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July 16, 2008

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

RECEIVED

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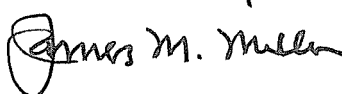
PUBLIC SERVICE  
COMMISSION

Re: The Applications of Big Rivers Electric Corporation for: (I) Approval of Wholesale Tariff Additions for Big Rivers Electric Corporation, (II) Approval of Transactions, (III) Approval to Issue Evidences of Indebtedness, and (IV) Approval of Amendments to Contracts; and of E.ON U.S., LLC, Western Kentucky Energy Corp., and LG&E Energy Marketing, Inc., for Approval of Transactions, PSC Case No. 2007-00455

Dear Ms. Stumbo:

Enclosed for filing on behalf of Big Rivers Electric Corporation ("Big Rivers") are an original and ten copies of a motion for expedited ruling. I certify that a copy of this letter and a copy of the motion have been served on the attached service list.

Sincerely yours,



James M. Miller

JMM/ej  
Enclosures

cc: Michael H. Core  
David Spainhoward  
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PSC CASE NO. 2007-00455

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

THE APPLICATIONS OF BIG RIVERS )  
ELECTRIC CORPORATION FOR: )  
(I) APPROVAL OF WHOLESALE TARIFF )  
ADDITIONS FOR BIG RIVERS ELECTRIC )  
CORPORATION, (II) APPROVAL OF )  
TRANSACTIONS, (III) APPROVAL TO ISSUE )  
EVIDENCES OF INDEBTEDNESS, AND ) CASE NO. 2007-00455  
(IV) APPROVAL OF AMENDMENTS TO )  
CONTRACTS; AND )  
)  
OF E.ON U.S., LLC, WESTERN KENTUCKY )  
ENERGY CORP. AND LG&E ENERGY MARKETING )  
INC. FOR APPROVAL OF TRANSACTIONS )

**MOTION TO EXPEDITE RULINGS**

Big Rivers Electric Corporation (“Big Rivers”), by counsel, moves the Public Service Commission (“Commission”) for expedited rulings on two matters pending in this case:

1. the Motion to Amend and Supplement Application filed June 11, 2008 (“Motion to Amend”), which includes, among other things, a request for approval of a document attached as Exhibit 6 to the Motion to Amend titled “Amendment to Operating and Support Agreement Among PBR-3 Statutory Trust, FBR-1 Statutory Trust, FBR-2 Statutory Trust, and Big Rivers Electric Corporation (D. B. Wilson Unit 1)” (the “Operating Agreement Amendment,” a copy of which is attached to this Motion for the convenience of the Commission and the parties); and,



1 The reason Big Rivers also seeks a ruling on the Motion to Amend is that the application  
2 for approval of the Operating Agreement Amendment is not technically before the  
3 Commission unless and until the Motion to Amend is granted.

4 3. The legal mechanism by which the B of A Leases were terminated early was Big  
5 Rivers purchasing the B of A Undivided Interests from Bank of America-related entities  
6 (the FBR-1 Trust and FBR-2 Trust). The Operating Agreement Amendment was drafted  
7 in connection with the termination of the B of A Leases to recognize the exit of the Bank  
8 of America entities from the leveraged lease transaction, and to make certain changes in  
9 the rights of the remaining parties that result in a net benefit to Big Rivers.

10 4. First, the Operating Agreement Amendment makes Big Rivers a “Facility User,”  
11 in addition to the “Operator” under the Operating Agreement, and recognizes that Big  
12 Rivers is the owner of over 57% of the Undivided Interest in the Wilson I facility. In the  
13 event the Operating Agreement is activated, this would give Big Rivers a vote that it  
14 would otherwise not have in the major decisions regarding operation of Wilson I listed in  
15 Section 5 of the Operating Agreement. Put another way, without the Operating  
16 Agreement Amendment, Big Rivers would be operating Wilson I, but the Philip Morris  
17 Capital Corporation (“PMCC”) entities would have the complete and unchallengeable  
18 right to make all decisions regarding the subjects listed in Section 5 of the Operating  
19 Agreement, such as settlement of claims, adoption of budgets and making modifications  
20 to the Wilson I generating unit. This would be an untenable situation. The PMCC  
21 entities agreed to this concession in return for Big Rivers’ agreement to delete from the  
22 Operating Agreement all provisions and references regarding the “Operating Fee” (see  
23 Section 2.7 of the Operating Agreement), which will no longer be payable to the

1 operator. Big Rivers believes that elimination of the Operating Fee section is reasonable  
2 because it is not typical that a majority owner of a generating station that is also operating  
3 the generating station would receive an operating fee.

4 5. The remaining terms of the Operating Agreement Amendment simply recognize  
5 that only one “Facility Lessor” remains in the leveraged lease transaction. The Operating  
6 Agreement Amendment provides that (i) the remaining PBR-3 Trust will be the sole  
7 “Facility Lessor;” and (ii) at any time Big Rivers (including its Affiliates) is both the  
8 Operator and a Facility User, the consent of PBR-3 Trust (the sole remaining Facility  
9 Lessor) will be required for all actions on which the Facility Users are entitled to vote.

10 6. The Operating Agreement Amendment is important to Big Rivers, even though  
11 there are limited circumstances under which the Operating Agreement (as amended)  
12 would ever be activated. The best interests of Big Rivers and its member cooperatives  
13 demand that Big Rivers have the right to participate in the major decisions affecting  
14 operation of Wilson I if the Operating Agreement is ever activated.

15 7. The request for an expedited ruling on the two issues presented in this Motion is  
16 appropriate because the hearing and final consideration of this case has been unavoidably  
17 postponed. This motion deals only with matters directly connected to the termination of  
18 the B of A Leases, which occurred June 30, 2008, and is not at all dependent upon the  
19 decisions reached on other issues in this case. Accordingly, there is no reason to delay  
20 taking up this Motion. Moreover, as discussed above, the Operating Agreement  
21 Amendment adjusts the rights of the parties in a manner that is favorable to and protects  
22 Big Rivers. This protection should be implemented as soon as possible. Having the  
23 Operating Agreement Amendment in place will also eliminate an issue that could

1 interfere with Big Rivers' current negotiations with its creditors to resolve the effects of  
2 the Ambac Assurance Corporation financial rating downgrades under the remaining  
3 leveraged leases with the PMCC entities.

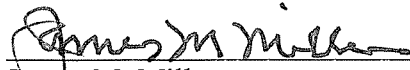
4 WHEREFORE, Big Rivers respectfully moves that the Commission expeditiously  
5 enter an order (i) granting the Big Rivers' June 11, 2008 Motion to Amend, (ii) approving  
6 execution by Big Rivers of the Operating Agreement Amendment, (iii) and granting Big  
7 Rivers all other relief to which it may appear entitled.

8 July 16, 2008

9  
10 [Signatures on following page]  
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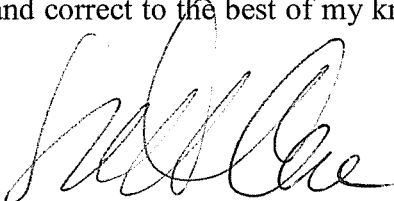
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(202) 637-5600

COUNSEL FOR BIG RIVERS  
ELECTRIC CORPORATION

**Verification**

I, Michael H. Core, President and Chief Executive Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 16th day of July, 2008.



Michael H. Core  
President and Chief Executive Officer  
Big Rivers Electric Corporation

COMMONWEALTH OF KENTUCKY )  
COUNTY OF HENDERSON )

The foregoing verification statement was SUBSCRIBED AND SWORN to before me by Michael H. Core, President and Chief Executive Officer for Big Rivers Electric Corporation, on this the 16th day of July, 2008.



Notary Public, Ky., State at Large  
My commission expires: 1-12-09

AMENDMENT TO OPERATING AND SUPPORT AGREEMENT

Dated as of \_\_\_\_\_, 2008

Among

PBR-3 STATUTORY TRUST, FBR-1 STATUTORY TRUST, FBR-2 STATUTORY TRUST, AND BIG RIVERS ELECTRIC CORPORATION (Wilson Unit 1)

[Originally filed as Exhibit 6 to Big Rivers Electric Corporation's Motion to Amend and Supplement Application filed June 11, 2008]

**AMENDMENT TO**  
**OPERATING AND SUPPORT AGREEMENT**

Dated as of [July 15], 2008

among

**PBR- 3 STATUTORY TRUST,**

acting through U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States, not in its individual capacity but solely as Trustee,

**FBR-1 STATUTORY TRUST,**

acting through U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States, not in its individual capacity but solely as Trustee,

**FBR-2 STATUTORY TRUST,**

acting through U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States, not in its individual capacity but solely as Trustee,

and

**BIG RIVERS ELECTRIC CORPORATION**

---

**D.B. WILSON UNIT 1**

---

This **AMENDMENT TO OPERATING AND SUPPORT AGREEMENT**, dated as of [July 15], 2008 (the “Effective Date”), is entered into by and among **FBR-1 STATUTORY TRUST**, a Connecticut statutory trust, acting through U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States, not in its individual capacity but solely as Trustee of a Connecticut statutory trust created by the Trust Agreement (the “FBR-1 Trust”), **FBR-2 STATUTORY TRUST**, a Connecticut statutory trust, acting through U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States, not in its individual capacity but solely as Trustee of a Connecticut statutory trust created by the Trust Agreement (FBR-2) (the “FBR-2 Trust” and, together with the FBR-1 Trust, the “FBR Trusts”), **PBR-3 STATUTORY TRUST**, a Connecticut statutory trust, acting through U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States, not in its individual capacity but solely as Trustee of a Connecticut statutory trust created by the Trust Agreement (PBR-3) (the “PBR-3 Trust” and, together with the FBR Trusts, the “Owner Trusts”), and **BIG RIVERS ELECTRIC CORPORATION**, a rural electric cooperative organized under the laws of the Commonwealth of Kentucky (“Big Rivers”).

**WHEREAS**, Big Rivers is a rural electric cooperative engaged in the generation and transmission of electric power and energy for wholesale sale and delivery to its members and others in the Commonwealth of Kentucky;

**WHEREAS**, Big Rivers has constructed and placed in service Plant Wilson, an electric generating facility which is located at the Site near Centertown, Kentucky and is designed to burn coal as a primary fuel;

**WHEREAS**, each Owner Trust has acquired a long-term leasehold interest in its Undivided Interest in Plant Wilson, and each has subleased its leasehold interest in the Undivided Interest to Big Rivers pursuant to a Facility Lease for the Facility Lease Term;

**WHEREAS**, Big Rivers has leased separate undivided interests in the Site in favor of each Owner Trust, which, in turn, have subleased their undivided leasehold interest in the Site to Big Rivers;

**WHEREAS**, pursuant to the Facility Lease, Big Rivers is obligated to cause the Facility to be operated and maintained in accordance with the terms of the Facility Lease.

**WHEREAS**, the parties entered into an Operating and Support Agreement, dated as of April 1, 2000, among Big Rivers and the Owner Trusts (the “Original Operating Agreement”), pursuant to which Big Rivers has been providing certain services regarding the operation of the Facility as an electric generating facility;

**WHEREAS**, pursuant to an Omnibus Termination Agreement, dated as of [July 15], 2008, among Big Rivers, the FBR Trusts, and certain other parties (the “Omnibus Termination Agreement”), the parties have agreed to terminate (i) the Facility Lease Agreement, dated as of April 1, 2000, between FBR-1 Trust and Big Rivers, and (ii) the Facility Lease Agreement, dated as of April 1, 2000, between FBR-2 Trust and Big Rivers (such agreements, together, the “FBR

Facility Leases”), and certain other Operative Documents (as defined and specified therein), on the terms of the Omnibus Termination Agreement;

**WHEREAS**, pursuant to the Omnibus Termination Agreement and solely with respect to the FBR Facility Leases, Big Rivers will purchase each of the Facility Lessor’s Interests (including all of the right, title and interest of each of the respective FBR Trust in, to and under the Undivided Interest in the Wilson Unit) and each of such FBR Trusts has agreed to such purchase; and

**WHEREAS**, the parties hereto desire to amend the Original Operating Agreement to reflect the termination of the FBR Facility Leases on the terms of the Omnibus Termination Agreement.

**NOW THEREFORE**, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. ACKNOWLEDGMENT.**

Big Rivers and each Owner Trust hereby acknowledge the termination of the FBR Facility Leases pursuant to the Omnibus Termination Agreement.

**SECTION 2. RELEASE AND DISCHARGE.**

Each of Big Rivers and the PBR-3 Trust does hereby release and discharge each FBR Trust from any and all obligations owing to Big Rivers or the PBR-3 Trust under the Original Operating Agreement from and after the Effective Date. Each of Big Rivers and the PBR-3 Trust hereby acknowledges and agrees that, in consequence of the Omnibus Termination Agreement, each FBR Trust is hereby released and discharged as a party to the Original Operating Agreement.

**SECTION 3. AMENDMENTS.**

The Original Operating Agreement is hereby amended as follows:

*Section 3.1.* In Section 1.1 of the Original Operating Agreement, the definition of “Facility Lessor” is amended to read as follows:

*“Facility Lessor” shall mean the PBR-3 Trust, as Facility Lessor under its Facility Lease.*

*Section 3.2.* In Section 1.1 of the Original Operating Agreement, the definition of “Facility User” is amended by adding clause (iv) to the definition, to read as follows:

*or (iv) Big Rivers, as the owner of the 57.2248931% Undivided Interest.*

*Section 3.3.* Section 2.7 of the Original Operating Agreement is hereby deleted in its entirety, and the following related provisions are amended as follows:

(a) The definition of “*Fair Market Sales Value*” is amended to delete the words “*or the Operating Fee paid to the Operator pursuant to Section 2.7 of this Agreement*” therein.

(b) The definition of “*Operating Fee*” is hereby deleted in its entirety.

(c) Section 5.4(d) is amended to delete the words “*together with any compensation payable to the Operator in accordance with Section 2.7 hereof*” therein.

*Section 3.4.* Section 4.2 of the Original Operating Agreement is hereby amended in its entirety to read as follows:

*A Facility User which is also the Operator or an Affiliate of the Operator (a) shall not be entitled to vote on any matter upon which the Facility Users are entitled to vote hereunder at any time an Event of Default has occurred and is continuing under any Facility Lease or, if such Facility User is Big Rivers, at any time a default by Big Rivers is continuing under this Agreement and (b) shall not under any circumstances be entitled to vote on the resignation or removal of the Operator. In the circumstances described in the preceding sentence, and in any other circumstances where the Facility User is not entitled to vote on matters hereunder, the Entitlement Share of such Facility User shall for voting purposes, be deemed to be equal to zero.*

*Section 3.5.* A new Section 4.3 is hereby added to the Original Operating Agreement, entitled “*Facility Lessor’s Voting Rights*”, to read as follows:

*Notwithstanding anything to the contrary contained herein, at any time that Big Rivers (including any Affiliate thereof) is both a Facility User and the Operator, any matter upon which the Facility Users are entitled to vote hereunder shall require the approval of the Facility Lessor.*

SECTION 4. LAW GOVERNING. This Amendment shall be governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance (including Section 5-1401 and Section 5-1402 of the New York General Obligations Law but excluding all other choice of law and conflicts of law rules).

SECTION 5. EFFECTIVENESS. This Amendment shall be effective upon completion of the transactions contemplated by the Omnibus Termination Agreement to occur on the Effective Date.

SECTION 6. COUNTERPARTS. This Amendment may be executed in two or more counterparts, all of which taken together shall constitute a single agreement.

(Signatures Follow on Next Page)

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to Operating and Support Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written.

BIG RIVERS ELECTRIC CORPORATION

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

PBR-3 STATUTORY TRUST

By: U.S. Bank National Association, as Trustee

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

FBR-1 STATUTORY TRUST and  
FBR-2 STATUTORY TRUST

By: U.S. Bank National Association, as Trustee

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



OPERATING AND SUPPORT AGREEMENT

Dated as of April 1, 2000

Among

PBR-3 STATUTORY TRUST, FBR-1 STATUTORY TRUST, FBR-2 STATUTORY  
TRUST, AND BIG RIVERS ELECTRIC CORPORATION (Wilson Unit 1)

[Originally filed in Volume 10 of the Application in this matter, Appendix C, Disk 3 of 3, Tab 6]

---

**OPERATING AND SUPPORT AGREEMENT**

Dated as of April 1, 2000

among

**PBR-3 STATUTORY TRUST,**  
acting through State Street Bank and Trust Company  
of Connecticut, National Association, not in its  
individual capacity, but solely as trustee

**FBR-1 STATUTORY TRUST,**  
acting through State Street Bank and Trust Company  
of Connecticut, National Association, not in its  
individual capacity, but solely as trustee

**FBR-2 STATUTORY TRUST,**  
acting through State Street Bank and Trust Company  
of Connecticut, National Association, not in its  
individual capacity, but solely as trustee

and

**BIG RIVERS ELECTRIC CORPORATION**

---

**D. B. WILSON UNIT NO. 1**

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## OPERATING AND SUPPORT AGREEMENT

**OPERATING AND SUPPORT AGREEMENT**, dated as of April 1, 2000, among **PBR-3 STATUTORY TRUST**, a Connecticut statutory trust, acting through State Street Bank and Trust Company of Connecticut, National Association, a national banking association not in its individual capacity, but solely as trustee under the Trust Agreement (PBR-3) (the "PBR-3 Trust"), **FBR-1 STATUTORY TRUST**, acting through State Street Bank and Trust Company of Connecticut, National Association, a national banking association not in its individual capacity, but solely as trustee under the Trust Agreement (FBR-1) (the "FBR-1 Trust"), **FBR-2 STATUTORY TRUST**, a Connecticut trust, acting through State Street Bank and Trust Company of Connecticut, National Association, a national banking association not in its individual capacity, but solely as trustee under the Trust Agreement (FBR-2) (the "FBR-2 Trust") and, collectively with the PBR-3 Trust and the FBR-1 Trust, the "Owner Trusts", and **BIG RIVERS ELECTRIC CORPORATION**, a rural electric cooperative organized under the laws of the Commonwealth of Kentucky ("Big Rivers").

**WHEREAS**, Big Rivers is a rural electric cooperative engaged in the generation and transmission of electric power and energy for wholesale sale and delivery to its members and others in the Commonwealth of Kentucky;

**WHEREAS**, Big Rivers has constructed and placed in service Plant Wilson, an electric generating facility which is located at the Site near Centertown, Kentucky and is designed to burn coal as a primary fuel;

**WHEREAS**, each Owner Trust has acquired a long-term leasehold interest in its Undivided Interest in Plant Wilson, and each has subleased its leasehold interest in the Undivided Interest to Big Rivers pursuant to a Facility Lease for the Facility Lease Term;

**WHEREAS**, Big Rivers has leased separate undivided interests in the Site in favor of each Owner Trust, which, in turn, has subleased its undivided leasehold interest in the Site to Big Rivers;

**WHEREAS**, pursuant to the Facility Lease, Big Rivers is obligated to cause the Facility to be operated and maintained in accordance with the terms of the Facility Lease.

**WHEREAS**, from and after the Service Commencement Date for any Owner Trust, subject to the terms hereof, each Owner Trust desires to obtain the services of Big Rivers to interface with WKEC and LEM regarding the operation of the Facility in the period prior to the expiration of the LG&E Arrangements and, in the period after the expiration of the WKEC Lease, to operate the Facility, to obtain a supply of water, limestone and coal, and to provide transmission services, in each case, to the extent required by the terms of this Agreement and for the full and complete use of the Facility as an electric generating facility;

**WHEREAS**, subject to the terms and provisions of this Agreement, Big Rivers is willing to provide such services, operate the Facility and to provide such water, limestone and coal and transmission services; and

WHEREAS, each Owner Trust desires that this Agreement set forth the terms and conditions, and set forth its obligations along with those of each other Owner Trust, for the operation and maintenance of all leasehold interests in the Undivided Interests jointly for the generation of electric power and energy from the Facility.

NOW THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

*Section 1.1. Definitions.* For purposes hereof the following terms shall have the respective meaning set forth:

“**Appraisal Procedure**” shall mean the procedure for determining Fair Market Sales Value described in the definition thereof.

“**Assigned LG&E Agreement Percentage**” shall have the meaning set forth in each Participation Agreement.

“**Base Power**” shall have the meaning set forth in Section 4.1(a) of the LEM Power Purchase Agreement.

“**Capability**” shall mean the amount of Energy, expressed in megawatt hours, that can be generated by the Facility.

“**Capacity**” shall mean megawatts of electric generating capacity.

“**Capital Expenditure Budget**” shall have the meaning set forth in Section 5.4(a) hereof.

“**Construction Cost**” shall mean, with respect to each Modification, the actual cost or purchase price (after deducting amounts realized as the salvage value of any Component which is being replaced by the Modification or the proceeds of insurance with respect to the loss or damage of any Component being replaced by such Modification) determined in accordance with Prudent Utility Practice, including, without limitation, (i) all costs of architectural and engineering services, labor, materials, equipment, supplies, personnel training, testing, permits and licenses, and legal services, (ii) payroll, including related fringe benefits and payroll taxes, of direct full time employees of the Operator allocable on an actual time basis to such acquisition or construction and not included in costs described in clause (viii) below, (iii) reasonable and allocable traveling expenses including use of the Operator’s transportation equipment, (iv) all costs of insurance obtained pursuant hereto and applicable to such acquisition or construction, (v) all costs relating to injury or damage claims and claims by contractors or suppliers arising under construction contracts and arising out of such acquisition or construction, less the proceeds of insurance maintained pursuant hereto and of insurance under any contract for such acquisition or construction, (vi) all Taxes legally required to be paid with respect to such acquisition or construction, (vii) all interest paid to third parties in respect of indebtedness for borrowed money incurred by any Party or the Operator to fund the costs of acquisition or construction which can be capitalized, and (viii) administrative and other overhead costs of the Operator as apportioned

by the Operator in accordance with the Operator's standard joint ownership accounting practices, applicable to such acquisition or construction.

**"Contract Year"** shall mean the 12-month period commencing at 12:01 a.m. on January 1 of each year and ending at 12:01 a.m. on the following January 1, except that the first Contract Year shall begin on the Initial Operating Commencement Date and the last Contract Year shall end on the Final Shutdown Date.

**"Energy"** shall mean megawatt hours of electric energy.

**"Entitlement Share"** with respect to each Facility User shall have the meaning set forth in Section 4 hereof.

**"Facility Lessor"** shall mean each Owner Trust, as Facility Lessor under its respective Facility Lease.

**"Facility User"** shall mean (i) any Owner Trust, or (ii) the Person to which such Owner Trust is leasing, as lessor, its leasehold interest in its Undivided Interest or (iii) another Person during the time and to the extent such Person is subleasing an Undivided Interest, in each case under circumstances giving the Owner Trust or such Person, as the case may be, the right to market and sell Energy from the Facility for its own account including any Person designated by an Owner Trust to be so entitled.

**"Fair Market Sales Value"** shall mean, with respect to water, limestone, coal or transmission services provided by Big Rivers pursuant to this Agreement or the Operating Fee paid to the Operator pursuant to Section 2.7 of this Agreement, the cash price obtainable for such commodities or services in an arm's length sale between an informed and willing purchaser under no compulsion to purchase and an informed and willing seller under no compulsion to sell or provide. If the parties are unable to agree upon a Fair Market Sales Value of such commodities or services within 30 days after a request therefor has been made, the Fair Market Sales Value of such commodities or services shall be determined by appraisal. The Owner Trust and the Operator or Big Rivers, as the case may be, will consult with the intent of selecting a mutually acceptable Independent Appraiser. If a mutually acceptable Independent Appraiser is selected, the Fair Market Sales Value of the commodity or service shall be determined by such Independent Appraiser. If the Operator or Big Rivers, as the case may be, and the Owner Trust are unable to agree upon a single Independent Appraiser within a 15-day period, the Owner Trust will retain an Independent Appraiser. Within 15 days after the Owner Trust's selection of an Independent Appraiser, the Operator or Big Rivers, as the case may be, shall select an Independent Appraiser. If the Operator or Big Rivers, as the case may be, fails to retain an Independent Appraiser within such period, the Fair Market Sales Value of the commodity or service shall be determined by the Independent Appraiser retained by the Owner Trust. The Independent Appraiser selected by the Operator or Big Rivers, as the case may be, and the Independent Appraiser selected by the Owner Trust shall select a consensus Independent Appraiser within 10 days after the selection of the second of such Independent Appraisers. If the Independent Appraisers cannot agree on a consensus Independent Appraiser within 10 days, the consensus Independent Appraiser shall be selected by the American Arbitration Association. If the parties are able to agree upon a single Independent Appraiser or the two Independent

Appraisers are able to agree upon a consensus Independent Appraiser, the single Independent Appraiser or the three Independent Appraisers, as the case may be, shall within 30 days make a determination of such Fair Market Sales Value of the commodity or service. If there shall be a panel of three Independent Appraisers, the appraisal which differs most from the other two appraisals with respect to the commodity or service, shall be excluded and the remaining two appraisals shall be averaged and such average shall constitute Fair Market Sales Value of the commodity or service. Fees and expenses relating to all such appraisals shall be divided between the Owner Trust requesting an appraisal and the Operator or Big Rivers, as the case may be.

**"Final Operating Commencement Date"** shall mean the Operating Commencement Date on which there are no Facility Leases in effect pursuant to which Big Rivers is subleasing an Undivided Interest from any Owner Trust.

**"Final Services Commencement Date"** shall mean the Services Commencement Date on which there are no Facility Leases in effect pursuant to which Big Rivers is subleasing an Undivided Interest from any Owner Trust.

**"Final Shutdown"** shall mean, subject to Section 5.2 hereof, the permanent removal from operation and commercial service of the Facility.

**"Final Shutdown Date"** shall mean the date on which Final Shutdown occurs.

**"Independent Appraiser"** shall mean a Person independent of any Owner Trust, Big Rivers and the Operator having experience in the business of evaluating the commodity or service in question.

**"Initial Services Commencement Date"** shall mean the Services Commencement Date which is the first to occur subsequent to the execution and delivery of this Agreement.

**"Maximum Net Generating Capacity"** shall mean the maximum net Capacity of the Facility to produce Energy for sustained periods under conditions existing from time to time.

**"Minimum Net Capacity"** shall mean such level of Capacity in excess of its Station Service Requirements as Big Rivers shall establish from time to time based upon the operating history of the Facility, as the minimum generating capacity of the Facility.

**"Minimum Requirements"** shall mean the Minimum Hourly Power Purchase Amount or Minimum Annual Power Purchase Amount, as applicable, and as adjusted pursuant to the LEM Power Purchase Agreement prior to the Operating Commencement Date.

**"Modification"** shall have the meaning set forth in each Participation Agreement.

**"Month"** shall mean a calendar month.

**"Nominal Capacity"** of the Facility shall be 440 MW.



**“Operating Commencement Date”** shall mean with respect to any Facility User, the date of expiration or termination of the WKEC Lease subsequent to the Services Commencement Date for such Facility User.

**“Operating Fee”** shall have the meaning set forth in Section 2.7 hereof.

**“Operation and Maintenance Expenses”** shall have the meaning set forth in Section 5.4(d) hereof.

**“Operations and Maintenance Expense Budget”** shall have the meaning set forth in Section 5.4(c) hereof.

**“Operator”** shall mean Big Rivers or any successor operating agent appointed pursuant to Section 7 hereof.

**“Participation Agreement”** shall mean each of the Participation Agreements designated (PBR-3), (FBR-1) and (FBR-2), dated as of April 1, 2000, made among, inter alia, Big Rivers Electric Corporation, the respective PBR-3 Trust, FBR-1 Trust and FBR-2 Trust, and the parties thereto.

**“Parties”** shall mean Big Rivers and the Owner Trusts and their respective successors and assigns hereunder, and **“Party”** shall mean one of the Parties, individually.

**“Point or Points of Interconnection”** shall mean those points at which the Transmission Facilities interconnect with other transmission facilities of other utilities.

**“Power”** shall mean megawatts of Capacity and associated Energy.

**“Replacement Component”** shall have the meaning set forth in Section 2.4 of this Agreement.

**“Services Commencement Date”** shall mean with respect to any Facility User, the date of expiration or earlier termination (other than in the case of a termination following an Event of Loss or under circumstances in which Big Rivers purchases or causes to be purchased such Facility User’s Undivided Interest, or under circumstance in which ownership of the beneficial interest of an Owner Trust is conveyed to Big Rivers) of the Facility Lease applicable to the Undivided Interest under which the Facility User derives its Entitlement Share relating to the Facility.

**“Station Service Requirements”** shall mean the Capacity and Energy required during any period (including initial start-up and testing) and supplied from any source for operation of all on-site process and auxiliary equipment and systems used or useful in connection with the operation and maintenance of the Facility.

**“Transmission Facilities”** shall mean, collectively, those transmission assets constructed in conjunction with the Facility, running from the Facility bus bar to the Points of Interconnection, together with all replacements thereof, substitutions therefor, additions thereto and modifications thereof made from time to time.

“**Uncontrollable Forces**” shall have the meaning set forth in Section 8.2 hereof.

“**Uniform System of Accounts**” shall mean the Uniform System of Accounts prescribed by the Federal Energy Regulatory Commission, as in effect on the date hereof and, except as otherwise expressly provided, as from time to time and hereafter amended, or the chart of accounts and accounting classifications which may be substituted for such Uniform System of Accounts from time to time by the Federal Energy Regulatory Commission or its successor for such purpose.

“**Wheeling Costs**” shall mean the costs for the wheeling services provided in respect of the Energy and Capacity delivered from the Facility, determined in accordance with Section 3.3 of this Agreement.

“**Willful Action**” shall mean any action taken or not taken by a party at the direction of its directors, officers, or employees having management or administrative responsibility affecting its performance hereunder, which action: (i) is knowingly or intentionally taken with indifference to the consequences thereof or with intent that injury or damage would result or would probably result therefrom; (ii) has been determined by final arbitration award, or final judgment or judicial decree to be a material default hereunder and which occurs or continues beyond the time specified in such arbitration award or judgment or judicial decree for curing such default or, if no time to cure is specified therein, occurs or continues beyond a reasonable time to cure such default; (iii) is knowingly or intentionally taken or not taken and is a material default hereunder or (iv) any act or failure to act which constitutes negligence, but does not include any act or failure to act which constitutes gross negligence. The phrase “employees having management or administrative responsibility” as used in this definition means employees of a party who are responsible for directing, controlling, and supervising such party’s performance under an Operative Document.

Other capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in Appendix A to each Participation Agreement, as each Participation Agreement is in effect on the date of execution of this Agreement or as each Participation Agreement may be thereafter uniformly amended with each other Participation Agreement, and the interpretive provisions of such Appendix A shall apply to this Agreement.

*Section 1.2. Use of Definitions.* All terms defined in this Agreement shall have the defined meanings when used in any certificate, report or other document made or delivered pursuant to this Agreement.

*Section 1.3. Agreements.* Except as otherwise indicated herein, all the agreements or instruments herein defined shall mean such agreements or instruments, as the same may be supplemented or amended from time to time or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms hereof and thereof.

## SECTION 2. OPERATION AND MAINTENANCE OF FACILITY.

*Section 2.1. Operation Prior to Expiration or Termination of WKEC Lease.* (a) If a Services Commencement Date for a Facility User occurs prior to the expiration or termination of the WKEC Lease,

(i) Such Facility User acknowledges and agrees that WKEC shall operate and maintain the Facility in accordance with the WKEC Lease and the other LG&E Operative Documents. Operation and maintenance of the Facility will continue on the basis of the WKEC Lease and the other LG&E Operative Documents until the expiration or termination of the WKEC Lease;

(ii) Big Rivers shall have no right or obligation with respect to operation or maintenance of the Facility during such period; and

(iii) unless and until Big Rivers is replaced as Operator of the Facility pursuant to Section 7 hereto, each Facility User, OP Trust, Owner Participant and the Trust Company (both in its individual capacity and as Trustee) hereby irrevocably appoints Big Rivers as its sole and exclusive agent for purposes of liaising, communicating, negotiating and enforcing the rights of any such Persons against WKEC, LEM or any other LG&E Entity with respect to the rights and obligations of any such Persons assigned to or assumed by such Persons pursuant to the Facility Lessee Assignment Agreement; provided that if Big Rivers is replaced as Operator of the Facility pursuant to Section 7, it shall, acting jointly with the Facility Lessors, appoint an entity to be a replacement agent hereunder.

(b) Following the termination of a Facility Lessee Reassignment Agreement, but prior to the Operating Commencement Date, Big Rivers shall be required to perform the following:

(i) to fulfill its obligations under the LEM Power Purchase Agreement other than the purchase of and payment for Base Power to the extent assigned pursuant to the Facility Lessee Assignment Agreement to which such Facility User is a party;

(ii) to provide the projected monthly and daily preschedules required by Sections 5.1 and 5.3 of the LEM Power Purchase Agreement after receiving estimates from the Facility User;

(iii) to perform its redispatch functions under Section 5.4 of the LEM Power Purchase Agreement;

(iv) to request, if necessary, Transmission Support Services, pursuant to Section 5.8 of the LEM Power Purchase Agreement and to pay for such services as may be required pursuant to Section 6.2 of the LEM Power Purchase Agreement;

(v) to provide metering information on a monthly basis as required pursuant to Section 6.1 of the LEM Power Purchase Agreement;

(vi) to carry out its billing and payment obligations under Section 6.5 of the LEM Power Purchase Agreement;

(vii) when required by such Facility User, to request an audit in accordance with Section 7 of the LEM Power Purchase Agreement with respect to the power sold to such Facility User;

(viii) pursuant to Section 9.2 of the LEM Power Purchase Agreement, to invoice LEM for any damages suffered by any of the Facility Users (and of which such Facility User may notify Big Rivers) arising from any failure of LEM to deliver Base Power; and

(ix) provide to the Facility Users copies of (i) the Annual O&M Budgets and Annual Capital Budgets (each as defined in the WKEC Lease) and the five-year plan projections of such budgets and any other notices provided to Big Rivers pursuant to Articles 7 and 8 of the WKEC Lease and (ii) any information with respect to scheduled outages for inspection and ordinary maintenance of Plant Wilson as may be provided to Big Rivers.

(c) Following the termination of a Facility Lessee Reassignment Agreement, but prior to the Operating Commencement Date for the Facility User which was a party to such Facility Lessee Reassignment Agreement, the relevant Facility User shall:

(i) pay its Facility Lessor's Percentage of the Assigned LG&E Agreement Percentage of all incremental costs of any redispach required under Section 5.4 of the LEM Power Purchase Agreement;

(ii) purchase and pay for Base Power in amounts no less than the Facility Lessor's Percentage of the Assigned LG&E Agreement Percentage of the Minimum Requirements, as assigned to such Facility User under the Facility Lessee Assignment Agreement;

(iii) pay to LEM any amounts payable under Section 6.4(b) of the LEM Power Purchase Agreement attributable to the failure of the Facility User to schedule its Facility Lessor's Percentage of the Assigned LG&E Agreement Percentage of the Minimum Requirements, as assigned to such Facility User under the Facility Lessee Assignment Agreement;

(iv) pay any amount payable by Big Rivers under Section 9 of the LEM Power Purchase Agreement attributable to the acts, errors or omissions of such Facility User; *provided, however*, that such Facility User shall not be required to pay any such amount attributable to the acts, errors or omissions of Big Rivers;

(v) at least 35 days prior to each October 1, submit to Big Rivers in writing the projected monthly amounts of Base Power the Facility User expects to require during the following Year or Partial Year. Such projection shall represent a good faith estimate by the Facility User of its anticipated requirements under the LEM Power Purchase Agreement; and

(vi) preschedule all deliveries of Base Power no later than 3:00 p.m., Central Time, on the second Business Day (as defined in the LEM Power Purchase Agreement) preceding the day or days of delivery, or as otherwise mutually agreed by Big Rivers, on behalf of all Facility Users and LEM. The Facility User's preschedule shall specify for each hour of each day its best estimate of its requirements for Base Power as the Facility User is entitled to receive pursuant to the LEM Power Purchase Agreement. Big Rivers will provide the Facility User with a schedule showing the point(s) of delivery at which the Facility User's Base Power purchased pursuant to the Facility Lessee Assignment Agreement and the LEM Power Purchase Agreement will be delivered within three hours following receipt by Big Rivers of such schedule

from LEM. The Facility User will make reasonable efforts to minimize changes in its preschedules and delivery schedules.

(d) Each Facility User acknowledges the agreement set forth in Section 9.2 of the LEM Power Purchase Agreement.

*Section 2.2. Designation of Operator.* The Parties hereby agree that, from and after the Initial Services Commencement Date, Big Rivers shall be the Operator of the Facility in accordance with the terms and conditions of this Agreement until the termination of this Agreement or removal of Big Rivers in accordance with Section 7 of this Agreement.

*Section 2.3. Operation and Maintenance.* Except as otherwise provided in Section 2.1(a), during the Facility Lease Term with respect to an Undivided Interest, Big Rivers shall be responsible for the operation and maintenance of the Facility in accordance with the provisions of the Facility Lease to which such Undivided Interest is subject. From and after the Operating Commencement Date with respect to any Facility Lease subject to the provisions of Sections 2.1 and 2.2 hereof, the Operator covenants that it will inspect, operate, service and maintain the Facility (i) in good condition (ordinary wear and tear excepted), repair and working order and in compliance with all Applicable Laws of any Governmental Entity having jurisdiction and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, with all such maintenance, repairs, renewals, replacements, betterments and improvements being made (a) as may be necessary so that the business carried on in connection with the Facility and the Site may be properly and advantageously conducted by the Operator on behalf of the Facility Users at all times, and (b) in accordance with Applicable Law and Prudent Utility Practice and (ii) in accordance with operating standards, consistent with Applicable Law and Prudent Utility Practice as shall result in the maintenance of the maximum operating capability of the Facility and to assure that the performance of the Facility measured by reference to unit Capacity and efficiency (determined by reference to heat rate, availability rates and forced outage rates) is not negatively affected (any decline in such Capacity or efficiency resulting from ordinary wear and tear excepted). The Operator agrees that it will (w) maintain the Facility and the Site in accordance with the terms and conditions of all insurance policies in effect at any time with respect to the Facility or the Site or any part thereof; (x) enforce warranty claims against all vendors, suppliers, contractors and manufacturers of the Facility or any part thereof; (y) keep the Facility and the Site free and clear of all Liens other than Permitted Liens; and (z) keep and maintain proper books and records relating to all services rendered and all funds expended for operation and maintenance of the Facility and the construction and installation of all replacement components and capital improvements affixed thereto or installed therein, all in accordance with the Uniform System of Accounts and customary practices in the electric utility industry. So long as Big Rivers or any of its Affiliates is also the operator of the Plant Green or lessee under the Other Facility Leases in respect of the Plant Green, Big Rivers shall perform its maintenance obligations in respect of the Facility and the Plant Green in a non-discriminatory manner.

*Section 2.4. Replacement of Components.* Effective on the Services Commencement Date for any Facility User, subject to the provisions of Section 2.1 hereof and subject to Section 5.1 hereof, in the ordinary course of maintenance, service, repair or testing pursuant to Section 2.3, the Operator may remove or cause to be removed from the Facility any Component;

*provided, however,* that the Operator shall cause such Component to be replaced by a replacement component which shall be free and clear of all Liens (except Permitted Liens) attributable to the Operator and shall be in as good operating condition as, and shall have a fair market value, residual value, utility and remaining useful life at least equal to that of the Component replaced, assuming such replaced Component was in at least the condition and repair required to be maintained in accordance with the terms of this Agreement (each such replacement Component incorporated in the Facility being herein referred to as a "Replacement Component") as promptly as practicable. An undivided interest equal to the Facility Lessor's Percentage in each Component at any time removed from the Facility shall remain subject to each of the Head Leases to which each Facility Lessor is a party and any Facility Lease still in effect, wherever located, until such time as such Component shall be replaced by a Replacement Component which has been incorporated in the Facility and which meets the requirements for Replacement Components specified above. Immediately upon any Replacement Component becoming incorporated in the Facility, without further act and at no cost to Big Rivers, (i) the replaced Component shall no longer be subject to any Head Lease or any Facility Lease still in effect, (ii) title to such Replacement Component shall vest in Big Rivers and shall become subject to the First Mortgage, (iii) an undivided interest equal to each Facility Lessor's Percentage in the Replacement Component shall thereupon become subject to the Head Lease for each respective Owner Trust, and shall be deemed a part of such Owner Trust's Undivided Interest for all purposes hereof. Notwithstanding anything in this Section 2.4 or elsewhere in this Agreement to the contrary, if the Operator has determined that a Component is surplus or obsolete, it shall have the right to remove such Component without replacing it; *provided* that no such Component may be so removed without being replaced if such removal would diminish the current or residual value by more than a *de minimis* amount or diminish the remaining useful life or utility of the Facility or cause the Facility to become "limited use" property within the meaning of Rev. Proc. 76-30, 1976-1, C.B. 647.

*Section 2.5. Modifications to the Facility.* Effective on the Services Commencement Date for any Facility User, subject to the provisions of Sections 2.1 and 2.2 hereof and subject to Section 5.1, the Operator shall make or cause to be made all Modifications to the Facility as are required by Applicable Law or as are necessary to operate the Facility for the continued generation of electric energy and such other Modifications as Facility Users owning leasehold interests in Undivided Interests constituting a majority of the Facility shall from time to time request; *provided* that no Modification to the Facility requested by such majority of Facility Users shall impair the operation or Capacity of the Facility, increase its heat rate or forced outage rate or diminish the availability rate, the fair market value, residual value, remaining useful life or utility of the Facility below the fair market value, residual value, remaining useful life or utility thereof immediately prior to such Modification requested by such majority of Facility Users, assuming the Facility was then in the condition required to be maintained by the terms of this Agreement, or, prior to the expiration or termination of a Facility Lease or cause the Facility to become "limited use" property, within the meaning of Rev. Proc. 76-30, 1976-1, C.B. 647. Title to all Modifications to the Facility shall immediately vest in Big Rivers. Prior to the Expiration Date for all Facility Leases, an undivided interest equal to each Owner Trust's Facility Lessor's Percentage in all Required or Nonseverable Modifications to the Facility shall become subject to the relevant Owner Trust's Head Lease and Ground Lease for all purposes of such Head Lease and Ground Lease in accordance with Section 8.3 of the Facility Leases and shall be a part of the Undivided Interest of any Owner Trust the Expiration Date for which has

not occurred and shall become subject to the Liens of the First Mortgage and the LG&E Interests (prior to the expiration or termination of the WKEC Lease). Subsequent to the Expiration Date of all Facility Leases, an undivided interest equal to each Owner Trust's Facility Lessor's Percentage in all Modifications incorporated in the Facility shall immediately become subject to the relevant Owner Trust's Head Lease and Ground Lease for all purposes of such Head Lease and Ground Lease and Big Rivers, at its own cost and expense, shall take such steps as the Owner Trusts may require from time to time to confirm that the foregoing Modifications are subject to the Head Leases or Ground Leases, as the case may be.

*Section 2.6. Deferral of Compliance.* So long as Big Rivers is the Operator, if, to the extent, and for so long as, (i) a test, challenge, appeal or proceeding for review of any requirement of Applicable Law relating to the operation or maintenance of the Facility shall be diligently prosecuted in good faith by the Operator, the Operator shall not be required to comply with such requirement that the Facility be operated and maintained in compliance with Applicable Law if, but only if, such test, challenge, appeal, proceeding or noncompliance shall not involve any danger of (x) foreclosure, sale, forfeiture or loss of, or imposition of any Lien on, the Facility or the Site, (y) impairment of the use, operation or maintenance of the Facility or the Site or any portion thereof, in any material respect, or the fair market value, residual value or remaining useful life of the Facility, or (z) any criminal liability being incurred by, or material adverse effect on, the interests of, any Owner Trust, including, without limitation, subjecting an Owner Trust or the related OP Trust or Owner Participant to regulation as a public utility under Applicable Law. If, and to the extent that the Operator's noncompliance with its covenant to operate and maintain the Facility in compliance with all Applicable Law is not of a type that can be immediately remedied, the Operator shall not be required to comply with such covenant so long as the Operator is taking all reasonable action to remedy such noncompliance and, if, but only if, such noncompliance shall not involve any danger described in the preceding sentence.

*Section 2.7. Operation and Maintenance Fee.* From and after the Operating Commencement Date for any Facility User, such Facility User will pay to the Operator an operating fee equal to the Facility Lessor's Percentage of the Fair Market Sales Value of the Operator's services hereunder as operator of the Facility, taking account of the Operator's liability for repair and maintenance costs, and the actual cost incurred by the Operator in performing, and properly attributable to, its services as Operator hereunder. Such fee shall be determined by mutual agreement between the Facility Users and the Operator, or if the Facility Users and the Operator shall be unable to agree, by the Appraisal Procedure (the "Operating Fee") provided, however, that no Operating Fee shall be payable by any Facility User in respect of any period prior to the Operating Commencement Date applicable to such Facility User. Such amounts shall be paid to the Operator in installments with a frequency to be agreed between the Parties, or, failing agreement, semiannually in arrears.

*Section 2.8. Water Supply.* From and after the Operating Commencement Date for any Facility User, Big Rivers agrees, subject to the occurrence of Uncontrollable Forces, to provide sufficient quantities of water to permit the continuous operation of the Facility at the level of its Minimum Net Capacity and, using best efforts, at such greater capacity (subject to the Maximum Net Generating Capacity) as a Facility User may require. Big Rivers hereby covenants and agrees not to commit its available water supply in such a way as to impair the use and operation

of the Facility at the capacity required. The cost of water used for the operation of Plant Wilson shall be the Fair Market Sales Value thereof.

*Section 2.9. Limestone Supply.* From and after the Operating Commencement Date for any Facility User, Big Rivers agrees, subject to the occurrence of Uncontrollable Forces to provide sufficient quantities of limestone to permit the operation of the Facility at the level of its Minimum Net Capacity and, using best efforts, at such greater capacity (subject to the Maximum Net Generating Capacity) as such Facility User may require. Big Rivers hereby covenants and agrees not to commit its available limestone supply in such a way as to impair the use and operation of the Facility at the capacity required. The cost of limestone used for the operation of Plant Wilson shall be the Fair Market Sales Value thereof.

*Section 2.10. Coal Supply.* From and after the Operating Commencement Date for any Facility User, Big Rivers agrees, subject to the occurrence of Uncontrollable Forces to provide sufficient quantities of coal to permit the operation of the Facility at the level of their respective Minimum Net Capacities and, using best efforts, at such greater capacity (subject to the Maximum Net Generating Capacity) as such Facility User may require. Big Rivers hereby covenants and agrees not to commit its available coal supply in such a way as to impair the use and operation of the Facility at the capacity required. The cost of such coal supplied to Plant Wilson shall be the Fair Market Sales Value thereof.

*Section 2.11. Insurance.* Prior to the Operating Commencement Date for any Facility User, Big Rivers will cause the Facility and the Site to be insured in accordance with Section 11 of each Facility Lease. From and after the Operating Commencement Date for any Facility User, unless the Facility Users representing a majority of the Entitlement Shares of all Facility Users decide to amend, the Operator will cause the Facility and the Site to be insured in accordance with this Section 2.11. All insurance maintained pursuant to this Section 2.11 for any Facility User shall be included in Operating and Maintenance Expenses paid by such Facility User pursuant to Section 5.4(d) of this Agreement.

(a) Property Insurance. Subject to availability on commercially reasonable terms, the Operator will maintain (or cause to be maintained) all risk property insurance customarily carried by prudent operators of facilities of comparable size and risk to the Facility and against loss or damage from such causes as are customarily insured against, which includes coverage for flood and windstorm and boiler and machinery coverage to cover mechanical breakdown. If so requested by the Facility Users representing a majority of the Entitlement Shares of all Facility Users, the Operator shall procure and maintain additional or alternative property damage insurance and comprehensive public liability insurance with respect to the Facility in such forms, insuring against such risks and in such amounts as such Facilities Users representing a majority of the Entitlement Shares of all Facilities Users shall specify and as are commercially available. Upon the request of an Owner Trust, OP Trust or Owner Participant, the Operator shall have such Owner Trust's, OP Trust's or Owner Participant's name included in all insurance policies required to be maintained pursuant to this Section 2.11 as named insureds.

(b) Liability Insurance. Subject to availability on commercially reasonable terms, the Operator will maintain liability insurance, including contractual liability coverage, insuring against claims for bodily injury (including death) and property damage to third parties



arising out of the ownership, operation, maintenance, condition and use of the Facility and the Site, with limits not less than \$35 million per occurrence/aggregate with a deductible not to exceed \$1,000,000 per occurrence or in such other amounts with such other deductible amounts as are stipulated by Facility Users representing a majority of the Entitlement Shares of all Facilities Users. The Operator will periodically review the liability insurance maintained by it or on its behalf and will, if necessary, revise such coverage and limits (including deductibles) in order that the liability insurance maintained by it or on its behalf is consistent with that maintained by prudent operators of a similar facility of comparable size and risk to the Facility. Such liability insurance may be purchased either in a single limit or in combination with a general and an excess policy.

(c) Provisions With Respect to Insurance.

(i) Subject to availability on commercially reasonable terms, the Operator will place the insurance maintained pursuant to this Section 2.11 with Associated Electric and Gas Insurance Limited or other companies approved by Facilities Users representing a majority of the Entitlement Shares of all Facilities Users. Subject to availability on commercially reasonable terms, all insurance policies required to be maintained pursuant to Section 2.11 shall name each Facility User, the Trust Company (both in its individual capacity and as Trustee), each Owner Trust, each OP Trust and each Owner Participant and, in respect of each Facility Lease still in effect, each Lender as additional insureds or named insureds, as their interests may appear.

(ii) All insurance policies required to be maintained pursuant to this Section 2.11 shall also (i) provide for at least 30 days' prior written notice (10 days for non-payment of premiums) by the insurance carrier to each Facility User, Owner Trust, OP Trust and Owner Participant in the event of cancellation, non-renewal, termination, expiration or amendment, (ii) provide that if (x) any such insurance policy is canceled, terminated or not renewed for any reason whatsoever, or (y) a substantial change is made in coverage which affects the interests of the Operator, any Facility User, Owner Trust, OP Trust or Owner Participant, or (z) such insurance policy is allowed to lapse for nonpayment of premiums, such termination, non-renewal, cancellation, change or lapse shall not be effective against the Operator, such Facility User, Owner Trust, OP Trust or Owner Participant for 30 days after receipt by the Operator, such Facility User, Owner Trust, OP Trust or Owner Participant, as the case may be, of written notice from any applicable insurers of such cancellation, change, or lapse and (iii) provide that each of the Owner Trusts or OP Trusts, as applicable, is permitted to make payments to effect the continuation of such insurance policy upon notice of cancellation due to nonpayment of premiums. Subject to availability on commercially reasonable terms, the Operator will place the insurance required by this Section 2.11 with insurance companies which agree to waive all claims for premiums from, and all subrogation rights against, each Facility User, each Owner Trust, each OP Trust and each Owner Participant. All the insurance maintained pursuant to this Section 2.11 shall be primary without right of contribution of any other insurance carried by or on behalf of any Facility User, Owner Trust, OP Trust or Owner Participant with respect to their respective interests in the Facility and the Site.

(iii) To the extent available on commercially reasonable terms, the Operator will use its best efforts to provide that the respective interests of each Owner Trust, OP

Trust, Owner Participant and, in respect of any Facility Lease still in effect, each Lender, shall not be invalidated by any act or neglect of the Operator, or any breach or violation by the Operator of any warranties, declarations or conditions contained in such policies or by the use of the Facility for purposes more hazardous than permitted by such policies. Additionally, to the extent available on commercially reasonable terms the Operator will use its best efforts to provide that such policies shall be endorsed to provide that, inasmuch as the policies are written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the manner as if there were a separate policy covering each insured. The Operator shall, at its own expense, make or cause to be made all proofs of loss and take all other steps necessary to collect the proceeds of such insurance.

(iv) Prior to the Operating Commencement Date, all proceeds of property damage insurance in respect of the Facility shall be applied in accordance with the terms of the WKEC Lease and the LG&E Arrangements. Following the Operating Commencement Date, the Operator shall, unless a decision has been made pursuant to Section 5.1 requiring Final Shutdown of the Facility, apply all proceeds of property damage insurance received by it in respect of the Facility toward costs of repairing or replacing the Facility or any portion thereof which has been damaged (including reimbursement to any Person who has previously paid such costs), and any such proceeds not required for such purpose shall be distributed to the Facility Users in accordance with their respective Entitlement Shares. If the costs of repair are estimated to be in excess of \$100,000, the Operator shall prepare a work plan, schedule and budget for the repair which shall be submitted to the Facility Users for review and approval in the same manner as Capital Expenditure Budgets. Pending the application of proceeds, such proceeds may be invested by the Operator in investment-grade securities which mature not later than such times as shall be necessary to provide moneys when needed to pay such costs of repair, reconstruction or replacement.

(d) Reports. On or before April 1 of each Contract Year after the Operating Commencement Date, the Operator shall furnish to each Facility User, Owner Trust, OP Trust and Owner Participant a report signed by a Responsible Officer of the Operator identifying all insurance coverage in place (attaching relevant insurance certificates evidencing such coverage) and certifying that all premiums in respect of such insurance policies are paid in full. Within 10 Business Days after the expiration and renewal of any insurance policy required to be maintained pursuant to this Section 2.11, the Operator shall provide each Facility User, Owner Trust, OP Trust and Owner Participant certificates from brokers or carriers stating that such policies are in effect and in the case of policies maintained pursuant to Section 2.10(b), indicating their status as additional insureds or named insureds, as the case may be.

(e) Additional Insurance. Each Facility User and Owner Trust (either directly or in the name of its relevant OP Trust and related Owner Participant), may, at any time, at its own expense and for its own account, carry insurance with respect to its interests in the Facility; provided, that such insurance does not in any way interfere with the Operator's ability to obtain the insurance required under this Section 2.11 hereof. Any insurance proceeds received from policies maintained by an Owner Trust or Facility User pursuant to the previous sentence shall be retained by such Owner Trust or Facility User, as the case may be, without reducing or otherwise affecting the Operator's obligations hereunder.

*Section 2.12. Scheduling.* After the Operating Commencement Date, each Facility User shall have the right to schedule for its own account Capacity and Energy from the Facility equal to the product of its Entitlement Share and the Maximum Net Generating Capacity or such higher Capability as may be available from time to time. Neither any Facility User nor the Operator shall be responsible for providing or arranging reserve requirements for any other Facility User. Each Facility User, not later than 2:00 p.m. on each Business Day, commencing on the first Business Day following the Operating Commencement Date for such Facility User, shall provide or cause to be provided to the Operator, its estimated hourly schedule of generation from the Facility for each hour of the following day (or, if such following day shall not be a Business Day, each successive day which shall not be a Business Day as well as the next Business Day). Such schedule may thereafter be changed by such Facility User at any time. The proceeds of the sale or other disposition of a Facility User's Entitlement Share shall be the property of such Facility User.

*Section 2.13. Outages.* The Operator shall prepare and deliver to each Facility User at least 120 days before the beginning of each Contract Year hereunder after the Operating Commencement Date for such Facility User (other than the first Contract Year, in which case such information shall be provided as promptly as practical after the Operating Commencement Date) a schedule of outages for inspection and ordinary maintenance for Plant Wilson for such Contract Year and, to the extent practicable, shall adhere to such schedule. Scheduling of such outages shall be coordinated with other plant inspection and maintenance outages on the same power supply system in accordance with Prudent Utility Practice. Any outages required for maintenance affecting the safety of Plant Wilson shall be scheduled by the Operator as required. In the event of emergency outages, forced outages, outages by reason of safety considerations or reductions in the Capacity of Plant Wilson, for any reason, the Operator shall schedule and perform all required repairs and replacements and restore the Capacity of Plant Wilson to the standards required by this Agreement in an expeditious manner in accordance with Prudent Utility Practice. During any period of outage of Plant Wilson, the Operator will provide to the Facility User emergency station power to the extent available at the Fair Market Sales Value thereof.

*Section 2.14. No Liens.* The Operator shall not directly or indirectly create, incur or assume any Lien on the Facility or any Component thereof or any Facility User's right, title or interest in and to any of the foregoing or any part thereof, except Permitted Liens. The Operator will, promptly, at its own expense, take such action as may be necessary to duly discharge any Lien (other than Permitted Liens) directly or indirectly created, incurred or assumed by it on the Facility or any Component thereof.

*Section 2.15. Notice of Partial Loss or Damage.* If there shall occur a partial loss or damage of a material nature with respect to the Facility, after the Services Commencement Date, the Operator shall provide written notice thereof to the Facility Users as promptly as practicable, but in any event within 30 days of the occurrence of such partial loss or damage.

*Section 2.16. Access.* After the Operating Commencement Date of any Facility User and without limiting the rights of the Owner Trusts under any Operative Document, (i) upon reasonable notice to the Operator, during normal business hours, such Facility User and, if the Facility User is not also the Owner Trust, such Owner Trust, shall have (w) access to the Facility

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for purposes of the inspection thereof, (x) the right to inspect the books of records, books of accounts and memoranda of the Operator relating to the Facility, (y) to make copies and extracts therefrom, and (z) to discuss with the executive officers of the Operator, the finances and accounts relating to the Facility and (ii) the Operator will cooperate with such Facility User and Owner Trust, as the case may be, in connection with any such inspection, review or discussion and shall provide such Facility User with the opportunity to meet with the operations manager of the Facility. Such inspection and review shall be solely at the expense of the Facility User or Owner Trust, as the case may be, requesting the inspection, review or discussion and shall be undertaken in compliance with the Operator's safety rules and standards and insurance requirements.

### SECTION 3. TRANSMISSION OF POWER AND ENERGY

*Section 3.1. Wheeling Service.* From and after the Services Commencement Date for any Facility User, Big Rivers, regardless of whether it is the Operator hereunder, acting for and on behalf of each Facility User shall, subject to Section 3.5, wheel such Facility User's Entitlement Share scheduled by such Facility User (up to the Maximum Net Generating Capacity of the Facility) over the Transmission Facilities to the Point or Points of Interconnection specified from time to time by such Facility User; *provided, however,* that should Big Rivers have in effect on and after the Services Commencement Date an open access transmission tariff or any successor tariff thereto of general applicability governing the provision of wheeling services over the Transmission Facilities, then such wheeling on behalf of each Facility User for its Entitlement Share shall be scheduled, reserved and otherwise provided by Big Rivers in a non-discriminatory manner under the applicable terms and conditions thereof, including any requirements with respect to ancillary services.

*Section 3.2. Delivery Voltages.* Capacity and Energy wheeled by Big Rivers hereunder shall be delivered at 161 kV (nominal) or at such other nominal delivery voltages as may be agreed upon by the Parties from time to time.

*Section 3.3. Wheeling Costs.* (a) Determination of Wheeling Costs. Wheeling Costs with respect to all wheeling services supplied by Big Rivers hereunder shall be determined at the Facility bus bar on the basis of rate schedules for all users of Big Rivers' wheeling services established, subject to Applicable Law, by the Board of Directors of Big Rivers in accordance with generally accepted rate-making practices in the electric utility industry. Big Rivers shall notify each Facility User of its determination of Wheeling Costs promptly after such determination is made; *provided, however,* that should Big Rivers have in effect on and after the Operating Commencement Date an open access transmission tariff or any successor tariff thereto of general applicability governing the provision of wheeling services over the Transmission Facilities, then the parties agree that the wheeling services provided hereunder shall be charged the then applicable rates under such tariff, including the costs of any required unbundled ancillary services.

(b) Transmission Losses. Quantities received from the Facility bus bar for any Facility User shall be reduced by an amount equal to transmission losses incurred in making deliveries of such quantities over the Transmission Facilities.

*Section 3.4. Power Factor.* From and after the Operating Commencement Date for any Facility User, such Facility User shall be obligated to maintain a power factor at each Point of Interconnection in accordance with the terms and conditions of the rate schedules referred to in Section 3.3(a). Should the power factor as metered at any such Point of Interconnection from Big Rivers' transmission system not be maintained within such limits, Big Rivers shall notify such Facility User and request that the power factor be corrected. If such Facility User shall not have begun corrective action at the end of 90 days, Big Rivers may take corrective action and such Facility User shall be obligated to compensate Big Rivers for all sums extended and all services contracted for or performed by Big Rivers, including Big Rivers' standard overhead. This Section 3.4 shall be applicable only to the extent that Big Rivers is wheeling Power and Energy generated by the Facilities and scheduled by such Facility User over the Transmission Facilities pursuant to this Agreement.

*Section 3.5. Service Continuity.* From and after the Services Commencement Date for any Facility User, Big Rivers shall maintain the Transmission Facilities, consistent with Prudent Utility Practice to prevent and minimize interruption of wheeling service to its customers, including the Facility Users, but does not guarantee such service against interruptions due to Uncontrollable Forces. In the event sufficient transmission capacity is not available, because of Uncontrollable Forces, to serve all Big Rivers' and Facility User's firm power schedules, including schedules hereunder, such schedules shall be reduced on a pro rata basis or otherwise curtailed consistent with the type of transmission scheduled and reserved under any then effective open access transmission tariff or successor tariff of general applicability.

*Section 3.6. Parties' Rights and Obligations.* The obligation of Big Rivers under this Section 3 is to wheel for a Facility User for which the Services Commencement Date has occurred, on the terms and conditions herein set forth, Capacity and Energy derived from the Facility. Nothing in this Agreement shall give any Facility User (i) any possessory or ownership interest in any Transmission Facilities, including without limitation the Transmission Facilities, owned by Big Rivers or (ii) any right to delivery of Capacity and Energy other than Capacity and Energy derived from the Facility. Nothing in this Agreement shall obligate Big Rivers to sell Capacity and Energy to any customers of any Facility User.

*Section 3.7. Big Rivers' Obligations under Section 3 of Agreement.* Big Rivers' obligations under this Section 3 shall (i) exist until the expiration or termination of the last of the Head Leases to expire or be terminated, (ii) be binding on its successors and assigns and (iii) continue regardless of (x) any determination by a competent authority that any provision of this Agreement other than this Section 3 is prohibited or unenforceable, (y) any termination of this Agreement in whole or in part, based on any default by a Facility User in its obligations under any provisions hereunder other than this Section 3, or (z) whether or not Big Rivers is the Operator under this Agreement.

#### SECTION 4. ENTITLEMENT SHARES; VOTING

*Section 4.1. Entitlement Shares.* The Entitlement Share (the "Entitlement Share") of each Facility User shall be (i) with respect to a Facility User who is an Owner Trust, equal to the Facility Lessor's Percentage of such Owner Trust and (ii) with respect to a Facility User which is not an Owner Trust, equal to the Facility Lessor's Percentage being leased or subleased by such

Facility User. The Entitlement Share of a Facility User shall not change during the term of this Agreement.

*Section 4.2. Voting.* A Facility User which is also the Operator or an Affiliate of the Operator (a) shall not be entitled to vote on any matter upon which the Facility Users are entitled to vote hereunder at any time an Event of Default has occurred and is continuing under any Facility Lease or, if such Facility User is Big Rivers, at any time a default by Big Rivers is continuing under this Agreement and (b) shall not under any circumstances be entitled to vote on the resignation or removal of the Operator or the amount of the Operating Fee payable to the Operator under Section 2.7. In the circumstances described in the preceding sentence, and in any other circumstances where the Facility User is not entitled to vote on matters hereunder, the Entitlement Share of such Facility User shall for voting purposes, be deemed to be equal to zero.

## SECTION 5. DECISIONS WITH RESPECT TO OPERATION OF THE FACILITY

*Section 5.1. Matters Requiring Approval of the Facility Users.* On and after the Initial Services Commencement Date, any Facility User whose Services Commencement Date has occurred may from time to time call for a meeting of the Facility Users for the purpose of reviewing the operation of the Facility. At such meetings the Facility Users shall review, discuss, and act upon disputes between or among the Facility Users or with Big Rivers or the Operator, but shall have no power to modify, unless expressly provided herein, the terms, covenants or conditions hereof. Such meetings shall be held in Henderson, Kentucky or by teleconference. The following decisions shall be implemented only with the consent of the Facility Users representing all Entitlement Shares:

(a) decisions as to whether or not Final Shutdown of a Unit shall occur because (i) a casualty shall have occurred with respect to the Unit damaging it, beyond economic repair or, (ii) the seizure, condemnation, taking or expropriation of the Site, any portion of the Facility (other than a seizure, condemnation, taking or expropriation of the entire Site) or any Component thereof necessary for the economically efficient operation of the Facility shall have occurred (any Final Shutdown decisions pursuant to this paragraph (a) to be subject to Section 5.2) or, (iii) damage to the Facility shall have occurred which the Operator estimates will cost more than \$1,000,000 to repair;

(b) decisions regarding the settlement of claims, disputes, litigation or arbitration relating to or arising out of the construction of Modifications or other asserted claims of contractors or suppliers in respect of goods or services contracted for by the Operator hereunder, if, in each case, the amount involved is in excess of \$500,000;

(c) voluntary decisions to temporarily take the Facility out of commercial service for any continuous period which exceeds 12 Months or voluntary decisions to effect a Final Shutdown (any Final Shutdown decision pursuant to this paragraph to be subject to Section 5.2 hereof);

(d) adoption of the Capital Expenditure Budget and the Operations and Maintenance Expense Budget and adoption of any amendments thereto in excess of \$100,000;

(e) after the Operating Commencement Date, decisions by Big Rivers to contract for any Modification (other than Modifications required by Applicable Law to be made) requiring expenditures which (i) exceed by more than \$100,000 the expenditures authorized for such Modification in the most recent Capital Expenditure Budget adopted pursuant to paragraph (d) above, or (ii) when combined with the expenditures on all Modifications which do not require consent under this clause and which shall have been contracted for by the Operator since the date of adoption of the most recent Capital Expenditure Budget under clause (d) above, would exceed in the aggregate \$300,000.

(f) such other decisions that relate to the use, operations and maintenance of the Facility that the Facility Users representing two-thirds of the Entitlement Shares of all Facility Users shall in good faith determine are of major significance.

Notwithstanding the foregoing, no approval of the Facility Users shall be required to take the Facility out of commercial service if, in the opinion of counsel for the Operator (which opinion shall be in writing, addressed and delivered to each Facility User), the Facility must finally and definitively be taken out of service because of any final decree or decision of any court or regulatory or other administrative body having jurisdiction over the Facility, in which case the Facility shall so be taken out of commercial service and Section 5.3 hereof shall apply.

*Section 5.2. Final Shutdown.* Final Shutdown of the Facility shall occur at any time on or after the Final Operating Commencement Date if a decision to such effect, specifying the Final Shutdown Date, shall have been made by the Facility Users representing two-thirds of all Undivided Interests in the Facility and the Facility Users pursuant to Section 5.1 hereof.

*Section 5.3. Temporary Shutdown.* A temporary shutdown of the Facility on or after the Operating Commencement Date shall not relieve the Operator of any obligation to inspect, service, repair, maintain, or overhaul the Facility, as the case may be, or any Component thereof in accordance with the terms of Section 2 hereof nor the obligation of any Facility User to make all payments required of it pursuant to any of the provisions of this Agreement.

*Section 5.4. Budgets; Expenses.*

(a) Capital Expenditure Budgets. As soon as practical after the initial Operating Commencement Date, and on or before November 1 of each Contract Year thereafter, the Operator shall submit to each Facility User a budget (the "Capital Expenditure Budget") setting forth an estimate of amounts expected to be expended for Modifications and capital repairs to be made pursuant to this Agreement, and related Construction Costs, together with an estimated cash flow schedule. Each Capital Expenditure Budget shall be supported by sufficient detail to allow the Facility Users to knowledgeably exercise their rights of review and approval pursuant to Section 5.1 hereof, describing the items of Construction Cost and the amounts expected to be expended therefor in each Month during the remainder of the then current Contract Year, in the case of the initial Capital Expenditure Budget, or in each quarter during the Contract Year next following, in the case of subsequent Capital Expenditure Budgets. The initial and each annual Capital Expenditure Budget shall be subject to approval by the Facility Users. Subject to Section 5.1 hereof, the initial and each annual Capital Expenditure Budget may be changed by the Operator from time to time as necessary or advisable in accordance with Prudent

Utility Practice; *provided, however*, that each such change which shall require additional expenditures in excess of \$100,000 shall first be submitted to the Facility Users for approval. The decisions of the Operator in making changes to a Capital Expenditure Budget pursuant to the preceding sentence which do not require additional expenditures in excess of \$100,000 shall not be subject to approval of the Facility Users. In order to enable each Facility User to exercise its judgment as permitted by paragraph (e) of Section 5.1 hereof, the Operator shall give to each such Facility User notice of any decision by the Operator required to be approved under such paragraph a reasonable time (but in no event less than 30 days) prior to the presentation thereof to such Facility User for its decision. Nothing herein contained shall in any way affect the obligations of Big Rivers under the other Operative Documents or, as Facility Lessee under any Facility Lease and other Operative Documents with respect thereto, which may remain in effect after the initial Operating Commencement Date.

(b) Payment for Modifications. From and after the initial Operating Commencement Date, but subject to any Facility Lease then in effect, if any, and the provisions of this paragraph, Modifications will be made at the expense of the Facility Users at that time, at the request of the Operator, who shall supervise the acquisition or construction thereof and record the Construction Cost thereof. Subject to Section 5.1, hereof, funds for the payment of Construction Costs of Modifications having a total cost of \$100,000 or less made in accordance with the preceding sentence shall be provided by or on behalf of each Facility User in accordance with its Entitlement Share in advance of the date when such funds are required by the Operator, so that the Operator, in such capacity will not have to advance any funds on behalf of such Facility User. Each Facility User will also be required to contribute its Entitlement Share of the Construction Cost of each Modification having a total cost of more than \$100,000 which has been approved by such Facility User plus its proportionate share of any amount not funded pursuant to the next succeeding sentence in an amount equal to such approving Facility User's Entitlement Share divided by the Entitlement Shares of all approving Facility Users, which funds shall be provided by or on behalf of each such approving Facility User in advance of the date when such funds are required by the Operator, so that the Operator in such capacity will not have to advance any funds on behalf of such approving Facility User. Upon the completion of the acquisition or construction of any Modification, the Operator shall provide to each Facility User information with respect to the final computation of such Construction Cost, and its Entitlement Shares of the Construction Cost of such Modification.

(c) Operations and Maintenance Expense Budget. As soon as practical after the initial Operating Commencement Date, and on or before November 1 of each Contract Year thereafter, the Operator shall submit to each Facility User a budget (the "Operations and Maintenance Expense Budget") of its estimate of Operation and Maintenance Expenses, for each Month for the remainder of the then current Contract Year, in the case of the initial Operations and Maintenance Expense Budget, or for each Month for the Contract Year next following, in the case of subsequent Operations and Maintenance Expense Budgets. The initial and each annual Operations and Maintenance Expense Budget shall be subject to approval by the Facility Users in accordance with Section 5.1(d) hereof. Extraordinary items of maintenance will be detailed to set forth the cost of labor and other expenses which will be incurred. Subject to Section 5.1, the initial and each annual Operations and Maintenance Expense Budget may be changed by the Operator from time to time as necessary or advisable in accordance with Prudent Utility Practice; *provided, however*, that each such change which shall require additional



expenditure in excess of \$50,000 shall first be submitted to the Facility Users for approval in accordance with Section 5.1 hereof. The decisions of the Operator in making changes to an Operations and Maintenance Expense Budget pursuant to the preceding sentence which do not require additional expenditure in any Contract Year in excess of \$50,000 shall not be subject to approval of the Facility Users. Notwithstanding the failure to approve the Operations and Maintenance Expense Budget, the Operator, on behalf of the Facility Users, may make all expenditures in the normal course of business, all as the same are necessary for the proper and safe operation and maintenance of the Facility.

(d) Operation and Maintenance Expenses. Operation and Maintenance Expenses (herein referred to as "Operation and Maintenance Expenses") shall include all payments made and obligations and liabilities incurred by the Operator for or in connection with engineering, contract preparation, purchasing, repair, supervision, recruitment, training, expediting, inspection, accounting, legal services, testing, protection, operation, wheeling services, use, decommissioning, retirement, and maintenance associated with operating the Facility, work related liabilities, insurance procured pursuant to Section 2.11 hereof and the cost of maintaining materials, supplies and spare parts, but excluding such costs as may be included in Construction Cost, and allocable to the Facility, determined in accordance with generally accepted accounting principles, together with any compensation payable to the Operator in accordance with Section 2.7 hereof and excluding the costs of Modifications. Operation and Maintenance Expenses shall be paid by the Facility Users pursuant to Section 6.2 in accordance with their respective Entitlement Shares. There shall be credited against Operation and Maintenance Expenses the proceeds of any sale by the Operator of any surplus materials constituting part of, or used in connection with, the Facility.

*Section 5.5. Records of Operation.* From and after the Operating Commencement Date, the Operator shall keep books of account and adequate records of the operations of the Facility, including operation and maintenance programs and other records, all in accordance with Prudent Utility Practice or as required by Applicable Law. All records shall be readily available for inspection and/or audit by each Facility User and their respective representatives at the Operator's offices, during regular business hours and upon reasonable notice, and copies thereof shall be furnished to each Facility User upon request. In addition, each Owner Trust shall have the right to provide such records to any proposed lessee or transferee of the beneficial interest in such Owner Trust. Such inspections and copying will be at no cost or expense to the Operator.

## SECTION 6. BILLING & PAYMENT

*Section 6.1. Operations Report.* The Operator shall, on an annual basis and from time to time during each Contract Year after the Operating Commencement Date, upon the reasonable request of any Facility User, deliver to each Facility User a report comparing actual operations for such Contract Year with the Operations and Maintenance Expense Budget prepared pursuant to Section 5.4(c) hereof and explaining any material variances therein. In addition to such annual report, the Operator shall provide such other reports regarding the operation of the Facility as the Facility Users may reasonably request.

*Section 6.2. Billing; Payment; Monthly Adjustment.* On or before the fifth day of each Month beginning with the fifth day of the first Month following the beginning of the first

Contract Year after the Operating Commencement Date, the Operator shall render to each Facility User monthly statements of amounts received in connection with the operation of the Facility and payable in respect of Operation and Maintenance Expenses. Beginning with the third Month of the first Contract Year after the Operating Commencement Date, in addition to the charge for the current Month, such monthly statement shall show an adjustment for actual Operation and Maintenance Expenses for the second preceding Month, except that adjustments with respect to Taxes shall be made annually. Any difference between such actual Operation and Maintenance Expenses and the amount paid for such second preceding Month shall be added to or deducted from, as the case may be, the amount of such monthly statement for the then current Month. To the extent that amounts received in any Month in connection with the operation of the Facility exceed the Operation and Maintenance Expenses for such Month as indicated on such statement, the Operator shall pay to each Facility User at the time such statement is rendered an amount equal to such difference multiplied by such Facility User's Entitlement Share. To the extent that Operation and Maintenance Expenses for such Month exceed amounts received in such Month, each Facility User shall pay the amounts shown on such statements rendered to it on or before the fifteenth day of such Month which shall be the amount of such excess multiplied by such Facility User's Entitlement Share. All payments hereunder shall be made by wire transfer of immediately available funds to such account as may be designated by the Operator or the Facility Users, as the case may be, or, if no such account has been designated, by check payable to the Operator or such Facility User, at the office of such Person specified in Section 8.6 hereof or such other place as shall be designated by such Person.

*Section 6.3. Annual Audit.* From and after the Operating Commencement Date, the Operator shall keep accurate records and accounts of all Entitlement Shares, amounts received in respect of such Entitlement Shares in connection with the operation of the Facility, and Operation and Maintenance Expenses, all in accordance with generally accepted accounting principles. Such records and accounts shall be subjected to an audit as of the end of and for each Contract Year by a firm of independent public accountants selected by the Facility Users and reasonably acceptable to the Operator, which firm may be the Operator's regular audit firm and shall be nationally recognized and shall be approved by Facility Users representing two-thirds of the Entitlement Shares. Each Owner Trust and Facility User shall be permitted to check and review all accounting records relating to the operation of the Facility and to observe the procedures followed by the accountants. The report of such firm of independent public accountants shall be submitted to the Operator, with a copy to each Owner Trust and each Facility User, within 120 days after the end of such Contract Year. The cost of such annual audits shall be included in Operation and Maintenance Expenses.

*Section 6.4. Annual Adjustment.* On or before the 120th day after the end of each Contract Year after the Operating Commencement Date, the Operator shall determine, after review of the annual audit of accounts provided for in Section 6.3 hereof, whether the aggregate amounts paid to or by the Facility Users pursuant to Section 6.2 hereof for such preceding Contract Year were the proper amounts. The Operator shall advise each Facility User in writing of such determination. The aggregate of any amount found to have been paid to or by any Facility User in excess of the amount which should have been paid to or by such Facility User shall be deducted from the amount to be paid by such Facility User pursuant to Section 6.2 hereof for the Month or, if necessary, the aggregate of any amount by which the amount which should have been paid exceeds the amount which was paid shall be added to the amount to be

paid by the Facility User to the Operator under the next statement to be submitted to the Facility Users pursuant to Section 6.2 hereof for the Month next following the Month in which such determination is made.

#### SECTION 7. REPLACEMENT OF BIG RIVERS AS OPERATOR

Big Rivers may be replaced as Operator of the Facility under this Agreement upon a vote of Facility Users in respect of Undivided Interests constituting a majority of the Facility (excluding Big Rivers or any of its Affiliates), but only if (a) it is in breach of any of its obligations hereunder, (b) its performance as Operator involves gross negligence or willful misconduct, (c) a Default under Sections 6, 7, 8, 11 or 18 of any Facility Lease shall have occurred and be continuing, or (d) a Payment Default under any Facility Lease shall have occurred and be continuing in respect of a payment of Supplemental Rent (other than Termination Value or payments determined by reference to Termination Value) in excess of \$1,000,000, (e) a "Default" under Sections 6, 7, 8, 11 or 18 under any of the Facility Leases each dated as of April 1, 2000 between Big Rivers and the respective "Facility Lessors" which are parties thereto in respect of the lease of undivided interests in Plant Green shall have occurred and be continuing; (f) any of the events permitting the removal of Big Rivers as "Operator" of Plant Green shall have occurred and be continuing. Upon the removal of Big Rivers as Operator under this Agreement, the Facility Users representing two-thirds of the Entitlement Shares (excluding Big Rivers or any of its Affiliates) shall appoint a successor operator to act as Operator under this Agreement. Big Rivers, if no longer Operator under this Agreement, shall (i) cooperate in all respects necessary or desirable to permit any successor Operator to commence and continue operation of the Facility in accordance with the provisions of this Agreement and the requirements of the Facility Users and (ii) acting jointly with the Facility Lessors designate a replacement agent to assume the role and obligations of Big Rivers under Section 2.1(a)(iii). Removal of Big Rivers as Operator under this Agreement shall not affect Big Rivers' other obligations under this Agreement or the Operative Documents in any respect.

#### SECTION 8. MISCELLANEOUS

*Section 8.1. Term.* This Agreement shall terminate with respect to any Owner Trust and any Facility User deriving its rights under such Owner Trust upon the expiration or earlier termination of such Owner Trust's Head Lease.

*Section 8.2. Uncontrollable Forces.* No Party shall be considered to be in default in the performance of any of its obligations hereunder, other than obligations to pay money, if failure of performance shall be due to Uncontrollable Forces. The term "Uncontrollable Forces" shall mean any cause beyond the control of the Party affected thereby and which, by the exercise of reasonable diligence, such Party is unable to prevent or overcome, including but not limited to an act of God, fire, flood, sinkholes, explosion, earthquake, hurricane, tornado, tidal wave, strike, sabotage, pestilence, an act of the public enemy, civil or military authority, including court orders, injunctions and orders of Governmental Entities of competent jurisdiction prohibiting, or the failure of any such Governmental Entities to issue orders permitting, acts necessary to performance hereunder or permitting any such act only subject to unreasonable conditions, insurrection or riot, an act of the elements, failure of equipment (other than by reason of a breach of obligations relating to repair and maintenance) or inability to obtain or ship materials or

equipment because of similar causes affecting the suppliers or carriers. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any obligation by reason of Uncontrollable Forces shall exercise due diligence to remove such inability with all reasonable dispatch.

*Section 8.3. Late Payments.* In the event any payment required to be made hereunder is not submitted within the time period herein specified, the Party failing to make such payment will pay, in addition to the amount of the required payment, interest thereon at a rate equal to the Overdue Rate calculated from the due date to and including the date of actual payment.

*Section 8.4. Nature of Obligations.* The duties, obligations and liabilities of each of the Parties hereunder are intended to be several and not joint, and no Party shall be jointly or severally liable for the acts, omissions or obligations of another Party. Nothing herein contained shall be construed to create an association, joint venture or partnership, or impose a partnership duty, obligation or liability on or with regard to any of the Parties. Each of the Owner Trusts intends that the joint production of Capacity and Energy from the Facility shall not be treated as a partnership for Federal income tax purposes and agrees to make the appropriate election under Section 761(a) of the Internal Revenue Code of 1986, as amended, to have excluded from the application of the provisions of Subchapter K, Chapter 1, Subtitle A thereof, any unincorporated organization which may be deemed to exist between them as a result of such joint activity. No party shall have the right or authority to bind another party without its express written consent, except as may be expressly provided in this Agreement or other agreement contemplated hereby.

*Section 8.5. Amendments and Waivers.* No term, covenant, agreement or condition of this Agreement may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each Party hereto.

*Section 8.6. Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein to a Party hereto shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to each Party hereto at its address set forth below or, at such other address as such Party may from time to time designate by written notice to the other Parties hereto:

If to Big Rivers:

Big Rivers Electric Corporation  
201 Third Avenue  
Henderson, Kentucky 42420  
Facsimile No.: (270) 827-2558  
Telephone No.: (270) 827-2561  
Attention: President and Chief Executive Officer

If to PBR-3 Trust or PBR-3 OP Statutory Trust:

[PBR-3 Statutory Trust] [PBR-3 OP Statutory Trust]  
c/o State Street Bank and Trust Company of Connecticut, National Association  
Goodwin Square  
225 Asylum Street  
Hartford, Connecticut 06103  
Facsimile No.: (860) 244-1897  
Telephone No.: (860) 244-1842  
Attention: Corporate Trust Administration

with copies to:

Bluegrass Leasing  
c/o Philip Morris Capital Corporation  
200 First Stamford Place, Suite 400  
Stamford, Connecticut 06902-6745  
Telephone No.: (914) 335-5000  
Attention: Vice President, Leasing  
Facsimile No.: (914) 335-8297  
Copy to: General Counsel  
Facsimile No.: (914) 335-8256

and

AME Investments, LLC  
c/o Ambac Capital Corporation  
One State Street Plaza  
New York, New York 10004  
Facsimile No.: (212) 208-3113  
Telephone No.: (212) 208-3433  
Attention: Managing Director

If to FBR-1 Trust or FBR-1 OP Statutory Trust:

[FBR-1 Statutory Trust] [FBR-1 OP Statutory Trust]  
c/o State Street Bank and Trust Company of Connecticut, National Association  
Goodwin Square  
225 Asylum Street  
Hartford, Connecticut 06103  
Facsimile No.: (860) 244-1897  
Telephone No.: (860) 244-1842  
Attention: Corporate Trust Administration

with copies to:

Fleet Real Estate, Inc.  
c/o Fleet Capital Corporation  
111 Westminster Street, 7th Floor  
Providence, Rhode Island 02903  
Facsimile No.: (401) 453-2356  
Telephone No.: (401) 278-6495  
Attention: Senior Credit Officer

and

AME Investments, LLC  
c/o Ambac Capital Corporation  
One State Street Plaza  
New York, New York 10004  
Facsimile No.: (212) 208-3113  
Telephone No.: (212) 208-3433  
Attention: Managing Director

If to FBR-2 Trust or FBR-2 OP Statutory Trust:

[FBR-2 Statutory Trust] [FBR-2 OP Statutory Trust]  
c/o State Street Bank and Trust Company of Connecticut, National Association  
Goodwin Square  
225 Asylum Street  
Hartford, Connecticut 06013  
Facsimile No.: (860) 244-1897  
Telephone No.: (860) 244-1842  
Attention: Corporate Trust Administration

with copies to:

Fleet Real Estate, Inc.  
c/o Fleet Capital Corporation  
111 Westminster Street, 7th Floor  
Providence, Rhode Island 02903  
Facsimile No.: (401) 453-2356  
Telephone No.: (401) 278-6495  
Attention: Senior Credit Officer  
Facsimile No.: (914) 335-8297

and

AME Investments, LLC  
c/o Ambac Capital Corporation  
One State Street Plaza  
New York, New York 10004  
Facsimile No.: (212) 208-3113  
Telephone No.: (212) 208-3433  
Attention: Managing Director

*Section 8.7. Effectiveness.* This Agreement has been dated as of the date first above written for convenience only. This Agreement shall be effective on the date of execution and delivery by the Parties hereto but the provisions and the duties hereof shall not become operative as to any Facility User until the Services Commencement Date of such Facility User.

*Section 8.8. Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the Parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof. Except as expressly provided herein or in the other Operative Documents, no Party hereto may assign its interests herein without the consent of the other Parties hereto. Each time a successor Trustee is appointed in accordance with the terms of the Trust Agreement, such successor Trustee shall, without further act, succeed to all rights, duties, immunities and obligations of the predecessor Trustee hereunder and the predecessor Trustee shall be released from all further duties and obligations hereunder, all without the necessity of any consent or approval by the Operator and without in any way altering the terms of this Agreement or the rights and obligations of the Owner Trusts hereunder.

*Section 8.9. Business Day.* Notwithstanding anything herein to the contrary, if the date on which any payment is to be made pursuant to this Agreement is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day with the same force and effect as if made on such scheduled date and (*provided* such payment is made on such succeeding Business Day) no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

*Section 8.10. Governing Law.* **This Agreement shall be governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance (including Section 5-1401 and Section 5-1402 of the New York General Obligations Law but excluding all other choice-of-law and conflicts of law rules).**

*Section 8.11. Severability.* If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law of any jurisdiction, the validity, legality and enforceability of such provision in any other jurisdiction and of the remaining provisions hereof in any jurisdiction shall not be affected or impaired thereby.

*Section 8.12. Counterparts.* This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Agreement.

*Section 8.13. Headings and Table of Contents.* The headings of the sections of this Agreement and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

*Section 8.14. Limitation of Liability.* It is expressly understood and agreed by the Parties hereto that (a) this Agreement is executed and delivered by the Trust Company, not individually or personally but solely as Trustee under three separate Trust Agreements, in the exercise of the powers and authority conferred and vested in it under such three Trust Agreements, (b) each of the representations, undertakings and agreements herein made on the part of the Owner Trust is made and intended not as personal representations, undertakings and agreements by the Trust Company, but is made and intended for the purpose for binding only the Owner Trusts, (c) nothing herein contained shall be construed as creating any liability on the Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the Parties hereto and (d) under no circumstances shall the Trust Company be personally liable for the payment of any indebtedness or expenses of the Owner Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Owner Trust under this Agreement.

It is further understood and agreed by the Parties hereto that neither any Owner Participant nor any OP Trust, as such, shall not become personally liable for, or for any loss in respect of, any action taken or omitted to be taken by, or any representation, warranty or agreement of any OP Trust's Owner Trust under this Agreement.

*Section 8.15. Delegation.* The Operator may not, acting alone or through agents, contract, subcontract or otherwise delegate its obligations hereunder to any Person, without the written consent of the Facility Users (other than Big Rivers or any Affiliate thereof), which consent shall not be unreasonably withheld.

*Section 8.16. Indemnification.* The Operator hereby agrees to indemnify and hold harmless each of the Owner Trusts, Trustees (in their individual capacities as well as in their capacities as Trustees) and the Facility Users against any liability, cost or expense (including reasonable counsel fees and disbursements, but not including any loss of anticipated profits, increased expenses of operation or any other consequential damages or losses of any nature) which may be incurred, imposed on or asserted against the Operator, any Owner Trusts, any Trustee or Facility User (and any of such Owner Trusts, Trustee's or Facility User's Affiliates, officers, directors, employees and agents) arising from any Willful Action by the Operator in operating the Facility (including, without limitation, any Environmental Claim arising out of any Willful Action by the Operator in operating the Facility), except to the extent that any such liability, cost or expense arises out of the gross negligence, bad faith or willful misconduct of any Trustee or Facility User.

*Section 8.17. Cooperation.* The Facility Users, Big Rivers (whether or not acting as Operator under this Agreement) and any successor Operator shall use their best efforts and shall cooperate to obtain as quickly as possible all requisite governmental, regulatory, and vendor approvals of the transactions contemplated hereby. The Facility Users, Big Rivers (whether or



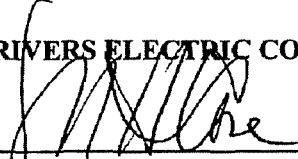
not acting as Operator under this Agreement), and any successor Operator shall discharge all obligations under this Agreement in good faith and in accordance with Prudent Utility Practice.

*Section 8.18. Facility Leases to Govern.* From the Initial Services Commencement Date and until the Final Services Commencement Date, should any provision of this Agreement be inconsistent with or in conflict with any provision of an Owner Trust's Facility Lease then in effect, the provisions of such Facility Lease shall be controlling, to the limited extent necessary to eliminate such inconsistency or conflict, for all Facility Users.

(Signatures Follow on Next Page)

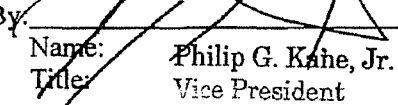
IN WITNESS WHEREOF, the parties hereto have caused this Operating and Support Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written.

**BIG RIVERS ELECTRIC CORPORATION**

By:   
Name: Michael H. Core  
Title: President and Chief Executive Officer

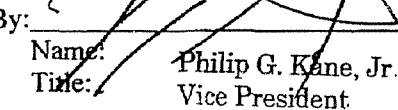
**PBR-3 STATUTORY TRUST**

By: State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as trustee under the Trust Agreement (PBR-3)

By:   
Name: Philip G. Kane, Jr.  
Title: Vice President

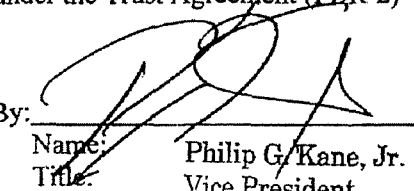
**FBR-1 STATUTORY TRUST**

By: State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as trustee under the Trust Agreement (FBR-1)

By:   
Name: Philip G. Kane, Jr.  
Title: Vice President

**FBR-2 STATUTORY TRUST**

By: State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as trustee under the Trust Agreement (FBR-2)

By:   
Name: Philip G. Kane, Jr.  
Title: Vice President