is subject to and conditioned upon Big Rivers' performance of such corresponding or related obligation to Seller, and (ii) may be undertaken by Big Rivers and that such performance of corresponding or related obligations by Big Rivers will satisfy Seller's performance obligations hereunder.

(f) Big Rivers shall be entitled to the benefit of each covenant undertaken by Customer in this Agreement, and Big Rivers may enforce any such covenant by action in its own name or may require Seller to enforce such covenant for and on behalf of Big Rivers.

(g) In the event the Wholesale Power Contract is terminated prior to the termination of this Agreement, Big Rivers' obligations hereunder shall terminate effective with the termination of the Wholesale Power Contract and such obligations shall transfer to Seller. Seller will then have the obligation to obtain a new MISO market participant to provide electric capacity and energy to Customer for the operational needs of the Facility up to the Maximum Contract Demand from the MISO energy and capacity markets (or through Alternative Supply Arrangements if requested by Customer). Notwithstanding the termination of the Wholesale

Power Contract, Customer shall be entitled to all rights and benefits owed to it under this Agreement.

11.02 Parties' Consent. The Parties may not amend or assign this Agreement except with the written consent of the other Parties.

11.03 RUS Collateral Assignment. Notwithstanding any other provision of this Agreement to the contrary, Big Rivers may, without the written consent of Customer or Seller and without relieving itself from liability hereunder, assign, transfer, mortgage or pledge this Agreement or its rights under this Agreement to create a security interest for the benefit of the United States of America, acting through the Rural Utilities Service ("RUS"), or other secured party (directly or through an indenture trustee or other collateral agent; collectively, including such indenture trustee or other collateral agent, a "Secured Party"). Thereafter, a Secured Party, without the written consent of Customer or Seller may (i) cause this Agreement (and all obligations hereunder) to be sold, assigned, transferred or otherwise disposed of to a third party pursuant to the terms governing such security interest, or (ii) if RUS first acquires this Agreement pursuant to 7 U.S.C. § 907 or if any other Secured Party otherwise first acquires this Agreement, sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) to a third party; provided, however, that in either case (A) Big Rivers is in default of its obligations that are secured by such security interest and that the applicable Secured Party has given Customer and Seller written notice of such default; and (B) the applicable Secured Party has given Customer and Seller not less than thirty (30) days' prior written notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement (and all obligations hereunder) indicating the identity of the intended third-party assignee or purchaser.

11.04 Facility Financing. Notwithstanding any other provision of this Agreement to the contrary, Customer may, without the written consent of Seller or Big Rivers and without relieving itself from liability hereunder, assign, transfer, mortgage or pledge this Agreement or its rights hereunder to aid in providing financing for the Facility (a "Facility Financing") and to create a security interest for the benefit of any Facility Financing provider or any other Secured Party, and Seller and Big Rivers hereby agree to review and execute any customary agreements in connection with any such Facility Financing for the benefit of such Secured Party; provided, that any such agreement shall provide that such Secured Party shall provide Seller and Big Rivers no less than ten (10) business days prior written notice of its intention to exercise its rights under such agreement.

ARTICLE XII TERM AND SERVICE COMMENCEMENT DATE

12.01 Term. This Agreement shall become effective upon the Effective Date and shall remain in effect for an initial term of fifteen (15) years after the Construction Completion Date (the "Initial Term"). The "Construction Completion Date" shall be the first day of the month following the earlier of: (i) the date Customer notifies the other Parties that construction of the Facility is complete, or (ii) the date that Customer's highest integrated 30-minute clock-hour non-coincident peak demand exceeds 50 MW. After the Initial Term, the Term will automatically be extended for successive five-year evergreen renewal terms unless terminated in accordance with Section 6.02 or Section 12.02.

12.02 Termination.

- (a) Any Party may terminate this Agreement prior to the Effective Date by providing written notice to the other Parties if the conditions precedent set forth in Section 13.01 have not been fulfilled or waived by all Parties within eighteen (18) months of the date of this Agreement.
- (b) Any Party may terminate this Agreement at the expiration of the Initial Term or any subsequent five-year renewal by giving the other Parties at least two year's written notice.
- (c) Any Party may terminate this Agreement by providing written notice to the other Parties if the Construction Completion Date has not occurred within three (3) years after the Effective Date. Customer shall notify the other Parties in writing once the Facility has achieved full commercial operation.

Termination shall not affect any obligation accrued prior to such termination or any other obligation which, pursuant to the terms of this Agreement, survives termination.

ARTICLE XIII
SUCCESSION, APPROVAL, AND EFFECTIVE DATE

13.01 The "Effective Date" of this Agreement shall be the date hereof, except that said Effective Date shall be postponed and this Agreement shall not become effective unless and until:

- (a) all necessary approvals, including approvals of this Agreement, are received from (i) the boards of directors or equivalent of Seller, Big Rivers and Customer; (ii) the Commission; (iii) MISO; and (iv) the RUS; or all of the Parties waive such approvals;
- (b) The Parties have entered into all arrangements and have received all approvals that are required by MISO for Customer to operate the Facility at the Maximum Contract Demand;
- (c) Century has transferred, or Big Rivers has otherwise obtained, transmission rights or transmission service sufficient for Big Rivers and Seller to serve Customer up to the Maximum Contract Demand; and
- (d) The Load Curtailment Agreement and the Protective Relays Agreement have been assigned to Customer (or Customer has entered into substantially similar agreements with Seller and Big Rivers), and all of the other Existing Century Agreements have been terminated or transferred to the satisfaction of Seller, Big Rivers and Customer.

ARTICLE XIV
MISCELLANEOUS

14.01 Entire Agreement. The terms, covenants, and conditions contained in this Agreement, including the attached exhibits, constitute the entire agreement between the Parties with respect to the Facility and shall supersede all previous communications, representations, or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof; provided, however, that service to Customer is subject to the articles, bylaws, tariffs, rules, and regulations of Utilities and to the laws, rules, regulations, and lawful orders of the Commission. In the event of a conflict between this Agreement and the articles, bylaws, tariffs, rules, and regulations of Utilities, this Agreement shall take precedence.

14.02 Governing Law, Jurisdiction, and Venue. All respective rights and obligations of the Parties shall be governed by the laws of the Commonwealth of Kentucky without regard to its conflicts of law rules. The courts of the Commonwealth of Kentucky will have exclusive jurisdiction over each and every judicial action brought under or in relationship to this Agreement; provided that the subject matter of such dispute is not a matter reserved by law to the Commission (in which event exclusive jurisdiction and venue will lie with the Commission), or to the U.S. federal judicial system (in which event exclusive jurisdiction and venue will lie with the U.S. District Court for the Western District of Kentucky), and the Parties shall submit to the jurisdiction of Kentucky courts for such purpose.

14.03 Waiver. The waiver by any of the Parties of any breach of any term, covenant, or condition contained herein will not be deemed a waiver of any other term, covenant, or condition, nor will it be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein.

14.04 Amendments. This Agreement may be amended, revised, or modified by, and only by, a written instrument duly executed by all Parties and approved by the Commission.

14.05 Counterparts and Electronic Signatures and Delivery. This Agreement may be executed in any number of counterparts, which together will constitute but one and the same instrument, and each counterpart will have the same force and effect as if they were one original. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

14.06 Headings. The headings contained in this Agreement are solely for convenience and do not constitute a part of the agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

14.07 Severability. Should any provision or provisions of this Agreement be declared void or illegal by any court of competent jurisdiction, then such void or illegal provision or provisions shall be severed from this Agreement, and all other provisions hereof shall remain in full force and effect.

[SIGNATURE PAGE(S) FOLLOW]


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the day and year first above written.

KENERGY CORP.

By: 

Tim Lindahl
President and CEO

JUSTIFIED DATAPOWER LLC

By: 

Nazar Khan
Chief Operating Officer and
Chief Technology Officer

BIG RIVERS ELECTRIC CORPORATION

By: 

Donald L. Gulley
President and CEO

EXHIBIT A

RATES

During the Term of this Agreement, Customer shall take service from Seller under any applicable tariffs of Seller, and Seller shall take service from Big Rivers under Big Rivers' LICX tariff for service to Customer, as such tariffs may be amended from time to time, and any other applicable or successor tariffs; provided, however, that the following Special Contract Rates shall apply to service to Customer during its load ramp period and full commercial operations in lieu of any other rates in such tariffs unless provided otherwise. Prior to the Construction Completion Date, Customer will be served under the applicable standard rate of Seller, and Seller will be served under Big Rivers' Large Industrial Customer (LIC) rate.

A. On and after the Construction Completion Date, Customer shall pay Seller:

1. Monthly Demand Charges calculated as follows:

a. "Planning Year" means the applicable MISO planning year that begins June 1 and ends the following May 31.

"Capacity Obligation" means the amount of accredited capacity Big Rivers is required to obtain, designate, or otherwise secure from MISO to ensure reliable service to Customer during a Season. The Capacity Obligation shall include Customer's Generation Peak Demand (as defined below) for a Season plus transmission losses, Big Rivers' planning reserve margin requirement, an adder to account for MISO's Reliability-Based Demand Curves, and any other adders or other adjustments required by FERC, NERC, SERC, MISO, the Commission, or any other entity having jurisdiction or authority over capacity obligations.

b. For the Planning Year in which the Construction Completion Date occurs, the "Generation Peak Demand" shall be established in writing by the Parties.

c. For each subsequent Planning Year, by October 1 of each calendar year and through the end of the Term, Customer shall provide Big Rivers a peak load estimate applicable to each Season of the MISO Planning Year that begins the following June 1 (each, the "Generation Peak Demand" for a Season).

After the Generation Peak Demand for each Season of a Planning Year has been established, the Parties may mutually agree to increase or decrease the Generation Peak Demand for any or all of the Seasons of the Planning Year, subject to the availability of capacity, MISO rules, and the capability of Big Rivers' then-existing transmission facilities. Neither Seller nor Big Rivers shall

be obligated under this Agreement to supply capacity in excess of the Maximum Contract Demand, as defined in Section 2.03(b) of this Agreement.

- d. For each month of a Planning Year, Customer will pay a monthly Demand Charge calculated as the Zone 6 Zonal Resource Credit (“ZRC”) Auction Clearing Price (“ACP”) for the applicable Season. This Demand Charge will be applied to the Capacity Obligation for the applicable Season, less any amount prepaid pursuant to Section 3.04(a) of this Agreement. The Demand Charge calculated in this manner will be fixed for each month of a Season of a Planning Year.

2. Energy Charges calculated as follows:

- a. On each business day after the Construction Completion Date and throughout the Term, Big Rivers will provide Customer good-faith estimates of the hourly Day-Ahead (“DA”) Locational Marginal Prices (“LMP’s”) for each day of the following seven-day period.
- b. Customer shall provide an hourly estimate of its load requirements for each Operating Day (“OD”) by 6:00 AM Eastern Time on the prior day (OD-1). OD estimates for Sundays, Mondays, and the OD following holidays must be provided by 6:00 AM Eastern Time on the prior business day, but may be revised by 6:00 AM Eastern Time on each OD-1. These hourly load estimates will be incorporated into the Big Rivers MISO Demand Bid for that OD.
- c. Customer will be responsible for the MISO DA energy cost for all energy provided under this Agreement. Customer will also be responsible for any energy costs and will receive any energy benefits associated with variances between the DA load estimate and actual Real-Time load. Customer will also be responsible for any MISO market charges and shall be entitled to any MISO market credits.
- d. No other tariff adders, riders, or credits (such as the FAC, Non-FAC PPA, ES, and MRSM) of either Seller or Big Rivers shall apply. A billing timeline and billing example is attached as Exhibit B.

3. Monthly Wholesale and Distribution Adders calculated as follows:

- a. Beginning on the Construction Completion Date, unless and until the Maximum Contract Demand is changed in accordance with Paragraph A(5) of this Exhibit A, the “Wholesale Demand Adder” shall be [REDACTED] times the Billing Demand for the month.
[REDACTED]

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 If the Maximum Contract Demand is changed in accordance with Exhibit A, the Wholesale Demand Adder for a month shall be determined according to the following chart, times the Billing Demand for the month.

Maximum Contract Demand (MW)		
Low End (>)	High End	Adder Amount* (\$/kW-month)
433.8	482.0 and above	████████
385.6	433.8	████████
337.4	385.6	████████
289.2	337.4	████████
241.0	289.2	████████
192.8	241.0	████████
144.6	192.8	████████
0.0	144.6	████████

* ██
 ██
 ██

- b. The “Distribution Demand Adder” shall begin on the Construction Completion Date and shall be ██████████ times the Billing Demand for the month. ██
 ██
 ██
 - c. The “Distribution Customer Charge” shall be ██████████ per month.
4. Billing Demand. The “Billing Demand” for a month will be the greater of (i) the Maximum Contract Demand, or (ii) highest integrated 30-minute clock-hour non-coincident peak demand during the month.
5. Change in Maximum Contract Demand and Unused Transmission Capacity. After the sixth (6) year of the Initial Term, Customer may provide notice to the other Parties of its desire to change its Maximum Contract Demand. Such notice must be provided at least eighteen (18) months prior to the start of a Planning Year, and shall take effect on the first day of the Planning Year. In no event shall Customer (i) increase its

Maximum Contract Demand above 482 MW without Big Rivers' consent, or (ii) increase its Maximum Contract Demand for a Planning Year above the Maximum Contract Demand for the prior Planning Year without Big Rivers' consent.

Any time Customer reduces its Maximum Contract Demand, Big Rivers may resell, reuse or redirect the unused transmission capacity, which is the difference between the prior Maximum Contract Demand and the reduced Maximum Contract Demand.

6. **Transmission Charges.** Beginning on the Construction Completion Date Customer shall be billed a transmission charge under Big Rivers' OATT equal to Customer's Billing Demand for the month multiplied by Big Rivers' then-current Network Integration Transmission Service ("NITS") transmission rate plus any applicable MISO charges, including Schedule 1, Schedule 26, and Schedule 26A charges. Transmission service to Customer shall be provided under Big Rivers' OATT on a nondiscriminatory basis. Big Rivers shall bill this transmission charge to Customer monthly, and Customer shall pay the transmission charge as instructed by Big Rivers.
7. **PSC Assessment.** Both Seller and Big Rivers are annually charged an assessment by the Kentucky Public Service Commission (the "PSC Assessment"). Customer shall be charged a passthrough of the portion of Seller's and Big Rivers' PSC Assessments attributable to sales under this Agreement. Seller will retain as an adder the passthrough of the portion of its PSC Assessment attributable to this Agreement, and Seller will pay to Big Rivers the portion of Big Rivers' PSC Assessment attributable to this Agreement.
8. **MISO Subaccount.** To ensure billing transparency and to minimize billing disputes, Big Rivers will establish a separate MISO subaccount at the Hawesville Commercial Pricing Node (or any successor node(s)).
9. **Costs and Fees for Demand Response Services.**
 - a. Customer, to the extent it is at fault or has caused such, shall be solely responsible for all charges, fees, penalties (including non-performance penalties), expenses, taxes, assessments, and other Costs imposed in connection with any demand response services provided by Big Rivers under this Agreement.
 - b. Customer shall also be solely responsible for other third-party Costs and expenses incurred by Big Rivers in providing such demand response services, including without limitation Costs and expenses charged by ACES or any other service provider.

- c. Customer shall pay a fee for any demand response services provided by Big Rivers equal to ■■■ of any revenues, credits, or other compensation Customer receives for participation in a demand response program.
 - d. Except for Big Rivers' fee for providing demand response services, Customer shall be entitled to any revenues, credits, or other compensation Big Rivers receives from MISO that the Facility is entitled to as a result of the Facility's participation in any MISO demand response programs pursuant to Section 2.13; provided, however, that upon expiration or termination of this Agreement or upon the occurrence of an Event of Default, Customer shall forfeit to Big Rivers any such revenues, credits, or other compensation for a Planning Year to the extent necessary to reimburse Big Rivers for the Cost incurred or committed by Big Rivers to procure capacity for Customer for that Planning Year.
10. Intent of the Parties. It is the intent of the Parties that: a) Customer shall incur all MISO market energy and capacity risks and shall be responsible for all Costs associated with Big Rivers obtaining, transmitting, and delivering the capacity and energy necessary for Seller's service to Customer under this Agreement; b) Customer shall not be subsidized directly or indirectly by Seller or Big Rivers; c) Customer shall be entitled to all MISO revenues, credits or other compensation attributable to the service provided under this Agreement to the Hawesville Commercial Pricing Node (or any successor node(s)) and Customer's separate MISO subaccount; d) capacity and energy supplied to Customer from the MISO markets shall be on a pass-through basis with no mark-up or margin; and e) transmission service shall be provided to Customer under Big Rivers' OATT on a nondiscriminatory basis.

Notwithstanding any other provision of this Agreement, and in addition to the other charges set forth in this Agreement, Customer shall be solely responsible for all charges, fees, penalties, expenses, taxes, assessments, or other out-of-pocket costs incurred by Seller or Big Rivers and attributable to the services provided under this Agreement to the Hawesville Commercial Pricing Node (or any successor node(s)) and Customer's separate MISO subaccount (collectively, "Costs"), including but not limited to any Costs for MISO transmission projects, uplift charges, congestion charges, capacity deficiency charges (including such charges that may be incurred as a result of Customer's load causing Big Rivers' system load to exceed the amount of its generation), the Cost of credit support required by MISO or other third parties, ACES fees, and any Costs imposed by FERC, NERC, SERC, the Commission, or any other entity having jurisdiction or authority to impose such Costs.

- B. Alternative Supply Arrangements. Upon request by Customer, and subject to Customer's consent, and as a supplement or replacement for energy or capacity from the MISO markets, Big Rivers shall use reasonable commercial efforts to acquire the capacity, energy, ancillary services, and/or other services provided hereunder through bilateral contracts from generation located in MISO or from generation with firm transmission that can be pseudo tied to MISO ("Alternative Supply Arrangements"). Customer shall be responsible for all Costs incurred by Seller or Big Rivers relating to such arrangements, including but not limited to transmission charges, transmission congestion charges, the Cost of any third-party service providers, and the Cost of any credit support Seller or Big rivers is required to provide under such arrangements. Customer shall be entitled to all revenues, credits or other compensation relating to such arrangements. Customer may bring an Alternative Supply Arrangement to Big Rivers which can be implemented only with the consent of Seller and Big Rivers.
- C. Change in Laws, Regulations, Markets. A material assumption of this Agreement is that Big Rivers, under the Wholesale Power Contract, may access throughout the Term of this Agreement, the service required to provide the power to which MISO energy charges or MISO PRA charges apply. If for any reason Big Rivers' membership in MISO is terminated, the services to provide such power to Customer are altered or are no longer available in the MISO energy or capacity markets, or there is a change in applicable laws, regulations, MISO rules, or the MISO market that results in Seller or Big Rivers incurring Costs attributable to the service provided under this Agreement, the Parties will negotiate in good faith to amend this Agreement to provide substitute pricing or substitute sources of energy and capacity to serve Customer's Maximum Contract Demand.

