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May 22, 2012

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

RECEIVED

MAY 23 2012

PUBLIC SERVICE  
COMMISSION

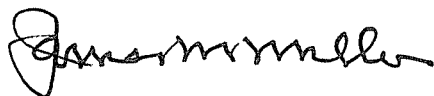
**RE: *In the Matter of: Application of Big Rivers Electric Corporation for Approval to Issue Evidences of Indebtedness, PSC Case No. 2012-00119***

Dear Mr. DeRouen:

Enclosed on behalf of Big Rivers Electric Corporation ("Big Rivers") is a supplemental response to Item 8 of the Public Service Commission Staff's Initial Requests for Information. This additional information consists of supplemental resolutions adopted by the Big Rivers board of directors on May 18, 2012, authorizing issuance by Big Rivers of the evidences of indebtedness for which authority is sought in this proceeding. Because those resolutions include voluminous attachments, we are filing only two copies of each resolution, and ask that the Commission accept two copies as compliance with Big Rivers' obligations. Big Rivers will file more copies, if the Commission finds two copies of the resolutions to be insufficient.

I certify that a copy of this letter and attachments have been served on the persons shown on the attached service list. Please feel free to contact me with any questions.

Sincerely yours,



James M. Miller

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JMM/ej  
Enclosures

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cc: Mark A. Hite  
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SERVICE LIST  
BIG RIVERS ELECTRIC CORPORATION  
PSC CASE NO. 2012-00119

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**EXCERPT FROM THE MINUTES OF REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
OF BIG RIVERS ELECTRIC CORPORATION  
HELD IN HENDERSON, KENTUCKY, ON  
MAY 18, 2012**

After an explanation by Mark Hite and corporate counsel, Director Bearden moved that the following resolutions be adopted:

**WHEREAS**, Big Rivers Electric Corporation (“Big Rivers”) has a \$50 million unsecured revolving credit agreement with CoBank, ACB, a federally chartered instrumentality of the United States (“CoBank”) and such agreement will expire this year; and

**WHEREAS**, in 2009 Big Rivers issued its 2009 Promissory Note Series A (the “RUS Series A Note”) currently outstanding in the principal amount of \$526,603,000 and Big Rivers is obligated to reduce the maximum permitted outstanding balances of such RUS Series A Note by \$60 million by October 1, 2012 and by \$200 million by January 1, 2016; and

**WHEREAS**, Big Rivers has applied a portion of and will apply the remaining portion of the \$35 million that was held in its transition reserve account established in 2009 to the prepayment of a portion of the RUS Series A Note; and

**WHEREAS**, in addition to its obligations to prepay balances of the RUS Series A Note, Big Rivers has capital requirements that it desires to be able to finance with the proceeds of loans; and

**WHEREAS**, Big Rivers has negotiated an agreement entitled “Senior Unsecured Revolving Credit Facility” with CoBank, as administrative agent, issuing lender, lead arranger and book runner, in the amount of \$50 million (the “CoBank Revolving Credit Facility”); a form of the CoBank Revolving Credit Facility is attached hereto as Exhibit A and the form of unsecured note evidencing the borrowing under the CoBank Revolving Credit Facility is attached as Exhibit J to such agreement and the CoBank Revolving Credit Facility and the unsecured note are presented to the Board of Directors of Big Rivers (the “Board”) for its approval; and

**WHEREAS**, Big Rivers has negotiated an agreement entitled “Secured Credit Agreement” with CoBank, as administrative agent, issuing lender, lead arranger and book runner, for a loan in the amount of \$235 million (the “CoBank Secured Credit Agreement”); a form of the CoBank Secured Credit Agreement is attached hereto as Exhibit B and has been presented to the Board for its approval; and

**WHEREAS**, Big Rivers wishes to use the proceeds of the CoBank Revolving Credit Facility for working capital and general corporate purposes, including but not limited to, capital expenditures; and

**WHEREAS**, Big Rivers wishes to use a portion of the proceeds of the CoBank Secured Credit Agreement to prepay a portion of the RUS Series A Note and wishes to use the remainder of the proceeds to replenish the transition reserve account in the amount of \$35 million and to fund a portion of its capital expenditures; and

**EXCERPT FROM THE MINUTES OF REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
OF BIG RIVERS ELECTRIC CORPORATION  
HELD IN HENDERSON, KENTUCKY, ON  
MAY 18, 2012**

**WHEREAS**, the loan under the CoBank Secured Credit Agreement will be evidenced by a note or notes in the amount of \$235 million (the “First Mortgage Notes, Series 2012A”), which will be issued and secured under the Indenture, dated as of July 1, 2009, as supplemented (the “Indenture”), between Big Rivers and U.S. Bank Trust National Association, as trustee (in such capacity, the “Trustee”); and

**WHEREAS**, a supplemental indenture (the “Second Supplemental Indenture”) authorizing the issuance of a series of Additional Obligations (as defined in the Indenture) entitled the First Mortgage Notes, Series 2012A is attached hereto as Exhibit C; the form of the First Mortgage Notes, Series 2012A is attached as Exhibit B to the Second Supplemental Indenture and the Second Supplemental Indenture, including the form of the First Mortgage Notes, Series 2012A, has been presented to the Board for its approval.

**NOW, THEREFORE**, the Board hereby resolves as follows:

**RESOLVED**, that each of the following is an Authorized Representative: The Chair, Vice Chair, Secretary-Treasurer and any Assistant Secretary-Treasurer of the Board; the President and Chief Executive Officer of Big Rivers, any Senior Vice President and any Vice President of Big Rivers; and any other officer or employee of Big Rivers designated as an Authorized Representative in writing by an Authorized Representative listed above.

**RESOLVED, FURTHER**, that the CoBank Revolving Credit Facility in substantially the form presented to this meeting, be, and it hereby is, in all respects approved; and that the Authorized Representatives be, and they hereby are, and each of them hereby is, authorized and directed to execute and deliver the CoBank Revolving Credit Facility on behalf of Big Rivers, with or without the seal of Big Rivers affixed thereto, and if so sealed, attested or not attested by the Secretary-Treasurer or an Assistant Secretary-Treasurer of Big Rivers, and with such changes or modifications as the Authorized Representative executing the same may approve, such approval to be conclusively evidenced by his execution thereof.

**RESOLVED, FURTHER**, that the CoBank Secured Credit Agreement in substantially the form presented to this meeting, be, and it hereby is, in all respects approved; and that the Authorized Representatives be, and they hereby are, and each of them hereby is, authorized and directed to execute and deliver the CoBank Secured Credit Agreement on behalf of Big Rivers, with or without the seal of Big Rivers affixed thereto, and if so sealed, attested or not attested by the Secretary-Treasurer or an Assistant Secretary-Treasurer of Big Rivers, and with such changes or modifications as the Authorized Representative executing the same may approve, such approval to be conclusively evidenced by his execution thereof.

**RESOLVED, FURTHER**, that the Second Supplemental Indenture in substantially the form presented to this meeting, be, and it hereby is, in all respects approved; and that the Authorized Representatives be, and they hereby are, and each of them hereby is, authorized and



**EXCERPT FROM THE MINUTES OF REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
OF BIG RIVERS ELECTRIC CORPORATION  
HELD IN HENDERSON, KENTUCKY, ON  
MAY 18, 2012**

directed to execute and deliver the Second Supplemental Indenture on behalf of Big Rivers, with or without the seal of Big Rivers affixed thereto, and if so sealed, attested or not attested by the Secretary-Treasurer or an Assistant Secretary-Treasurer of Big Rivers, and with such changes or modifications as the Authorized Representative executing the same may approve, such approval to be conclusively evidenced by his execution thereof.

**RESOLVED, FURTHER**, that the First Mortgage Notes, Series 2012A (in the form set forth as Exhibit B to the Second Supplemental Indenture), in the aggregate principal amount of the Loan, be, and they hereby are authorized to be issued as a series of Additional Obligations under the Indenture pursuant to Sections 4.2, 4.3 and/or 4.4 of the Indenture, as supplemented by the Second Supplemental Indenture, in substantially the form presented to this meeting, be, and such form hereby is, in all respects approved; and that the Authorized Representatives be, and they hereby are, and each of them hereby is, authorized and directed to execute and deliver the First Mortgage Notes, Series 2012A on behalf of Big Rivers, with or without the seal of Big Rivers affixed thereto, and if so sealed, attested or not attested by the Secretary-Treasurer or an Assistant Secretary-Treasurer of Big Rivers, and with such changes or modifications as the Authorized Representative executing the same may approve, such approval to be conclusively evidenced by his execution thereof.

**RESOLVED, FURTHER**, that the Authorized Representatives of Big Rivers be, and they hereby are, and each of them hereby is authorized and directed for, and on behalf of Big Rivers, to execute all such agreements, documents, instruments certificates, and other papers, and to do all such acts and things as may be necessary or desirable to complete the transactions authorized hereby, including, without limitation, the prepayment of a portion of the RUS Series A Note, the negotiation with the Department of Agriculture, Rural Utilities Services (“RUS”) of the reduction of the maximum outstanding minimum balances of the RUS Series A Note, the securing of the First Mortgage Notes, Series 2012A under the Indenture, including, without limitation, the obtaining of all approvals or consents from CoBank, RUS and the Kentucky Public Service Commission, the entry into the CoBank Revolving Credit Facility with CoBank, the entry into the CoBank Secured Credit Agreement with CoBank, the entry into the Second Supplemental Indenture with the Trustee, the issuance and delivery of the unsecured note under the CoBank Revolving Credit Facility, the issuance and delivery of the First Mortgage Notes, Series 2012A under the Indenture, the entry into arrangements with RUS relating to the reduction of maximum permitted outstanding balances of the RUS Series A Note, and the carrying out of the terms of the various agreements and documents authorized or approved in the foregoing resolutions, and to otherwise carry out the purposes and intent of the foregoing resolutions; and any such acts or things done or accomplished prior to the date hereof in furtherance of the foregoing be, and they hereby are, in all respects approved, ratified and confirmed.

**EXCERPT FROM THE MINUTES OF REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
OF BIG RIVERS ELECTRIC CORPORATION  
HELD IN HENDERSON, KENTUCKY, ON  
MAY 18, 2012**

**RESOLVED, FURTHER,** that the foregoing resolutions shall take effect immediately.  
The motion was seconded and unanimously approved.

I, Paula Mitchell, Executive Secretary of the Board of Directors of Big Rivers Electric Corporation, hereby certify that the above is a true and correct excerpt from the minutes of the Regular Meeting of the Board of Directors of said Corporation held on 5-18-12.

Paula Mitchell

**EXHIBIT A**

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**\$50,000,000**

**SENIOR UNSECURED REVOLVING CREDIT FACILITY**

**AMONG**

**BIG RIVERS ELECTRIC CORPORATION**  
AS BORROWER,

THE SEVERAL LENDERS FROM TIME TO TIME PARTIES  
HERETO,

AND

**COBANK, ACB,**  
AS ADMINISTRATIVE AGENT, ISSUING LENDER, LEAD ARRANGER AND BOOK  
RUNNER,

**DATED AS OF \_\_\_\_\_, 2012**

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**EXHIBITS**

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EXHIBIT C	Form of Notice of Borrowing
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EXHIBIT E-1	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
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EXHIBIT E-4	Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
EXHIBIT F	Form of Secretary’s Certificate
EXHIBIT G	Form of Solvency Certificate
EXHIBIT H	Form of Compliance Certificate
EXHIBIT I	Form of Assignment and Assumption
EXHIBIT J	Form of Note



## SCHEDULES

[Schedule 4.01(G)	Litigation]
Schedule 5.03	Consents
Schedule 5.10	Liens
Schedule 5.13	Subsidiaries, Members and Affiliates
[Schedule 5.15	Environmental Matters]
Schedule 5.17	Member Wholesale Power Contracts and Material Direct Serve Contracts
Schedule 5.20	Indebtedness
Schedule 7.03	Transactions With Affiliates
Schedule 7.11	Investments
Schedule 12.06(F)	Voting Participants

## CREDIT AGREEMENT

This Credit Agreement (this "Agreement") dated as of \_\_\_\_\_, 2012, is entered into by and among Big Rivers Electric Corporation, a Kentucky cooperative corporation (the "Borrower"), the several financial institutions or entities from time to time parties to this Agreement (the "Lenders") and CoBank, ACB, a federally chartered instrumentality of the United States ("CoBank") as administrative agent (in such capacity, the "Administrative Agent"), Issuing Lender, lead arranger, and book runner.

### BACKGROUND

From time to time, the Lenders may make loans or the Issuing Lender may issue letters of credit for the account of the Borrower. In order to facilitate the making of such loans and the issuance of such letters of credit, the parties are entering into this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1 DEFINITIONS AND ACCOUNTING TERMS

**SECTION 1.01 Definitions.** Capitalized terms used in this Agreement and defined in Exhibit A hereto shall have the meanings set forth in that Exhibit.

**SECTION 1.02 Rules of Interpretation.** The rules of interpretation set forth in Exhibit A shall apply to this Agreement.

### ARTICLE 2 THE COMMITMENTS

#### SECTION 2.01 The Loans.

(A) Subject to the terms and conditions hereof, the Lenders agree to make revolving credit loans (the "Loans") in Dollars to the Borrower from time to time during the Commitment Period, provided, that, after giving effect to any such Loan, (a) the sum, at any time, of the Outstanding Amount of all Loans, plus the Outstanding Amount of L/C Obligations, shall not exceed the Commitments and (b) with respect to each individual Lender, the Lender's Commitment Percentage of the Outstanding Amount of the Loans, plus such Lender's Commitment Percentage of the L/C Obligations, shall not exceed such Lender's Commitment Percentage of the Commitments. The Loans may from time to time be LIBOR Loans or Base Rate Loans, as determined in accordance with Sections 2.01(C) and 2.08.

(B) Subject to the mandatory prepayment provisions in Section 2.07 and Section 10.01, the Borrower shall repay each Loan made to it on the Commitment Termination Date.

(C) The Borrower may borrow under the Commitments during the Commitment Period on any Banking Day; provided that the Borrower shall give the

Administrative Agent an irrevocable Notice of Borrowing (which must be received by the Administrative Agent (i) in the case of LIBOR Loans, prior to 10:00 AM, Denver, Colorado time, at least three (3) Banking Days prior to the requested Borrowing Date, or (ii) in the case of Base Rate Loans, prior to 11:00 AM Denver, Colorado time, on the Banking Day prior to the requested Borrowing Date), specifying (a) the amount and Type of Loans to be borrowed, (b) the requested Borrowing Date, and (c) in the case of LIBOR Loans, the respective amounts of each such Type of Loan and the respective lengths of the initial Interest Period therefor. Any Loans made on the Closing Date shall be Base Rate Loans unless the Administrative Agent shall have received an appropriate funding indemnity letter executed by the Borrower and reasonably acceptable to the Administrative Agent at least three (3) Banking Days prior to the Closing Date. Each borrowing by the Borrower under the Commitments shall be in an amount equal to \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or, if the then available Commitments is less than \$1,000,000, such lesser amount, provided, that any borrowing for such lesser amount must be a Base Rate Loan).

(D) Upon receipt of any Notice of Borrowing from the Borrower, the Administrative Agent shall promptly notify each Lender thereof. Each Lender will make its Commitment Percentage of the requested Loans available to the Administrative Agent, in immediately available funds, for the account of the Borrower at the Funding Office prior to 11:00 AM Denver, Colorado time, on the Borrowing Date requested by the Borrower in the Notice of Borrowing. The Loans requested in such Notice of Borrowing will then be made available (after the Administrative Agent has received the same from each Lender as provided in the preceding sentence) to the Borrower by the Administrative Agent by no later than 1:00 PM Denver, Colorado time, in each case by crediting the Borrower's account (Account No. 00050949) at CoBank, ACB (ABA Routing No. 307088754), or to such other account as the Borrower shall direct the Administrative Agent in writing, by wire transfer of immediately available funds. If no election as to the Type of a Loan is specified, then the requested Loan shall be a Base Rate Loan bearing interest at the Base Rate plus the Applicable Margin. If no Interest Period is specified with respect to any requested LIBOR Loan, the Borrower shall be deemed to have selected an Interest Period of one month's duration.

**SECTION 2.02 Method of Payment.** The Borrower shall make all payments to the Administrative Agent under this Agreement and all other Loan Documents by wire transfer of immediately available funds, or, if specified by separate agreement between the Borrower and the Administrative Agent, by automated clearing house or other similar cash handling processes. Wire transfers shall be made to the following account (or to such other account as the Administrative Agent may direct by notice):

CoBank, ACB, as Administrative Agent  
Bank Location: Englewood, Colorado  
ABA Routing No. 307088754  
Short Name: CoBank  
Beneficiary: Big Rivers Electric Corporation  
Account Number: 00050949  
Attention: agencybank@cobank.com

Checks shall be mailed to CoBank, Department 167, Denver, Colorado 80291-0167 or to such other place as the Administrative Agent may direct by notice (the “Funding Office”).

**SECTION 2.03 Repayment of Loans.**

(A) The Borrower hereby unconditionally promises to pay to the Administrative Agent the then unpaid principal amount of each Loan made to the Borrower outstanding on the Commitment Termination Date (or on such earlier date on which the Loans become due and payable pursuant to Article 10). The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Loans made to the Borrower from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.09.

(B) The Administrative Agent, on behalf of the Borrower, shall maintain the Register in accordance with Section 12.06(C), in which shall be recorded (i) the amount of each Loan made hereunder, any Note evidencing such Loan, the Type of each Loan and each Interest Period applicable thereto, (ii) the amount of any principal, reimbursement obligations, interest and fees, as applicable, due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower.

(C) The entries made in the Register shall, to the extent permitted by applicable Requirements of Law, be presumed correct absent manifest error as to the existence and amounts of the Obligations of the Borrower therein recorded; provided, that the failure of the Administrative Agent to maintain the Register, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) any Loan in accordance with the terms of this Agreement.

(D) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff, deduction or counterclaim to the extent permitted by applicable Requirements of Law and shall be made prior to 12:00 PM Denver, Colorado time, on the due date thereof to the Administrative Agent at the Funding Office, and funds received after such time shall be credited on the next Banking Day. If any payment hereunder (other than payments on the LIBOR Loans) becomes due and payable on a day other than a Banking Day, such payment shall be extended to the next succeeding Banking Day. If any payment on a LIBOR Loan becomes due and payable on a day other than a Banking Day, the maturity thereof shall be extended to the next succeeding Banking Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Banking Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension. Credit for any payment made by check will not be given until the later of the next Banking Day after receipt of the check or the day on which the Lender receives immediately available funds.

**SECTION 2.04 Letters of Credit.**

(A) **Usage and Availability.**

(1) Subject to the terms and conditions set forth herein, the Borrower may utilize the Commitments from time to time during the L/C Availability Period to open irrevocable Letters of Credit for its account; provided, (a) the Outstanding Amount of all L/C Obligations plus the Outstanding Amount of all Loans shall not exceed the Commitments and (b) the Outstanding Amount of all L/C Obligations shall not exceed the L/C Sublimit. Each Letter of Credit will be issued within three (3) Banking Days after receipt of a duly completed and executed copy of the Letter of Credit Application and while outstanding shall reduce the amount available under the Commitments by the maximum amount capable of being drawn thereunder. Consistent with the above, (x) the Issuing Lender agrees in reliance upon the agreements of the Lenders set forth in this Section 2.04, (i) from time to time during the Commitment Period until the Letter of Credit Expiration Date, to issue Letters of Credit in Dollars for the account of the Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with clause (2) below and (ii) to honor drawings under the Letters of Credit; and (y) the Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower and any drawings thereunder. Each Letter of Credit: (aa) must be in form and content acceptable to the Issuing Lender, (bb) must expire no later than the Letter of Credit Expiration Date and (cc) is deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth herein. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the L/C Availability Period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(2) The Issuing Lender shall not issue any Letter of Credit if: (a) subject to Section 2.04(B)(3), the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, or (b) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date.

(3) The Issuing Lender shall not be under any obligation to issue any Letter of Credit if: (a) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing such Letter of Credit, or any Requirement of Law applicable to the Issuing Lender or any request or directive (whether or not having the force of Requirement of Law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to such Letter of Credit any restrictions, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it; (b) the issuance of such Letter of Credit would violate one or more policies of the Issuing Lender applicable to borrowers generally; (c) except as otherwise agreed by the Administrative Agent and the Issuing Lender, such Letter of Credit is in an initial stated amount of less than \$100,000; (d) such Letter of Credit is to be denominated in a currency other than Dollars; or (e) a default of any Lender's obligations to fund under Section 2.04(C) exists or any Lender is at such time a Defaulting Lender hereunder, unless the Issuing Lender has entered into satisfactory arrangements with the Borrower or such Lender to eliminate the Issuing Lender's risk with respect to such Lender or

the Fronting Exposure of the Defaulting Lender has been reallocated pursuant to Section 3.07(A)(4).

(4) The Issuing Lender shall not amend any Letter of Credit if the Issuing Lender would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(5) The Issuing Lender shall be under no obligation to amend any Letter of Credit if (a) the Issuing Lender would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (b) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(6) The Issuing Lender shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and any Issuer Documents associated therewith, and the Issuing Lender shall have all of the benefits and immunities (a) provided to the Administrative Agent in Article 11 with respect to any actions taken or omissions suffered by the Issuing Lender in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article 11 included the Issuing Lender with respect to such acts or omission, and (b) as additionally provided herein with respect to the Issuing Lender.

**(B) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.**

(1) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the Issuing Lender (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the Issuing Lender and the Administrative Agent not later than 11:00 AM Denver, Colorado time, at least three (3) Banking Days (or such later date and time as the Administrative Agent and the Issuing Lender may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Issuing Lender: (a) the proposed issuance date of the requested Letter of Credit (which shall be a Banking Day); (b) the amount thereof; (c) the expiry date thereof; (d) the name and address of the beneficiary thereof; (e) the documents to be presented by such beneficiary in case of any drawing thereunder; (f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (g) the purpose and nature of the requested Letter of Credit; and (h) such other matters as the Issuing Lender may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Issuing Lender (i) the Letter of Credit to be amended; (ii) the proposed date of amendment thereof (which shall be a Banking Day); (iii) the nature of the proposed amendment; and (iv) such other matters as the Issuing Lender may require. Additionally, the Borrower shall furnish to the Issuing Lender and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the Issuing Lender or the Administrative Agent may require.

(2) Promptly after receipt of any Letter of Credit Application, the Issuing Lender will confirm with the Administrative Agent (in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the Issuing Lender will provide the Administrative Agent with a copy thereof. Unless the Issuing Lender has received written notice from any Lender, the Administrative Agent or the Borrower, at least one (1) Banking Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Section 4.02 shall not be satisfied, then, subject to the terms and conditions hereof, the Issuing Lender shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the Issuing Lender's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Issuing Lender a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Commitment Percentage times the amount of such Letter of Credit.

(3) If the Borrower so requests in any applicable Letter of Credit Application, the Issuing Lender may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the Issuing Lender to prevent any such extension at least once in each twelve (12) month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Lender, the Borrower shall not be required to make a specific request to the Issuing Lender for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Issuing Lender to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, that the Issuing Lender shall not permit any such extension if (A) the Issuing Lender has determined that it would not be permitted at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (2) or (3) of Section 2.04(A) or otherwise), or (B) it has received notice (in writing) on or before the day that is seven (7) Banking Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each case directing the Issuing Lender not to permit such extension.

(4) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Issuing Lender will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

**(C) Drawings and Reimbursements; Funding of Participations.**

(1) Upon receipt from the beneficiary of any Letter of Credit of any notice of drawing under such Letter of Credit, the Issuing Lender shall notify the Borrower and the Administrative Agent thereof. Not later than 10:00 AM Denver, Colorado time, on the date

of any payment by the Issuing Lender under a Letter of Credit (each such date, an “Honor Date”), the Borrower shall reimburse the Issuing Lender through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the Issuing Lender by such time, the Administrative Agent shall promptly notify each Lender on the Honor Date, the amount of the unreimbursed drawing (the “Unreimbursed Amount”), and the amount of such Lender’s Commitment Percentage thereof. In such event, the Borrower shall be deemed to have requested a Loan bearing interest at the Base Rate plus the Applicable Margin to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.01, but subject to the conditions set forth in Section 4.02 (other than in clause (d) of Section 4.02) and provided that, after giving effect to such borrowing, the Outstanding Amount of all Loans and L/C Obligations shall not exceed the Commitments. Any notice given by the Issuing Lender or the Administrative Agent pursuant to this Section 2.04(C)(1) must be given in writing.

(2) Each Lender shall upon any notice pursuant to Section 2.04(C)(1) make funds available to the Administrative Agent for the account of the Issuing Lender at the Funding Office in an amount equal to its Commitment Percentage of the Unreimbursed Amount not later than 2:00 PM Denver, Colorado time, on the Banking Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.04(C)(3), each Lender that so makes funds available shall be deemed to have made a Loan bearing interest at the Base Rate plus the Applicable Margin to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Issuing Lender.

(3) With respect to any Unreimbursed Amount that is not fully refinanced by a Loan bearing interest at the Base Rate plus the Applicable Margin because the conditions set forth in Section 4.02 (other than in clause (d) of Section 4.02) cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the Issuing Lender an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender’s payment to the Administrative Agent for the account of the Issuing Lender pursuant to Section 2.04(C)(2) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.04.

(4) Until each Lender funds its Loan or L/C Advance pursuant to this Section 2.04(C) to reimburse the Issuing Lender for any amount drawn under any Letter of Credit, interest in respect of such Lender’s Commitment Percentage of such amount shall be solely for the account of the Issuing Lender.

(5) Each Lender’s obligation to make Loans or L/C Advances to reimburse the Issuing Lender for amounts drawn under Letters of Credit, as contemplated by this Section 2.04(C), shall be absolute and unconditional and shall not be affected by any circumstance, including (a) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever; (b) the occurrence or continuance of a Default or Event of Default, or (c) any other occurrence, event or condition, whether or not similar to any of the foregoing. No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to



reimburse the Issuing Lender for the amount of any payment made by the Issuing Lender under any Letter of Credit, together with interest as provided herein.

(6) If any Lender fails to make available to the Administrative Agent for the account of the Issuing Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(C) by the time specified in Section 2.04(C)(2), the Issuing Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Issuing Lender at a rate per annum equal to the greater of the Federal Funds Effective Rate and a rate determined by the Issuing Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Issuing Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's portion included in the relevant borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the Issuing Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (6) shall be conclusive absent manifest error.

**(D) Repayment of Participations.**

(1) At any time after the Issuing Lender has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.04(C), if the Administrative Agent receives for the account of the Issuing Lender any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), then, except as otherwise provided in Section 2.04(C)(4), the Administrative Agent will distribute to such Lender its Commitment Percentage thereof in the same funds as those received by the Administrative Agent.

(2) If any payment received by the Administrative Agent for the account of the Issuing Lender pursuant to Section 2.04(C)(1) is required to be returned under any circumstance (including pursuant to any settlement entered into by the Issuing Lender in its discretion), each Lender shall pay to the Administrative Agent for the account of the Issuing Lender its Commitment Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Loans and the termination of this Agreement.

(3) Upon the prepayment of Commitments of any Lender ("Affected Lender") pursuant to Section 3.07, each remaining Lender shall be deemed to have acquired, without recourse or warranty, from such Affected Lender an undivided interest and participation in any Letter of Credit and the related L/C Obligations in an amount equal to each such remaining Lender's pro rata share of such Letter of Credit and L/C Obligations, assuming for the calculation of such pro rata share that the Affected Lender's Commitments equal zero.

(E) **Obligations Absolute.** The obligation of the Borrower to reimburse the Issuing Lender for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(1) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;

(2) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(3) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(4) any payment by the Issuing Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Issuing Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under the Bankruptcy Code or any similar Requirement of Law; or

(5) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the Issuing Lender. The Borrower shall be conclusively deemed to have waived any such claim against the Issuing Lender and its correspondents unless such notice is given as aforesaid.

(F) **Role of Issuing Lender.** Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the Issuing Lender shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Lender, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Issuing Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the

Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee by Requirement of Law or under any other agreement. None of the Issuing Lender, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Issuing Lender shall be liable or responsible for any of the matters described in clauses (1) through (5) of Section 2.04(E); provided, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the Issuing Lender, and the Issuing Lender may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the Issuing Lender's willful misconduct or gross negligence as determined by a final, nonappealable judgment of a court of competent jurisdiction or the Issuing Lender's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Issuing Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(G) **Letter of Credit Fees.** The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Commitment Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Margin for LIBOR Loans times the average daily amount of each Letter of Credit issued and outstanding during the applicable quarter. Letter of Credit Fees shall be (a) due and payable in arrears on the last Banking Day of each March, June, September, and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand, (b) computed on the basis of the actual number of days elapsed in a 360-day year, and (c) shared proportionately by the Lenders based on each Commitment Percentage. If there is any change in the Applicable Margin for LIBOR Loans during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Margin for LIBOR Loans separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Applicable Margin for LIBOR Loans plus an annual rate of 2.0%.

(H) **Fronting Fee.** The Borrower shall pay directly to the Issuing Lender for its own account a fronting fee (the "Fronting Fee") with respect to each Letter of Credit, in an amount equal to 0.125% of the aggregate stated amount of each Letter of Credit. Each Fronting Fee shall be payable on the issuance date of the applicable Letter of Credit. In addition, the Borrower shall pay directly to the Issuing Lender for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the

Issuing Lender relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(I) **Conflict With Issuer Documents.** In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(J) **Applicability of ISP.** Unless otherwise expressly agreed by the Issuing Lender and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

**SECTION 2.05 Termination or Reduction of Commitments.** The Borrower shall have the right, upon ten (10) Banking Days' prior written notice to the Administrative Agent, to terminate the Commitments or, from time to time, to reduce the amount of the Commitments; provided that no such termination or reduction of the Commitments shall be permitted if, after giving effect thereto and to any prepayments of the Loans, or Cash Collateralization of L/C Obligations, made on the effective date thereof, (a) the Outstanding Amount of all Loans plus the Outstanding Amount of all L/C Obligations would exceed the Commitments or (b) the Outstanding Amount of all L/C Obligations would exceed the L/C Sublimit. Any partial reduction of the Commitments shall be in an amount equal to \$10,000,000, or a whole multiple of \$5,000,000 in excess thereof, and shall permanently reduce the Commitments.

**SECTION 2.06 Voluntary Prepayments.** The Borrower may at any time and from time to time prepay any Loans in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 11:00 AM Denver, Colorado time three (3) Banking Days prior thereto in the case of LIBOR Loans, and no later than 11:00 AM Denver, Colorado time one (1) Banking Day prior thereto in the case of Base Rate Loans, which notice shall specify (i) which Loans will be prepaid, (ii) the date (which shall be a Banking Day) and amount of prepayment, and (iii) whether the prepayment is of LIBOR Loans or Base Rate Loans; provided that if a LIBOR Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 3.03. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein together with (except in the case of Loans that are Base Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Loans shall be in an aggregate principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof and shall be subject to the provisions of Section 3.03. Any payments of Loans made pursuant to this Section 2.06 shall not reduce the Commitments and may be reborrowed in accordance with the terms and conditions hereof.

**SECTION 2.07 Mandatory Prepayments; Change of Control.**

(A) The Borrower shall (i) immediately prepay all outstanding Loans in full and Cash Collateralize all outstanding L/C Obligations upon a Change of Control, and (ii) from time to time prepay the Loans and/or Cash Collateralize the L/C Obligations to the extent necessary so that the Outstanding Amount of all Loans and L/C Obligations shall not at any time exceed the Commitments or L/C Sublimit, as applicable.

(B) Any payments made under this Section 2.07 shall (i) be applied first ratably to any L/C Borrowing and second to any Loans, and (ii) within the parameters of the applications set forth in clause (i), be applied first to Base Rate Loans and then to LIBOR Loans in direct order of Interest Period maturities.

(C) Mandatory prepayments of LIBOR Loans made pursuant to this Section 2.07 shall be subject to the provisions of Section 3.03.

(D) In addition to the foregoing, all outstanding Commitments shall be immediately and automatically cancelled upon a prepayment pursuant to Section 2.07(A)(i).

#### **SECTION 2.08 Conversion and Continuation Options.**

(A) The Borrower may elect from time to time, by giving the Administrative Agent irrevocable notice in the form of Exhibit D no later than 11:00 AM Denver, Colorado time on the third (3<sup>rd</sup>) Banking Day prior thereto to convert: (i) LIBOR Loans made to the Borrower to Base Rate Loans, and (ii) Base Rate Loans made to the Borrower to LIBOR Loans; provided, that no Base Rate Loan may be converted into a LIBOR Loan when any Default or Event of Default has occurred and is continuing. Any notice to convert a Base Rate Loan to a LIBOR Loan shall specify the length of the initial Interest Period therefor.

(B) Any LIBOR Loan may be continued as such by the Borrower giving irrevocable notice to the Administrative Agent in the form of Exhibit D, in accordance with the applicable provisions of the term "Interest Period" set forth in Exhibit A and no later than 11:00 AM Denver, Colorado time on the third (3<sup>rd</sup>) Banking Day preceding the proposed continuation date; provided, that (i) if any LIBOR Loan is so continued on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 3.03, (ii) no LIBOR Loan may be continued as such when any Default or Event of Default has occurred and is continuing, and (iii) if the Borrower shall fail to give any required notice as described above in this paragraph for any LIBOR Loan on or prior to the third Banking Day prior to the last day of the Interest Period then applicable thereto, such LIBOR Loan shall be automatically converted to a Base Rate Loan on the last day of such then expiring Interest Period.

(C) Notwithstanding anything to the contrary in this Agreement, (i) all borrowings, conversions, continuations and optional prepayments of LIBOR Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that no more than ten (10) LIBOR Loan Interest Periods shall be outstanding at any one time and (ii) no Loan may be converted into, or continued as, a LIBOR Loan if the balance of such Loan at the time of such conversion or continuation is less than \$1,000,000.

#### **SECTION 2.09 Interest Rates and Payment Dates.**

(A) Each LIBOR Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the LIBOR Rate determined for such day plus the Applicable Margin.

(B) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate plus the Applicable Margin.

(C) Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, interest shall accrue at a rate per annum on (i) each Loan, at the interest rate otherwise applicable thereto (including the Applicable Margin) plus two percent (2%) and (ii) all other amounts due and payable pursuant to this Agreement (other than Letter of Credit Fees which are addressed in Section 2.04(G)), at a rate equal to the Base Rate plus the Applicable Margin plus two percent (2%) (the “Default Rate”). Upon the expiration of any Interest Period in effect at the time any such increase in interest rate is effective, such LIBOR Loans shall become Base Rate Loans bearing interest pursuant to clause (i) of this Section 2.09(C).

(D) Interest shall be payable by the Borrower in arrears on each Interest Payment Date; provided that interest accruing pursuant to Section 2.09(C) shall be payable from time to time on demand.

**SECTION 2.10 Computation of Interest and Fees.** Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans based on the Prime Rate, the rate of interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. Any change in the interest rate on a Loan resulting from a change in the Base Rate shall become effective as of the Administrative Agent’s opening of business on the Banking Day on which such change becomes effective.

**SECTION 2.11 Fees.**

(A) Facility Fee. The Borrower agrees to pay to the Administrative Agent for the benefit of the Lenders a facility fee equal to the amount of Commitments multiplied by the Applicable Margin for the Facility Fee (the “Facility Fee”) for the period from and including the Closing Date to the last day of the Commitment Period, calculated on the basis of the actual number of days elapsed in a 360-day year; payable quarterly in arrears on the last Banking Day of each March, June, September and December during the Commitment Period, on the Commitment Termination Date on any date on which the Commitments are terminated pursuant to Section 2.05.

(B) Other Fees. The Borrower agrees to pay such other fees as provided in the Fee Letter.

(C) Letter of Credit Fees. The Borrower agrees to pay the Letter of Credit Fee set forth in Section 2.04(G) and the Fronting Fee set forth in Section 2.04(H).

**SECTION 2.12 CoBank Security.** Each party hereto acknowledges that CoBank has a statutory first lien pursuant to the Farm Credit Act of 1971 (as amended from time to time) on all CoBank Equities that the Borrower may now own or hereafter acquire, which statutory lien shall be for CoBank's sole and exclusive benefit. The CoBank Equities shall not constitute security for the Obligations due to any other Lender. To the extent that any of the Loan Documents create a Lien on the CoBank Equities or on patronage accrued by CoBank for the account of the Borrower (including, in each case, proceeds thereof except to the extent any such proceeds not themselves constituting CoBank Equities are a part of the Trust Estate), such Lien shall be for CoBank's sole and exclusive benefit and shall not be subject to pro rata sharing hereunder. Neither the CoBank Equities nor any accrued patronage shall be offset against the Obligations except that, in the event of an Event of Default, CoBank may elect in its sole discretion to apply the cash portion of any patronage distribution or retirement of equity to amounts due under this Agreement. The Borrower acknowledges that any corresponding tax liability associated with such application is the sole responsibility of the Borrower. CoBank shall have no obligation to retire the CoBank Equities upon any Event of Default, Default or any other default by the Borrower or at any other time, either for application to the Obligations or otherwise.

**SECTION 2.13 Pro Rata Treatment and Payments.**

(A) Each borrowing by the Borrower from the Lenders hereunder, subject to Section 3.07, each payment by the Borrower on account of any Facility Fee or Letter of Credit Fees and, subject to Section 3.06, any reduction of the Commitments shall be made pro rata according to the Commitment Percentage of the Lenders.

(B) Other than payments made pursuant to Section 2.13(C), each payment (including prepayments) to be made by the Borrower on account of principal of and interest on the Loans shall be made pro rata according to the respective Outstanding Amounts of the Loans then held by the Lenders.

(C) Notwithstanding anything to the contrary set forth in this Agreement, unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption make available to the Borrower a corresponding amount; provided, that the Administrative Agent shall not be obligated to provide funds to the Borrower that are not provided to the Administrative Agent in accordance with Section 2.01(D). If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent on demand, such amount with interest thereon, at a rate equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be presumptively correct in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three (3) Banking Days

after such Borrowing Date, the Administrative Agent shall give notice of such fact to the Borrower and the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to the Base Rate Loans, on demand, from the Borrower. Nothing herein shall be deemed to limit the rights of the Administrative Agent or the Borrower against any Defaulting Lender.

(D) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the relevant Lenders their respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three (3) Banking Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each relevant Lender to which any amount was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

(E) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Loan set forth in Sections 2.01 or 4.02 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest, without prejudice to such Lender's rights against the Borrower under Section 3.03

(F) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan.

**SECTION 2.14 Sharing of Payments.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and



(ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in L/C Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. Notwithstanding anything in this Section 2.14 to the contrary, CoBank may exercise its rights against any CoBank Equities held by the Borrower without complying with this Section 2.14.

### **ARTICLE 3 ADDITIONAL PROVISIONS REGARDING LOANS**

#### **SECTION 3.01 LIBOR Loan Provisions**

(A) Increased Costs Generally. If any Change in Law shall:

(1) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate) or any Issuing Lender;

(2) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(3) impose on any Lender or any Issuing Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Lender or other Recipient, the Borrower will pay to such Lender, Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such

Lender, Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(B) Capital Requirements. If any Lender or Issuing Lender determines that any Change in Law affecting such Lender or Issuing Lender or any lending office of such Lender or such Lender's or Issuing Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or Issuing Lender's capital or on the capital of such Lender's or Issuing Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by any Issuing Lender, to a level below that which such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Lender's policies and the policies of such Lender's or Issuing Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Lender or such Lender's or Issuing Lender's holding company for any such reduction suffered.

(C) Certificates for Reimbursement. A certificate of a Lender or Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or Issuing Lender or its holding company, as the case may be, as specified in paragraph (A) or (B) of this Section 3.01 and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or Issuing Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(D) Delay in Requests. Failure or delay on the part of any Lender or Issuing Lender to demand compensation pursuant to this Section 3.01 shall not constitute a waiver of such Lender's or Issuing Lender's right to demand such compensation; provided, that, the Borrower shall not be required to compensate a Lender or Issuing Lender pursuant to this Section 3.01 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or Issuing Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or Issuing Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

(E) Unavailability. If, prior to the first day of any Interest Period for any LIBOR Loan, the Administrative Agent shall have determined (which determination shall be presumed correct absent manifest error), that (i) by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the LIBOR Rate for such Interest Period, or (ii) by reason of any changes arising after the Closing Date, the LIBOR Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to the Lenders of making or maintaining their affected loans during such Interest Period, the Administrative Agent shall, as soon as practicable thereafter, give notice of such determination to the Borrower. In the event of any such determination under clauses (i) or (ii) above, until the Administrative Agent shall have advised the Borrower that the circumstances giving rise to such notice no longer exist, (a) any request by the Borrower for LIBOR Loans shall be deemed to be a

request for a Base Rate Loan, (b) any request by the Borrower for conversion into or continuation of LIBOR Loans shall be deemed to be a request for conversion into or continuation of Base Rate Loans and (c) any Loans that were to be converted or continued as LIBOR Loans on the first day of an Interest Period shall be converted to or continued as Base Rate Loans. Until such notice has been withdrawn by the Administrative Agent, no further LIBOR Loans shall be made or continued as such, nor shall the Borrower have the right to convert any Base Rate Loans to LIBOR Loans.

### **SECTION 3.02 Illegality.**

Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof any Change in Law shall make it unlawful for any Lender to make or maintain its Loans, then such Lender shall promptly notify the Borrower thereof (with a copy to the Administrative Agent), following which (a) such Lender's Commitment shall be suspended until such time as such Lender may again make and maintain its Loans hereunder and (b) if such law shall so mandate, such Lender's Loans shall be prepaid by the Borrower, together with accrued and unpaid interest thereof and all other amounts payable by the Borrower under this Agreement (including, without limitation, in the case of LIBOR Loans, amounts owing pursuant to Section 3.03), on or before such date as shall be mandated by such law.

### **SECTION 3.03 Compensation.**

The Borrower promises to indemnify the Administrative Agent and the Lenders and to hold the Administrative Agent and the Lenders harmless from any loss or expense which the Administrative Agent or the Lenders may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of LIBOR Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of a LIBOR Loan after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, (c) the making of a prepayment of LIBOR Loans on a day which is not the last day of an Interest Period with respect thereto, (d) the payment, continuation or conversion of a LIBOR Loan on a day which is not the last day of the Interest Period applicable thereto or the failure to repay a LIBOR Loan when required by the terms of this Agreement and (e) receiving payments pursuant to Section 3.06(A)(2) with respect to any LIBOR Loans assigned on a day which is not the last day of an Interest Period, as applicable, with respect thereto. Such indemnification may include an amount equal to (i) an amount of interest calculated at the LIBOR Rate plus the Applicable Margin which would have accrued on the amount in question, for the period from the date of such prepayment or of such failure to borrow, convert, continue or repay to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such LIBOR Loans provided for herein minus (ii) the amount of interest (as reasonably determined by the Administrative Agent) which would have accrued to the Lenders on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank market. The Borrower shall pay to the Administrative Agent for the benefit of the Lenders such compensation as may be due under this Section 3.03 within ten (10) days after receipt of a certificate of the Administrative Agent claiming such compensation and identifying with reasonable specificity the basis for and amount thereof. Each determination by

Administrative Agent of amounts owing under this Section 3.03 shall, absent manifest error, be conclusive and binding on the parties hereto. This Section 3.03 shall survive the termination of this Agreement and the other Loan Documents and the payment of the Loans and all other amounts payable hereunder.

#### **SECTION 3.04 Taxes.**

(A) Issuing Lender. For purposes of this Section 3.04, the term “Lender” includes any Issuing Lender.

(B) Payment Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.04) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(C) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(D) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.04) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(E) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 12.06 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally

imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (E).

(F) Evidence of Payments. As soon as practicable and in any event within ten (10) Banking Days after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 3.04, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment if available, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(G) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 3.04(G)(ii)(a), (ii)(b) and (ii)(d) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower,

(a) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(b) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable;

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty:

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN;

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(d) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s

obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(H) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.04 (including by the payment of additional amounts pursuant to this Section 3.04), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (H) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (H), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (H) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(I) Survival. Each party's obligations under this Section 3.04 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**SECTION 3.05 Change of Lending Office**. If any Lender requests compensation under Sections 3.01, 3.02 or 3.03, or requires the Borrower to pay additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.04, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01, 3.02, 3.03 or Section 3.04, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

### **SECTION 3.06 Replacement of Lender or Reduction of Commitments.**

(A) If any Lender requests compensation under Sections 3.01, 3.02 or 3.03, or if the Borrower is required to pay additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.04 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.05 (each such Lender a “Specified Lender”), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, so long as no Default or Event of Default shall have occurred and be continuing, at its sole expense and effort, upon notice to such Lender and the Administrative Agent require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if such Lender accepts such assignment); provided, that:

(1) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.06;

(2) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in L/C Borrowings, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(3) in the case of any such assignment resulting from a claim for compensation under Sections 3.02 or 3.03 or payments required to be made pursuant to Section 3.04, such assignment will result in a reduction in such compensation or payments thereafter;

(4) such assignment does not conflict with applicable law; and

(5) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

(B) Unless a Default or Event of Default shall have occurred and be continuing, the Borrower may terminate in full the Commitments of any Specified Lender or Defaulting Lender upon not less than three (3) Banking Days’ prior notice to the Administrative Agent (which will promptly notify the Lenders thereof), and in such event the provisions of Section 3.07(A)(2) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided, that, such termination will not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lenders or any Lenders may have against such Defaulting Lender. After giving effect to any Commitment termination pursuant to this Section 3.06(B), the Outstanding Amounts of the Loans and Fronting Exposure may not be held pro rata in accordance with the new Commitment. In order to remedy the foregoing, on the effective date of each Commitment termination, the Lenders,



including the Specified Lender or Defaulting Lender (with the Commitment of such Specified Lender or Defaulting Lender for purposes of such reallocation deemed to be zero), shall reallocate the Outstanding Amounts of the Loans and Fronting Exposure owed to them among themselves so that, after giving effect thereto, the Loans will be held by the remaining Lenders on a pro rata basis in accordance with their respective Commitment Percentages after giving effect to such Commitment termination, provided that, if a reallocation of the Outstanding Amount of the Loans and Fronting Exposure is required, such reallocation does not cause any individual Lender's Commitment Percentage of the Outstanding Amount of the Loans and Fronting Exposure to exceed such Lender's Commitment.

(C) Borrower may not exercise its rights under this Section 3.06 if, as a result of a waiver by a Lender, the circumstances giving rise to the Borrower's rights under this Section 3.06 cease to apply or if a Default or Event of Default has occurred and is continuing.

### **SECTION 3.07 Defaulting Lenders.**

(A) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(1) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(2) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 10 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.07 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lender hereunder; *third*, to Cash Collateralize the Issuing Lender's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 3.08; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Lender's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 3.08; *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction

obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 (other than, with respect to any Loans issued pursuant to Section 2.04(C)(1), clause (d) of Section 4.02) were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Commitment Percentages without giving effect to Section 3.07(A)(4). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 3.07(A)(2) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(3) Certain Fees.

(a) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Commitment Percentage of the stated amount of Letters of Credit for which it has provided a L/C Advance or as to which such Commitment Percentage has been Cash Collateralized. No Defaulting Lender shall be entitled to receive any Facility Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) With respect to any Facility Fee or Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to Section 3.07(A)(3)(a), the Borrower shall (x) pay to the Administrative Agent for the account of each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that have been reallocated to such Non-Defaulting Lender pursuant to Section 3.07(A)(4), (y) pay to the Issuing Lender the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(4) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Commitment Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 (other than in clause (d) of Section 4.02) are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause such Non-Defaulting Lender's pro rata share of outstanding Loans plus its pro rata share

of outstanding L/C Obligations to exceed such Non-Defaulting Lender's Commitment Percentage. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(5) Cash Collateral. If the reallocation described in clause (4) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize the Issuing Lender's Fronting Exposure in accordance with the procedures set forth in Section 3.08.

(B) Defaulting Lender Cure. If the Borrower, the Administrative Agent and the Issuing Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with their respective Commitment Percentages (without giving effect to Section 3.07(A)(4)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(C) New Letters of Credit. So long as any Lender is a Defaulting Lender, the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

### **SECTION 3.08 Cash Collateral**

(A) Upon the request of the Administrative Agent or the Issuing Lender (i) if the Issuing Lender has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Commitment Termination Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent or the Issuing Lender, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all of the Fronting Exposure (after giving effect to Section 3.07(A)(4) and any Cash Collateral provided by the Defaulting Lender).

(B) All Cash Collateral shall be maintained in blocked, interest bearing deposit accounts at the Administrative Agent. The Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Lender and the Lenders, and agrees to

maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 3.08(C). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(C) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 3.08 or Sections 2.04, 2.07, 3.07 or Article 10 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(D) Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 12.06(G)) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of the Borrower shall not be released during the continuance of an Event of Default (and following application as provided in this Section 3.08 may be otherwise applied in accordance with Section 10.02), and (y) the Person providing Cash Collateral and the Issuing Lender may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

#### **ARTICLE 4 CONDITIONS PRECEDENT**

**SECTION 4.01 Conditions to Closing.** The obligation of the Administrative Agent and the Lenders to enter into this Agreement and to provide any Loan to be made on the Closing Date is subject to the satisfaction (or waiver) of the following conditions precedent and the conditions set forth in Section 4.02 (other than, to the extent that no Loans are to be provided on the Closing Date, clause (d) of Section 4.02):

(A) Loan Agreement. The Administrative Agent shall have received for delivery to each Lender (i) this Agreement, executed and delivered by the Borrower and (ii) any Note executed by the Borrower as required by the Lenders.

(B) Legal Opinions. The Administrative Agent shall have received for delivery to each Lender an executed legal opinion of (i) Sullivan, Mountjoy, Stainback & Miller,

P.S.C., counsel to the Borrower and (ii) Orrick, Herrington & Sutcliffe LLP, special New York counsel to the Borrower, both as reasonably satisfactory to the Administrative Agent.

(C) Secretary's Certificate. The Administrative Agent shall have received for delivery to each Lender a certificate of the Borrower, dated as of the Closing Date, substantially in the form of Exhibit F, with appropriate insertions and attachments.

(D) Closing Certificate. The Administrative Agent shall have received for delivery to each Lender a certificate signed by a Responsible Officer of the Borrower, dated as of the Closing Date certifying that (i) there has not occurred any Material Adverse Effect since December 31, 2011, (ii) all facts or information represented to the Administrative Agent are correct except as would not reasonably be expected to have a Material Adverse Effect, (iii) the representations and warranties in Article 5 are true and accurate in all material respects, except to the extent any representation or warranty is already qualified by materiality or Material Adverse Effect, in which case such representation or warranty is true and correct in all respects.

(E) Financial Statements. The Administrative Agent shall have received for delivery to each Lender and be satisfied with (i) the audited financial statements of the Borrower for fiscal year ending December 31, 2011 (ii) unaudited financial statements of the Borrower for each quarterly period ended (a) after December 31, 2011 and (b) at least 45 days prior to the Closing Date, and (iii) such other financial information, including without limitation financial projections as the Administrative Agent may reasonably request.

(F) Fees and Other Charges. The Administrative Agent, for its own benefit and the benefit of the Lenders, shall have received all fees or other charges provided for herein and in the Fee Letter to be paid on or prior to the Closing Date.

(G) Litigation. [Except as set forth in Schedule 4.01(G)]<sup>1</sup>, there shall be no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority pending that, singly or in the aggregate, materially impairs the transactions contemplated by this Agreement or that would reasonably be expected to have a Material Adverse Effect.

(H) Financial Obligation. The Borrower shall be in compliance with all agreements governing Material Indebtedness in all material respects.

(I) Member Wholesale Power Contracts; Material Direct Serve Contracts. The Administrative Agent shall have received true and correct copies of the Member Wholesale Power Contracts and Material Direct Serve Contracts listed on Schedule 5.17, including all material amendments, supplements or modifications thereto.

(J) Solvency Certificate. The Administrative Agent shall have received a solvency certificate signed by the chief financial officer or equivalent officer on behalf of the Borrower, substantially in the form of Exhibit G.

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<sup>1</sup> NTD: SUBJECT TO REVIEW OF LITIGATION DISCLOSURES TO BE PROVIDED BY BIG RIVERS.

(K) USA Patriot Act. The Administrative Agent shall have received for delivery to each Lender from the Borrower documentation and other information required by the Lenders' regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA Patriot Act.

(L) Material Adverse Effect. There shall not have occurred a Material Adverse Effect since December 31, 2011.

(M) Existing CoBank Facility. The Borrower shall have (prior to or concurrently with the Closing Date) (i) terminated and permanently cancelled all commitments under the Existing CoBank Facility, and (ii) repaid in full all principal, interest, fees and other amounts outstanding under the Existing CoBank Facility.

(N) Indenture. The Administrative Agent shall have received for delivery to each Lender a copy of the executed Indenture, including any amendments or supplements thereto.

(O) Investment Policy. The Administrative Agent shall have received for delivery to each Lender and be satisfied with a written investment policy approved by the Board of Directors of the Borrower.

(P) Approvals. The Borrower shall have obtained all approvals, authorizations, waivers or other documentation from any Governmental Authority necessary for the execution, delivery, performance or enforcement of any Loan Document.

**SECTION 4.02 Conditions to Each Credit Extension** . The agreement of the Lenders to make any Credit Extension hereunder is subject to the satisfaction of the following conditions precedent:

(A) Representations and Warranties. Each of the representations and warranties made by the Borrower in or pursuant to the Loan Documents shall be true and correct in all material respects, except to the extent any representation or warranty is already qualified by materiality or Material Adverse Effect, in which case such representation or warranty shall be true and correct in all respects, and in each case on and as of such date as if made on and as of such date except to the extent that such representations and warranties relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, except to the extent any such representation and warranty is already qualified by materiality or Material Adverse Effect, in which case such representation or warranty shall be true and correct in all respects.

(B) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Credit Extension requested to be made on such date.

(C) Additional Documents. The Issuing Lender has received such additional documents as the Issuing Lender may request in connection with any L/C Credit Extension.

(D) Written Request. The Administrative Agent has received (i) in the case of a Loan, a Notice of Borrowing or (ii) in the case of a L/C Credit Extension, a Letter of Credit Application, each as required pursuant to the terms hereof.

Each request for a Credit Extension hereunder shall constitute a representation and warranty by the Borrower, as of such date and as of the date of such Credit Extension, that the conditions contained in this Section 4.02 have been satisfied.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent, the Issuing Lender and the Lenders to enter into this Agreement and to make the Loans and issue Letters of Credit hereunder, the Borrower represents and warrants to the Administrative Agent, the Issuing Lender and the Lenders, which representations and warranties shall be deemed made on the Closing Date and on the date of each Credit Extension (except to the extent that such representations and warranties relate to an earlier date, in which case such representations and warranties shall be deemed to have been made as of such earlier date) hereunder that:

**SECTION 5.01 Existence**. The Borrower (i) is duly organized (or incorporated), validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation; (ii) has the corporate or organizational power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect; and (iii) is duly qualified and in good standing (where such concept is relevant) under the Requirements of Law of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification except, in each case, to the extent that the failure to be so qualified or in good standing (where such concept is relevant) would not reasonably be expected to have a Material Adverse Effect.

**SECTION 5.02 Compliance With Law, Wholesale Power Contracts, Material Direct Serve Contracts, and Organizational Documents**. The Borrower is in compliance with (i) all Requirements of Law except to the extent that any such failure to comply therewith would not reasonably be expected to have a Material Adverse Effect, (ii) all anti-corruption and anti-money laundering laws, rules, and regulations, including, without limitation, the USA Patriot Act and all other anti-terrorism financing laws, rules, and regulations, (iii) the Member Wholesale Power Contracts and Material Direct Serve Contracts except to the extent that any such failure to comply therewith would not reasonably be expected to have a Material Adverse Effect, and (iv) its Organizational Documents.

**SECTION 5.03 Consents and Approvals.** No consent, permission, authorization, filings, notices, order or license of any Governmental Authority or of any party to any agreement to which the Borrower is a party or by which it or any of its Property may be bound or affected, is necessary in connection with the execution, delivery, performance or enforcement of any Loan Document, except consents, permission, authorizations, filings, notices, orders or licenses described in Schedule 5.03, which have been obtained and are in full force or the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect.

**SECTION 5.04 Taxes.** The Borrower (i) has filed or caused to be filed all Federal, state, provincial and other tax returns that are required to be filed and (ii) has paid all Taxes that are due and payable and all other Taxes, fees, assessments or other governmental charges or levies imposed on it or any of its Property by any Governmental Authority except in each case to the extent that (i) the failure to do so would not reasonably be expected to result in a Material Adverse Effect or (ii) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves required in conformity with GAAP with respect thereto have been provided on the books of the Borrower.

**SECTION 5.05 Corporate Power; Authorization; Enforceable Obligations.**

(A) The Borrower has the corporate or organizational power and authority to execute, deliver and perform the Loan Documents to which it is a party and to borrow the Loans hereunder.

(B) The Borrower has taken all necessary corporate or other action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and to authorize the extensions of credit on the terms and conditions of this Agreement.

(C) Each Loan Document has been duly executed and delivered on behalf of the Borrower. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Requirements of Law affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law) and the implied covenants of good faith and fair dealing.

**SECTION 5.06 No Conflict.** The execution, delivery and performance of this Agreement and the other Loan Documents by the Borrower, the borrowings hereunder and the use of the proceeds thereof do not and will not (a) violate the Organizational Documents of the Borrower, (b) except as would not reasonably be expected to have a Material Adverse Effect, violate any Requirements of Law, (c) result in, or require, the creation or imposition of any Lien on any of its respective properties or revenues pursuant to any Requirements of Law or any such Contractual Obligation (other than the Liens permitted by Section 7.01), or (d) result in a breach of, or constitute a default under, the Indenture or any other indenture, loan agreement, credit agreement, or other material agreement to which the Borrower is a party or by which it or any of its necessary properties are bound.



**SECTION 5.07 ERISA.** All plans (“ERISA Plans”) of a type described in Section 3(3) of ERISA in respect of which the Borrower is an “Employer”, as defined in Section 3(5) of ERISA, are, to the best knowledge of the Borrower, in substantial compliance with ERISA, and none of such ERISA Plans is insolvent or in reorganization, or has a material accumulated or waived funding deficiency within the meaning of Section 412 of the Internal Revenue Code, except to the extent that any such non-compliance, insolvency, reorganization or deficiency would not reasonably be expected to have a Material Adverse Effect. The Borrower has not incurred any material liability (including any material contingent liability) to or on account of any such ERISA Plan pursuant to Sections 4062, 4063, 4064, 4201 or 4204 of ERISA. No proceedings have been instituted to terminate any such ERISA Plan.

**SECTION 5.08 No Change.** As of the Closing Date, since December 31, 2011, there has been no event, circumstance, development, change or effect that would reasonably be expected to have a Material Adverse Effect.

**SECTION 5.09 No Material Litigation.** [Except as disclosed on Schedule 4.01(G)]<sup>2</sup>, as of the Closing Date, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, likely to be commenced within a reasonable time period against the Borrower which taken as a whole, would reasonably be expected to have a Material Adverse Effect.

**SECTION 5.10 Ownership of Property; Liens.** The Borrower has title to, or a valid leasehold interest in, all its material real property, and good title to, or a valid leasehold interest in, all its other material Property necessary and sufficient for the operation of the Business and for the payment of the Borrower’s financial obligations, and none of such Property is subject to any Lien except as permitted by Section 7.01, and, as of the Closing Date, as set forth on Schedule 5.10.

**SECTION 5.11 Federal Regulations.** No part of the proceeds of any Loans will be used for “buying” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the regulations of the Board. If requested by the Administrative Agent, the Borrower will furnish to the Administrative Agent a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U 1 referred to in Regulation U.

**SECTION 5.12 Investment Company Act.** The Borrower is not an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**SECTION 5.13 Subsidiaries, Affiliates and Members.** As of the Closing Date, there are no direct or indirect Subsidiaries of the Borrower, Affiliates, or Members, other than as disclosed on Schedule 5.13.

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<sup>2</sup> NTD: SUBJECT TO REVIEW OF LITIGATION DISCLOSURES TO BE PROVIDED BY BIG RIVERS.

**SECTION 5.14 Solvency.** The Borrower is, and after giving effect to the making of the Loans and issuing of the Letters of Credit hereunder will be, Solvent.

**SECTION 5.15 Environmental Matters.** [Except as disclosed on Schedule 5.15<sup>3</sup>, as of the Closing Date the Borrower has obtained all environmental, health and safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business as now being or as proposed to be conducted, which if not obtained would reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, each of such permits, licenses and authorizations is in full force and effect and the Borrower is in compliance with the terms and conditions thereof, and is also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered into, promulgated or approved thereunder, that, in each case, if not in effect or not in compliance would reasonably be expected to result in a Material Adverse Effect.

**SECTION 5.16 Accuracy of Information, etc.** As of the Closing Date, no written, factual statement or information (excluding the projections and pro forma financial information referred to below) contained in this Agreement, any other Loan Document or any financial statement or certificate furnished to any Lender, by or on behalf of the Borrower, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, when taken as a whole, contained, as of the date such statement, information, or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not materially misleading. The projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Administrative Agent and the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

**SECTION 5.17 Member Wholesale Power Contracts; Material Direct Serve Contracts.**

(A) The Borrower has heretofore delivered to the Administrative Agent complete and correct copies of the Member Wholesale Power Contracts and Material Direct Serve Contracts in effect on the date hereof. Identified on Schedule 5.17 are the Member Wholesale Power Contracts and the Material Direct Serve Contracts in effect as of the Closing Date. Each such Member Wholesale Power Contract and Material Direct Serve Contract are (i) legal, valid and binding upon the Borrower and enforceable against the Borrower in accordance with their respective terms and (ii) to the Borrower's actual knowledge without investigation, legal, valid and binding upon each Counterparty thereto and enforceable against each Counterparty thereto in accordance with their respective terms.

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<sup>3</sup> NTD: SUBJECT TO REVIEW OF ENVIRONMENTAL DISCLOSURES TO BE PROVIDED BY BIG RIVERS.

(B) The Borrower has not received a “Notice of Termination for Closure” under Section 7.3.1(a) of either of the Borrower’s smelter contracts from any Counterparty indicating its intention to terminate such Direct Serve Contract pursuant to the terms thereunder (“Notice of Cancellation”).

**SECTION 5.18 Insurance.** The Borrower maintains insurance in accordance with the Indenture.

**SECTION 5.19 Franchises, Licenses, Etc.** The Borrower possesses all franchises, certificates, licenses, permits and other authorizations necessary for the operation of its Business, except such as the failure to possess would not reasonably be expected to result in a Material Adverse Effect.

**SECTION 5.20 Indebtedness.** As of the Closing Date, the Borrower has no Material Indebtedness other than as set forth on Schedule 5.20.

**SECTION 5.21 Indenture.** No “Event of Default” (as defined in the Indenture) has occurred and is continuing.

## ARTICLE 6 AFFIRMATIVE COVENANTS

The Borrower hereby agrees that, so long as the Commitments remain in effect or any Loan or other amount is owing to the Administrative Agent or any Lender hereunder, the Borrower shall:

**SECTION 6.01 Financial Reports.** Furnish to the Administrative Agent:

(A) Annual Financial Statements. No later than one hundred twenty (120) days after the end of each fiscal year of the Borrower occurring during the term hereof, annual financial statements of the Borrower prepared in accordance with GAAP consistently applied. Such financial statements shall: (a) be audited by a nationally recognized firm of independent certified public accountants selected by the Borrower or such other firm of independent certified public accountants reasonably acceptable to the Administrative Agent; (b) be accompanied by a report of such accountants containing an opinion which is not limited as to going concern or scope to the effect that the financial statements: (i) were audited in accordance with generally accepted auditing standards; and (ii) present fairly, in all material respects, the financial position of the Borrower as at the year then ended and the results of its operations for the year then ended, in conformity with GAAP; (c) be prepared in reasonable detail and in comparative form and (d) include consolidated balance sheets, a statement of equities, a statement of operations, a statement of cash flows, and all notes and schedules relating thereto.

(B) Quarterly Financial Statements. No later than sixty (60) days after the end of the first three quarterly periods of each fiscal year of the Borrower, commencing with the fiscal quarter ending June 30, 2012, the unaudited consolidated balance sheets of the Borrower as of the end of such quarter and a related statement of operations for the Borrower for the portion of the fiscal year through the end of such quarter, and such other interim statements as the Administrative Agent may reasonably request, all prepared on a consolidated basis, in reasonable

detail, and in comparative form in accordance with GAAP consistently applied and certified by the chief financial officer of the Borrower (or another Responsible Officer acceptable to the Administrative Agent) as being fairly stated in all material respects (subject to normal year end audit adjustments and the lack of notes).

(C) Annual Budgets and Financial Plans. No later than ninety (90) days after the end of each fiscal year of the Borrower, copies of the annual budgets and financial plans of the Borrower and its Subsidiaries covering for at least the three year period following the end of such fiscal year.

(D) Annual RUS Form 12. Promptly after furnishing the same to RUS, a copy of the RUS Form 12a (or equivalent replacement thereof) filed by the Borrower with RUS for December 31 of each year.

(E) Compliance Certificate. Together with each set of financial statements delivered pursuant to Sections 6.01(A) and (B), a certificate of the chief financial officer of the Borrower substantially in the form of Exhibit H (or another Responsible Officer acceptable to the Administrative Agent): (i) certifying that no Default or Event of Default occurred during the period covered by such statements or, if a Default or Event of Default did occur during such period, a statement as to the nature thereof, whether such Default or Event of Default is continuing, and, if continuing, the action which is proposed to be taken with respect thereto and (ii) together with each set of financial statements delivered pursuant to Section 6.01(A) only, (a) calculating the financial covenants set forth in Section 8.01 and Section 8.02 and (b) setting forth the Borrower's Ratings from each Rating Agency which has issued a Rating on the Borrower.

(F) Other Information. Such other information and reports regarding the condition or operations, financial or otherwise (including copies of any amendments or supplements to the Indenture, Wholesale Power Contracts, or Material Direct Serve Contracts) of the Borrower as the Administrative Agent may from time to time reasonably request.

**SECTION 6.02 Notices**. Upon a Responsible Officer of the Borrower obtaining knowledge thereof, furnish to the Administrative Agent for delivery to each Lender:

(A) Notice of Default; Material Adverse Event. Promptly, and in any event within ten (10) Banking Days after becoming aware thereof, notice of the occurrence of a Default or an Event of Default or any event, circumstance, change or effect that would reasonably result in a Material Adverse Effect.

(B) Notice of Litigation, Governmental Proceedings, & Environmental Events. Promptly, and in any event within ten (10) Banking Days after a Responsible Officer becoming aware thereof, notice of: (1) the commencement of any action, suit or proceeding before or by any court, governmental instrumentality, arbitrator, mediator or the like which, if adversely decided, would reasonably be expected to have a Material Adverse Effect; and (2) the receipt of any notice, indictment, pleading, or other communication alleging a condition that both: (a) may reasonably be expected to require the Borrower to undertake or to contribute to a clean-up or other response under any Environmental Law, or which seeks penalties, damages, injunctive

relief, or other relief as a result of an alleged violation of any such Requirements of Law, or which claims personal injury or property damage as a result of environmental factors or conditions; and (b) would reasonably be expected to have a Material Adverse Effect or result in criminal sanctions.

(C) Notice of Certain Events. Promptly, and in any event within fifteen (15) Banking Days, written notice of each of the following: (1) any change in the name, structure, jurisdiction of organization, or organizational identification number (if any) of Borrower; or (2) any change in the principal place of business of the Borrower or the office where its records concerning its accounts are kept.

(D) Notices With Respect to Material Contracts. Promptly, and in any event within ten (10) Banking Days after a Responsible Officer becoming aware thereof, the Borrower shall notify the Administrative Agent of (i) any material modification to any of the Material Contracts or the entering into of any new Material Contract, (ii) any default in the performance of any Counterparty's or Counterparties' payment obligations where the aggregate principal amount of such default or defaults exceeds \$10,000,000 under any Material Contract that has continued unremedied for thirty (30) or more days beyond the applicable grace period, if any, (iii) its receipt of a judicial or regulatory filing made by a Counterparty (a) requesting to withdraw from, or make a material modification to, any of its obligations under its Material Contract, (b) seeking consent to assign any of its rights and obligations under its Material Contract, or (c) contesting the validity or enforceability of its Material Contract, (iv) any release or termination of a Counterparty's payment obligations under a Material Contract, (v) any decree, order, filing, petition, or similar action regarding the insolvency or bankruptcy of a Counterparty or regarding any such Counterparty's inability to meet its future obligations under its Material Contract, or (v) its receipt of a Notice of Cancellation from a Counterparty to a Material Direct Serve Contract and shall provide a copy of such Notice of Cancellation to the Administrative Agent.

(E) Ratings. Promptly, and in any event within ten (10) Banking Days upon Borrower's receipt of notice of any change to, or issuance of, any Rating of the Borrower by any Rating Agency, (i) a certificate of a Responsible Officer of the Borrower acceptable to the Administrative Agent stating that the Borrower's Rating has changed, or a new Rating has been issued, as applicable, and the new Rating and whether the new Rating causes any change in the Applicable Margin, and (ii) a copy of the revised Rating, together with any report issued in connection therewith.

(F) Subsidiaries. Promptly, and in any event within fifteen (15) Banking Days after (i) the formation of any material Subsidiary or (ii) any immaterial Subsidiary becoming a material Subsidiary, in either case, such information as the Administrative Agent may reasonably request with respect to such Subsidiary, including, without limitation, the name, chief executive office, and jurisdiction of formation.

(G) Governmental Reports. Promptly, and in any event within ten (10) Banking Days upon Borrower's receipt of a written notice, request for information, order, complaint or report of any Governmental Authority regarding any matter that would reasonably be expected to have a Material Adverse Effect.

**SECTION 6.03 Preservation of Existence.** Preserve, renew and keep in full force and effect its corporate or other existence and take all reasonable action to maintain all material rights, privileges, licenses and franchises reasonably determined by Borrower to be necessary in the normal conduct of its business; provided, however, that the Borrower shall not be required to preserve any right, privilege, license or franchise if the loss thereof could not reasonably be expected to result in a Material Adverse Effect.

**SECTION 6.04 Compliance With Laws, Member Wholesale Power Contracts, Material Direct Serve Contracts, and Indenture.** Comply with (A) all Requirements of Law (including without limitation Environmental Laws and ERISA matters) and each Member Wholesale Power Contract and Material Direct Serve Contract, except, in each case, to the extent that failure to comply therewith would not reasonably be expected to have a Material Adverse Effect, and (B) the Indenture in all material respects.

**SECTION 6.05 Payment of Taxes.** Pay and discharge as the same shall become due and payable all its Taxes, fees, assessments and governmental charges or levies imposed on it or any of its Property except in each case to the extent that (i) the failure to do so would not reasonably be expected to result in a Material Adverse Effect or (ii) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves required in conformity with GAAP with respect thereto have been provided on the books of the Borrower.

**SECTION 6.06 Insurance.** Maintain such insurance as required by the Indenture.

**SECTION 6.07 Maintenance of Properties.** Maintain its properties as required by the Indenture.

**SECTION 6.08 Books and Records.** Keep proper records and books of account in which true, correct and complete entries will be made in accordance with GAAP and all material Requirements of Law.

**SECTION 6.09 Inspection.** Permit any Lender (coordinated through the Administrative Agent or its agents), upon reasonable notice and during normal business hours or at such other times as the parties may agree, to examine the properties, books and records of the Borrower, and to discuss its affairs, finances and accounts with its officers, directors, and independent certified public accountants.

**SECTION 6.10 Use of Proceeds.** Use the proceeds of any Loan for working capital and general corporate purposes, including but not limited to capital expenditures.

**SECTION 6.11 CoBank Equity.**

(A) So long as CoBank is a Lender hereunder, the Borrower will acquire equity in CoBank in such amounts and at such times as CoBank may require in accordance with CoBank's ByLaws and Capital Plan (as each may be amended from time to time), except that the maximum amount of equity that the Borrower may be required to purchase in CoBank in connection with the Loans made by CoBank may not exceed the maximum amount permitted by the ByLaws and the Capital Plan at the time this Agreement is entered into. The Borrower

acknowledges receipt of a copy of (i) CoBank's most recent annual report, and if more recent, CoBank's latest quarterly report, (ii) CoBank's Notice to Prospective Stockholders and (iii) CoBank's ByLaws and Capital Plan, which describe the nature of all of the Borrower's stock and other equities in CoBank acquired in connection with its patronage loan from CoBank (the "CoBank Equities") as well as capitalization requirements, and agrees to be bound by the terms thereof.

(B) Each party hereto acknowledges that CoBank's ByLaws and Capital Plan (as each may be amended from time to time) shall govern (i) the rights and obligations of the parties with respect to the CoBank Equities and any patronage refunds or other distributions made on account thereof or on account of the Borrower's patronage with CoBank, (ii) the Borrower's eligibility for patronage distributions from CoBank (in the form of CoBank Equities and cash) and (iii) patronage distributions, if any, in the event of a sale of a participation interest. CoBank reserves the right to assign or sell participations in all or any part of its Commitments or outstanding Loans hereunder on a non-patronage basis.

**SECTION 6.12 Further Assurances.** From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Administrative Agent may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents.

## **ARTICLE 7 NEGATIVE COVENANTS**

The Borrower hereby agrees that, for the period so long as the Commitments remain in effect or any Loan or other amount is owing to the Administrative Agent or any Lender hereunder, the Borrower shall not:

**SECTION 7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for Liens that are not prohibited by the Indenture as in effect on the date hereof (which Liens not prohibited by the Indenture include the statutory first Lien in favor of CoBank on the CoBank Equities).

**SECTION 7.02 Restricted Payments.** Directly or indirectly declare or pay any dividend or make any payments of, distributions of, or retirements of patronage capital to its Members, except to the extent permitted by Section 13.15 of the Indenture (as in effect on the Closing Date).

**SECTION 7.03 Transactions With Affiliates.** Sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates except (a) transactions in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower than could be obtained on an arm's-length basis for any such transaction from unrelated or un-Affiliated third parties recognizing the not-for-profit, cooperative business of the Borrower, (b) transactions that are priced at the Borrower's or such Affiliate's costs, (c) transactions existing on the date hereof (which are listed on Schedule 7.03) and (d) transactions expressly permitted under this Agreement.

**SECTION 7.04 Line of Business.** Engage to any material extent in any business other than the business of being an electric generation and transmission cooperative and associated activities.

**SECTION 7.05 Accounting Changes.** Make or permit any change in (i) accounting policies or reporting practices, except as required or permitted by applicable law or as otherwise in compliance with GAAP, or (ii) the last day of its fiscal year from December 31, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30, and September 30 respectively.

**SECTION 7.06 Indebtedness.** Create, issue, incur, assume, or permit to exist any Indebtedness, except:

- (A) Indebtedness pursuant to any Loan Document;
- (B) Guarantees in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Borrower;
- (C) Indebtedness with respect to accounts payable to trade creditors incurred in the ordinary course of business;
- (D) Indebtedness issued and secured under the Indenture;
- (E) Unsecured Indebtedness not otherwise permitted by this Section 7.06 in an aggregate principal amount not to exceed, at any one time outstanding, \$200,000,000; provided, however, that any such Indebtedness incurred in reliance on this Section 7.06(F) shall be of a ranking no better than *pari passu* to the Loans;
- (F) Indebtedness outstanding on the date hereof and listed on Schedule 5.20, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness and (ii) refinancings and extensions of any such Indebtedness if the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended;
- (G) Indebtedness (including, without limitation, Capital Lease obligations) secured by Purchase Money Security Interests in an aggregate principal amount not to exceed \$20,000,000 at any one time outstanding;
- (H) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn by the Borrower in the ordinary course of business against insufficient funds, so long as such Indebtedness is promptly repaid;
- (I) Indebtedness representing deferred compensation to employees incurred in the ordinary course of business; and
- (J) Indebtedness in respect of workers' compensation claims, banker's acceptance, bank guarantees, warehouse receipt or similar facilities, property, casualty or



liability insurance, take-or-pay obligations in supply arrangements, self-insurance obligations, performance, bid performance, appeal and surety bonds and completion guaranties, in each case in the ordinary course of business.

**SECTION 7.07 Member Wholesale Power Contracts, Material Direct Serve Contracts and Organizational Documents.**

(A) Consent to any modification, supplement or waiver of any of the provision of its Member Wholesale Power Contracts or Material Direct Serve Contracts, if the effect thereof, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(B) Consent to any modification, supplement or waiver of any of the provisions of its Organizational Documents if the effect thereof, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

**SECTION 7.08 Negative Pledge and Prohibition Clauses.** Enter into any Contractual Obligation that prohibits or limits the ability of the Borrower to (a) create, incur, assume or suffer to exist CoBank's statutory first Lien on the CoBank Equities or (b) perform its obligations under any Loan Document.

**SECTION 7.09 Sale, Consolidation and Merger** Enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) or dispose of all or Substantially All of its assets, unless:

(A) such transaction or disposition is permitted by Section 11.1 of the Indenture;

(B) the Person formed by such consolidation or into which the Borrower is merged or the Person which acquires all or Substantially All of Borrower's assets shall be a person organized and validly existing under the laws of the United States of America and any state thereof or the District of Columbia and shall execute and deliver to the Administrative Agent an assumption to this Agreement in a form satisfactory to the Administrative Agent whereby such Person assumes the due and punctual payment of principal (and premium, if any) and interest on all obligations hereunder;

(C) immediately after giving effect to such transaction, no Default or Event of Default hereunder shall exist; and

(D) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer and an opinion of counsel, each of which shall be satisfactory to the Administrative Agent, stating that this Agreement is legal, valid and binding upon such Person formed by such consolidation or into which the Borrower is merged or which acquires all or Substantially All of the Borrower's assets.

**SECTION 7.10 Limitation on Hedging Agreements.** At any time when any Loan, Letter of Credit or Commitment is outstanding, enter into any Hedging Agreements for speculative purposes.

**SECTION 7.11 Investments.** Make or permit to remain outstanding any Investments except:

- (A) Investments outstanding on the date hereof and set forth in Schedule 7.11;
- (B) Investments approved by the Borrower's Board of directors (whether pursuant to any such Board of Director's approved investment policy of the Borrower or pursuant to specific approvals of Investments by the Board of Directors of the Borrower);
- (C) Hedging Agreements entered into in the ordinary course of Borrower's business to hedge or mitigate its commercial risk;
- (D) Investments in cash equivalents and investments that were cash equivalents when made;
- (E) Investments in the ordinary course of business consisting of (i) endorsements for collection or deposit and (ii) customary trade arrangements with customers consistent with past practices;
- (F) (i) extensions of trade credit in the ordinary course of business and (ii) purchases and acquisitions of inventory, supplies, materials and equipment or purchase of contract rights or licenses or leases of intellectual property in each case in the ordinary course of business, to the extent such purchases and acquisitions constitute Investments;
- (G) Such other Investments as may from time to time be made or purchased by the Borrower; provided, however, that the aggregate costs of such other Investments (other than Investments constituting debt obligations), plus the aggregate outstanding principal amount of such other Investments constituting debt obligations shall not at any time exceed 25% of the Borrower's "Gross Utility Plant" (as determined in accordance with the RUS System of Accounts);
- (H) Investments in a Cushion of Credit (Advance Payment) Account with the RUS pursuant to Section 313 of the Rural Electrification Act of 1936, as amended;
- (I) Investments related to retirement, pension or other benefit plans, whether or not such plans are multiple-employer plans, arising in the ordinary course of business of the Borrower or any Subsidiary;
- (J) Reserves maintained by the Borrower which are referred to in the smelter contracts as the "Economic Reserve," the "Rural Economic Reserve," and the "Transition Reserve" (as each are defined in either of the Borrower's smelter contracts);
- (K) Capital Stock or other securities of, or Investments in, CoBank or its investment services or programs; and
- (L) Investments by the Borrower in cooperative entities in connection with the Borrower's business.

**ARTICLE 8**  
**FINANCIAL COVENANTS**

**SECTION 8.01 Minimum Margins for Interest.** The Borrower will not permit its Margins for Interest Ratio (as defined in the Indenture as in effect on the Closing Date) for any fiscal year to be less than 1.10 for such fiscal period.

**SECTION 8.02 Total Debt to Total Capitalization.** The Borrower shall have, on both a consolidated and unconsolidated basis, as of the last day of each fiscal year of the Borrower, a Total Debt to Capitalization Ratio not greater than 0.80:1.00.

**ARTICLE 9**  
**EVENTS OF DEFAULT**

If any of the following events shall occur and be continuing:

**SECTION 9.01 Payment.** The Borrower shall fail to pay (i) any principal of any Loans or any L/C Obligations due to any Lender hereunder or under any other Loan Document when due in accordance with the terms hereof or thereof, or (ii) any interest owed by it on any Loans or any L/C Obligations or any fee or other amount payable by it hereunder or under any other Loan Document within five (5) Banking Days after any such interest or other amount becomes due in accordance with the terms hereof.

**SECTION 9.02 Misrepresentation.** Any representation or warranty made or deemed made by the Borrower herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document, shall in either case prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished.

**SECTION 9.03 Covenant Violations.** The Borrower shall default in the observance or performance of any agreement contained in Section 6.01, 6.02(A), (D) and (E), 6.03 (with respect to the Borrower's existence), 6.09, 6.10, 6.11, Article 7, or Article 8.

**SECTION 9.04 Other Violations.** The Borrower shall default in the observance or performance of (i) any agreement contained in Section 6.02(B), (C), (F), and (G) and such default shall continue unremedied for a period of five (5) days or (ii) any other agreement contained in this Agreement or any other Loan Document (other than as provided in Section 9.01, 9.02 or 9.03), and such default shall continue unremedied for a period of thirty (30) days, in each case, after the earlier of (A) the date the Borrower receives from the Administrative Agent notice of the existence of such default or (B) the date a Responsible Officer of the Borrower obtains knowledge of such default, provided, that in the case of (ii) above, if remedial action has been taken and Borrower is diligently pursuing a cure, such remedial action has not succeeded within an additional thirty (30) day period after Borrower receives notice (pursuant to clause (ii)(A) above) or obtains knowledge (pursuant to clause (ii)(B) above), as applicable.

**SECTION 9.05 Material Indebtedness.** With respect to any Material Indebtedness, (A) the Borrower shall default in any payment (beyond the applicable grace period with respect thereto, if any) with respect to any such Material Indebtedness, or (B) any such Material Indebtedness shall be declared due and payable, or required to be prepaid by the holder or holders of such Material Indebtedness (or trustee or agent on behalf of such holders), other than by a regularly scheduled required prepayment or other prepayments of such Material Indebtedness prior to the stated maturity thereof.

**SECTION 9.06 Bankruptcy.**

(A) A court having jurisdiction shall enter (i) a decree or order for relief in respect of the Borrower in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar Requirement of Law or (ii) a decree or order adjudging the Borrower a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable federal or state Law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Borrower or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief of any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days.

(B) The Borrower shall commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar Requirement of Law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or shall consent to the entry of a decree or order for relief in respect of the Borrower in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar Requirement of Law or any bankruptcy or insolvency case or proceeding shall be commenced against the Borrower, or the Borrower shall file a petition or answer or consent seeking reorganization or relief under any applicable federal or state Law, or shall consent to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Borrower or of any substantial part of its property, or the Borrower shall make an assignment for the benefit of creditors, or the Borrower shall admit in writing of its inability to pay its debts generally as they become due, or the Borrower shall take corporate action in furtherance of any such action.

**SECTION 9.07 ERISA.** The Borrower fails to make full payment when due of all amounts which, under the provisions of any ERISA Plan, the Borrower is required to pay as contributions thereto and such failure results in a Material Adverse Effect; or an accumulated funding deficiency occurs or exists, whether or not waived, with respect to any ERISA Plan to the extent such deficiency results in a Material Adverse Effect.

**SECTION 9.08 Judgments.** One or more judgments or decrees shall be entered against the Borrower which all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof.

**SECTION 9.09 Member Wholesale Power Contracts and Material Direct Serve Contracts.** In the course of one fiscal year of the Borrower (i) any one or more Members shall default in the performance of any payment obligations under its or their Member Wholesale Power Contracts or any one Person party to a Material Direct Serve Contract shall default in its performance of any payment obligations under such Material Direct Serve Contract, where the aggregate principal amount of such default or defaults exceeds 20% of the Borrower's prior fiscal year's revenues and such default or defaults have continued for thirty-five (35) days beyond any applicable cure period, (ii) any one or more Members or any one Person party to a Material Direct Serve Contract shall contest the validity or enforceability of its or their Member Wholesale Power Contracts or Material Direct Serve Contracts, as the case may be, representing, individually or in the aggregate, 20% or more of the Borrower's prior fiscal year's revenues by filing any judicial or regulatory action, suit or proceeding seeking as a remedy the declaration of the unenforceability or the material modification of its or their Member Wholesale Power Contracts or Material Direct Serve Contracts, as the case may be, and such judicial or regulatory body shall have issued a final and non-appealable order either (A) declaring unenforceable all or a material portion of such Member Wholesale Power Contracts or such Material Direct Serve Contracts, as the case may be, representing, individually or in the aggregate, 20% or more of the Borrower's prior fiscal year's revenues or (B) adversely modifying any material portion of such Wholesale Power Contracts or Material Direct Serve Contracts representing, as the case may be, individually or in the aggregate, 20% or more of the Borrower's prior fiscal year's revenues, or (iii) release or termination of Borrower's Member Wholesale Power Contracts or Material Direct Serve Contracts together representing 20% or more of the Borrower's prior fiscal year's revenues.

**SECTION 9.10 Invalidity of Loan Documents.** Any Loan Document shall be deemed invalid by order, judgment or decree of any Governmental Authority or arbitrator, or the Borrower shall assert that any such Loan Document is invalid.

**SECTION 9.11 Indenture.** An Event of Default (as defined in the Indenture) shall exist.

## **ARTICLE 10 REMEDIES UPON DEFAULT**

**SECTION 10.01 Remedies Upon Default.** If an Event of Default has occurred and is continuing, (A) if such event is an Event of Default specified in Section 9.06 with respect to the Borrower, automatically the Commitments and any obligation of the Issuing Lender to make L/C Credit Extensions shall immediately terminate and the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents shall immediately become due and payable and (B) if such event is any other Event of Default, any of the following actions may be taken: (i) the Administrative Agent may, or at the request of the Required Lenders, shall, by notice to the Borrower declare the Commitments and any obligation of the Issuing Lender to make L/C Credit Extensions to be terminated forthwith, whereupon the Commitments and any obligation of the Issuing Lender to make L/C Credit Extensions shall immediately terminate; (ii) the Administrative Agent may, or at the request of the Required Lenders, shall, by notice to the Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other

Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; and (iii) the Administrative Agent may, or at the request of the Required Lenders, shall, enforce any and all rights and remedies as may be provided by this Agreement, any other Loan Document, or under applicable Requirement of Law, including without limitation, set off and application against the Borrower's obligation to Lender the proceeds of any equity in CoBank, any cash held by CoBank, or any other balances held by CoBank for the Borrower's account (whether or not such balances are then due). Each of such rights and remedies shall be cumulative and may be exercised from time to time, and no failure on the part of any Lender to exercise, and no delay in exercising, any right or remedy shall preclude any other future exercise thereof, or the exercise of any other right. Presentment, demand and protest of any kind are hereby expressly waived by the Borrower. In addition to the rights and remedies set forth above, upon the occurrence and during the continuance of an Event of Default, at Administrative Agent's option in each instance (and automatically following an acceleration), the unpaid principal balance of the Loans and L/C Borrowing (and all overdue payments of interest and fees) shall bear interest at the Default Rate. All such interest, together with all overdue amounts, shall be payable on demand.

#### **SECTION 10.02 Allocation of Payments After Acceleration**

Notwithstanding any other provisions of this Agreement, all amounts collected or received by the Administrative Agent or any Lender on account of amounts outstanding under any of the Loan Documents shall be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation fees and disbursements of any law firm or other external counsel and all disbursements of internal legal counsel) of the Administrative Agent or any of the Lenders in connection with enforcing the rights of the Lenders under the Loan Documents, pro rata, as set forth below;

SECOND, to payment of any fees (other than Letter of Credit Fees) owed to the Administrative Agent, Issuing Lender, or any Lender, pro rata as set forth below;

THIRD, to the payment of all accrued interest and Letter of Credit Fees payable to the Lenders hereunder, pro rata as set forth below;

FOURTH, in accordance with the waterfall set forth in Section 2.07(B) and then to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, as set forth below;

FIFTH, to all other Obligations which shall have become due and payable under the Loan Documents and not repaid pursuant to clauses "FIRST" through "FOURTH" above; and

SIXTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (a) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category and (b) each of the Lenders shall receive an amount equal to its pro rata share (based on the proportion that the then

outstanding Loans held by such Lender bears to the aggregate then outstanding Loans) of amounts available to be applied.

Amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

## **ARTICLE 11 ADMINISTRATIVE AGENT**

**SECTION 11.01 Appointment.** Each of the Lenders and the Issuing Lender hereby irrevocably appoints the Administrative Agent to act on its behalf as the Administrative Agent hereunder and under the Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Section are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender and the Borrower shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**SECTION 11.02 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

### **SECTION 11.03 Exculpatory Provisions.**

(A) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(1) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(2) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Requirement of Law including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(3) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(B) The Administrative Agent shall not be liable for any action taken or not taken by it (a) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Article 10 and Section 12.01) or (b) in the absence of its own gross negligence or willful misconduct as determined by a final, nonappealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the Issuing Lender.

(C) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (iv) the satisfaction of any condition set forth in Sections 4.01 and 4.02 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**SECTION 11.04 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for



relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**SECTION 11.05 Notice of Default.** Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless Administrative Agent has received notice from a Lender or Issuing Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that Administrative Agent receives such a notice, Administrative Agent promptly shall give notice thereof to the Borrower, the Issuing Lender and the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; provided, that unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders. Notwithstanding anything else to the contrary in this Agreement, the Administrative Agent shall not be required to take, or to omit to take, any action (a) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any of its Affiliates or (b) that is, in the opinion of the Administrative Agent, contrary to any Loan Document or applicable Requirement of Law.

**SECTION 11.06 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender and the Issuing Lender acknowledges that it has, independently and without reliance on the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**SECTION 11.07 Indemnification.** The Lenders agree to indemnify Administrative Agent and Agent Parties (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any

kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against Administrative Agent or Agent Parties in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by Administrative Agent or Agent Parties Persons under or in connection with any of the foregoing; provided, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from Administrative Agent's or Agent Parties' gross negligence or willful misconduct. The agreements in this Section 11.07 shall survive the payment of the Loan and all other amounts payable hereunder.

**SECTION 11.08 Right as a Lender.** The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**SECTION 11.09 Resignation of Administrative Agent.**

(A) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower (so long as no Default or Event of Default has occurred and is continuing), to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the Issuing Lender appoint a successor Administrative Agent. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(B) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower (so long as no Default or Event of Default has occurred and is continuing), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent, and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 11.07 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

**SECTION 11.10 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, no Bookrunner or Arranger listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Lender hereunder.

## **ARTICLE 12 MISCELLANEOUS**

### **SECTION 12.01 Amendments and Waivers.**

(A) Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 12.01. The Required Lenders and the Borrower may or, with the written consent of the Required Lenders, the Administrative Agent and the Borrower may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights or obligations of the Administrative Agent, the Lenders or of the Borrower hereunder or thereunder or (b) waive, on such terms and conditions as the Required Lenders or the Administrative Agent may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (x)(i) forgive or reduce the principal amount or extend the final scheduled date of maturity of any Loan, (ii) reduce the stated rate of any interest or fee payable hereunder or extend the scheduled date of any payment thereof, (iii) increase the amount or extend the expiration date of any Lender's Commitments, (iv) modify the definition of "Required Lender," or (v) modify Section 2.13, in each case without the written consent of each Lender directly adversely affected thereby; or (y) eliminate or reduce the voting rights of any Lender or

Participant under this Section 12.01 without the written consent of such Lender or Participant; or (z) amend, modify or waive any provision of Article 11 without the written consent of the Administrative Agent. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Borrower, the Lenders, the Administrative Agent and all future holders of Loans. In the case of any waiver, the Borrower, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing unless limited by the terms of such waiver; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. No amendment, waiver or consent shall affect the rights or duties of the Issuing Lender under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it unless also signed by the Issuing Lender.

(B) If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace such non-consenting Lender in accordance with Section 3.06; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

#### **SECTION 12.02 Notices Generally.**

(A) Notices. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Administrative Agent or the Issuing Lender, as follows:

CoBank, ACB  
5500 South Quebec Street  
Greenwood Village, Colorado 80111  
Facsimile: (303) 740-4002  
Attention: Power Supply Division

With a copy to:  
CoBank, ACB  
5500 South Quebec Street  
Greenwood Village, Colorado 80111  
Facsimile: (303) 740-4002  
Attention: Legal Division

Latham & Watkins LLP  
555 Eleventh Street, NW  
Suite 1000

If to the Borrower, as follows:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Facsimile: (270) 827-2558  
Attention: President and Chief Executive Officer

With a copy to:  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Facsimile: (270) 827-2558  
Attention: Chief Financial Officer

James M. Miller, Esq.  
Sullivan, Mountjoy, Stainback & Miller, P.S.C.

Washington, DC 20004-1304  
Fax: +1.202.637.2201  
Attention: Paul J. Hunt

100 St. Ann Building  
Owensboro, KY 42303

If to a Lender, to it at its address (of facsimile number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Banking Day for the recipient). Notices delivered through electronic communications, to the extent provided in paragraph (B) below, shall be effective as provided in said paragraph (B).

(B) Electronic Communication. Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided, that the foregoing shall not apply to notices to any Lender or Issuing Lender pursuant to Article 2 if such Lender or Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Banking Day for the recipient.

(C) Change of Address, etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(D) Platform.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the “Platform”).

(ii) The Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of communications through the Platform except to the extent that such losses, damages, liabilities or related expenses are determined by a final, nonappealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Agent Parties. “Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of the Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through the Platform.

**SECTION 12.03 No Waiver; Cumulative Remedies.** No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by any Requirement of Law.

**SECTION 12.04 Survival of Representations and Warranties.** All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loans and other extensions of credit hereunder.

**SECTION 12.05 Costs and Expenses; Indemnification.**

(A) Costs and Expenses. The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the Loans, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of

the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iii) all out of pocket expenses incurred by the Administrative Agent, any Lender or any Issuing Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or any Issuing Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or any Issuing Lender, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(B) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Materials of Environmental Concern on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 12.05(B) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(C) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (A) or (B) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any Issuing Lender, or any Related

Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Issuing Lender, or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided, that, with respect to such unpaid amounts owed to any Issuing Lender solely in its capacity as such, only the Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Lenders' Aggregate Exposure Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such Issuing Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or such Issuing Lender in connection with such capacity.

(D) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party hereto shall assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. No Indemnitee referred to in paragraph (B) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(E) Payments. All amounts due under this Section shall be payable not later than ten (10) days after demand therefor.

(F) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

#### **SECTION 12.06 Successors and Assigns; Participations and Assignments.**

(A) Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (B) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (D) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (F) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (D) of this Section and, to the



extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(B) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(1) Minimum Amounts.

(a) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (B)(1)(b) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(b) in any case not described in paragraph (B)(1)(a) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(2) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned.

(3) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (B)(1)(b) of this Section and, in addition:

(a) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Banking Days after having received notice thereof and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Loans;

(b) the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) shall be required for assignments in respect of the Loans or any unfunded Commitments if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(c) the consent of the Issuing Lender shall be required for any assignment.

(4) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(5) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(6) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(7) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Aggregate Exposure. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (C) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.03 and 12.05 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a

Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (D) of this Section.

(C) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Colorado a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(D) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, the Issuing Lenders and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 12.05(C) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso of Section 12.01(A) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.03 and 3.04 (subject to the requirements and limitations therein, including the requirements under Section 3.04(G) (it being understood that the documentation required under Section 3.04(G) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (B) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 3.06 as if it were an assignee under paragraph (B) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 3.01, 3.03 and 3.04, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable

efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.07 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.14 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(E) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(F) Farm Credit Lenders. Notwithstanding anything in this Section 12.06 to the contrary, any institution that is a member of the Farm Credit System (a "Farm Credit Lender") that (i) has purchased a participation in the minimum aggregate amount of \$5,000,000 on or after the Closing Date, (ii) is, by written notice to the Borrower and the Administrative Agent ("Voting Participant Notification"), designated by the selling Lender (including any existing Voting Participant) as being entitled to be accorded the rights of a Voting Participant hereunder and (iii) receives the prior written consent of the Administrative Agent, in its sole discretion, to become a Voting Participant (such consent to be required only to the extent and under the circumstances it would be required if such Voting Participant were to become a Lender pursuant to an assignment in accordance with Section 12.06(A)) (any such Farm Credit Lender so designated and consented to being called a "Voting Participant"), shall be entitled to vote for so long as such Farm Credit Lender owns such participation and notwithstanding any subparticipation by such Farm Credit Lender (and the voting rights of the selling Lender (including any existing Voting Participant) shall be correspondingly reduced), on a dollar for dollar basis, as if such participant were a Lender, on any matter requiring or allowing a Lender to provide or withhold its consent, or to otherwise vote on any proposed action. To be effective, each Voting Participant Notification shall, with respect to any Voting Participant, (x) state the full name, as well as all contact information required of an assignee in an Assignment and Assumption and (y) state the dollar amount of the participation purchased in its Commitment or any or all of its Loans. Notwithstanding the foregoing, each Farm Credit Lender designated as a Voting Participant on Schedule 12.06(F) hereto shall be deemed a Voting Participant without delivery of a Voting Participant Notification and without the prior written consent of the

Administrative Agent. The selling Lender (including any existing Voting Participant) and the purchasing Voting Participant shall notify the Administrative Agent and the Borrower within three (3) Banking Days' of any termination of, or reduction or increase in the amount of, such participation. The Borrower and the Administrative Agent shall be entitled to conclusively rely on information contained in notices delivered pursuant to this paragraph. The voting rights hereunder are solely for the benefit of the Voting Participant and shall not inure to any assignee or participant of the Voting Participant that is not a Farm Credit Lender.

**SECTION 12.07 Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Lender, such Issuing Lender or any such Affiliate, to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Issuing Lender or their respective Affiliates, irrespective of whether or not such Lender, Issuing Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or such Issuing Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 3.07 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lenders, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Lender or their respective Affiliates may have. Each Lender and Issuing Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**SECTION 12.08 Counterparts.** This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement or the Assignment and Assumption by facsimile transmission or other electronic means shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

**SECTION 12.09 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**SECTION 12.10 Complete Agreement.** The Loan Documents are intended by the parties to be a complete and final expression of their agreement.

**SECTION 12.11 Applicable Law.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY PROVISION THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION).

**SECTION 12.12 Submission to Jurisdiction; Waivers.** The Borrower hereby irrevocably and unconditionally:

(A) submits for itself and its Property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, and appellate courts thereof;

(B) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(C) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to it at its address set forth in Section 12.02 or at such other address of which the Lender shall have been notified pursuant thereto; and

(D) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by any Requirement of Law or shall limit the right to sue in any other jurisdiction.

**SECTION 12.13 Acknowledgments.** The Borrower hereby acknowledges that:

(A) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(B) the Administrative Agent and the Lenders do not have any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(C) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby between the Lenders and the Borrower.

**SECTION 12.14 Accounting Changes.** In the event that any Accounting Change shall occur and such change results in a change in the method of calculation of financial ratios, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrower's financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower and the Administrative Agent, all financial ratios, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred.

**SECTION 12.15 WAIVERS OF JURY TRIAL.** THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

**SECTION 12.16 USA PATRIOT ACT.** The Lenders hereby notify the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Publ. 107 56 (signed into law October 26, 2001)) (the "Act"), each is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lenders to identify the Borrower in accordance with the Act.

**SECTION 12.17 Confidentiality.**

(A) Each of the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority, (iii) to the extent required by applicable Requirements of Law or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 12.17, to (a) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any other Loan Document or (b) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (vii) with the consent of the Borrower, (viii) to the extent such Information (X) becomes publicly available other than as a result of a breach of this Section or (Y) becomes available to the Lender on a nonconfidential basis from a source other than the Borrower or (ix) to the National Association of Insurance Commissioners

or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or in connection with examinations or audits of such Lender. For the purposes of this Section 12.17, "Information" means all information received from the Borrower relating to the Borrower or its Business, other than any such information that is available to such Lender on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.17 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(B) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 12.17(A) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.



**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers as of the date shown above.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CoBANK, ACB**, as Administrative Agent, Lead Arranger and Book Runner

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE:

**CoBANK, ACB, as Issuing Lender**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE:

**CoBANK, ACB, as Lender**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

## EXHIBIT A

### DEFINITIONS AND RULES OF INTERPRETATION

**SECTION 1.01 Definitions.** As used in the Agreement, any amendment thereto, or in any other Loan Document, the following terms shall have the following meanings:

**Accounting Change** refers to changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

**Act** shall have the meaning given it in Section 12.16.

**Administrative Agent** shall have the meaning given it in the Introduction.

**Affected Lender** shall have the meaning given it in Section 2.04(D)(3).

**Affiliate** shall mean any Person: (1) which directly or indirectly controls, or is controlled by, or is under common control with, the Borrower; (2) which directly or indirectly beneficially owns or holds five percent (5%) or more of any class of voting stock of, or other interests in the Borrower; or (3) five percent (5%) or more of the voting stock of, or other interest in, which is directly or indirectly beneficially owned or held by the Borrower; provided, however, that no Member of the Borrower shall be deemed to be an Affiliate of the Borrower for the purposes of this Agreement. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**Agent Parties** shall have the meaning given it in Section 12.02(D)(ii).

**Aggregate Exposure** shall mean, with respect to any Lender at any time, an amount equal to the aggregate amount of such Lender’s Commitments then in effect or, if the Commitments have been terminated, the amount of such Lender’s Loans then outstanding.

**Aggregate Exposure Percentage** shall mean, with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the total Aggregate Exposures of all Lenders at such time.

**Agreement** shall mean this Credit Agreement dated as of the Closing Date, by and between the Borrower, the Administrative Agent and the Lenders, as it may be amended or modified from time to time.

**Applicable Margin** shall mean, for any day, with respect to any Loan or the Facility Fee, the applicable rate per annum determined pursuant to the Pricing Grid. Any adjustment in the Applicable Margin shall be applicable to all outstanding Loans.

**Approved Fund** shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**Assignment and Assumption** shall mean an Assignment and Assumption, substantially in the form of Exhibit I.

**Auto-Extension of Letter of Credit** shall have the meaning specified in Section 2.04(B)(3).

**Banking Day** shall mean any day that is not a Saturday, Sunday or other day on which banks in Denver, Colorado are authorized or required by law to remain closed; provided that, when used in connection with a LIBOR Loan, the term "Banking Day" shall also exclude any day on which banks are not open for dealings in Dollars in the London interbank market.

**Bankruptcy Code** shall mean the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

**Base Rate** shall mean the rate of interest in effect from day to day defined as a rate per annum announced by the Administrative Agent on the first Banking Day of each week equal to the greatest of (A) 100 basis points greater than the LIBOR Rate or (B) the Prime Rate. Solely for the purpose of the definition of "Base Rate," "LIBOR Rate" shall mean the one-month LIBOR Rate (rounded upward to the nearest 1/100 of 1%) as quoted by the British Bankers Association at of 11:00 a.m. London time and published by Bloomberg, on the first Banking Day of the week applicable to the Borrower's election of the Base Rate.

**Base Rate Loans** shall mean Loans denominated in Dollars the rate of interest applicable to which is based upon the Base Rate.

**Board** shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

**Board of Directors** shall mean either the board of directors of the Borrower or any duly authorized committee of such board.

**Borrower** shall have the meaning given it in the Introduction.

**Borrowing Date** shall mean any Banking Day specified by the Borrower as a date on which the Borrower requests a Lender to make Loans hereunder.

**Business** shall mean the business activities and operations of the Borrower just prior to the Closing Date and activities relating, incidental or ancillary thereto.

**Capital Lease** shall mean a lease which should be capitalized on the books of the lessee in accordance with GAAP (other than obligations under any lease related to (i) equipment used for office; or computer needs, (ii) equipment used for transportation needs, or (iii) leases of other items having a net book value of less than \$1,000,000) provided, however, that "Capital Lease Obligations" shall not include obligations included on such Person's consolidated financial

statements because of consolidation of another Person, including a subsidiary, with such Person pursuant to GAAP and for which such Person is not legally obligated.

**Capital Stock** shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, and any and all equivalent ownership interests in a Person (other than a corporation).

**Cash Collateralize** shall mean to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Lender and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances in an amount equal to the applicable L/C Obligation pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Issuing Lender (which documents are hereby consented to by the Lenders). The Borrower hereby grants to the Administrative Agent, for the benefit of the Issuing Lender and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, interest bearing deposit accounts at the Administrative Agent. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

**Change in Law** shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

**Change of Control** shall mean, at any time, the Borrower ceases to be an electric generation and transmission cooperative that is controlled by no less than 51% (tested by percentage of the controlling vote to elect the Board of Directors of the Borrower) of the Members of the Borrower.

**Closing Date** shall mean the date hereof.

**CoBank** shall have the meaning given it in the Introduction.

**CoBank Equities** shall have the meaning specified in Section 6.11(A).

**Code** shall mean the Internal Revenue Code of 1986, as amended from time to time (and any successor thereto).

**Commitment Percentage** shall mean, for each Lender, each percentage identified as its Commitment Percentage opposite such Lender's name on Exhibit B with respect to the

applicable Commitments, as each such percentage may be modified by assignment in accordance with the terms of this Agreement.

**Commitment Period** shall mean the period commencing on the Closing Date and ending on the Banking Day immediately preceding the Commitment Termination Date.

**Commitment Termination Date** shall mean the Banking Day immediately preceding the five (5) year anniversary of the Closing Date.

**Commitments** shall mean fifty million Dollars (\$50,000,000) as such amount may be voluntarily reduced in accordance with Section 2.05.

**Communication** shall have the meaning given it in Section 12.02(D)(ii).

**Connection Income Taxes** shall mean Other Connection Taxes that are imposed on or measured by net income or net profits (however denominated) or that are franchise Taxes or branch profits Taxes.

**Contractual Obligation** shall mean as to any Person, any provision of any security issued by such Person or of any written or recorded agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

**Counterparty** shall mean, when referring to a Member Wholesale Power Contract, the Member party to such Member Wholesale Power Contract and, when referring to a Direct Serve Contract, the Person counterparty to the Borrower on such Direct Serve Contract.

**Credit Extension** shall mean the making of any Loan or L/C Credit Extension.

**Debtor Relief Laws** shall mean the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

**Default** shall mean the occurrence of any event which with the giving of notice hereunder or the passage of time hereunder or the occurrence of any other condition hereunder would become an Event of Default under the Agreement or under any other Loan Document.

**Default Rate** shall have the meaning specified in Section 2.09(C).

**Defaulting Lender** shall mean, subject to Section 3.07(B), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Banking Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two (2) Banking Days of the date when due, (b) has notified the Borrower, the



Administrative Agent or the Issuing Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Banking Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.07(B)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, and each Lender.

**Direct Serve Contracts** shall mean wholesale electric service contracts (in each case, together with material amendments or supplements thereto and all successor or replacement contracts and agreements thereto and thereof) with a member of Borrower to provide wholesale electric service directly from Borrower's transmission system to any customer for which the member has an electric service contract with such customer.

**Dollars** and the sign "\$" shall mean lawful money of the United States of America.

**Environmental Law** shall mean any and all applicable Requirements of Law, rules, orders, regulations, statutes, ordinances, codes or decrees (including, without limitation, common law) of the United States, or any state, provincial, local, municipal or other Governmental Authority, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment, as has been, is now, or at any time hereafter is, in effect.

**Environmental Liability** shall mean any liability, claim, action, suit, judgment or order under or relating to any Environmental Law for any damages, injunctive relief, losses, fines, penalties, fees, expenses or costs, whether contingent or otherwise, including those arising from or relating to: (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Materials of Environmental Concern, (c) exposure to any Materials of Environmental Concern, (d) the

Release of any Materials of Environmental Concern or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**ERISA** shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time (and any successor thereto), and the regulations and published interpretations thereof.

**Event of Default** shall mean any of the events specified in Article 9 of the Agreement and any event specified in any other Loan Document as an Event of Default.

**Excluded Taxes** shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income or net profits (however denominated), franchise Taxes (imposed in lieu of net income or net profits Taxes), and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.06) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.04, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.04(G) and (d) any U.S. federal withholding Taxes imposed under FATCA.

**Existing CoBank Facility** shall mean that certain \$50,000,000 unsecured line of credit facility made available by CoBank to Borrower pursuant to that certain Revolving Credit Agreement entered into as of July 16, 2009 between Borrower and CoBank.

**Facility Fee** shall have the meaning given it in Section 2.11(A).

**Farm Credit Lender** shall have the meaning given it in Section 12.06(F).

**Farm Credit System** shall mean a federally chartered network of borrower-owned lending institutions comprised of cooperatives and related service organizations.

**FATCA** shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

**Federal Funds Effective Rate** shall mean for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Banking Day by the Federal

Reserve Bank of New York, or, if such rate is not so published for any day that is a Banking Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

**Fee Letter** shall mean that certain letter, dated January 12, 2012, by CoBank and accepted and agreed to by the Borrower.

**Fitch** shall mean Fitch, Inc.

**Foreign Lender** shall mean (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

**Fronting Exposure** shall mean, at any time there is a Defaulting Lender (or, with respect to Section 3.06, a Specified Lender), such Defaulting Lender's or Specified Lender's Commitment Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by the Issuing Lender other than L/C Obligations as to which such Defaulting Lender's or Specified Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

**Fund** shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**Funding Office** shall mean the office of the Administrative Agent specified in Section 2.03 or such other office as may be specified from time to time by the Lender as its funding office by written notice to the Borrower.

**GAAP** shall mean generally accepted accounting principles in the United States.

**Governmental Authority** shall mean the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**Guarantee** of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities, assets, or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or

letter of guaranty issued to support such Indebtedness; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

**Hedging Agreement** shall mean any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

**Honor Date** shall have the meaning given it in Section 2.04(C)(1).

**Indebtedness** of any Person shall mean, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person for the deferred purchase price of property or services, (d) all guarantee obligations by such Person of Indebtedness of others, (e) all Capital Lease obligations of such Person, and (f) the principal component of all obligations, contingent or otherwise, of such Person (i) as an account party in respect of letters of credit (other than any letters of credit, bank guarantees or similar instrument in respect of which a back-to-back letter of credit has been issued under or permitted by this Agreement) and (ii) in respect of bankers' acceptances; provided that Indebtedness shall not include (A) trade and other ordinary course payables, accrued expenses and intercompany liabilities arising in the ordinary course of business, (B) prepaid or deferred revenue arising in the ordinary course of business, (C) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy unperformed obligations of the seller of such asset or (D) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof. Indebtedness shall not include obligations under (i) Hedging Agreements not entered into for speculative purposes, (ii) leases (other than Capital Lease Obligations), (iii) power, energy, transmission or fuel purchase agreements, (iv) obligations imposed by a Governmental Authority (other than RUS or CoBank), (v) commodities trading or purchase arrangements not entered into for speculative purposes, (vi) surety, indemnity, performance, release and appeal bonds and Guarantees thereof incurred in the ordinary course of the Borrower's business, (vii) reclamation or decommissioning obligations (and Guarantees thereof), or (viii) obligations which have been legally or economically defeased.

**Indemnified Taxes** shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

**Indemnitee** shall have the meaning set forth in Section 12.05(B).

**Indenture** shall mean that certain Indenture dated as July 1, 2009, between the Borrower and U.S. Bank National Association, as amended, supplemented or restated from time to time.

**Interest Payment Date** shall mean (a) as to any Base Rate Loan, the last Banking Day of each March, June, September and December, commencing on March 31, 2012, to occur while

such Base Rate Loan is outstanding and the final maturity date of such Base Rate Loan, (b) as to any LIBOR Loan having an Interest Period of three months or less, the last day of such Interest Period, and (c) as to any LIBOR Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period.

**Interest Period** shall mean, as to any LIBOR Loan, the period commencing on the Borrowing Date or continuation or conversion date, as the case may be, with respect to such LIBOR Loan and ending on the numerically corresponding day one (1), two (2), three (3), or six (6) months (or, nine (9) or twelve (12) months, if available from all Lenders) thereafter, as selected by the Borrower in its Notice of Borrowing or Notice of Continuation/Conversion, as the case may be, given with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

- (1) if any Interest Period would otherwise end on a day that is not a Banking Day, such Interest Period shall be extended to the next succeeding Banking Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Banking Day;
- (2) no Interest Period may extend beyond the scheduled Commitment Termination Date; and
- (3) any Interest Period of months that begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month.

**Investments** means, for any Person: (a) the acquisition (whether for cash, property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership, limited liability company or other ownership interests or other securities of, or all or substantially all of the assets of, any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with sales by such Person in the ordinary course of business; (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; or (d) the entering into of any Hedging Agreement for speculative purposes. The issuance of a Letter of Credit hereunder to a beneficiary who receives such Letter of Credit in connection with a transaction between such beneficiary and a Person other than the Borrower shall be deemed to be an Investment by the Borrower in such Person.

**ISP** shall mean the *International Standby Practices* as most recently published from time to time by the International Chamber of Commerce.

**Issuer Documents** shall mean with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the Issuing Lender and the Borrower or in favor of the Issuing Lender and relating to such Letter of Credit.

**Issuing Lender** shall mean CoBank in its capacity as issuer of Letters of Credit hereunder or any other Lender selected by the Borrower who consents to issues Letters of Credit hereunder and approved by the Administrative Agent (such approval not to be unreasonably withheld, delayed or conditioned).

**L/C Advance** shall mean, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with such Lender's Commitment Percentage.

**L/C Availability Period** shall mean the period starting on the Closing Date and ending thirty (30) days prior to the Commitment Termination Date (or, if such day is not a Banking Day, the next preceding Banking Day).

**L/C Borrowing** shall mean an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Loan.

**L/C Credit Extension** shall mean, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase in the amount thereof.

**L/C Obligations** shall mean, as at any time of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

**L/C Sublimit** shall mean an amount equal to the lesser of (a) the then effective Commitments and (b) \$10,000,000. The L/C Sublimit is part of, and not in addition to, the Commitments.

**Lenders** shall mean the several financial institutions from time to time parties hereto.

**Letter of Credit** shall mean any standby Letter of Credit issued hereunder.

**Letter of Credit Application** shall mean an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Issuing Lender.

**Letter of Credit Expiration Date** shall mean the day that is thirty (30) days prior to the Commitment Termination Date (or, if such day is not a Banking Day, the next preceding Banking Day).

**Letter of Credit Fee** shall have the meaning specified in Section 2.04(G).

**LIBOR Loans** shall mean any Loan bearing interest at a rate determined by reference to the LIBOR Rate.

**LIBOR Rate** shall mean, for any Interest Period, the interest rate per annum (rounded upward to the nearest 1/100<sup>th</sup> of 1%) determined by dividing (i) the rate of interest at which deposits in Dollars for such Interest Period are offered (based on information presented by Bloomberg as quoted by the British Bankers' Association as of 11:00 a.m. (London time) two (2) Banking Days prior to the first day of such Interest Period) by (ii) a number equal to 1.00 minus the Reserve Percentage.

**Lien** shall mean any mortgage, deed of trust, pledge, security interest, hypothecation, assignment for security purposes, deposit arrangement, lien (statutory or other), or other security agreement, charge or similar encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement).

**Loans** shall have the meaning given it in Section 2.01(A).

**Loan Documents** shall mean this Agreement and the Notes, if any.

**Material Adverse Effect** shall mean any change to the business, operations, affairs, condition (financial or otherwise), liabilities (actual or contingent), assets, or properties of the Borrower or its subsidiaries, taken as a whole, that materially adversely affects (i) the ability of the Borrower to perform its obligations under the Loan Documents or (ii) the validity or enforceability of any Loan Documents or the Lenders' remedies under the Loan Documents.

**Material Contract** shall mean each Member Wholesale Power Contract and Material Direct Serve Contract listed on Schedule 5.17.

**Material Direct Serve Contracts** shall mean any Direct Serve Contract to (i) any smelter to which a member of the Borrower supplies power, and (ii) any customer with a contract load of 25 megawatts or greater.<sup>4</sup>

**Materials of Environmental Concern** shall mean any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or byproducts and all other hydrocarbons, coal ash, radon gas, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, chlorofluorocarbons and all other ozone-depleting substances, pollutants, contaminants, radioactivity and any other chemicals, materials or substances that are defined as hazardous or toxic under any Environmental Law that are prohibited, limited or regulated pursuant to any Environmental Law.

**Material Indebtedness** shall mean any Indebtedness with a principal value in excess of \$10,000,000 and any Indebtedness owed to CoBank other than Indebtedness incurred under this Agreement.

**Member** shall mean a rural distribution cooperative member of the Borrower.

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<sup>4</sup> NTD: SUBJECT TO REVIEW OF SCHEDULE 5.17 TO BE PROVIDED BY BIG RIVERS.

**Member Wholesale Power Contracts** shall mean the Borrower's power supply contracts with its Members (together with all material amendments and supplements thereto) and all successor or replacement contracts and agreements thereto or thereof, excluding the Direct Serve Contracts.

**Moody's** shall mean Moody's Investor Services.

**Net Worth** shall mean the difference between total assets less total liabilities (both as determined in accordance with GAAP), except that in determining Total Capitalization, contributions in aid of construction, advances for construction, customer deposits, or similar items reducing rate base calculations shall be excluded.

**Non-Consenting Lender** shall mean any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all affected Lenders in accordance with the terms of Section 12.01 and (ii) has been approved by the Required Lenders.

**Non-Defaulting Lender** shall mean, at any time, each Lender that is not a Defaulting Lender at such time.

**Note** shall mean any promissory note evidencing any obligation to repay any Loan substantially in the form of Exhibit J.

**Notice of Borrowing** shall mean a Notice of Borrowing, substantially in the form of Exhibit C.

**Notice of Cancellation** shall have the meaning given it in Section 5.17(B).

**Notice of Continuation/Conversion** shall mean a Notice of Continuation/Conversion, substantially in the form of Exhibit D.

**Obligations** shall mean the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and reimbursement obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans, the reimbursement obligations and all other obligations and liabilities of the Borrower to any Lenders, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, in each case, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to a Lender that are required to be paid by the Borrower pursuant hereto) or otherwise.

**Organizational Documents** shall mean the documents under which the Borrower has been organized or is run, including (as may be relevant) articles of incorporation or formation, bylaws, partnership agreements, shareholder agreements, and the like.



**Other Connection Taxes** shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

**Other Taxes** shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes.

**Outstanding Amount** shall mean (i) with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of any Loans occurring on such date and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

**Participant** shall have the meaning specified in Section 12.06(D).

**Participant Register** shall have the meaning specified in Section 12.06(D).

**Person** shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

**Platform** shall have the meaning given it in Section 12.02(D)(i).

**Pricing Grid** shall mean the table set forth below:

<u>Margin Level</u>	<u>S&amp;P/Moody's/Fitch Issuer Rating</u>	<u>Applicable Margin for LIBOR Loans</u>	<u>Applicable Margin for Base Rate Loans</u>	<u>Applicable Margin for Facility Fee</u>
1	≥ A-/A-/A-	1.15%	0.15%	0.150%
2	BBB+/Baa1/BBB+	1.25%	0.25%	0.1750%
3	BBB/Baa2/BBB	1.40%	0.40%	0.200%
4	BBB-/Baa3/BBB-	1.55%	0.55%	0.250%
5	BB+/Ba1/BB+	1.80%	0.80%	0.400%
6	<BB+/Ba1/BB+	2.15%	1.15%	0.600%

Changes in the Applicable Margin with respect to Loans or the Facility Fee resulting from changes in the Borrower's Rating by a Rating Agency shall become effective (a) if an increase, any time after the date of the increase as determined by the Administrative Agent and (b) if a decrease, no less than five (5) days after the Administrative Agent receives written notice from the Borrower requesting such a decrease. In the event there is a Rating by only two (2) of the Rating Agencies and there is a split Rating, the highest Rating will apply. In the event that there is a Rating by each of the Rating Agencies and there is a split Rating: (a) if two (2) of the three Ratings are the same, then such Rating shall apply, and (b) if none of the Ratings are the same, the middle Rating shall apply. In the event there is only one Rating, that Rating will apply. If the Borrower does not have a Rating from any of the Rating Agencies then, in each case, Margin Level 6 from the above table shall apply. If the Borrower has a senior secured debt rating, but not a long term issuer rating or senior unsecured debt rating from any Rating Agency, for purposes of the Pricing Grid, the Rating from such Rating Agency shall be deemed to be one level less than the senior secured debt rating from that Rating Agency. Starting on the Closing Date and until the Borrower's Rating changes, it shall be deemed to be at Margin Level 4.

**Prime Rate** shall mean the rate of interest per annum published from time to time in the Eastern Edition of the Wall Street Journal as the average primary lending rate for seventy percent (70%) of the United States' ten largest banks, or if the Wall Street Journal shall cease publication or cease publishing the "prime rate" on a regular basis, such other regularly published average prime rate applicable to such commercial banks as is acceptable to the Required Lenders in their reasonable discretion.

**Property or Properties** shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

**Prudence Industry Practice** shall mean the practices, methods and acts engaged in or approved by a significant portion of the electric generation or utility industry, as applicable, in the region during the relevant time period, or any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, reasonably could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. "Prudent Industry Practice" is not intended to be limited to the optimum practice, method or act, but rather to include a spectrum of possible practices, methods or acts generally in acceptance in the region in light of the circumstances.

**Purchase Money Security Interest** shall mean Liens securing Indebtedness of the Borrower permitted by Section 7.06(H) to finance or refinance the acquisition of fixed or capital assets; provided, that (i) such Liens shall originally be created substantially simultaneously with the acquisition of such fixed or capital assets and (ii) such Liens do not at any time encumber any Property other than the Property financed by such Indebtedness and the proceeds thereof.

**Rating** shall mean (A) the Borrower's long term issuer rating or (B) if the Borrower does not have a long term issuer rating, the Borrower's senior unsecured non-credit enhanced debt rating.

**Rating Agency** shall mean S&P, Moody's or Fitch.

**Recipient** shall mean (a) the Administrative Agent, (b) any Lender and (c) any Issuing Lender, as applicable.

**Register** shall have the meaning assigned to such term in Section 12.06(C).

**Regulation U** shall mean Regulation U of the Board of Governors of the Federal Reserve System of the United States (or any successor) as in effect from time to time.

**Related Parties** means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, attorneys-in-fact and advisors of such Person and of such Person's Affiliates.

**Release** shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or within or upon any building, structure or facility.

**Removal Effective Date** shall have the meaning given it in Section 11.09.

**Required Lenders** shall mean two (2) or more Lenders (including Voting Participants) who are not Defaulting Lenders and who have in the aggregate Commitment Percentages greater than 50% (calculated without giving effect to any Loans or Commitments held or deemed to be held by a Defaulting Lender), provided, that, at any time when there is only one (1) Lender and no Voting Participants, such Lender shall constitute the "Required Lenders." For the avoidance of doubt, the Unused Commitment of, and the Outstanding Amounts held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

**Requirements of Law** shall mean as to any Person, the certificate of incorporation and bylaws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, provided, however, that for purposes of the Loan Documents, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith shall be deemed to have gone into effect after the Closing Date, regardless of the date enacted, adopted or issued).

**Reserve Percentage** shall mean, with respect to the applicable Lender only, for any Interest Period during which such Lender, as determined in its sole discretion, is subject to a Reserve Percentage, the aggregate (but without duplication) of the rates (expressed as a decimal fraction) of reserve requirements in effect on the day which is two (2) Banking Days prior to the beginning of such Interest Period for Eurocurrency Funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) which are required to be maintained by a member bank of the Federal Reserve System (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto, as now and from time to time

in effect). For any Interest Period during which a Lender is not subject to a Reserve Percentage, the Reserve Percentage shall be equal to zero for such Lender.

**Resignation Effective Date** shall have the meaning assigned such term in Section 11.09.

**Responsible Officer** shall mean the chief executive officer, president, chief financial officer (or similar title) controller or treasurer (or similar title) of the Borrower or its Members, as applicable.

**Revolving Credit Exposure** shall mean, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Loans and such Lender's participation in L/C Obligations at such time.

**RUS** shall mean the Rural Utilities Service or other agency succeeding to the authority of the Rural Utilities Service with respect to loans to electric cooperatives.

**S&P** shall mean Standard & Poor's Rating Services, a Standard & Poor's Financial Services LLC business.

**SEC** shall mean the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

**Solvent** shall mean with respect to any Person, as of any date of determination, (a) the fair value of the assets of such Person (determined at a fair valuation made with reference to the financial statements delivered to the Administrative Agent pursuant to Section 4.01(A) or Section 6.01) will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (b) such Person will not have, as of such date, an unreasonably small amount of capital for a generation and transmission cooperative with similar power supply obligations with which to conduct its business and (c) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim", (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured and (iii) except as otherwise provided by applicable Requirement of Law, the amount of a "contingent" liability at any time shall be the amount thereof which, in light of all the facts and circumstances existing at such time, can reasonably be expected to become actual or matured liabilities.

**Specified Lender** shall have the meaning given it in Section 3.06.

**Subsidiary** shall mean, as to the Borrower, a corporation, partnership, limited liability company, joint venture, or other Person of which shares of stock or other equity interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company, joint venture, or other Person are at the time

owned, or the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by the Borrower.

**Substantially All** shall refer to 75% or more of total assets of the Borrower on a consolidated basis.

**Taxes** shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**Total Capitalization** shall mean Total Debt plus Net Worth.

**Total Credit Exposure** shall mean, as to any Lender at any time, the Unused Commitments and Revolving Credit Exposure of such Lender at such time.

**Total Debt** shall mean the sum of (a) all indebtedness for borrowed money, (b) obligations which are evidenced by notes, bonds debentures or similar instruments, and (c) that portion of obligations with respect to capital leases or other capitalized agreements that are properly classified as a liability on the balance sheet in conformity with GAAP or which are treated as operating leases under regulations applicable to them but which otherwise would be required to be capitalized under GAAP.

**Total Debt to Capitalization Ratio** means the ratio of Total Debt to Total Capitalization.

**Trade Date** shall have the meaning given it in Section 12.06(B)(i)(b).

**Trust Estate** shall have the meaning set forth in the Indenture.

**Type** shall mean as to any Loan, its nature as a Base Rate Loan or a LIBOR Loan.

**Unreimbursed Amount** shall have the meaning given it in Section 2.04(C)(1).

**Unused Commitment** shall mean an amount equal to the excess, if any, of the Commitments then in effect over the sum of the Loans and L/C Obligations then outstanding.

**U.S. Borrower** shall mean any Borrower that is a U.S. Person.

**U.S. Person** shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

**U.S. Tax Compliance Certificate** has the meaning given it in Section 3.04(G)(ii)(b)(3).

**Voting Participant** has the meaning given it in Section 12.06(F).

**Voting Participant Notification** has the meaning given it in Section 12.06(F).

**Withholding Agent** shall mean the Borrower and the Administrative Agent.

**SECTION 1.02 Rules of Interpretation.** The following rules of interpretation shall apply to the Agreement and any Loan Document, and all amendments to either of the foregoing:

**Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles.

**Number.** All terms stated in the singular shall include the plural, and all terms stated in the plural shall include the singular.

**Including.** The term “including” shall mean including, but not limited to.

**Default.** The expression “while any Default or Event of Default shall have occurred and be continuing” (or like expression) shall be deemed to include the period following any acceleration of the Obligations (unless such acceleration is rescinded).

**Time Periods.** The word “from,” when referring to a time period, is exclusive and shall not include the day from which the time period runs. The word “to” or “through,” when referring to a time period, is inclusive and shall include the day to which the time period runs.

**Headings.** Captions and headings used in this Agreement are for reference and convenience of the parties only, and shall not constitute a part of this Agreement.

**Agreement.** The terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this Agreement, and all references to Articles and Sections refer to articles and sections of this Agreement, and all references to Exhibits are to exhibits attached hereto, each of which is made a part hereof for all purposes.

**Successors and Assigns.** References to any person or entity will be construed as a reference to any successors or permitted assigns of such person or entity.

**Amendments and Modifications.** Unless otherwise provided herein, reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended, supplemented or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

COMMITMENT PERCENTAGES

[TO BE COMPLETED BY COBANK]

Lender	Revolver Commitments	Commitment Percentage
CoBank, ACB	\$[ ]	[ ]%
<b>TOTAL</b>	<b>\$50,000,000.00</b>	<b>100%</b>

**EXHIBIT C  
TO CREDIT AGREEMENT**

**FORM OF NOTICE OF BORROWING**

CoBank, ACB, as Administrative Agent  
5500 South Quebec Street  
Greenwood Village, Colorado 80111  
Facsimile: (303) 740-4002  
Attention: Power Supply Division

[Date]

Ladies and Gentlemen:

Pursuant to Section [2.01(C)][4.01(D)] of the Credit Agreement, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky [cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), Issuing Lender, lead arranger and book runner, the undersigned duly authorized officer of the Borrower hereby requests a borrowing under the Credit Agreement, and in that connection sets forth below the information relating to such borrowing:

- |    |   |          |
|----|---|----------|
| A. | Borrowing Date <sup>1</sup>                   | _____    |
| B. | Total Amount <sup>2</sup>                     | \$ _____ |
| C. | Type of Loan <sup>3</sup>                     | _____    |
| D. | If a LIBOR Loan, Interest Period <sup>4</sup> | _____    |

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<sup>1</sup> Borrowing Date must occur on a Banking Day and must be, in the case of LIBOR Loans, at least three (3) Banking Days after the day on which this Notice of Borrowing is delivered to Administrative Agent or, in the case of Base Rate Loans, at least one (1) Banking Day after the day on which this Notice of Borrowing is delivered to Administrative Agent. Any Notice of Borrowing for a LIBOR Loan delivered after 10:00 A.M. Denver, Colorado time, and any Notice of Borrowing for a Base Rate Loan delivered after 11:00 A.M. Denver, Colorado time, will be deemed to have been delivered on the next succeeding Banking Day.

<sup>2</sup> Each borrowing must be in an amount equal to \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or, if the then available Commitments is less than \$1,000,000, such lesser amount).

<sup>3</sup> The Type of Loan must be a LIBOR Loan or a Base Rate Loan, provided, that any Loans made on the Closing Date must be a Base Rate Loan unless a funding indemnity letter executed by the Borrower and reasonably acceptable to the Administrative Agent is delivered herewith.

<sup>4</sup> The Interest Period selected shall mean, with respect to any LIBOR Loan, the period commencing on the Borrowing Date and ending on the numerically corresponding day one (1), two (2), three (3), or six (6) months (or, nine (9) or twelve (12) months, if available from all Lenders) thereafter, except that: (A) if the Interest Period would end on a day that is not a Banking Day, then such Interest Period shall be extended to the next Banking Day unless such Banking Day would fall in the next calendar month, in which case the Interest Period shall end on the immediately preceding Banking Day, (B) no Interest Period may extend



The undersigned duly authorized officer of the Borrower hereby certifies on behalf of the Borrower that the following statements are true on the date hereof, and will be true on the proposed Borrowing Date:

- (1) each of the representations and warranties made by the Borrower in or pursuant to the Loan Documents is true and correct in all material respects, except to the extent any representation or warranty is already qualified by materiality or Material Adverse Effect, in which case such representation or warranty is true and correct in all material respects, and in each case on and as of such date as if made on and as of such date except to the extent that such representations and warranties relates to an earlier date, in which case, such representations and warranties were true and correct in all material respects as of such earlier date, except to the extent any such representation and warranty is already qualified by materiality or Material Adverse Effect, in which case such representation or warranty was true and correct in all respects; and
- (2) no Default or Event of Default has occurred and is continuing nor, after giving effect to the Credit Extension to be made on the Borrowing Date, will occur and be continuing.

(SIGNATURE PAGE FOLLOWS)

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beyond the scheduled Commitment Termination Date, and (C) each such Interest Period that commences on the last Banking Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Banking Day of the appropriate subsequent calendar month.

IN WITNESS WHEREOF, the undersigned has executed this Notice of Borrowing as of the date first set forth above.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT D  
TO CREDIT AGREEMENT**

**FORM OF NOTICE OF CONTINUATION/CONVERSION**

CoBank, ACB, as Administrative Agent  
5500 South Quebec Street  
Greenwood Village, Colorado 80111  
Facsimile: (303) 740-4002  
Attention: Power Supply Division

[Date]

Ladies and Gentlemen:

Pursuant to Section 2.08 of the Credit Agreement, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky [cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and CoBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), Issuing Lender, lead arranger and book runner, the undersigned duly authorized officer of the Borrower hereby requests:<sup>5</sup>

A. That a portion of the current outstanding Loans, in the amount of \$ \_\_\_\_\_, be continued or converted at the interest rate option set forth in paragraph C below.

[Please use below space to provide any other instructions necessary.]

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B. The [conversion] [continuation] date shall be \_\_\_\_\_.<sup>6</sup>

C. The interest rate option applicable to the part of the existing Loans being converted or continued shall be equal to:

1. \_\_\_\_\_ the Base Rate

---

<sup>5</sup> Each conversion or continuation must be requested by the Borrower no later than 11:00 AM Denver, Colorado time at least three (3) Banking Days prior to the date for a requested conversion or continuation, as applicable.

<sup>6</sup> The conversion or continuation date must be a Banking Day.

2. \_\_\_\_\_ the LIBOR Rate for an Interest Period<sup>7</sup> of:

\_\_\_\_\_ one month

\_\_\_\_\_ two months

\_\_\_\_\_ three months

\_\_\_\_\_ six months

\_\_\_\_\_ nine months

\_\_\_\_\_ twelve months

D. No Default or Event of Default has occurred and is continuing or would be caused by giving effect to this Notice of Continuation/Conversion.

(SIGNATURE PAGE FOLLOWS)

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<sup>7</sup>

Interest Periods of nine or twelve months of duration may be selected by the Borrower only if available from all Lenders. If the Interest Period would end on a day that is not a Banking Day, then such Interest Period shall be extended to the next Banking Day unless such Banking Day would fall in the next calendar month, in which case the Interest Period shall end on the immediately preceding Banking Day. No Interest Period may extend beyond the scheduled Commitment Termination Date. Each such Interest Period that commences on the last Banking Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Banking Day of the appropriate subsequent calendar month. There may be no more than ten (10) LIBOR Loan Interest Periods outstanding at any one time.

IN WITNESS WHEREOF, the undersigned has executed this Notice of Continuation/Conversion as of the date first set forth above.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT E-1  
TO CREDIT AGREEMENT

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Senior Unsecured Revolving Credit Facility, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a [Kentucky cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), Issuing Lender, lead arranger and book runner.

Pursuant to the provisions of Section 3.04(G)(ii)(b)(3) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 20[ ]

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Senior Unsecured Revolving Credit Facility, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky [cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), Issuing Lender, lead arranger and book runner.

Pursuant to the provisions of Section 3.04(G)(ii)(b)(4) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 20[ ]

EXHIBIT E-3  
TO CREDIT AGREEMENT

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Senior Unsecured Revolving Credit Facility, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a [Kentucky cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), Issuing Lender, lead arranger and book runner.

Pursuant to the provisions of Section 3.04(G)(ii)(b)(4) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20[ ]



**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Senior Unsecured Revolving Credit Facility, dated as of [\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a [Kentucky cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), Issuing Lender, lead arranger and book runner.

Pursuant to the provisions of Section 3.04(G)(ii)(b)(4) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 20[ ]

EXHIBIT F  
TO CREDIT AGREEMENT

**FORM OF SECRETARY'S CERTIFICATE**

Pursuant to Section 4.01(C) of the Credit Agreement, dated as of [\_\_\_\_], 2012 (the "Credit Agreement"); unless otherwise defined herein, capitalized terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky cooperative corporation (the "Borrower"), the several financial institutions or entities from time to time parties thereto and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, issuing lender, lead arranger and book runner, the undersigned [NAME OF AUTHORIZED PERSON], the [TITLE OF AUTHORIZED PERSON] of the Borrower, hereby certifies on behalf of the Borrower that [NAME OF SECRETARY/ASSISTANT SECRETARY] is the duly elected and qualified [SECRETARY/ASSISTANT SECRETARY] of the Borrower and the signature set forth for such officer below is such officer's true and genuine signature.

The undersigned [SECRETARY/ASSISTANT SECRETARY] of the Borrower hereby certifies as follows:

1. Attached hereto as Annex 1 is a true and complete copy of a Certificate of Good Standing or the equivalent from the Borrower's jurisdiction of organization dated as of a recent date prior to the date hereof.
2. Attached hereto as Annex 2 is a true and complete copy of resolutions duly adopted by the Board of Directors of the Borrower on [\_\_\_\_], 2012. Such resolutions have not in any way been amended, modified, revoked or rescinded, have been in full force and effect since their adoption to and including the date hereof and are now in full force and effect and are the only corporate proceedings of the Borrower now in force relating to or affecting the matters referred to therein.
3. Attached hereto as Annex 3 is a true and complete copy of the Bylaws of the Borrower as in effect on the date hereof.
4. Attached hereto as Annex 4 is a true and complete certified copy of the Articles of Incorporation of the Borrower as in effect on the date hereof, and such Articles of Incorporation have not been amended, repealed, modified or restated since the date of such certification.
5. The persons listed on the Incumbency Certificate attached hereto as Schedule I are now duly elected and qualified officers or employees of the Borrower holding the offices and positions indicated next to their respective names on the Incumbency Certificate attached hereto as Schedule I, and the signatures appearing opposite their respective names on the Incumbency Certificate attached hereto as Schedule I are the true and genuine signatures of such officers and employees, and each of such officers and employees is duly authorized to execute and deliver on behalf of the Borrower each of the Loan Documents to which it is a party and any certificate or other document to be delivered by the Borrower pursuant to the Loan Documents to which it is a party.

**(SIGNATURE PAGE FOLLOWS)**

IN WITNESS WHEREOF, the undersigned have hereunto set our names as of the date set forth below.

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 2012

Schedule I  
to Secretary's Certificate

NAME

OFFICE

SIGNATURE

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Annex 1  
to Secretary's Certificate

[Certificate of Good Standing]

Annex 2  
to Secretary's Certificate

[Board Resolutions]

Annex 3  
to Secretary's Certificate

[Bylaws]



Annex 4  
to Secretary's Certificate

[Articles of Incorporation]

**EXHIBIT G  
TO CREDIT AGREEMENT**

**FORM OF SOLVENCY CERTIFICATE**

Pursuant to Section 4.01(J) of the Credit Agreement, dated [\_\_\_\_], 2012 (the "Credit Agreement"); unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky cooperative corporation (the "Borrower"), the several financial institutions or entities from time to time parties thereto and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, issuing lender, lead arranger and book runner, the undersigned [CHIEF FINANCIAL OFFICER OR EQUIVALENT OFFICER] of the Borrower, hereby certifies on behalf of the Borrower that as of the Closing Date, the Borrower is Solvent, and after giving effect to the initial extensions of credit, if any, to be made on the Closing Date, the Borrower will be Solvent.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Solvency Certificate as of this  
\_\_\_\_ day of [\_\_\_\_], 2012.

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT H  
TO CREDIT AGREEMENT**

**FORM OF COMPLIANCE CERTIFICATE**

Pursuant to Section 6.01(E) of the Credit Agreement, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the “Credit Agreement”; unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky cooperative corporation (the “Borrower”), the several financial institutions or entities from time to time parties thereto and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, issuing lender, lead arranger and book runner, the undersigned [insert name of officer or authorized position], the [insert title of office or authorized position] of the Borrower, hereby certifies on behalf of the Borrower as follows:

(A) As of the [quarter]/[year] ending \_\_\_\_\_, 20\_\_, the statements referenced below (i) have been prepared in accordance with applicable GAAP (in the case of any quarterly financial statements, subject to normal year end audit adjustments and lack of notes) and (ii) are fairly stated in all material respects (subject to normal year end audit adjustments and the lack of notes).

(B) Attached hereto as Schedule 1 are the [quarterly][annual] financial statements for the fiscal period cited above.

(C) [Attached hereto as Schedule 2 (Minimum Margins for Interest) are calculations demonstrating compliance by the Borrower with Section 8.01 of the Credit Agreement.]<sup>8</sup>

(E) [Attached hereto as Schedule 3 (Total Debt to Capitalization) are calculations demonstrating compliance by the Borrower with Section 8.02 of the Credit Agreement.]<sup>9</sup>

(F) [Attached hereto as Schedule 4 (Ratings) are the Borrower's Ratings from each Rating Agency which has issued a Rating on the Borrower.]<sup>10</sup>

(G) No Default or Event of Default has occurred during the period covered by this Compliance Certificate, except as indicated on a separate page attached hereto, containing a statement as to the nature of such Default or Event of Default, whether such Default or Event of Default is continuing and, if continuing, an explanation of the action taken or proposed to be taken by the Borrower with respect thereto.

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<sup>8</sup> In connection with the delivery of annual financial statements only.

<sup>9</sup> In connection with the delivery of annual financial statements only.

<sup>10</sup> In connection with the delivery of annual financial statements only.

[Signature page follows.]

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**Schedule 1 to Compliance Certificate**

**[Annual][Quarterly] Financials**

[Attached]

Schedule 2 to Compliance Certificate

Minimum Margins For Interest

Margins for Interest Ratio is calculated, as of each fiscal year, as calculated in the Indenture in effect on the Closing Date.

As of the fiscal year ended \_\_\_\_\_, such calculation was as follows:

*Margins for Interest:*

net margins of the Borrower for such fiscal year<sup>11</sup> \_\_\_\_\_

*plus*

the amount, if any, included in the computation of net margins for accruals for federal and state income and other taxes imposed on income after deduction of interest expense for the fiscal year: \_\_\_\_\_

*plus*

the amount, if any, included in the computation of net margins for any losses incurred by any Subsidiary or Affiliate of the Borrower \_\_\_\_\_

*plus*

the amount, if any, the Borrower actually receives in the fiscal year as a dividend or other distribution of earnings of any Subsidiary or Affiliate (whether or not such earnings were for the fiscal year or any earlier fiscal year) \_\_\_\_\_

*minus*

the amount, if any, included in the computation of net margins for any earnings or profits of any subsidiary or Affiliate of the Borrower \_\_\_\_\_

*minus*

the amount, if any, the Borrower actually contributes to the capital of, or actually pays under a guarantee by the Borrower of \_\_\_\_\_

<sup>11</sup> Net margins shall be determined in accordance with Accounting Requirements (as defined in the Indenture in effect as of the Closing Date) and shall include revenues, subject to a possible refund at a future date, but which shall exclude provisions for any: (i) non-recurring charge to income, whether or not recorded as such on the Borrower's books, of whatever kind or nature (including the non-recoverability of assets or expenses), except to the extent the Board of Directors determines to recover such non-recurring charge in Rates (as defined in the Indenture in effect as of the date of the Credit Agreement), and (ii) refund of revenues collected or accrued by the Borrower in any prior year subject to possible refund.



an obligation of, any Subsidiary or Affiliate in the fiscal year to the extent of any accumulated losses incurred by such Subsidiary or Affiliate (whether or not such losses were for such fiscal year or any earlier fiscal years), but only to the extent (x) such losses have not otherwise caused other contributions or guarantee payments to be included in net margins for purposes of computing Margins for Interest for a prior fiscal year and (y) such amount has not otherwise been included in net margins:

\_\_\_\_\_

*Equal*

\_\_\_\_\_

**Interest Charges (as defined in the Indenture in effect as of the date of the Closing Date):**

\_\_\_\_\_

**Margins for Interest Ratio (sum of (a) Margins For Interest plus (b) Interest Charges, divided by Interest Charges):**

\_\_\_\_\_ <sup>12</sup>

\_\_\_\_\_  
<sup>12</sup> Must be at least 1.10 to comply with covenant.

Schedule 3 to Compliance Certificate

**Total Debt to Capitalization**

<i>Total Debt:</i> <sup>13</sup>	
<i>Total Capitalization:</i> <sup>14</sup>	
<i>Total Debt to Capitalization Ratio:</i>	15

<sup>13</sup> Total Debt shall mean the sum of (a) all indebtedness for borrowed money, (b) obligations which are evidenced by notes, bonds debentures or similar instruments, and (c) that portion of obligations with respect to capital leases or other capitalized agreements that are properly classified as a liability on the balance sheet in conformity with GAAP or which are treated as operating leases under regulations applicable to them but which otherwise would be required to be capitalized under GAAP.

<sup>14</sup> Total Capitalization shall mean Total Debt plus the difference between total assets less total liabilities (both in accordance with GAAP), [except that contributions in aid of construction, advances for construction, customer deposits, or similar items reducing rate base calculations shall be excluded.]

<sup>15</sup> Must be no more than 0.80:1.00 to be in compliance.

**Schedule 4 to Compliance Certificate**

**Borrower's Ratings**

**EXHIBIT I  
TO CREDIT AGREEMENT**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**Assignment and Assumption Agreement**

This Assignment and Assumption Agreement (the "Assignment and Assumption") is dated as of the Effective Date of Assignment set forth below and is entered into by and between the Assignor (as defined below) and the Assignee (as defined below). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement (as defined below), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date of Assignment inserted by the Administrative Agent as contemplated below (A) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (B) to the extent permitted to be assigned under applicable Requirement of Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (A) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (A) and (B) above being referred to herein collectively as the "Assigned Interest"). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor : \_\_\_\_\_ (the "Assignor")
2. Assignee : \_\_\_\_\_ (the "Assignee")
3. Credit Agreement: Credit Agreement, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"), by and among BIG RIVERS ELECTRIC CORPORATION), a Kentucky cooperative corporation (the "Borrower"), the several financial institutions or entities from time to time parties thereto and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, issuing lender, lead arranger and book runner.

4. Assigned Interest:

Amount of Commitment/Loans Assigned	Percentage of Commitment/Loans Assigned
\$	%

\$	%
\$	%

5. Effective Date of Assignment: \_\_\_\_\_, 201\_\_<sup>16</sup> (the "Effective Date of Assignment")

**(SIGNATURE PAGES FOLLOW)**

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<sup>16</sup> To be inserted by Administrative Agent and which shall be the effective date of recordation of transfer in the Register therefor.

The terms set forth in this Assignment and Assumption are hereby agreed to:

[Name of Assignee]

[Name of Assignor]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Consented<sup>17</sup> to:

COBANK, ACB, as Administrative Agent

Consented<sup>18</sup> to:

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

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<sup>17</sup> Consent of Administrative Agent is not required if the Assignor is assigning its Assigned Interests to an Affiliate of the Assignor, another Lender, an Affiliate of another Lender or an Approved Fund.

<sup>18</sup> Consent of the Borrower is not required if the Assignor is assigning its Assigned Interests to an Affiliate of the Assignor, another Lender, an Affiliate of another Lender, an Approved Fund or if a Default or an Event of Default has occurred and is continuing.

## TO ASSIGNMENT AND ASSUMPTION

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1 Assignor. The Assignor (A) represents and warrants that (1) it is the legal and beneficial owner of the Assigned Interest, (2) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (3) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (B) assumes no responsibility with respect to (1) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (2) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (3) the financial condition of the Borrower or its Affiliates or any other Person obligated in respect of any Loan Document or (4) the performance or observance by the Borrower or its Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (A) represents and warrants that (1) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (2) it satisfies the requirements to be an assignee under the Credit Agreement (subject to such consents, if any, as may be required under the Credit Agreement), (3) from and after the Effective Date of Assignment, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (4) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (5) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to the Credit Agreement, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (6) it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest; and (B) agrees that (1) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (2) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date of Assignment, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date of Assignment and to the Assignee for amounts which have accrued from and after the Effective Date of Assignment.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an



executed counterpart of a signature page of this Assignment and Assumption by telecopy or by PDF shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the laws of the State of New York.

**EXHIBIT J  
TO CREDIT AGREEMENT**

**FORM OF NOTE**

\$[\_\_\_\_\_] \_\_\_\_\_, 2012

**FOR VALUE RECEIVED, BIG RIVERS ELECTRIC CORPORATION**, a Kentucky cooperative corporation (the "Borrower") **HEREBY PROMISES TO PAY** to [LENDER] (the "Lender"), or its assigns, in lawful money of the United States and in immediately available funds, the principal amount of [\_\_\_\_\_] DOLLARS (\$[\_\_\_\_\_] ), or, if less, the aggregate unpaid principal amount of the Loans (as defined in the Credit Agreement referred to below) made by Lender to the Borrower pursuant to the Credit Agreement and outstanding on the Commitment Termination Date (as defined in the Credit Agreement), whichever is less. The Borrower also promises to pay interest on the unpaid principal balance of the Loans for the period such balance is outstanding in like money, at the rates of interest, at the times, and calculated in the manner, set forth in Credit Agreement. Any amount of principal and, to the extent provided by law, interest, hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at a rate per annum equal at all times to the rates set forth in Section 2.09 of the Credit Agreement. All payments made hereunder shall be made at the times and in the manner set forth in the Credit Agreement.

The Borrower hereby authorizes the Lender to endorse on the schedule annexed to this Note: (i) the amount and Type of all Loans; (ii) in the case of LIBOR Loans, the applicable Interest Periods; and (iii) all renewals, conversions and payments of principal and interest in respect of such Loans, which endorsements shall be presumed correct absent manifest error as to the outstanding principal amount of, and accrued and unpaid interest on, the Loans; provided however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligation of the Borrower under the Credit Agreement or this Note.

This is a Note referred to in that certain Credit Agreement, dated as of [\_\_\_\_], 2012, by and among the Borrower, the several financial institutions or entities from time to time parties thereto, including the Lender, and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, issuing lender, lead arranger and book runner, as amended, supplemented or modified from time to time (the "Credit Agreement"), to evidence the Loans made by the Lender thereunder, all of the terms and provisions of which are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of principal upon the occurrence of an Event of Default and for prepayments on the terms and conditions specified therein.

The Borrower hereby waives presentment for payment, demand, notice of protest, notice of dishonor, and any other notice or formality with respect to this Note, and all defenses on the ground of delay or of any extension of time for payment hereof which may, without obligation, hereafter be given by the holder hereof.

Except to the extent governed by applicable federal law, this Note shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without reference to choice of law doctrine.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE 4.01(g)**

BIG RIVERS ELECTRIC CORPORATION  
LITIGATION SCHEDULE  
(as of March 12, 2012)

1. ***Eminent Domain Litigation.***

Big Rivers is the plaintiff in several eminent domain proceedings that have been filed to acquire easements for transmission line rights-of-way.

2. ***Jane Eckert, on her own behalf and on behalf of the Estate of Robert Eckert, Deceased vs. Alcoa, Inc., Big Rivers Electric Corporation, BMW Constructors, Inc., Bristol-Myers Squibb Company, General Electric Company, Industrial Contractors, Inc., Triangle Enterprises, Inc.,*** Marion County Superior Court, Civil Division Room No. 2, Cause No. 49D02-9801-MI-0001-359.

This action arises from the 2007 death of a worker, Robert Eckert, from asbestos-related disease diagnosed in 1995. The suit was filed July 2, 2007, in Marion County, Illinois. Big Rivers' liability carrier, Zurich, is defending this action with a reservation of rights.

3. ***Harlen Kennedy, Jr. and Brenda Kennedy, his wife, v. Big Rivers Electric Corporation, et al.,*** 3rd Judicial Circuit, Madison County, Illinois, Case No. 11-L-727.

This action was filed by the plaintiffs in 2011 alleging that Harlen Kennedy, Jr. developed lung cancer from exposure to asbestos while working for a contractor at a Big Rivers facility. Big Rivers' liability carrier, Zurich, is defending this action with a reservation of rights.

4. ***Pat Maple, as Representative of the Heirs and Estate of Durwood Maple, Deceased v. Big Rivers Electric Corporation, et al.,*** In the Circuit Court of St. Clair County, Illinois, Twentieth Judicial Circuit No. 11-L-59.

This action was filed by the plaintiff in 2011 alleging that Durwood Maple developed and died from lung cancer that resulted from exposure to asbestos while working for a contractor at a Big Rivers facility. Big Rivers' liability carrier, Zurich, is defending this action with a reservation of rights.

5. ***Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power***

*and Light*, Henderson Circuit Court Civil Action No. 09-CI-00693; *City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light v. Big Rivers Electric Corporation*, Kentucky Court of Appeals No. 2010-CA-000120-MR; *In the Matter of Arbitration Between: Big Rivers Electric Corporation v. City of Henderson, Kentucky and City of Henderson Utility Commission dba Henderson Municipal Power and Light*, American Arbitration Association, Case No. 52-198-000173-10.

Big Rivers filed suit in Henderson, Kentucky, Circuit Court on July 31, 2009, requesting an order referring to arbitration a dispute with the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, “HMP&L”). The dispute is over the rights of the parties respecting “Excess Henderson Energy,” as that term is defined in the contracts by which Big Rivers operates HMP&L’s Station Two and receives a portion of the generation output of Station Two. The order of the Henderson Circuit Court directing arbitration has been appealed to the Kentucky Court of Appeals. The contractual dispute is now pending before the American Arbitration Association.

6. *John Yates v. Inland Waters Pollution Control Services LLC d/b/a Inland Industrial Services Group, LLC, Inland Industrial Services Group LLC, DeBusk Industrial Services Company (a/k/a DISC), E.ON U.S. Services, Inc., LG&E and KU Services Company, f/k/a E.ON Services, Inc., Big Rivers Electric Corporation, Western Kentucky Energy Corp., Inland Waters of Ohio, Inc., James D. Price, Jr., and Joshua McCarty*, Ohio Circuit Court, Case No. 10-CI-00523.

John Yates, a resident of Texas and an employee of Titan Contracting and Leasing Company, Inc., filed suit in Ohio Circuit Court on October 1, 2010, against Big Rivers and several other entities regarding injuries he received while performing work at the Big Rivers Wilson Station on October 7, 2009. Co-defendants’ insurance carrier, Chartis, has agreed to defend the action and indemnify Big Rivers in this matter.

7. *The City of Henderson Utility Commission v. Michael C. Donta, Executive Director of the Department of Workplace Standards, Big Rivers Electric Corporation, et al*, Henderson Circuit Court, Civil Action No. 10-CI-898.

The Kentucky Labor Cabinet served a Notice of Violation on Henderson Municipal Power & Light (“HMP&L”) on April 27, 2010, alleging that HMP&L had violated prevailing wage laws by failing to stipulate in bid proposals that prevailing hourly rate of wages must be paid to all laborers, workmen, and mechanics

**SCHEDULE 4.01(g)**

performing work on the Station Two spring 2010 scheduled outage. This is a declaratory judgment action, which asks the Court to decide whether the value of the individual projects related to the outage work on a generating station must be combined for purposes of determining coverage under prevailing wage laws in Kentucky. Big Rivers was joined as a party interested in the outcome because of its operating and power purchase agreements with HMP&L.

8. ***Notice and Application of Big Rivers Electric Corporation for a General Adjustment in Rates***, PSC Case No. 2011-00036; ***Big Rivers Electric Corporation v. Public Service Commission, et al.***, Franklin Circuit Court Civil Action No. 11-CI-1757; ***Kentucky Industrial Utility Customers, Inc. v. Public Service Commission, et al.***, Franklin Circuit Court Civil Action No. 11-CI-1700; ***Kentucky Industrial Utility Customers, Inc. v. Public Service Commission Chairman David Armstrong and Vice Chairman James Gardner, et al.***, Franklin Circuit Court Civil Action No. 12-CI-0037.

These proceedings are all relate to Big Rivers' notice and application for a general adjustment in rates that was filed with the Kentucky Public Service Commission ("*Commission*") on March 1, 2011 (the "*Rate Case*"). On November 17, 2011, the Commission entered an order (the "*Order*") granting a portion of Big Rivers' requested rate relief.

Kentucky Industrial Utility Customers, Inc. ("*KIUC*"), an intervening party in the Rate Case, filed an appeal from the Order on December 1, 2011. That appeal was docketed in Franklin Circuit Court in Case No. 11-CI-1700.

On December 6, 2011, Big Rivers filed with the Commission a petition for rehearing of the Order. On December 8, 2011, the Commission granted Big Rivers' petition for rehearing. That rehearing is pending.

On December 15, 2011, in light of questions raised about the jurisdiction of the Commission to grant a rehearing, Big Rivers filed a separate complaint in the Franklin Circuit Court as a protective appeal from the Order. That appeal was docketed in Franklin Circuit Court in Case No. 11-CI-1757.

On January 10, 2012, KIUC filed an action seeking a writ of mandamus directing the Chairman and Vice Chairman of the Commission to dismiss Big Rivers' rehearing petition and to vacate the Rehearing Order. That case was docketed in Franklin Circuit Court in Case No. 12-CI-0037.

By order dated March 8, 2012, the Franklin Circuit Court consolidated,

dismissed and remanded to the Commission all three cases pending in that court. No appeals have yet been filed from this order.

**9. *Other Pending Disputes with Henderson Municipal Power & Light.***

Big Rivers has two other pending disputes related to the Henderson Municipal Power & Light Station Two contracts. The first involves the refusal of HMP&L to pay any of the expenses billed to Big Rivers by Midwest ISO that are related to the Station Two generation and the HMP&L load. Second, Big Rivers has contested the reasonableness of the HMP&L annual capacity share reservations for certain future periods. No litigation has yet been initiated with respect to these disputes.

**10. *SERC Investigation***

Big Rivers is currently the subject of a non-public investigation initiated in February 2009 by SERC Reliability Corporation (“*SERC*”), one of the North America Electric Reliability Corporation’s (“*NERC*’s”) regional entities with responsibility for enforcing mandatory reliability standards. The staff from NERC and the Federal Energy Regulatory Commission also participated in the investigation. In June 2011, SERC initiated a formal assessment to determine Big Rivers’ compliance relative to eight Reliability Standards Requirements as a result of findings of possible violations by the investigation team. The assessment is still ongoing.

**11. *Secretary of the Labor Cabinet Commonwealth of Kentucky v. Big Rivers Electric Corporation***, KOSHRC Docket No. 4833-11, Administrative Action No. 11-KOSH-0290.

This complaint was filed by the plaintiff in 2011, subsequent to Big Rivers having contested a citation issued by KOSHA. The administrative hearing officer has granted extensions requested by KOSHA counsel to allow time for settlement negotiations, which have yet to take place. The penalties assessed with the citation total \$7,500.



**EXHIBIT B**

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**SECURED CREDIT AGREEMENT**

**BETWEEN**

**BIG RIVERS ELECTRIC CORPORATION**  
AS BORROWER,

THE SEVERAL LENDERS FROM TIME TO TIME PARTIES  
HERETO,

AND

**COBANK, ACB,**  
AS ADMINISTRATIVE AGENT, LEAD ARRANGER AND BOOK RUNNER,

**DATED AS OF \_\_\_\_\_, 2012**

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## SECURED CREDIT AGREEMENT

This Secured Credit Agreement (this "Agreement") dated as of \_\_\_\_\_, 2012, is entered into by and between Big Rivers Electric Corporation, a Kentucky cooperative corporation (the "Borrower"), the several financial institutions or entities from time to time parties to this Agreement (the "Lenders") and CoBank, ACB, a federally chartered instrumentality of the United States ("CoBank") as administrative agent (in such capacity, the "Administrative Agent"), lead arranger, and book runner.

### BACKGROUND

**WHEREAS**, the Lenders have agreed to extend a term loan to the Borrower, in an aggregate amount not to exceed \$235,000,000, for the purposes, and upon the terms and conditions, set forth herein;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

### ARTICLE 1 DEFINITIONS AND ACCOUNTING TERMS

**SECTION 1.01 Definitions.** Capitalized terms used in this Agreement and defined in Exhibit A hereto shall have the meanings set forth in that Exhibit.

**SECTION 1.02 Rules of Interpretation.** The rules of interpretation set forth in Exhibit A shall apply to this Agreement.

### ARTICLE 2 LOAN AMOUNT AND TERM

#### **SECTION 2.01 Term Loan Commitment.**

(a) Subject to the terms and conditions hereof, each Lender severally agrees to make available to the Borrower on the Closing Date an amount in Dollars not to exceed its Commitment and, when taken together with all other amounts made available by the other Lenders on the Closing Date, not to exceed the total Commitment (the "Loan").

(b) The Borrower's obligation to repay the Loan shall be evidenced by one or more notes, each in substantially the form of Exhibit B hereto, duly executed, dated the Closing Date, and each payable to a Lender in an aggregate principal amount of such Lender's Loan (each a "Note" and together, the "Notes").

#### **SECTION 2.02 Procedure for Borrowing.**

(a) The Borrower shall give the Administrative Agent (i) an irrevocable Notice of Borrowing (which notice must be received by the Administrative Agent prior to 10:00 AM, Denver, Colorado time, at least three (3) Banking Days prior to the Closing Date), and (ii) a funding indemnity letter executed by the Borrower and reasonably acceptable to the Administrative Agent.

(b) Upon receipt of a Notice of Borrowing from the Borrower, the Administrative Agent will promptly notify each Lender thereof. Each Lender will make an amount equal to its Commitment available to the Administrative Agent, in immediately available funds, for the account of the Borrower at the Funding Office prior to 11:00 AM Denver, Colorado time on the Closing Date. The



Loan will then be made available (after the Administrative Agent has received the same from each Lender as provided for in the preceding sentence) to the Borrower by the Administrative Agent by no later than 1:00 PM Denver, Colorado time by crediting the Borrower's account (Account No. 00050949) at CoBank, ACB (ABA Routing No. 307088754), or to such other account as the Borrower shall direct the Administrative Agent in writing, by wire transfer of immediately available funds.

**SECTION 2.03 Method of Payment.** The Borrower shall make all payments to the Administrative Agent under this Agreement and all other Loan Documents by wire transfer of immediately available funds, by check, or, if specified by separate agreement between the Borrower and the Administrative Agent, by automated clearing house or other similar cash handling processes. Wire transfers shall be made to the following account (or to such other account as the Lender may direct by notice):

CoBank, ACB, as Administrative Agent  
Bank Location: Englewood, Colorado  
ABA Routing No. 307088754  
Short Name: CoBank  
Beneficiary: Big Rivers Electric Corporation  
Account Number: 00050949  
Attention: agencybank@cobank.com

Checks shall be mailed to CoBank, Department 167, Denver, Colorado 80291-0167 or to such other place as the Administrative Agent may direct by notice from time to time (the "Funding Office").

**SECTION 2.04 Repayment of the Loan.**

(a) The Borrower hereby unconditionally promises to repay the Loan in accordance with the repayment schedule set forth in Exhibit C (or on such earlier date on which the Loan becomes due and payable pursuant to Article 10). Amounts repaid pursuant to this Agreement may not be re-borrowed. Any unpaid principal amounts of the Loan outstanding as of the Maturity Date shall be due and payable on the Maturity Date. The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Loan outstanding from the Closing Date until payment in full thereof at the rate per annum, and on the dates, set forth in Section 2.08.

(b) The Administrative Agent, on behalf of the Borrower, shall maintain the Register in accordance with Section 12.06(c), in which shall be recorded (i) the amount of the Loan made hereunder, any Note evidencing the Loan, (ii) the amount of any principal, interest and fees, as applicable, due and payable or to become due and payable from the Borrower to each Lender hereunder, and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower.

(c) The entries made in the Register shall, to the extent permitted by applicable Requirement of Law, be presumed correct absent manifest error as to the existence and amounts of the Obligations of the Borrower therein recorded; provided, that the failure of the Administrative Agent to maintain the Register, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loan or any other obligation in accordance with the terms of this Agreement.

(d) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest or otherwise, shall be made without setoff, deduction or counterclaim to the extent permitted by applicable Requirements of Law and shall be made prior to 12:00

PM Denver, Colorado time, on the due date thereof to the Administrative Office at the Funding Office, and funds received after such time shall be credited on the next Banking Day. If any payment hereunder becomes due and payable on a day other than a Banking Day, such payment shall be extended to the next succeeding Banking Day. In the case of any extension of any payment of principal pursuant to the preceding sentence, interest thereon shall be payable at the then applicable rate during such extension. Credit for any payment made by check will not be given until the later of the next Banking Day after receipt of the check or the day on which the Administrative Agent receives immediately available funds.

**SECTION 2.05 Voluntary Prepayments.**

Subject to Section 2.07 and Section 3.03, the Borrower may at any time and from time to time prepay the Loan in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent no later than 11:00 AM, Denver, Colorado time on five (5) Banking Days prior thereto, which notice shall specify (i) the amount of the Loan to be prepaid, (ii) the date (which shall be a Banking Day) of prepayment, and (iii) whether such payments should be applied ratably or in inverse order of maturity, provided that the Borrower shall also pay any amounts owing pursuant to Section 3.03. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein together with accrued interest to such date on the amount prepaid. Partial prepayments of the Loan shall be in an aggregate principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Any payments of the Loan made pursuant to this Section 2.05 may not be reborrowed.

**SECTION 2.06 Mandatory Prepayments.**

Subject to Section 2.07 and Section 3.03, the Borrower shall prepay the Loan in full immediately upon the occurrence of a Change of Control, without the need for any demand or notification by any Person.

- (a) Any payments made under this Section 2.06 shall be applied in inverse order of maturity.
- (b) Any payments made under this Section 2.06 may not be reborrowed.

**SECTION 2.07 Prepayment Surcharge.** Prepayments of the Loan under Section 2.05 and Section 2.06 (whether such prepayment is the result of a voluntary prepayment, acceleration or otherwise) are subject to a surcharge (the “Prepayment Surcharge”) on any such prepayment equal to a per annum rate of one-half (1/2) of one percent (1%) on the principal balance of the Loan being prepaid (calculated through the Maturity Date). Such Prepayment Surcharge shall be in addition to any compensation payable pursuant to Section 3.03 hereof.

**SECTION 2.08 Interest Rates and Payment Dates.**

- (a) The Loan shall bear interest at a rate per annum equal to the Quoted Fixed Rate.
- (b) Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, interest shall accrue at a rate per annum on Loan, fees and all other amounts due and payable pursuant to this Agreement at a rate per annum equal to the Quoted Fixed Rate plus two percent (2%) (the “Default Rate”).

(c) Interest shall be payable by the Borrower in arrears on each Interest Payment Date; provided that interest accruing pursuant to Section 2.08(b) shall be payable from time to time on demand.

**SECTION 2.09 Computation of Interest.** Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed.

**SECTION 2.10 Fees.** The Borrower agrees to pay such fees as provided in the Fee Letter.

**SECTION 2.11 Security.**

(a) Each party hereto acknowledges that CoBank has a statutory first Lien pursuant to the Farm Credit Act of 1971 (as amended from time to time) on all CoBank Equities that the Borrower may now own or hereafter acquire, which statutory Lien shall be for CoBank's sole and exclusive benefit. The CoBank Equities shall not constitute security for the obligations arising hereunder due to any other Person. To the extent that any of the Loan Documents create a Lien on the CoBank Equities or on patronage accrued by CoBank for the account of the Borrower (including, in each case, proceeds thereof except to the extent any such proceeds not themselves constituting CoBank Equities are part of the Trust Estate), such Lien shall be for CoBank's sole and exclusive benefit. Neither the CoBank Equities nor any accrued patronage shall be offset against such obligations except that, in the event of an Event of Default, CoBank may elect to apply the cash portion of any patronage distribution or retirement of equity to amounts due under this Agreement. The Borrower acknowledges that any corresponding tax liability associated with such application is the sole responsibility of the Borrower. CoBank shall have no obligation to retire the CoBank Equities upon any Event of Default, Default or any other default by the Borrower or any other Person, or at any other time, either for application to such obligations or otherwise.

(b) Each of the Notes at all times shall be secured under the Company's Indenture, shared equally and ratably with all other Outstanding Obligations (as defined in the Indenture) and shall be authenticated by the Trustee pursuant thereto.

**SECTION 2.12 Pro Rata Treatment and Payments.**

(a) Each payment (including prepayments) to be made by the Borrower on account of principal of and interest on the Loan shall be made pro rata according to the respective Outstanding Amounts of the Loan then held by the Lenders.

(b) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the relevant Lenders their respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three (3) Banking Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each relevant Lender to which any amount was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

(c) If any Lender makes available to the Administrative Agent funds for the Loan to be made by such Lender, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the Loan set forth in Sections 2.01 or 4.01 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest, without prejudice to such Lender's rights against the Borrower under Section 3.03

(d) The obligations of the Lenders hereunder to make available its Commitment for the Loan are several and not joint. The failure of any Lender to make available its Commitment on the Closing Date hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Commitment available on the Closing Date.

**SECTION 2.13 Sharing of Payments.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on the Loan or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of the Loan and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the portion of the Loan held by the other Lenders and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective amounts of the Loan and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in the Loan to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation. Notwithstanding anything in this Section 2.13 to the contrary, CoBank may exercise its rights against any CoBank Equities held by the Borrower without complying with this Section 2.13.

### **ARTICLE 3 ADDITIONAL PROVISIONS REGARDING THE LOAN**

#### **SECTION 3.01 Additional Loan Provisions.**

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or the Loan made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining the Loan or of maintaining its obligation to make the Loan, or to increase the cost to such Lender or such other Recipient, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitment of such Lender or the amount of the Loan made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company as specified in paragraph (a) or (b) of this Section 3.01 and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.01 shall not constitute a waiver of such Lender's right to demand such compensation; provided, that, the Borrower shall not be required to compensate a Lender pursuant to this Section 3.01 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

### **SECTION 3.02 Illegality.**

Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof any Change in Law shall make it unlawful for any Lender to make or maintain the Loan, then such

Lender shall promptly notify the Borrower thereof (with a copy to the Administrative Agent), following which, if such law shall so mandate, an amount of the outstanding principal of the Loan held by such Lender shall be prepaid by the Borrower, together with accrued and unpaid interest thereof and all other amounts payable by the Borrower under this Agreement (including, without limitation, amounts owing pursuant to Section 3.03), on or before such date as shall be mandated by such law.

### **SECTION 3.03    Compensation.**

The Borrower promises to indemnify the Administrative Agent and the Lenders and to hold the Administrative Agent and the Lenders harmless from any loss or expense which the Administrative Agent or the Lenders may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of the Loan after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of the Loan after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, (c) the making of any prepayment of the Loan, (d) the failure to repay the Loan when required by the terms of this Agreement, and (e) receiving payments pursuant to Section 3.06(a)(2) with respect to any assignments. Such indemnification may include an amount equal to (i) an amount of interest calculated at the Quoted Fixed Rate which would have accrued on the amount in question, for the period from the date of such prepayment or of such failure to borrow or repay to the last day of the Maturity Date minus (ii) the amount of interest (as reasonably determined by the Administrative Agent) which would have accrued to the Lenders on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank market. The Borrower shall pay to the Administrative Agent for the benefit of the Lenders such compensation as may be due under this Section 3.03 within ten (10) days after receipt of a certificate of the Administrative Agent claiming such compensation and identifying with reasonable specificity the basis for and amount thereof. Each determination by Administrative Agent of amounts owing under this Section 3.03 shall, absent manifest error, be conclusive and binding on the parties hereto. This Section 3.03 shall survive the termination of this Agreement, the other Loan Documents, and the Indenture and the payment of the Loan and all other amounts payable hereunder.

### **SECTION 3.04    Taxes.**

(a)    Payment Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.04) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b)    Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c)    Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.04)

payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.06 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) Evidence of Payments. As soon as practicable and in any event within ten (10) Banking Days after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 3.04, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 3.04(f)(ii)(a), (ii)(b) and (ii)(d) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower,

(a) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the

Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(b) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable;

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty:

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit D-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN;

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(d) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably



requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.04 (including by the payment of additional amounts pursuant to this Section 3.04), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 3.04 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**SECTION 3.05 Change of Lending Office**. If any Lender requests compensation under Sections 3.01, 3.02 or 3.03, or requires the Borrower to pay additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.04, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking the Loan hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01, 3.02, 3.03 or Section 3.04, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

**SECTION 3.06 Replacement of Lender or Reduction of Commitments**.

(a) If any Lender requests compensation under Sections 3.01, 3.02 or 3.03, or if the Borrower is required to pay additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.04 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.05 (each such Lender a "Specified

Lender”), or if any Lender is Non-Consenting Lender, then the Borrower may, so long as no Default or Event of Default shall have occurred and be continuing, at its sole expense and effort, upon notice to such Lender and the Administrative Agent require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if such Lender accepts such assignment); provided, that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.06;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loan, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Sections 3.02 or 3.03 or payments required to be made pursuant to Section 3.04, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

(b) Borrower may not exercise its rights under this Section 3.06 if, as a result of a waiver by a Lender, the circumstances giving rise to the Borrower’s rights under this Section 3.06 cease to apply or if a Default or Event of Default has occurred and is continuing.

#### ARTICLE 4 CONDITIONS PRECEDENT

**SECTION 4.01** Conditions to Closing. The obligation of the Lenders to enter into this Agreement and to provide the Loan to be made on the Closing Date is subject to the satisfaction (or waiver) of the following conditions precedent:

(a) Loan Documents. The Administrative Agent shall have receive for delivery to each Lender (i) this Agreement, executed and delivered by the Borrower, and (ii) each of the Notes accompanied by [a Certificate of Authentication executed by the Trustee and dated as of the Closing Date]<sup>1</sup> indicating that the Notes have been authenticated pursuant to the Indenture and are secured thereunder.

(b) Legal Opinions. The Administrative Agent shall have received for delivery to each Lender an executed legal opinion of (i) Sullivan, Mountjoy, Stainback & Miller, P.S.C., counsel to the Borrower, and (ii) Orrick, Herrington & Sutcliffe LLP, special New York counsel to the Borrower, both as reasonably satisfactory to the Administrative Agent.

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<sup>1</sup> ORRICK/BIG RIVERS: PLEASE CONFIRM APPROACH.

(c) Secretary's Certificate. The Administrative Agent shall have received for delivery to each Lender a certificate of the Borrower, dated as of the Closing Date, substantially in the form of Exhibit E, with appropriate insertions and attachments.

(d) Closing Certificate. The Administrative Agent shall have received for delivery to each Lender a certificate dated as of the Closing Date signed by a Responsible Officer of the Borrower certifying that (i) there has not occurred a Material Adverse Effect since December 31, 2011, (ii) all facts or information represented to the Administrative Agent are correct except as would not reasonably be expected to have a Material Adverse Effect, and (iii) the representations and warranties in Article 5 are true and accurate in all material respects, except to the extent any representation or warranty is already qualified by materiality or Material Adverse Effect, in which case such representation or warranty is true and correct in all respects.

(e) Financial Statements. The Administrative Agent shall have received for delivery to each Lender and be satisfied with (i) the audited financial statements of the Borrower for fiscal year ending December 31, 2011 (ii) unaudited financial statements of the Borrower for each quarterly period ended (a) after December 31, 2011 and (b) at least 45 days prior to the Closing Date, and (iii) such other financial information, including without limitation financial projections, as the Administrative Agent may reasonably request.

(f) Fees and Other Charges. The Administrative Agent, for its own benefit and the benefit of the Lenders, shall have received all fees or other charges provided for herein and in the Fee Letter to be paid on or prior to the Closing Date.

(g) Litigation. [Except as set forth in Schedule 4.01(g)]<sup>2</sup>, there shall be no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority pending that, singly or in the aggregate, materially impairs the transactions contemplated by this Agreement or that would reasonably be expected to have a Material Adverse Effect.

(h) Financial Obligations. The Borrower shall be in compliance with all agreements governing Material Indebtedness.

(i) Member Wholesale Power Contracts; Material Direct Serve Contracts. The Administrative Agent shall have received true and correct copies of the Member Wholesale Power Contracts and Material Direct Serve Contracts listed on Schedule 5.17, including all material amendments, supplements or modifications thereto.

(j) Solvency Certificate. The Administrative Agent shall have received for delivery to each Lender a solvency certificate signed by the chief financial officer or equivalent officer on behalf of the Borrower, substantially in the form of Exhibit F.

(k) USA Patriot Act. The Administrative Agent shall have received for delivery to each Lender from the Borrower documentation and other information required by the Lenders' regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA Patriot Act.

(l) Material Adverse Effect. There shall not have occurred a Material Adverse Effect since December 31, 2011.

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<sup>2</sup> NTD: SUBJECT TO REVIEW OF LITIGATION TO BE DISCLOSED BY BIG RIVERS.

(m) Flood Insurance. The Administrative Agent shall have been permitted to conduct any diligence it deems necessary with respect to any real property owned or used by the Borrower which may be subject to any Requirement of Law pertaining to flood insurance and have received for delivery to each Lender proof of flood insurance in an amount satisfactory to the Administrative Agent and otherwise sufficient to comply with any Requirements of Law.

(n) Indenture. (i) The Administrative Agent shall have received for delivery to each Lender a correct and complete copy of the Indenture and all amendments and supplements thereto, including that certain Supplemental Indenture, executed and delivered by the Trustee and the Borrower, dated on or before the Closing Date (the "Supplemental Indenture"), and be reasonably satisfied therewith, and (ii) the Borrower shall have completed any authentication requirements under the terms of the Indenture and taken the necessary steps to ensure the Notes are, to the satisfaction of the Administrative Agent in its sole discretion, secured thereunder (the "Collateral Requirements").

(o) Member Wholesale Power Contracts; Material Direct Serve Contracts. (i) No Member shall have terminated or contested in writing the validity or enforceability of its Member Wholesale Power Contract or, after any applicable grace period, failed to make any payment thereunder and (ii) no Person party to a Material Direct Serve Contract shall have terminated or contested in writing the validity or enforceability of its Material Direct Serve Contract or, after any applicable grace period, failed to make any payment thereunder.

(p) Additional Documents. The Administrative Agent shall have received such additional documents as the Administrative Agent may reasonably request.

(q) Written Request. The Administrative Agent shall have a Notice of Borrowing as required pursuant to the terms hereof.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

To induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loan, the Borrower represents and warrants to the Administrative Agent and the Lenders, which representations and warranties shall be deemed made on the Closing Date hereunder that:

**SECTION 5.01** Existence. The Borrower (i) is duly organized (or incorporated), validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation; (ii) has the corporate or organizational power and authority, and the legal right, to own and operate its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect; and (iii) is duly qualified and in good standing (where such concept is relevant) under the Requirements of Law of each jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification except, in each case, to the extent that the failure to be so qualified or in good standing (where such concept is relevant) would not reasonably be expected to have a Material Adverse Effect.

**SECTION 5.02 Compliance with Law, Member Wholesale Power Contracts, Material Direct Serve Contracts, and Organizational Documents.** The Borrower is in compliance with (i) all Requirements of Law except to the extent that any such failure to comply therewith would not reasonably be expected to have a Material Adverse Effect, (ii) all anti-corruption and anti-money laundering laws, rules, and regulations, including, without limitation, the USA Patriot Act and all other anti-terrorism financing laws, rules, and regulations, (iii) the Member Wholesale Power Contracts and Material Direct Serve Contracts except to the extent that any such failure to comply therewith would not reasonably be expected to have a Material Adverse Effect, and (iv) its Organizational Documents.

**SECTION 5.03 Consents and Approvals.** No consent, permission, authorization, filings, notices, order or license of any Governmental Authority or of any party to any agreement to which the Borrower is a party or by which it or any of its Property may be bound or affected, is necessary in connection with the execution, delivery, performance or enforcement of any Loan Document, except consents, permission, authorizations, filings, notices, orders or licenses described in Schedule 5.03<sup>3</sup>, which have been obtained and are in full force or the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect.

**SECTION 5.04 Taxes.** The Borrower (i) has filed or caused to be filed all Federal, state, provincial and other tax returns that are required to be filed and (ii) has paid all Taxes that are due and payable and all other Taxes, fees, assessments or other governmental charges or levies imposed on it or any of its Property by any Governmental Authority except in each case to the extent that (i) the failure to do so would not reasonably be expected to result in a Material Adverse Effect or (ii) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves required in conformity with GAAP with respect thereto have been provided on the books of the Borrower.

**SECTION 5.05 Corporate Power; Authorization; Enforceable Obligations.**

(a) The Borrower has the corporate or organizational power and authority to execute, deliver and perform the Loan Documents to which it is a party, to borrow the Loan hereunder, and to fulfill the Collateral Requirements.

(b) The Borrower has taken all necessary corporate or other action to authorize the execution, delivery and performance of the Loan Documents to which it is a party, to authorize the extensions of credit on the terms and conditions of this Agreement, and to fulfill the Collateral Requirements.

(c) Each Loan Document has been duly executed and delivered on behalf of the Borrower. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Requirements of Law affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law) and the implied covenants of good faith and fair dealing.

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<sup>3</sup> NTD: Schedule 5.03 should list any filings or other actions that are required to be taken pursuant to the Indenture that cannot be completed prior to the Closing Date.

**SECTION 5.06 No Conflict.** The execution, delivery and performance of this Agreement and the other Loan Documents by the Borrower, the borrowings hereunder and the use of the proceeds thereof do not and will not (a) violate the Organizational Documents of the Borrower, (b) except as would not reasonably be expected to have a Material Adverse Effect, violate any Requirements of Law, (c) result in, or require, the creation or imposition of any Lien on any of its respective properties or revenues pursuant to any Requirements of Law or any such Contractual Obligation (other than the Liens permitted by Section 7.01), or (d) result in a breach of, or constitute a default under, the Indenture or any other indenture, loan agreement, credit agreement, or other material agreement to which the Borrower is a party or by which it or any of its necessary properties are bound.

**SECTION 5.07 ERISA.** All plans (“ERISA Plans”) of a type described in Section 3(3) of ERISA in respect of which the Borrower is an “Employer”, as defined in Section 3(5) of ERISA, are, to the best knowledge of the Borrower, in substantial compliance with ERISA, and none of such ERISA Plans is insolvent or in reorganization, or has a material accumulated or waived funding deficiency within the meaning of Section 412 of the Internal Revenue Code, except to the extent that any such non-compliance, insolvency, reorganization or deficiency would not reasonably be expected to have a Material Adverse Effect. The Borrower has not incurred any material liability (including any material contingent liability) to or on account of any such ERISA Plan pursuant to Sections 4062, 4063, 4064, 4201 or 4204 of ERISA. No proceedings have been instituted to terminate any such ERISA Plan.

**SECTION 5.08 No Change.** Since December 31, 2011, there has been no event, circumstance, development, change or effect that would reasonably be expected to have a Material Adverse Effect.

**SECTION 5.09 No Material Litigation.** [Except as disclosed on Schedule 4.01(g)]<sup>4</sup>, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, likely to be commenced within a reasonable time period against the Borrower which, taken as a whole, would reasonably be expected to have a Material Adverse Effect.

**SECTION 5.10 Ownership of Property; Liens.** The Borrower has title to, or a valid leasehold interest in, all its material real property, and good title to, or a valid leasehold interest in, all its other material Property comprising the Trust Estate, and none of such Property comprising the Trust Estate is subject to any Lien except as permitted by Section 7.01.

**SECTION 5.11 Federal Regulations.** No part of the proceeds of the Loan will be used for “buying” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the regulations of the Board. If requested by the Administrative Agent, the Borrower will furnish to the Administrative Agent a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U 1 referred to in Regulation U.

**SECTION 5.12 Investment Company Act.** The Borrower is not an “investment company,” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

**SECTION 5.13 Subsidiaries, Affiliates and Members.** There are no direct or indirect Subsidiaries of the Borrower, Affiliates, or Members, other than as disclosed on Schedule 5.13.

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<sup>4</sup> NTD: SUBJECT TO REVIEW OF LITIGATION DISCLOSURES TO BE PROVIDED BY BIG RIVERS.

**SECTION 5.14 Solvency.** The Borrower is, and after giving effect to the making of the Loan hereunder will be, Solvent.

**SECTION 5.15 Environmental Matters.** [Except as disclosed on Schedule 5.15]<sup>5</sup>, the Borrower has obtained all environmental, health and safety permits, licenses and other authorizations required under all Environmental Laws to carry on its business as now being or as proposed to be conducted, which if not obtained would reasonably be expected to result in a Material Adverse Effect. Each of such permits, licenses and authorizations is in full force and effect and the Borrower is in compliance with the terms and conditions thereof, and is also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any applicable Environmental Law or in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered into, promulgated or approved thereunder, that, in each case, if not in effect or not in compliance would reasonably be expected to result in a Material Adverse Effect.

**SECTION 5.16 Accuracy of Information, etc.** No written, factual statement or information (excluding the projections and pro forma financial information referred to below) contained in this Agreement, any other Loan Document or any financial statement or certificate furnished to any Lender, by or on behalf of the Borrower, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, when taken as a whole, contained, as of the date such statement, information, or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements contained herein or therein not materially misleading. The projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by the Administrative Agent and the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

**SECTION 5.17 Member Wholesale Power Contracts; Material Direct Serve Contracts.**

(a) The Borrower has heretofore delivered to the Administrative Agent complete and correct copies of the Member Wholesale Power Contracts and Material Direct Serve Contracts in effect on the Closing Date. Identified on Schedule 5.17 are the Member Wholesale Power Contracts and the Material Direct Serve Contracts in effect as of the Closing Date. Each such Member Wholesale Power Contract and Material Direct Serve Contract are (i) legal, valid and binding upon the Borrower and enforceable against the Borrower in accordance with their respective terms and (ii) to the Borrower's actual knowledge without investigation, legal, valid and binding upon each Counterparty thereto and enforceable against each Counterparty thereto in accordance with their respective terms.

(b) The Borrower has not received a "Notice of Termination for Closure" under Section 7.3.1(a) of either of the Borrower's smelter contracts from any Counterparty indicating its intention to terminate such Direct Serve Contract pursuant to the terms thereunder ("Notice of Cancellation").

**SECTION 5.18 Insurance.** The Borrower maintains insurance in accordance with the Indenture.

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<sup>5</sup> NTD: SUBJECT TO REVIEW OF ENVIRONMENTAL MATTERS TO BE DISCLOSED BY BIG RIVERS.

**SECTION 5.19**            **Franchises, Licenses, Etc.**    The Borrower possesses all franchises, certificates, licenses, permits and other authorizations necessary for the operation of its Business, except such as the failure to possess would not reasonably be expected to result in a Material Adverse Effect.

**SECTION 5.20**        **Indebtedness.**    As of the Closing Date, the Borrower has no Material Indebtedness other than as set forth on Schedule 5.20.

**SECTION 5.21**        **Certain Indenture Items.**

(a)     The Notes constitute “Additional Obligations” as such term is defined in the Indenture.

(b)     The Notes have been and remain authenticated pursuant to the requirements set forth in Section 4.1 of the Indenture.

(c)     The terms of the Loan Documents do not conflict with the provisions of the Indenture.

(d)     The Borrower’s obligations under the Notes when delivered will rank *pari passu* in right of payment, without preference or priority, with all other “Obligations” as defined in the Indenture.

**ARTICLE 6**  
**AFFIRMATIVE COVENANTS**

The Borrower hereby agrees that, so long as the Loan or other amount is owing to the Lenders hereunder, the Borrower shall:

**SECTION 6.01**        **Financial Reports.**    Furnish to the Administrative Agent:

(a)     **Annual Financial Statements.**    No later than one hundred twenty (120) days after the end of each fiscal year of the Borrower occurring during the term hereof, annual financial statements of the Borrower prepared in accordance with GAAP consistently applied. Such financial statements shall: (a) be audited by a nationally recognized firm of independent certified public accountants selected by the Borrower or such other firm of independent certified public accountants reasonably acceptable to the Administrative Agent (b) be accompanied by a report of such accountants containing an opinion which is not limited as to going concern or scope to the effect that the financial statements: (i) were audited in accordance with generally accepted auditing standards; and (ii) present fairly, in all material respects, the financial position of the Borrower as at the year then ended and the results of its operations for the year then ended, in conformity with GAAP; (c) be prepared in reasonable detail and in comparative form and (d) include consolidated balance sheets, a statement of equity, a statement of operations, a statement of cash flows, and all notes and schedules relating thereto.

(b)     **Quarterly Financial Statements.**    No later than sixty (60) days after the end of the first three quarterly periods of each fiscal year of the Borrower, commencing with the fiscal quarter ending June 30, 2012, the unaudited consolidated balance sheets of the Borrower as of the end of such quarter and a related statement of operations for the Borrower for the portion of the fiscal year through the end of such quarter, and such other interim statements as the Administrative Agent may reasonably request, all prepared on a consolidated basis, in reasonable detail, and in comparative form in accordance



with GAAP consistently applied and certified by the chief financial officer of the Borrower (or another Responsible Officer acceptable to the Administrative Agent) as being fairly stated in all material respects (subject to normal year end audit adjustments and the lack of notes).

(c) Annual Budgets and Financial Plans. No later than ninety (90) days after the end of each fiscal year of the Borrower, copies of the annual budgets and financial plans of the Borrower and its Subsidiaries covering for at least the three year period following the end of such fiscal year.

(d) Annual RUS Form 12. Promptly after furnishing the same to RUS, a copy of the RUS Form 12a (or equivalent replacement thereof) filed by the Borrower with RUS for December 31 of each year.

(e) Compliance Certificate. Together with each set of financial statements delivered pursuant to Sections 6.01(a) and (b), a certificate of the chief financial officer of the Borrower substantially in the form of Exhibit G (or another Responsible Officer acceptable to the Administrative Agent): (i) certifying that no Default or Event of Default occurred during the period covered by such statements or, if a Default or Event of Default did occur during such period, a statement as to the nature thereof, whether such Default or Event of Default is continuing, and, if continuing, the action which is proposed to be taken with respect thereto and (ii) together with each set of financial statements delivered pursuant to Section 6.01(a) only, calculating the Borrower's Margin For Interest Ratio (as defined in the Indenture).

(f) Other Information. Such other information and reports regarding the condition or operations, financial or otherwise (including copies of any amendments or supplements to the Indenture, Member Wholesale Power Contracts, or Material Direct Serve Contracts) of the Borrower as the Administrative Agent may from time to time reasonably request.

**SECTION 6.02 Notices.** Upon a Responsible Officer of the Borrower obtaining knowledge thereof, furnish to the Administrative Agent for delivery to each Lender:

(a) Notice of Default; Material Adverse Event. Promptly, and in any event within ten (10) Banking Days after becoming aware thereof, notice of the occurrence of a Default or an Event of Default or any event, circumstance, change or effect that would reasonably result in a Material Adverse Effect.

(b) Notice of Litigation, Governmental Proceedings, & Environmental Events. Promptly, and in any event within ten (10) Banking Days after a Responsible Officer becoming aware thereof, notice of: (1) the commencement of any action, suit or proceeding before or by any court, governmental instrumentality, arbitrator, mediator or the like which, if adversely decided, would reasonably be expected to have a Material Adverse Effect; and (2) the receipt of any notice, indictment, pleading, or other communication alleging a condition that both: (a) may reasonably be expected to require the Borrower to undertake or to contribute to a clean-up or other response under any Environmental Law, or which seeks penalties, damages, injunctive relief, or other relief as a result of an alleged violation of any such Requirements of Law, or which claims personal injury or property damage as a result of environmental factors or conditions; and (b) would reasonably be expected to have a Material Adverse Effect or result in criminal sanctions.

(c) Notice of Certain Events. Promptly, and in any event within fifteen (15) Banking Days, written notice of each of the following: (1) any change in the name, structure, jurisdiction of organization, or organizational identification number (if any) of Borrower; or (2) any change in the

principal place of business of the Borrower or the office where its records concerning its accounts are kept.

(d) Notices with Respect to Material Contracts. Promptly, and in any event within ten (10) Banking Days after a Responsible Officer becoming aware thereof, the Borrower shall notify the Administrative Agent of (i) any material modification to any of the Material Contracts or entering into any new Material Contracts, (ii) any default in the performance of any Counterparty's or Counterparties' payment obligations where the aggregate principal amount of such default or defaults exceeds \$10,000,000 under any Material Contract that has continued unremedied for thirty (30) or more days beyond the applicable grace period, if any, (iii) its receipt of a judicial or regulatory filing made by a Member, in either case (a) requesting to withdraw from, or make a material modification to, any of its obligations under its Material Contract, (b) seeking consent to assign any of its rights and obligations under its Material Contract, or (c) contesting the validity or enforceability of its Material Contract, (iv) any release or termination of a Counterparty's payment obligations under a Material Contract (v) any decree, order, filing, petition, or similar action regarding the insolvency or bankruptcy of a Counterparty or regarding any such Counterparty's inability to meet its future obligations under its Material Contract, or (vi) its receipt of a Notice of Cancellation from a Counterparty to a Material Direct Serve Contract and shall provide a copy of such Notice of Cancellation to the Administrative Agent.

(e) Subsidiaries. Promptly, and in any event within fifteen (15) Banking Days after (i) the formation of any material Subsidiary or (ii) any immaterial Subsidiary becoming a material Subsidiary, such information as the Administrative Agent may reasonably request with respect to such Subsidiary, including, without limitation, the name, chief executive office, and jurisdiction of formation.

(f) Governmental Reports. Promptly, and in any event within ten (10) Banking Days upon Borrower's receipt of a written notice, request for information, order, complaint or report of any Governmental Authority regarding any matter that would reasonably be expected to have a Material Adverse Effect.

**SECTION 6.03 Compliance with Laws, Member Wholesale Power Contracts, Direct Serve Contracts, and Indenture.** Comply with (A) all Requirements of Law (including without limitation Environmental Laws and ERISA matters) and each Member Wholesale Power Contract and Direct Serve Contract, except, in each case, to the extent that failure to comply therewith would not reasonably be expected to have a Material Adverse Effect, and (B) the Indenture.

**SECTION 6.04 Inspection.** Permit any Lender (coordinated through the Administrative Agent or its agents), upon reasonable notice and during normal business hours or at such other times as the parties may agree, to examine the properties, books and records of the Borrower, and to discuss its or their affairs, finances and accounts with its or their officers, directors, and independent certified public accountants.

**SECTION 6.05 Use of Proceeds.** Use the proceeds of the Loan for debt refinancing, funding of the Transition Reserve in the amount of \$35,000,000, and capital expenditures.

**SECTION 6.06 CoBank Equity.**

(a) So long as CoBank is a Lender hereunder, the Borrower will acquire equity in CoBank in such amounts and at such times as CoBank may require in accordance with CoBank's ByLaws and Capital Plan (as each may be amended from time to time), except that the maximum amount of equity that the Borrower may be required to purchase in CoBank in connection with the amount of the Loan held

by CoBank may not exceed the maximum amount permitted by the ByLaws and the Capital Plan at the time this Agreement is entered into. The Borrower acknowledges receipt of a copy of (i) CoBank's most recent annual report, and if more recent, CoBank's latest quarterly report, (ii) CoBank's Notice to Prospective Stockholders and (iii) CoBank's ByLaws and Capital Plan, which describe the nature of all of the Borrower's stock and other equities in CoBank acquired in connection with its patronage loan from CoBank (the "CoBank Equities") as well as capitalization requirements, and agrees to be bound by the terms thereof.

(b) Each party hereto acknowledges that CoBank's ByLaws and Capital Plan (as each may be amended from time to time) shall govern (i) the rights and obligations of the parties with respect to the CoBank Equities and any patronage refunds or other distributions made on account thereof or on account of the Borrower's patronage with CoBank, (ii) the Borrower's eligibility for patronage distributions from CoBank (in the form of CoBank Equities and cash) and (iii) patronage distributions, if any, in the event of a sale of a participation interest. CoBank reserves the right to assign or sell participations in all or any part of its Commitments or outstanding amounts of the Loan hereunder on a non-patronage basis.

**SECTION 6.07 Further Assurances.** From time to time execute and deliver, or cause to be executed and delivered, such additional instruments, certificates or documents, and take all such actions, as the Administrative Agent may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement, the other Loan Documents and the Collateral Requirements.

## **ARTICLE 7 NEGATIVE COVENANTS**

The Borrower hereby agrees that, for the period so long as Loan or other amount is owing to the Lenders hereunder, the Borrower shall not:

**SECTION 7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon the Trust Estate (as defined in the Indenture) except as permitted under the Indenture (which Liens not prohibited by the Indenture include the statutory first Lien in favor of CoBank on the CoBank Equities).

**SECTION 7.02 Restricted Payments.** Directly or indirectly declare or pay any dividend or make any payments of, distributions of, or retirements of patronage capital to its Members, except to the extent permitted by Section 13.15 of the Indenture.

**SECTION 7.03 Accounting Changes.** Make or permit any change in accounting policies or reporting practices, except as required or permitted by applicable law or as otherwise in compliance with GAAP.

**SECTION 7.04 Member Wholesale Power Contracts, Material Direct Serve Contracts and Organizational Documents.**

(a) Consent to any modification, supplement or waiver of any of the provision of its Member Wholesale Power Contracts or Material Direct Serve Contracts, if the effect thereof, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(b) Consent to any modification, supplement or waiver of any of the provisions of its Organizational Documents if the effect thereof, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

**SECTION 7.05 Negative Pledge and Prohibition Clauses.** Enter into any Contractual Obligation that prohibits or limits the ability of the Borrower to (a) create, incur, assume or suffer to exist CoBank's statutory first Lien on the CoBank Equities or (b) perform its obligations under any Loan Document.

## **ARTICLE 8 FINANCIAL COVENANT**

The Borrower shall comply with Section 13.14 of its Indenture.

## **ARTICLE 9 EVENTS OF DEFAULT**

If any of the following events shall occur and be continuing:

**SECTION 9.01 Payment.** The company shall fail to pay (a) any principal of the Loan due hereunder, or (b) any interest owed by it on the Loan or any fee or other amount payable by it hereunder or under any other Loan Document, within five (5) Banking days after any such interest or other amount becomes due in accordance with the terms hereof.

**SECTION 9.02 Misrepresentation.** Any representation or warranty made or deemed made by the Borrower herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document, shall in either case prove to have been inaccurate in any material respect on or as of the date made or deemed made or furnished; provided that, with respect to representations and warranties made after the Closing Date only, the interest rate shall return to the Quoted Fixed Rate (and the Loans shall not bear interest at the Default Rate) immediately upon the Borrower's provision of accurate information in writing to the Administrative Agent.

**SECTION 9.03 Covenant Violations.** The Borrower shall default in the observance or performance of any agreement contained in Section 6.01, 6.02(a), and (d), 6.05, 6.06, Article 7, Article 8, or Article XIII of the Indenture (subject to the applicable cure provisions, if any, contained therein).

**SECTION 9.04 Other Violations.** The Borrower shall default in the observance or performance of (i) any agreement contained in Section 6.02(b), (c), (e), and (f) and such default shall continue unremedied for a period of five (5) days or (ii) any other agreement contained in this Agreement or any other Loan Document (other than as provided in Section 9.01, 9.02 or 9.03), and such default shall continue unremedied for a period of thirty (30) days, in each case, after the earlier of (A) the date the Borrower receives from the Administrative Agent notice of the existence of such default or (B) the date a Responsible Officer of the Borrower obtains knowledge of such default, provided, that in the case of (ii) above, if remedial action has been taken and Borrower is diligently pursuing a cure, such remedial action has not succeeded within an additional thirty (30) day period after Borrower receives notice (pursuant to clause (ii)(A) above) or obtains knowledge (pursuant to clause (ii)(B) above), as applicable.

**SECTION 9.05 CoBank Indebtedness.**

(a) With respect to any Indebtedness owed to CoBank, (i) the Borrower shall default in any payment (beyond the applicable grace period with respect thereto, if any), or (ii) any such Indebtedness shall be declared due and payable, or required to be prepaid, other than by a regularly scheduled required prepayment or other prepayments of such Indebtedness prior to the stated maturity thereof.

(b) CoBank's commitment to lend to the Borrower under any other agreement existing between CoBank and the Borrower as of the Closing Date shall be terminated due to a default thereunder.

**SECTION 9.06 Member Wholesale Power Contracts and Material Direct Serve Contracts.** In the course of one fiscal year of the Borrower (i) any one or more Members shall default in the performance of any payment obligations under its or their Member Wholesale Power Contracts or any one Person party to a Material Direct Serve Contract shall default in its performance of any payment obligations under such Material Direct Serve Contract, where the aggregate principal amount of such default or defaults exceeds 20% of the Borrower's prior fiscal year's revenues and such default or defaults have continued for thirty-five (35) days beyond any applicable cure period, (ii) any one or more Members or any one Person party to a Material Direct Serve Contract shall contest the validity or enforceability of its or their Member Wholesale Power Contracts or Material Direct Serve Contracts, as the case may be, representing, individually or in the aggregate, 20% or more of the Borrower's prior fiscal year's revenues by filing any judicial or regulatory action, suit or proceeding seeking as a remedy the declaration of the unenforceability or the material modification of its or their Member Wholesale Power Contracts or Material Direct Serve Contracts, as the case may be, and such judicial or regulatory body shall have issued a final and non-appealable order either (A) declaring unenforceable all or a material portion of such Member Wholesale Power Contracts or such Material Direct Serve Contracts, as the case may be, representing, individually or in the aggregate, 20% or more of the Borrower's prior fiscal year's revenues or (B) adversely modifying any material portion of such Wholesale Power Contracts or Material Direct Serve Contracts representing, as the case may be, individually or in the aggregate, 20% or more of the Borrower's prior fiscal year's revenues, or (iii) release or termination of Borrower's Member Wholesale Power Contracts or Material Direct Serve Contracts together representing 20% or more of the Borrower's prior fiscal year's revenues.

**SECTION 9.07 Invalidity of Loan Documents.** Any Loan Document shall be deemed invalid by order, judgment or decree of any Governmental Authority or arbitrator, or the Borrower shall assert that any such Loan Document is invalid.

**SECTION 9.08 Indenture.** An Event of Default (as defined in the Indenture) shall exist or the Notes shall cease to be secured under the terms of the Indenture.

## ARTICLE 103 REMEDIES UPON DEFAULT

### SECTION 10.01 Remedies.

(a) Subject in all cases to clause (b) of this Section 10.01, if an Event of Default has occurred and is continuing, (i) if such event is an Event of Default specified in the Indenture with respect to the Borrower, the Lenders, as Holders of "Obligations" under the Indenture, shall have the rights and remedies set forth in the Indenture and (ii) if such event is any other Event of Default, any of the following actions may be taken: the Administrative Agent may, or at the request of the Required Lenders, shall, enforce any and all rights and remedies as may be provided by this Agreement, any other Loan

Document, or under applicable Requirement of Law, including without limitation, set off and application against the Borrower's obligation to Lender then due and payable the proceeds of any equity in CoBank, any cash held by CoBank, or any other balances held by CoBank for the Borrower's account (whether or not such balances are then due). Each of such rights and remedies shall be cumulative and may be exercised from time to time, and no failure on the part of any Lender to exercise, and no delay in exercising, any right or remedy shall preclude any other future exercise thereof, or the exercise of any other right. Presentment, demand and protest of any kind are hereby expressly waived by the Borrower. In addition to the rights and remedies set forth above, upon the occurrence and during the continuance of an Event of Default, at Administrative Agent's option in each instance (and automatically following an acceleration), the unpaid principal balance of the Loan (and all overdue payments of interest and fees) shall bear interest at the Default Rate. All such interest, together with all overdue amounts, shall be payable on demand.

(b) The Loan may only be accelerated as provided in, and subject to the terms of, the Indenture.

**SECTION 10.02 Allocation of Payments after Acceleration.** Notwithstanding any other provisions of this Agreement, all amounts collected or received by the Administrative Agent or any Lender on account of amounts owed pursuant to the Notes (including any principal (and premium, if any) and interest thereunder) and secured by the Indenture shall be paid to the Administrative Agent for the benefit of the Lenders pursuant to Section 2.12 and any additional amounts shall then be paid or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation fees and disbursements of any law firm or other external counsel and all disbursements of internal legal counsel) of the Administrative Agent or any of the Lenders in connection with enforcing the rights of the Lenders under the Loan Documents, pro rata, as set forth below;

SECOND, to payment of any fees owed to the Administrative Agent or any Lender, pro rata as set forth below;

THIRD, to all other obligations which shall have become due and payable under the Loan Documents and not repaid pursuant to clauses "FIRST" or "SECOND" above; and

FOURTH, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (a) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category and (b) each of the Lenders shall receive an amount equal to its pro rata share (based on the proportion that the then outstanding amount of the Loan held by such Lender bears to the aggregate then outstanding amount of the Loan) of amounts available to be applied.

## ARTICLE 11 ADMINISTRATIVE AGENT

**SECTION 11.01 Appointment.** Each of the Lenders hereby irrevocably appoints the Administrative Agent to act on its behalf as the Administrative Agent hereunder and under the Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with

such actions and powers as are *reasonably incidental thereto*. The provisions of this Section are solely for the benefit of the Administrative Agent, the Lenders and the Borrower shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**SECTION 11.02 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**SECTION 11.03 Exculpatory Provisions.**

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary (or other implied) duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Requirement of Law including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (a) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Article 10 and Section 12.01) or (b) in the absence of its own gross negligence or willful misconduct as determined by a final, nonappealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any

Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Sections 4.01 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**SECTION 11.04 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender or the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**SECTION 11.05 Notice of Default.** Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless Administrative Agent has received notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” In the event that Administrative Agent receives such a notice, Administrative Agent promptly shall give notice thereof to the Borrower and the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; provided, that unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders. Notwithstanding anything else to the contrary in this Agreement, the Administrative Agent shall not be required to take, or to omit to take, any action (a) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any of its Affiliates or (b) that is, in the opinion of the Administrative Agent, contrary to any Loan Document or applicable Requirement of Law.

**SECTION 11.06 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance on the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based



upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**SECTION 11.07 Indemnification.** The Lenders agree to indemnify Administrative Agent and Agent Parties (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section 11.07 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loan shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loan) be imposed on, incurred by or asserted against Administrative Agent or Agent Parties in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by Administrative Agent or Agent Parties under or in connection with any of the foregoing; provided, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from Administrative Agent's or Agent Parties' gross negligence or willful misconduct. The agreements in this Section 11.07 shall survive the payment of the Loan and all other amounts payable hereunder.

**SECTION 11.08 Right as a Lender.** The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**SECTION 11.09 Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower (so long as no Default or Event of Default has occurred and is continuing), to appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders appoint a successor Administrative Agent. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the

acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent, and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 11.07 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

**SECTION 11.10 No Other Duties, etc.** Anything herein to the contrary notwithstanding, no Bookrunner or Arranger listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

## ARTICLE 12 MISCELLANEOUS

### SECTION 12.01 Amendments and Waivers.

(a) Neither this Agreement, any other Loan Document (except the Notes, the Indenture and the Second Supplemental Indenture), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 12.01. The Required Lenders and the Borrower may or, with the written consent of the Required Lenders, the Administrative Agent and the Borrower may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights or obligations of the Administrative Agent, the Lenders or of the Borrower hereunder or thereunder or (b) waive, on such terms and conditions as the Required Lenders or the Administrative Agent may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (x)(i) forgive or reduce the principal amount or extend the final scheduled date of maturity of the Loan, (ii) reduce the stated rate of any interest or fee payable hereunder or extend the scheduled date of any payment thereof, (iii) increase the amount or extend the expiration date of any Lender's Commitments, (iv) modify the definition of "Required Lender," or (v) modify Section 2.12, in each case without the written consent of each Lender directly adversely affected thereby; or (y) eliminate or reduce the voting rights of any Lender or Participant under this Section 12.01 without the written consent of such Lender or Participant; or (z) amend, modify or waive any provision of Article 11 without the written consent of the Administrative Agent. The Notes, the Indenture and the Supplemental Indenture, may be amended, supplemented or modified pursuant to the terms of the Indenture. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Borrower, the Lenders, the Administrative Agent and all future holders of Loan. In the case of any waiver, the Borrower, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing unless limited by the terms of such waiver; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

(b) If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace such non-consenting Lender in accordance with Section 3.06; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

**SECTION 12.02 Notices Generally.**

(a) Notices. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Administrative Agent, as follows:

CoBank, ACB  
5500 South Quebec Street  
Greenwood Village, Colorado 80111  
Facsimile: (303) 740-4002  
Attention: Power Supply Division

With a copy to:  
CoBank, ACB  
5500 South Quebec Street  
Greenwood Village, Colorado 80111  
Facsimile: (303) 740-4002  
Attention: Legal Division

Latham & Watkins LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004-1304  
Fax: +1.202.637.2201  
Attention: Paul J. Hunt

If to a Lender, to it at its address (of facsimile number) set forth in its Administrative Questionnaire.

If to the Borrower, as follows:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Facsimile: (270) 827-2558  
Attention: President and Chief Executive Officer

With a copy to:  
Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420  
Facsimile: (270) 827-2558  
Attention: Chief Financial Officer

James M. Miller, Esq.  
Sullivan, Mountjoy, Stainback & Miller, P.S.C.  
100 St. Ann Building  
Owensboro, KY 42303

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Banking Day for the recipient). Notices delivered through electronic communications, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided, that the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Banking Day for the recipient.

(c) Change of Address, etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(d) Platform.

(i) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "Platform").

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of communications through the Platform except to the extent that such losses, damages, liabilities or related expenses are determined by a final, nonappealable judgment of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Agent Parties. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of the Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through the Platform.

**SECTION 12.03 No Waiver; Cumulative Remedies.** No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by any Requirement of Law.

**SECTION 12.04 Survival of Representations and Warranties.** All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loan and other extensions of credit hereunder.

**SECTION 12.05 Costs and Expenses; Indemnification.**

(a) **Costs and Expenses.** The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the Loan, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out of pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent or any Lender or any, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loan made hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loan.

(b) **Indemnification by the Borrower.** The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) the Loan or use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Materials of Environmental Concern on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower against an Indemnitee for breach in bad

faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 12.05(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party thereof, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided, that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or against any Related Party thereof acting for the Administrative Agent (or any such sub-agent) in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party hereto shall assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Loan or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(E) Payments. All amounts due under this Section shall be payable not later than ten (10) days after demand therefor.

(F) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

#### **SECTION 12.06 Successors and Assigns; Participations and Assignments.**

(a) Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the principal amount of the Loan at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the principal amount of the Loan at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (B)(1)(b) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (B)(1)(a) of this Section, the aggregate amount of the Commitment (which for this purpose includes principal amount of the Loan outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Banking Days after having received notice thereof and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Loan;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) shall be required for assignments in respect of the Loan or any unfunded Commitments if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(iv) Assignment and Assumption; Transfer Notice. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. The assigning Lender shall deliver the applicable Note(s) representing a right to payment of the obligations being assigned together with a Transfer Notice executed by such assigning Lender to the

Administrative Agent. Upon receipt of such Note and Transfer Notice, the Administrative Agent shall countersign the Transfer Notice and deliver the Note and Transfer Notice to the Trustee to register the new holder of the Note in accordance with the terms of the Indenture. The Administrative Agent shall deliver the Note to the assignee Lender following registration by the Trustee.

(v) No Assignment to Certain Persons. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (v).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section and the submission of the Transfer Notice by the Administrative Agent to the Trustee pursuant to paragraph (b)(iv) of this paragraph, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.03 and 12.05 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in Colorado a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loan owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loan owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent, and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 12.05(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any



amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso of Section 12.01(a) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.03 and 3.04 (subject to the requirements and limitations therein, including the requirements under Section 3.04(g) (it being understood that the documentation required under Section 3.04(G) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 3.06 as if it were an assignee under paragraph (B) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 3.01, 3.03 and 3.04, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.07 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loan or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

(f) Farm Credit Lenders. Notwithstanding anything in this Section 12.06 to the contrary, any institution that is a member of the Farm Credit System (a "Farm Credit Lender") that (i) has purchased a participation in the minimum aggregate amount of \$5,000,000 on or after the Closing Date, (ii) is, by written notice to the Borrower and the Administrative Agent ("Voting Participant Notification"), designated by the selling Lender (including any existing Voting Participant) as being entitled to be accorded the rights of a Voting Participant hereunder and (iii) receives the prior written consent of the Administrative Agent, in its sole discretion, to become a Voting Participant (such consent to be required only to the extent and under the circumstances it would be required if such Voting Participant were to become a Lender pursuant to an assignment in accordance with Section 12.06(a)) (any such Farm Credit Lender so designated and consented to being called a "Voting Participant"), shall be entitled to vote for so long as such Farm Credit Lender owns such participation and notwithstanding any subparticipation by such Farm Credit Lender (and the voting rights of the selling Lender (including any existing Voting Participant) shall be correspondingly reduced), on a dollar for dollar basis, as if such

participant were a Lender, on any matter requiring or allowing a Lender to provide or withhold its consent, or to otherwise vote on any proposed action. To be effective, each Voting Participant Notification shall, with respect to any Voting Participant, (x) state the full name, as well as all contact information required of an assignee in an Assignment and Assumption and (y) state the dollar amount of the participation purchased in its Commitment or any or all of its Loan. Notwithstanding the foregoing, each Farm Credit Lender designated as a Voting Participant on Schedule 12.06(f) hereto shall be deemed a Voting Participant without delivery of a Voting Participant Notification and without the prior written consent of the Administrative Agent. The selling Lender (including any existing Voting Participant) and the purchasing Voting Participant shall notify the Administrative Agent and the Borrower within three (3) Banking Days' of any termination of, or reduction or increase in the amount of, such participation. The Borrower and the Administrative Agent shall be entitled to conclusively rely on information contained in notices delivered pursuant to this paragraph. The voting rights hereunder are solely for the benefit of the Voting Participant and shall not inure to any assignee or participant of the Voting Participant that is not a Farm Credit Lender.

**SECTION 12.07 Set off.** If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or their respective Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**SECTION 12.08 Counterparts.** This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement or the Assignment and Assumption by facsimile transmission or other electronic means shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

**SECTION 12.09 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**SECTION 12.10 Complete Agreement.** The Loan Documents are intended by the parties to be a complete and final expression of their agreement.

**SECTION 12.11 Applicable Law.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY PROVISION THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION).

**SECTION 12.12 Submission to Jurisdiction; Waivers.** The Borrower hereby irrevocably and unconditionally:

(a) submits for itself and its Property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the nonexclusive general jurisdiction of the courts of the State of New York, and appellate courts thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to it at its address set forth in Section 12.02 or at such other address of which the Lender shall have been notified pursuant thereto; and

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by any Requirement of Law or shall limit the right to sue in any other jurisdiction.

**SECTION 12.13 Acknowledgments.** The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) the Administrative Agent and the Lenders do not have any fiduciary relationship with or duty to the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Lenders, on one hand, and the Borrower, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby between the Lenders and the Borrower.

**SECTION 12.14 Accounting Changes.** In the event that any Accounting Change shall occur and such change results in a change in the method of calculation of financial ratios, standards or terms in this Agreement, then the Borrower and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Borrower's financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Borrower and the Administrative Agent, all financial ratios, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred.

**SECTION 12.15 WAIVERS OF JURY TRIAL.** THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

**SECTION 12.16 USA PATRIOT ACT.** The Lenders hereby notify the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Publ. 107 56 (signed into law October 26, 2001)) (the "Act"), each is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lenders to identify the Borrower in accordance with the Act.

**SECTION 12.17 Confidentiality.**

(a) Each of the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority, (iii) to the extent required by applicable Requirements of Law or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 12.17, to (a) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any other Loan Document or (b) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (vii) with the consent of the Borrower, (viii) to the extent such Information (X) becomes publicly available other than as a result of a breach of this Section or (Y) becomes available to the Lender on a nonconfidential basis from a source other than the Borrower or (ix) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender or in connection with examinations or audits of such Lender. For the purposes of this Section 12.17, "Information" means all information received from the Borrower relating to the Borrower or its Business, other than any such information that is available to such Lender on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.17 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 12.17(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers as of the date shown above.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title:

**COBANK, ACB**, as Administrative Agent, Lead Arranger, and Bookrunner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:

COBANK, ACB, as Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title:

## EXHIBIT A

### DEFINITIONS AND RULES OF INTERPRETATION

**SECTION 1.01 Definitions.** As used in the Agreement, any amendment thereto, or in any other Loan Document, the following terms shall have the following meanings:

**Accounting Change** refers to changes in accounting principles required or permitted by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

**Act** has the meaning given in Section 12.16.

**Administrative Agent** shall have the meaning given it in the Introduction.

**Affiliate** shall mean any Person: (1) which directly or indirectly controls, or is controlled by, or is under common control with, the Borrower; (2) which directly or indirectly beneficially owns or holds five percent (5%) or more of any class of voting stock of, or other interests in the Borrower; or (3) five percent (5%) or more of the voting stock of, or other interest in, which is directly or indirectly beneficially owned or held by the Borrower; provided, however, that no Member of the Borrower shall be deemed to be an Affiliate of the Borrower for the purposes of this Agreement. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**Agent Parties** has the meaning given it in Section 12.02(d)(ii).

**Aggregate Exposure Percentage** shall mean, with respect to any Lender, the ratio (expressed as a percentage) of such Lender's Commitment to the total Commitments of all Lenders.

**Agreement** has the meaning given it in the introduction hereto.

**Approved Fund** shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

**Assignee** has the meaning specified in Section 12.06(a).

**Assignment and Assumption** shall mean an Assignment and Assumption, substantially in the form of Exhibit H.

**Banking Day** shall mean any day that is not a Saturday, Sunday or other day on which banks in Denver, Colorado are authorized or required by law to remain closed.

**Bankruptcy Code** shall mean the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

**Board** shall mean the Board of Governors of the Federal Reserve System of the United States (or any successor).

**Board of Directors** shall mean either the board of directors of the Borrower or any duly authorized committee of such board.



**Borrower** has the meaning given in the preamble hereto.

**Business** shall mean the business activities and operations of the Borrower prior to the Closing Date and activities relating, incidental or ancillary thereto.

**Capital Lease** shall mean a lease which should be capitalized on the books of the lessee in accordance with GAAP (other than obligations under any lease related to (i) equipment used for office; or compute needs, (ii) equipment used for transportation needs, or (iii) leases of other items having a net book value of less than \$1,000,000) *provided, however, that* “Capital Lease Obligations” shall not include obligations included on such Person’s consolidated financial statements because of consolidation of another Person, including a subsidiary, with such Person pursuant to GAAP and for which such Person is not legally obligated.

**Capital Stock** shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, and any and all equivalent ownership interests in a Person (other than a corporation).

**Change in Law** shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

**Change of Control** shall mean, at any time, the Borrower ceases to be an electric generation and transmission cooperative that is controlled by no less than 51% (tested by percentage of the controlling vote to elect the Board of Directors of the Borrower) of the Members of the Borrower.

**Closing Date** shall mean the date the conditions precedent to the Loan set forth in Section 4.01 are met.

**CoBank** has the meaning given in the preamble hereto.

**CoBank Equities** has the meaning specified in Section 6.06(a).

**Code** shall mean the Internal Revenue Code of 1986, as amended from time to time (and any successor thereto) and the regulations thereunder.

**Collateral Requirements** has the meaning given in Section 4.01(n).

**Commitment** shall mean, as to any Lender, the obligation of such Lender to make a Loan to the Borrower in a principal amount not to exceed the amount set forth opposite such Lender’s name on Exhibit I. The aggregate amount of the Commitments is two hundred and thirty five million dollars (\$235,000,000). Immediately after the making of the Loan on the Closing Date, the Commitment shall be reduced to zero dollars (\$0).

**Communication** has the meaning given it in Section 12.02(D)(ii).

**Connection Income Taxes** shall mean Other Connection Taxes that are imposed on or measured by net income or net profits (however denominated) or that are franchise Taxes or branch profits Taxes.

**Contractual Obligation** shall mean, as to any Person, any provision of any security issued by such Person or of any written or recorded agreement, instrument or other undertaking to which such Person is a party or by which it or any of its Property is bound.

**Counterparty** shall mean, when referring to a Member Wholesale Power Contract, the Member party to such Member Wholesale Power Contract and, when referring to a Direct Serve Contract, the Person counterparty to the Borrower on such Direct Serve Contract.

**Debtor Relief Laws** shall mean the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

**Default** shall mean the occurrence of any event which with the giving of notice hereunder or the passage of time hereunder or the occurrence of any other condition hereunder would become an Event of Default under the Agreement or under any other Loan Document.

**Default Rate** has the meaning specified in Section 2.08(b).

**Direct Serve Contracts** shall mean wholesale electric service contracts (together with material amendments or supplements thereto and all successor or replacement contracts and agreements thereto and thereof) with a member of Borrower to provide wholesale electric service directly from Borrower's transmission system to any customer for which the member has an electric service contract with such customer.

**Dollars** and the sign "\$" shall mean Lawful money of the United States of America.

**Environmental Law** shall mean any and all applicable Requirements of Law, rules, orders, regulations, statutes, ordinances, codes or decrees (including, without limitation, common law) of the United States, or any state, provincial, local, municipal or other governmental authority, regulating, relating to or imposing liability or standards of conduct concerning protection of the environment, as has been, is now, or at any time hereafter is, in effect.

**Environmental Liability** shall mean any liability, claim, action, suit, judgment or order under or relating to any Environmental Law for any damages, injunctive relief, losses, fines, penalties, fees, expenses or costs, whether contingent or otherwise, including those arising from or relating to: (a) compliance or non-compliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Materials of Environmental Concern, (c) exposure to any Materials of Environmental Concern, (d) the Release of any Materials of Environmental Concern or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**ERISA** shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time (and any successor thereto), and the regulations and published interpretations thereof.

**Event of Default** shall mean any of the events specified in Article 9 and any event specified in any other Loan Document as an Event of Default.

**Excluded Taxes** shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income or net profits (however denominated), franchise Taxes (imposed in lieu of net income or net profits Taxes), and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.06) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.04, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.04(G) and (d) any U.S. federal withholding Taxes imposed under FATCA.

**Existing CoBank Facility** shall mean that certain \$50,000,000 unsecured line of credit facility made available by CoBank to Borrower pursuant to that certain Revolving Credit Agreement entered into as of July 16, 2009 between Borrower and CoBank.

**Farm Credit Lender** has the meaning given it in Section 12.06(F).

**Farm Credit System** shall mean a federally chartered network of borrower-owned lending institutions comprised of cooperatives and related service organizations.

**FATCA** shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

**Federal Funds Effective Rate** shall mean for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Banking Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Banking Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

**Fee Letter** shall mean that certain letter, dated January 12, 2012, by CoBank and accepted and agreed to by the Borrower.

**Fitch** shall mean Fitch, Inc.

**Foreign Lender** shall mean (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

**Fund** shall mean any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**Funding Office** shall mean the office of the Administrative Agent specified in Section 2.03 or such other office as may be specified from time to time by the Lender as its funding office by written notice to the Borrower.

**GAAP** shall mean generally accepted accounting principles in the United States.

**Governmental Authority** shall mean the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**Indebtedness** of any Person shall mean, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person for the deferred purchase price of property or services, (d) all guarantee obligations by such Person of Indebtedness of others, (e) all Capital Lease obligations of such Person, and (f) the principal component of all obligations, contingent or otherwise, of such Person (i) as an account party in respect of letters of credit (other than any letters of credit, bank guarantees or similar instrument in respect of which a back-to-back letter of credit has been issued under or permitted by this Agreement) and (ii) in respect of bankers' acceptances; provided that Indebtedness shall not include (A) trade and other ordinary course payables, accrued expenses and intercompany liabilities arising in the ordinary course of business, (B) prepaid or deferred revenue arising in the ordinary course of business, (C) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy unperformed obligations of the seller of such asset or (D) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP. The Indebtedness of any Person shall include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof. Indebtedness shall not include obligations under (i) hedging agreements not entered into for speculative purposes, (ii) leases (other than Capital Lease Obligations), (iii) power, energy, transmission or fuel purchase agreements, (iv) obligations imposed by a Governmental Authority (other than RUS or CoBank), (v) commodities trading or purchase arrangements not entered into for speculative purposes, (vi) surety, indemnity, performance, release and appeal bonds and Guarantees thereof incurred in the ordinary course of the Borrower's business, (vii) reclamation or decommissioning obligations (and Guarantees thereof, or (viii) obligations which have been legally or economically defeased.

**Indemnified Taxes** shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

**Indemnitee** has the meaning set forth in Section 12.05(b).

**Indenture** shall mean that certain Indenture dated as July 1, 2009, between the Borrower and U.S. Bank National Association, as amended, supplemented or restated from time to time.

**Interest Payment Date** shall mean the last Banking Day of each March, June, September and December, commencing on March 31, 2012, and the Maturity Date.

**Lenders** shall mean the several financial institutions from time to time parties hereto.

**Lien** shall mean any mortgage, deed of trust, pledge, security interest, hypothecation, assignment for security purposes, deposit arrangement, lien (statutory or other), or other security agreement, charge or similar encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement).

**Loan** shall have the meaning given it in Section 2.01(a).

**Loan Documents** shall mean this Agreement, the Notes and the documents creating or evidencing the Collateral Requirements including the Indenture and the Supplemental Indenture.

**Material Adverse Effect** shall mean any change to the business, operations, affairs, condition (financial or otherwise), liabilities (actual or contingent), assets, or properties of the Borrower or its subsidiaries, taken as a whole, that materially adversely affects (i) the ability of the Borrower to perform its obligations under the Loan Documents or (ii) the validity or enforceability of any Loan Documents or the Lenders' remedies under the Loan Documents.

**Material Contract** shall mean each Member Wholesale Power Contract and Material Direct Serve Contract listed on Schedule 5.17.

**Material Direct Serve Contracts** shall mean any Direct Serve Contract to (i) any smelter to which a member of the Borrower supplies power, and (ii) any customer with a contract load of 25 megawatts or greater.<sup>6</sup>

**Materials of Environmental Concern** shall mean any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or byproducts and all other hydrocarbons, coal ash, radon gas,, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, chlorofluorocarbons and all other ozone-depleting substances, pollutants, contaminants, radioactivity and any other chemicals, materials or substances that are defined as hazardous or toxic under any Environmental Law, that are prohibited, limited or regulated pursuant to any Environmental Law.

**Material Indebtedness** shall mean any Indebtedness with a principal value in excess of \$10,000,000.

**Member** shall mean a rural distribution cooperative member of the Borrower.

**Member Wholesale Power Contracts** shall mean the Borrower's power supply contracts with its members (together with all material amendments and supplements thereto) and all successor or replacement contracts and agreements thereto or thereof, excluding the Direct Serve Contracts.

**Moody's** shall mean Moody's Investor Services.

**Maturity Date** shall mean March 31, 2032.

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<sup>6</sup> NTD: SUBJECT TO REVIEW OF SCHEDULE 5.17 TO BE PROVIDED BY BIG RIVERS.

**Non-Consenting Lender** shall mean any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all affected Lenders in accordance with the terms of Section 12.01 and (ii) has been approved by the Required Lenders.

**Notes** shall mean the meaning given in Section 2.01(b).

**Notice of Borrowing** shall mean a Notice of Borrowing, substantially in the form of Exhibit J.

**Notice of Cancellation** shall have the meaning given it in Section 5.17(b).

**Organizational Documents** shall mean the documents under which the Borrower has been organized or is run, including (as may be relevant) articles of incorporation or formation, bylaws, partnership agreements, shareholder agreements, and the like.

**Other Connection Taxes** shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in the Loan or Loan Document).

**Other Taxes** shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes.

**Outstanding Amount** shall mean on any date, the aggregate outstanding principal amount of the Loan, after giving effect to any prepayments or repayments of occurring on such date.

**Participant** shall have the meaning specified in Section 12.06(d).

**Participant Register** has the meaning specified in Section 12.06(d).

**Person** shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

**Prepayment Surcharge** has the meaning given it in Section 2.07.

**Property or Properties** shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

**Quoted Fixed Rate** shall mean a rate to be established by the Administrative Agent on the date of Borrowing in its sole and absolute discretion.

**Recipient** shall mean the Administrative Agent or any Lender, as applicable.

**Register** shall have the meaning assigned to such term in Section 12.06(c).

**Regulation U** shall mean Regulation U of the Board of Governors of the Federal Reserve System of the United States (or any successor) as in effect from time to time.

**Related Parties** shall mean, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, attorneys-in-fact and advisors of such Person and of such Person's Affiliates.

**Release** shall mean any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or within or upon any building, structure or facility.

**Required Lenders** shall mean two (2) or more Lenders (including Voting Participants) who have in the aggregate Commitment Percentages greater than 50%, provided, that, at any time when there is only one (1) Lender and no Voting Participants, such Lender shall constitute the "Required Lenders."

**Requirements of Law** shall mean as to any Person, the certificate of incorporation and bylaws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, provided, however, that for purposes of the Loan Documents, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith shall be deemed to have gone into effect after the Closing Date, regardless of the date enacted, adopted or issued).

**Resignation Effective Date** has the meaning assigned such term in Section 11.09.

**Responsible Officer** shall mean the chief executive officer, president, chief financial officer (or similar title) controller or treasurer (or similar title) of the Borrower or its members, as applicable.

**RUS** shall mean the Rural Utilities Service or other agency succeeding to the authority of the Rural Utilities Service with respect to loans to electric cooperatives.

**SEC** shall mean the Securities and Exchange Commission (or successors thereto or an analogous Governmental Authority).

**Solvent** shall mean with respect to any Person, as of any date of determination, (a) the fair value of the assets of such Person (determined at a fair valuation made with reference to the financial statements delivered to the Administrative Agent pursuant to Section 4.01(A) or Section 6.01) will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (b) such Person will not have, as of such date, an unreasonably small amount of capital for a generation and transmission cooperative with similar power supply obligations with which to conduct its business and (c) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim", (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured and (iii) except as otherwise provided by applicable Requirement of Law, the amount of a "contingent" liability at any time shall be the amount thereof which,

in light of all the facts and circumstances existing at such time, can reasonably be expected to become actual or matured liabilities.

**Specified Lender** has the meaning given it in Section 3.06.

**Subsidiary** shall mean, as to the Borrower, a corporation, partnership, limited liability company, joint venture, or other Person of which shares of stock or other equity interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company, joint venture, or other Person are at the time owned, or the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by the Borrower.

**Supplemental Indenture** shall mean the meaning given it in Section 4.01(o).

**Taxes** shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**Trade Date** has the meaning given it in Section 12.06(b)(i)(B).

**Transfer Notice** shall mean a Transfer Notice, substantially in the form of the Transfer Notice attached to the Form of Note attached as Exhibit B hereto.

**Transition Reserve** means a transition reserve to be maintained by Borrower in the amount of \$35,000,000 for use in meeting expenses in the event a smelter terminates service under its Direct Serve Contract.

**Trustee** shall mean the meaning given in the Indenture.

**Trust Estate** shall have the meaning set forth in the Indenture.

**U.S. Borrower** shall mean any Borrower that is a U.S. Person.

**U.S. Person** shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

**U.S. Tax Compliance Certificate** has the meaning given it in Section 3.04(G)(ii)(b)(3).

**Voting Participant** has the meaning given it in Section 12.06(f).

**Withholding Agent** shall mean the Borrower and the Administrative Agent.

**SECTION 1.02 Rules of Interpretation.** The following rules of interpretation shall apply to the Agreement and any Loan Document, and all amendments to either of the foregoing:

**Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles.



**Number.** All terms stated in the singular shall include the plural, and all terms stated in the plural shall include the singular.

**Including.** The term “including” shall mean including, but not limited to.

**Default.** The expression “while any Default or Event of Default shall have occurred and be continuing” (or like expression) shall be deemed to include the period following any acceleration of the Loan (unless such acceleration is rescinded).

**Time Periods.** The word “from,” when referring to a time period, is exclusive and shall not include the day from which the time period runs. The word “to” or “through,” when referring to a time period, is inclusive and shall include the day to which the time period runs.

**Headings.** Captions and headings used in this Agreement are for reference and convenience of the parties only, and shall not constitute a part of this Agreement.

**Gender.** The gender of all words used in this Agreement includes the masculine, feminine, and neuter.

**Agreement.** The terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this Agreement, and all references to Articles and Sections refer to articles and sections of this Agreement, and all references to Exhibits are to exhibits attached hereto, each of which is made a part hereof for all purposes.

**Or.** The term “or” is not exclusive.

**Agents.** Where any provision in this Agreement refers to action to be taken by any person or entity, or which such person or entity is prohibited from taking, such provision will be applicable whether such action is taken directly or indirectly by such person or entity, including actions taken by or on behalf of any affiliate of such person or entity.

**Successors and Assigns.** References to any person or entity will be construed as a reference to any successors or permitted assigns of such person or entity.

**Amendments and Modifications.** Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended, supplemented or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

FORM OF NOTE

\$\_[ ] \_\_\_\_\_, 2012

FOR VALUE RECEIVED, BIG RIVERS ELECTRIC CORPORATION, a Kentucky cooperative corporation (the "Borrower") HEREBY PROMISES TO PAY to [LENDER] (the "Lender"), or its assigns, in lawful money of the United States and in immediately available funds, the principal amount of [ ] DOLLARS (\$[ ]), or, if less, the aggregate unpaid principal amount of the Loans (as defined in the Credit Agreement referred to below) made by Lender to the Borrower pursuant to the Credit Agreement and outstanding on the Commitment Termination Date (as defined in the Credit Agreement), whichever is less. The Borrower also promises to pay interest on the unpaid principal balance of the Loans for the period such balance is outstanding in like money, at the rates of interest, at the times, and calculated in the manner, set forth in Credit Agreement. Any amount of principal and, to the extent provided by law, interest, hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at a rate per annum equal at all times to the rates set forth in Section 2.09 of the Credit Agreement. All payments made hereunder shall be made at the times and in the manner set forth in the Credit Agreement.

The Borrower hereby authorizes the Lender to endorse on the schedule annexed to this Note: (i) the amount and Type of all Loans; (ii) in the case of LIBOR Loans, the applicable Interest Periods; and (iii) all renewals, conversions and payments of principal and interest in respect of such Loans, which endorsements shall be presumed correct absent manifest error as to the outstanding principal amount of, and accrued and unpaid interest on, the Loans; provided however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligation of the Borrower under the Credit Agreement or this Note.

This is a Note referred to in that certain Credit Agreement, dated as of [ ], 2012, by and among the Borrower, the several financial institutions or entities from time to time parties thereto, including the Lender, and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, lead arranger and book runner, as amended, supplemented or modified from time to time (the "Credit Agreement"), to evidence the Loans made by the Lender thereunder, all of the terms and provisions of which are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of principal upon the occurrence of an Event of Default and for prepayments on the terms and conditions specified therein.

The Borrower hereby waives presentment for payment, demand, notice of protest, notice of dishonor, and any other notice or formality with respect to this Note, and all defenses on the ground of delay or of any extension of time for payment hereof which may, without obligation, hereafter be given by the holder hereof.

Except to the extent governed by applicable federal law, this Note shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without reference to choice of law doctrine.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE TO NOTE  
LOANS**

Date Loan Made or Paid	Amount of Loan Made or Paid	Unpaid Principal Balance of Note	Name of Person Making Notation
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**EXHIBIT C  
TO CREDIT AGREEMENT**

**PRINCIPAL REPAYMENT SCHEDULE**

[SUBJECT TO FINAL COMMITMENT AMOUNTS RAISED BY COBANK. WILL BE CONFIRMED  
JUST PRIOR TO CLOSING DATE.]

<u>Period #</u>	<u>Date</u>	<u>Principal Payment</u>	
1.	6/30/2012	1,285,642.00	*
2.	9/30/2012	1,301,712.00	*
3.	12/31/2012	1,317,984.00	*
4.	3/31/2013	1,334,458.00	*
5.	6/30/2013	1,351,139.00	*
6.	9/30/2013	1,368,028.00	*
7.	12/31/2013	1,385,129.00	*
8.	3/31/2014	1,402,443.00	*
9.	6/30/2014	1,419,973.00	*
10.	9/30/2014	1,437,723.00	*
11.	12/31/2014	1,455,695.00	*
12.	3/31/2015	1,473,891.00	*
13.	6/30/2015	1,492,314.00	*
14.	9/30/2015	1,510,968.00	*
15.	12/31/2015	1,529,855.00	*
16.	3/31/2016	1,548,979.00	*
17.	6/30/2016	1,568,341.00	*
18.	9/30/2016	1,587,945.00	*
19.	12/31/2016	1,607,794.00	*
20.	3/31/2017	1,627,892.00	*
21.	6/30/2017	1,648,241.00	*
22.	9/30/2017	1,668,844.00	*
23.	12/31/2017	1,689,704.00	*
24.	3/31/2018	1,710,825.00	*
25.	6/30/2018	1,732,211.00	*
26.	9/30/2018	1,753,863.00	*
27.	12/31/2018	1,775,787.00	*
28.	3/31/2019	1,797,984.00	*
29.	6/30/2019	1,820,459.00	*
30.	9/30/2019	1,843,214.00	*
31.	12/31/2019	1,866,255.00	*

32.	3/31/2020	1,889,583.00	*
33.	6/30/2020	1,913,203.00	*
34.	9/30/2020	1,937,118.00	*
35.	12/31/2020	1,961,332.00	*
36.	3/31/2021	1,985,848.00	*
37.	6/30/2021	2,010,671.00	*
38.	9/30/2021	2,035,805.00	*
39.	12/31/2021	2,061,252.00	*
40.	3/31/2022	2,087,018.00	*
41.	6/30/2022	2,113,106.00	*
42.	9/30/2022	2,139,520.00	*
43.	12/31/2022	2,166,264.00	*
44.	3/31/2023	2,193,342.00	*
45.	6/30/2023	2,220,759.00	*
46.	9/30/2023	2,248,518.00	*
47.	12/31/2023	2,276,625.00	*
48.	3/31/2024	2,305,082.00	*
49.	6/30/2024	2,333,896.00	*
50.	9/30/2024	2,363,070.00	*
51.	12/31/2024	2,392,608.00	*
52.	3/31/2025	2,422,516.00	*
53.	6/30/2025	2,452,797.00	*
54.	9/30/2025	2,483,457.00	*
55.	12/31/2025	2,514,500.00	*
56.	3/31/2026	2,545,931.00	*
57.	6/30/2026	2,577,756.00	*
58.	9/30/2026	2,609,978.00	*
59.	12/31/2026	2,642,602.00	*
60.	3/31/2027	2,675,635.00	*
61.	6/30/2027	2,709,080.00	*
62.	9/30/2027	2,742,944.00	*
63.	12/31/2027	2,777,231.00	*
64.	3/31/2028	2,811,946.00	*
65.	6/30/2028	2,847,095.00	*
66.	9/30/2028	2,882,684.00	*
67.	12/31/2028	2,918,718.00	*
68.	3/31/2029	2,955,201.00	*
69.	6/30/2029	2,992,141.00	*
70.	9/30/2029	3,029,543.00	*
71.	12/31/2029	3,067,413.00	*

72.	3/31/2030	3,105,755.00	*
73.	6/30/2030	3,144,577.00	*
74.	9/30/2030	3,183,884.00	*
75.	12/31/2030	3,223,683.00	*
76.	3/31/2031	3,263,979.00	*
77.	6/30/2031	3,304,779.00	*
78.	9/30/2031	3,346,088.00	*
79.	12/31/2031	3,387,915.00	*
80.	3/31/2032	3,430,260.00	*

EXHIBIT D-1  
TO CREDIT AGREEMENT

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Senior Unsecured Revolving Credit Facility, dated as of [ ], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a [Kentucky cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), lead arranger and book runner.

Pursuant to the provisions of Section 3.04(f)(ii)(b)(3) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 20[ ]



EXHIBIT D-2  
TO CREDIT AGREEMENT

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

**(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Senior Unsecured Revolving Credit Facility, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky [cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), lead arranger and book runner.

Pursuant to the provisions of Section 3.04(f)(ii)(b)(4) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT D-3  
TO CREDIT AGREEMENT**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Senior Unsecured Revolving Credit Facility, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a [Kentucky cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), lead arranger and book runner.

Pursuant to the provisions of Section 3.04(f)(ii)(b)(4) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT D-4  
TO CREDIT AGREEMENT**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

**(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)**

Reference is hereby made to the Senior Unsecured Revolving Credit Facility, dated as of [\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a [Kentucky cooperative corporation] (the "Borrower"), the several financial institutions or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), lead arranger and book runner.

Pursuant to the provisions of Section 3.04(f)(ii)(b)(4) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT E  
TO CREDIT AGREEMENT**

**FORM OF SECRETARY'S CERTIFICATE**

Pursuant to Section 4.01(c) of the Credit Agreement, dated as of [\_\_\_\_], 2012 (the "Credit Agreement"; unless otherwise defined herein, capitalized terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky cooperative corporation (the "Borrower"), the several financial institutions or entities from time to time parties thereto and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, lead arranger and book runner, the undersigned [NAME OF AUTHORIZED PERSON], the [TITLE OF AUTHORIZED PERSON] of the Borrower, hereby certifies on behalf of the Borrower that [NAME OF SECRETARY/ASSISTANT SECRETARY] is the duly elected and qualified [SECRETARY/ASSISTANT SECRETARY] of the Borrower and the signature set forth for such officer below is such officer's true and genuine signature.

The undersigned [SECRETARY/ASSISTANT SECRETARY] of the Borrower hereby certifies as follows:

1. Attached hereto as Annex 1 is a true and complete copy of a Certificate of Good Standing or the equivalent from the Borrower's jurisdiction of organization dated as of a recent date prior to the date hereof.
2. Attached hereto as Annex 2 is a true and complete copy of resolutions duly adopted by the Board of Directors of the Borrower on [\_\_\_\_], 2012. Such resolutions have not in any way been amended, modified, revoked or rescinded, have been in full force and effect since their adoption to and including the date hereof and are now in full force and effect and are the only corporate proceedings of the Borrower now in force relating to or affecting the matters referred to therein.
3. Attached hereto as Annex 3 is a true and complete copy of the Bylaws of the Borrower as in effect on the date hereof.
4. Attached hereto as Annex 4 is a true and complete certified copy of the Articles of Incorporation of the Borrower as in effect on the date hereof, and such Articles of Incorporation have not been amended, repealed, modified or restated since the date of such certification.
5. The persons listed on the Incumbency Certificate attached hereto as Schedule I are now duly elected and qualified officers or employees of the Borrower holding the offices and positions indicated next to their respective names on the Incumbency Certificate attached hereto as Schedule I, and the signatures appearing opposite their respective names on the Incumbency Certificate attached hereto as Schedule I are the true and genuine signatures of such officers and employees, and each of such officers and employees is duly authorized to execute and deliver on behalf of the Borrower each of the Loan Documents to which it is a party and any certificate or other document to be delivered by the Borrower pursuant to the Loan Documents to which it is a party.

**(SIGNATURE PAGE FOLLOWS)**

IN WITNESS WHEREOF, the undersigned have hereunto set our names as of the date set forth below.

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 2012

Schedule I  
to Secretary's Certificate

NAME

OFFICE

SIGNATURE

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Annex 1  
to Secretary's Certificate

[Certificate of Good Standing]

Annex 2  
to Secretary's Certificate

[Board Resolutions]



Annex 3  
to Secretary's Certificate

[Bylaws]

Annex 4  
to Secretary's Certificate

[Articles of Incorporation]

**EXHIBIT F  
TO CREDIT AGREEMENT**

**FORM OF SOLVENCY CERTIFICATE**

Pursuant to Section 4.01(j) of the Credit Agreement, dated [\_\_\_\_], 2012 (the “Credit Agreement”; unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky cooperative corporation (the “Borrower”), the several financial institutions or entities from time to time parties thereto and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, lead arranger and book runner, the undersigned [CHIEF FINANCIAL OFFICER OR EQUIVALENT OFFICER] of the Borrower, hereby certifies on behalf of the Borrower that as of the Closing Date, the Borrower is Solvent, and after giving effect to the initial extensions of credit, if any, to be made on the Closing Date, the Borrower will be Solvent.

[Signature page follows]

**IN WITNESS WHEREOF**, the undersigned has executed this Solvency Certificate as of this  
\_\_\_\_ day of [\_\_\_\_], 2012.

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT G  
TO CREDIT AGREEMENT**

**FORM OF COMPLIANCE CERTIFICATE**

Pursuant to Section 6.01(e) of the Credit Agreement, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky cooperative corporation (the "Borrower"), the several financial institutions or entities from time to time parties thereto and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, lead arranger and book runner, the undersigned [insert name of officer or authorized position], the [insert title of office or authorized position] of the Borrower, hereby certifies on behalf of the Borrower as follows:

(A) As of the [quarter]/[year] ending \_\_\_\_\_, 20\_\_, the statements referenced below (i) have been prepared in accordance with applicable GAAP (in the case of any quarterly financial statements, subject to normal year end audit adjustments and lack of notes) and (ii) are fairly stated in all material respects (subject to normal year end audit adjustments and the lack of notes).

(B) Attached hereto as Schedule 1 are the [quarterly][annual] financial statements for the fiscal period cited above.

(C) [Attached hereto as Schedule 2 (Margin for Interest) are calculations demonstrating the Borrower Margin for Interest Ratio (as defined in the Indenture).]<sup>1</sup>

(D) No Default or Event of Default has occurred during the period covered by this Compliance Certificate, except as indicated on a separate page attached hereto, containing a statement as to the nature of such Default or Event of Default, whether such Default or Event of Default is continuing and, if continuing, an explanation of the action taken or proposed to be taken by the Borrower with respect thereto.

[Signature page follows.]

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<sup>1</sup> In connection with the delivery of annual financial statements only.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**Schedule 1 to Compliance Certificate**

**[Annual][Quarterly] Financials**

[Attached]

Schedule 2 to Compliance Certificate

Margin For Interest Ratio

Margins for Interest Ratio is calculated, as of each fiscal year, as calculated in the Indenture in effect on the Closing Date.

As of the fiscal year ended \_\_\_\_\_, such calculation was as follows:

Margins for Interest:

net margins of the Borrower for such fiscal year<sup>2</sup> \_\_\_\_\_

plus

the amount, if any, included in the computation of net margins for accruals for federal and state income and other taxes imposed on income after deduction of interest expense for the fiscal year: \_\_\_\_\_

plus

the amount, if any, included in the computation of net margins for any losses incurred by any Subsidiary or Affiliate of the Borrower \_\_\_\_\_

plus

the amount, if any, the Borrower actually receives in the fiscal year as a dividend or other distribution of earnings of any Subsidiary or Affiliate (whether or not such earnings were for the fiscal year or any earlier fiscal year) \_\_\_\_\_

minus

the amount, if any, included in the computation of net margins for any earnings or profits of any subsidiary or Affiliate of the Borrower \_\_\_\_\_

minus

the amount, if any, the Borrower actually contributes to the capital of, or actually pays under a guarantee by the Borrower of \_\_\_\_\_

<sup>2</sup> Net margins shall be determined in accordance with Accounting Requirements (as defined in the Indenture in effect as of the Closing Date) and shall include revenues, subject to a possible refund at a future date, but which shall exclude provisions for any: (i) non-recurring charge to income, whether or not recorded as such on the Borrower's books, of whatever kind or nature (including the non-recoverability of assets or expenses), except to the extent the Board of Directors determines to recover such non-recurring charge in Rates (as defined in the Indenture in effect as of the date of the Credit Agreement), and (ii) refund of revenues collected or accrued by the Borrower in any prior year subject to possible refund.



an obligation of, any Subsidiary or Affiliate in the fiscal year to the extent of any accumulated losses incurred by such Subsidiary or Affiliate (whether or not such losses were for such fiscal year or any earlier fiscal years), but only to the extent (x) such losses have not otherwise caused other contributions or guarantee payments to be included in net margins for purposes of computing Margins for Interest for a prior fiscal year and (y) such amount has not otherwise been included in net margins:

\_\_\_\_\_

*Equal*

\_\_\_\_\_

*Interest Charges (as defined in the Indenture in effect as of the date of the Closing Date):*

\_\_\_\_\_

*Margins for Interest Ratio (sum of (a) Margins For Interest plus (b) Interest Charges, divided by Interest Charges):*

\_\_\_\_\_

**EXHIBIT H  
TO CREDIT AGREEMENT**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**Assignment and Assumption Agreement**

This Assignment and Assumption Agreement (the "Assignment and Assumption") is dated as of the Effective Date of Assignment set forth below and is entered into by and between the Assignor (as defined below) and the Assignee (as defined below). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement (as defined below), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date of Assignment inserted by the Administrative Agent as contemplated below (A) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (B) to the extent permitted to be assigned under applicable Requirement of Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (A) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (A) and (B) above being referred to herein collectively as the "Assigned Interest"). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor : \_\_\_\_\_ (the "Assignor")
2. Assignee : \_\_\_\_\_ (the "Assignee")
3. Credit Agreement: Credit Agreement, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"), by and among BIG RIVERS ELECTRIC CORPORATION), a Kentucky cooperative corporation (the "Borrower"), the several financial institutions or entities from time to time parties thereto and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, lead arranger and book runner.

4. Assigned Interest:

Amount of Commitment/Loans Assigned	Percentage of Commitment/Loans Assigned
\$	%

€	%
€	%

5. Effective Date of Assignment: \_\_\_\_\_, 201\_\_<sup>3</sup> (the "Effective Date of Assignment")

**(SIGNATURE PAGES FOLLOW)**

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<sup>3</sup> To be inserted by Administrative Agent and which shall be the effective date of recordation of transfer in the Register therefor.

The terms set forth in this Assignment and Assumption are hereby agreed to:

[Name of Assignee]

[Name of Assignor]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Consented<sup>4</sup> to:

COBANK, ACB, as Administrative Agent

Consented<sup>5</sup> to:

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

---

<sup>4</sup> Consent of Administrative Agent is not required if the Assignor is assigning its Assigned Interests to an Affiliate of the Assignor, another Lender, an Affiliate of another Lender or an Approved Fund.

<sup>5</sup> Consent of the Borrower is not required if the Assignor is assigning its Assigned Interests to an Affiliate of the Assignor, another Lender, an Affiliate of another Lender, an Approved Fund or if a Default or an Event of Default has occurred and is continuing.

## TO ASSIGNMENT AND ASSUMPTION

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1 Assignor. The Assignor (A) represents and warrants that (1) it is the legal and beneficial owner of the Assigned Interest, (2) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (3) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (B) assumes no responsibility with respect to (1) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (2) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (3) the financial condition of the Borrower or its Affiliates or any other Person obligated in respect of any Loan Document or (4) the performance or observance by the Borrower or its Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (A) represents and warrants that (1) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (2) it satisfies the requirements to be an assignee under the Credit Agreement (subject to such consents, if any, as may be required under the Credit Agreement), (3) from and after the Effective Date of Assignment, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (4) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (5) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to the Credit Agreement, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (6) it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest; and (B) agrees that (1) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (2) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date of Assignment, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date of Assignment and to the Assignee for amounts which have accrued from and after the Effective Date of Assignment.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an

executed counterpart of a signature page of this Assignment and Assumption by telecopy or by PDF shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the laws of the State of New York.

**EXHIBIT I  
TO CREDIT AGREEMENT**

**LENDERS' COMMITMENTS**

[TO BE COMPLETED BY COBANK]

<b>Lender</b>	<b>Revolver Commitments</b>	<b>Commitment Percentage</b>
CoBank, ACB	\$[ ]	[ ]%
<b>TOTAL</b>	<b>[\$175,000,000.00]</b>	<b>100%</b>



**EXHIBIT J  
TO CREDIT AGREEMENT**

**FORM OF NOTICE OF BORROWING**

CoBank, ACB, as Administrative Agent  
5500 South Quebec Street  
Greenwood Village, Colorado 80111  
Facsimile: (303) 740-4002  
Attention: Power Supply Division

[Date]

Ladies and Gentlemen:

Pursuant to Section 4.01(q) of the Credit Agreement, dated as of [\_\_\_\_], 2012 (as amended, supplemented or modified and in effect from time to time, the "Credit Agreement"; capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement), by and among BIG RIVERS ELECTRIC CORPORATION, a Kentucky [cooperative corporation] (the "Borrower"), the several *financial institutions* or entities from time to time parties thereto (the "Lenders") and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent (in such capacity, "Administrative Agent"), lead arranger and book runner, the undersigned duly authorized officer of the Borrower hereby requests a borrowing under the Credit Agreement to be made on the Closing Date in the amount of [\$175,000,000].

(SIGNATURE PAGE FOLLOWS)

**IN WITNESS WHEREOF**, the undersigned has executed this Notice of Borrowing as of the date first set forth above.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 4.01(g)**

BIG RIVERS ELECTRIC CORPORATION  
LITIGATION SCHEDULE  
(as of March 12, 2012)

1. ***Eminent Domain Litigation.***

Big Rivers is the plaintiff in several eminent domain proceedings that have been filed to acquire easements for transmission line rights-of-way.

2. ***Jane Eckert, on her own behalf and on behalf of the Estate of Robert Eckert, Deceased vs. Alcoa, Inc., Big Rivers Electric Corporation, BMW Constructors, Inc., Bristol-Myers Squibb Company, General Electric Company, Industrial Contractors, Inc., Triangle Enterprises, Inc.,*** Marion County Superior Court, Civil Division Room No. 2, Cause No. 49D02-9801-MI-0001-359.

This action arises from the 2007 death of a worker, Robert Eckert, from asbestos-related disease diagnosed in 1995. The suit was filed July 2, 2007, in Marion County, Illinois. Big Rivers' liability carrier, Zurich, is defending this action with a reservation of rights.

3. ***Harlen Kennedy, Jr. and Brenda Kennedy, his wife, v. Big Rivers Electric Corporation, et al.,*** 3rd Judicial Circuit, Madison County, Illinois, Case No. 11-L-727.

This action was filed by the plaintiffs in 2011 alleging that Harlen Kennedy, Jr. developed lung cancer from exposure to asbestos while working for a contractor at a Big Rivers facility. Big Rivers' liability carrier, Zurich, is defending this action with a reservation of rights.

4. ***Pat Maple, as Representative of the Heirs and Estate of Durwood Maple, Deceased v. Big Rivers Electric Corporation, et al.,*** In the Circuit Court of St. Clair County, Illinois, Twentieth Judicial Circuit No. 11-L-59.

This action was filed by the plaintiff in 2011 alleging that Durwood Maple developed and died from lung cancer that resulted from exposure to asbestos while working for a contractor at a Big Rivers facility. Big Rivers' liability carrier, Zurich, is defending this action with a reservation of rights.

5. ***Big Rivers Electric Corporation v. City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power***

*and Light*, Henderson Circuit Court Civil Action No. 09-CI-00693; *City of Henderson, Kentucky, and City of Henderson Utility Commission, d/b/a/ Henderson Municipal Power and Light v. Big Rivers Electric Corporation*, Kentucky Court of Appeals No. 2010-CA-000120-MR; *In the Matter of Arbitration Between: Big Rivers Electric Corporation v. City of Henderson, Kentucky and City of Henderson Utility Commission dba Henderson Municipal Power and Light*, American Arbitration Association, Case No. 52-198-000173-10.

Big Rivers filed suit in Henderson, Kentucky, Circuit Court on July 31, 2009, requesting an order referring to arbitration a dispute with the City of Henderson, Kentucky and City of Henderson Utility Commission (collectively, “HMP&L”). The dispute is over the rights of the parties respecting “Excess Henderson Energy,” as that term is defined in the contracts by which Big Rivers operates HMP&L’s Station Two and receives a portion of the generation output of Station Two. The order of the Henderson Circuit Court directing arbitration has been appealed to the Kentucky Court of Appeals. The contractual dispute is now pending before the American Arbitration Association.

6. *John Yates v. Inland Waters Pollution Control Services LLC d/b/a Inland Industrial Services Group, LLC, Inland Industrial Services Group LLC, DeBusk Industrial Services Company (a/k/a DISC), E.ON U.S. Services, Inc., LG&E and KU Services Company, f/k/a E.ON Services, Inc., Big Rivers Electric Corporation, Western Kentucky Energy Corp., Inland Waters of Ohio, Inc., James D. Price, Jr., and Joshua McCarty*, Ohio Circuit Court, Case No. 10-CI-00523.

John Yates, a resident of Texas and an employee of Titan Contracting and Leasing Company, Inc., filed suit in Ohio Circuit Court on October 1, 2010, against Big Rivers and several other entities regarding injuries he received while performing work at the Big Rivers Wilson Station on October 7, 2009. Co-defendants’ insurance carrier, Chartis, has agreed to defend the action and indemnify Big Rivers in this matter.

7. *The City of Henderson Utility Commission v. Michael C. Donta, Executive Director of the Department of Workplace Standards, Big Rivers Electric Corporation, et al*, Henderson Circuit Court, Civil Action No. 10-CI-898.

The Kentucky Labor Cabinet served a Notice of Violation on Henderson Municipal Power & Light (“HMP&L”) on April 27, 2010, alleging that HMP&L had violated prevailing wage laws by failing to stipulate in bid proposals that prevailing hourly rate of wages must be paid to all laborers, workmen, and mechanics

SCHEDULE 4.01(g)

performing work on the Station Two spring 2010 scheduled outage. This is a declaratory judgment action, which asks the Court to decide whether the value of the individual projects related to the outage work on a generating station must be combined for purposes of determining coverage under prevailing wage laws in Kentucky. Big Rivers was joined as a party interested in the outcome because of its operating and power purchase agreements with HMP&L.

**8. Notice and Application of Big Rivers Electric Corporation for a General Adjustment in Rates**, PSC Case No. 2011-00036; **Big Rivers Electric Corporation v. Public Service Commission, et al.**, Franklin Circuit Court Civil Action No. 11-CI-1757; **Kentucky Industrial Utility Customers, Inc. v. Public Service Commission, et al.**, Franklin Circuit Court Civil Action No. 11-CI-1700; **Kentucky Industrial Utility Customers, Inc. v. Public Service Commission Chairman David Armstrong and Vice Chairman James Gardner, et al.**, Franklin Circuit Court Civil Action No. 12-CI-0037.

These proceedings all relate to Big Rivers' notice and application for a general adjustment in rates that was filed with the Kentucky Public Service Commission ("*Commission*") on March 1, 2011 (the "*Rate Case*"). On November 17, 2011, the Commission entered an order (the "*Order*") granting a portion of Big Rivers' requested rate relief.

Kentucky Industrial Utility Customers, Inc. ("*KIUC*"), an intervening party in the Rate Case, filed an appeal from the Order on December 1, 2011. That appeal was docketed in Franklin Circuit Court in Case No. 11-CI-1700.

On December 6, 2011, Big Rivers filed with the Commission a petition for rehearing of the Order. On December 8, 2011, the Commission granted Big Rivers' petition for rehearing. That rehearing is pending.

On December 15, 2011, in light of questions raised about the jurisdiction of the Commission to grant a rehearing, Big Rivers filed a separate complaint in the Franklin Circuit Court as a protective appeal from the Order. That appeal was docketed in Franklin Circuit Court in Case No. 11-CI-1757.

On January 10, 2012, KIUC filed an action seeking a writ of mandamus directing the Chairman and Vice Chairman of the Commission to dismiss Big Rivers' rehearing petition and to vacate the Rehearing Order. That case was docketed in Franklin Circuit Court in Case No. 12-CI-0037.

By order dated March 8, 2012, the Franklin Circuit Court consolidated,

dismissed and remanded to the Commission all three cases pending in that court. No appeals have yet been filed from this order.

**9. *Other Pending Disputes with Henderson Municipal Power & Light.***

Big Rivers has two other pending disputes related to the Henderson Municipal Power & Light Station Two contracts. The first involves the refusal of HMP&L to pay any of the expenses billed to Big Rivers by Midwest ISO that are related to the Station Two generation and the HMP&L load. Second, Big Rivers has contested the reasonableness of the HMP&L annual capacity share reservations for certain future periods. No litigation has yet been initiated with respect to these disputes.

**10. *SERC Investigation***

Big Rivers is currently the subject of a non-public investigation initiated in February 2009 by SERC Reliability Corporation (“*SERC*”), one of the North America Electric Reliability Corporation’s (“*NERC’s*”) regional entities with responsibility for enforcing mandatory reliability standards. The staff from NERC and the Federal Energy Regulatory Commission also participated in the investigation. In June 2011, SERC initiated a formal assessment to determine Big Rivers’ compliance relative to eight Reliability Standards Requirements as a result of findings of possible violations by the investigation team. The assessment is still ongoing.

**11. *Secretary of the Labor Cabinet Commonwealth of Kentucky v. Big Rivers Electric Corporation***, KOSHRC Docket No. 4833-11, Administrative Action No. 11-KOSH-0290.

This complaint was filed by the plaintiff in 2011, subsequent to Big Rivers having contested a citation issued by KOSHA. The administrative hearing officer has granted extensions requested by KOSHA counsel to allow time for settlement negotiations, which have yet to take place. The penalties assessed with the citation total \$7,500.

EXHIBIT C

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**SECOND SUPPLEMENTAL INDENTURE**  
(to that certain Indenture dated as of July 1, 2009)  
dated as of [\_\_\_\_], 2012

Relating to the Big Rivers Electric Corporation  
First Mortgage Notes, Series 2012A  
Authorized by this Second Supplemental Indenture

**BIG RIVERS ELECTRIC CORPORATION**

to

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE**

**FIRST MORTGAGE OBLIGATIONS**

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- THIS INSTRUMENT IS A MORTGAGE.
- THIS INSTRUMENT GRANTS A SECURITY INTEREST IN A TRANSMITTING UTILITY.
- BIG RIVERS ELECTRIC CORPORATION IS A TRANSMITTING UTILITY.
- THIS INSTRUMENT CONTAINS PROVISIONS THAT COVER REAL AND PERSONAL PROPERTY, AFTER-ACQUIRED PROPERTY, FIXTURES AND PROCEEDS.
- FUTURE ADVANCES AND FUTURE OBLIGATIONS ARE SECURED BY THIS INSTRUMENT.
- THE MAXIMUM ADDITIONAL INDEBTEDNESS WHICH MAY BE SECURED HEREUNDER IS \$[3,000,000,000].
- THE TYPES OF PROPERTY COVERED BY THIS INSTRUMENT ARE DESCRIBED ON PAGES 2 THROUGH 3.
- THE ADDRESSES AND THE SIGNATURES OF THE PARTIES TO THIS INSTRUMENT ARE STATED ON PAGES 1, S-1 AND S-2.

THIS INDENTURE WAS PREPARED BY JAMES M. MILLER OF SULLIVAN, MOUNTJOY, STAINBACK & MILLER, P.S.C., 100 ST. ANN BUILDING, OWENSBORO, KENTUCKY 42303, ATTORNEY FOR BIG RIVERS ELECTRIC CORPORATION.

Signed: \_\_\_\_\_



**THIS SECOND SUPPLEMENTAL INDENTURE**, dated as of [\_\_\_\_], 2012 (this "Second Supplemental Indenture"), is between **BIG RIVERS ELECTRIC CORPORATION**, a cooperative corporation organized under the laws of the Commonwealth of Kentucky, as Grantor (hereinafter called the "Company"), whose post office address is 201 Third Street, Henderson, Kentucky 42420, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (in such capacity, the "Trustee"), whose post office address is 225 Asylum Street, Hartford, Connecticut 06103;

**WHEREAS**, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of July 1, 2009 (the "Original Indenture", as heretofore, hereby and hereafter supplemented being sometimes referred to as the "Indenture"), for the purpose of securing its Existing Obligations and providing for the authentication and delivery of Additional Obligations (capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Original Indenture) by the Trustee from time to time under the Original Indenture, which Original Indenture is filed of record as shown on Exhibit A hereto;

**WHEREAS**, in connection herewith, the Company will enter into a Secured Credit Agreement, dated as of [\_\_\_\_], 2012 (the "Credit Agreement"), with the several financial institutions or entities from time to time parties thereto (the "Lenders") and CoBank, ACB, a federally chartered instrumentality of the United States, as administrative agent (the "Administrative Agent"), pursuant to which the Lenders have agreed to loan the Company \$[235,000,000] and, in connection therewith, the Company will secure certain of its obligations under the Credit Agreement under this Second Supplemental Indenture; and

**WHEREAS**, the Company desires to execute and deliver this Second Supplemental Indenture, in accordance with the provisions of the Original Indenture, for the purpose of providing for the creation and designation of the First Mortgage Notes, Series 2012A, in the principal amount of \$[235,000,000] (the "First Mortgage Notes, Series 2012A") as an Additional Obligation and specifying the form and provisions of the First Mortgage Notes, Series 2012A; and

**WHEREAS**, Section 12.1 of the Original Indenture provides that, without the consent of the Holders of any of the Obligations at the time Outstanding, the Company, when authorized by a Board Resolution, and the Trustee, may enter into Supplemental Indentures for the purposes and subject to the conditions set forth in said Section 12.1; and

**WHEREAS**, all acts and proceedings required by law and by the Articles of Incorporation and Bylaws of the Company necessary to secure the payment of the principal of and interest on the First Mortgage Notes, Series 2012A, to make the First Mortgage Notes, Series 2012A issued hereunder, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal obligation of the Company, and to constitute the Indenture a valid and binding lien for the security of the First Mortgage Notes, Series 2012A, in accordance with its terms,

have been done and taken; and the execution and delivery of this Second Supplemental Indenture has been in all respects duly authorized;

**NOW, THEREFORE, THIS SECOND SUPPLEMENTAL INDENTURE WITNESSES**, that, to secure the payment of the principal of (and premium, if any) and interest on the Outstanding Secured Obligations, including, when issued, the First Mortgage Notes, Series 2012A, to confirm the lien of the Indenture upon the Trust Estate, including property purchased, constructed or otherwise acquired by the Company since the date of execution of the Original Indenture, to secure performance of the covenants therein and herein contained, to declare the terms and conditions on which the First Mortgage Notes, Series 2012A are secured, and in consideration of the premises thereof and hereof, the Company by these presents does grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to (and does create a security interest in favor of) the Trustee, in trust with power of sale, all property, rights, privileges and franchises of the Company (except any Excepted Property) of the character described in the Granting Clauses of the Original Indenture, whether now owned or hereafter acquired, including all such property, rights, privileges and franchises acquired since the date of execution of the Original Indenture subject to all exceptions, reservations and matters of the character therein referred to, and subject in all cases to Sections 5.2 and 11.2 B of the Original Indenture and to the rights of the Company under the Original Indenture, including the rights set forth in Article V thereof; but expressly excepting and excluding from the lien and operation of the Indenture all properties of the character specifically excepted as "Excepted Property" in the Original Indenture to the extent contemplated thereby.

**PROVIDED, HOWEVER**, that if, upon the occurrence of an Event of Default under the Indenture, the Trustee, or any separate trustee or co-trustee appointed under Section 9.14 of the Original Indenture or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Trust Estate, all the Excepted Property described or referred to in Paragraphs A through H, inclusive, of "Excepted Property" in the Original Indenture then owned or thereafter acquired by the Company, shall immediately, and, in the case of any Excepted Property described or referred to in Paragraphs I, J and L of "Excepted Property" in the Original Indenture, upon demand of the Trustee or such other trustee or receiver, become subject to the lien of the Indenture to the extent permitted by law, and the Trustee or such other trustee or receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and whenever all Events of Default shall have been cured and the possession of all or substantially all of the Trust Estate shall have been restored to the Company, such Excepted Property shall again be excepted and excluded from the lien of the Indenture to the extent and otherwise as hereinabove set forth and as set forth in the Indenture.

The Company may, however, pursuant to the Granting Clause Third of the Original Indenture, subject to the lien of the Indenture any Excepted Property, whereupon the same shall cease to be Excepted Property.

**TO HAVE AND TO HOLD** all such property, rights, privileges and franchises hereby and hereafter (by Supplemental Indenture or otherwise) granted, bargained, sold, alienated, remised, released, conveyed, assigned, transferred, mortgaged, hypothecated, pledged, set over or confirmed (or in which a security interest is granted) as aforesaid, together with all the tenements, hereditaments and appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited or required to be deposited with the Trustee (other than any such cash which is specifically stated in the Original Indenture not to be deemed part of the Trust Estate) being part of the Trust Estate), unto the Trustee, and its successors and assigns in the trust herein created, forever.

**SUBJECT, HOWEVER,** to (i) Permitted Exceptions and (ii) to the extent permitted by Section 13.6 of the Original Indenture as to property hereafter acquired (a) any duly recorded or perfected Prior Lien that may exist thereon at the date of the acquisition thereof by the Company and (b) purchase money mortgages, other purchase money liens, chattel mortgages, conditional sales agreements or other title retention agreements created by the Company at the time of acquisition thereof.

**BUT IN TRUST, NEVERTHELESS,** with power of sale, for the equal and proportionate benefit and security of the Holders from time to time of all the Outstanding Secured Obligations without any priority of any Outstanding Secured Obligation over any other Outstanding Secured Obligation and for the enforcement of the payment of Outstanding Secured Obligations in accordance with their terms.

**UPON CONDITION** that, until the happening of an Event of Default under the Indenture and subject to the provisions of Article V of the Original Indenture, and not in limitation of the rights elsewhere provided in the Original Indenture, including the rights set forth in Article V of the Original Indenture, the Company shall have the right to (i) possess, use, manage, operate and enjoy the Trust Estate (other than cash and securities constituting part of the Trust Estate that are deposited with the Trustee), (ii) explore for, gather, cut, mine and produce crops, timber, coal, ore, gas, oil, minerals or other natural resources and products, and to use, consume and dispose of any thereof, and (iii) collect, receive, use, make payments from, transfer, invest, otherwise utilize or employ amounts constituting or derived from the rents, issues, tolls, earnings, profits, revenues, products and proceeds from the Trust Estate or the operation of the property constituting part of the Trust Estate.

Should the indebtedness secured by the Indenture be paid according to the tenor and effect thereof when the same shall become due and payable and should the Company perform all covenants therein and herein contained in a timely manner, then the Indenture shall be canceled and surrendered.

**AND IT IS HEREBY COVENANTED AND DECLARED** that the First Mortgage Notes, Series 2012A are to be authenticated and delivered and the Trust Estate is to be held and applied by the Trustee, subject to the covenants, conditions and trusts set forth herein and in the Original Indenture, and the Company does hereby covenant and

agree to and with the Trustee, for the equal and proportionate benefit of all Holders of the Outstanding Secured Obligations, as follows:

## **ARTICLE I**

### **THE FIRST MORTGAGE NOTES, SERIES 2012A AND CERTAIN PROVISIONS RELATING THERETO**

#### **SECTION 1.01. Definitions.**

All words and phrases defined in Article I of the Original Indenture shall have the same meaning in this Second Supplemental Indenture, including any exhibit hereto, except as otherwise appears herein or unless the context clearly requires otherwise.

#### **SECTION 1.02. Authorization and Terms of the First Mortgage Notes, Series 2012A.**

There shall be established a series of Additional Obligations known as and entitled the "First Mortgage Notes, Series 2012A" (hereinafter referred to as the "First Mortgage Notes, Series 2012A"), the form, terms and conditions of which shall be substantially as set forth in Sections 1.02-1.06 hereof. The First Mortgage Notes, Series 2012A are the same Notes described and defined in the Credit Agreement as the "Notes." The aggregate principal face amount of the First Mortgage Notes, Series 2012A which shall be authenticated and delivered and Outstanding at any one time is limited to \$[\_\_\_\_\_]. The First Mortgage Notes, Series 2012A shall be dated [\_\_\_\_\_, 2012 and are due [\_\_\_\_\_, \_\_\_\_].

The First Mortgage Notes, Series 2012A shall bear interest at the rates and be payable on the Interest Payment Dates (as defined in the Credit Agreement) set forth in Section 2.08 of the Credit Agreement. The principal of and interest on, the First Mortgage Notes, Series 2012A shall be paid to the Person in whose name that Obligation (or one or more Predecessor Obligations) is registered at the close of business on the 15<sup>th</sup> day (whether or not a Business Day) of the calendar month immediately preceding an interest payment (the "Record Date") applicable to such Interest Payment Date (as defined in the Credit Agreement). Interest on the First Mortgage Notes, Series 2012A shall be computed for the actual number of days the loan is outstanding on a basis of a year consisting of 360 days pursuant to Section 2.09 of the Credit Agreement. The Company will act as the Paying Agent for the First Mortgage Notes, Series 2012A.

#### **SECTION 1.03. Repayment.**

(a) Repayment of the First Mortgage Notes, Series 2012A shall be in such amounts and on such dates as set forth in Exhibit C of the Credit Agreement pursuant to Section 2.04(a) of the Credit Agreement.

(b) The First Mortgage Notes, Series 2012A that the Company acquires and surrenders (other than by means of repayments as provided herein) will be credited

against future repayments for such First Mortgage Notes, Series 2012A and the principal payment to be made on the maturity date of such First Mortgage Notes, Series 2012A, in proportion to the respective amounts of those repayments, subject to authorized denominations.

**SECTION 1.04. Voluntary Prepayment.**

The Company may at any time and from time to time prepay the First Mortgage Notes, Series 2012A, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent (as defined in the Credit Agreement) no later than 11:00 AM, Denver, Colorado time five (5) Banking Days (as defined in the Credit Agreement) prior thereto, pursuant to Section 2.05 of the Credit Agreement and for the amount, together with a prepayment surcharge as provided in Section 2.07 of the Credit Agreement.

**SECTION 1.05. Mandatory Prepayment.**

The Company shall prepay the First Mortgage Notes, Series 2012A, in full immediately upon the occurrence of a Change of Control (as defined in the Credit Agreement), without the need for any demand or notification by any Person (as defined in the Credit Agreement) pursuant to Section 2.06 of the Credit Agreement and for the amount, together with a prepayment surcharge as provided in Section 2.07 of the Credit Agreement.

**SECTION 1.06. Form of the First Mortgage Notes, Series 2012A.**

The First Mortgage Notes, Series 2012A and the Trustee's authentication certificate to be executed on the First Mortgage Notes, Series 2012A shall be substantially in the form of Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted in the Original Indenture.

**SECTION 1.07. Registration and Transfer of the First Mortgage Notes, Series 2012A.**

The First Mortgage Notes, Series 2012A shall be issued as fully registered notes without coupons and in minimum denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof. The First Mortgage Notes, Series 2012A shall be registered in the name of CoBank, ACB in certificated form. Transfers of the First Mortgage Notes, Series 2012A must occur under the terms of the Credit Agreement and the Indenture. To affect a transfer under the Indenture, Holders must fill in and execute the Transfer Notice attached to the First Mortgage Notes, Series 2012A (the "Transfer Notice") and submit the First Mortgage Notes, Series 2012A and the Transfer Notice to the Administrative Agent. Upon countersignature by the Administrative Agent of the Transfer Notice the Administrative Agent shall surrender such First Mortgage Notes, Series 2012A, together with the completed Transfer Notice, to the Trustee for registration of transfer pursuant to the provisions of the Indenture.

## ARTICLE II

### MISCELLANEOUS

#### **SECTION 2.01. Supplemental Indenture.**

This Second Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture, and shall form a part thereof, and the Original Indenture, as hereby supplemented, is hereby confirmed. Except to the extent inconsistent with the express terms of this Second Supplemental Indenture and the Credit Agreement, all of the provisions, terms, covenants and conditions of the Original Indenture shall be applicable to the First Mortgage Notes, Series 2012A to the same extent as if specifically set forth herein.

#### **SECTION 2.02. Recitals.**

All recitals in this Second Supplemental Indenture are made by the Company only and not by the Trustee; and all of the provisions contained in the Original Indenture, in respect of the rights, privileges, immunities, powers and duties of the Trustee shall be applicable in respect hereof as fully and with like effect as if set forth herein in full. The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Second Supplemental Indenture or the First Mortgage Notes, Series 2012A (other than its certificate of authentication); it shall not be accountable for the Company's use of the proceeds from the First Mortgage Notes, Series 2012A; and it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The Trustee is not a party to the Credit Agreement, and it will not be responsible for or charged with knowledge of any terms of the Credit Agreement.

#### **SECTION 2.03. Successors and Assigns.**

Whenever in this Second Supplemental Indenture any of the parties hereto is named or referred to, this shall, subject to the provisions of Articles IX and XI of the Original Indenture, be deemed to include the successors and assigns of such party, and all the covenants and agreements in this Second Supplemental Indenture contained by or on behalf of the Company, or by or on behalf of the Trustee shall, subject as aforesaid, bind and inure to the respective benefits of the respective successors and assigns of such parties, whether so expressed or not.

#### **SECTION 2.04. No Rights, Remedies, Etc.**

Nothing in this Second Supplemental Indenture, expressed or implied, is intended, or shall be construed, to confer upon, or to give to, any person, firm or corporation, other than the parties hereto and the Holders of the Outstanding Secured Obligations, any right, remedy or claim under or by reason of this Second Supplemental Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all the covenants, conditions, stipulations, promises and agreements in this Second Supplemental Indenture contained by or on behalf of the Company shall be for the sole

and exclusive benefit of the parties hereto, and of the Holders of Outstanding Secured Obligations.

**SECTION 2.05. Counterparts.**

This Second Supplemental Indenture may be executed in several counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts, or as many of them as the Company and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**SECTION 2.06. Security Agreement; Mailing Address.**

To the extent permitted by applicable law, this Second Supplemental Indenture shall be deemed to be a security agreement and financing statement whereby the Company grants to the Trustee a security interest in all of the Trust Estate that is personal property or fixtures under the Uniform Commercial Code.

The mailing address of the Company, as debtor is:

Big Rivers Electric Corporation  
201 Third Street  
Henderson, Kentucky 42420

and the mailing address of the Trustee, as secured party is:

U.S. Bank National Association  
Corporate Trust Services  
P.O. Box 960778  
Boston, Massachusetts 02102

Additionally, this Second Supplemental Indenture shall, if appropriate, be an amendment to the financing documents originally filed in connection with the Original Indenture. The Company and Trustee are authorized to execute and file as appropriate instruments under the Uniform Commercial Code to either create a security interest or amend any security interest heretofore created; *provided* that the Trustee has no obligation to prepare or make any such filings.

[Signatures on Next Page.]

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed as of the day and year first above written.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Name: Mark A. Bailey  
Title: President and Chief Executive Officer

(SEAL)

Attest: \_\_\_\_\_  
Name:  
Title:

COMMONWEALTH OF KENTUCKY     )  
  ) ss  
COUNTY OF HENDERSON         )

THE FOREGOING instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Mark A. Bailey, President and Chief Executive Officer of Big Rivers Electric Corporation, a Kentucky corporation, for and on behalf of said corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public's Signature  
Notary Public – Kentucky, State at Large  
My commission expires:\_\_\_\_\_

(Notarial Seal)



Trustee:

**U.S. BANK NATIONAL ASSOCIATION**, as  
Trustee

By: \_\_\_\_\_  
Name:  
Title:

STATE OF CONNECTICUT     )  
  )  
COUNTY OF HARTFORD     )

THE FOREGOING instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by [\_\_\_\_\_, \_\_\_\_\_] Vice President of U.S. Bank National Association, a national banking association, for and on behalf of said association.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public's Signature  
Notary Public, State of \_\_\_\_\_,  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

(Notarial Seal)

**SCHEDULE I**

**INFORMATION RELATING TO HOLDERS**

<b>Name and Address of Holder</b>	<b>Principal Amount of First Mortgage Notes, Series 2012A to be Purchased</b>
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CoBank, ACB	
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## EXHIBIT A

[Filing and recording information for the Original Indenture on a county by county basis]

**EXHIBIT B**

THIS SERIES 2012A FIRST MORTGAGE NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT OR IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE, EXCEPT UNDER CIRCUMSTANCES WHERE NEITHER SUCH REGISTRATION NOR SUCH AN EXEMPTION IS REQUIRED BY LAW.

**BIG RIVERS ELECTRIC CORPORATION**

**FIRST MORTGAGE NOTES, SERIES 2012A**

[\$ \_\_\_\_\_], \_\_\_\_\_, 2012

**FOR VALUE RECEIVED, BIG RIVERS ELECTRIC CORPORATION**, a Kentucky cooperative corporation (the "Borrower") **HEREBY PROMISES TO PAY** to CoBank, ACB (the "Lender"), or its assigns, in lawful money of the United States and in immediately available funds, the principal amount of [ \_\_\_\_\_ ] DOLLARS (\$[ \_\_\_\_\_ ]), or, if less, the aggregate unpaid principal amount of the Loans (as defined in the Credit Agreement referred to below) made by Lender to the Borrower pursuant to the Credit Agreement and outstanding on the Commitment Termination Date (as defined in the Credit Agreement), whichever is less. The Borrower also promises to pay interest on the unpaid principal balance of the Loans for the period such balance is outstanding in like money, at the rates of interest, at the times, and calculated in the manner, set forth in Credit Agreement. Any amount of principal and, to the extent provided by law, interest, hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at a rate per annum equal at all times to the rates set forth in Section 2.08 of the Credit Agreement. All payments made hereunder shall be made at the times and in the manner set forth in the Credit Agreement.

The Borrower hereby authorizes the Lender to endorse on the schedule annexed to this Note all payments of principal and interest in respect of the Loan, which endorsements shall be presumed correct absent manifest error as to the outstanding principal amount of, and accrued and unpaid interest on, the Loans; provided however, that the failure to make such notation with respect to any Loan or payment shall not limit or otherwise affect the obligation of the Borrower under the Credit Agreement or this Note.

This is a Note referred to in that certain Credit Agreement, dated as of [ \_\_\_\_ ], 2012, by and among the Borrower, the several financial institutions or entities from time to time parties thereto, including the Lender, and COBANK, ACB, a federally chartered instrumentality of the United States, as administrative agent, lead arranger and book runner, as amended, supplemented or modified from time to time (the "Credit Agreement"), to evidence the Loans made by the Lender thereunder, all of the terms and provisions of which are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of principal upon the occurrence of an Event of Default and for prepayments on the terms and conditions specified therein, including payment of a surcharge pursuant to Section 2.07 of the Credit Agreement.

This Note is an Obligation (as defined in the Indenture) subject to and is secured by that certain Indenture, dated as of July 1, 2009, as supplemented, by and between the Borrower and U.S. Bank National Association, as Trustee.

This Note is a registered Obligation and, as provided in the Indenture, upon surrender of this Note for registration of transfer, accompanied by a written instrument of transfer duly executed, by the registered Holder hereof (or such Holder's attorney duly authorized in writing) and countersigned by the Administrative Agent, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

The Borrower hereby waives presentment for payment, demand, notice of protest, notice of dishonor, and any other notice or formality with respect to this Note, and all defenses on the ground of delay or of any extension of time for payment hereof which may, without obligation, hereafter be given by the holder hereof.

Except to the extent governed by applicable federal law, this Note shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without reference to choice of law doctrine.

**BIG RIVERS ELECTRIC  
CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

This is one of the Obligations (as defined in the Indenture) of the series designated therein referred to in the Indenture.

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Date of Authentication: \_\_\_\_\_

**SCHEDULE TO NOTE  
LOANS**

<b>Date Loan Made or Paid</b>	<b>Amount of Loan Made or Paid</b>	<b>Unpaid Principal Balance of Note</b>	<b>Name of Person Making Notation</b>



FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered Noteholder hereby sell(s) assign(s) and transfer(s) unto

Insert Taxpayer Identification No.

\_\_\_\_\_  
\_\_\_\_\_  
(Please print or typewrite name and address including zip code of assignee)

\_\_\_\_\_  
the within Note and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_  
attorney to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Transferor)

NOTE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or enlargement or any change whatsoever.

NOTE: The signature must be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program) pursuant to S.E.C. Rule 17Ad-15.

The Administrative Agent hereby authorizes the Trustee as Obligation Registrar for the First Mortgage Notes, Series 2012A to transfer this Note under the Indenture pursuant to the instructions, above.

CoBank, ACB, as Administrative Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_