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**AMENDED AND RESTATED AGREEMENT  
FOR RETAIL ELECTRIC SERVICE BETWEEN  
KENERGY CORP. AND WILLAMETTE INDUSTRIES, INC.**

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

BY: Stephan D. Bell  
SECRETARY OF THE COMMISSION

**Dated as of April 4, 2001**

**AMENDED AND RESTATED AGREEMENT  
FOR RETAIL ELECTRIC SERVICE BETWEEN  
KENERGY CORP. AND WILLAMETTE INDUSTRIES**

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**AMENDED AND RESTATED AGREEMENT FOR RETAIL  
ELECTRIC SERVICE TO WILLAMETTE INDUSTRIES, INC.**

**THIS AGREEMENT** dated as of the 4<sup>th</sup> day of April, 2001, by and between **KENERGY CORP.**, 6402 Old Corydon Road, P. O. Box 18, Henderson, Kentucky 42419-0018 ("Kenergy"), and **WILLAMETTE INDUSTRIES, INC.**, an Oregon corporation with principal offices at 3800 Wells Fargo Center, Portland, Oregon 97201 ("Willamette") (separately "Party", collectively the "Parties"),

WHEREAS, Willamette is a retail member-customer of Kenergy, and presently purchases its power requirements from Kenergy pursuant to a contract dated September 16, 1991 ("Willamette 1991 Agreement"), and

WHEREAS, Willamette is constructing an on-site qualifying cogeneration facility (the "QF") that is to be used to supply all or a portion of Willamette's electric load at Willamette's facilities in Hawesville, Kentucky, and Willamette has represented in writing to Kenergy that it has obtained all regulatory and other approvals required to construct and operate the QF, and

WHEREAS, Willamette has informed Kenergy that it will need a supply of backup power and related transmission and other services at certain times when the QF is out of service or not producing at full capacity, in addition to a supply of firm power, and

WHEREAS, in reliance on this retail power agreement, Kenergy is entering into, or has entered into, a wholesale power sales agreement ("Wholesale Agreement") by which Kenergy will purchase and receive from Big Rivers Electric Corporation ("Big Rivers") supplies of firm power, backup power and other services to make available under this retail power agreement, and

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WHEREAS, the Parties desire to terminate the Willamette 1991 Agreement and to enter into an agreement for retail firm power services, backup power services and other services under terms that match, as closely as possible, the terms of the Wholesale Agreement, while retaining certain additional terms from the Willamette 1991 Agreement and adding certain other terms, and

WHEREAS, the Parties desire to detail Kenergy's and Willamette's rights and responsibilities with respect to the supply and purchase of the power supply.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, the Parties agree as follows:

1. DEFINITIONS. The following terms, when used herein with initial capitalization, shall have the following meanings for purposes of this Agreement unless a different meaning shall be stated:

a. "Agreement" means this retail power supply agreement between Kenergy and Willamette, including any schedules, appendices, and exhibits attached hereto.

b. "Ancillary Services" shall mean those services that must be purchased by all entities using Big Rivers' Open Access Transmission Tariff that are necessary to support the transmission of energy and capacity from resources to loads while maintaining reliable operation of Big Rivers' Transmission System in accordance with Good Utility Practice.

c. "Backup Power" or "Backup Power Service" shall mean electric power, other than Replacement Power, delivered by Kenergy to Willamette, as set forth in Section 5 of this Agreement.

d. "Big Rivers Transmission System" shall mean the electric power transmission and subtransmission facilities owned, operated, and maintained by Big Rivers.

e. "Effective Date" shall be the date upon which Kenergy and Willamette enter into the last of the acceptances and approvals listed in Section 20.

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f. "Energy Imbalance Service" shall mean the service by the same name available under Schedule 4 of the OATT, as limited by the terms of Section 4 of this Agreement.

g. "Firm Power" or "Firm Power Service" is defined in Section 3 of this Agreement.

h. "Good Utility Practice" shall mean any 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 the 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. Good Utility Practice is not intended to be limited to the optimum practice, method or act, but rather to be a spectrum of acceptable practices, methods, or acts.

i. "Index Price" shall mean the published *Megawatt Daily* Index Price Into Tennessee Valley Authority ("TVA") or any replacement index established pursuant to Section 8.f.

j. "KPSC" shall mean the Public Service Commission of Kentucky, or any successor agency.

k. "LEM Agreement" shall mean the Power Purchase Agreement dated July 15, 1998, between Big Rivers Electric Corporation and LG&E Energy Marketing, Inc., as amended from time to time.

l. "NERC" shall mean the North American Electric Reliability Council, or any successor agency.

m. "New Taxes" shall mean (i) any Taxes enacted and effective after December 2, 1999, or (ii) any law, order, rule or regulation, or interpretation thereof, enacted and effective after December 2, 1999, resulting in application of any Tax to a new or different class of persons.

n. "OATT" shall mean the Big Rivers open access transmission tariff, as revised from time to time.

o. "Qualifying Facility" or "QF" shall mean the electric cogeneration unit installed and operated by Willamette at its Hawesville facility.

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p. "Reliant" and "Reliant Agreement" shall mean, respectively, Reliant Energy Services, Inc. and the Master Commodity Purchase and Sale Agreement between Reliant and Big Rivers dated as of December 2, 1999, as amended from time to time.

q. "Replacement Power" or "Replacement Power Service" shall mean all electric power delivered by Kenergy to Willamette each month, of no more than 62 MW above the level of Firm Power Billing Demand, that Willamette is not entitled to take as Backup Power under the terms of this Agreement.

r. "Scheduled Outage" shall mean the period of time commencing when the power requirements of Kenergy to serve Willamette exceed Firm Power Billing Demand, by no more than 62 MW, stated in a notice provided under Section 5.b of this Agreement that has been given by Willamette to Big Rivers and Kenergy and acknowledged by Big Rivers as conforming with the provisions of the Wholesale Agreement.

s. "Start Date" shall have the meaning given it in Section 16.

t. "Taxes" shall mean any or all ad valorem, property, occupation, severance, generation, first use, conversion, energy, transport, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, regulatory assessments by federal, state or local agencies or commissions (including, but not limited to, Federal Energy Regulatory Commission ("FERC") assessments), license fees, permits or assessments or changes therein, other than taxes based on net income or net worth.

u. "Unscheduled Outage" shall mean the period of time commencing when the power requirements of Willamette exceed Firm Power Billing Demand, by no more than 62 MW and that is not scheduled in accordance with the provisions of this Agreement, and which results from a forced outage of the QF or other cause beyond the control of Willamette. An Unscheduled Outage shall terminate when either (i) the next subsequent schedule of Backup Power terminates, or (ii) the power requirements of Willamette no longer exceed Firm Power Billing Demand.

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2. OBLIGATIONS OF PARTIES; FORCE MAJEURE; RELATIONSHIP TO WHOLESALE AGREEMENT.

a. Commencing on the Start Date, Kenergy agrees to provide and sell to Willamette, and Willamette agrees to take and purchase from Kenergy, Firm Power Service, Energy Imbalance Service, Replacement Power Service, and Backup Power Service upon the terms, rates, charges, adjustments and such other provisions as are stated in this Agreement.

b. Kenergy shall take all actions reasonably necessary to enforce the provisions of the Wholesale Agreement and to ensure that Big Rivers supplies Firm Power Service, Energy Imbalance Service, Replacement Power Service, and Backup Power Service under the terms set forth in the Wholesale Agreement. Kenergy shall not breach the Wholesale Agreement or default on its obligations thereunder. Kenergy shall not agree to or permit rescission, modification, suspension or waiver of the Wholesale Agreement or any of its terms, except as may be required pursuant to a lawful order of a regulatory agency or court. In the event that Kenergy is unable or unwilling to enforce any or all provisions of the Wholesale Agreement, Kenergy shall assign to Willamette the right of enforcement under the Wholesale Agreement. Kenergy and Willamette shall cooperate in any negotiation, mediation, arbitration or administrative or judicial proceeding to enforce the Wholesale Agreement.

c. In the event either Party is rendered unable, wholly or in part, by Force Majeure (as defined below in Section 2.d) to carry out its obligations, upon such Party's giving written notice and reasonably full particulars of such Force Majeure to the other Party within a reasonable time after the occurrence of the cause relied on, then the obligations, so far as and to the extent that they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, insofar as possible, be remedied with all reasonable dispatch.

d. The term "Force Majeure" as used in this Section 2 shall mean acts of God, strikes, acts of public enemy, wars, blockades, insurrections, riots, epidemics, land and lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of government, either federal or

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state, civil or military, civil disturbances, explosions, breakage or accident to machinery 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 (either federal or state), including both civil and military, which are not reasonably within the control of, and could not have been avoided by the exercise of due care by, the Party claiming suspension.

e. An event constituting a force majeure under Section 2 of the Wholesale Agreement shall constitute a Force Majeure. In the event of a failure of Reliant to supply power to Big Rivers, for resale to Kenergy, for ultimate resale to Willamette, that is excused by reason of the force majeure provisions contained in Paragraph 7 of Schedule 4 of the Reliant Agreement, any power supplied by Kenergy to replace the Reliant power shall be priced to Willamette as Replacement Power. Notwithstanding any provision to the contrary under this Agreement or the Wholesale Agreement, an unexcused failure of Big Rivers to supply power to Kenergy shall not constitute a Force Majeure relieving either Party of its obligations under this Agreement. For purposes of the preceding sentence, the term "unexcused failure" shall mean any failure to supply power that Big Rivers is obligated to supply under the Wholesale Agreement that is not excused by reason of the Force Majeure provisions contained in Section 2 of the Wholesale Agreement.

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f. (Intentionally left blank)

g. (Intentionally left blank)

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h. Kenergy promptly shall advise Willamette of any changes in the Wholesale Agreement, whether by written agreement of the parties to the Wholesale Agreement, or by valid orders of the KPSC. No change in the Wholesale Agreement shall be incorporated into this Agreement or otherwise become the obligation of Willamette unless and until Willamette consents thereto in writing. Each Party hereto likewise recognizes that any change in the Wholesale Agreement which affects, directly or indirectly, the rights and obligations of Willamette under this Agreement may be subject to the same approvals required for this Agreement, as listed in Section 20 below.

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3. FIRM POWER SERVICE AVAILABILITY.

a. Kenergy agrees to provide and sell to Willamette, and Willamette agrees to take and purchase from Kenergy each month from the Start Date through midnight, March 31, 2011, firm electric power and associated energy ("Firm Power" or "Firm Power Service").

b. The billing demand in each month for Firm Power Service shall be the billing demand, in whole megawatts, established from time to time by Willamette under the terms of this Section 3 ("Firm Power Billing Demand") in an amount not less than 25 MW and not more than 40 MW. Willamette shall pay for the amount of Firm Power Billing Demand each month at the rates established in this Agreement, regardless of its actual measured demand. Firm Power Billing Demand on the Start Date shall be 30 MW, unless otherwise changed in accordance with the terms of this Agreement.

c. Willamette may adjust Firm Power Billing Demand by written notice to Kenergy and Big Rivers that is acknowledged by both Big Rivers and Kenergy as received no less than thirty (30) days prior to the first day of the month in which the adjustment in Firm Power Billing Demand is to be effective. A copy of the written notice of adjustment of Firm Power Billing Demand given by Willamette to Kenergy, received and acknowledged by Big Rivers, shall suffice as notice under this Section 3.c., provided that such notice is in the form required by this Section 3.

d. Each written notice of adjustment of Firm Power Billing Demand given by Willamette under this Section shall state the effective date of the adjustment, which shall always be the first day of a calendar month, and the amount of the Firm Power Billing Demand on and after that effective date.

e. The rates and additional terms for Firm Power Service up to and including 40 MW shall be the rates established and additional terms for service stated in Appendix A, attached hereto and incorporated herein. If a change occurs in the rates in Big Rivers' Rate Schedule, the Kentucky Industrial Customer Rate, or any amended or equivalent successor rate schedule for which

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Kenergy qualifies for service to Willamette, the rates in the attached Appendix A shall be automatically adjusted to incorporate that change.

f. If Willamette requests Firm Power Service in an amount above 40 MW, Kenergy will negotiate with Willamette and Big Rivers to amend this Agreement and the Wholesale Agreement to provide that additional service on terms that are substantially similar to the terms on which Big Rivers is then selling firm wholesale power service to Kenergy for resale to large industrial retail customers in the same classification as Willamette. The Parties agree that, for purposes of the Big Rivers Rate Schedule 10, Willamette's Base Year peak demand is deemed to be 40 MW.

4. ENERGY IMBALANCE SERVICE AVAILABILITY AND RATES.

a. Kenergy will provide Willamette Energy Imbalance Service, subject to the limitations contained in this Section 4.

b. Energy Imbalance Service furnished under this Agreement is applicable to the number of MWhs, over a single clock hour, by which:

i. The amount of energy associated with Firm Power Service that is delivered exceeds the maximum amount of energy available under Firm Power Service, where only Firm Power Service is being delivered, and where no Backup Power Service or Replacement Power Service is scheduled; or

ii. The amount of energy associated with Firm Power Service that is delivered, plus the amount of energy scheduled for Backup Power Service and Replacement Power Service exceeds the sum of the maximum amount of energy available under Firm Power Service, plus the amounts of energy scheduled for Backup Power Service and Replacement Power Service; or

iii. The amount of energy delivered is less than the sum of all amounts of energy scheduled for Backup Power Service and Replacement Power Service.

c. Energy Imbalance Service furnished under this Agreement is not applicable to the number of MWhs, over a single clock hour, by which:

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i. The amount of energy associated with Firm Power Service is less than the maximum amount of energy available under Firm Power Service, where only Firm Power Service is being delivered, and where no Backup Power Service or Replacement Power Service is scheduled; or

ii. The amount of energy associated with Firm Power Service that is delivered, plus the amount of energy scheduled for Backup Power Service and Replacement Power Service exceeds the sum of all amounts of energy scheduled for Backup Power Service and Replacement Power Service, but is equal to or less than the sum of the maximum amount of energy available under Firm Power Service, plus the amounts of energy scheduled for Backup Power Service or Replacement Power Service.

d. Energy Imbalance Service shall be priced in accordance with Schedule 4 of the OATT.

5. BACKUP POWER SERVICE AND REPLACEMENT POWER SERVICE

AVAILABILITY. Kenergy agrees that Backup Power Service in an amount, not greater than 62 MW, in whole megawatts ("Backup Power Demand"), including associated energy, shall be available to Willamette on and after the Start Date only upon the following terms, conditions and limitations:

a. Backup Power Service for an Unscheduled Outage of the QF is available as provided in Section 6 of this Agreement, on a firm basis, under the rules and at the rates contained in Sections 5, 6 and 8 hereof.

b. Backup Power Service for a Scheduled Outage of the QF that has been scheduled by Willamette and accepted by Kenergy and Big Rivers no less than seventy-five (75) hours in advance of the Scheduled Outage is available after notice as provided in Section 6 of this Agreement on a firm basis, at the rates contained in Section 8 hereof, provided, however, that no Scheduled Outages shall be scheduled without the express agreement of Big Rivers during the period from May 15 through September 15.

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c. In the event of an Unscheduled Outage of the QF, for which Backup Power Service is unavailable under paragraph a, above, Kenergy has no obligation to provide Backup Power Service, but instead will attempt to provide Replacement Power Service. Such Replacement Power Service will be eligible for the Backup Power Service pricing provisions for Backup Power Service in Section 8 of this Agreement only upon the terms contained in Sections 5 and 6 of this Agreement, and otherwise will be priced as Replacement Power. The Parties agree that if service requested by Willamette pursuant to proper notice under paragraphs a and b, above, is not available, due to a Force Majeure on the part of Reliant or Big Rivers, Kenergy will so inform Willamette, and will offer to provide or, as applicable, continue to provide service as Replacement Power Service. In the event of an Unscheduled Outage, other than an Unscheduled Outage for which Backup Power Service is available under paragraph a, above, Kenergy shall provide Replacement Power Service unless and until (i) Backup Power Service becomes available; (ii) Willamette instructs Kenergy not to provide Replacement Power, or (iii) Kenergy is not able to locate a source for Replacement Power. At all times Kenergy shall conform to Good Utility Practice and shall use commercially reasonable efforts consistent therewith to attempt to provide the most economical power available as Replacement Power, provided, however, that any purchases by Kenergy from Big Rivers for service to Willamette, at prices no greater than the Backup Power Rate shall be deemed to conform to "Good Utility Practice" and to be "commercially reasonable" for the supply of Replacement Power. The Parties agree that use by Big Rivers of the automatic reserve sharing system of the East Central Area Reliability Council ("ECAR ARS") shall be deemed to conform to "Good Utility Practice" and to be "commercially reasonable" for the supply of Replacement Power. In the event Reliant is unable due to Force Majeure to provide Backup Power Service or Replacement Power Service, Willamette may request that Kenergy, through Big Rivers, use reasonable efforts to attempt to provide Replacement Power Service from alternate sources on a non-firm, as available basis, for a defined quantity and period of time designated by Willamette in a new notice consistent with the provisions of Sections 6.a. and 6.b. of this Agreement. In the absence of such new notice,

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Kenergy shall continue to provide Replacement Power Service as stated in this Agreement. Under no circumstances shall Kenergy be obligated to terminate a power sale to provide Replacement Power Service to Willamette, nor shall it be required to provide such alternate source Replacement Power Service out of available resources in Kenergy's power portfolio at less than then-prevailing market rates. Upon locating an alternate source and supply of Replacement Power Service on the terms requested by Willamette, Kenergy shall notify Willamette of the time for the commencement of such service. Willamette may schedule Replacement Power on a half-hourly basis, to the extent that Kenergy, through Big Rivers, can locate Replacement Power on that basis. Kenergy shall use commercially reasonable efforts to provide current pricing information for supplies of Replacement Power as reasonably requested by Willamette.

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d. If during the term of this Agreement Willamette wishes to increase the Backup Power Demand, Kenergy agrees to enter into good faith negotiations with Big Rivers and Willamette to agree upon terms for the supply of such additional Backup Power under this Agreement. Any resulting contract amendment will be subject to such creditor and regulatory approvals as may be required at that time.

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e. The Parties acknowledge and agree that a material, mutually-beneficial assumption of this Agreement is that Big Rivers, under the Wholesale Agreement, may access throughout the term of this Agreement the ECAR ARS to cover the power supply requirements gap between the time that Big Rivers gives notice to its power supplier of a call for Backup Power Service upon the initial occurrence of an Unscheduled Outage, and the time when the wholesale power delivery intended for use as Backup Power begins or should begin to flow to Kenergy as provided in Section 6. If for any reason the ECAR ARS becomes unavailable or uneconomic to Big Rivers for use as contemplated under the Wholesale Agreement, the Parties agree that they will negotiate in good faith to amend this Agreement to provide for any increase or decrease in the cost of continuing to use the ECAR ARS or an alternate means of covering that power supply gap. If Kenergy and Willamette are unable to agree upon those issues, either Party may request dispute

resolution as set forth in Section 23 of this Agreement. Willamette further agrees that, to the extent commercially reasonable, it will cooperate with Kenergy and Big Rivers to conform its use of Backup Power with the rules for use of the ECAR ARS.

6. NOTICE OBLIGATIONS AND PRICING RULES FOR BACKUP POWER.

a. Notice Requirements. Electric power delivered to Willamette as Backup Power Service under this Agreement shall be furnished and priced as provided in this Section 6 upon compliance by Willamette with the applicable subsections of Section 5, above, and upon receipt and acknowledgement by Kenergy and Big Rivers of notice from Willamette that meets the following requirements, or if it does not meet such requirements, if it is expressly accepted by Kenergy or Big Rivers, at their sole discretion:

i. The notice shall include a statement of the quantity (in whole megawatts) and the duration (including the beginning date and time and the ending date and time, with the ending time to be at the top of the hour, subject to Willamette's right to schedule Replacement Power on a half-hourly basis, where permitted by the source of that Replacement Power); and

ii. Except as provided in Section 6.a.iii., below, power taken by Willamette upon the occurrence of an Unscheduled Outage initially will be priced as Replacement Power Service until Big Rivers has received delivery of energy from its wholesale supplier to meet Big Rivers' Backup Power obligation to Kenergy, subject to the limitations stated below. Although Kenergy shall use commercially reasonable efforts to deliver energy as soon as permitted by transmission schedulers, the following notice limits shall apply generally, depending how far after the top of the hour notice is provided to Kenergy by Willamette:

(1) If Kenergy receives notice to deliver Backup Power during the first fifteen minutes in any clock hour, Backup Power Service shall commence no later than the beginning of the next clock hour (45 to 59 minute delay);

(2) If Kenergy receives notice to deliver Backup Power Service from the sixteenth minute through the forty-fifth minute in any clock hour and the applicable transmission service provider accepts the schedule, Backup Power Service shall

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later than thirty minutes following the next clock hour provided that the service shall commence following at least forty-five but no more than seventy-four minutes after notice. If the applicable transmission provider does not accept a transmission schedule submitted during the time period described in this provision, then Backup Power Service shall commence no later than the next clock hour following at least seventy-four but no more than one hundred and four minutes of notice;

(3) If Kenergy receives notice to deliver Backup Power Service during the last fifteen minutes of any clock hour, Backup Power Service shall commence no later than the clock hour immediately following the next clock hour (60 to 74 minutes).

(4) During the period while Backup Power Service is scheduled with the transmission provider, Big Rivers will endeavor to supply Replacement Power using ECAR ARS resources until the power from its wholesale supplier can be transmitted to it.

iii. Notwithstanding the above limitations in Section 6.a.ii. restricting the provision of Backup Power Service to periods after which Big Rivers' supplier has obtained a transmission schedule for the service to be supplied, Kenergy will provide this Replacement Power at the rate for Backup Power, commencing as of the time of the Unscheduled Outage provided that (a) such notice as required in this Section 6.a. shall have been provided to Kenergy, and also to Big Rivers, within ten (10) minutes of the occurrence of the Unscheduled Outage; and (b) Replacement Power is obtained by Big Rivers from the ECAR ARS in this time period at a price that does not exceed \$102.00 per MWh, and (c) Big Rivers has not previously provided Replacement Power at the rate described in this Section 6.a.iii. during the same Unscheduled Outage event. In the event the ECAR ARS price charged Big Rivers during this time period exceeds \$102.00 per MWh when such notice is provided, Kenergy shall provide this Replacement Power at the rate for Backup Power plus an additional amount per MWh calculated as the difference between \$102.00 from the amount in \$/MWh paid by Big Rivers for ECAR ARS during that time period and the ECAR ARS rate (including the "ECAR ARS Rate Surcharge"). If notice of an Unscheduled Outage provided for in this Section 6.a. is not provided within ten (10) minutes of the occurrence of the Unscheduled Outage,

standard Replacement Power rates (including, but not limited to, the cost of Energy Imbalance Service as described in Section 4.b.i.) will be charged until the time actual notice of the Unscheduled Outage is supplied, and thereafter the Backup Power rate will be charged plus the ECAR ARS Rate Surcharge, if the rates paid by Big Rivers for ECAR ARS during the periods described in Section 6.a.ii.(1)-(3) exceed \$102.00 per MWh. Replacement Power rates will apply during the periods in question if the ECAR ARS is not available.

b. Form of Notices. All notices and acknowledgments under this Section shall be given either (i) in writing, or (ii) verbally and then confirmed in writing delivered to the other Party within one (1) hour. A writing may be delivered by facsimile. Prior to the Start Date, the Parties agree to develop detailed procedures and forms that will result in Kenergy and Big Rivers receiving as much advance notice and good faith information regarding the nature and duration of both Scheduled Outages and Unscheduled Outages for the QF as is commercially reasonable to provide.

c. Prompt Notice of Unscheduled and Scheduled Outages. Willamette agrees to notify Big Rivers and Kenergy promptly of an Unscheduled Outage or a Scheduled Outage at the QF. Notice provided by Willamette directly to Big Rivers that otherwise complies with the requirements of this Section 6, with written follow-up notice to Kenergy, shall constitute adequate notice of an Unscheduled Outage or a Scheduled Outage at the QF.

d. Effect of Notice Acknowledgment by Big Rivers or Kenergy. Acknowledgment by Big Rivers or Kenergy of a notice from Willamette requesting Backup Power Service shall obligate Willamette to accept and pay for all Backup Power Service, Replacement Power Service and Energy Imbalance Service obtained by Kenergy to respond to that notice, whether or not actually used by Willamette; provided, however, that upon request by Willamette, Big Rivers or Kenergy shall exercise commercially reasonable efforts to modify any schedule.

e. Recording. Each Party consents to the recording of its representatives' telephone conversations in connection with notices given regarding Backup Power under this Agreement without further notice or consent. All recordings may be introduced into evidence as provided to

prove the terms of a transaction between the Parties, and objections based on principles of statute of frauds, the parol evidence rule, or similar evidentiary rules, are waived. In addition, all objections by a Party to the authority (actual or apparent) of its representatives to enter into a transaction are waived.

f. Notice Procedures. Kenergy agrees to cooperate with Willamette and Big Rivers to establish procedures to ensure that all notices under this Section 6 are immediately and accurately provided directly to Big Rivers or its supplier. Notice provided by Willamette directly to Big Rivers, which fulfills the Notice requirements of the Wholesale Agreement, followed by notice to Kenergy, shall constitute adequate notice under this Agreement.

7. BACKUP POWER TRANSMISSION AND ASSUMPTIONS.

a. Transmission Scheduling and Expense. The Parties understand and agree that, under the Wholesale Agreement, Big Rivers, at its expense, is required to arrange for and manage all transmission service and Ancillary Services required to deliver Backup Power to the delivery point specified in Section 11 of this Agreement. Neither Kenergy nor Willamette shall be responsible for that transmission scheduling and expense.

b. Material Assumptions. The Parties understand and agree that two material assumptions underlying the willingness of the Parties to enter into this Agreement are (i) that the TVA transmission system will continue to be operated generally as the transmission systems of other utilities are operated and, (ii) that neither the TVA transmission system nor the Big Rivers transmission system will become part of a regional transmission organization. Upon the failure of one or both of these assumptions, the Parties agree that they shall modify the provisions of this Agreement governing transmission to the extent necessary to compensate Big Rivers for significant increases in transmission costs that are beyond the control of Big Rivers, and to incorporate the terms and conditions of service required by TVA or the regional transmission organization.

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c. Kenergy's obligations under this Agreement will not be excused to the extent that Big Rivers relies on non-firm transmission service that is curtailed or interrupted in accordance with the terms of that service.

8. BACKUP POWER SERVICE AND REPLACEMENT POWER RATES AND CHARGES. Kenergy shall provide Backup Power Service to Willamette at the following rates and charges:

a. Backup Power Service Charges. Actual MWhs delivered for each hour shall be multiplied by the applicable percentage of the Index Price, depending upon the following delivery pricing periods:

i. Block One applies to off-peak service taken during the 8 hour block (i.e. Hour Ending ("HE") 23 through HE 6) for every day of the year. The Block One price shall be established as the greater of \$13.75/MWh or 80% of the Index Price for that day, or the Index Price for the closest business day with an Index Price. In the case of any day where the next closest business day falls on two different days, the average of the Index Price for each of the two business days shall be utilized.

ii. Block Two applies to off-peak service taken during the 16 hours block (HE 7 to HE 22) for all Saturdays, Sundays and NERC Holidays. The Block Two price shall be established as 100% of the Index Price for the closest business day with an Index Price. In the case of any day where the next closest business day falls on two different days, the average of the Index Price for each of the two business days shall be utilized.

iii. Block Three applies to on-peak service taken during the following hours and periods during the year (April - September, HE 7 to HE 10 and HE 20 to HE 22) and (October - March, HE 11 to HE 16 and HE 21 to 22). The Block Three price shall be established as 100% of the Index Price for that day and hour.

iv. Block Four applies to on-peak service taken during the following hours and periods during the year (April - September, HE 11 to HE 19) and (October, March, HE 7 to HE

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10 and HE 17 to HE 20). The Block Four price shall be established as 150% of the Index Price for that day and hour.

b. Transmission and Ancillary Services Charges for Backup Power. Kenergy agrees that the costs of transmitting Backup Power to the delivery point specified in Section 11 shall be included within the price of Backup Power Service, and that no additional charge for transmission shall be owing from Willamette to Kenergy or Big Rivers with respect to Backup Power Service. All Ancillary Services are included in that charge, except as otherwise set forth in this Agreement in Section 4 (Energy Imbalance) and Section 12 (Power Factor). As between Kenergy and Willamette, Kenergy shall be responsible for any losses incurred in transmitting Backup Power to Kenergy at the delivery point for resale to Willamette, including any losses on the TVA transmission system or other third-party transmission systems.

c. Charges for Replacement Power Service. Replacement Power Service shall be priced at Big Rivers' net out-of-pocket costs (including, without limitation, any charges for demand, energy, transmission, losses and Ancillary Services). Willamette shall pay Kenergy for all Replacement Power Service costs that Kenergy is required to pay under this Section 8.c.

d. Additional Charges.

i. Willamette shall pay an additional charge of \$2.50 per MWh for all Backup Power Service and Replacement Power Service billed to Willamette under this Agreement.

ii. Willamette shall also pay the following additional charges each month during the term of this Agreement: (1) in each of months 1 through 60, the sum of \$16,670, and (2) in each of months 61 through 117, the sum of \$18,750.

e. Rates Fixed; Adjustment of Rates.

i. The Parties agree that the rates contained in Sections 8.a, 8.b. and 8.d. are fixed and cannot be changed by either Party unilaterally (including petitioning an applicable regulatory authority to change such rates) except that Willamette understands and acknowledges

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that under the Wholesale Agreement Big Rivers shall adjust these rates to reflect a pass-through of a significant New Tax or other charge, or any significant increase or decrease in any Tax or other charge, imposed on Big Rivers as a purchaser or seller of this electric energy sold to Kenergy under the Wholesale Agreement that is actually paid by or credited to Big Rivers. Any such increase or decrease shall be included in Kenergy's bill to Willamette.

ii. Notwithstanding any other provision of this Agreement to the contrary, if (a) a Tax or New Tax is imposed on the transactions related to the Wholesale Agreement, and (b) Big Rivers is liable for such Tax or New Tax, either because the Tax or New Tax is assessed against Big Rivers or because the Tax or New Tax is assessed against Reliant and Big Rivers is required to pay the amount of that New Tax under the Reliant Agreement, Willamette understands that Kenergy shall be required to pay Big Rivers the amount of all such Taxes or New Taxes, and Willamette shall in turn pay the same amount to Kenergy.

f. Replacement Index. If the *Megawatt Daily* Index Price Into TVA ceases to be available, the Parties shall adopt for use in this Agreement the substitute price index agreed upon by Big Rivers and Reliant in the Reliant Agreement, hereinafter defined, pursuant to which Big Rivers acquires the electric power resources for Backup Power Service under this Agreement. In the Wholesale Agreement, Big Rivers agrees that it will exercise reasonable, good faith efforts to negotiate with Reliant for a substitute index that approximates the rates that make up the *Megawatt Daily* TVA Index Into TVA.

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9. METERING AND BILLING CHARGE. In addition to all other charges for service under this Agreement, beginning on the first anniversary of the Wholesale Agreement, Willamette shall pay Kenergy the monthly charge for metering and billing, that Kenergy must pay to Big Rivers pursuant to Section 9 of the Wholesale Agreement. Willamette shall have

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Kenergy to invoke its right under Sections 9 and 23 of the Wholesale agreement to have the KPSC establish the metering and billing charge. Kenergy agrees to permit Willamette to review all information and explanations provided by Big Rivers to justify such charge, and Kenergy agrees to cooperate with any reasonable request of Willamette to (i) obtain additional information regarding cost justifications for such charge, (ii) challenge the accuracy and reasonableness of any cost component claimed by Big Rivers in establishing such charge, and (iii) to seek reasonable adjustments to the claimed costs of metering and billing in establishing such charge.

10. IMPACT OF REGULATORY CHANGES.

a. Willamette understands and acknowledges that under Section 10 of the Wholesale Agreement either Big Rivers or Kenergy may propose renegotiation of the Wholesale Agreement under certain circumstances defined therein. Kenergy agrees to invoke its right under Section 10 of the Wholesale Agreement to seek renegotiation of the Wholesale Agreement upon Willamette's request. Kenergy shall not invoke its right to seek renegotiation of the Wholesale Agreement under this Section 10 absent Willamette's written consent, which consent shall not unreasonably be withheld. In any renegotiation pursuant to Section 10 of the Wholesale Agreement, Kenergy agrees to cooperate fully with any reasonable request of Willamette, including a request to participate in the renegotiation process with Big Rivers, subject to Big Rivers' consent. Kenergy shall apprise Willamette of all details of any renegotiation. Kenergy shall not agree to reform the Wholesale Agreement under Section 10 of the Wholesale Agreement without the advance written consent of Willamette. If Kenergy agrees to reform the Wholesale Agreement pursuant to Section 10 of the Wholesale Agreement, such reform shall be incorporated into this Agreement. For purposes of this Section 10, any dispute resolution proceedings conducted under the Wholesale Agreement shall be considered part of the renegotiation process to which this Section 10 applies.

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b. Kenergy or Willamette may propose renegotiation of this Agreement if that Party believes that a change in prevailing federal or state public utility regulatory standards, or utility industry self-regulation (such as through NERC) standards, materially and adversely affects that Party's performance hereunder. Upon a proposed renegotiation, the Parties agree to negotiate in good faith to reform this Agreement to be consistent with the Parties' original obligations and economic understandings; provided, however, that a mere change in the economics underlying the business deal contained herein shall not be cause to trigger renegotiation under the terms of this paragraph unless that change is directly caused by changes in prevailing federal or state public utility regulatory standards, or utility industry self-regulation standards. If Kenergy and Willamette are unable to agree upon an appropriate reform of this Agreement, either Party may seek dispute resolution pursuant to Section 23. Notwithstanding the above, this Agreement may be subject to regulation by the KPSC, or some other future state utility regulatory agency.

11. SERVICE CHARACTERISTICS AND DELIVERY POINT. The service characteristics and delivery point shall be as follows:

- a. Service hereunder shall be alternating current, three-phase, four-wire, sixty Hertz, 12,470 volts.
- b. Willamette shall not sell electric power and energy purchased hereunder.
- c. The point of delivery of the electric power and energy supplied hereunder shall be at the point of connection between Willamette's bus with Big Rivers' step-down transformers' low- side bushings.

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12. POWER FACTOR.

a. Power Factor for Load other than Backup Power and Energy Imbalance Service. Willamette shall maintain a power factor at the point of delivery as nearly as practicable to unity for load other than Backup Power and Energy Imbalance Service. Power factor during normal operation may range from unity to ninety percent (90%). Should Willamette's power factor fall below 90% at time of maximum load, Big Rivers has reserved in the Wholesale Agreement the right to either: (i) install at Kenergy's expense suitable equipment to maintain a power factor of

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90% or higher if, after reasonable notice to Kenergy, Kenergy fails to install suitable equipment to maintain a power factor of 90% or higher; or (ii) adjust the maximum metered demand for billing purposes in accordance with the following formula:

$$\frac{\text{Maximum Actual Measured kW} \times 90\%}{\text{Power Factor (\%)}}$$

If Kenergy receives notice of a power factor deficiency under Section 12.a.(i), above, it shall give Willamette a reasonable opportunity to install, at its own expense, suitable equipment to maintain a power factor of 90% or higher. If said equipment is installed at Kenergy's expense, Willamette shall forthwith pay Kenergy a like amount. If the maximum metered demand is adjusted, same will automatically be incorporated herein and will become a part of this Agreement.

b. Power Factor for Backup Power and Energy Imbalance Service. Willamette shall maintain a power factor at the point of delivery of 100% for Backup Power Service and Energy Imbalance Service. Should Willamette's power factor fall below 100% Big Rivers has reserved in the Wholesale Agreement the right to either: (i) install at Kenergy's expense suitable equipment to correct the power factor to 100%, if, after reasonable notice to Kenergy, Kenergy fails to install suitable equipment to maintain a power factor of 100%, or (ii) provide the required vars to correct power factor to 100% at a price of \$1.72 per kvar per year (\$0.143 per kvar per month). If Kenergy receives notice of a power factor deficiency under Section 12.b. (i.), above, it shall give Willamette a reasonable opportunity to install, at its own expense, suitable equipment to maintain a power factor of 100%. The price of vars shall change with any increase in the price of capacitors. The determination of the number of vars needed to achieve the 100% power factor shall reflect, as an offset, the extent to which Willamette's power factor for Firm Power exceeds 90%. If said equipment is installed at Kenergy's expense under Section 12.b of the Wholesale Agreement, Willamette shall forthwith pay Kenergy a like amount, provided that Willamette does not install any such equipment without Willamette's consent, which shall not unreasonably

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withheld or delayed. If vars are provided, the cost of same shall automatically be incorporated herein and become a part hereof, and shall be paid by Willamette to Kenergy.

13. FACILITIES TO BE PROVIDED BY PARTIES.

a. Facilities Provided by Big Rivers. The Parties understand and acknowledge that, except as provided in 13.c., below, Big Rivers, at its expense, shall furnish, install, maintain and replace, or cause to be furnished, installed, maintained and replaced, all facilities, other than the facilities Willamette is obligated to provide under this Agreement, required for the delivery of the electric power and energy hereunder to the point of delivery, including the Three (3) 24/32/40 MVA transformers presently located in the Big Rivers Skillman substation. Kenergy agrees to permit Willamette reasonable access to the Big Rivers Skillman substation to operate and maintain the facilities owned by Willamette located in that substation.

b. Metering. The Parties further understand and acknowledge that Big Rivers, at its expense, shall install, maintain, and operate the metering equipment located in Big Rivers' Skillman substation, which will consist of energy and demand metering integrated over thirty (30) minute intervals.

c. The expenses associated with the obligations of Big Rivers under section 13.a., above, shall become the responsibility of Willamette, if, and to the extent that, the expenses associated with those obligations are not included in Big Rivers' approved transmission rates. In that event, Willamette shall have the option to require Kenergy to exercise its right under the Wholesale Agreement to acquire the facilities associated with those expenses from Big Rivers at Big Rivers' net depreciated book value and to resell the same facilities to Willamette at Kenergy's acquisition cost. If Willamette exercises its option to purchase such facilities, Willamette shall, upon request of Kenergy, sell to Kenergy an undivided interest in such facilities sufficient to permit Kenergy to serve other customers from such facilities if and to the extent that surplus capacity of such facilities is available, and Kenergy shall be solely responsible for the cost of any upgrade or facility expansion necessary to serve customers other than Willamette.

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d. Facilities Provided by Willamette.

i. Willamette shall provide or cause to be provided, without cost to Kenergy, suitable permanent easements for facilities and substation sites, rough-graded to Kenergy's requirements, upon and across its property as reasonably required by Kenergy and its wholesale power supplier for the construction and maintenance of such facilities, alterations to existing facilities, or both, as may from time to time be necessary. It is understood and agreed, however, that the location of any lines used for service to other customers of Kenergy shall be subject to the approval of Willamette.

ii. Willamette shall provide or cause to be provided, without cost to Kenergy, all required 12,470 volt substation equipment, including buses or cables to connect to transformers owned by Kenergy, its wholesale power supplier, or both, excluding, however, the 12,470 volt transformer, lightning arresters, revenue metering equipment, and station service equipment for Big Rivers' portion of the substation.

iii. Willamette shall provide or cause to be provided, without cost to Kenergy metering and telemetry equipment required by Kenergy to monitor and to meter all power to be provided by Kenergy hereunder except Firm Power.

14. RELATIONSHIP TO COMPLETION OF WILLAMETTE QUALIFYING FACILITY.

The Parties to this Agreement expressly understand and acknowledge that this Agreement and the Wholesale Agreement have been entered into prior to completion of the construction of the Willamette QF, which Backup Power Service under this Agreement is intended to support. The Parties also acknowledge that the Willamette QF is the first QF to locate in Kenergy's certified service area and the Big Rivers control area. In recognition of these facts, the Parties agree as follows:

a. Information About QF. Willamette shall supply to Kenergy and Big Rivers such information and documents as Kenergy and Big Rivers may require, in their sole judgement, to properly evaluate and understand the QF equipment for which Backup Power Service is being provided. The plans for such facility presented to Kenergy and Big Rivers must be sufficient

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detail so as to provide them with an understanding regarding the reasonably expected need for Backup Power from such facilities, including the maintenance plans for the proposed unit (duration, timing, notice, etc.). All information contained in documents provided to Kenergy and Big Rivers under this Section 14.a., and which are stamped or otherwise marked as confidential, shall be treated by Kenergy and Big Rivers as confidential information and not disclosed to any other party, or used for any purpose other than the purposes set forth in this Section 14.a., except as lawfully ordered by a regulatory body or a court having proper jurisdiction, or their respective procedural rules or regulations and only for so long as the information is not otherwise publicly available other than as a result of disclosure by Kenergy or Big Rivers.

b. System Disturbance Agreement. In addition to the above requirements, Willamette, as owner of the QF, must enter into a System Disturbance Agreement with Big Rivers and Kenergy that is acceptable to both Big Rivers and Kenergy.

c. Material Requirements. The requirements of paragraphs 14.a., 14.b. and 14.e. are fundamental, material parts of this Agreement and the underlying Wholesale Agreement, and complete performance of those requirements by Willamette are essential prerequisites to the wholesale power supply obligations of Big Rivers under the Wholesale Agreement and the retail power supply obligations of Kenergy hereunder on and after the Effective Date.

d. Testing of QF. The Parties agree that testing of the QF shall occur prior to the Start Date, under the terms of the Willamette 1991 Agreement and the corresponding wholesale power agreement between Big Rivers and Kenergy, and that Willamette's minimum billing demand under the Willamette 1991 Agreement, for each month in which testing of the QF occurs, shall be the greater of actual metered demand or 82 MW. Willamette agrees that it will cooperate and work closely with Kenergy and Big Rivers during the testing period to minimize the impact on the Big Rivers transmission system and generating units in the Big Rivers' ~~PUBLIC SERVICE COMMISSION~~ OF KENTUCKY by fluctuations in Willamette's load during testing of the QF. EFFECTIVE

e. Operating Standards and Procedures. Willamette shall mutually develop with Kenergy and Big Rivers prior to synchronization of the QF to the existing load, an agreement

establishing operating standards and procedures acceptable to Kenergy and Big Rivers that will avoid adverse effects from the QF on Willamette's load and on Big Rivers' transmission system.

15. TERM. Immediately upon execution by both Parties, this Agreement shall be the legal and binding obligation of the Parties and shall remain in force unless one or more of the contingencies and approvals required in Section 20 is not received or obtained. If the Parties are unable to secure one or more approvals or satisfy one or more of the contingencies set forth in Section 20, the Parties agree immediately to negotiate in good faith to agree to such modifications as are necessary to secure each such approval or satisfy each such contingency. If after good faith negotiations, the Parties are unable to reach agreement on such approvals, this Agreement shall automatically terminate. In the absence of an agreement of the Parties that an agreement on such modifications cannot be reached, the failure of such negotiations shall be presumed upon the lapse of thirty (30) days after written notice to that effect by one Party to the other. The term of this Agreement shall expire on the earlier to occur of (i) at midnight on March 31, 2011 (the "Termination Date") and (ii) a termination under Section 18 of this Agreement.

16. START DATE.

a. The Start Date shall be July 1, 2001. The Start Date cannot be changed without the written consent of both Parties and of Big Rivers.

b. Beginning at 12:01 a.m., prevailing time, on the Start Date, this Agreement shall govern the rights and obligations of the Parties with respect to the retail power supply for Willamette, in lieu of the Willamette 1991 Agreement. As of the Start Date, the Willamette 1991 Agreement shall be deemed terminated as to any agreements between Kenergy and Willamette, provided that if the Start Date has not occurred by July 1, 2001, this Agreement shall terminate, and the terms of the Willamette 1991 Agreement shall be reinstated for power service to Willamette.

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17. BILLING AND PAYMENT TERMS.

a. Order of Deliveries. For billing purposes, all power delivered to Willamette under this Agreement shall be deemed to be delivered in the following order:

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- i. Either Backup Power or Replacement Power, depending on the circumstances of the delivery, as set forth in Section 5, shall be deemed first through the meter;
- ii. Power scheduled to remedy a positive Energy Imbalance pursuant to Section 4 shall be deemed second through the meter;
- iii. Firm Power shall be deemed third through the meter;
- iv. Energy Imbalance Service shall be determined after accounting for all other power deliveries.

b. Billing and Payment. Kenergy shall bill Willamette no later than the first working day after the 13th of the month for the previous month's service hereunder. Willamette shall pay Kenergy in immediately available funds by 1:00 P.M., Central Time (prevailing) on the first working day after the 24th of the month (the "Due Date"). If Willamette shall fail to pay any such bill within such prescribed period, Kenergy may discontinue delivery of electric power and energy hereunder upon five (5) days' written notice to Willamette of its intention to do so. Such discontinuance for non-payment shall be in addition to any other remedy which may be available to Kenergy and shall not lessen in any way the obligation of Willamette to pay to Kenergy any and all sums owing to Kenergy.

c. Interest on Unpaid Balances. Interest on any unpaid amounts shall be simple interest equal to the prime lending rate as published in the "Money Rates" column of the Wall Street Journal on the Due Date or Special Due Date (as defined in Section 17.d. below), or on the first business day after the Due Date or Special Due Date if the Due Date or Special Due Date falls on a weekend day or a day when such rate is not published, plus one percent (1%). Interest on delinquent amounts shall be calculated from the Due Date or Special Due Date of the bill to the date of the payment, with interest calculated and prorated for that portion of the month in which amounts are outstanding. The applicable interest rate shall be recalculated each month using the new prime lending rate as published in the "Money Rates" column of ~~PUBLIC SERVICE COMMISSION~~ Journal, on the Due Date or Special Due Date in that month, or on the first business day ~~EFFECTIVE~~

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Due Date or Special Due Date in that month if the Due Date falls on a weekend day or a day when such rate is not published, plus one percent (1%).

d. Special Billing and Payment Provisions. Willamette understands and acknowledges that under Section 17.d. of the Wholesale Agreement, anytime Big Rivers' accrued obligations to its wholesale power and transmission providers for power and services purchased to supply Kenergy Backup Power Service (not to include the reservation fee in the Reliant Agreement, Replacement Power Service and Energy Imbalance Service exceeds \$500,000, Big Rivers has the right to bill Kenergy for all amounts owed and payment is due on the first working day no later than five (5) business days after receipt of the bill (the "Special Due Date"). A copy of any bill to Kenergy under Section 17.d. of the Wholesale Agreement will also be sent simultaneously to Willamette. Notwithstanding any other provisions in this Section 17, Willamette shall pay Kenergy that bill in immediately available funds by 1:00 o'clock P.M., Central Time (prevailing), in the first working day no later than five (5) business days after receipt of that bill. If Willamette shall fail to pay any such bill within the prescribed period, Kenergy may discontinue delivery of electric power and energy hereunder upon five (5) business days' written notice to Willamette of its intention to do so (a copy of Big Rivers' notice to Kenergy shall suffice for the aforementioned notice). Such discontinuance for non-payment shall be in addition to any other remedy which may be available to Kenergy and shall not lessen in any way the obligation of Willamette to pay to Kenergy any and all sums owing to Kenergy.

18. TERMINATION. This Agreement shall terminate prior to the Termination Date (subject in some instances to the election of the affected Party, as stated below) for any of the following reasons:

- a. If the Effective Date does not occur on or before June 1, 2001.
- b. If the Start Date does not occur on July 1, 2001.
- c. (Intentionally left blank).
- d. Upon default by a Party in the performance of this Agreement as provided in

Section 19 of this Agreement, at the election of the affected Party.

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e. Failure of the Parties to agree to modifications to this Agreement necessary to secure regulatory approvals or to satisfy contingencies required pursuant to Section 20.

f. Termination of the Wholesale Agreement, other than as a result of breach by Kenergy or a voluntary agreement between Kenergy and Big Rivers.

19. BREACH; DEFAULT; REMEDIES.

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

i. Failure by Willamette to make any payment as and when due hereunder in accordance with the terms of Section 17.b. (curable in accordance with the terms of Section 17, prior to disconnect);

ii. Failure of a Party to perform any material duty imposed on it by this Agreement that is otherwise not expressly addressed in this Section 19.a. (curable within 30 days following notice of breach from the non-breaching Party to the breaching Party);

iii. 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 if such proceedings are not withdrawn or dismissed within 60 days after such institution (in which case a default occurs on the 61st day after filing);

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

v. Allowance by a Party of the appointment of a receiver or trustee of all or a material part of its property if such receiver or trustee is not discharged within 60 days after appointment (in which case a default occurs on the 61st day after appointment);

vi. Any attempt by a Party to transfer an interest in this Agreement or the Commission as permitted pursuant to Section 21 of this Agreement (not curable); or

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

b. In the event of a default by either Party, the non-defaulting Party may, in its own 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.

c. The 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 default of any of the provisions herein, provided that neither Party is entitled to recover from the other Party any consequential, incidental or special damages including, without limitation, lost profits. The Parties agree that upon early termination of this Agreement as a result of default by Willamette or in accordance with Sections 18. b., or d., Kenergy shall be entitled to recover from Willamette as partial damages for breach any amounts Kenergy is obligated to pay Big Rivers under the Wholesale Agreement during the period beginning with the date of the default by Willamette.

20. APPROVALS.

a. The Effective Date of this Agreement shall be the date first above written, subject (a) to the approval or acceptance of this Agreement, as appropriate, in writing by each of the following: KPSC and Big Rivers, (b) to the approval by Willamette of the Wholesale Agreement, and (c) to the final approval and effectiveness of the Wholesale Agreement, and the System Disturbance Agreement. Kenergy shall give Willamette written notice of the date on which the last of such approvals is received, or the last of any approvals not received is waived by Kenergy.

b. (Intentionally left blank)

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21. NOTICES. Except as provided in Section 6, all notices and other communications to Big Rivers, Kenergy and Willamette under this Agreement must be in writing, and shall be addressed, respectively, as follows:

To Big Rivers:

Big Rivers Electric Corporation  
201 Third Street, P.O. Box 24  
Henderson, KY 42419  
Telephone No. (270) 827-2561  
Telecopy No. (270) 827-2101  
Attn: Vice President, Power Supply

To Kenergy:

Kenergy Corp.  
6402 Old Corydon Road, Post Office Box 18  
Henderson, KY 42419  
Telephone No. (270) 826-3991  
Telecopy No. (270) 830-6934  
Attn: President

To Willamette:

Willamette Industries, Inc.  
PO Box 130  
Hwy 1406  
Hawesville, KY 42348  
Telephone No. (270) 927-6961  
Telecopy No. (270) 927-6817  
Attn: Ray Biscopink

and to

Willamette Industries, Inc.  
500 Wells Fargo Center  
1300 SW Fifth Ave.  
Portland, OR 97201  
Telephone No. (503) 412-2009  
Telecopy No. (503) 721-8624  
Attn: Energy Manager

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Kenergy and Willamette may change their addresses under this section by notice given to each other in the manner set forth above. If Kenergy is informed of a change of address for Big Rivers, such information shall immediately be provided to Willamette. Unless otherwise expressly required in this Agreement, all notices shall be effective (i) if sent by messenger or courier service, when delivered, (ii) if sent by mail, three days after posting, postage prepaid, and (iii) if sent by facsimile, when sent (provided that a duplicate copy thereof is promptly sent by mail); provided that if a provision hereof specifies that a period shall be measured by a fixed number of days after receipt of a notice, notice shall be effective when received, irrespective of the means of delivery.

22. SUCCESSION, SURVIVAL AND ASSIGNMENT. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. The provisions of this Agreement that provide for, relate to or concern billings, billing adjustments, and enforcement of liability and indemnification obligations arising from acts or events that occur during the term of this Agreement shall survive the termination of this Agreement. The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions of this Agreement. Neither Party hereto shall assign this contract or any of the rights thereto without the written consent of the other, except that nothing herein contained shall prevent either Party from subjecting rights hereunder to mortgages, pledges, security agreements, or other liens or rights considered by a Party as necessary for the financing of its operations. Consent to an assignment shall not unreasonably be withheld.

23. DISPUTE RESOLUTION

a. Kenergy and Willamette shall attempt to resolve any dispute referred to this Section 23 under the terms of Sections 5.e, 9, and 10, by negotiation between representatives of each who will have the authority to resolve the dispute. Either Party may give the other written notice of any dispute not resolved in the ordinary course of business, and request a meeting within thirty (30) days after delivery of such notice at a mutually acceptable time and place to resolve the dispute. Upon the request of either Party, the Parties agree to select a mutually

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acceptable person to act as a facilitator of the negotiations between the Parties to settle the dispute. If that request is made, the Parties agree to select as the facilitator a person who has not previously been employed by either Party, is qualified by education or experience to participate in a discussion of the matters relating to the questions in dispute, and does not have a direct or indirect interest in either Party or the subject matter of the negotiation. The Parties agree to attempt in good faith to select a facilitator within ten (10) days after written notice from the Party requesting the participation of a facilitator in the negotiations. All negotiations held pursuant to this Section 23.a shall be confidential, and evidence thereof shall not be admissible in any subsequent proceeding.

b. If the Parties are unable to resolve by negotiation a dispute governed by the procedures of this Section 23, or are unable to agree upon the appointment of a facilitator after either Party has requested appointment of a facilitator, either Party may submit the question in dispute to the KPSC for resolution, and the decision of the KPSC shall be final, except that either Party may pursue any available appeal of the decision of the KPSC.

24. GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky.

25. WAIVER. The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach of any provision hereof shall not constitute a waiver of any provision of this Agreement or limit the Party's right thereafter to enforce any provision or exercise any right.

26. ENTIRE AGREEMENT. This Agreement, including all attached exhibits, together with each tariff and other agreement referred to in this Agreement, contains the entire and final understanding of the Parties and supersedes all prior agreements and understandings between the Parties related to the subject matter of those agreements. This Agreement may be signed in counterparts.

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(The following provisions are taken from the Willamette 1991 Agreement.)

27. GENERAL OBLIGATIONS. (part of Section 1) Willamette shall remain a member of Kenergy, shall pay the membership fee and be bound by such rules and regulations as may from time to time be adopted by Kenergy.

28. OPERATION AND MAINTENANCE OF FACILITIES. (Section 5) Kenergy shall operate and maintain, or cause to be operated and maintained, all of the transmission lines and substation facilities owned by it, its wholesale power supplier, or both. Willamette shall furnish, install, maintain and operate such facilities and equipment as may be necessary to enable it to receive and use electric power and energy purchased hereunder, and as may be necessary in the opinion of Kenergy to afford reasonable protection to the facilities of Kenergy, its wholesale power supplier, or both. Plans for equipment to be installed for the protection of the facilities of Willamette, Kenergy or its wholesale power supplier, or any combination thereof, shall be submitted to Kenergy for prior approval.

29. CONSTRUCTION STANDARDS. (Section 6) Kenergy and Willamette shall construct and maintain the facilities to be provided by each under this agreement in accordance with applicable provisions of the National Electric Safety Code of the American National Standards Institute, the rules and regulations of the KPSC, and other applicable laws, codes and regulations, provided, however, Kenergy shall have no duty to inspect Willamette's facilities for conformance therewith. Nothing in this agreement shall be constructed to render Kenergy 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 or operation and maintenance of Willamette's electric system.

30. METERING. (Section 9) Kenergy shall cause to be installed, maintained and operated the metering equipment located in the step down substations at Willamette's plants. Each meter shall be read on or about the first day of each month (or such other date as may be mutually agreed upon) by a representative of Kenergy, and may be simultaneously read by a

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representative of Willamette if consumer so elects. Kenergy shall make such tests and inspections of the meters as may be necessary to maintain them at the highest practical commercial standard of accuracy. If periodic tests show that a meter used for billing is accurate within one percent (1%) slow or fast, no correction shall be made in the billing. If any such tests show that such meter is inaccurate by more than one percent (1%) slow or fast, correction shall be made in the billing to the proper Party for the period during which the parties agree that the inaccuracy existed. Kenergy will make additional tests of meters at the request and expense of Willamette and in the presence of Willamette's representative. In all other respects meters shall be installed, operated, maintained and tested in accordance with the rules and regulations of the KPSC.

31. RIGHT OF REMOVAL. (Section 10) Any and all equipment, apparatus, devices or facilities placed or installed, or caused to be placed or installed by either of the Parties hereto on or in the premises of the other Party shall be and remain the property of the Party owning and installing same, regardless of mode or manner of annexation or attachment to real property of the other, and upon termination of this agreement the owner thereof shall have the right to enter upon the premises of the other Party and shall within a reasonable time remove such equipment, apparatus, devices or facilities, except that Willamette shall not recover any easements or sites conveyed to Kenergy. The Party effecting removal under this provision shall pay any damages to the premises or property of the other Party caused by such removal.

32. RIGHT OF ACCESS. (Section 11) Duly authorized representatives of Kenergy shall be permitted to enter Willamette's premises at all reasonable times and with reasonable advance notice in order to carry out the provisions of this Agreement.

33. RATES AND PAYMENT. (Section 12.06) Willamette agrees that if, at any time, the rate under which Kenergy purchases electric service at wholesale is modified, Kenergy may make the corresponding modification in the rate for service hereunder.

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34. RATES AND PAYMENT. (Section 12.07) No provision of this Agreement shall be construed or operate to deny Willamette the right to appear before any administrative or legal tribunal to protest any rate adjustment proposed by Kenergy or its wholesale power supplier.

35. LIMITATION ON DAMAGES. (Section 17.03) This Agreement shall not subject either Party to consequential damages or damages for loss of anticipated profits.

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(Provisions for security deposit, distribution fee and construction of agreement)

36. SECURITY DEPOSIT. If circumstances arise during the term of this Agreement such that Kenergy has legitimate, reasonable concerns about Willamette's ability to meet its obligations under this Agreement, Kenergy may require Willamette, as security for payment of its monthly billing obligations, to provide Kenergy a cash deposit or other sufficient guaranty in an amount representing two (2) months' estimated billing.

37. DISTRIBUTION FEE. Throughout the term of this Agreement, Willamette shall pay to Kenergy a fee ("Distribution Fee") of three-tenths of a mill (\$0.0003) for every kilowatt hour of energy that Willamette consumes at its facilities in Hawesville, Kentucky, regardless of whether the energy is purchased from Kenergy or generated on-site. The Distribution Fee shall be paid coincidental with Willamette's monthly payments for service hereunder, and the provisions of Section 17 shall apply in the event of Willamette's failure to pay. Each Party shall have the right, during the term of this Agreement, to petition the KPSC for adjustments to the Distribution Fee or otherwise to participate in proceedings to investigate and, if necessary, modify the Distribution Fee. Willamette agrees that it shall not assert, as a basis for reducing the amount of the Distribution Fee, the fact that the Distribution Fee is imposed on self-generated power in addition to purchased power, provided, however, that nothing in this Agreement shall preclude Willamette from asserting that the Distribution Fee is excessive in relation to Kenergy's actual

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cost of service. The Parties acknowledge that Kenergy has pending before the KPSC a general rate case, Docket No. 2000-395. Willamette is participating in that general rate case through its membership in Kentucky Industrial Utility Customers, Inc. (the "KIUC") The KIUC is seeking a reduction in the distribution fee that Kenergy charges to certain industrial customers, as set forth in those customers' contracts and/or tariffs. The Parties agree that any adjustment to Willamette's distribution fee rendered in Docket No. 2000-395 shall automatically be applied to Willamette's Distribution Fee under this Agreement.

38. CONSTRUCTION OF AGREEMENT. It is the intention of the Parties that for each financial obligation of Kenergy to Big Rivers under the Wholesale Agreement, there is a corresponding financial obligation from Willamette to Kenergy hereunder. The Parties agree that the terms and provisions of this Agreement shall be so construed, except as expressly provided to the contrary under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives on this the day and date first above written.

**Kenergy Corp.**

By: Dean Stanley  
Its: President and CEO

**WILLAMETTE INDUSTRIES, INC.,**

By: \_\_\_\_\_  
Its: Executive Vice President, Paper Group

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**Kenergy Corp.**

By: \_\_\_\_\_  
Its: **President and CEO**

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**WILLAMETTE INDUSTRIES, INC.,**

By: Mani D. Coym  
Its: **Executive Vice President, Paper Group**

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**Rates and Additional Terms For Firm Power Service  
Appendix A**

- I. The general tariff of Big Rivers applies except where inconsistent with the Agreement to which this Appendix A is attached.
- II. The rates in this Appendix A shall take effect at 12:01 a.m. prevailing time on the Start Date.
- III. The monthly delivery point rate for Firm Power Service is:
  - (a) A demand charge for each KW of billing demand of \$10.15, plus,
  - (b) An energy charge for each KWh of \$0.013715

As provided in the Agreement to which this Appendix A is attached, no separate transmission or ancillary services charges are applicable to service priced under this Appendix A.

In addition to the foregoing rates and charges, Willamette agrees to pay the Distribution Fee set forth in Section 37 of the Agreement to which this Appendix A is attached.

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