

AGREEMENT FOR TIER 3 ENERGY  
BETWEEN  
KENERGY CORP.  
AND  
BIG RIVERS ELECTRIC CORPORATION

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DEC 21 2000

ARTICLE I

PARTIES

PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

BY: Stephen O. Bell  
SECRETARY OF THE COMMISSION

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 BIG RIVERS ELECTRIC CORPORATION, a Kentucky corporation organized under KRS Chapter 279 ("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 under this Agreement. Pursuant to the attached Form of Consent, Southwire consents to this Agreement.

ARTICLE II

RECITALS

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

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"). Kenergy is also a member of Supplier .

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, 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 such request, 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, firm 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

#### DEFINITIONS:

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

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 Effective Date: The date specified in Section 4.02.

Section 3.05 Energy: The flow of electricity denominated in kilowatt-hours.

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Section 3.06 Energy Availability Period: Energy Availability Period shall have the meaning ascribed in Section 5.01 below.

Section 3.07 FERC: The Federal Energy Regulatory Commission or any successor agency.

Section 3.08 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 3.09 Kenergy: Kenergy Corp., its successors or assigns.

Section 3.10 KPSC: The Kentucky Public Service Commission or any successor agency.

Section 3.11 Monthly Charge: The total charge in each Billing Month for Tier 3 Energy computed in accordance with this Agreement.

Section 3.12 Open Access Transmission Tariff. Any transmission tariff approved by 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 3.13 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 3.14 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

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

Section 3.16 Supplier: Big Rivers Electric Corporation (“Big Rivers”).

Section 3.17 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 as Tier 3 Energy.

Section 3.18 Tier 3 Energy: The energy purchased from one or more Third-Party Suppliers by Kenergy for resale to Southwire, as further described in Section 2.04.

Section 3.19 Transmission Provider: Big Rivers, its successors or assigns.

Section 3.20 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

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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 economically to use the Tier 3 Energy, or market conditions relating to Southwire's business or the products produced at the Hawesville Facility.

Section 3.21 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:

- (a) This Agreement shall have been duly executed and delivered by the Parties.
- (b) Kenergy shall have made arrangements with the Transmission Provider that are satisfactory to Southwire for transmission service under Transmission Provider's Open Access Transmission Tariff for the delivery of the full amounts of Tier 3 Energy that Suppliers are required to deliver pursuant to this 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 of this Agreement by the KPSC under Section 9.2 of the Southwire Power Agreement.

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Section 4.03 As soon as practicable, Kenergy shall provide written notice to Southwire and Supplier of (a) the date the arrangements with Transmission Provider 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

### PURCHASE AND SALE OF TIER 3 ENERGY

Section 5.01 Delivery Obligation. Supplier's obligation to deliver Tier 3 Energy pursuant to this Agreement and Kenergy's obligation to purchase such 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").

Section 5.02 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 5.03 Tier 3 Energy Volume. During the Energy Availability Period, Supplier will sell and deliver to Kenergy and Kenergy shall purchase from Supplier a block of fifteen (15) megawatts of Energy at the Point of Delivery around the clock 100% load factor, subject however, to the limited right of Supplier to interrupt said delivery in accordance with the terms and conditions specified in Section 5.07.

Section 5.04 Tier 3 Energy Rates. For all Tier 3 Energy supplied pursuant to this Agreement (except for Tier 3 Energy provided pursuant to Section 5.07(e)), Kenergy shall pay

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Supplier \$26.28 per megawatt hour from January 1, 2001 through December 31, 2002. These charges are not subject to change over the term of this Agreement. Kenergy shall purchase and accept delivery of the full amount of Tier 3 Energy made available by Supplier. If Kenergy or Southwire does not accept delivery of the full amount of such energy, the Monthly Charge shall include the amount that would have been due had the full amount of such energy been accepted.

Section 5.05 Other Charges to Southwire. Transmission services, ancillary services and power factor restrictions are not provided under this Agreement. Kenergy shall separately charge to Southwire the charges incurred in obtaining transmission services, ancillary services and Kenergy's applicable distribution fee related to Kenergy's sale of Tier 3 Energy purchased by Kenergy from Supplier.

Section 5.06 Firm Service Obligation. Subject to Section 5.07, Tier 3 Energy delivered hereunder is firm. Unless otherwise excused pursuant to Article XII (Uncontrollable Forces), in the event that Supplier fails to deliver Tier 3 Energy, including Tier 3 Energy obligated to be delivered at the Buy-Through Price, to the Point of Delivery in accordance with the terms of this Agreement, then Supplier will be liable for 100% of the costs incurred by Kenergy using Prudent Utility Practice to obtain Tier 3 Energy 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. Except as permitted by Section 5.07, deliveries of Tier 3 Energy hereunder will only be curtailed or interrupted in the event of an Uncontrollable Force as defined in this Agreement.

Section 5.07 Interruptibility. In each calendar year under this Agreement, in its discretion, upon ten (10) minutes prior notice to Kenergy and Southwire ("Notice of Interruption"), Supplier may interrupt delivery of all or any part of the Tier 3 Energy subject to the following terms, limitations and conditions:

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(a) Supplier may not implement more than sixty (60) interruptions in any calendar year and all such interruptions may not exceed an aggregate of four hundred (400) hours in any calendar year.

(b) The maximum duration of any interruption shall be eight (8) hours.

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

(d) Each Notice of Interruption shall specify, for each one hour period of the intended interruption, the price or set of hourly prices per megawatt hour that Kenergy may elect to pay to Supplier as an alternative to the intended interruption (the "Buy Through Price"). Kenergy shall have five minutes to consult with Southwire and thereafter notify Supplier that it accepts the Buy Through Price for all or any part of the intended 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.

(e) Upon Kenergy's acceptance of the Buy Through Price for all or any part of an intended interruption, the obligation of Supplier to provide firm power shall be re-established, provided that Supplier shall charge to Kenergy the Buy Through Price for all such power instead of the price set forth in Section 5.04 above, and further provided that any period during which Kenergy pays the Buy Through Price shall be deemed an interruption for purposes of determining hours of interruption and number of interruptions in any calendar year.

(f) During any period of interruption, Supplier may notify Kenergy and Southwire of its willingness to terminate the interruption and resume the delivery of firm power under the

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applicable price set forth in Section 5.04 above. Upon notification from Supplier terminating the interruption, Kenergy shall purchase and accept delivery of firm power for resale to Southwire within ten (10) minutes.

(g) Following any period of interruption, Southwire shall be granted a recovery period of no less than sixteen (16) hours, and Supplier may not implement a subsequent interruption during such recovery period; provided, however, that for purposes of this subsection only, any period during which Kenergy elected to pay the Buy Through Price shall not be deemed to be a period of interruption.

## 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.

Section 6.02 If Kenergy shall fail to pay any bill rendered by Supplier within the time prescribed in Section 6.01, Supplier may discontinue delivery 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 set forth in Section 5.04, which charge shall be calculated assuming that such Energy had been delivered.

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

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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 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 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 pursuant to this Article VI shall constitute a waiver of any right of Kenergy 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 161,000 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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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 other 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) Failure of Supplier to deliver to Kenergy any amount of Tier 3 Energy in accordance with this Agreement for more than 30 days, whether or not consecutive, in any 365 day period (not curable);

(e) 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);

(f) Assignment by a Party for the benefit of creditors, other than as expressly provided herein (not curable);

(g) 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).

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(h) 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).

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 hereof, 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 Tier 3 Energy as required by this Agreement shall be as set forth in Section 5.06 and, if Supplier has defaulted pursuant to Section 8.01(d), Section 9.01.

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BY: Stephen O. Bue  
SECRETARY OF THE COMMISSION

ARTICLE X

ADDITIONAL COVENANTS OF THE PARTIES

Section 10.01 Kenergy covenants that:

(a) It will not intentionally take any action that would diminish the expected volumes of Tier 3 Energy to be purchased under this Agreement, shorten its Term 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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Section 10.02 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 10.03 Supplier will permit Kenergy 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 Kenergy to Supplier pursuant to 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 to Southwire under this Agreement. Supplier shall retain all documentation applicable to service to Kenergy under this Agreement for a period of three years.

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Section 10.04 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 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 .

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BY:                                            
SECRETARY OF THE COMMISSION

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.

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.

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. Nothing in this paragraph prohibits a Party from referring to FERC any matter properly within FERC's jurisdiction.

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BY: Stephan O. Bell  
SECRETARY OF THE COMMISSION

ARTICLE XII

UNCONTROLLABLE FORCES

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, 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 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.

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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.

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BY:                       
ST. REPLY OF THE COMMISSION

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 assign or delegate all or any portion of its rights or obligations under this Agreement to any affiliate or entity controlled by Supplier or to the Rural Utilities Service 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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BY: Stephen O. Bell  
SECRETARY OF THE COMMISSION

ARTICLE XIV

REPRESENTATIONS AND WARRANTIES:

Section 14.01 Kenergy hereby represents and warrants to Supplier as follows:

(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 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 the 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 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 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.

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APPROVED BY: Richard D. Bell  
SECRETARY OF THE COMMISSION

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

ARTICLE XV  
AMENDMENTS

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

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 issue presented to FERC.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

DEC 21 2000

ARTICLE XVI

GENERAL

PURSUANT TO 307 KAR 5011,  
SECTION 9 (1)  
BY: John O. Bell  
SECRETARY OF THE COMMISSION

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

Big Rivers Electric Corporation  
P.O. Box 24  
201 Third Street  
Henderson, Ky. 42419  
Attention: Michael H. Core, President and CEO  
Facsimile No.: (270) 827-2558

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OF KENTUCKY  
EFFECTIVE

DEC 21 2000

FURSUANT TO 007 KAR 5.011,  
SECTION 9 (1)  
By: Robert O. Bell  
SECRETARY OF THE COMMISSION

To Kenergy:

Kenergy Corp.  
6402 Old Corydon Road  
P.O. Box 18  
Henderson, KY 42419-0018  
Attention: Dean Stanley, President/CEO  
Facsimile: (270) 826-3999

To Southwire:

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

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.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

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PURSUANT TO 207 KAR 5:011,  
SECTION 9 (1)

BY: [Signature] Bell  
CLERK OF THE COMMISSION

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 and does not supplement, amend or alter in any respect the other, existing wholesale power agreements between the Parties dated June 11, 1962, as amended, and February 16, 1988, as amended.

Section 16.08 The Parties agree that, for purposes of this Agreement, Kenergy is doing business with Supplier on a patronage basis in accordance with the provisions of the Articles of Incorporation and Bylaws of Supplier that may be in effect from time to time

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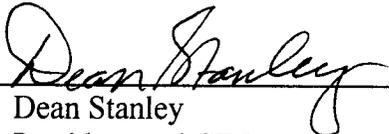
DEC 21 2000

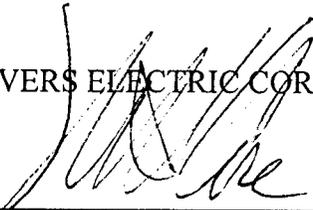
PURSUANT TO 807 KAR 5.011,  
SECTION 9 (1)

BY: Michael D. 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

BIG RIVERS ELECTRIC CORPORATION  
  
\_\_\_\_\_  
By: Michael H. Core  
Title: President and CEO

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

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PURSUANT TO 207 KAR 5:011,  
SECTION 9 (1)  
By:   
\_\_\_\_\_  
SECRETARY OF THE COMMISSION