

AGREEMENT FOR INTERRUPTIBLE TIER 3 ENERGY  
BETWEEN  
KENERGY CORP.  
AND  
SOUTHERN INDIANA GAS AND ELECTRIC COMPANY

ARTICLE I

PARTIES

The Parties to this Agreement, dated as of this 30<sup>th</sup> day of November, 2000, are KENERGY CORP., a Kentucky corporation organized under KRS Chapter 279 ("Kenergy") (successor to Green River Electric Corporation) and SOUTHERN INDIANA GAS AND ELECTRIC COMPANY, an Indiana corporation ("Supplier"). Kenergy and Supplier are each referred to individually as a "Party" and collectively as "Parties." It is recognized by the Parties that Southwire Company ("Southwire") is a third-party beneficiary Pursuant to the attached Form of Consent, Southwire consents to this Agreement.

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ARTICLE II

RECITALS

PURSUANT TO 807 KAR 5:011,  
SECTION 9 (1)

Section 2.01 Supplier is engaged in the business of selling electric power at wholesale.

BY: *[Signature]*  
SECRETARY OF THE COMMISSION

Section 2.02 Kenergy is an electric cooperative that provides electric energy at retail to Southwire pursuant to an agreement entitled "Agreement for Electric Service between Kenergy Corp. and Southwire Company" dated July 15, 1998 (the "Southwire Power Agreement").

Section 2.03 Southwire owns and operates (through its indirect wholly owned subsidiary, NSA, L.P.) an aluminum reduction plant and also directly owns and operates a rod mill facility, both in Hawesville, Hancock County, Kentucky (together, the "Hawesville Facility").

Section 2.04 Pursuant to Section 9.2 of the Southwire Power Agreement and upon the request of Southwire, Kenergy shall contract with one or more third party suppliers for certain

quantities of energy denominated as "Tier 3 Energy" at prices, terms and conditions which respond to Southwire's requirements. Upon approval of the Kentucky Public Service Commission, Kenergy shall then make a corollary sale of Tier 3 Energy to Southwire in an amount that is equal to the amount that Kenergy is required to pay to each third party supplier.

Section 2.05 Southwire has made a request for interruptible power, and Kenergy therefore desires to enter into an agreement with Supplier to purchase for resale to Southwire, and Supplier desires to enter into an agreement with Kenergy to sell, fully interruptible Tier 3 Energy as set forth in this Agreement.

THEREFORE, in consideration of the mutual covenants set forth below, the parties agree as follows.

ARTICLE III

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DEFINITIONS:

The following terms, when used in this Agreement with initial capitalization, whether in the singular or the plural, shall have the meanings specified:

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SECTION 9 (1)  
BY STEVEN O. BULL  
SECRETARY OF THE COMMISSION

Section 3.01 Agreement: This Agreement together with any amendments to which the Parties may agree in writing from time to time.

Section 3.02 A.M.: Means A.M., Central Standard Time or Central Daylight Time, as applicable.

Section 3.03 Billing Month: Each calendar month during the term of this Agreement in which Tier 3 Energy is provided to Kenergy by Supplier.

Section 3.04 Buy Through Energy: Tier 3 Energy that Supplier is obligated to provide under circumstances when (i) Kenergy schedules Energy on a timely basis in accordance with Section 5.01 hereof, (ii) Supplier provides a timely Notice of Interruption in accordance with Section 5.08(a) hereof, (iii) Supplier provides a Buy Through Price as provided for in Section

5.08(c) and (iv) Kenergy accepts and agrees to pay the Buy Through Price for the scheduled amount of Energy.

Section 3.05 Effective Date: The date specified in Section 4.02.

Section 3.06 Energy: The flow of electricity denominated in kilowatt-hours.

Section 3.07 Energy Availability Period: Energy Availability Period shall have the meaning ascribed in Section 5.03 below.

Section 3.08 FERC: The Federal Energy Regulatory Commission or any successor agency.

Section 3.09 Hawesville Facility: The aluminum reduction plant and rod mill facility located in Hancock County, Kentucky, and any expansions, additions, improvements and replacements thereof or thereto at the existing site.

Section 3.10 Kenergy: Kenergy Corp., its successors or assigns.

Section 3.11 KPSC: The Kentucky Public Service Commission or any successor agency.

Section 3.12 Monthly Charge: The total charge in each Billing Month for Public Service Commission of Kentucky effective computed in accordance with this Agreement.

Section 3.13 Off-Peak Hours : All hours that are not On-Peak Hours.

Section 3.14 On-Peak Hours: Working Days from 7:00 AM to 11:00 PM.

Section 3.15 Open Access Transmission Tariff. Any transmission tariff approved by

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BY: Stephen O. Bell  
SECRETARY OF THE COMMISSION

FERC following filing by a public utility pursuant to 18 C.F.R. § 35.28(c) or approved by FERC as constituting reciprocal transmission service following a submittal by a non-public utility pursuant to 18 C.F.R. § 35.28(e).

Section 3.16 Point of Delivery: The point(s) at which Supplier is interconnected with the Transmission Provider and at which the Transmission Provider meters Energy for delivery to Kenergy. At such point(s), title to the Energy transfers from Supplier to Kenergy.

Section 3.17 Prudent Utility Practice: Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Section 3.18 Southwire: Southwire Company, a Delaware corporation, its successors and assigns.

Section 3.19 Supplier: Southern Indiana Gas and Electric Company

Section 3.20 Third-Party Supplier: Any supplier of wholesale electric service, including Supplier, that after December 31, 2000 sells electric power service directly or indirectly to Kenergy for resale to Southwire pursuant to Section 9.2 of the Southwire Power Agreement.

Section 3.21 Tier 3 Energy: The interruptible energy purchased hereunder by Kenergy for resale to Southwire, including Buy Through Energy and Uninterrupted Energy as defined in this Agreement.

Section 3.22 Transmission Provider: Big Rivers Electric Corporation ("Big Rivers"), its successors or assigns, or any other owner or lessee of transmission facilities directly

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interconnected with Kenergy over which Supplier or Kenergy may contract for the delivery of electric power to Kenergy for resale to Southwire.

Section 3.23 Uncontrollable Force: Any cause beyond the control of the Party unable, in whole or in part, to perform its obligations under this Agreement which, despite exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid and which, despite the exercise of due diligence, it has been unable to overcome. Such causes include, but are not limited to: acts of God; strikes, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of the Government, whether Federal, State or local, civil or military, civil disturbances, explosions, breakage of or accident to machinery, equipment or transmission lines, inability of either Party hereto 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, civil or military, and any other forces which are not reasonably within the control of the Party claiming suspension. A forced outage of a generating unit or units is not an Uncontrollable Force unless it prevents the physical delivery of power to Kenergy for resale to Southwire. Uncontrollable Force shall not include Southwire's inability to economically use the Tier 3 Energy or market conditions relating to Southwire's business or the products produced at the Hawesville Facility.

Section 3.24 Uninterrupted Energy: Tier 3 Energy that Supplier is obligated to provide at such time as (i) Kenergy schedules such energy on a timely basis in accordance with Section 5.01 hereof and (ii) Supplier does not exercise its right to interrupt by timely Notice of Interruption in accordance with Section 5.08(a) hereof.

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BY: Richard Bell  
SECRETARY OF THE COMMISSION

Section 3.25 Working Days: Mondays through Fridays of each week except legal holidays established by law in the United States of America or the Commonwealth of Kentucky.

ARTICLE IV

TERM

Section 4.01 This Agreement will remain in full force and effect from the Effective Date through December 31, 2002 unless earlier terminated by either Party pursuant to Section 9.01, Section 4.04 or by mutual agreement of the Parties.

Section 4.02 This Agreement shall become effective on the date upon which the last of the following conditions have been satisfied or waived by each of the Parties: **DEC 21 2000**

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(a) This Agreement shall have been duly executed and delivered by the Parties.

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*[Signature]*  
SECRETARY OF THE COMMISSION

(b) Kenergy shall have made arrangements with Big Rivers that are satisfactory to Southwire and Supplier for transmission service under Big Rivers' Open Access Transmission Tariff for the delivery of the full amounts of Tier 3 Energy that Supplier is required to deliver pursuant to the Agreement.

(c) The Parties have received all regulatory and other approvals, permits and consents necessary for the provision of Tier 3 Energy under this Agreement, including the acceptance or approval by the KPSC of the rates to Southwire in accordance with Section 9.2 of the Southwire Power Agreement.

Section 4.03. As soon as practicable, Kenergy shall provide written notice to Southwire and Supplier of (a) the date the arrangements with Big Rivers described in Section 4.02(b) have been made and (b) the date the approval of the KPSC described in 4.02(c) has been obtained. Unless waived by Supplier in writing, these conditions shall not be deemed satisfied until Supplier has received such notices.

Section 4.04. Each Party agrees to use reasonable diligence to satisfy the conditions described in Section 4.02. If the conditions have not been satisfied by December 31, 2000, either Party may terminate this Agreement upon written notice to the other Party..

## ARTICLE V

### SCHEDULING AND PURCHASE AND SALE OF TIER 3 ENERGY

Section 5.01 Scheduling Obligation. Subject to Section 5.02 below, Kenergy shall have responsibility at the request of Southwire of scheduling at least twenty-four (24) hours in advance the amount (up to 10 megawatts), the duration and time of delivery of Tier 3 Energy by Supplier, provided that such scheduling shall be in increments of one (1) megawatt and shall be purchased at a 100% load factor. Southwire agrees to request the scheduling of at least one (1) megawatt per hour during the Off-Peak Hours for a minimum of 2,000 hours per year.

Section 5.02 Limitations of Scheduling. With respect to each calendar day, the amount of Energy scheduled by Kenergy for Off-Peak Hours must be the same for all Off-Peak Hours during that day and must equal or exceed the amount of Energy scheduled for On-Peak Hours during that day. In addition, the amount of energy scheduled for On-Peak Hours during any calendar day must be the same for all On-Peak Hours during that day. By way of example, if on a given day Kenergy schedules 8 MW for Off-Peak Hours, then Kenergy must schedule 8 MW for all Off-Peak Hours during that day and the schedule for On-Peak Hours must be 8 MW or less. On that same day, if Kenergy schedules 6 MW for On-Peak Hours, Kenergy must schedule 6 MW for all On-Peak Hours during that day.

Section 5.03 Delivery Obligation. Supplier's obligation to deliver scheduled Tier 3 Energy pursuant to this Agreement and Kenergy's obligation to purchase such scheduled Tier 3 Energy will commence at 12:01 A.M. on January 1, 2001, and will terminate as of 12:00 midnight on December 31, 2002 ("Energy Availability Period").

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BY: [Signature]  
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Section 5.04 Tier 3 Energy Volume. During the Energy Availability Period, Supplier agrees to make available to Kenergy and Kenergy may purchase from Supplier up to ten (10) megawatts of Tier 3 Energy at the Point of Delivery, subject, however, to the right of Supplier to interrupt said delivery in accordance with the terms and conditions specified in Section 5.08.

Section 5.05 Payment Obligation. Kenergy agrees to pay Supplier the Monthly Charge each month in accordance with the terms of this Agreement for the Tier 3 Energy provided by Supplier to Kenergy for resale to Southwire.

Section 5.06 Tier 3 Energy Rates. For Uninterrupted Energy supplied pursuant to this Agreement, Kenergy shall pay Supplier \$28.00 per megawatt hour for deliveries during On-Peak Hours and \$18.00 per megawatt hour for deliveries during Off-Peak Hours. These charges are not subject to change over the term of this Agreement. Kenergy shall purchase and accept delivery of the amount of Tier 3 Energy made available by Supplier in accordance with the scheduling procedures set forth in Section 5.01. If Kenergy (or Southwire) does not accept delivery of the full amount of such energy so scheduled, the Monthly Charge shall include the amount that would have been due had the full amount of such scheduled energy been accepted.

Section 5.07 Transmission Service and Delivery to Southwire. Kenergy shall separately charge to Southwire the charges incurred in obtaining transmission services, ancillary services, if any, and Kenergy's applicable distribution fee related to Kenergy's sale of Tier 3 Energy purchased by Kenergy from Supplier.

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Section 5.08 Interruptibility. Scheduled Tier 3 Energy to be delivered hereunder by Supplier shall be fully interruptible subject to the following terms, limitations and conditions:

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BY \_\_\_\_\_  
SECRETARY OF THE COMMISSION

(a) Supplier may interrupt service for all or any portion of the scheduled delivery upon one (1) hour prior notice to Kenergy and Southwire ("Notice of Interruption") in which



case Supplier shall have no obligation to supply the scheduled power. If Supplier does not timely exercise its right to interrupt the scheduled delivery, then Supplier shall be obligated to provide Uninterrupted Energy.

(b) Each Notice of Interruption shall be made orally and shall be followed by a confirmation immediately transmitted by facsimile, and shall designate the amount of power to be interrupted and the duration of such interruption.

(c) In each Notice of Interruption Supplier may at its discretion (but without being required) offer an alternative price or prices per megawatt hour upon which Supplier would make the interrupted amount of scheduled power available to Kenergy during the specified hour or hours of interruption (the "Buy-Through Price"). Kenergy shall have ten (10) minutes from the time it receives verbal Notice of Interruption to consult with Southwire and thereafter notify Supplier that it will accept the Buy-Through Price for the Buy Through Energy comprising all or any part of the designated interruption. The failure of Kenergy to notify Supplier of its acceptance of the Buy Through Price shall constitute a rejection of the Buy Through Price, and the interruption shall thereafter be implemented in accordance with the Notice of Interruption.

(d) Upon Kenergy's acceptance of the Buy Through Price for the Buy Through Energy, the obligation of Supplier to provide the scheduled power in whole or in part, as the case may be, shall be re-established, provided that Supplier shall charge to Kenergy the Buy Through Price for all Buy Through Energy instead of the price set forth in Section 5.06 above.

(e) During any period of interruption, Supplier may notify Kenergy and Southwire of its willingness to terminate the interruption and resume the delivery of scheduled power under the applicable price set forth in Section 5.06 above. Upon notification from Supplier terminating the interruption, Kenergy shall purchase and accept delivery of scheduled power for resale to

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BY: Glenn Bui  
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Southwire at the start of the hour following such notice. Supplier shall provide Kenergy and Southwire at least ten (10) minutes advanced notice of the termination of an interruption.

5.09 Service Obligation. Unless otherwise excused pursuant to Article XII or unless service is interrupted pursuant to Section 5.08, in the event that Supplier fails to deliver Uninterrupted Energy or Buy Through Energy, as applicable, to the Point of Delivery in accordance with the terms of this Agreement, then Supplier will be liable for 100% of the costs reasonably incurred by Kenergy in obtaining Tier 3 Energy in a commercially reasonable manner from one or more other Third Party Suppliers above the amount that Kenergy would have paid under this Agreement had Supplier fulfilled its obligations hereunder.

## ARTICLE VI

### BILLING

Section 6.01 Supplier shall bill Kenergy on a monthly basis for the Monthly Charge based on the Tier 3 Energy provided during the most recently ended Billing Month. Supplier shall issue its bill as soon after the Billing Month's end as detailed information is available.

Kenergy shall pay Supplier the Monthly Charge in immediately available funds on or before the first Working Day after the 25th of the month in which the bill is issued. For the convenience of

the Parties, and to facilitate satisfaction of Kenergy's obligation to Supplier, Kenergy hereby

assigns to Supplier all of its right to receive the corollary payment from Southwire under the

Southwire Power Agreement with respect to the Tier 3 Energy sold by Supplier and purchased

by Kenergy for resale to Southwire under this Agreement. Kenergy also hereby assigns to

Supplier all of its rights to collect and enforce collection of such amounts due from Southwire.

Upon completion of appropriate documentation assuring Supplier an unencumbered right to

Kenergy's account receivable (as described above), and to exercise all of Kenergy's rights

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thereto, Supplier will release Kenergy from further liability under this Agreement for amounts subject to such assignment to Supplier, provided that such release does not relieve Kenergy of its other liabilities under this Agreement. Kenergy agrees to cooperate with and assist Supplier with respect to any collections of amounts due from Southwire to Kenergy which are assigned to Supplier pursuant to this section, provided that Supplier will reimburse Kenergy for any expenses Kenergy incurs in providing such cooperation and assistance. The Parties will establish an account to be used exclusively for receiving Southwire's payments and from which disbursements will be made monthly (to the extent that funds are available) to Supplier for the amounts due. The rights and obligations of each of Kenergy and Supplier with respect to assignment of the account receivable and the disbursement account will be established by separate written agreements.

Section 6.02 If Kenergy shall fail to pay any bill rendered by Supplier within the time prescribed in Section 6.01, Supplier, in addition to its right to interrupt the delivery of Tier 3 Energy pursuant to Section 5.08, may terminate the scheduling of Tier 3 Energy hereunder upon five (5) days' written notice to Kenergy and Southwire of its intention to do so. Such discontinuance for non-payment shall not in any way affect the obligation of Kenergy to pay the charge for Energy as required by Section 5.06.

Section 6.03 In the event any bill rendered by Supplier is not paid on the due date, interest will accrue and become payable by Kenergy to Supplier on all unpaid amounts at a rate of 4 percentage points over the then-effective prime commercial lending rate per annum published in the Money Rates section of *The Wall Street Journal* commencing on the first Working Day after the due date. (Should *The Wall Street Journal* discontinue publication of the

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DA. [Signature] Bell  
SECRETARY OF THE COMMISSION

prime commercial lending rate, the Parties shall agree on a mutually acceptable alternative source for that rate.)

Section 6.04 In the event any portion of any bill is disputed by Kenergy or Southwire, the disputed amount shall be paid, under protest, when due. If the protested portion of the payment is found to be incorrect, Supplier shall promptly cause to be refunded to Kenergy (or to Southwire on behalf of Kenergy, as applicable) the amount that was not then due and payable, together with interest accrued on each calendar day from the date of payment by Kenergy to the date the refund is made. The same interest rate and computation method provided for in Section 6.03 shall be applied to the determination of interest due to Kenergy on the refund.

Section 6.05 No payment made by Kenergy (or Southwire) pursuant to this Article VI shall constitute a waiver of any right of Kenergy (or Southwire) to contest the correctness of any charge or credit.

ARTICLE VII

CHARACTERISTICS OF SERVICE

Section 7.01 Tier 3 Energy to be supplied by Supplier to Kenergy under this Agreement shall be three-phase, sixty cycle at 134,000 volts. Regulation of voltage shall be within such limits as shall be agreed upon by the Parties but at no time shall be inconsistent with standards required by applicable governmental agencies or such other organizations that establish reliability and electric operation standards for the region.

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ARTICLE VIII

BREACH AND DEFAULT

Section 8.01 The occurrence of any of the following events, unless otherwise excused pursuant to the terms of this Agreement, constitutes a breach by the relevant Party under this

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SECTION 9 (1)  
BY: Gregory O. Blue  
SECRETARY OF THE COMMISSION

Agreement and if not curable or not cured within the applicable cure period (indicated in parenthesis) shall constitute a default:

(a) Failure by a Party to make any payment as and when due hereunder (curable within 3 days following notice of default from the non-defaulting party to the defaulting party and Southwire);

(b) Failure of a Party to perform any material duty imposed on it by this Agreement (curable within 30 days following notice of default from the nondefaulting party to the defaulting party and Southwire);

(c) Any attempt by a Party to transfer an interest in this Agreement other than as permitted pursuant to Article XIII of this Agreement (not curable);

(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 a Party (curable by withdrawing the petition or dismissing the proceeding within 60 days after filing);

(e) Assignment by a Party for the benefit of creditors (not curable);

(f) Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property (curable by discharge of such receiver or trustee within 60 days after appointment).

(g) Failure, inability or refusal of Kenergy to cure a breach or default by Kenergy under the Southwire Power Agreement which gives rise to a termination of that agreement, or any termination by Kenergy of the Southwire Power Agreement in breach or default thereof (not curable).

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BY:                       
CLERK OF THE COMMISSION

Section 8.02 The waiver by either Party of any breach of any term, covenant or condition contained herein shall not be deemed a waiver of any other term, covenant or condition, nor shall it be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

ARTICLE IX

REMEDIES OF THE PARTIES

Section 9.01 Remedies, General: In event of a default by either Party, the non-defaulting Party may, in its sole discretion, elect to terminate this Agreement upon written notice to the other Party, or to seek enforcement of its terms at law or in equity.

Section 9.02 Remedies Scope: Remedies provided in this Agreement are cumulative, unless specifically designated to be an exclusive remedy. Nothing contained in this Agreement shall be construed to abridge, limit, or deprive either Party of any means of enforcing any remedy either at law or in equity for the breach or default of any of the provisions herein provided that:

(a) Neither Party is entitled to recover from the other Party any consequential, incidental or special damages including without limitation, lost profits; and

(b) Kenergy's sole and exclusive right to damages or other relief for a failure by Supplier to deliver scheduled Tier 3 Energy as required by this Agreement shall be as set forth in Section 5.09.

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ARTICLE X

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ADDITIONAL COVENANTS OF THE PARTIES

Section 10.01 Kenergy covenants that:

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BY: Stephen O. Bell  
SECRETARY OF THE COMMISSION

(a) It will not intentionally take any action that would shorten the Term of this Agreement or otherwise adversely affect the economic value of this Agreement to Supplier or Southwire.

(b) It will not resell any Tier 3 Energy purchased from Supplier under this Agreement to any user other than Southwire and will require that any Tier 3 Energy that Kenergy purchases from Supplier under this Agreement and resells to Southwire must be consumed by Southwire for its Hawesville Facility except as expressly permitted with the written authorization of Supplier; provided, that in the event of an Uncontrollable Force that renders Southwire unable to receive and utilize power purchased by Kenergy from Supplier hereunder, Kenergy may resell that power to the extent contemplated in Section 26.6 of the Southwire Power Agreement.

(c) It will not take any action or support any action by others that in any manner would impede Kenergy's ability to fulfill its obligations to Supplier under this Agreement;

(d) It will not waive compliance by Southwire with any of its obligations under the Southwire Power Agreement or fail to fully enforce the Southwire Power Agreement against Southwire in any manner that would adversely affect Kenergy's ability to fulfill its obligations under this Agreement; and

(e) It will not assign or transfer (by operation of law or otherwise) any rights or interests that it may have in the Southwire Power Agreement to any party without causing the transferee of the Southwire Power Agreement to assume and agree to perform all of Kenergy's obligations under this Agreement which arise following that assignment or transfer and without complying with Article XIII.

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BY: SPRINGER Beu  
CLERK OF THE COMMISSION

Section 10.02 Kenergy agrees that it will fully enforce all of Big Rivers' obligations pursuant to the contract between Kenergy and Big Rivers under which Big Rivers provides transmission and other services to Kenergy which are necessary for its performance under this Agreement, or which would adversely affect Supplier or Southwire's economic interest under this Agreement, unless Kenergy has first established an alternative means by which to receive such services (without reliance on Supplier, other than to the extent to which Supplier agrees in writing).

Section 10.03 Kenergy will permit Supplier and Southwire to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Kenergy relating to its service to Southwire under the Southwire Power Agreement, including (for example, but not by way of limitation) scheduled usage, meter records and billing records and records related to power supplied during the Energy Availability Period as they relate to determination of the amount of Tier 3 Energy supplied by Supplier and delivered to or used by Southwire. Kenergy shall retain all documentation applicable to service to Southwire under the Southwire Power Agreement for a period of three years and consistent with the requirements of Section 25 of the Southwire Power Agreement.

Section 10.04 Supplier will permit Kenergy or Southwire to audit, upon reasonable notice, at its own expense, at a mutually agreeable time, all information in the possession of Supplier relating to its service to Kenergy under this Agreement, including (for example, but not by way of limitation) scheduled deliveries, meter records and billing records and records related to payments made by Southwire to Supplier pursuant to the assignment described in Section 6.01 of this Agreement and such other documents related to payment for and determination of the amount of Tier 3 Energy supplied by Supplier and delivered to Kenergy for resale and delivery

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to Southwire. Supplier shall retain all documentation applicable to service to Kenergy under this Agreement for a period of three years.

Section 10.05 Supplier covenants that it will not take any action or support any action by others that in any manner would impede Supplier's ability to fulfill its obligations to Kenergy or Southwire under this Agreement. Supplier will not intentionally take any action that would diminish or otherwise adversely affect the economic value of this Agreement to Kenergy or Southwire.

## ARTICLE XI

### DISPUTE RESOLUTION AND CHOICE OF LAW

Section 11.01 Should any dispute arise between the Parties concerning the terms or conditions of this Agreement, the duties or obligations of the Parties under this Agreement, or the implementation, interpretation or breach of this Agreement, either Party may request in writing a meeting between an authorized representative of each of the Parties to discuss and attempt to reach a resolution of the dispute. Such meeting shall take place within ten (10) days (or such shorter or longer time as agreed upon by the Parties) of the request. Any resolution mutually agreed upon by the Parties shall be reduced to written form and signed by each Party, and thereafter shall be binding upon each Party to this Agreement. Absent such resolution, the Parties shall be entitled to pursue all rights and remedies that they may have at law, in equity or pursuant to this Agreement (subject to the limitations set forth in the Agreement) to resolve that dispute. Notwithstanding the provisions of this Section 11.01, each Party will at all times be free to seek injunctive relief, where its delay in doing so could result in irreparable injury.

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Section 11.02 This Agreement shall be interpreted, governed by and construed under the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules.

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BY: Stephan O. Bell  
SECRETARY OF THE COMMISSION

Section 11.03 The Parties hereby agree that 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 U.S. federal judicial system (in which event exclusive jurisdiction and venue shall lie with the U.S. District Court for the Western District of Kentucky), and the Parties hereby agree to submit to the jurisdiction of the Kentucky courts for such purpose. Venue in state court actions shall be in the same Circuit Court as selected by Southwire and Kenergy as the Court in which venue will lie for the resolution of disputes under the Southwire Power Agreement. Nothing in this paragraph prohibits a Party from referring ~~to the U.S. District Court for the Western District of Kentucky~~ properly within FERC's jurisdiction.

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ARTICLE XII

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UNCONTROLLABLE FORCES

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Section 12.01 No Party shall be considered to be in breach or default in the performance of any of its obligations under this Agreement when a failure of performance is due to an Uncontrollable Force, except as enumerated in this Article XII. The Party claiming failure or inability to perform shall promptly contact the other Party and provide written notice that an Uncontrollable Force has caused failure of performance. In the event either Party shall be unable, in whole or in part, by reason of Uncontrollable Force to carry out its obligations, then the obligations of the Parties (other than obligations to make payments then due or becoming due with respect to performance prior to such period), to the extent that they are affected by such Uncontrollable Force, shall be suspended during the continuance of any inability so caused, but for no longer period. A Party shall not be relieved of liability for failing to perform if such failure is due to causes arising out of its own negligence or willful acts or omissions, or to

BY: *[Signature]*  
OFFICE OF THE COMMISSIONER

removable or remediable causes which it fails to remove or remedy with reasonable dispatch.

Section 12.02 Either Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove or remedy such inability with all reasonable dispatch.

Section 12.03 Kenergy and Supplier agree to notify the other Party at the earliest practicable time following (i) the occurrence of any Uncontrollable Force which renders such Party incapable of performing hereunder, or (ii) the time at which such Party has reason to expect that such an Uncontrollable Force is imminent. Kenergy also agrees to so notify Supplier in the event that Kenergy receives notice from Southwire or the Transmission Provider that such entity anticipates that it will be unable to perform its obligations to Kenergy (under any contract or agreement that affects Kenergy's performance under this Agreement) due to an Uncontrollable Force.

Section 12.04 Nothing contained herein shall be construed to require a Party to prevent or to settle a labor dispute against its will.

ARTICLE XIII

SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. No interest in this Agreement may be transferred or assigned by either Party, in whole or in part, by instrument or operation of law, without the prior written consent of the other Party, except that (a) assignment may be made by either Party without the consent of the other Party to such person or entity as acquires all or substantially all the assets of the assigning Party or which merges with or acquires all or substantially all of the stock or other ownership interest of such Party, and (b) Supplier may

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assign or delegate all or any portion of its rights or obligations under this Agreement to any affiliate or entity controlled by Supplier without the prior consent of Kenergy. When consent is required, consent shall not be unreasonably withheld, conditioned or delayed. In no event shall either Party assign this Agreement to any third party that does not have adequate financial capacity or that would otherwise be unable to perform the obligations of the assigning Party pursuant to this Agreement, nor shall either Party assign this Agreement on any terms at variance from those set forth in this Agreement except as agreed to in writing by the Parties. No permitted assignment or transfer shall change the duties of the Parties, or impair the performance under this Agreement except to the extent set forth in such permitted assignment and approved in writing by the Parties. No Party is released from its obligations under this Agreement pursuant to any assignment, unless such release is granted in writing.

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#### ARTICLE XIV

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#### REPRESENTATIONS AND WARRANTIES:

PURSUANT TO 807 KAR 5.011,  
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Section 14.01 Kenergy hereby represents and warrants to Supplier as follows: BW

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(a) Kenergy is a 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 Kenergy has been duly and effectively authorized by all requisite corporate action.

(c) Without further investigation, Supplier can rely upon any scheduling or other written notice from Kenergy.

(d) Kenergy has reserved network service or firm point-to-point transmission service pursuant to the Open Access Transmission Tariff of any Transmission Provider as reasonably required to deliver to Southwire the Tier 3 Energy purchased by Kenergy from Supplier pursuant to this Agreement.

Section 14.02 Supplier hereby represents and warrants to Kenergy as follows:

(a) Supplier is a corporation duly organized and validly existing and in good standing under the laws of the State of Indiana and has the power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to carry on its business as it is now being conducted and as it is contemplated hereunder to be conducted during the term hereof.

(b) The execution, delivery and performance of this Agreement by Supplier has been duly and effectively authorized by all requisite corporate action.

(c) Without further investigation, Kenergy can rely upon any written notice from Supplier.

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#### ARTICLE XV

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#### AMENDMENTS

PURSUANT TO 207 KAR 5.011,  
SECTION 9 (1)

Section 15.01 This Agreement may be amended, revised, or modified by and only by, a written instrument duly executed by both Parties.

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Section 15.02 The rates for service specified in this Agreement shall remain in effect for the term of this Agreement, and shall not be subject to change through application to the FERC pursuant to the provisions of Section 205 of the Federal Power Act absent the agreement of each of the Parties to this Agreement. Accordingly, neither Party shall petition FERC or any other governmental agency pursuant to the provisions of Section 205 or 206 of the

Federal Power Act or any other provision of law to amend any rate, methodology, or formula contained in this Agreement absent the agreement in writing of the other Party nor shall any Party cooperate with any other person(s), or request or encourage any other person(s) to make such petition; and each Party further agrees to oppose any action to change such rate, methodology or formula, including but not limited to pursuing appeals of any order or decision directing such change, and to bear all of its own costs of such opposition including attorneys' fees. Nothing in this Agreement limits the right of any Party to challenge any aspect of the Transmission Provider's Open Access Transmission Tariff, including the applicable loss factor, the transmission service rates or any other transmission or ancillary service rates. This Agreement shall be subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC).

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ARTICLE XVI

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GENERAL

PURSUANT TO 307 KAR 5011,  
SECTION 9 (1)

Section 16.01 Good Faith Efforts: The Parties agree that each shall in good faith

BY [Signature]  
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take all reasonable actions within their reasonable control as are necessary to permit the other Party to fulfill its obligations under this Agreement; provided, that no Party shall be obligated to expend money or incur material economic loss in order to facilitate performance by the other Party. Where the consent, agreement, or approval of either Party must be obtained hereunder, such consent, agreement or approval shall not be unreasonably withheld, conditioned, or delayed. Where either Party is required or permitted to act or fail to act based upon its opinion or judgment, such opinion or judgment shall not be unreasonably exercised. Where notice to the other Party is required to be given herein, and no notice period is specified, such notice will be given as far in advance as is reasonably practical.

Section 16.02 Information Exchange: The Parties shall cooperate in the

exchange of information between themselves in order to further the purposes of this Agreement, to verify compliance with the terms of this Agreement and to keep each other fully informed of facts which could constitute a material change in any of the business or financial relationships contemplated by this Agreement.

Section 16.03 Notices: 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 in person or by any qualified and recognized delivery service, or sent by United States mail postage prepaid to the persons specified below unless otherwise provided for in this Agreement.

To Supplier:

Southern Indiana Gas & Electric Company  
20 N.W. Fourth Street  
Evansville, Indiana 47741  
Attention: Ronald G. Jochum, Vice President-Power Supply

To Kenergy:

Kenergy Corp.  
P.O. Box 18  
Henderson, KY 42419-0018  
Attention: Dean Stanley, President/CEO  
Facsimile: (270) 826-3999

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To Southwire:

Southwire Company  
One Southwire Drive  
Carrollton, Georgia 30119  
Attention : James Lee Hunter  
Vice President, Technical Services  
Facsimile: (770) 838-6098

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SECTION 9(1)  
BY: Debra O. Bell  
SECRETARY OF THE COMMISSION

Either Party may at any time, by written notice to the other Party, change the designation

or address of the person specified to receive notices pursuant to this Agreement.

Section 16.04 Severability: If any clause, sentence, paragraph or part of this Agreement should for any reason be finally adjudged by any court of competent jurisdiction to be unenforceable or invalid, such judgment shall not affect, impair or invalidate the remainder of this Agreement but shall be confined in its operation to the clause, sentence, paragraph or any part thereof directly involved in the controversy in which the judgment is rendered, unless the loss or failure of such clause, sentence, paragraph or part of this Agreement shall materially adversely affect the benefit of the bargain to be received by either or both of the Parties, in which event the Parties shall promptly meet and use their good faith best efforts to renegotiate this Agreement in such a fashion as will restore the relative rights and benefits of both Parties or, absent such renegotiation, the Party(s) that was so materially adversely affected shall be entitled, in its discretion, to terminate this Agreement.

Section 16.05 Singular and Plural References: Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number and vice versa.

Section 16.06 Each provision of this Agreement providing for payment for Tier 3 Energy or related to remedies for default, damage claims, indemnification or payment of other liabilities will survive the termination of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run.

Section 16.07 This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter addressed herein.

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PURSUANT TO 807 KAR 50.11,  
SECTION 9 (1)  
BY Glenn O. Bell  
SECRETARY OF THE COMMISSION

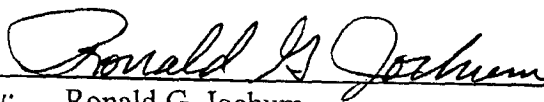


IN WITNESS WHEREOF, this Agreement is hereby executed as of the day and year first above written.

KENERGY CORP.


  
By: Dean Stanley  
Title: President and CEO

SOUTHERN INDIANA GAS AND ELECTRIC  
COMPANY

  
By: Ronald G. Jochum  
Title: Vice President - Power Supply

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BY:   
SECRETARY OF THE COMMISSION