

by the terms and provisions of all documents to be executed by them in connection with the Plan.

23. On the Effective Date, the Debtor and the Reorganized Debtor, each of the Members, each of the Smelters, the RUS, LG&E Energy and any other Person required shall execute the Schedule 5.4(a) Documents in a form that is reasonably satisfactory to the Smelters and the parties thereto.

24. In the event of any conflict or inconsistency between the terms of the Plan, this Confirmation Order, the Disclosure Statement, any Transaction Agreement or any other related instrument, document or agreement, the terms of the Transaction Agreements shall control issues specifically dealt with therein; otherwise, the terms of the Confirmation Order shall control; provided, however, that if the terms of the Plan or the Confirmation Order (i) do not expressly resolve the issue under consideration, or (ii) are ambiguous with regard to such issue, the Reorganized Debtor or LG&E Energy, on notice to one another, the RUS, the Office of the U.S. Trustee, each of the Smelters, each of the Members, each of the Banks and each entity that has filed and served a notice of appearance with the Bankruptcy Court after the Confirmation Date, may seek such relief from this Court as may be necessary.

25. In the event of any conflict or inconsistency between the terms of the Plan, this Confirmation Order, the Disclosure Statement and any New RUS Loan Document, the terms of the New RUS Loan Documents shall control issues specifically dealt with therein; otherwise, the terms of the Confirmation Order shall control; provided, however, that if the terms of the Plan or Confirmation Order (i) do not expressly resolve

the issue under consideration, or (ii) are ambiguous with regard to such issue, the Reorganized Debtor or the RUS, on notice to one another, LG&E Energy, the Office of the Trustee, each of the Smelters, each of the Members, each of the Banks and each entity that has filed and served a notice of appearance with the Bankruptcy Court after the Confirmation Date, may seek such relief from this Court as may be necessary.

26. In the event of any conflict or inconsistency between the terms of the Plan, the Confirmation Order, the Disclosure Statement, and any Schedule 5.4(a) Document, the terms of the Schedule 5.4(a) Documents shall control issues specifically dealt with therein; otherwise, the terms of the Confirmation Order shall control; provided, however, that if the terms of the Plan or Confirmation Order (i) do not expressly resolve the issue under consideration, or (ii) are ambiguous with regard to such issue, the Reorganized Debtor or the Smelters, on notice to one another, LG&E Energy, the Office of the Trustee, the RUS, each of the Members, each of the Banks and each entity that has filed and served a notice of appearance with the Bankruptcy Court after the Confirmation Date, may seek such relief from this Court as may be necessary.

27. The Debtor shall continue to exist on and after the Effective Date as the Reorganized Debtor, a Kentucky electric cooperative corporation, with all the rights and powers of such corporation under applicable law. Except as otherwise provided in the Plan or the Transaction Agreements, on or after the Effective Date, any and all Assets and properties of the estate, and any and all Assets and properties acquired by the Debtor or the Reorganized Debtor under any provision of the Plan, shall vest in the Reorganized Debtor, free and clear of any and all Claims, Liens, charges or other encumbrances.

Except as otherwise provided by the Plan or the Transaction Agreements on and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of Assets and properties and compromise or settle any claims against it without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan, the Transaction Agreements, this Order, any other agreement to which the Reorganized Debtor is a party and which survives the Effective Date, or applicable law. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs after the Effective Date for professional fees, disbursements, expenses or related support services without application to the Bankruptcy Court.

28. As of the date of this Order, the Creditors' Committee is and shall be deemed to be dissolved. No fees or expenses relating in any way to service on or in connection with the Creditors' Committee any time after the Confirmation Date shall be allowed or paid. The members of the Creditors' Committee are entitled to seek reimbursement of out-of-pocket expenses for expenses incurred in connection with any applications for reimbursement of expenses pending on the Confirmation Date or filed and served after the Confirmation Date pursuant to the provisions of this Order. As of the date of this Order, the members of the Creditors' Committee are and shall be released and discharged from all rights and duties arising from or related to the Reorganization Case.

29. LG&E Energy is a creditor and party in interest and has standing to be heard on any matters related to the Reorganization Case before this Court or any

other court of competent jurisdiction, including without limitation, any appeal of this Order.

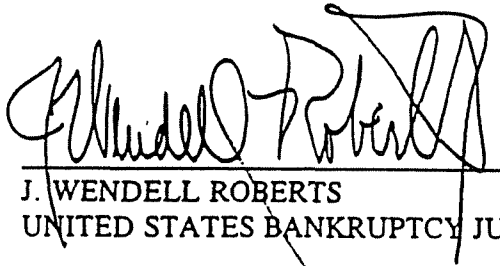
30. This Order (without Exhibit A) shall be served as soon as reasonably practical after the date hereof, by first class mail, upon (a) the United States Trustee, (b) all Persons on the Short List, (c) all Persons on the Mailing Matrix, and (d) all parties having requested a copy of the Disclosure Statement.

Dated: Louisville, Kentucky  
June 9, 1997

ENTERED  
BY DIANE S. ROBL, Clerk  
SLD

JUN 09 1997

U.S. Bankruptcy Court  
Western District of Kentucky



J. WENDELL ROBERTS  
UNITED STATES BANKRUPTCY JUDGE



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY

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IN RE: )  
BIG RIVERS ELECTRIC CORPORATION, ) Chapter 11  
Debtor. ) Case No. 96-1168  
)

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**MODIFICATIONS TO THE FIRST AMENDED PLAN OF REORGANIZATION  
PROPOSED BY DEBTOR BIG RIVERS ELECTRIC CORPORATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY  
CODE AS MODIFIED AND RESTATED JUNE 9, 1997**

Dated May 21, 1998

Big Rivers Electric Corporation, debtor and debtor-in-possession in the above-captioned case under Chapter 11 of the Bankruptcy Code, hereby proposes, pursuant to Section 1127(b) of the Bankruptcy Code, modifications to the First Amended Plan of Reorganization Proposed by Debtor Big Rivers Electric Corporation under Chapter 11 of the Bankruptcy Code as Modified and Restated June 9, 1997,<sup>1</sup> confirmed by the Bankruptcy Court on June 9, 1997.

**I. MODIFICATIONS TO ARTICLE I:**

1. The following terms and definitions are modified as set forth below:

a. The term "**Arbitrage Payment**" in Paragraph 1.10 is deleted and replaced with the following:

"**Arbitrage Amount**" shall have the meaning set forth in the New RUS Note, the form of which is attached hereto as Schedule 1.86.

b. The definition of the term "**ARVP Note**" in Paragraph 1.11 is deleted and replaced with the following definition:

"**ARVP Note**" means that certain secured note, the form and terms of which are attached

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<sup>1</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the First Amended Plan of Reorganization Proposed by Debtor Big River Electric Corporation Under Chapter 11 of the Bankruptcy Code as Modified and Restated June 9, 1997.

hereto as Schedule 1.11, in the original aggregate principal amount of \$265,000,000 to be issued and delivered by the Reorganized Debtor to the RUS as of the Effective Date, as same may be amended or modified by agreement between the Debtor or the Reorganized Debtor and the RUS. Such note shall (a) not bear interest; (b) not require any payments prior to the maturity date (which shall be the December 31st that is closest to the twenty-fifth anniversary of the Effective Date) except as provided in Schedule 1.11; and (c) be secured by the New RUS Mortgage. All payments on the ARVP Note shall reduce the principal balance of the ARVP Note on a dollar-for-dollar basis. If the Effective Date is not July 1, 1998, then the schedules of the ARVP Note shall be revised as necessary to reflect the actual Effective Date and other appropriate corresponding changes.

c. The definition of the term "**Confirmation Date**" in Paragraph 1.43 is modified to (i) insert the phrase "June 9, 1997" immediately following the word "means" in the first line thereof; and (ii) replace the word "enters" with the word "entered" in the second line thereof.

d. The definition of the term "**Confirmation Hearing**" in Paragraph 1.44 is modified to (i) insert the phrase "on June 9, 1997" immediately following the word "hearing" in the first line thereof; (ii) delete the phrase "including all adjournments or continuances thereof," in the first and second line thereof and (iii) replace the word "considers" with the word "considered" in the second line thereof.

e. The definition of the term "**Confirmation Order**" in Paragraph 1.45 is modified to insert the phrase "entered on June 9, 1997" immediately following the phrase "Bankruptcy Code" in the second line thereof.

f. The definition of the term "**Disclosure Statement**" in Paragraph 1.52 is deleted and replaced with the following definition:

"**Disclosure Statement**" means (i) that certain disclosure statement relating to the First Amended Plan of Reorganization Proposed by Debtor Big Rivers Electric Corporation Under Chapter 11 of the Bankruptcy Code as Modified and Restated June 9, 1997, including, without limitation, all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code on May 13, 1997, and (ii) that certain modified disclosure statement, including, without limitation, all exhibits and schedules thereto, relating to the Plan Modifications, as approved by the Bankruptcy Court pursuant to Sections 1127 and 1125 of the Bankruptcy Code on May 21, 1998.

g. The definition of the term "**Disclosure Statement Order**" in Paragraph 1.53 is modified to replace the word "order" with the word "orders" in the first line thereof.

h. The definition of the term "**New RUS Agreement**" in Paragraph 1.81 is deleted and replaced with the following definition:

**"New RUS Agreement"** means that certain agreement by and between the Reorganized Debtor and the RUS, the form and terms of which are attached hereto as Schedule 1.85, to be executed and delivered as of the Effective Date, which relates to the obligations and indebtedness of the Reorganized Debtor to the RUS on account of the New RUS Note, the ARVP Note and the New RUS Mortgage, as may be amended or modified by agreement between the Debtor or the Reorganized Debtor and the RUS.

i. The definition of the term **"New RUS Mortgage"** in Paragraph 1.83 is deleted and replaced with the following definition:

**"New RUS Mortgage"** means that certain mortgage, the form and terms of which are attached hereto as Schedule 1.87, to be executed and delivered by the Reorganized Debtor in favor of, among others, the RUS as of the Effective Date, pursuant to which the Reorganized Debtor shall convey and grant to the RUS a Lien and mortgage on all of the Assets and properties of the Reorganized Debtor to secure the obligations of the Reorganized Debtor to the RUS under the New RUS Note, the ARVP Note and the New RUS Agreement, as such mortgage may be amended or modified by agreement between the Debtor or the Reorganized Debtor and the RUS.

j. The definition of the term **"New RUS Note"** in Paragraph 1.84 is deleted and replaced with the following definition:

**"New RUS Note"** means that certain secured note, the form and terms of which are attached hereto as Schedule 1.88, in an original aggregate principal amount equal to the difference between (a) \$1,101,165,000 and (b) the Closing Payment, to be issued and delivered by the Reorganized Debtor to the RUS as of the Effective Date as same may be amended or modified by agreement between the Debtor or the Reorganized Debtor and the RUS. Such note shall have a term ending to ...y-four years and four months after the Effective Date (unless sooner accelerated). If the Effective Date is not ... 1998, then the schedules of the New RUS Note shall be revised as necessary to reflect the actual Effective Date and other appropriate corresponding changes.

k. The definition of the term **"Non-Disturbance Agreement"** in Paragraph 1.104 is modified to insert the word "New" immediately before the phrase "Participation Agreement" in the second line thereof.

l. The definition of the term **"Plan"** in Paragraph 1.114 is deleted and replaced with the following definition:

**"Plan"** means the First Amended Plan of Reorganization Proposed by Debtor Big Rivers Electric Corporation Under Chapter 11 of the Bankruptcy Code as Modified and Restated June 9, 1997 (including all exhibits, attachments, schedules, and supplements annexed thereto or referenced therein) confirmed by the Bankruptcy Court on June 9, 1997, as



modified by the Plan Modifications approved by the Plan Modification Order.

m. The definition of the term "**Power Contract**" in Paragraph 1.117 is modified to insert the word "New" immediately before the phrase "Participation Agreement" in the second line thereof.

n. The definition of the term "**RUS**" in Paragraph 1.127 is modified to insert the phrase "or the United States of America acting through the United States Department of Agriculture, Rural Utilities Service, as the context requires" immediately following the term "Rural Electrification Administration" in the second line thereof.

o. The definition of the term "**Total Excess Cash Collateral Amount**" in Paragraph 1.139 is modified to insert the phrase ", the Final Cash Collateral Order" between the word "Order" and the word "or" in the third line thereof.

p. The definition of the term "**Transaction Agreements**" in Paragraph 1.140 is modified to (i) insert the phrase "the New Participation Agreement" immediately following the word "individually" in the first line thereof, and (ii) insert the word "New" immediately before the phrase "Participation Agreement" in the third line thereof.

2. The following terms and definitions are added to Article I alphabetically:

**"Final Cash Collateral Order"** means that certain Order entered by the Bankruptcy Court on June 9, 1997, entitled "Consent Order Concerning Use of Cash Collateral and Adequate Protection."

**"Marketing Payment"** means a payment to be made upon Closing by the Debtor or the Reorganized Debtor, as applicable, to LG&E Energy in immediately available funds in an amount to be determined as follows: (a) in the event the Closing occurs on or before July 1, 1998, the Marketing Payment shall be \$5,000,000; (b) in the event the Closing occurs following July 1, 1998, but prior to August 1, 1998, the Marketing Payment shall be \$5,000,000 plus an amount determined by multiplying (i) \$2,000,000 by (ii) a fraction, the numerator of which is the total number of days following July 1, 1998, through and including the date on which the Closing occurs and the denominator of which is 30; and (c) in the event the Closing occurs following July 31, 1998, the Marketing Payment shall be \$7,000,000.

**"Modification Date"** means the date on which the Clerk of the Bankruptcy Court enters the Plan Modification Order on the docket maintained by the Office of the Clerk.

**"New Participation Agreement"** means that certain New Participation Agreement by and between Debtor and LG&E Energy dated April 6, 1998, including, without limitation, all exhibits and schedules thereto, a copy of which is included in the Plan Supplement.

**"Plan Modifications"** means the May 6, 1998 modifications proposed by the Debtor under

Section 1127 of the Bankruptcy Code to the First Amended Plan of Reorganization Proposed by Debtor Big Rivers Electric Corporation Under Chapter 11 of the Bankruptcy Code as Modified and Restated June 9, 1997 (including all exhibits, attachments and schedules attached thereto), as they may be altered, modified or supplemented.

**“Plan Modification Order”** means the order of the Bankruptcy Court approving the Plan Modifications pursuant to Section 1127 of the Bankruptcy Code.

**“RUS Demand Promissory Note”** means that certain interest-free demand promissory note, the form of which is attached hereto as Schedule 1.134, to be executed and delivered by LG&E Energy to the RUS as of the Effective Date if the Marketing Payment paid by the Debtor or the Reorganized Debtor to LG&E Energy exceeds \$5 million, in the original principal amount equal to the amount by which the Marketing Payment paid by the Debtor or the Reorganized Debtor to LG&E Energy exceeds \$5 million, but in no event greater than \$2 million in the aggregate. The RUS would be authorized to demand and receive payment under this note to the extent the Reorganized Debtor were to default under either the ARVP Note or the New RUS Note, all in accordance with the terms and conditions of the RUS Demand Promissory Note.

3. The following terms are deleted from Article I:
  - a. The term **“Transmission Agreement”** in Paragraph 1.141.

## **II. MODIFICATIONS TO ARTICLE IV:**

1. Paragraph 4.1 **Satisfaction of Claims** of Article IV is modified to replace the phrase “or Confirmation Order” with the phrase “, the Confirmation Order or the Plan Modification Order” at the end of the fourth line thereof.
2. Paragraph 4.2.2 is modified to insert the phrase “, the Final Cash Collateral Order” immediately following the term “Interim Cash Collateral Order” in the fifth line thereof.
3. Paragraph 4.2.2(b) is modified to insert the phrase “and subject to the Transaction Agreements” immediately following the word “foregoing” in the third line thereof.
4. The following language is added as Paragraph 4.2.2(c).
  - (c) In the event the Marketing Payment paid by the Debtor or the Reorganized Debtor to LG&E Energy exceeds \$5 million, LG&E Energy shall execute and deliver to the RUS, as of the Effective Date, the RUS Demand Promissory Note. Any payments by LG&E Energy to the RUS on the RUS Demand Promissory Note shall be deemed payments for and on behalf of the Debtor or the Reorganized Debtor under either or both the New RUS Note or the ARVP Note. In light of such payments on its behalf.

the Debtor has agreed to reimburse LG&E Energy for all such payments in accordance with the terms and conditions set forth in the New Participation Agreement.

5. Paragraphs 4.2.4(a) is modified to insert the phrase "Chase shall pay \$586,207 in cash to LG&E Energy or its designee, (iii)" immediately following "(ii)" in the fourth line thereof, and "(iii)" is deleted and replaced with "(iv)" in the fifth line thereof.

6. Paragraph 4.2.4(c) is modified to insert the phrase "and the Plan Modification Order are" immediately following the term "Confirmation Order" in the eleventh line thereof and the word "is" is deleted in the eleventh line thereof.

7. Paragraphs 4.2.6(a) is modified to insert the phrase "BNY shall pay \$413,793 in cash to LG&E Energy or its designee, (iii)" immediately following "(ii)" in the fourth line thereof, and "(iii)" is deleted and replaced with "(iv)" in the fifth line thereof.

8. Paragraph 4.2.6(d) is modified to insert the phrase "and the Plan Modification Order are" immediately following the term "Confirmation Order" in the eleventh line thereof, and the word "is" is deleted in the eleventh line thereof.

### **III. MODIFICATIONS TO ARTICLE V:**

1. Paragraph 5.1(b) is modified as follows:

a. Paragraph 5.1(b)2 is modified to delete the words "and LG&E Energy shall execute and deliver the Transaction Agreements" and to insert ", LG&E Energy, the RUS, the Smelters and other parties thereto shall execute and deliver the applicable Transaction Agreements to which they are a party and make each delivery contemplated therein" immediately following the word "Debtor" in the first line thereof.

b. Paragraph 5.1(b)4 is deleted and replaced with the following:

The RUS, any Replacement LC Issuer, the issuer of the \$15 million line of credit to the Reorganized Debtor, the Debtor or the Reorganized Debtor and LG&E Energy shall execute and deliver the Non-Disturbance Agreement.

c. Paragraph 5.1(b)6 is deleted and replaced with the following language:

Chase shall pay (i) the Chase Effective Date Payment to the Reorganized Debtor, and (ii) \$586,207 to LG&E Energy or its designee.

d. Paragraph 5.1(b)7 is deleted and replaced with the following language:

BNY shall pay (i) the BNY Effective Date Payment to the Reorganized Debtor, and (ii) \$413,793 to LG&E Energy or its designee.

e. Paragraph 5.1(b)9 is modified to delete the phrase “including, without limitation, the Stand-By Agreement, a non-disturbance agreement from the RUS and the replacement letter of credit bank, and the Smelter power contracts with Members and the tariffs applicable thereto” immediately following the word “Document” in the third line thereof.

f. The following sub-paragraphs are added to Paragraph 5.1(b):

19. The Debtor or the Reorganized Debtor shall pay to LG&E Energy the Marketing Payment.

20. In the event the Marketing Payment paid by the Debtor or the Reorganized Debtor to LG&E Energy exceeds \$5 million, LG&E Energy shall execute and deliver the RUS Demand Promissory Note to the RUS.

2. Paragraph 5.2(a) is modified to insert the term “, the Plan Modification Order” immediately following “the Confirmation Order” in the twelfth line thereof.

3. Paragraph 5.2(b) is modified to insert the phrase “as to the Smelter load and” after the word “Except” in the first line thereof.

4. Paragraph 5.2(c) is modified to (i) insert the words “prior to the Effective Date,” immediately following the phrase “transmission-system operator” in the first line thereof, (ii) delete the phrase “Open Access Transmission Service Tariffs” and insert the phrase “an Open Access Transmission Tariff” immediately following the word “file” in the first line thereof, and (iii) insert the words “and thereafter maintain such or similar tariffs” immediately following the term “FERC” in the second line thereof.

5. Paragraph 5.3(a) is deleted and replaced with the following language:

The KPSC shall have approved the rates at which the Reorganized Debtor shall sell power to each of the Members and others (if applicable), the rates at which Green River Electric shall sell power at retail to Southwire and the rates at which Henderson Union shall sell power at retail to Alcan from and after the Effective Date (the “Proposed Rates”). The term “Proposed Rates” includes the rates, volumes, time periods and other terms set forth in Schedule 5.3 annexed hereto. The Proposed Rates of the Reorganized Debtor for energy sales and/or for transmission service, as applicable, are set forth in proposed tariffs applicable to each of the Members (to the extent applicable to each Member) for each of three applicable customer classes: (a) rural ratepayers; (b) primary aluminum Smelter customers; and (c) large industrial non-Smelter customers. The Proposed Rates of the Members are set forth in their

respective tariffs.

6. Paragraph 5.3(b) is modified to delete the first sentence thereof and to replace it with the following sentence: "The Debtor shall seek approval of tariffs that would establish the Proposed Rates for the Members and others (if applicable) to become effective no later than 12:01 a.m. on the day immediately following the Effective Date, and the Members shall obtain approval of tariffs containing specific rates applicable to power sold by the Members to the Smelters."

7. Paragraph 5.7 is modified to delete the phrase "at least five days prior to the deadline fixed by the Bankruptcy Court for filing objections to the confirmation of the Plan, subject to further order of the Bankruptcy Court" and to insert the phrase "by the deadline fixed by the Bankruptcy Court" immediately following the term "Bankruptcy Court" in the second line thereof.

#### IV. MODIFICATIONS TO ARTICLE VII:

1. Paragraph 7.2 is modified to delete the words "or the Confirmation Order" and to insert the words ", the Confirmation Order or the Plan Modification Order" immediately following the word "Plan" in the first line thereof.

2. Paragraph 7.2(a) is deleted and replaced with the following language:

The Confirmation Date and the Modification Date shall have occurred, and neither the Confirmation Order nor the Plan Modification Order shall have been vacated, reversed or stayed.

3. Paragraph 7.3 is modified to insert the words "LG&E Energy," immediately before the words "the RUS" in clause (f) thereof.

4. Paragraphs 7.4 and 7.5 are each modified to insert the phrase "; provided, however, that payments made in accordance with and as authorized by Sections 4.2.4(b), 4.2.4(c), 4.2.6(c) and 4.2.6(d) shall nevertheless be deemed authorized and shall not be subject to avoidance or recovery by the Debtor" immediately following the word "void" in the last lines thereof.

5. The following language is added as Paragraph 7.6:

**7.6 Effect of Vacation of the Plan Modification Order or Failure of the Effective Date to Occur on or Before December 31, 1998.** Subject to Section 8.2(b) hereof, if the Plan Modification Order is vacated or if the Effective Date does not occur on or before December 31, 1998, the Plan Modifications shall be null and void; provided, however, that payments made in accordance with and as authorized by Sections 4.2.4(b), 4.2.4(c), 4.2.6(c) and 4.2.6 (d) shall nevertheless be deemed authorized and shall not be subject to avoidance or recovery by the Debtor. In that event, the First Amended Plan of Reorganization Proposed by Debtor Big Rivers

Electric Corporation Under Chapter 11 of the Bankruptcy Code as Modified and Restated June 9, 1997 and the Participation Agreement (including, without limitation, the exhibits thereto) approved on June 9, 1997 pursuant to the Confirmation Order shall be restored and shall remain in full force and effect, subject to and in accordance with their respective terms.

#### V. MODIFICATIONS TO ARTICLE IX:

1. Paragraph 9.1 of Article IX is modified to delete the words "subject to the Participation Agreement being satisfactory in form and substance to the Debtor and LG&E Energy" in the fifth and sixth lines thereof.

2. Paragraph 9.3(b) of Article IX is modified to (i) delete the words "in the discretion of" and insert the phrase ", upon notice and hearing to all parties in interest, by," in the second line thereof (ii) insert the phrase "by such alteration, amendment and/or interpretation" immediately following the word "affected" in the third line thereof and (iii) insert the phrase "and the Plan Modification Order" after the term "Confirmation Order" in the sixth line thereof.

3. Paragraph 9.4(a) of Article IX is modified to (i) insert the term ", the Plan Modification Order," immediately following the term "the Confirmation Order" in the second line thereof; (ii) insert the phrase "and the Plan Modification Order" immediately following the term "Confirmation Order" in the fourth line thereof; and (iii) delete the words "or Confirmation Order" and insert the words ", the Confirmation Order or the Plan Modification Order" immediately following the word "Plan" in the fifth line thereof.

4. Paragraph 9.4(b) of Article IX is modified to (i) insert the term ", the Plan Modification Order" immediately following the term "Confirmation Order" in the second line thereof; (ii) insert the phrase "and the Plan Modification Order" immediately following the term "Confirmation Order" in the fourth line thereof; and (iii) delete the words "or Confirmation Order" and insert the words ", the Confirmation Order or the Plan Modification Order" immediately following the word "Plan" in the fourth line thereof.

5. Paragraph 9.4(c) of Article IX is modified to (i) insert the term ", the Plan Modification Order" immediately following the term "Confirmation Order" in the second line thereof; (ii) insert the phrase "and the Plan Modification Order" immediately following the term "Confirmation Order" in the fourth line thereof; and (iii) delete the words "or Confirmation Order" and insert the words ", the Confirmation Order or the Plan Modification Order" immediately following the word "Plan" in the fourth line thereof.

#### VI. MODIFICATIONS TO ARTICLE X:

1. Paragraph 10 of Article X is modified to insert the words ", the Plan Modification Order" immediately following the term "Confirmation Order" in the first line thereof.

2. Paragraph 10(n) of Article X is modified to insert the phrase "or the Plan Modification Order" immediately following the term "Confirmation Order" in the second line thereof.

3. Paragraph 10(o) of Article X is modified to insert the term "the Plan Modification Order" immediately following the term "Confirmation Order" in the second line thereof.

## **VII. MODIFICATIONS TO SCHEDULES:**

1. A new Schedule 1.11 is added which consists of the form and terms of the ARVP Note and is attached hereto as Exhibit 1.

2. Schedule 1.41 is deleted and replaced with a new Schedule 1.41 which is attached hereto as Exhibit 2.

3. Schedule 1.81 is deleted.

4. Schedule 1.84 is deleted.

5. A new Schedule 1.85 is added which consists of the terms and conditions of the New RUS Agreement and is attached as Exhibit 3.

6. A new Schedule 1.87 is added which consists of the form and terms of the New RUS Mortgage and is attached as Exhibit 4.

7. A new Schedule 1.88 is added which consists of the form and terms of the New RUS Note and is attached hereto as Exhibit 5.

8. Schedule 5.3(a) is deleted and replaced with a new Schedule 5.3(a) which is attached hereto as Exhibit 6.

9. Schedule 5.4(a) is deleted and replaced with a new Schedule 5.4(a) which is attached hereto as Exhibit 7.

LONG ALDRIDGE NORMAN LLP

SULLIVAN, MOUNTJOY, STAINBACK &  
MILLER, P.S.C.

By: Laura F. Nix

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Georgia Bar No. 409194  
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ATTORNEYS FOR BIG RIVERS ELECTRIC CORPORATION



SCHEDULE 1.11

PROMISSORY NOTE

\$265,000,000

Washington, D.C.

\_\_\_\_\_, 199\_\_

FOR VALUE RECEIVED, the undersigned, BIG RIVERS ELECTRIC CORPORATION ("Big Rivers"), a Kentucky corporation, hereby unconditionally promises to pay to the United States of America, acting through the United States Department of Agriculture, Rural Utilities Service, (the "RUS"), at the office of the RUS located in Washington, D.C., in lawful money of the United States of America and in immediately available funds, the principal amount of Two Hundred Sixty-Five Million Dollars (\$265,000,000) as set forth below.

This Note shall bear no interest. This Note shall not require any payments prior to [ ] (the "Maturity Date"), when the entire outstanding principal hereof shall be due and payable in full: provided, however, that (i) on February 15, May 15, August 15 and November 15 of each year prior to the maturity or acceleration of this Note, Big Rivers shall make a payment equal to one-third (1/3) of the Arbitrage Amount (as defined below), if any, with respect to the immediately preceding calendar quarter, and (ii) Big Rivers shall pay, as such sums become due, one half of any Post-Effective Date Fraud Recoveries (as defined in the Plan (as defined below)). All payments on this Note shall reduce the principal balance of this Note on a dollar for dollar basis.

"Arbitrage Amount" means, with respect to any particular calendar quarter, all net revenues, if any, received in such quarter from (i) the net benefit of purchasing power from third parties for resale to Big Rivers' Members instead of purchasing such power from LG&E Energy (as defined in the Plan (as defined below)) and (ii) an amount equal to the net revenues of any off-system power sales in excess of net revenues shown on the attached Schedule X for the applicable period, provided, however, that, if the actual sales margin for Member sales is less than the projected sales margin for Member sales shown on Schedule Y for the applicable period, such amount referenced in this clause (ii) shall be reduced (but not to an amount less than 0) by the difference between such projected sales margin shown on Schedule Y and such actual sales margin, but only to the extent that the difference is caused by less-than-projected MWh sales as shown on Schedule Y for the applicable period.

This Note is secured by the lien of that certain Restated Mortgage and Security Agreement dated as of [ ] made by and among the undersigned, the United States of America, Ambac Assurance Corporation [and \_\_\_\_\_] (the "New RUS Mortgage").

This Note is the ARVP Note referred to in the First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code As Modified And Restated June 9, 1997 as modified by the Modifications To The First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code As Modified And Restated June 9, 1997 (as modified or amended, the "Plan") which Plan was filed with and confirmed by the United States Bankruptcy Court for the Western District of Kentucky.

Upon the occurrence of any one or more events of default specified in the New RUS Agreement (as defined below) and/or the New RUS Mortgage this Note may be declared to be accelerated as provided therein; provided, however, that if this Note is accelerated, the amount payable hereunder shall be the outstanding amount under this Note multiplied by the applicable percentage indicated in the ARVP Note Applicable Acceleration Percentage Table attached hereto and made a part hereof.

The New RUS Agreement shall mean that certain New RUS Agreement dated as of \_\_\_\_\_ between the undersigned and the United States of America.

Presentment, demand, protest and all other notices of any kind are hereby expressly waived by the undersigned.

This Note shall be governed by and construed in accordance with federal law.

BIG RIVERS ELECTRIC CORPORATION

By: \_\_\_\_\_  
Title: President

[Corporate Seal]

Attest:

\_\_\_\_\_  
[Secretary or Assistant Secretary]

[Schedules to be amended to reflect. inter alia, actual Effective Date.]

**SCHEDULE X**  
**BIG RIVERS ELECTRIC CORPORATION**  
**Effective Date. JULY 1, 1998**  
**Other Sales Quarterly MWh and Margin**

YEAR	MONTH	MWh	Margin (\$1,000'S)
1998	OCTOBER	0	0
1999	JAN	0	0
1999	APRIL	0	0
1999	JULY	0	0
1999	OCTOBER	0	0
2000	JAN	0	0
2000	APRIL	0	0
2000	JULY	0	0
2000	OCTOBER	0	0
2001	JAN	0	0
2001	APRIL	0	0
2001	JULY	0	0
2001	OCTOBER	0	0
2002	JAN	0	0
2002	APRIL	0	0
2002	JULY	0	0
2002	OCTOBER	0	0
2003	JAN	0	0
2003	APRIL	0	0
2003	JULY	0	0
2003	OCTOBER	0	0
2004	JAN	0	0
2004	APRIL	0	0
2004	JULY	0	0
2004	OCTOBER	0	0
2005	JAN	0	0
2005	APRIL	0	0
2005	JULY	0	0
2005	OCTOBER	0	0
2006	JAN	0	0
2006	APRIL	0	0
2006	JULY	0	0
2006	OCTOBER	0	0
2007	JAN	0	0
2007	APRIL	0	0
2007	JULY	0	0
2007	OCTOBER	0	0
2008	JAN	0	0
2008	APRIL	0	0
2008	JULY	0	0
2008	OCTOBER	0	0
2009	JAN	0	0
2009	APRIL	0	0
2009	JULY	0	0
2009	OCTOBER	0	0
2010	JAN	0	0
2010	APRIL	0	0
2010	JULY	0	0
2010	OCTOBER	0	0
2011	JAN	0	0

**SCHEDULE X  
BIG RIVERS ELECTRIC CORPORATION**

Effective Date: JULY 1, 1998

Other Sales Quarterly MWh and Margin

YEAR	MONTH	MWh	Margin (\$1,000'S)
2011	APRIL	305,205	2,489
2011	JULY	305,205	2,489
2011	OCTOBER	305,205	2,489
2012	JAN	305,205	2,489
2012	APRIL	383,897	3,561
2012	JULY	383,897	3,561
2012	OCTOBER	383,897	3,561
2013	JAN	383,897	3,561
2013	APRIL	373,255	3,518
2013	JULY	373,255	3,518
2013	OCTOBER	373,255	3,518
2014	JAN	373,255	3,518
2014	APRIL	362,272	3,446
2014	JULY	362,272	3,446
2014	OCTOBER	362,272	3,446
2015	JAN	362,272	3,446
2015	APRIL	350,939	3,374
2015	JULY	350,939	3,374
2015	OCTOBER	350,939	3,374
2016	JAN	350,939	3,374
2016	APRIL	339,241	3,308
2016	JULY	339,241	3,308
2016	OCTOBER	339,241	3,308
2017	JAN	339,241	3,308
2017	APRIL	327,168	3,240
2017	JULY	327,168	3,240
2017	OCTOBER	327,168	3,240
2018	JAN	327,168	3,240
2018	APRIL	314,708	3,161
2018	JULY	314,708	3,161
2018	OCTOBER	314,708	3,161
2019	JAN	314,708	3,161
2019	APRIL	301,848	3,064
2019	JULY	301,848	3,064
2019	OCTOBER	301,848	3,064
2020	JAN	301,848	3,064
2020	APRIL	288,573	2,961
2020	JULY	288,573	2,961
2020	OCTOBER	288,573	2,961
2021	JAN	288,573	2,961
2021	APRIL	274,873	2,858
2021	JULY	274,873	2,858
2021	OCTOBER	274,873	2,858
2022	JAN	274,873	2,858
2022	APRIL	260,739	2,751
2022	JULY	260,739	2,751
2022	OCTOBER	260,739	2,751
2023	JAN	260,739	2,751

**SCHEDULE Y**  
**BIG RIVERS ELECTRIC CORPORATION**  
**Effective Date: July 1, 1998**  
**Non-Smelter Member Sales Quarterly MWh and Margin**

YEAR	MONTH	MWh	Margin (\$1 000'S)
1998	OCTOBER	847,742	12,675
1999	JAN	847,742	12,675
1999	APRIL	863,985	12,895
1999	JULY	863,985	12,895
1999	OCTOBER	863,985	12,895
2000	JAN	863,985	12,895
2000	APRIL	879,020	13,112
2000	JULY	879,020	13,112
2000	OCTOBER	879,020	13,112
2001	JAN	879,020	13,112
2001	APRIL	893,010	13,446
2001	JULY	893,010	13,446
2001	OCTOBER	893,010	13,446
2002	JAN	893,010	13,446
2002	APRIL	904,162	13,469
2002	JULY	904,162	13,469
2002	OCTOBER	904,162	13,469
2003	JAN	904,162	13,469
2003	APRIL	918,223	13,632
2003	JULY	918,223	13,632
2003	OCTOBER	918,223	13,632
2004	JAN	918,223	13,632
2004	APRIL	932,806	13,742
2004	JULY	932,806	13,742
2004	OCTOBER	932,806	13,742
2005	JAN	932,806	13,742
2005	APRIL	947,844	13,858
2005	JULY	947,844	13,858
2005	OCTOBER	947,844	13,858
2006	JAN	947,844	13,858
2006	APRIL	963,357	14,036
2006	JULY	963,357	14,036
2006	OCTOBER	963,357	14,036
2007	JAN	963,357	14,036
2007	APRIL	978,494	16,159
2007	JULY	978,494	16,159
2007	OCTOBER	978,494	16,159
2008	JAN	978,494	16,159
2008	APRIL	1,021,974	16,497
2008	JULY	1,021,974	16,497
2008	OCTOBER	1,021,974	16,497
2009	JAN	1,021,974	16,497
2009	APRIL	1,037,970	16,431
2009	JULY	1,037,970	16,431
2009	OCTOBER	1,037,970	16,431
2010	JAN	1,037,970	16,431
2010	APRIL	1,054,425	16,371
2010	JULY	1,054,425	16,371
2010	OCTOBER	1,054,425	16,371
2011	JAN	1,054,425	16,371

**SCHEDULE Y**  
**BIG RIVERS ELECTRIC CORPORATION**

Effective Date: July 1, 1998

Non-Smelter Member Sales Quarterly MWh and Margin

YEAR	MONTH	MWh	Margin (\$1,000'S)
2011	APRIL	1,071,355	16,451
2011	JULY	1,071,355	16,451
2011	OCTOBER	1,071,355	16,451
2012	JAN	1,071,355	16,451
2012	APRIL	1,088,124	17,493
2012	JULY	1,088,124	17,493
2012	OCTOBER	1,088,124	17,493
2013	JAN	1,088,124	17,493
2013	APRIL	1,125,760	17,690
2013	JULY	1,125,760	17,690
2013	OCTOBER	1,125,760	17,690
2014	JAN	1,125,760	17,690
2014	APRIL	1,143,354	17,591
2014	JULY	1,143,354	17,591
2014	OCTOBER	1,143,354	17,591
2015	JAN	1,143,354	17,591
2015	APRIL	1,161,410	17,486
2015	JULY	1,161,410	17,486
2015	OCTOBER	1,161,410	17,486
2016	JAN	1,161,410	17,486
2016	APRIL	1,179,950	17,421
2016	JULY	1,179,950	17,421
2016	OCTOBER	1,179,950	17,421
2017	JAN	1,179,950	17,421
2017	APRIL	1,198,980	17,350
2017	JULY	1,198,980	17,350
2017	OCTOBER	1,198,980	17,350
2018	JAN	1,198,980	17,350
2018	APRIL	1,218,512	17,265
2018	JULY	1,218,512	17,265
2018	OCTOBER	1,218,512	17,265
2019	JAN	1,218,512	17,265
2019	APRIL	1,238,561	17,113
2019	JULY	1,238,561	17,113
2019	OCTOBER	1,238,561	17,113
2020	JAN	1,238,561	17,113
2020	APRIL	1,259,140	16,941
2020	JULY	1,259,140	16,941
2020	OCTOBER	1,259,140	16,941
2021	JAN	1,259,140	16,941
2021	APRIL	1,280,263	16,811
2021	JULY	1,280,263	16,811
2021	OCTOBER	1,280,263	16,811
2022	JAN	1,280,263	16,811
2022	APRIL	1,301,929	16,689
2022	JULY	1,301,929	16,689
2022	OCTOBER	1,301,929	16,689
2023	JAN	1,301,929	16,689

**BIG RIVERS ELECTRIC CORPORATION**

Effective Date: July 1, 1998

**ARVP NOTE APPLICABLE ACCELERATION TABLE**

YEAR	MONTH	ACCELERATION PERCENTAGE
1998	JULY	19.44%
1998	OCTOBER	19.78%
1999	JAN	20.11%
1999	APRIL	20.45%
1999	JULY	20.80%
1999	OCTOBER	21.15%
2000	JAN	21.51%
2000	APRIL	21.86%
2000	JULY	22.24%
2000	OCTOBER	22.62%
2001	JAN	22.99%
2001	APRIL	23.37%
2001	JULY	23.77%
2001	OCTOBER	24.18%
2002	JAN	24.58%
2002	APRIL	24.99%
2002	JULY	25.42%
2002	OCTOBER	25.85%
2003	JAN	26.28%
2003	APRIL	26.71%
2003	JULY	27.17%
2003	OCTOBER	27.64%
2004	JAN	28.10%
2004	APRIL	28.56%
2004	JULY	29.05%
2004	OCTOBER	29.54%
2005	JAN	30.04%
2005	APRIL	30.53%
2005	JULY	31.06%
2005	OCTOBER	31.59%
2006	JAN	32.11%
2006	APRIL	32.64%
2006	JULY	33.20%
2006	OCTOBER	33.77%
2007	JAN	34.33%
2007	APRIL	34.90%
2007	JULY	35.50%
2007	OCTOBER	36.10%
2008	JAN	36.71%
2008	APRIL	37.31%
2008	JULY	37.95%
2008	OCTOBER	38.60%

**BIG RIVERS ELECTRIC CORPORATION**

Effective Date: July 1, 1998

**ARVP NOTE APPLICABLE ACCELERATION TABLE**

YEAR	MONTH	ACCELERATION PERCENTAGE
2009	JAN	39.24%
2009	APRIL	39.89%
2009	JULY	40.57%
2009	OCTOBER	41.26%
2010	JAN	41.95%
2010	APRIL	42.64%
2010	JULY	43.38%
2010	OCTOBER	44.12%
2011	JAN	44.85%
2011	APRIL	45.59%
2011	JULY	46.38%
2011	OCTOBER	47.16%
2012	JAN	47.95%
2012	APRIL	48.74%
2012	JULY	49.58%
2012	OCTOBER	50.42%
2013	JAN	51.26%
2013	APRIL	52.11%
2013	JULY	53.01%
2013	OCTOBER	53.91%
2014	JAN	54.81%
2014	APRIL	55.71%
2014	JULY	56.67%
2014	OCTOBER	57.63%
2015	JAN	58.59%
2015	APRIL	59.56%
2015	JULY	60.59%
2015	OCTOBER	61.61%
2016	JAN	62.64%
2016	APRIL	63.67%
2016	JULY	64.77%
2016	OCTOBER	65.87%
2017	JAN	66.97%
2017	APRIL	68.07%
2017	JULY	69.25%
2017	OCTOBER	70.42%
2018	JAN	71.60%
2018	APRIL	72.78%
2018	JULY	74.03%
2018	OCTOBER	75.29%
2019	JAN	76.55%
2019	APRIL	77.80%
2019	JULY	79.15%
2019	OCTOBER	80.49%
2020	JAN	81.84%
2020	APRIL	83.18%
2020	JULY	84.62%
2020	OCTOBER	86.05%



**BIG RIVERS ELECTRIC CORPORATION**  
**Effective Date: July 1, 1998**  
**ARVP NOTE APPLICABLE ACCELERATION TABLE**

<b>YEAR</b>	<b>MONTH</b>	<b>ACCELERATION PERCENTAGE</b>
2021	JAN	87.49%
2021	APRIL	88.93%
2021	JULY	90.46%
2021	OCTOBER	92.00%
2022	JAN	93.54%
2022	APRIL	95.07%
2022	JULY	96.72%
2022	OCTOBER	98.36%
2023	JAN	100.00%

## SCHEDULE 1.41

The amount of the Closing Payment shall be determined as follows:

(a) In the event the Closing occurs on or before July 1, 1998, the Closing Payment shall be \$78,428,000; (b) in the event the Closing occurs after July 1, 1998, but prior to August 1, 1998, the Closing Payment shall be the difference between (i) \$78,428,000 and (ii) an amount determined by multiplying (x) \$2,000,000 by (y) a fraction, the numerator of which is the total number of days following July 1, 1998, through and including the date on which the Closing occurs and the denominator of which is 30; and (c) in the event the Closing occurs after July 31, 1998, the Closing Payment shall be \$76,428,000; provided, however, in any event, the amount of the Closing Payment shall be adjusted as provided in the Feasibility Analysis (May 20, 1998) attached to the Disclosure Statement.

**SCHEDULE 1.85**

**NEW RUS AGREEMENT  
(No Future Advances)**

Dated as of \_\_\_\_\_, 19\_\_

**between**

**BIG RIVERS ELECTRIC CORPORATION**

**and**

**UNITED STATES OF AMERICA**

RUS Project Designation:  
\_\_\_\_\_

**EXHIBIT 3**

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## NEW RUS AGREEMENT

**THIS NEW RUS AGREEMENT**, dated as of \_\_\_\_\_, 199\_\_, is between **BIG RIVERS ELECTRIC CORPORATION** (together with any successors and assigns, the "Borrower"), a rural electric cooperative corporation organized and existing under K.R.S. Chapter 279 of the Commonwealth of Kentucky (the "State"), and the **UNITED STATES OF AMERICA** (the "Government"), acting by and through the Administrator (together with any person succeeding to the powers and rights of the Administrator with respect to this Agreement, the "Administrator") of the Rural Utilities Service (together with any agency succeeding to the powers and rights of the Rural Utilities Service with respect to this Agreement, the "RUS");

### RECITALS

WHEREAS, the Borrower previously incurred, pursuant to the Act (as defined in Article I), certain indebtedness and other obligations to, or guaranteed by, the Government; and

WHEREAS, with respect to such indebtedness and other obligations, the Borrower and the Government, together with certain other parties, entered into that certain Restructuring Agreement Among Big Rivers Electric Corporation, United States of America, Manufacturers Hanover Trust Company and Irving Trust Company dated as of August 31, 1987 (as amended or modified the "1987 Restructuring Agreement"); and

WHEREAS the 1987 Restructuring Agreement, together with that certain Promissory Note issued in connection therewith in the face amount of \$1,192,309,124 and dated March 30, 1988 (the "1988 Promissory Note") and certain other documents evidenced the Borrower's indebtedness and other obligations to the Government; and

WHEREAS, to secure the Borrower's indebtedness and other obligations to the Government and to secure certain other indebtedness, the Borrower previously entered into that certain Restated Mortgage and Security Agreement dated as of March 30, 1988, by and among the Borrower, as Mortgagor, and the Government, Manufacturer's Hanover Trust Company and Irving Trust Company, as Mortgagees (as modified or amended, the "Existing RUS Mortgage"); and

WHEREAS, The Chase Manhattan Bank ("Chase") is the successor to Manufacturer's Hanover Trust Company and The Bank of New York ("BNY") is the successor to Irving Trust Company; and

WHEREAS, on September 25, 1996, the Borrower filed for relief under Chapter 11 of the Bankruptcy Code (as defined in Article I), in the Bankruptcy Court (as defined in Article I); and

WHEREAS, by orders entered June 9, 1997 and [ \_\_\_\_\_ ], the Bankruptcy Court confirmed the Plan (as defined in Article I); and

WHEREAS, in accordance with the terms of the Plan, the Government has received contemporaneously herewith and hereby acknowledges receipt of (i) the Closing Payment (as defined in the Plan), and (ii) the balance of the Total Excess Cash Collateral Amount (as defined in the Plan); and

WHEREAS, in accordance with the terms of the Plan, the Borrower has executed and delivered and the Government has received and hereby acknowledges such execution, delivery and receipt of, contemporaneously herewith, (i) the New RUS Note, (ii) the ARVP Note, and (iii) the New RUS Mortgage; and

WHEREAS, this Agreement constitutes the New RUS Agreement (as defined in the Plan); and

WHEREAS, the indebtedness and other obligations of Borrower to the Government have been restructured such that the only indebtedness and obligations of the Borrower to the Government are those evidenced by the New RUS Loan Documents; and

WHEREAS, pursuant to the Participation Agreement (as defined in Article I) and the other LG&E Transaction Agreements (as defined in Article I), Borrower and LG&E Energy (as defined in Article I) have agreed to effectuate the LG&E Transaction (as defined in Article I); pursuant to which, among other things, LG&E Energy would operate and/or lease the Borrower's generating plants, provide power to the Borrower and market excess power; and

WHEREAS, in order to effectuate the provisions of the Plan, the parties hereto desire to enter into this Agreement

NOW THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree and bind themselves as follows:

#### **ARTICLE I – DEFINITIONS**

Capitalized terms that are not defined herein shall have the meanings set forth in the Plan (as defined below). The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made, in accordance with the Accounting Requirements.

"Accounting Requirements" shall mean the requirements of the system of accounts prescribed by the RUS.

"Act" shall mean the Rural Electrification Act of 1936, as amended.

"Agreement" shall mean this Agreement, together with any subsequent supplements or amendments hereto.

"ARVP Note" shall mean that certain promissory note in the principal amount of [\$ \_\_\_\_\_] executed by the Borrower and delivered to the Government in connection with this Agreement and the Plan.

"Bankruptcy Case" shall mean the bankruptcy case commenced as a result of the Borrower's filing for relief under Chapter 11 of the Bankruptcy Code on September 25, 1996 in the United States Bankruptcy Court for the Western District of Kentucky.

"Bankruptcy Code" shall mean Title 11 of the United States Code §§ 101, et. seq., as in effect on September 25, 1996, together with all amendments, modifications and replacements of the foregoing as the same may exist upon any relevant date to the extent applicable to the Bankruptcy Case or this Agreement.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Western District of Kentucky with jurisdiction over the Bankruptcy Case or, if such Court ceases or declines to exercise jurisdiction over the Bankruptcy Case, the Court or adjunct thereof that exercises jurisdiction over the Bankruptcy Case including, without limitation, to the extent of any withdrawal of the reference made pursuant to 28 U.S.C. § 157, the United States District Court for the Western District of Kentucky.

"Business Day" shall mean any day that the RUS is open for business.

"Encumbered Property" shall mean all of the property encumbered by the New RUS Mortgage.

"Equity" shall mean the Borrower's total margins and equity as computed in accordance with Accounting Requirements.

"Event of Default" shall have the meaning as defined in Article VI.

"FERC" shall mean the Federal Energy Regulatory Commission, or any agency or other governmental body succeeding to the functions thereof.

"General Manager" shall mean the President and Chief Executive Officer of the Borrower or the person performing the duties of a chief executive officer if no person holds such title and, in the event of any dispute between the Borrower and the Government as to who is the General Manager, the Administrator may designate a person or position that shall be the General Manager for purposes of this Agreement.



"Investment" shall mean any loan or advance to, or any investment in, or purchase or commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assumption or other obligation or liability with respect to the obligations of, any other person, firm or corporation, except investments in securities or deposits issued, guaranteed or fully insured as to payment by the Government or any agency thereof and except any other investments set forth in the RUS Regulations (7 C.F.R. § 1717.655) as excluded from computations of the amounts and types of investments for which RUS approval is required.

"Laws" shall have the meaning as defined in Section (e) of Article II.

"Leased Assets" shall mean all of the Borrower's property which is operated or leased by LG&E Energy or its subsidiaries or affiliates in accordance with the LG&E Transaction Agreements.

"LG&E Energy" shall mean, collectively and individually, LG&E Energy Corp. and any affiliate thereof that is a party to any LG&E Transaction Agreement or other agreement, document or transaction comprising the LG&E Transaction.

"LG&E Transaction" shall mean, collectively, all of the transactions contemplated by the Participation Agreement.

"LG&E Transaction Agreements" shall mean, collectively and individually, the Participation Agreement and all of the agreements and other documents effectuating the LG&E Transaction, including the Operative Documents (as defined in the Participation Agreement), as such agreements and documents may be modified or amended.

"Material Adverse Effect" shall mean a material adverse effect on the condition, financial or otherwise, operations, properties, margins or business of the Borrower or on the ability of the Borrower to perform its obligations under the New RUS Loan Documents.

"New RUS Loan Documents" shall mean, collectively and individually, this Agreement, the New RUS Mortgage, the New RUS Note and the ARVP Note.

"New RUS Mortgage" shall mean that certain Restated Mortgage and Security Agreement made by and among the Borrower, the Government, [\_\_\_\_\_], and Ambac Assurance Corporation, dated \_\_\_\_\_ and delivered to the Government [\_\_\_\_\_], and Ambac Assurance Corporation in connection with this Agreement and the Plan.

"New RUS Note" shall mean that certain promissory note in the principal amount of [\$\_\_\_\_\_] executed by the Borrower and delivered to the Government in connection with this Agreement and the Plan.

"Old RUS Loan Documents" shall mean the 1987 Restructuring Agreement, the 1988 Promissory Note, the Existing Mortgage, and any notes, mortgages, loan contracts or agreements evidencing any indebtedness or obligations owing from Borrower to the Government or the RUS which were executed, delivered and existing prior to the execution of this Agreement.

"Participation Agreement" shall mean that certain New Participation Agreement among the Borrower and LG&E Energy dated [\_\_\_\_\_], as same may be amended or modified.

"Plan" shall mean the First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code As Modified And Restated June 9, 1997, as modified by the Modifications To The First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code As Modified And Restated June 9, 1997, as same may be modified or amended which was filed with and confirmed by the Bankruptcy Court.

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

"Rating Agency" shall mean any nationally recognized statistical rating organization (within the meaning of the rules of the United States Securities and Exchange Commission) that at the applicable time has assigned, at the request of the Borrower, a rating to any long-term indebtedness (that is not subject to credit enhancement) issued by or on behalf of the Borrower (including, without limitation, indebtedness issued by development authorities or any other governmental authority with respect to which the Borrower is an obligor) and secured directly or indirectly under the Indenture.

"Retained Assets" shall mean all of the Borrower's property other than Leased Assets.

"RUS Notes" shall mean the ARVP Note and the New RUS Note.

"RUS Regulations" shall mean the rules and regulations of general applicability published by the RUS from time to time in 7 C.F.R. Chapter XVII and any replacement chapter, as such rules and regulations exist at the date of applicability thereof, and, unless the context clearly demonstrates a contrary intent, shall also include such rules and regulations of other Federal entities which the RUS is required by law to implement.

"RUS Related Debt" shall mean any and all obligations or indebtedness whatsoever ever owed by the Borrower to any person other than the Government and/or the RUS if such obligations

or indebtedness were or are guaranteed by the Government and/or the RUS. RUS Related Debt includes all debt ever owed by the Borrower to (a) the Federal Financing Bank, (b) Louisville Bank for Cooperatives, and (c) CoBank, ACB.

“Subsidiary” shall mean a corporation that is a subsidiary of the Borrower and subject to the Borrower’s control, as defined by Accounting Requirements.

“System” shall mean all interest in electric properties of the Borrower, it being the intent that “System” be broadly construed to encompass and include the Borrower’s interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, or other fuel of any kind or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Borrower’s generating plants, now existing or hereafter acquired by lease, contract, purchase or otherwise or constructed by the Borrower, including any interest or participation of the Borrower in any such facilities or any rights to the output or capacity thereof, together with all additions, betterments, extensions and improvements to said System or any part thereof hereafter made and together with all lands, easements and rights-of-way of the Borrower and all other works, property or structures of the Borrower and contract rights and other tangible and intangible assets of the Borrower used or useful in connection with or related to said System, including, without limitation, a contract right or other contractual arrangement for the long-term or short-term interconnection, interchange, exchange, pooling, wheeling, transmission, purchase or sale of electric power and energy and other similar arrangements with entities having generation or transmission capabilities.

“Total Utility Plant” shall mean the amount constituting the total utility plant (gross) of the Borrower computed in accordance with the Accounting Requirements.

“Wholesale Power Contracts” shall mean, collectively and individually, the wholesale power contracts in effect between the Borrower and each of its member distribution cooperatives as same may be amended or modified.

“Uniform System of Accounts” shall mean the uniform system of accounts referred to in the New RUS Mortgage.

## **ARTICLE II – REPRESENTATIONS AND WARRANTIES**

Recognizing that the Government is relying hereon, the Borrower represents and warrants, as of the date of this Agreement, as follows:

(a) *Organization; Power, Etc.* The Borrower: (i) is duly organized, validly existing, and in good standing under the laws of the State; (ii) is duly qualified to do business and is in good

standing in each jurisdiction in which the transaction of its business makes such qualification necessary; (iii) has all requisite corporate and legal power to own and operate its assets and to carry on its business and to enter into and perform the New RUS Loan Documents; and (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals which are necessary to the conduct of its business or required by applicable Laws.

(b) *Authority.* The execution, delivery and performance by the Borrower of this Agreement and the other New RUS Loan Documents and the performance of the obligations contemplated hereby and thereby have been duly authorized by all necessary corporate action and do not violate any provision of law or of the Articles of Incorporation or By-Laws of the Borrower or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which the Borrower is a party or by which it may be bound.

(c) *Consents.* No consent, permission, authorization, order or license of any governmental authority is necessary in connection with the execution, delivery or performance of the New RUS Loan Documents, except such as have been obtained and are in full force and effect.

(d) *Binding Agreement.* Each of the New RUS Loan Documents is enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

(e) *Compliance With Laws.* The Borrower is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws"), the failure to comply with which could reasonably be expected to have a Material Adverse Effect.

(f) *Litigation.* There are no pending legal, arbitration or governmental actions or proceedings to which the Borrower is a party or to which any of its property is subject which, if adversely determined, could reasonably be expected to have a Material Adverse Effect, and to the best of the Borrower's knowledge, no such actions or proceedings are threatened or contemplated, except as the Borrower has disclosed to the RUS in writing.

(g) *Principal Place of Business; Records.* The principal place of business and chief executive office of the Borrower is at the address of the Borrower specified in [Section 8.2].

(h) *Subsidiaries.* The Borrower has no Subsidiaries.

(i) *Defaults Under Other Agreements.* The Borrower is not in default under any agreement or instrument to which it is a party or to which any of its property is subject that could reasonably be expected to have a Material Adverse Effect.

## ARTICLE III -- THE NEW RUS LOAN DOCUMENTS

### Section 3.1 The New RUS Loan Documents

\_\_\_\_\_ To restructure its prior indebtedness and obligations to the Government, the Borrower has executed and delivered the New RUS Loan Documents to the Government.

### Section 3.2 No Further Advances

The Borrower acknowledges and agrees that no additional amounts are to be advanced to the Borrower under the RUS Notes, and the Government, acting by or through the Administrator of the RUS, is under no obligation to make any further advances to the Borrower under the RUS Notes. The Government acknowledges and agrees that the Government remains obligated with respect to payments and obligations on account of its guarantees pertaining to the RUS Related Debt.

### Section 3.3 Interest Rates and Payment

(a) *Interest Rates.* The New RUS Note shall be payable and bear interest as therein provided. The ARVP Note shall bear no interest and shall be payable as therein provided.

(b) *Application of Payments.* All amounts paid by the Borrower, on the Borrower's behalf or for the account of the Borrower shall be accepted by the Government and shall be applied as follows: (i) first, if and only if, at the time of the Government's receipt of such amounts, any payments are then due and owing under the ARVP Note, then such amounts shall be applied to the ARVP Note to the extent, and only to the extent, of such payments then due and owing thereunder, (ii) second, to any amounts then due and owing under the New RUS Note, and (iii) third, as a prepayment of principal on the New RUS Note. In the absence of a written directive from Borrower, no amounts paid to the Government shall be applied as a prepayment on the ARVP Note unless and until all other obligations of Borrower to the Government have been satisfied in full.

(c) *Electronic Funds Transfer.* Except as otherwise prescribed by the RUS, payments on the RUS Notes shall be made by utilizing electronic funds transfer procedures as specified by the RUS.

### Section 3.4 Prepayment

Both of the RUS Notes may be prepaid in whole or in part in the sole discretion of the Borrower without penalty or prepayment premium.

### Section 3.5 No Other Obligations of Borrower

The New RUS Loan Documents supersede the Old RUS Loan Documents. The Government and the RUS acknowledge and agree that the Borrower owes no indebtedness or obligations to either

the Government or the RUS, whether under the Old RUS Loan Documents or otherwise, except the indebtedness and obligations evidenced by the New RUS Loan Documents. Without limiting the foregoing, the Government and the RUS further acknowledge and agree that (i) the Borrower has been discharged and released from all indebtedness and obligations under the Old RUS Loan Documents, (ii) the Borrower has been discharged and released from all indebtedness and obligations on or related to the RUS Related Debt, and (iii) neither the RUS nor the Government shall seek to collect from or enforce against Borrower any amounts or obligations in excess of those provided for in the New RUS Loan Documents. In all events, the Government shall make all payments due on the RUS Related Debt and such duty shall be independent of any obligations of the Borrower under the Plan, the RUS Notes, this Agreement and the New RUS Mortgage.

**Section 3.6 Limitation on Aggregate Principal Amount of the RUS Notes**

Notwithstanding the terms of the RUS Notes, the aggregate amount payable under the RUS Notes upon any acceleration thereof shall be the lesser of (i) the beginning principal amount of the New RUS Note, or (ii) the amount payable upon acceleration under the terms of the RUS Notes.

**ARTICLE IV – AFFIRMATIVE COVENANTS**

**Section 4.1 Generally**

Unless otherwise agreed to in writing by the Government, while this Agreement is in effect, the Borrower shall duly observe each of the affirmative covenants contained in this Article IV.

**Section 4.2 Annual Certificates**

(a) *Performance under New RUS Mortgage.* The Borrower shall duly observe and perform all of its obligations under the New RUS Mortgage.

(b) *Annual Certification.* Within one hundred twenty (120) days after the close of each fiscal year, the Borrower shall deliver to the RUS a written statement signed by its General Manager, stating that, to the knowledge of the General Manager, during such year the Borrower has fulfilled all of its obligations under the New RUS Loan Documents throughout such year in all material respects or, if there has been a material default in the fulfillment of any such obligations, specifying each such default known to the General Manager and the nature and status thereof.

**Section 4.3 Rates**

*Prospective Notice of Change in Rates.* The Borrower shall give the RUS sixty (60) days' prior written notice of any proposed change in the Borrower's general rate structure.

**Section 4.4 Financial Books**

The Borrower shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all of the dealings, business and affairs of the Borrower. Without limiting the foregoing, the Borrower shall implement appropriate bookkeeping mechanisms for the purpose of determining the Arbitrage Amount (as defined in the RUS Notes), if any, each calendar quarter.

**Section 4.5 Rights of Inspection**

The Borrower shall afford the Government, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the Retained Assets encumbered by the New RUS Mortgage, and any or all books, records, accounts, invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Borrower or in any way pertaining to its property or business, and to make copies or extracts therefrom.

**Section 4.6 Real Property Acquisition**

In acquiring real property, the Borrower shall comply in all material respects with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, and 49 C.F.R. part 24, referenced by 7 C.F.R. part 21, to the extent applicable to such acquisition.

**Section 4.7 Power Requirements Studies**

The Borrower shall prepare and use power requirements studies of its electric loads and future energy and capacity requirements in conformance with Prudent Utility Practice and an RUS approved plan for preparation of such power requirements studies, taking into account the obligations of the Borrower under the Wholesale Power Contracts.

**Section 4.8 Long Range Engineering Plans and Construction Work Plans**

The Borrower shall develop, maintain and use up-to-date long-range engineering plans and construction work plans in conformance with Prudent Utility Practice.

**Section 4.9 Design Standards, Construction Standards and List of Materials**

The Borrower shall use design standards, construction standards and lists of acceptable materials in conformance with Prudent Utility Practice.

#### **Section 4.10 Financial Reports**

The Borrower shall cause to be prepared and furnished to the RUS a full and complete annual report of its financial condition and of its operations in form and substance reasonably satisfactory to the RUS, audited and certified by an independent certified public accountant reasonably satisfactory to the RUS and accompanied by a report of such audit in form and substance reasonably satisfactory to the RUS. The Borrower shall also furnish to the RUS from time to time such other reports concerning the financial condition or operations of the Borrower, as the RUS may reasonably request or RUS Regulations require.

#### **Section 4.11 Miscellaneous Reports and Notices**

The Borrower shall furnish to the RUS:

(a) *Notice of Default.* Promptly after becoming aware thereof, notice of: (i) the occurrence of any Event of Default or event which with the giving of notice or the passage of time, or both, would become an Event of Default; and (ii) the receipt of any notice given pursuant to the LG&E Transaction Agreements with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an "Event of Default" under the LG&E Transaction Agreements.

(b) *Notice of Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency or instrumentality affecting the Borrower which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

(c) *Notice of Change of Place of Business.* Promptly in writing, notice of any change in location of its principal place of business or the office where its records concerning accounts and contract rights are kept.

(d) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could reasonably be expected to have a Material Adverse Effect.

(e) *Ratings.* Promptly after receipt thereof, copies of any reports or ratings on the Borrower issued by any Rating Agency.

(f) *Other Information.* Such other information regarding the condition, financial or otherwise, operations, properties or business of the Borrower as the RUS may, from time to time, reasonably request.



**Section 4.12 Compliance with Laws**

The Borrower shall operate in compliance in all material respects with all applicable Laws the failure to comply with which could reasonably be expected to have a Material Adverse Effect.

**ARTICLE V -- NEGATIVE COVENANTS**

**Section 5.1 General**

Unless otherwise agreed to in writing by the Government, while this Agreement is in effect, the Borrower shall duly observe each of the negative covenants set forth in this Article V.

**Section 5.2 Limitations on System Extensions, Additions and Dispositions**

(a) *Additions to Capacity.* The Borrower shall not, without first complying with the requirements of Section 8.1, purchase, construct, lease or otherwise acquire Special Assets (as defined below) if the aggregate amount expended by the Borrower for purchase, construction, lease or other acquisition of all Special Assets (i) in the current fiscal year of the Borrower is greater than 5% of the Borrower's Total Utility Plant or (ii) in the current and two immediately preceding fiscal years of the Borrower is greater than 10% of the Borrower's Total Utility Plant. For the purposes of this Subsection (a), "Special Assets" means capital assets that constitute utility or non-utility plant and that: (1) taking into account any substantially contemporaneous or otherwise related sale, transfer, lease or other disposition, increase the generating capacity of the System or any generating plant of the Borrower by more than 5%; (2) are not subject to the lien of the New RUS Mortgage; or (3) are not used or useful as a part of the System.

(b) *Dispositions of System Assets.* The Borrower shall not, without first complying with the requirements of Section 8.1, request the release of capital assets that constitute utility plant from the lien of the New RUS Mortgage if (taking into account any substantially contemporaneous or otherwise related purchase, construction, lease or other acquisition of similar property that is subject to the lien of the New RUS Mortgage) there will result a decrease in the generating capacity of the System or any generating plant by more than 5% if the aggregate net book value of all such assets released from the lien of the New RUS Mortgage (i) in the current fiscal year of the Borrower is greater than 5% of the Borrower's Total Utility Plant or (ii) in the current and two immediately preceding fiscal years of the Borrower is greater than 10% of the Borrower's Total Utility Plant.

**Section 5.3 Limitations on Employment and Retention of General Manager**

At any time an Event of Default, or an event which with the passage of time or the giving of notice, or both, would become an Event of Default, occurs and is continuing, the Borrower shall not, without the prior written approval of the Government, enter into an employment relationship with any person to serve as General Manager unless such employment shall first have been approved by

the Government. If an Event of Default, or an event which with the passage of time or the giving of notice, or both, would become an Event of Default, occurs and is continuing and the Government requests the Borrower to terminate the employment of its General Manager, the Borrower shall do so within thirty (30) days after the date of such request. All contracts in respect of the employment of the General Manager hereafter entered into shall contain provisions to permit compliance with this Section 5.3.

#### **Section 5.4 Limitations on Certain Types of Contracts**

(a) *Approval of Certain Contracts.* The Borrower shall not, without first complying with the requirements of Section 8.1, enter into any of the following:

- (i) any contract for the management or operation of all or substantially all of the Retained Assets;
- (ii) any contract for the purchase or sale of electric power and energy that has a term exceeding three (3) years and under which committed purchases or sales exceed ten percent (10%) of the peak demand of the System for the most recently completed fiscal year;
- (iii) any pooling or similar power supply agreement that has a term exceeding three (3) years; or
- (iv) any material amendment or material modification to any of the Wholesale Power Contracts, including any schedules thereto.

(b) *Terminations.* The Borrower shall not, without first complying with the requirements of Section 8.1, exercise any option to terminate any contract, including, without limitation, any Wholesale Power Contract, if such contract, based upon its nature, remaining term (not taking into account any option of the Borrower to terminate) and size, would be required to be approved by the Government pursuant to Subsection (a) above if the Borrower were to have entered into such contract on the proposed termination date. The Borrower further agrees at the written direction of the Government to exercise any option to terminate a contract if the exercise by the Borrower of that option would require compliance with Section 8.1 pursuant to the immediately preceding sentence: provided, however, the Borrower shall not be required to exercise any such option to terminate if such exercise could reasonably be expected to have a Material Adverse Effect. For the purpose of illustration only, and not by way of limitation, the Borrower shall be required to comply with Section 8.1 before terminating, and the Government can require the Borrower to terminate, in any year before year seven (7) thereof, a ten (10) year contract for the sale of electric power and energy that exceeds ten percent (10%) of the Borrower's peak demand because the portion of the contract to be terminated meets the standards of Subsection (a)(ii) above (i.e., a term greater than three (3) years for the committed sale of electric power and energy that exceeds ten percent (10%) of the Borrower's peak demand). The Borrower can terminate without first complying with Section 8.1, and the

Government cannot require the Borrower to terminate, that same contract after year seven (7) thereof.

(c) *Determination of Term.* The term of any contract shall be determined for purposes of this Section 5.4 based solely upon the period prior to the first date upon which the Borrower could, at its option, terminate the contract (taking into account any notice period required for termination), unless the exercise of such termination right could reasonably be expected to have a Material Adverse Effect.

(d) *Amendments; Extensions.* Any amendment or modification to an existing contract (including an extension thereof) shall be governed by this Section 5.4 only to the extent of the specific amendment or modification and not the contract as a whole.

#### **Section 5.5 Limitations on Investments**

The Borrower shall not, without first complying with the requirements of Section 8.1, make any Investment, except (i) Investments made for the purpose of funds management that are made pursuant to an investment policy approved by the Borrower's Board of Directors, a copy of which has been provided to the RUS, (ii) Investments specifically approved by the RUS in writing under this clause (ii), and (iii) other Investments that do not in the aggregate with all other Investments other than Investments described in clauses (i) and (ii) above exceed fifteen percent (15%) of the Borrower's Total Utility Plant as defined in the Uniform System of Accounts.

#### **Section 5.6 Depreciation Rates**

The Borrower shall not, without first complying with the requirements of Section 8.1, adopt any depreciation rate not previously approved for the Borrower by the RUS. The Borrower shall record depreciation in compliance with Accounting Requirements and shall use depreciation methods and depreciation lives or depreciation rates as contained in the then applicable RUS Bulletins or Regulations or as specifically approved by RUS.

#### **Section 5.7 Negative Pledge**

Except for Permitted Encumbrances (as defined in the New RUS Mortgage), the Borrower shall not, without first complying with the requirements of Section 8.1, directly or indirectly create, incur, assume or permit to exist any lien, mortgage, pledge, security interest, charge or encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any other agreement to give any security interest) on or with respect to any of the Encumbered Property.

**Section 5.8 Fiscal Year**

The Borrower shall not, without first complying with the requirements of Section 8.1, change its fiscal year.

**Section 5.9 Limitation on Certain Payments**

So long as any amounts remain outstanding under either the New RUS Note or the ARVP Note the Borrower shall not pay any amounts owing under Section 22.2 of the Participation Agreement in respect of "Big Rivers' Reimbursement Obligations" (as defined in the Participation Agreement) including any accrued and unpaid interest thereon.

**ARTICLE VI – EVENTS OF DEFAULT**

The following shall be "Events of Default" under this Agreement:

(a) *Representations and Warranties.* Any representation or warranty made by the Borrower in Article II hereof, in any certificate furnished to the RUS hereunder or in the New RUS Mortgage shall be incorrect in any material respect at the time made;

(b) *Payment.* Default shall be made in the payment of any amounts due and payable under the RUS Notes, whether by acceleration or otherwise, and such amounts shall remain unsatisfied for five (5) Business Days after written notice thereof shall have been given to the Borrower by the Government;

(c) *Other Covenants.* Default by the Borrower in the observance or performance of any other covenant or agreement contained in any of the New RUS Loan Documents, and such default shall continue for thirty (30) calendar days after written notice specifying such default and requiring same to be remedied shall have been given to the Borrower by the Government;

(d) *Corporate Existence.* The Borrower shall forfeit or otherwise be deprived of its corporate charter or any franchises, permits, easements, consents or licenses required to carry on any material portion of its business;

(e) *Other Obligations.* Default by Borrower in the payment of any obligation, whether direct or contingent, for borrowed money in excess of \$10,000,000.

(f) *Bankruptcy.* A court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days or the Borrower shall commence a voluntary case under any applicable bankruptcy.

insolvency or other similar law now or hereafter in effect, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; provided, however, that neither the commencement of the Bankruptcy Case nor any orders entered in connection therewith shall constitute an Event of Default under this Agreement;

(g) *Dissolution or Liquidation.* Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Borrower, or failure by the Borrower promptly to forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days. The term "dissolution or liquidation of the Borrower," as used in this Subsection (g), shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another business entity following a transfer of all or substantially all its assets as an entirety, under conditions permitted by the New RUS Mortgage.

## ARTICLE VII – REMEDIES

Upon the occurrence of an Event of Default, then the Government may pursue all rights and remedies available to the Government that are contemplated by this Agreement in the manner, upon the conditions and with the effect provided in this Agreement, including, but not limited to, a suit for specific performance, injunctive relief or damages. The Government is hereby authorized, to the maximum extent permitted by applicable law, to demand specific performance of this Agreement at any time when the Borrower shall have failed to comply with any provision of this Agreement applicable to it. Nothing herein shall limit the right of the Government to pursue all rights and remedies available to a creditor at law or in equity following the occurrence of an Event of Default, or any right or remedy available to the Government under the New RUS Mortgage. Each right, power and remedy of the Government shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

## ARTICLE VIII – MISCELLANEOUS

The Borrower and the Government further agree as follows:

### **Section 8.1 Notice to Government: Objection of Government**

Before undertaking any transaction described in Article V that requires compliance with this Section 8.1, the Borrower shall give to the Government (i) notice in writing describing in reasonable detail the proposed transaction and expressly stating that the transaction is covered by this Section 8.1 and (ii) existing drafts of any documents to effect such transaction. If the Government delivers to the Borrower written notice that it objects to the proposed transaction after (I) 60 days (or such

shorter period as the parties shall agree to in writing) in the case of any transaction of the nature described in paragraph (a) below, or (II) 30 days (or such shorter period as the parties shall agree to in writing) in the case of any transaction of the nature described in paragraph (b) below, the Borrower shall not complete the transaction without Government approval, which approval shall not be unreasonably withheld.

- (a) Transactions requiring compliance with this Section 8.1 pursuant to Sections 5.2, 5.4 and 5.7 shall be subject to a 60-day review and objection period (or such shorter period as the parties shall agree to in writing); and
- (b) Transactions requiring compliance with this Section 8.1 pursuant to Sections 5.5, 5.6 and 5.8 shall be subject to a 30-day review and objection period (or such shorter period as the parties shall agree to in writing).

## **Section 8.2 Notices**

All notices, requests and other communications provided for herein, including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement, shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are as follows:

The Government:

Rural Utilities Service  
United States Department of Agriculture  
1400 Independence Avenue, S.W.  
Room 4051  
Washington, DC 20250-1500  
Fax: (202) 720-1725  
Attention: Administrator

With a copy to:

Rural Utilities Service  
United States Department of Agriculture  
1400 Independence Avenue, S.W.  
Stop: 1568  
Room 0270  
Washington, DC 20250-1500

Fax: (202) 720-1401  
Attention: Power Supply Division

The Borrower:

Big Rivers Electric Corporation  
201 Third Street  
P. O. Box 24  
Henderson, Kentucky 42420  
Fax: (502) 827-2558  
and (502) 827-4882  
Attention: Michael Core, President and Chief Executive Officer

With a copy to:

Paul H. Keck  
Long Aldridge & Norman, LLP  
701 Pennsylvania Avenue, N.W  
Suite 600  
Washington, D.C. 20004  
Fax: (202) 624-1298

Russell A. Tolley  
Long Aldridge & Norman, LLP  
One Peachtree Center  
Suite 5300  
303 Peachtree Street  
Atlanta, GA 30308  
Fax: (404) 527-4198

**Section 8.3 Expenses**

To the extent allowed by law, the Borrower shall pay all costs and expenses of the Government, including reasonable fees of counsel, incurred in connection with the enforcement of the New RUS Loan Documents.

**Section 8.4 Late Payments**

If payment of any amount due hereunder is not received at the United States Treasury in Washington, DC, or such other location as the Government may designate to the Borrower, within five (5) Business Days after the due date thereof or such other longer time period as the RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount," and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period"), the Borrower shall pay to the Government, in addition to all other amounts due under the terms of the RUS Notes and this Agreement, any late-payment charge as may be fixed by RUS Regulations from time to time on the delinquent amount for the late-payment period.

**Section 8.5 Filing Fees**

To the extent permitted by Law, the Borrower agrees to pay all expenses of the Government (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by the Government in connection with the New RUS Mortgage, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection therewith. The Borrower agrees to save harmless and indemnify the Government from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by the Government in connection with the New RUS Mortgage. The provisions of this Section 8.5 shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder or due on the RUS Notes. Nothing in this Section 8.5 shall be construed as a waiver or limitation of the benefits accorded by or the applicability of Section 1146(c) of the Bankruptcy Code.

**Section 8.6 No Waiver**

No failure on the part of the Government to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Government of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

**Section 8.7 Governing Law**

This Agreement shall be governed by and construed in accordance with federal law and where under federal law the laws of a state would be applied, the laws of the Commonwealth of Kentucky applicable to contracts made and performed in Kentucky shall be applied without regard to conflict of laws doctrines.

**Section 8.8 Holiday Payments**

If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

**Section 8.9 Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the Borrower and the Government and their respective successors and assigns, except that the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Government.



#### **Section 8.10 Complete Agreement; Amendments**

This Agreement and the other New RUS Loan Documents are intended by the parties to be a complete and final expression of their agreement with respect to the matters addressed herein and therein. However, the Government reserves the right to waive its rights to compliance with any provision of this Agreement, the RUS Regulations and the other New RUS Loan Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Borrower herefrom or therefrom, shall be effective unless approved in writing by the Government in the form of either RUS Regulations or other writing signed by or on behalf of the Government, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

#### **Section 8.11 Headings**

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

#### **Section 8.12 Severability**

If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement, the RUS Notes, and the New RUS Mortgage shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained herein.

#### **Section 8.13 Right of Set off**

Upon the occurrence and during the continuance of any Event of Default the Government is hereby authorized at any time and from time to time, without prior notice to the Borrower, to exercise rights of set off or recoupment and apply any and all amounts held or hereafter held, by the Government or owed to the Borrower or for the credit or account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing hereunder or under the RUS Notes. The Government agrees to notify the Borrower promptly after any such set off or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such set off, recoupment or application. The rights of the Government under this Section 8.13 are in addition to any other rights and remedies (including other rights of set off or recoupment) which the Government may have. Nothing in this Section shall affect the agreements made in Section 3.5 of this Agreement, and, without limiting the preceding clause, nothing in this Section shall limit or affect the Government's independent obligation to make all payments due on the RUS Related Debt.

**Section 8.14 Sole Benefit**

The rights and benefits set forth in this Agreement are for the sole benefit of the parties hereto and may be relied upon only by them.

**Section 8.15 Authority of RUS Representatives**

In the case of any consent, approval or waiver from the Government that is required under this Agreement or any other New RUS Loan Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this Section 8.17, "authorized RUS representative" means the Administrator, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

**Section 8.16 Relation to RUS Regulations**

(a) In case of any conflict between the terms of the New RUS Loan Documents and the provisions of the RUS Regulations, the terms of the New RUS Loan Documents shall control; and if Borrower is in compliance with the New RUS Loan Documents, Borrower is hereby deemed to have complied with, or otherwise satisfied the requirements of, or received approval under such conflicting provisions of the RUS Regulations, and the Government/RUS hereby waives compliance by the Borrower with such provisions conflicting of the RUS Regulations.

(b) The Borrower recognizes that some RUS Regulations implement Federal statutes or regulatory policies that are not limited to rural electrification but apply to many types of Federal assistance. Nothing herein is intended to, or shall be deemed to, waive the requirements of any Federal statute or regulation that is applicable to the Borrower independently of any requirement made applicable solely by the RUS Regulations.

**Section 8.17 Term**

This Agreement shall remain in effect until one of the following two events has occurred:

(a) The Borrower and the Government replace this Agreement with another written agreement; or

(b) All of the Borrower's obligations under the RUS Notes have been discharged and paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed. the Borrower's execution to be attested under seal. as of the day and year first above written.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Michael Core  
President and Chief Executive Officer

Attest: \_\_\_\_\_  
Assistant Secretary

[CORPORATE SEAL]

**UNITED STATES OF AMERICA,**  
acting by and through the Administrator  
of the Rural Utilities Service

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

DRAFT  
May 18, 1998

RUS PROJECT DESIGNATION

Kentucky 62

RESTATED

MORTGAGE

AND SECURITY AGREEMENT

made by and among

BIG RIVERS ELECTRIC CORPORATION,

UNITED STATES OF AMERICA,

AMBAC ASSURANCE CORPORATION

and

[NAME OF BANK]

Dated as of \_\_\_\_\_, 1998

THIS INSTRUMENT WAS PREPARED BY RICHARD M. LAWRENCE, THE RURAL UTILITIES DIVISION, OFFICE OF THE GENERAL COUNSEL, UNITED STATES DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C. 20250-1414, AND CARL F. LYON, JR. OF ORRICK, HERRINGTON & SUTCLIFFE LLP, 666 FIFTH AVENUE, NEW YORK, NEW YORK 10103-0001, ATTORNEY FOR BIG RIVERS ELECTRIC CORPORATION.

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

No. \_\_\_\_\_

RESTATED MORTGAGE AND SECURITY AGREEMENT, dated as of \_\_\_\_\_, 1998, made by and among BIG RIVERS ELECTRIC CORPORATION, a rural electric cooperative corporation organized and existing under K.R.S. Chapter 279 of the Commonwealth of Kentucky (hereinafter called the "Mortgagor"), UNITED STATES OF AMERICA (the "Government") acting through the Administrator of the Rural Utilities Service ("RUS"), as successor to the Administrator of the Rural Electrification Administration ("REA"), AMBAC ASSURANCE CORPORATION ("Ambac") a Wisconsin-domiciled stock insurance company and [NAME OF BANK] (the Government, Ambac and [NAME OF BANK] being hereinafter sometimes called the "Mortgagees"),

WHEREAS, pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. sections 901 et seq.) (hereinafter called the "Act"), REA made certain loans to the Mortgagor and guaranteed certain obligations to the Mortgagor (hereinafter called the "RUS Debt"); and

WHEREAS, in accordance with the terms and provisions of a restructuring agreement dated as of August 31, 1987 among the Government; Chemical Bank (now known as Chase Manhattan Bank, N.A.); The Bank of New York ("The Bank of New York"); and the Mortgagor (the "Restructuring Agreement"), RUS, Chemical Bank, The Bank of New York and the Mortgagor entered into the Existing RUS Mortgage (hereinafter defined); and

WHEREAS, in accordance with the terms and provisions of the Restructuring Agreement, the RUS Debt and certain obligations of the Mortgagor to Chemical Bank (now known as Chase Manhattan Bank, N.A.) and The Bank of New York were secured under the Existing RUS Mortgage; and

WHEREAS, on September 25, 1996, the Mortgagor filed for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court, Western District of Kentucky (the "Bankruptcy Court"); and

WHEREAS, on June 9, 1997, the Bankruptcy Court confirmed and entered an order confirming Mortgagor's "First Amended Plan of Reorganization Proposed by Debtor Big Rivers Electric Corporation Under Chapter 11 of the Bankruptcy Code as Modified and Restated June 9, 1997" (as modified or amended, the "Plan") [Revise as necessary or appropriate if/when Plan is modified/amended]; and

WHEREAS, pursuant to the Plan, the Mortgagor has entered into this Restated Mortgage and Security Agreement in order to (i) secure its obligations to RUS including, without limitation, its obligations under the Government Debt Notes (as hereinafter

defined), the New RUS Agreement (hereinafter defined) and this Mortgage, (ii) remove Chase Manhattan Bank, N.A. ("Chase") and The Bank of New York as secured parties under the Existing RUS Mortgage (hereinafter defined) and (iii) secure its obligations to Ambac under the Ambac Notes and under the 1983 Reimbursement Agreement (hereinafter defined) and the 1985 Reimbursement Agreement (hereinafter defined); and

WHEREAS, this Restated Mortgage and Security Agreement is the "New RUS Mortgage" (as defined in the Plan) that the Government shall receive under the Plan; and

WHEREAS, contemporaneously with the effective date of this Restated Mortgage and Security Agreement, Chase and The Bank of New York have executed and delivered documents to the Mortgagor and RUS which release Chase and The Bank of New York from their rights under security instruments (hereinafter collectively called the "Existing RUS Mortgage") identified in the "Instruments Recital" hereof; and

WHEREAS, in accordance with the terms and provisions of the Plan, the obligations of the Mortgagor to the Government have been restructured such that the only obligations of the Mortgagor to the Government are those evidenced by (i) that certain promissory note dated \_\_\_\_\_, 1998 in the original principal amount of \$\_\_\_\_\_ (the "New RUS Note"), (ii) that certain promissory note dated \_\_\_\_\_, 1998 in the original principal amount of \$265,000,000 due on \_\_\_\_\_ (the "ARVP Note"), (iii) a certain agreement by and between the Mortgagor and RUS, dated as of \_\_\_\_\_, 1998 (the "New RUS Agreement") and (iv) this Mortgage; the New RUS Note and the ARVP Note are collectively referred to herein as the "Government Debt Notes"; and

WHEREAS, [NAME OF BANK] will lend the Mortgagor sums pursuant to the provisions of the Bank Loan Agreement (hereinafter defined) and will receive a note in the principal amount of up to \$\_\_\_\_\_ (the "Bank Note") in order to evidence the obligation of the Mortgagor to pay [NAME OF BANK] pursuant to the provisions of the Bank Loan Agreement; and

WHEREAS, Ambac has agreed to issue (i) a financial guarantee insurance policy (the "1983 Municipal Bond Insurance Policy") which guarantees the full and timely payment of principal of and interest on the 1983 Bonds (hereinafter defined), (ii) a financial guarantee insurance policy (the "1985 Municipal Bond Insurance Policy"; the 1983 Municipal Bond Insurance Policy and the 1985 Municipal Bond Insurance Policy are sometimes hereinafter referred to as the "Municipal Bond Insurance Policies") which guarantees the full and timely payment of principal of and interest on the 1985 Bonds (hereinafter defined), (iii) a surety policy in order to insure the full and timely payment by the Mortgagor to Credit Suisse First Boston, New York, New York ("Credit Suisse") of fees and other charges due and owing with respect to the 1983 Bonds (the "1983 Surety Policy"), (iv) a surety policy in order to insure

the full and timely payment by the Mortgagor to Credit Suisse of fees and other charges due and owing with respect to the 1985 Bonds (the "1985 Surety Policy"), and (v) a surety policy in order to insure the full and timely payment by the Mortgagor to Credit Suisse of certain additional charges, differential fee amounts and accrued and unpaid interest on the 1985 bonds (the "1985 Interest Surety Policy"; the 1983 Surety Policy, the 1985 Surety Policy and the 1985 Interest Surety Policy are sometimes hereinafter referred to as the "Surety Policies"); and

WHEREAS, contemporaneously with the execution and delivery of this Mortgage, the Mortgagor and Ambac will enter into the 1983 Reimbursement Agreement (hereinafter defined) and the 1985 Reimbursement Agreement (hereinafter defined) each providing for the issuance of two promissory notes to Ambac in order to evidence the obligations of the Mortgagor to reimburse Ambac under the 1983 Reimbursement Agreement and the 1985 Reimbursement Agreement, respectively, and, in connection with the 1983 Reimbursement Agreement, the Mortgagor shall issue a promissory note in an amount not to exceed \$\_\_\_\_\_ with respect to the 1983 Municipal Bond Insurance Policy and a promissory note in an amount not to exceed \$\_\_\_\_\_ with respect to the 1983 Surety Policy and, in connection with the 1985 Reimbursement Agreement, the Mortgagor shall issue a promissory note in an amount not to exceed \$\_\_\_\_\_ with respect to the 1985 Municipal Bond Insurance Policy, a promissory note in an amount not to exceed \$\_\_\_\_\_ with respect to the 1985 Surety Policy, and a promissory note in an amount not to exceed \$\_\_\_\_\_ with respect to the 1985 Interest Surety Policy (such five promissory notes are collectively referred to herein and identified in the Instruments Recital as the "AMBAC Notes") and the Government Debt Notes, the AMBAC Notes and the Bank Note (collectively, the "Notes") are intended to be secured by the lien of this Restated Mortgage and Security Agreement; and

WHEREAS, the Plan requires that the Mortgagor execute and deliver this Mortgage; and

WHEREAS, the changes in the Existing RUS Mortgage which the parties thereto and the parties hereto desire now to effect in order to comply with the terms of the Plan make advisable the consolidating and restating of each of the instruments constituting the Existing RUS Mortgage in its entirety; and

WHEREAS, the parties to the Existing RUS Mortgage and this Restated Mortgage and Security Agreement desire that the lien of the Existing RUS Mortgage be preserved and continue as modified by the lien of this Restated Mortgage and Security Agreement;

NOW, THEREFORE, this Restated Mortgage and Security Agreement

WITNESSETH:

That each of the instruments constituting the Existing RUS Mortgage is hereby amended, supplemented and consolidated to read in its entirety from and after the date of execution of this Rescated Mortgage and Security Agreement (the Existing RUS Mortgage, as amended, supplemented, consolidated and restated hereby, being herein called "this Mortgage") as follows:

WHEREAS, all further references in this Mortgage to the Mortgagor's obligations to the Government shall be deemed to mean only obligations owed to the Government under (i) the New RUS Note, (ii) the ARVP Note, (iii) the New RUS Agreement and (iv) this Mortgage, all other obligations of the Mortgagor to the Government and RUS having been discharged and released; and

WHEREAS, the Plan provides that the Mortgagor shall issue the Government Debt Notes on the effective date of this Mortgage and that the Government Debt Notes be secured by the lien of this Mortgage, and accordingly the Mortgagor has duly authorized, executed and delivered the Government Debt Notes payable to the Government; and

WHEREAS, the Mortgagor and the Government have agreed and the Plan provides, inter alia, that the Mortgagor shall have no obligations to the Government or to RUS other than those obligations evidenced by the New RUS Note, the ARVP Note, the New RUS Agreement and this Mortgage, and accordingly, without limiting the foregoing, the Government and RUS have further acknowledged and agreed that (i) the Mortgagor has been discharged and released from all indebtedness and obligations under the Old RUS Loan Documents (as defined in the New RUS Agreement), (ii) the Mortgagor has been discharged and released from all indebtedness or obligations on or related to the RUS Debt and the RUS Related Debt (as defined in the New RUS Agreement), and (iii) the Government shall not seek to collect from or enforce against the Mortgagor any amounts or obligations in excess of those provided for in the New RUS Loan Documents (as defined in the New RUS Agreement); and

WHEREAS, in all events, the Government shall make all payments due on the RUS Related Debt (as defined in the New RUS Agreement) and such duty shall be independent of any obligations of the Mortgagor under the Plan, the RUS Notes, the New RUS Agreement and this Mortgage; and

WHEREAS, the Mortgagor, Ambac and RUS have agreed that the obligations owed to Ambac under the 1983 Reimbursement Agreement and under the 1985 Reimbursement Agreement as evidenced by the AMBAC Notes shall be secured by the lien of this Mortgage, and accordingly the Mortgagor has duly authorized, executed and delivered the AMBAC Notes payable to Ambac; and

WHEREAS, the Mortgagor, Ambac, RUS and [NAME OF BANK] have agreed that the obligations owed to [NAME OF BANK] under the



Bank Loan Agreement as evidenced by the Bank Note shall be secured by the lien of this Mortgage, and accordingly the Mortgagor has duly authorized, executed and delivered the Bank Note payable to [NAME OF BANK]; and

WHEREAS, for the purposes of Schedule 3.1 of the Participation Agreement dated June 9, 1997, by and among Mortgagor, LG&E Power Marketing Inc., Western Kentucky Leasing Corp., WKE Station Two Inc. (f/k/a LG&E Station Two Inc.) and Western Kentucky Energy Corp., this Mortgage shall be a "Debt Restructuring Agreement" as that term is defined therein; and

WHEREAS, the instruments referred to in the preceding recitals and the Maximum Debt Limit referred to in article I, section 1 hereof are hereby identified as follows:

#### INSTRUMENTS RECITAL

"AMBAC Notes", (i) one (1) promissory note payable to Ambac, dated \_\_\_\_\_, 1998, bearing interest at a rate of \_\_\_% per annum, stated to mature on June 1, 2013, issued by the Mortgagor in the aggregate principal amount of not to exceed \$\_\_\_\_\_ with respect to the 1983 Municipal Bond Insurance Policy, (ii) one (1) promissory note payable to Ambac, dated \_\_\_\_\_, 1998, bearing interest at a rate of \_\_\_% per annum, stated to mature on October 1, 2015, issued by the Mortgagor in the aggregate principal amount of not to exceed \$\_\_\_\_\_ with respect to the 1985 Municipal Bond Insurance Policy, (iii) one (1) promissory note payable to Ambac, dated \_\_\_\_\_, 1998, bearing interest at a rate of \_\_\_% per annum stated to mature on June 1, 2013, issued by the Mortgagor in the aggregate principal amount of not to exceed \$\_\_\_\_\_ with respect to the 1983 Surety Policy, (iv) one (1) promissory note payable to Ambac, dated \_\_\_\_\_, 1998, bearing interest at a rate of \_\_\_% per annum stated to mature on October 1, 2015, issued by the Mortgagor in the aggregate principal amount of not to exceed \$\_\_\_\_\_ with respect to the 1985 Surety Policy, and (v) one (1) promissory note payable to Ambac, dated \_\_\_\_\_, 1998, bearing interest at a rate of \_\_\_% per annum stated to mature on October 1, 2015, issued by the Mortgagor in the aggregate principal amount of not to exceed \$\_\_\_\_\_ with respect to the 1985 Interest Surety Policy.

"Bank Loan Agreement" shall mean the loan agreement, dated as of \_\_\_\_\_, 1998 between the Mortgagor and [NAME OF BANK].

"Bank Note", one (1) promissory note payable to [NAME OF BANK], dated \_\_\_\_\_, 1998, bearing interest at a rate of \_\_\_% per annum, stated to mature on \_\_\_\_\_ issued by the Mortgagor in the aggregate principal amount of not to exceed \$\_\_\_\_\_.

"Government Debt Notes", one (1) promissory note payable to the Government, dated \_\_\_\_\_, 1998, bearing interest at the rate of \_\_\_% per annum simple interest and stated to mature on \_\_\_\_\_, issued by the Mortgagor in the principal amount

of \$ \_\_\_\_\_ and one (1) promissory note payable to the Government, dated \_\_\_\_\_, 1998, bearing no interest and stated to mature on \_\_\_\_\_ issued by the Mortgagor in the principal amount of \$265,000,000.

"**Maximum Debt Limit**" for purposes of article I, section 1 hereof shall be \_\_\_\_\_.

"**1985 Bonds**" shall mean the \$83,300,000 County of Ohio, Kentucky, Variable Rate Demand Pollution Control Refunding Bonds, Series 1985 (Big Rivers Electric Corporation Project).

"**1985 Reimbursement Agreement**" shall mean the Reimbursement Agreement, dated as of \_\_\_\_\_, 1998, by and between the Mortgagor and Ambac relating to the 1985 Bonds.

"**1983 Bonds**" shall mean the \$58,800,000 County of Ohio, Kentucky, Pollution Control Floating Rate Demand Bonds, Series 1983 (Big Rivers Electric Corporation Project).

"**1983 Reimbursement Agreement**" shall mean the Reimbursement Agreement, dated as of \_\_\_\_\_, 1998, by and between the Mortgagor and Ambac relating to the 1983 Bonds.

"**Existing RUS Mortgage**":

<u>Instrument</u>	<u>Date</u>	<u>Parties</u>
Supplemental Mortgage*	04/09/76	Mortgagor, Louisville Bank for Cooperatives ("LBC") & Government
Supplement to Supplemental Mortgage*	04/09/76	Mortgagor, LBC & Government
Supplement to Supplemental Mortgage*	08/12/77	Mortgagor, LBC & Government
Amendment to Supplement Supplemental Mortgage*	08/30/77	Mortgagor, LBC & Government
Supplement to Supplemental Mortgage*	11/17/80	Mortgagor, LBC & Government
Amendment to Supplemental Mortgage	09/15/87	Mortgagor & Government
Amendment to Supplemental Mortgage	2/01/88	Mortgagor & Government
Restated Mortgage	3/30/88	Mortgagor, Government, Manufacturers Hanover Trust Company and Irving Trust Company

<u>Instrument</u>	<u>Date</u>	<u>Parties</u>
Supplement to Restated Mortgage	10/01/95	Mortgagor, Government, Chemical Bank and The Bank of New York

\*NOTE: LBC has released of record its rights under this instrument.

"LG&E Transaction Agreements" shall have the meaning set forth in the New RUS Agreement.

WHEREAS, The Government, Ambac and the Bank are authorized to enter into this Mortgage; and

WHEREAS, to the extent that any of the property described or referred to in this Mortgage is governed by the provisions of the Uniform Commercial Code of any state (hereinafter called the "Uniform Commercial Code"), the parties hereto desire that this Mortgage be regarded as a "security agreement" and as a "financing statement" for said security agreement under the Uniform Commercial Code;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH that, in order to secure the payment of the principal of and interest, if any, on the Notes, according to their tenor and effect, and further to secure the due performance of the covenants, agreements and provisions contained in this Mortgage and the New RUS Agreement, and to declare the terms and conditions upon which the New RUS Agreement and Notes are to be secured, the Mortgagor, in consideration of the premises, has executed and delivered this Mortgage, and has granted, bargained, sold, conveyed, warranted, assigned, transferred, mortgaged, pledged, and set over, and by these presents does hereby grant, bargain, sell, convey, warrant, assign, transfer, mortgage, pledge and set over, and grant a security interest unto the Mortgagees, and their respective assigns, all and singular the following-described property (hereinafter sometimes called the "Mortgaged Property"):

I

All right, title and interest of the Mortgagor in and to all of the real property described on Appendix A hereto which is attached to this instrument and hereby incorporated herein at this point as if set forth at length.

II

All right, title and interest of the Mortgager in and to the electric generating plants and facilities and electric transmission and distribution lines and facilities now owned by the Mortgagor, wherever located, including without limitation those located in the Counties of Breckinridge, Caldwell, Crittenden, Daviess, Hancock, Henderson, Hopkins, Livingston, Lyon, McCracken, McLean, Meade, Muhlenberg, Ohio, Union and Webster in the Commonwealth of Kentucky, or hereafter constructed or acquired by the Mortgagor, wherever located, and in and to all extensions and improvements thereof and additions thereto, including all substations, service and connecting lines (both overhead and underground), poles, towers, posts, crossarms, wires, cables, conduits, mains, pipes, tubes, transformers, insulators, meters, electrical connections, lamps, fuses, junction boxes, fixtures, appliances, generators, dynamos, water turbines, water wheels, boilers, steam turbines, motors, switch boards, switch racks, pipe lines, machinery, tools, supplies, switching and other equipment, and any and all other property of every nature and description, used or acquired for use by the Mortgagor in connection therewith;

III

All right, title and interest of the Mortgagor in, to and under any and all grants, privileges, rights of way and easements now owned, held, leased, enjoyed or exercised, or which may hereafter be owned, held, leased, acquired, enjoyed or exercised, by the Mortgagor for the purposes of, or in connection with, the construction or operation by or on behalf of the Mortgagor of electric transmission or distribution lines, or systems, whether underground or overhead or otherwise, or of any electric generating plant, wherever located;

IV

All right, title and interest of the Mortgagor in, to and under any and all licenses, franchises, ordinances, privileges and permits heretofore granted, issued or executed, or which may hereafter be granted, issued or executed, to it or to its assignors by the United States of America, or by any state, or by any county, township, municipality, village or other political subdivision thereof, or by any agency, board, commission or department of any of the foregoing, authorizing the construction, acquisition, or operation of electric transmission or distribution lines, or systems, or any electric generating plant or plants, insofar as the

same may by law be assigned, granted, bargained, sold, conveyed, transferred, mortgaged, or pledged;

V

All right, title and interest of the Mortgagor in, to and under any and all contracts heretofore or hereafter executed by and between the Mortgagor and any person, firm, corporation or governmental body or agency providing for the purchase, sale, exchange or transmission of electric power or energy by the Mortgagor together with any and all other accounts, contract rights and general intangibles (as such terms are defined in the applicable Uniform Commercial Code) heretofore or hereafter acquired by the Mortgagor, including, without limitation, all of the contracts and other rights described or referred to in Appendix B hereto which is attached to this instrument and hereby incorporated herein at this point as if set forth at length including all amendments to the contracts and other rights described or referred to in Appendix B and all agreements changing, modifying or replacing, in whole or in part, the contracts and other rights described or referred to in Appendix B. The amendments and agreements referred to in this Section V include, without limitation, all such amendments and agreements now or hereinafter existing;

VI

All right, title and interest of the Mortgagor in, to and under any and all of the LG&E Transaction Agreements including, without limitation, those documents and agreements listed on Appendix C hereto;

VII

Also, all right, title and interest of the Mortgagor in and to all other property, real or personal, tangible or intangible, of every kind, nature and description, and wheresoever situated, now owned or hereafter acquired by the Mortgagor, it being the intention hereof that all such property now owned but not specifically described herein or acquired or held by the Mortgagor after the date hereof shall be as fully embraced within and subjected to the lien hereof as if the same were now owned by the Mortgagor and were specifically described herein to the extent only, however, that the subjection of such property to the lien hereof shall not be contrary to law;

Together with all proceeds, rents, income, revenues, profits and benefits at any time derived, received or had from any and all of the above-described property of the Mortgagor.

Provided, however, that except as hereinafter provided in section 11(b) of article II hereof, no automobiles, trucks, trailers, tractors or other vehicles (including without limitation

aircraft or ships, if any) owned by the Mortgagor shall be included in the Mortgaged Property.

TO HAVE AND TO HOLD all and singular the Mortgaged Property unto the Mortgagees and their respective assigns forever, to secure equally and ratably the payment of all amounts due and owing under the Notes according to their tenor and effect, without preference, priority or distinction as to interest, if any, or principal (except as otherwise specifically provided herein) or as to lien or otherwise of any Note over any other Note by reason of the priority in time of the execution, delivery or maturity thereof or of the assignment or negotiation thereof, or otherwise (except as otherwise specifically set forth herein), and to secure the due performance of the covenants, agreements and provisions herein and in the New RUS Agreement.

## ARTICLE I

### ADDITIONAL NOTES

SECTION 1. The Notes at any one time secured hereby, shall not exceed in the aggregate principal amount the amount identified in the Instruments Recital as the Maximum Debt Limit, and no Note shall mature more than fifty (50) years after the date hereof.

No additional Notes or indebtedness to other parties shall be secured by this Mortgage without the prior written approval of RUS, Ambac and the Bank.

SECTION 2. The Mortgagor, when authorized by resolution or resolutions of its board of directors, may from time to time execute, acknowledge, deliver, record and file mortgages supplemental to this Mortgage which thereafter shall form a part hereof, for the purpose of formally confirming this Mortgage as security for the Notes. Nothing herein contained shall require the execution and delivery by the Mortgagor of a supplemental mortgage in connection with the issuance hereunder of the securing hereby of Notes except as hereinafter provided in section 11 of article II hereof.

## ARTICLE II

### PARTICULAR COVENANTS OF THE MORTGAGOR

The Mortgagor covenants with the Mortgagees and the holders of Notes (the holders of Notes being hereinafter sometimes collectively called the "Noteholders") and each of them as follows:

SECTION 1. The Mortgagor is duly authorized under its articles of incorporation and by-laws and the laws of the state of its incorporation and all other applicable provisions of law to

execute and deliver the Government Debt Notes, the AMBAC Notes, the New RUS Agreement, the 1983 Reimbursement Agreement, the 1985 Reimbursement Agreement, the Bank Loan Agreement and this Mortgage; and all corporate action on its part for the execution and delivery of the Government Debt Notes, the AMBAC Notes, the New RUS Agreement, the 1983 Reimbursement Agreement, the 1985 Reimbursement Agreement, the Bank Loan Agreement and this Mortgage has been duly and effectively taken; and the Government Debt Notes, the New RUS Agreement, the 1983 Reimbursement Agreement, the 1985 Reimbursement Agreement, the AMBAC Notes, the Bank Loan Agreement and this Mortgage are, or when executed and delivered or undertaken, as the case may be, will be the valid and enforceable obligations of the Mortgagor in accordance with their respective terms.

SECTION 2. The Mortgagor warrants that it has good right and lawful authority to mortgage the property described in the granting clauses of this Mortgage for the purposes herein expressed, and that the said property is free and clear of any deed of trust, mortgage, lien, charge or encumbrance thereon or affecting the title thereto, except for such matters which do not in the aggregate materially detract from the value of the Mortgaged Property taken as a whole and do not materially impair the use of such property for the purposes for which it is held by the Mortgagor, and except the lien of this Mortgage and Permitted Encumbrances (as defined in Appendix D). The Mortgagor will, so long as any of the Notes shall be outstanding, maintain and preserve the lien of this Mortgage superior to all other liens affecting the Mortgaged Property (except those referenced in the immediately preceding sentence), and will forever warrant and defend the title to the property described as being mortgaged hereby to the Mortgagees against any and all claims and demands whatsoever. The Mortgagor will promptly pay or discharge any and all obligations for or on account of which any such lien or charge might exist or could be created and any and all lawful taxes, rates, levies, assessments, liens, claims or other charges imposed upon or accruing upon any of the Mortgagor's property (whether taxed to the Mortgagor or to any Noteholder), or the franchises, earnings or business of the Mortgagor, as and when the same shall become due and payable; and whenever called upon so to do the Mortgagor will furnish to the Mortgagees or to any Noteholder adequate proof of such payment or discharge, provided, however, that this provision shall not be deemed to require the payment or discharge of any tax, rate, levy, assessment or other governmental charge while the Mortgagor is contesting the validity thereof by appropriate proceedings in good faith and so long as it shall have set aside on its books adequate reserves with respect thereto.

SECTION 3. The Mortgagor, without the consent in writing of RUS, Ambac and the Bank, will not charge, assign, pledge, mortgage or otherwise encumber any of its property, real or personal, tangible or intangible, wheresoever located, which at the time is, or at any time may become, subject to the lien of this Mortgage, but in no event contrary to the provisions of section 2 of this article II.

SECTION 4. The Mortgagor will duly and punctually pay the principal of and interest, if any, on the Notes at the dates and places and in the manner provided therein, according to the true intent and meaning thereof, and all other sums becoming due hereunder.

SECTION 5. The Mortgagor will at all times, so long as any of the Notes shall be outstanding, take or cause to be taken all such action as from time to time may be necessary to preserve its corporate existence and to preserve and renew all franchises, rights of way, easements, permits and licenses now or hereafter to it granted or upon it conferred, and will comply with all valid laws, ordinances, regulations and requirements applicable to it or its property. The Mortgagor will not without the approval in writing of RUS and Ambac, which approval shall not be unreasonably withheld, sell, lease or transfer (or make any agreement therefor) any capital asset subject to the lien of this Mortgage, unless the fair market value of such asset is less than \$50,000 and the aggregate value of assets so sold, leased or transferred in any 12-month period is less than \$200,000 and the proceeds of such sale, lease or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately, subject to the provisions of Article V hereof, (i) applied as the Mortgagees direct, or, absent such direction, (ii) (A) applied as a prepayment of the Notes, pro rata according to the aggregate unpaid principal amount of the Notes, (B) in the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the Mortgagor's business, not necessarily of the same kind as the property disposed of, which shall forthwith become subject to the lien of this Mortgage, or (C) set aside as a deposit in the construction fund contemplated by Account Number 131.2 of the Uniform System of Accounts prescribed by RUS for its Electric Borrowers (hereinafter, as in effect on the date hereof, called the "Uniform System of Accounts"). Any reference in this Mortgage to any Account Number of the Uniform System of Accounts shall apply to such Account Number included in the Uniform System of Accounts as of August 6, 1997, or to any other Account Number which may be thereafter prescribed with respect to the information contemplated by the Account Number herein specified; or, if no such Account Number shall be applicable after such date to the accounts of the Mortgagor for such information, such reference shall apply to the corresponding information otherwise determined in an appropriate manner.

SECTION 6. The Mortgagor will at all times maintain and preserve or cause to be maintained and preserved the Mortgaged Property in accordance with Prudent Utility Practice (as defined in the New RUS Agreement) and each and every part and parcel thereof in good repair, working order and condition and in accordance with Prudent Utility Practice and will from time to time make all needful and proper repairs, renewals, and replacements, and useful and proper alterations, additions, betterments and improvements, and will, subject to contingencies beyond its reasonable control and use all reasonable diligence to furnish the consumers served by



the Mortgagor with an adequate supply of electric energy and other services furnished by the Mortgagor. If any substantial part of the Mortgaged Property is leased by the Mortgagor to any other party, other than as contemplated in connection with the LG&E Transaction Agreements, the lease agreement between the Mortgagor and the lessee shall obligate the lessee to comply with the provisions of this section in respect of the leased facilities and to permit the Mortgagor to operate the leased facilities in the event of any failure by the lessee to so comply.

SECTION 7. (a) The Mortgagor will take out, as the respective risks are incurred, and maintain the following classes and amounts of insurance: (1) fidelity bonds covering each officer and employee of the Mortgagor in not less than the following amounts, based on the estimated annual gross revenues of the Mortgaged Property:

<u>Annual Gross Revenue</u>		<u>Amount of Coverage</u>
Less than	\$ 200,000	\$ 10,000
\$ 200,001	to 400,000	20,000
400,001	to 600,000	40,000
600,001	to 800,000	60,000
800,001	to 1,000,000	80,000
over	1,000,000	100,000

and each collection agent of the Mortgagor shall be included in such fidelity bonds for not less than \$2,500, or 10 percent of the highest amount collected annually by any one collection agent, whichever is greater; (2) workmen's compensation insurance covering all employees of the Mortgagor in such amounts as may be required by law or if the Mortgagor or any of its employees are not subject to the workmen's compensation laws of the State or States in which the Mortgagor conducts its operations, then its workmen's compensation policy shall provide voluntary compensation coverage to the same extent as though the Mortgagor and such employees were subject to such laws; and including occupational disease liability coverage, and "additional medical" coverage of not less than \$10,000 in States where full medical coverage is not required by law; (3) public liability and property damage liability insurance, covering ownership liability, and all operations of the Mortgagor, with limits for bodily injury or death of not less than \$100,000 for one person and \$300,000 for each accident, and with limits for property damage of not less than \$50,000 for each accident and \$100,000 aggregate for the policy period; (4) liability insurance on all motor vehicles, trailers, semitrailers, and aircraft used in the conduct of the Mortgagor's business, whether owned, non-owned or hired by the Mortgagor, with bodily injury limits of not less than \$100,00 for one person and \$300,000 for each accident, and with property damage limits of \$25,000 for each accident; in connection with aircraft liability, also passenger bodily injury

limits of \$100,000 per person and \$300,000 for each accident; (5) fire and extended coverage insurance, designating RUS and Ambac as mortgagees in the policy, on each building and its contents, and on any other property of the Mortgagor, other than power lines and other distribution facilities, including without limitation property situated at each storage location of materials and supplies, poles and crossarms, owned by the Mortgagor, having a value at any one location in excess of \$5,000, or in excess of one percent of the total plant value, whichever is larger, and in an amount not less than 80 percent of the current cost to replace the property new, less actual depreciation; and (6) boiler and machinery insurance, if the Mortgaged Property includes electric generating facilities, in an amount for each accident not less than the actual current cash value of the property of the Mortgagor and of other adjacent property that could be damaged thereby.

The Mortgagor will also, from time to time, increase or supplement or cause to be increased or supplemented the classes and amounts of insurance specified above to the extent requested by RUS and required to conform to the accepted practice of companies of the size and character of the Mortgagor. The Mortgagor will, upon request of any Mortgagee, submit to the Mortgagees a schedule of its insurance in effect on the date specified in such request and copies of any policies or contracts relating thereto.

The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory authorities, including standard RUS endorsements and riders used by the insurance industry to provide coverage for RUS borrowers. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 10 days after written notice to the Mortgagees of cancellation.

(b. In the event of damage to or the destruction or loss of any portion of the Mortgaged Property which shall be covered by insurance, unless RUS and the Mortgagor shall otherwise agree, the Mortgagor shall replace or restore or caused to be replaced or restored such damaged, destroyed or lost portion so that the Mortgaged Property shall be in substantially the same condition as it was in prior to such damage, destruction or loss, and shall apply the proceeds of the insurance for that purpose; provided, however, that in the event the Mortgagor, with agreement therefor by RUS, shall not so replace or restore such damaged, destroyed or lost portion of the Mortgaged Property, if any Note has been accelerated, and subject to the provisions of Article V hereof, the Mortgagor shall apply the proceeds of the insurance as a ratable prepayment of or on account of the unpaid principal of the Notes, to such installments thereof as may be designated by the respective Noteholders at the time of any such payment. The Mortgagor shall replace or cause to be replaced the loss or shall commence such restoration promptly after such damage, destruction or loss shall have occurred and shall complete or cause to be completed such

replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance all costs and expenses in connection therewith so that such replacement or restoration shall be so completed that the portion of the Mortgaged Property so replaced or restored shall be free and clear of all mechanics' liens and other claims; provided, however, that, with respect to any Enhancement (as defined in the LG&E Transaction Agreements) or any Major Capital Improvement (as defined in the LG&E Transaction Agreements), the issues of insurance coverage, the disposition of insurance proceeds and the restoration or replacement of any such Enhancement or Major Capital Improvement shall be governed by the provisions of the LG&E Transaction Agreements.

SECTION 8. In the event of the failure of the Mortgagor in any respect to comply with the covenants and conditions herein contained with respect to the procuring of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair and free of liens and other claims or to comply with any other covenant contained in this Mortgage, any Mortgagee shall have the right (without prejudice to any other rights arising by reason of such default) to advance or expend moneys for the purpose of procuring such insurance, or for the payment of insurance premiums, taxes, assessments or other charges, or to save the Mortgaged Property from sale or forfeiture for any unpaid tax or assessment, or otherwise, or to redeem the same from tax or other sale, or to purchase any tax title thereon, or to remove or purchase any mechanic's liens or other encumbrance thereon, or to make repairs thereon or to comply with any other covenant herein contained or to prosecute or defend any suit in relation to the Mortgaged Property or in any manner to protect the Mortgaged Property and the title thereto, and all sums so advanced for any of the aforesaid purposes with interest thereon at the highest legal rate but not in excess of ten per centum (10%) per annum shall be deemed a charge upon the Mortgaged Property in the same manner as the Notes at the time outstanding are secured and shall be forthwith paid to the Mortgagee making such advance or advances upon demand. It shall not be obligatory for any Mortgagee in making any such advances or expenditures to inquire into the validity of any such tax title, or of any of such taxes or assessments or sales therefor, or of any such mechanics' liens or other encumbrance. A Mortgagee acting hereunder shall not be liable to the Mortgagor, any other Mortgagee or any Noteholder except for losses resulting from gross negligence or wilful misfeasance.

SECTION 9. The Mortgagor will not pay its directors, as such, any salaries for their services, except such as shall have been approved by RUS, provided that nothing herein contained shall preclude any director from serving the Mortgagor in any other capacity and receiving compensation therefor. Salaries and wages paid officers and employees shall be reasonable and in conformity with the usual practice of corporations and the size and nature of the Mortgagor.

SECTION 10. The Mortgagor will at all times keep, and safely preserve, proper books, records and accounts in which full and true entries will be made of all of the dealings, business and affairs of the Mortgagor, in accordance with the methods and principles of accounting prescribed in the Uniform System of Accounts. The Mortgagor will prepare and furnish each of the Mortgagees not later than the 20th day of each month, or at less frequent intervals when specified by such Mortgagee, financial and statistical reports on its condition and operations. Such reports shall be in such form and include such information as may be reasonably specified by such Mortgagee, including without limitation an analysis of the Mortgagor's revenues, expenses and consumer accounts. The Mortgagor will cause to be prepared and furnished to each of the Mortgagees, at least once during the 12-month period during the term hereof, a full and complete report of its financial condition as of a date (hereinafter called the "Fiscal Date") not more than 90 days prior to the date such report is furnished to the Mortgagees hereunder, and of its operations for the 12-month period ended on the Fiscal Date, in form and substance reasonably satisfactory to RUS, audited and certified by independent certified public accountants satisfactory to RUS and accompanied by a report of such audit in form and substance reasonably satisfactory to RUS. Any Mortgagee, through its representatives, shall at all times during reasonable business hours have access to, and the right to inspect and make copies of, any or all books, records and accounts, and any or all invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Mortgagor or in anywise pertaining to its property or business.

SECTION 11. (a) The Mortgagor will from time to time upon written demand of any Mortgagee make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered all such further and supplemental indentures of mortgage, deeds of trust, mortgages financing statements, continuation statements, security agreements, instruments and conveyances as may reasonably be requested by any Mortgagee and take or cause to be taken all such further action as may reasonably be requested by any Mortgagee to effectuate the intention of these presents and to provide for the securing and payment of the principal of and interest, if any, on the Notes equally and ratably according the terms thereof and for the purpose of fully conveying, transferring and confirming unto the Mortgagees the property hereby conveyed, mortgaged and pledged, or intended so to be, whether now owned by the Mortgagor or hereafter acquired by it and to reflect the assignment of the rights or interests of any of the Mortgagees or of any Noteholder hereunder or under any Note. The Mortgagor will cause this Mortgage and any and all supplemental indentures of mortgage, mortgages and deeds of trust and every security agreement, financing statement, continuation statement and every additional instrument which shall be executed pursuant to the foregoing provisions forthwith upon execution to be recorded and filed and recorded and refiled as conveyances and mortgages and deeds of

trust of and security interests in real and personal property in such manner and in such places as may be reasonably requested by any Mortgagee in order fully to preserve the security for the Notes and to perfect and maintain the superior lien of this Mortgage and all supplemental indentures of mortgage, mortgages and deeds of trust and the rights and remedies of the Mortgagees and the Noteholders.

(b) In the event that the Mortgagor suffers in the future a deficit in net income, as determined in accordance with methods of accounting prescribed in section 10 of article II hereof, for any fiscal year while any of the Notes are outstanding, the Mortgagor will at any time or times upon written demand of any Mortgagee make, execute, acknowledge and deliver or cause to be made, executed, acknowledged and delivered all such further and supplemental indentures of mortgage, mortgages, security agreements, financing statements, instruments and conveyances, and take or cause to be taken all such further action, as may reasonably be requested by any Mortgagee in order to include in this Mortgage, as Mortgaged Property, and to subject to all the terms and conditions of this Mortgage, all right, title and interest of the Mortgagor in and to, all and singular, the automobiles, trucks, trailers, tractors, aircraft, ships and other vehicles then owned by the Mortgagor, or which may thereafter be owned or acquired by the Mortgagor. From and after the time of such written demand of RUS or Ambac, such Excepted Property shall be deemed to be part of the Mortgaged Property for all purposes hereof.

SECTION 12. Any Noteholder may, at any time or times in succession without notice to or the consent of the Mortgagor or any other Noteholder and upon such terms as such Noteholder may prescribe, grant to any person, firm or corporation who shall have become obligated to pay all or any part of the principal of or interest on any Note held by or indebtedness owed to such Noteholder or who may be affected by the lien hereby created, an extension of the time for the payment of such principal or interest, and after any such extension the Mortgagor will remain liable for the payment of such Note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

SECTION 13. The Mortgagor, subject to applicable laws, and rules and orders of regulatory bodies, and taking into consideration all other sources of revenue available to the Mortgagor, will design its rates for electric energy and other services furnished by it with a view to paying and discharging all taxes, maintenance expenses, cost of electric energy and other operating expenses of its electric transmission and distribution system and electric generating facilities, if any, and also to making all payments on Notes when and as the same shall become due and to providing and maintaining reasonable working capital for the Mortgagor.

SECTION 14. The Mortgagor will not, in any one year, without the approval in writing of the Mortgagees, declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other Cash Distributions (such dividends, refunds, retirements and other distributions being hereinafter collectively called "Distributions"), to its members, stockholders or consumers if after giving effect to any such Distribution the total Equity of the Mortgagor will not equal or exceed 40% of its total assets and other debits; provided, however, that the Mortgagor may nevertheless make Distributions in any year up to 25% of the patronage capital and margins received by the Mortgagor in the next preceding year where after giving effect to any such Distribution the total Equity of the Mortgagor will equal or exceed 20% of its total assets and other debits, and provided, further, however, that in no event will the Mortgagor make any Distributions if there is unpaid when due any installment of principal or interest on the Notes, if the Mortgagor is otherwise in default hereunder or if, after giving effect to any such Distribution, the Mortgagor's total current and accrued assets would be less than its total current and accrued liabilities.

For the purpose of this section, a "Cash Distribution" shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Mortgagor, but not the repayment of a membership fee of not in excess of \$100 upon termination of a membership. As used or applied in this Mortgage (1) "Equity" shall mean the aggregate of Equities and Margins (as such terms are defined in the Uniform System of Accounts) and Subordinated Indebtedness; and (2) "Subordinated Indebtedness" shall mean unsecured indebtedness of the Mortgagor, payment of which shall be subordinated to the prior payment of the Notes in form and substance satisfactory to the Mortgagees.

SECTION 15. In the event that the Mortgaged Property, or any part thereof, shall be taken under the power of eminent domain, unless RUS and the Mortgagor shall otherwise agree and, subject to any applicable provisions of the LG&E Transaction Agreements, the Mortgagor shall replace the Mortgaged Property, or part thereof, taken under the power of eminent domain; provided, however that in the event that the Mortgagor, with the agreement therefor of RUS, shall not replace such Mortgaged Property, the Mortgagor shall, and subject to the provisions of Article V hereof and applicable provisions of the LG&E Transaction Agreements, if any Note has been accelerated, apply the proceeds and avails therefrom: first to the ratable payment of any indebtedness by this Mortgage secured other than principal or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, to such installments thereof as may be designated by the respective Noteholders at the time of any such payment; and, fourth, the balance shall be paid to whosoever shall be entitled thereto; provided, however, that, subject to the provisions of Article V hereof, any Noteholder may cause funds to which it may be entitled under clause third hereof to be applied by

the Mortgagor to the making of a deposit in the construction fund contemplated by Account 131.2 of the Uniform System of Accounts instead of causing such funds being applied to the prepayment of any Note held by such Noteholder.

SECTION 16. The Mortgagor will well and truly observe and perform all of the covenants, agreements, terms and conditions contained in the New RUS Agreement, as from time to time amended, on its part to be observed or performed. The Mortgagor will promptly furnish each Mortgagee with written notice of the occurrence of any event of default under the New RUS Agreement.

SECTION 17. The Mortgagor will promptly notify the Mortgagees in writing of any change in location of its chief place of business or the office where its records concerning accounts and contract rights are kept.

SECTION 18. The Mortgagor will obtain all such rights of way, easements from landowners and releases from lienors as shall be necessary or advisable in the conduct of its business, and, if requested by any Mortgagee, deliver to such Mortgagee evidence satisfactory to such Mortgagee of the obtaining of such rights of way, easements or releases.

SECTION 19. If the Government Debt Notes have been paid and discharged and if all obligations under the New RUS Agreement and this Mortgage have been satisfied while any of the AMBAC Notes is still outstanding, all rights and powers of RUS and the holders of the Government Debt Notes under this Mortgage shall immediately vest in Ambac and the holders of the AMBAC Notes, respectively, and, correspondingly, if all of the AMBAC Notes have been paid and discharged and Ambac shall have no further obligation under its Municipal Bond Insurance Policies or its Surety Policies while the Government Debt Notes are still outstanding, all rights and powers of Ambac and the holders of the AMBAC Notes under this Mortgage shall immediately vest in RUS and the holders of the Government Debt Notes, respectively. Ambac, RUS, the Mortgagor and the Noteholders shall execute and deliver such instruments, assignments, releases or other documents as shall be reasonably required to carry out the intention of this section.

SECTION 20. The Mortgagor will not, without the approval in writing of the Government and Ambac consolidate with or merge into any other corporation or permit any other corporation to merge into the Mortgagor or acquire all or substantially all of the business or assets if such acquisition is analogous in purpose or effect to a merger or consolidation, or so consolidate or merge or permit any such merger or so acquire all or substantially all of the business or assets of another corporation is such acquisition is analogous in purpose or effect to a merger or consolidation, or so consolidate or merge or permit any such merger or so acquire any such business or assets without the approval in writing of the Government and Ambac, unless the corporation surviving such transaction shall have assumed the payment of the Notes and the

performance of the Mortgagor's covenants in this Mortgage, the 1983 Reimbursement Agreement, the 1985 Reimbursement Agreement, the Bank Loan Agreement and the New RUS Agreement.

### ARTICLE III

#### REMEDIES OF THE MORTGAGEES AND NOTEHOLDERS

Section 1. If one or more of the following events (hereinafter called "Events of Default") shall happen, that is to say:

(a) default shall be made in the payment of any installment of or on account of interest, if any, on or principal of any Note when and as the same shall be required to be made whether by acceleration or otherwise which shall remain unsatisfied for five (5) Business Days (as defined in the New RUS Agreement) after written notice thereof shall have been given to the Mortgagor by the respective Mortgagees;

(b) any representation or warranty made by the Mortgagor herein, in the New RUS Agreement, the 1983 Reimbursement Agreement, the 1985 Reimbursement Agreement, the Bank Loan Agreement or in any certificate delivered hereunder or thereunder shall prove to have been incorrect or untrue in any material respect when made;

(c) default shall be made in the due observance or performance of any of the covenants, conditions or agreements on the part of the Mortgagor contained in sections 3, 4 and 5 of article II hereof and such default shall continue for five (5) Business Days after written notice specifying such default and requiring to be remedied shall have been given to the Mortgagor by any Noteholder;

(d) default shall be made in the due observance or performance of any other of the covenants, conditions or agreements on the part of the Mortgagor, in any of the Notes or in this Mortgage contained, and such default shall continue for a period of thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Mortgagor by any Noteholder;

(e) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Mortgagor in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed or in effect for a period of ninety (90) consecutive days or the Mortgagor shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the appointment or taking possession by a



receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property or make any general assignment for the benefit of creditors; provided, however, that neither the commencement of the Bankruptcy Case nor any orders entered in connection therewith shall constitute an event of default under this Mortgage;

(f) other than as provided in the immediately preceding clause, the dissolution or liquidation of the Mortgagor, or failure by the Mortgagor promptly to forestall or remove any execution, garnishment or attachment of such consequences as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days. The term "dissolution or liquidation of the Mortgagor" is used in this clause (f) shall not be construed to include the cessation of the corporate existence of the Mortgagor resulting either from a merger or consolidation of the Mortgagor into or with another corporation following a transfer of all or substantially all of its assets as an entity, under the conditions expressly set forth in this Mortgage;

(g) the Mortgagor shall forfeit or otherwise be deprived of its corporate charter or franchises, permits, easements or licenses required to carry on any material portion of its business; or

(h) a violation of the terms of any subordination agreement delivered pursuant to section 14 of article II hereof shall have occurred; and

then in each and every such case the Government, to the extent permitted by applicable state law on behalf of all the Noteholders, may, in its discretion:

(aa) upon protest, presentment or demand, declare all unpaid principal of and accrued interest on and other amounts payable under the Notes to be due and payable immediately; and upon any such declaration all such unpaid principal and accrued interest so declared to be due and payable shall become and be due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding;

(bb) take immediate possession of the Mortgaged Property, collect and receive all credits, outstanding accounts and bills receivable of the Mortgagor and all proceeds, rents, income, revenues and profits pertaining to or arising from the Mortgaged Property, or any part thereof, and issue binding receipts therefor; and manage, control and operate the Mortgaged Property as fully as the mortgagor might do if in possession thereof, including, without limitation, the making of all repairs or replacements deemed necessary or advisable;

(cc) proceed to protect and enforce the rights of the Mortgagees and the rights of the Noteholder or Noteholders under

this Mortgage by suits or actions in equity or at law in any court or courts of competent jurisdiction, whether for specific performance of any covenant or any agreement contained herein or in aid of the execution of any power herein granted or for the foreclosure hereof or hereunder or for the sale of the Mortgaged Property, or any part thereof, or to collect the debts hereby secured or for the enforcement of such other or additional appropriate legal or equitable remedies as may be deemed most effectual to protect and enforce the rights and remedies herein granted or conferred, and in the event of the institution of any such action or suit any Mortgagee shall have the right, irrespective of the adequacy of the security, to have appointed a receiver of the Mortgaged Property and of all proceeds, rents, income, revenues and profits pertaining thereto or arising therefrom derived, received or had from the time of the commencement of such suit or action, and such receiver shall have all the usual powers and duties of receivers in like and similar cases, to the fullest extent permitted by law, and if any Mortgagee shall make application for the appointment of a receiver the Mortgagor hereby expressly consents that the court to which such application shall be made may, irrespective of the adequacy of the security, make said appointment; and

(dd) sell or cause to be sold all and singular the Mortgaged Property or any part thereof, and all right, title, interest, claim and demand of the Mortgagor therein or hereto, at public auction or otherwise, as may be prescribed or permitted, and in the manner prescribed or permitted by applicable law. ,

SECTION 2. (a) If, upon the expiration of 60 days after the happening of an Event of Default, the Government shall not have either (i) proceeded to exercise or enforce any of the remedies set forth in section 1 hereof or conferred by law or (ii) provided written notice to Ambac that it has decided not to exercise or enforce any of the remedies set forth in section 1 hereof or conferred by law, then, Ambac shall have the right to forthwith exercise or enforce any of the remedies set forth in section 1 hereof on behalf of all Noteholders provided that it shall not have the right to accelerate any Notes held by the Government. The Government shall not incur any liability to Ambac for its exercise or non-exercise of any of the remedies set forth in section 1 hereof or conferred by law.

(b) (1) Notwithstanding the provisions of section 1 of this article III and subsection (a) of this section, if, in the opinion of counsel satisfactory to the Government, the Government may not lawfully act on behalf and for the benefit of all Noteholders other than the Government, and if the Government Debt Notes have been accelerated, each Mortgagee shall have the right, immediately upon the happening of an Event of Default and notwithstanding any action taken by any other Mortgagee, to exercise on its own behalf any right or remedy herein or by law conferred.

(2) Nothing in this Mortgage contained shall affect or impair the right, which is absolute and unconditional, of any holder of any Note which may be secured hereby, to enforce the payment of the principal of, premium, if any, or interest on such Note on the date or dates any such interest, premium or principal shall become due and payable, whether by acceleration or otherwise, in accordance with the terms of such Note.

SECTION 3. The Mortgagor covenants that it will give immediate written notice to all of the Mortgagees of the occurrence of an Event of Default or in the event that any right or remedy described in clauses (aa) through (dd) of section 1 of this article III is exercised or enforced, or any action is taken to exercise or enforce any such right or remedy. Each Mortgagee covenants that it will give immediate written notice to the other Mortgagees of the occurrence of any Event of Default of which it has knowledge or in the event that such Mortgagee exercises or enforces any right or remedy described in said clauses (aa) through (dd), or takes any action to exercise or enforce any such right or remedy.

SECTION 4. At any sale hereunder any Noteholder or Noteholders shall have the right to bid for and purchase the Mortgaged Property, or such part thereof as shall be offered for sale.

SECTION 5. Subject to the provisions of article V hereof, any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies and any other sums received by the Mortgagees, the disposition of which is not otherwise herein specifically provided for, shall be applied first, to the payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes; and the balance, if any, shall be paid to whosoever shall be entitled thereto. Any proceeds of funds collected by the Government under this Mortgage for the account or benefit of, or which are distributable or attributable to, Ambac or any Noteholder, other than RUS, are not payments of principal of or interest on the Government Debt Notes as contemplated by 7 United States Code Annotated section 903(f) and shall be held by the Government in trust for the benefit of Ambac or such holder, as the case may be, and in no event shall be deemed to be moneys received for the use of the United States of America as contemplated by 31 United States Code Annotated section 484 or 31 United States Code annotated section 495.

SECTION 6. Every right or remedy herein conferred upon or reserved to the Mortgagees or to the Noteholders shall be cumulated and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law, or in equity.

or by statute. The pursuit of any right or remedy hereunder shall not be deemed to be an election and shall not preclude the pursuit of any other right or remedy.

SECTION 7. The Mortgagor, for itself and all who may claim through or under it, covenants that it will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated and the Mortgagor, for itself and all who may claim through or under it, hereby waives the benefit of all such laws unless such waiver shall be forbidden by law.

SECTION 8. If at any time after an Event of Default and prior to the institution of foreclosure proceedings, all payments in respect of principal and interest which shall have become due and payable by the terms of the Notes shall be paid to the respective Noteholders, and all other defaults hereunder and under the Notes shall have been cured, together with reimbursements for any resulting expense or damage, to the satisfaction of all the Noteholders, together with interest at the highest legal rate [- but not in excess of ten per centum (10%) per annum], then and in every such case, the Mortgagee or Mortgagees who shall have instituted any of the foregoing remedies shall, by written notice to the Mortgagor, waive such default or defaults, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 9. For purposes of this article III, to the extent permitted by applicable state law, each Noteholder appoints the Mortgagee or Mortgagees exercising any remedy as above provided as its attorney(s)-in-fact for such purpose.

SECTION 10. Nothing herein contained shall be deemed to authorize any mortgagee to authorize or consent to or accept or adopt on behalf of any other Mortgagee or any Noteholder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any holder thereof, or to authorize the Mortgagees to vote in respect of the claim of any Noteholder in any such proceeding.

SECTION 11. Any rights of action and claims under this Mortgage or the Notes may be prosecuted and enforced by the Mortgagee or Mortgagees prosecuting and enforcing the same without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and, to the extent permitted by applicable state law, any such proceeding instituted by any Mortgagee shall be brought in its own name as attorney-in-fact for the Noteholders, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Mortgagees, their agents and counsel, be for the ratable benefit of the Noteholders in respect of which such judgment has been recovered.

## ARTICLE IV

### POSSESSION UNTIL DEFAULT-DEFEASANCE CLAUSE

SECTION 1. Until some one or more of the Events of Default shall have happened, the Mortgagor shall be suffered and permitted to retain actual possession of the Mortgaged Property, and to manage, operate and use the same and any part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the proceeds, rents, revenues, issues, earnings, income, products and profits thereof or therefrom, subject to the provisions of this Mortgage.

SECTION 2. If the Mortgagor shall well and truly and indefeasibly pay or cause to be paid indefeasibly the whole amount of the principal of and interest, if any, on the Notes at the times and in the manner therein provided, according to the true intent and meaning thereof, then and in that case, all property, rights and interests hereby conveyed or assigned or pledged shall revert to the Mortgagor and the estate, right, title and interest of the Mortgagees and the Noteholders shall thereupon cease, determine and become void and the Mortgagees and the Noteholders, in such case, on written demand of the Mortgagor but at the Mortgagor's cost and expense, shall enter satisfaction of this Mortgage upon the record. In any event, each Noteholder, upon indefeasible payment in full to him by the Mortgagor of all amounts, of principal of and interest, if any, on any Note held by him and the payment and discharge by the Mortgagor of all charges due to such Noteholder intended to be secured hereunder, shall execute and deliver to the Mortgagor such instrument or satisfaction, discharge or release as shall be reasonably requested by the Mortgagor or required by law in the circumstances.

## ARTICLE V

### CERTAIN RIGHTS OF AMBAC AND [NAME OF BANK]

SECTION 1. All indebtedness of the Mortgagor to the Government evidenced by the New RUS Agreement (the "Total Government Debt") (including, without limitation principal, interest, premium, fees, penalties, indemnities and "post-petition interest" in bankruptcy) that may be deemed by any court to exist in favor of the Government shall be subordinated to the "AMBAC Debt" and the "Bank Debt" to the extent and in the manner provided in this article V. "AMBAC Debt" means, at any date, all indebtedness of the Mortgagor evidenced by the AMBAC Notes, this Mortgage, the 1983 Reimbursement Agreement and the 1985 Reimbursement Agreement (including, without limitation, principal, interest, premium, fees, penalties, indemnities and "post-petition interest" in bankruptcy). "Bank Debt" means, at any date, all indebtedness of the Mortgagor evidenced by the Bank Note, this Mortgage and the Bank Loan Agreement (including, without

limitation, principal, interest, premium, fees, penalties, indemnities and "post-petition interest" in bankruptcy).

SECTION 2. The Mortgagor, the Government, Ambac and [NAME OF BANK] agree that the Total Government Debt is subordinate and junior in right to payment, to the extent and in the manner provided in this article V, to the prior payment in full of all AMBAC Debt and all Bank Debt.

SECTION 3. Upon any acceleration of the Notes or any distribution of Mortgaged Property to creditors upon a liquidation or dissolution of the Mortgagor or in a subsequent bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Mortgagor, (i) the holders of AMBAC Debt and Bank Debt shall be entitled to receive payment in full of all AMBAC Debt and Bank Debt before the Government shall be entitled to receive any payment in respect of the Total Government Debt and (ii) until payment in full of all AMBAC Debt and Bank Debt, any distribution of assets of any kind or character to which the Government would be entitled but for this article V shall be paid by the Government, or any receiver, trustee in bankruptcy, liquidating trustee or other person making such payment or distribution to, or if received by the Government shall be held for the benefit of and shall be forthwith paid or delivered to, the holders of the AMBAC Debt and Bank Debt, for application to the payment of all AMBAC Debt and Bank Debt until all AMBAC Debt and Bank Debt shall have been paid in full after giving effect to any concurrent payment or distribution to the holders of AMBAC Debt and Bank Debt in respect of such AMBAC Debt and Bank Debt. Any payments to Ambac and [NAME OF BANK] pursuant to this article V shall be made on a pro rata basis according to the aggregate unpaid principal amount of the Ambac Notes and the Bank Note.

SECTION 4. The Mortgagor shall not pay and the Government shall have no right to collect, and agrees not to accept payments of interest or principal or other amounts then due and payable with respect to the Total Government Debt (i) unless at the time of such payment there exists net cash flow (after all operating and other expenses) from the Mortgaged Property, for any applicable payment period, sufficient to make payments of debt service and all other amounts then due and payable to Ambac pursuant to or in connection with the 1983 Reimbursement Agreement, the 1985 Reimbursement Agreement and this Mortgage and to [NAME OF BANK] pursuant to or in connection with the Bank Loan Agreement and this Mortgage for such period.

SECTION 5. In the event: (i) the AMBAC Debt becomes due or is declared due and payable prior to its stated maturity or the Mortgagor is in default or pending default (as reasonably determined by Ambac) under the 1983 Reimbursement Agreement, the 1985 Reimbursement Agreement or this Mortgage; (ii) the Bank Debt becomes due or is declared due and payable prior to its stated maturity or the Mortgagor is in default or pending default (as reasonably determined by [NAME OF BANK]) under the Bank Loan

Agreement or this Mortgage; or (iii) any payment prohibited by section 4 has been made; or (iv) any distribution, voluntary or involuntary, by operation of law or otherwise, is made of all or any part of the property of the Mortgagor to any creditor or creditors of the Mortgagor by reason of any liquidation of the Mortgagor, or of any receivership for the Mortgagor of all or substantially all of its property, or of any insolvency or bankruptcy proceedings or assignment for the benefit of Mortgagor's creditors, then, and in any such event, any payment or distribution of any kind which shall be payable with respect to the Total Government Debt or which has been received by the Government subsequent to the effective date of any of the events described in (i), (ii), (iii) or (iv) above, shall be held in trust by the Government for the benefit of Ambac and [NAME OF BANK] and shall be paid or delivered directly to Ambac and [NAME OF BANK] for application to the payment of the AMBAC Debt and the Bank Debt but only to the extent necessary to make payment in full of all sums due under the AMBAC Debt and the Bank Debt. In any such event, Ambac and/or [NAME OF BANK] may, but shall not be obligated to, collect any such payment or distribution that would, but for these subordination provisions, be payable or deliverable with respect to the Total Government Debt. In the event of any of the foregoing occurrences, and until the AMBAC Debt and the Bank Debt shall have been fully paid and satisfied and all of the obligations of the Mortgagor to Ambac and [NAME OF BANK] have been performed in full, no payment shall be made to or accepted by the Government in respect of the Total Government Debt. To the extent that the Government has received a payment or distribution of any kind with respect to Total Government Debt and the Government shall have paid or delivered such payment or distribution to Ambac and [NAME OF BANK] for application to the payment of the AMBAC Debt and the Bank Debt, the Total Government Debt or part thereof originally intended to be satisfied by such payment or distribution shall be deemed to be reinstated and outstanding as if such payment or distribution had not occurred.

SECTION 6. To the extent any payment under the 1983 Reimbursement Agreement, the 1985 Reimbursement Agreement, the AMBAC Notes, the Bank Loan Agreement, the Bank Note or the Mortgage (whether by or on behalf of the Mortgagor, as proceeds of security or enforcement of any right of setoff or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the AMBAC Debt and the Bank Debt or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

SECTION 7. This article V defines the relative rights of the Government and the holders of AMBAC Debt and the Bank Debt. Nothing in this article V shall (i) impair the obligation of the Mortgagor, which is absolute and unconditional to pay all amounts due with respect to the AMBAC Debt and the Bank Debt, (ii) impair

the obligation of the Mortgagor, which is absolute and unconditional, to pay all amounts due with respect to the Total Government Debt, (iii) affect the relative rights of the Government and creditors of the Mortgagor other than holders of AMBAC Debt and the holders of Bank Debt, (iv) affect the relative rights of the holders of AMBAC Debt among themselves or (v) affect the relative rights of the holders of Bank Debt among themselves.

SECTION 8. Prior to any assignment or transfer of all or any portion of the Total Government Debt, the Government shall cause the assignee or transferee to become bound by the provisions of this article V.

SECTION 9. This article V shall not be amended or modified in any respect, nor may any of the provisions hereof be waived, except by an instrument signed by the Government, Ambac and the Bank.

## ARTICLE VI

### MISCELLANEOUS

SECTION 1. It is hereby declared to be the intention of each of the parties hereto that all electric generating plants and appurtenances thereto, transmission and distribution lines, or systems, embraced in the Mortgaged Property, including, without limitation, all rights of way and easements granted or given to the Mortgagor or obtained by it to use real property in connection with the construction, operation or maintenance of such plants, lines, or systems, and all service and connecting lines, poles, posts, crossarms, wires, cables, conduits, mains, pipes, tubes, transformers, insulators, meters, electrical connections, lamps, fuses, junction boxes and fixtures forming part of, or used in connection with, such plants, lines or systems, and all other property physically attached to any of the foregoing-described property, shall be deemed to be real property.

SECTION 2. All of the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the Mortgagor shall bind its successors and assigns, whether so specified or not, and all titles, rights and remedies hereby granted to or conferred upon the Mortgagees shall pass to and inure to the benefit of the successors and assigns of the Mortgagees and shall be deemed to be granted or conferred for the ratable benefit and security of all who shall from time to time be the holders of Notes executed and delivered as herein provided. The Mortgagor and each of the Mortgagees hereby agree to execute and deliver such consents, acknowledgments and other instruments as may be reasonably requested by any Mortgagee or any Noteholder in connection with any assignment of the rights or interests of any Mortgagee or any Noteholder hereunder or under the Notes.



SECTION 3. The aggregate principal amount of the AMBAC Notes at any time outstanding for all purposes under this Mortgage shall be equal to the sum of (i) the aggregate amount of payments that have been made under the Municipal Bond Insurance Policies and the Surety Policies and (ii) the aggregate principal amount of the remaining commitments under such Municipal Bond Insurance Policies and the Surety Policies.

SECTION 4. The descriptive headings of the various articles of this Mortgage were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

SECTION 5. All demands, notices, reports, approvals, designations or directions required or permitted to be given hereunder shall be in writing and shall be deemed to be properly given if mailed by registered mail addressed to the proper party or parties at the following addresses:

As to the Mortgagor:           Big Rivers Electric Corporation  
  201 Third Street  
  P.O. Box 24  
  Henderson, Kentucky 42420  
  Attention: President and Chief  
  Executive Officer

As to the Mortgagees:       The Government:  
  
  The Administrator  
  Rural Utilities Service  
  United States Department of  
  Agriculture  
  1400 Independence Avenue, S.W.  
  Room 4051  
  Washington, D.C. 20250-1500

Ambac:  
  
  One State Street Plaza  
  New York, New York 10004

The Bank:

and as to any other person, firm, corporation or governmental body or agency having an interest herein by reason of being the holder of any Note or otherwise, at the last address designated by such person, firm, corporation, governmental body or agency to the Mortgagor and the Mortgagees. The Mortgagor or the Mortgagees may from time to time designate to each other a new address to which demands, notices, reports, approvals, designations or directions

may be addressed and from and after any such designation the address designated shall be deemed to be the address of such party in lieu of the address hereinabove given.

SECTION 6. The invalidity of any one or more phrases, clauses, sentences, paragraphs or provisions of this Mortgage shall not affect the remaining portions hereof, nor shall any such invalidity as to one Mortgagee or Noteholder hereunder affect the rights hereunder of the other Mortgagees or any other Noteholder.

SECTION 7. Accounting terms are used in this Mortgage in accordance with the meanings given them in the Uniform System of Accounts or, failing provision therefor in said System, the meanings given them by generally accepted accounting practices. Any reference herein to "directors" or "board of directors" shall be deemed to mean "trustees" or "board of trustees", as the case may be.

SECTION 8. To the extent that any of the property described or referred to in this Mortgage is governed by the provisions of the Uniform Commercial Code this Mortgage is hereby deemed a "security agreement" under the Uniform Commercial Code, and a "financing statement" under the Uniform Commercial Code for said security agreement. The mailing addresses of the Mortgagor as debtor, and of the Mortgagees as secured parties, are as set forth in section 5 of this article VI.

SECTION 9. The Mortgagor agrees to indemnify and save harmless each of the Mortgagees against any liability or damages which any of them may incur or sustain in the exercise and performance of their powers and duties hereunder. For such reimbursement and indemnity, the Mortgagees shall be secured under this Mortgage in the same manner as the Notes and all such reimbursements for expense or damage shall be paid to the Mortgagees incurring or suffering the same with interest at the rate specified in section 8 of article II hereof.

SECTION 10. At all times when any Note is held by RUS, or in the event RUS shall assign a Note without having insured the payment of such Note, this Mortgage shall secure payment of such note for the benefit of RUS or such uninsured holder thereof, as the case may be. Whenever any Note may be sold to an insured purchaser, it shall continue to be considered a "Note" as defined herein, but as to any such insured Note RUS, and not such insured purchaser, shall be considered to be, and shall have the rights of, the Noteholder for purposes of this Mortgage.

SECTION 11. Any reference herein to the Administrator shall be deemed to mean the Administrator of the Rural Utilities Service or his duly authorized representative or any other person or authority in whom may be vested the duties and functions which the Administrator is now or may hereafter be authorized by law to perform.

SECTION 12. This Mortgage may be simultaneously executed in any number of counterparts, and all of said counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

SECTION 13. To the extent that provisions of this Mortgage are inconsistent with provisions of the New RUS Agreement, the 1983 Reimbursement Agreement, the 1985 Reimbursement Agreement and/or the Bank Loan Agreement, the provisions of this Mortgage shall control.

SECTION 14. With respect to any provision of this Mortgage that requires the approval of or the consent of RUS and/or Ambac, the Mortgagor shall give RUS and/or Ambac (as the case may be) notice of the action that requires consent. If RUS and/or Ambac (as the case may be) shall not respond to any such notice within 60 days of its date, then RUS and/or Ambac (as the case may be) shall be deemed to have given approval or consent to the Mortgagor.

IN WITNESS WHEREOF, BIG RIVERS ELECTRIC CORPORATION, as Mortgagor, has caused this Restated Mortgage and Security Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its officers thereunto duly authorized, **AMBAC ASSURANCE CORPORATION**, as Mortgagee, has caused this Restated Mortgage and Security Agreement to be signed in its name and its corporate seal to be hereunto affixed by its officers thereunto duly authorized, **[NAME OF BANK]**, as Mortgagee, has caused this Restated Mortgage and Security Agreement to be signed in its name and its corporate seal to be hereunto affixed by its officers thereunto duly authorized, and **UNITED STATES OF AMERICA**, as Mortgagee, has caused this Restated Mortgage and Security Agreement to be duly executed in its behalf, all as of the day and year first above written.

(SEAL)

**BIG RIVERS ELECTRIC CORPORATION**

Attest:

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

\_\_\_\_\_  
Secretary

Executed by the Mortgagor  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
Witnesses

(SEAL)

UNITED STATES OF AMERICA,  
acting through the  
Administrator of the  
Rural Utilities Service

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

Executed by the Mortgagee  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
Witnesses

(SEAL)

AMBAC ASSURANCE CORPORATION

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

Executed by the Mortgagee  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
Witnesses

(SEAL)

[NAME OF BANK]

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

Executed by the Mortgagee  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
Witnesses



DISTRICT OF COLUMBIA ) : ss:

I, \_\_\_\_\_, a Notary Public in and for the District of Columbia, do hereby certify that \_\_\_\_\_, Administrator of the **RURAL UTILITIES SERVICE**, an agency of the United States of America, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Administrator of said Rural Utilities Service, appeared before me this day in person and acknowledged that he, being thereunto duly authorized, signed, sealed and delivered said instrument as his free and voluntary act as such Administrator of said Rural Utilities Service, and as the free and voluntary act of the United States of America acting through the Rural Utilities Service, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_th day of \_\_\_\_\_, A.D. 1998.

\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

(Notarial Seal)

My commission expires: \_\_\_\_\_

STATE OF NEW YORK )  
 )  
 ) : ss.  
COUNTY OF )

I, \_\_\_\_\_, a Notary Public in and for the county and state aforesaid, do hereby certify that \_\_\_\_\_ of **AMBAC ASSURANCE CORPORATION**, a corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_ of said corporation, appeared before me this day in person and acknowledged that he, being thereunto duly authorize, signed, sealed and delivered said instrument as his free and voluntary act as such \_\_\_\_\_ of said corporation, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, A.D. 1998.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
County, New York

(Notarial Seal) .  
.

My commission expires: \_\_\_\_\_





APPENDIX D

For purposes of this Mortgage, the term:

**"Permitted Encumbrances"** shall mean:

(1) as to the property specifically described in Granting Clauses I through VI, the restrictions, exceptions, reservations, conditions, limitations, interests and other matters which are set forth or referred to in such descriptions and each of which fits one or more of the clauses of this definition, PROVIDED, such matters do not in the aggregate materially detract from the value of the Mortgaged Property taken as a whole and do not materially impair the use of such property for the purposes for which it is held by the Mortgagor;

(2) liens for taxes, assessments and other governmental charges which are not delinquent;

(3) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(4) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business for charges which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(5) liens in respect of judgments or awards with respect to which the Mortgagor shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Mortgagor shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(6) easements and similar rights granted by the Mortgagor over or in respect of any Mortgaged Property, PROVIDED that in the opinion of the Board of Directors of the Mortgagor or a duly authorized officer of the Mortgagor such grant will not impair the usefulness of such property in the conduct of the Mortgagor's business and will not be prejudicial to the interests of the Mortgagees, and similar rights granted by any predecessor in title of the Mortgagor;

(7) easements, leases, reservations or other rights of others in any property of the Mortgagor for streets, roads, bridges, pipes, pipe lines, railroads, electric transmission and distribution lines, telegraph and telephone lines, the removal of oil, gas, coal or other minerals and other similar purposes, flood

rights, river control and development rights, sewage and drainage rights, restrictions against pollution and zoning laws and minor defects and irregularities in the record evidence of title, PROVIDED that such easements, leases, reservations, rights, restrictions, laws, defects and irregularities do not materially affect the marketability of title to such property and do not in the aggregate materially impair the use of the Mortgaged Property taken as whole for the purposes for which it is held by the Mortgagor;

(8) liens upon lands over which easements or rights of way are acquired by the Mortgagor for any of the purposes specified in paragraph (7) of this definition, securing indebtedness neither created, assumed nor guaranteed by the Mortgagor nor on account of which it customarily pays interest, which liens do not materially impair the use of such easements or rights of way for the purposes for which they are held by the Mortgagor;

(9) leases existing at the date of this instrument affecting property owned by the Mortgagor at said date which have been previously disclosed to the Mortgagees in writing and leases for a term of not more than two years (including any extensions or renewals) affecting property acquired by the Mortgagor after said date;

(10) terminable or short term leases or permits for occupancy, which leases or permits expressly grant to the Mortgagor the right to terminate them at any time on not more than six months' notice and which occupancy does not interfere with the operation of the business of the Mortgagor;

(11) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or performance of which other obligations or acts is required under lease, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(12) liens or privileges of any employees of the Mortgagor for salary or wages earned but not yet payable;

(13) the burdens of any law or governmental regulation or permit requiring the Mortgagor to maintain certain facilities or perform certain acts as a condition of its occupancy of or interference with any public lands or any river or stream or navigable waters;

(14) any irregularities in or deficiencies of title to any rights-of-way for pipe lines, telephone lines, telegraph lines, power lines or appurtenances thereto, or other improvements thereon, and to any real estate used or to be used primarily for right-of-way purposes, PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor shall have obtained from the apparent owner of the lands or estates therein covered by any such right-of-

way a sufficient right, by the terms of the instrument granting such right-of-way, to the use thereof for the construction, operation or maintenance of the lines, appurtenances or improvements for which the same are used or are to be used, or PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor has power under eminent domain, or similar statutes, to remove such irregularities or deficiencies;

(15) rights reserved to, or vested in, any municipality or governmental or other public authority to control or regulate any property of the Mortgagor, or to use such property in any manner, which rights do not materially impair the use of such property, for the purposes for which it is held by the Mortgagor;

(16) any obligations or duties, affecting the property of the Mortgagor, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;

(17) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Mortgagor upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Mortgagor; PROVIDED, HOWEVER, that nothing in this clause 17 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

(18) as to properties of other operating electric companies acquired after the date of this Mortgage by the Mortgagor, reservations and other matters as to which such properties may be subject;

(19) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Mortgagor to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 19 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

(20) liens arising out of any defeased mortgage or indenture of the Mortgagor;

(21) the undivided interest of other owners, and liens on such undivided interests, in property owned jointly with the Mortgagor as well as the rights of such owners to such property pursuant to the ownership contracts;

(22) any lien or privilege vested in any lessor, licensor or permittee for rent to become due or for other obligations or acts

to be performed, the payment of which rent or the performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent; and

(23) purchase money mortgages in an amount not exceeding 10% of Net Utility Plant.

SCHEDULE 1.88

PROMISSORY NOTE

[\$1,022,737,000]

Washington, D.C.

\_\_\_\_\_, 199\_\_

FOR VALUE RECEIVED, the undersigned, BIG RIVERS ELECTRIC CORPORATION ("Big Rivers"), a Kentucky corporation, hereby unconditionally promises to pay to the United States of America, acting through the United States Department of Agriculture, Rural Utilities Service, (the "RUS"), at the office of the RUS located in Washington, D.C., in lawful money of the United States of America and in immediately available funds, the principal amount of [One Billion Twenty Two Million Seven Hundred Thirty-Seven Thousand Dollars] [(\$1,022,737,000)] together with interest on so much of the principal amount as is from time to time outstanding and unpaid at the rate of [5.75]% per anum simple interest as set forth below.

Big Rivers shall make quarterly payments of interest and/or principal commencing on \_\_\_\_\_ [1], 199\_\_, and continuing on the [first] day of January, April, July and October of each year through and including [\_\_\_\_\_] such that, after each such payment, the outstanding amount under this Note, including principal and all accrued interest, if any, does not exceed the Allowed Balance amount shown on the RUS Maximum Debt Balance Schedule, attached hereto and hereby made a part hereof, for the applicable date, as such Allowed Balance amount shall be adjusted as provided below. If any such payment is insufficient to retire all interest accrued during the period ending with such payment and beginning with the last previous payment, then the amount of accrued but unpaid interest relating to such period shall be added to the principal amount of this Note. If the day upon which any payment hereunder is due falls on a day that is not a Business Day (as defined in the New RUS Agreement (as defined below)), then such payment shall be due on the next Business Day.

The "Cap X Adjustment" shall mean an amount determined for any given quarter by the following formula:

$$\text{Cap X Adjustment} = a + b - c$$

where "a" is the amount shown for the applicable quarter on the attached Schedule of Starting Amounts for Cap X Adjustment; "b" is equal to one-third (1/3) of the Arbitrage Amount (as defined below) for the applicable quarter; and "c" is the aggregate amount of all Big Rivers' actual capital expenditures (including those incurred pursuant to any of the Operative Documents (as defined in the Participation Agreement (as defined below)) and other capital expenditures (as determined in accordance with RUS Uniform System of Accounts Bulletin 1767B, as amended, modified or replaced from time to time) for the applicable quarter.

"Arbitrage Amount" means, with respect to any particular calendar quarter, all net revenues, if any, received in such quarter from (i) the net benefit of purchasing power from third parties for resale to Big Rivers' Members instead of purchasing such power from LG&E Energy (as defined in the Plan (as defined below)) and (ii) an amount equal to the net revenues of any off-system power sales in excess of net revenues shown on the attached Schedule X for the applicable period, provided, however, that, if the actual sales margin for Member sales is less than the projected sales margin for Member sales shown on Schedule Y for the applicable period, such amount referenced in this clause (ii) shall be reduced (but not to an amount less than 0) by the difference between such projected sales margin shown on Schedule Y and such actual sales margin, but only to the extent that the difference is caused by less-than-projected MWh sales as shown on Schedule Y for the applicable period.

Within [45] days following the quarterly payment due [ ] and within [45] days following each subsequent quarterly payment, Big Rivers shall determine the Cap X Adjustment for the preceding calendar quarter. The Allowed Balance amount corresponding to the next payment due and the Allowed Balance amount corresponding to each succeeding payment due then shall be (i) reduced to the extent the Cap X Adjustment so determined is a positive number, or (ii) increased to the extent the Cap X Adjustment so determined is a negative number; provided, however, that (x) no Allowed Balance amount for any quarter shall be increased to an amount greater than the unadjusted Allowed Balance amount shown for such quarter on the attached RUS Maximum Debt Balance Schedule, and (y) in the event of a Rate Reduction (as defined below), there shall be no increase to any Allowed Balance amount.

A "Rate Reduction" means a change in the rates Big Rivers charges to its Members which change occurs after the Effective Date (as defined in the New Participation Agreement among Big Rivers, LG&E Energy Marketing Inc., Western Kentucky Leasing Corp., WKE Station Two Inc. and Western Kentucky Energy Corp. (the "Participation Agreement")) and which change (i) has not been consented to by the RUS, and (ii) results in rates lower than those rates which were to be in effect on the said Effective Date; provided, however, a change in rates shall not be deemed a Rate Reduction for purposes of this Promissory Note if such change constitutes incentive rates intended to produce substantial power sales to new customers or substantial additional sales to existing customers.

On [ ], the entire outstanding principal hereof, together with all accrued but unpaid interest thereon, shall be due and payable in full.

This Note is secured by the lien of that certain Restated Mortgage and Security Agreement dated as of [ ] among the undersigned, the United States of America, Ambac Assurance Corporation [and [ ] (the "New RUS Mortgage").

This Note is the New RUS Note referred to in the First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code As Modified And Restated June 9, 1997 as modified by the Modifications To The First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code As Modified And Restated June 9, 1997 (as modified or

amended, the "Plan") which Plan was filed with and confirmed by the United States Bankruptcy Court for the Western District of Kentucky.

Any amounts under this Note may be prepaid at any time without penalty or prepayment premium.

Upon the occurrence of any one or more events of default specified in the New RUS Agreement (as defined below) and/or the New RUS Mortgage all amounts then remaining unpaid on this Note may be declared to be immediately due and payable all as provided therein.

The New RUS Agreement shall mean that certain New RUS Agreement dated as of \_\_\_\_\_ between the undersigned and the United States of America.

Presentment, demand, protest and all other notices of any kind are hereby expressly waived by the undersigned.

This Note shall be governed by and construed in accordance with federal law.

**BIG RIVERS ELECTRIC CORPORATION**

By: \_\_\_\_\_  
Title: President

[Corporate Seal]

Attest:

\_\_\_\_\_  
[Secretary or Assistant Secretary]

[Schedules to be amended to reflect, inter alia, actual Effective Date.]

**Notes Concerning RUS Maximum Debt Balance Schedule**

1. The RUS Maximum Debt Balance Schedule assumes a Closing Payment of [\$78,428,000]. As indicated in Schedule 1.41 of the Plan, the actual amount of the Closing Payment may be higher or lower than this assumed amount. If the actual Closing Payment is lower than this assumed amount, the RUS Maximum Debt Balance Schedule would be adjusted as follows: each figure in the Allowed Balance column would be increased by an amount equal to (a) the percentage in the Adjustment Factor column, multiplied by (b) the difference between [\$78,428,000] and the actual Closing Payment. If the actual Closing Payment is higher than this assumed amount, the RUS Maximum Debt Balance Schedule would be adjusted as follows: each figure in the Allowed Balance column would be reduced by an amount equal to (a) the percentage in the Adjustment Factor column, multiplied by (b) the difference between the actual Closing Payment and [\$78,428,000].
  
2. The RUS Maximum Debt Balance Schedule also assumes a Closing Date of July 1, 1998. If the actual Closing were to occur subsequent to July 1, 1998, the RUS Maximum Debt Balance Schedule may require further adjustments as shall be agreed upon between the RUS and Debtor within the parameters set forth and as discussed in the Feasibility Analysis (May 20, 1998) which is attached to the Disclosure Statement.



**BIG RIVERS ELECTRIC CORPORATION**  
**Effective Date: July 1, 1998**  
**RUS MAXIMUM DEBT BALANCE SCHEDULE**

1st of the Month Allowed Balance  
 Following Quarterly Payment

11-May-98

	YEAR	MONTH	ALLOWED BALANCE	ADJUSTMENT FACTOR
1	Initial Payment =	\$78,428	\$1,022,737	100.000%
2	1998	JULY	\$1,022,737	100.000%
3	1998	OCTOBER	\$1,022,737	100.000%
4	1999	JAN	\$1,019,737	99.707%
5	1999	APRIL	\$1,016,737	99.414%
6	1999	JULY	\$1,013,737	99.121%
7	1999	OCTOBER	\$1,010,737	98.828%
8	2000	JAN	\$1,008,237	98.584%
9	2000	APRIL	\$1,005,737	98.340%
10	2000	JULY	\$1,003,237	98.096%
11	2000	OCTOBER	\$1,000,737	97.852%
12	2001	JAN	\$999,737	97.754%
13	2001	APRIL	\$998,737	97.656%
14	2001	JULY	\$997,737	97.558%
15	2001	OCTOBER	\$996,737	97.460%
16	2002	JAN	\$996,237	97.411%
17	2002	APRIL	\$995,737	97.362%
18	2002	JULY	\$995,237	97.313%
19	2002	OCTOBER	\$994,737	97.264%
20	2003	JAN	\$994,737	97.264%
21	2003	APRIL	\$994,737	97.264%
22	2003	JULY	\$994,737	97.264%
23	2003	OCTOBER	\$994,737	97.264%
24	2004	JAN	\$991,737	96.971%
25	2004	APRIL	\$988,737	96.678%
26	2004	JULY	\$985,737	96.385%
27	2004	OCTOBER	\$982,737	96.092%
28	2005	JAN	\$977,737	95.603%
29	2005	APRIL	\$972,737	95.114%
30	2005	JULY	\$967,737	94.625%
31	2005	OCTOBER	\$962,737	94.136%
32	2006	JAN	\$956,737	93.549%
33	2006	APRIL	\$950,737	92.962%
34	2006	JULY	\$944,737	92.375%
35	2006	OCTOBER	\$938,737	91.788%
36	2007	JAN	\$932,237	91.152%
37	2007	APRIL	\$925,737	90.516%
38	2007	JULY	\$919,237	89.880%
39	2007	OCTOBER	\$912,737	89.244%
40	2008	JAN	\$904,237	88.413%
41	2008	APRIL	\$895,737	87.582%
42	2008	JULY	\$887,237	86.751%
43	2008	OCTOBER	\$878,737	85.920%

**BIG RIVERS ELECTRIC CORPORATION**  
**Effective Date: July 1, 1998**  
**RUS MAXIMUM DEBT BALANCE SCHEDULE**

1st of the Month Allowed Balance

11-May-98

Following Quarterly Payment

	YEAR	MONTH	ALLOWED BALANCE	ADJUSTMENT FACTOR
44	2009	JAN	\$870,237	85.089%
45	2009	APRIL	\$861,737	84.258%
46	2009	JULY	\$853,237	83.427%
47	2009	OCTOBER	\$844,737	82.596%
48	2010	JAN	\$835,737	81.716%
49	2010	APRIL	\$826,737	80.836%
50	2010	JULY	\$817,737	79.956%
51	2010	OCTOBER	\$808,737	79.076%
52	2011	JAN	\$798,237	78.049%
53	2011	APRIL	\$787,737	77.022%
54	2011	JULY	\$777,237	75.995%
55	2011	OCTOBER	\$766,737	74.968%
56	2012	JAN	\$751,737	73.501%
57	2012	APRIL	\$736,737	72.034%
58	2012	JULY	\$721,737	70.567%
59	2012	OCTOBER	\$706,737	69.100%
60	2013	JAN	\$706,737	69.100%
61	2013	APRIL	\$706,737	69.100%
62	2013	JULY	\$706,737	69.100%
63	2013	OCTOBER	\$706,737	69.100%
64	2014	JAN	\$691,237	67.584%
65	2014	APRIL	\$675,737	66.068%
66	2014	JULY	\$660,237	64.552%
67	2014	OCTOBER	\$644,737	63.036%
68	2015	JAN	\$631,737	61.765%
69	2015	APRIL	\$618,737	60.494%
70	2015	JULY	\$605,737	59.223%
71	2015	OCTOBER	\$592,737	57.952%
72	2016	JAN	\$574,737	56.192%
73	2016	APRIL	\$559,737	54.432%
74	2016	JULY	\$538,737	52.672%
75	2016	OCTOBER	\$520,737	50.912%
76	2017	JAN	\$502,237	49.103%
77	2017	APRIL	\$483,737	47.294%
78	2017	JULY	\$465,237	45.485%
79	2017	OCTOBER	\$446,737	43.676%
80	2018	JAN	\$427,237	41.769%
81	2018	APRIL	\$407,737	39.862%
82	2018	JULY	\$388,237	37.955%
83	2018	OCTOBER	\$368,737	36.048%
84	2019	JAN	\$343,737	34.092%
85	2019	APRIL	\$328,737	32.136%
86	2019	JULY	\$308,737	30.180%
87	2019	OCTOBER	\$288,737	28.224%
88	2020	JAN	\$268,737	26.268%
89	2020	APRIL	\$248,737	24.312%
90	2020	JULY	\$228,737	22.356%
91	2020	OCTOBER	\$208,737	20.400%

**BIG RIVERS ELECTRIC CORPORATION**  
**Effective Date: July 1, 1998**  
**RUS MAXIMUM DEBT BALANCE SCHEDULE**  
 1st of the Month Allowed Balance  
 Following Quarterly Payment

11-May-98

	<b>YEAR</b>	<b>MONTH</b>	<b>ALLOWED BALANCE</b>	<b>ADJUSTMENT FACTOR</b>
92	2021	JAN	\$188,737	18.444%
93	2021	APRIL	\$168,737	16.488%
94	2021	JULY	\$148,737	14.532%
95	2021	OCTOBER	\$128,737	12.576%
96	2022	JAN	\$96,553	9.429%
97	2022	APRIL	\$64,369	6.282%
98	2022	JULY	\$32,184	3.135%

**BIG RIVERS ELECTRIC CORPORATION**  
**Schedule of Starting Amounts**  
**for Cap X Adjustments**  
**Effective Date: July 1, 1998**

<b>YEAR</b>	<b>MONTH</b>	<b>ALLOWED BALANCE (\$1,000'S)</b>
1998	OCTOBER	2,262
1999	JAN	2,262
1999	APRIL	1,428
1999	JULY	1,428
1999	OCTOBER	1,428
2000	JAN	1,428
2000	APRIL	1,995
2000	JULY	1,995
2000	OCTOBER	1,995
2001	JAN	1,995
2001	APRIL	3,199
2001	JULY	3,199
2001	OCTOBER	3,199
2002	JAN	3,199
2002	APRIL	4,603
2002	JULY	4,603
2002	OCTOBER	4,603
2003	JAN	4,603
2003	APRIL	5,965
2003	JULY	5,965
2003	OCTOBER	5,965
2004	JAN	5,965
2004	APRIL	918
2004	JULY	918
2004	OCTOBER	918
2005	JAN	918
2005	APRIL	873
2005	JULY	873
2005	OCTOBER	873
2006	JAN	873
2006	APRIL	827
2006	JULY	827
2006	OCTOBER	827
2007	JAN	827
2007	APRIL	781
2007	JULY	781
2007	OCTOBER	781
2008	JAN	781
2008	APRIL	973
2008	JULY	973
2008	OCTOBER	973
2009	JAN	973
2009	APRIL	915
2009	JULY	915
2009	OCTOBER	915
2010	JAN	915
2010	APRIL	857
2010	JULY	857
2010	OCTOBER	857
2011	JAN	857

**BIG RIVERS ELECTRIC CORPORATION**  
**Schedule of Starting Amounts**  
**for Cap X Adjustments**  
**Effective Date: July 1, 1998**

YEAR	MONTH	ALLOWED BALANCE (\$1,000'S)
2011	APRIL	782
2011	JULY	782
2011	OCTOBER	782
2012	JAN	782
2012	APRIL	695
2012	JULY	695
2012	OCTOBER	695
2013	JAN	695
2013	APRIL	607
2013	JULY	607
2013	OCTOBER	607
2014	JAN	607
2014	APRIL	518
2014	JULY	518
2014	OCTOBER	518
2015	JAN	518
2015	APRIL	429
2015	JULY	429
2015	OCTOBER	429
2016	JAN	429
2016	APRIL	338
2016	JULY	338
2016	OCTOBER	338
2017	JAN	338
2017	APRIL	245
2017	JULY	245
2017	OCTOBER	245
2018	JAN	245
2018	APRIL	150
2018	JULY	150
2018	OCTOBER	150
2019	JAN	150
2019	APRIL	53
2019	JULY	53
2019	OCTOBER	53
2020	JAN	53
2020	APRIL	(47)
2020	JULY	(47)
2020	OCTOBER	(47)
2021	JAN	(47)
2021	APRIL	(150)
2021	JULY	(150)
2021	OCTOBER	(150)
2022	JAN	(150)
2022	APRIL	(258)
2022	JULY	(258)
2022	OCTOBER	(258)
2023	JAN	(258)

**SCHEDULE X**  
**BIG RIVERS ELECTRIC CORPORATION**  
**Effective Date: JULY 1, 1998**  
**Other Sales Quarterly MWh and Margin**

YEAR	MONTH	MWh	Margin (\$1,000'S)
1998	OCTOBER	0	0
1999	JAN	0	0
1999	APRIL	0	0
1999	JULY	0	0
1999	OCTOBER	0	0
2000	JAN	0	0
2000	APRIL	0	0
2000	JULY	0	0
2000	OCTOBER	0	0
2001	JAN	0	0
2001	APRIL	0	0
2001	JULY	0	0
2001	OCTOBER	0	0
2002	JAN	0	0
2002	APRIL	0	0
2002	JULY	0	0
2002	OCTOBER	0	0
2003	JAN	0	0
2003	APRIL	0	0
2003	JULY	0	0
2003	OCTOBER	0	0
2004	JAN	0	0
2004	APRIL	0	0
2004	JULY	0	0
2004	OCTOBER	0	0
2005	JAN	0	0
2005	APRIL	0	0
2005	JULY	0	0
2005	OCTOBER	0	0
2006	JAN	0	0
2006	APRIL	0	0
2006	JULY	0	0
2006	OCTOBER	0	0
2007	JAN	0	0
2007	APRIL	0	0
2007	JULY	0	0
2007	OCTOBER	0	0
2008	JAN	0	0
2008	APRIL	0	0
2008	JULY	0	0
2008	OCTOBER	0	0
2009	JAN	0	0
2009	APRIL	0	0
2009	JULY	0	0
2009	OCTOBER	0	0
2010	JAN	0	0
2010	APRIL	0	0
2010	JULY	0	0
2010	OCTOBER	0	0
2011	JAN	0	0

**SCHEDULE X**  
**BIG RIVERS ELECTRIC CORPORATION**  
**Effective Date: JULY 1, 1998**  
**Other Sales Quarterly MWh and Margin**

YEAR	MONTH	MWh	Margin (\$1,000'S)
2011	APRIL	305,205	2,489
2011	JULY	305,205	2,489
2011	OCTOBER	305,205	2,489
2012	JAN	305,205	2,489
2012	APRIL	383,897	3,561
2012	JULY	383,897	3,561
2012	OCTOBER	383,897	3,561
2013	JAN	383,897	3,561
2013	APRIL	373,255	3,518
2013	JULY	373,255	3,518
2013	OCTOBER	373,255	3,518
2014	JAN	373,255	3,518
2014	APRIL	362,272	3,446
2014	JULY	362,272	3,446
2014	OCTOBER	362,272	3,446
2015	JAN	362,272	3,446
2015	APRIL	350,939	3,374
2015	JULY	350,939	3,374
2015	OCTOBER	350,939	3,374
2016	JAN	350,939	3,374
2016	APRIL	339,241	3,308
2016	JULY	339,241	3,308
2016	OCTOBER	339,241	3,308
2017	JAN	339,241	3,308
2017	APRIL	327,168	3,240
2017	JULY	327,168	3,240
2017	OCTOBER	327,168	3,240
2018	JAN	327,168	3,240
2018	APRIL	314,708	3,161
2018	JULY	314,708	3,161
2018	OCTOBER	314,708	3,161
2019	JAN	314,708	3,161
2019	APRIL	301,848	3,064
2019	JULY	301,848	3,064
2019	OCTOBER	301,848	3,064
2020	JAN	301,848	3,064
2020	APRIL	288,573	2,961
2020	JULY	288,573	2,961
2020	OCTOBER	288,573	2,961
2021	JAN	288,573	2,961
2021	APRIL	274,873	2,858
2021	JULY	274,873	2,858
2021	OCTOBER	274,873	2,858
2022	JAN	274,873	2,858
2022	APRIL	260,739	2,751
2022	JULY	260,739	2,751
2022	OCTOBER	260,739	2,751
2023	JAN	260,739	2,751

**SCHEDULE T**  
**BIG RIVERS ELECTRIC CORPORATION**  
**Effective Date: July 1, 1998**  
**Non-Smelter Member Sales Quarterly MWh and Margin**

YEAR	MONTH	MWh	Margin (\$1,000'S)
1998	OCTOBER	847,742	12,675
1999	JAN	847,742	12,675
1999	APRIL	863,985	12,895
1999	JULY	863,985	12,895
1999	OCTOBER	863,985	12,895
2000	JAN	863,985	12,895
2000	APRIL	879,020	13,112
2000	JULY	879,020	13,112
2000	OCTOBER	879,020	13,112
2001	JAN	879,020	13,112
2001	APRIL	893,010	13,446
2001	JULY	893,010	13,446
2001	OCTOBER	893,010	13,446
2002	JAN	893,010	13,446
2002	APRIL	904,162	13,469
2002	JULY	904,162	13,469
2002	OCTOBER	904,162	13,469
2003	JAN	904,162	13,469
2003	APRIL	918,223	13,632
2003	JULY	918,223	13,632
2003	OCTOBER	918,223	13,632
2004	JAN	918,223	13,632
2004	APRIL	932,806	13,742
2004	JULY	932,806	13,742
2004	OCTOBER	932,806	13,742
2005	JAN	932,806	13,742
2005	APRIL	947,844	13,856
2005	JULY	947,844	13,856
2005	OCTOBER	947,844	13,856
2006	JAN	947,844	13,856
2006	APRIL	963,357	14,036
2006	JULY	963,357	14,036
2006	OCTOBER	963,357	14,036
2007	JAN	963,357	14,036
2007	APRIL	978,494	16,159
2007	JULY	978,494	16,159
2007	OCTOBER	978,494	16,159
2008	JAN	978,494	16,159
2008	APRIL	1,021,974	16,497
2008	JULY	1,021,974	16,497
2008	OCTOBER	1,021,974	16,497
2009	JAN	1,021,974	16,497
2009	APRIL	1,037,970	16,431
2009	JULY	1,037,970	16,431
2009	OCTOBER	1,037,970	16,431
2010	JAN	1,037,970	16,431
2010	APRIL	1,054,425	16,371
2010	JULY	1,054,425	16,371
2010	OCTOBER	1,054,425	16,371
2011	JAN	1,054,425	16,371



**BIG RIVERS ELECTRIC CORPORATION**

Effective Date: July 1, 1998

**Non-Smelter Member Sales Quarterly MWh and Margin**

<b>YEAR</b>	<b>MONTH</b>	<b>MWh</b>	<b>Margin (\$1,000'S)</b>
2011	APRIL	1,071,355	16,451
2011	JULY	1,071,355	16,451
2011	OCTOBER	1,071,355	16,451
2012	JAN	1,071,355	16,451
2012	APRIL	1,088,124	17,493
2012	JULY	1,088,124	17,493
2012	OCTOBER	1,088,124	17,493
2013	JAN	1,088,124	17,493
2013	APRIL	1,125,760	17,690
2013	JULY	1,125,760	17,690
2013	OCTOBER	1,125,760	17,690
2014	JAN	1,125,760	17,690
2014	APRIL	1,143,354	17,591
2014	JULY	1,143,354	17,591
2014	OCTOBER	1,143,354	17,591
2015	JAN	1,143,354	17,591
2015	APRIL	1,161,410	17,486
2015	JULY	1,161,410	17,486
2015	OCTOBER	1,161,410	17,486
2016	JAN	1,161,410	17,486
2016	APRIL	1,179,950	17,421
2016	JULY	1,179,950	17,421
2016	OCTOBER	1,179,950	17,421
2017	JAN	1,179,950	17,421
2017	APRIL	1,198,980	17,350
2017	JULY	1,198,980	17,350
2017	OCTOBER	1,198,980	17,350
2018	JAN	1,198,980	17,350
2018	APRIL	1,218,512	17,265
2018	JULY	1,218,512	17,265
2018	OCTOBER	1,218,512	17,265
2019	JAN	1,218,512	17,265
2019	APRIL	1,238,561	17,113
2019	JULY	1,238,561	17,113
2019	OCTOBER	1,238,561	17,113
2020	JAN	1,238,561	17,113
2020	APRIL	1,259,140	16,941
2020	JULY	1,259,140	16,941
2020	OCTOBER	1,259,140	16,941
2021	JAN	1,259,140	16,941
2021	APRIL	1,280,263	16,811
2021	JULY	1,280,263	16,811
2021	OCTOBER	1,280,263	16,811
2022	JAN	1,280,263	16,811
2022	APRIL	1,301,929	16,689
2022	JULY	1,301,929	16,689
2022	OCTOBER	1,301,929	16,689
2023	JAN	1,301,929	16,689



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF KENTUCKY  
OWENSBORO DIVISION

IN RE:	)	CHAPTER 11
	)	
BIG RIVERS ELECTRIC CORPORATION,	)	CASE NO. 96-41168
	)	
Debtor.	)	
_____		)

FILED DESIGNATED DOCUMENTS

ATTACHED HERETO ARE SCHEDULES 5.3(a) AND 5.4(a) OF THE PLAN, AS MODIFIED BY THE PLAN MODIFICATIONS, FILED IN ACCORDANCE WITH THE COURT'S ORDER APRIL 23, 1998, AS MODIFIED BY ORDERS DATED MAY 4, 1998 AND MAY 27, 1998.<sup>1</sup>

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<sup>1</sup> The Second Amendment to the New Participation Agreement has been filed under seal in accordance with this Court's Protective Order dated May 28, 1997.

**SCHEDULE 5.3(a)**

**SMELTER TARIFF: In the event of conflict between this schedule and any filed tariff, the tariff will govern.**

<b>Maximum Demand (MW):</b>	<b>SOUTHWIRE</b>	<b>ALCAN</b>
Tier 1 + 2 During Contract Term	339.0	233.0
Tier 1 Closing - 12/31/2002	129.5	98.0
Tier 1 After 12/31/2002	48.0	48.5

NOTE: Load and tariff for Southwire includes the Rod & Cable mill.

**RATE PER KWH - TIER 1 SOUTHWIRE ALCAN**

	Closing through 12/31/2002	Closing through 12/31/2002	
Rate per kWh	\$0.0312	\$0.0312	\$ per kWh ( <i>Delivered to Distribution Cooperatives by LEM</i> )
Each kWh each month up to the number of days in the month multiplied by 24 hours by the following	126,910	96,040	kWh per hour per day in the month

	1/1/2003 - 12/31/2010	1/1/2003 - 12/31/2011	
Rate per kWh	\$0.0312	\$0.0312	\$ per kWh ( <i>Delivered to Distribution Cooperatives by LEM</i> )
Each kWh each month up to the number of days in the month multiplied by 24 hours by the following	47,040	47,530	kWh per hour per day in the month

Note: Tier 1 is a Take-or-Pay obligation of the Smelters, provided, however, that the Smelters will pay \$0.0312 per kWh for Tier 1 energy that the Smelters take and will pay \$0.0140 for Tier 1 energy that the Smelters do not take. Smelters shall have the right to direct the Members to sell the energy not taken for their own account.

Note: If Southwire (or any subsidiary of Southwire) builds the fifth potline at or within two miles of the Southwire Smelter, for the period after December 31, 2002, the Tier 1 Demand shall be reduced from 48.0 MW to 37.0 MW and the base hourly Tier 1 kWh shall be reduced from 47,040 kWh to 36,260 kWh.

**RATE PER KWH - TIER 2      SOUTHWIRE      ALCAN**

kWh above Tier 1 each month up to:

	12/31/2010	12/31/2011	
Each kWh above Tier 1 each month up to the number of days in the month multiplied by the following	7,973,280	5,480,160	KWh per day in the month

Rate per kWh:

1998	\$0.02148	\$0.02148	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
1999	\$0.02148	\$0.02148	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2000	\$0.02148	\$0.02148	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2001	\$0.02169	\$0.02169	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2002	\$0.02179	\$0.02179	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2003	\$0.02229	\$0.02229	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2004	\$0.02240	\$0.02240	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2005	\$0.02251	\$0.02251	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2006	\$0.02273	\$0.02273	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2007	\$0.02312	\$0.02312	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2008	\$0.02344	\$0.02344	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2009	\$0.02377	\$0.02377	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2010	\$0.02410	\$0.02410	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2011	-----	\$0.02341	\$ per kWh (Delivered by LEM to Distribution Cooperatives)

**RATE PER kWh - TIER 3**

**SOUTHWIRE      ALCAN**

kWh above the sum of Tier 1 plus Tier 2 each month:

Rate per kWh: Closing through 12/31/2000	\$0.0192	\$0.0192	\$ per kWh (Delivered by LEM to Distribution Cooperative)
After 12/31/2000	To be determined pursuant to a rate filing with the KPSC by the Distribution Cooperatives after consultation with the Smelters as to their power requirements.		

The Tier 3 Rates set forth above are for the power supply component of power provided by LEM to the Distribution Cooperatives for resale to the Smelters. In addition to the rate for the power supply component set forth above, the delivered cost of Tier 3 power shall also include components for transmission services and transmission losses.

The Tier 3 Rates set forth above through and including December 31, 2000, include all generation based ancillary services. After December 31, 2000, the Tier 3 Rates may or may not include all generation based ancillary services but will not include reactive power, which must be separately acquired or supplied by the Smelters; provided, however, that Big Rivers has committed to provide at no additional charge certain fixed amounts of reactive power associated with a 90% power factor applied to the Smelters' Tier 1 and Tier 2 loads. Reactive power necessary for transmission of additional loads and certain other amounts of reactive power may be purchased from Big Rivers.

Commencing January 1, 2001, the Distribution Cooperatives also will offer the Smelters the ability to purchase certain amounts of power and energy as Tier 3 Interruptible Energy and as Tier 3 Backup Energy in circumstances where either Smelter's total hourly demand exceeds the LEM obligation to provide Tier 1, Tier 2 and Tier 3 demand. Up to 7,000 kW each hour may be purchased by Southwire as Interruptible Energy and up to 5,000 kW each hour may be purchased by Alcan as Tier 3 Interruptible Energy, which will be provided by LEM to the Distribution Cooperatives. LEM will be able to notify the Distribution Cooperatives of the non-availability of Tier 3 Interruptible Energy at their sole discretion, subject to certain notice periods.

**RATE PER KWH TIER 3 INTERRUPTIBLE ENERGY:**

	NSA	ALCAN	
2001	\$0.02112	\$0.02112	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2002	\$0.02122	\$0.02122	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2003	\$0.02132	\$0.02132	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2004	\$0.02142	\$0.02142	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2005	\$0.02152	\$0.02152	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2006	\$0.02172	\$0.02172	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2007	\$0.02202	\$0.02202	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2008	\$0.02233	\$0.02233	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2009	\$0.02263	\$0.02263	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2010	\$0.02295	\$0.02295	\$ per kWh (Delivered by LEM to Distribution Cooperatives)
2011	_____	\$0.02223	\$ per kWh (Delivered by LEM to Distribution Cooperatives)

**TIER 3 BACKUP ENERGY:**

Tier 3 Backup Energy will be supplied by the Distribution Cooperatives in any hour to the extent either Smelter takes greater than its maximum Tier 1, Tier 2 and Tier 3 demand amounts and Tier 3 Interruptible Energy is not available or is insufficient to satisfy that Smelter's total demand in any hour. The Distribution Cooperatives shall supply this Tier 3 Backup Energy at the greater of (i) \$0.0307 per kWh or (ii) 110% of amounts paid by LEM to obtain and deliver such energy, including any amounts paid by LEM for transmission and ancillary services on any third-party transmission systems, provided that LEM will not charge the Distribution Cooperatives a rate for Tier 3 Backup Energy greater than the maximum rate for energy imbalance service permitted under its rate schedule for the sale of Ancillary Services as filed with FERC.

**DISTRIBUTION COOPERATIVE FEE**

Each kilowatt hour purchased by the Smelters under Tier 1, Tier 2, and Tier 3 (including Tier 3 Interruptible and Tier 3 Back-Up) shall be subject to a fee charged by the Distribution Cooperatives of one-tenth of one mill (\$0.0001), provided that, after December 31, 2000, the fee shall be subject to change by order of the KPSC upon application of either or both parties.

**SCHEDULE 5.4(a)<sup>1</sup>**  
**AS MODIFIED JUNE 1, 1998**

**Terms for Settlement of Smelter Issues**

This Schedule 5.4(a) sets forth fundamental understandings in connection with the resolution of all Smelter issues and the preparation of other documents which, collectively, will encompass the Smelter settlement as incorporated into the First Amended Plan of Reorganization Proposed by Big Rivers Electric Corporation Under Chapter 11 of the Bankruptcy Code, as Amended and Restated June 9, 1997 (the "Plan"), as modified by the Plan Modifications. In the event of conflict between this schedule and any executed agreement, the agreement will govern. The understandings are as follows:

1. **Basic Economic Terms.** Big Rivers Electric Corporation ("Big Rivers"), Green River Electric Corporation ("Green River Electric"), Henderson Union Electric Cooperative Corp. ("Henderson Union"), and LG&E Energy Marketing Inc. ("LEM"), together with Alcan Aluminum Corporation ("Alcan"), NSA, Inc. ("NSA") and Southwire Company ("Southwire") (collectively the "Smelters"), have reached an understanding on the basic economic terms of new power contracts, as set forth in Schedule 5.3 (a), which is hereby incorporated herein as a part of this Schedule 5.4 (a).

2. **Stand-By Commitments and Creditor Non-Disturbance Agreements.**

(a) **Standby Agreement.** The parties agree that no Standby Power Agreement will be required because Big Rivers will no longer be the wholesale power supplier to Henderson Union and Green River Electric on behalf of the Smelters.

(b) **Non-Disturbance Agreement:** The parties agree that a non-disturbance agreement between the RUS and the Smelters will not be required because LEM has assumed a direct obligation to pay to RUS on behalf of Big Rivers an amount equal to the "Monthly Margin Payment," as defined in the Transaction Agreements, so that in no event will RUS, as creditor of Big Rivers, have any security or other financial interest in any of the smelter contracts or in any revenue generated by power sales to the Smelters.

3. **Supply Obligation.**

(a) **Termination of Supply Obligation by Big Rivers.** Commencing at 12:01 a.m. on the day after the Closing Date of the LG&E Energy Transaction ("Date of Implementation"), Big Rivers shall be under no obligation to

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan, as modified by the Plan Modifications.



provide power to Green River Electric and Henderson Union for consumption by Southwire and Alcan and Green River Electric and Henderson Union shall be under no obligation to purchase power from Big Rivers for consumption by Southwire and Alcan. Big Rivers shall in no case have any power supply responsibilities to either Green River Electric with respect to any Southwire load or to Henderson Union with respect to any Alcan load. Notwithstanding the above, Big Rivers shall be obligated to provide Green River Electric and Henderson Union and/or Green River Electric's and Henderson Union's designated wholesale power supplier with unbundled transmission service set forth in paragraph 6 below and certain quantities of reactive power set forth in paragraph 7 below.

(b) **Commencement of LEM's Power Supply Obligation.**

Commencing on the Date of Implementation, LEM will become the designated wholesale power supplier to Green River Electric and Henderson Union with respect to certain amounts of energy and capacity. Such energy and capacity will be purchased by Green River Electric and Henderson Union for resale to Southwire and Alcan, respectively. LEM and each of Henderson Union and Green River Electric will enter into an Agreement for Electric Service, the term of which will commence on the Date of Implementation and expire as of December 31, 2011 and December 31, 2010, respectively ("Wholesale Agreement"). Pursuant to such Wholesale Agreements, LEM will sell and the respective Distribution Cooperative will purchase Tier 1 Energy and Tier 2 Energy, each of which will be available throughout the term of the Wholesale Agreement; Tier 3 Energy, which will be available to a limited extent and for a limited period, as described further below; and Tier 3 Interruptible Energy and Tier 3 Backup Energy, each of which will be available only during the period from January 1, 2001 through the end of the term of the applicable Wholesale Agreement. Green River Electric and Henderson Union will sell to the Smelters, and the Smelters will purchase, such power as the Distribution Cooperatives receive from LEM under the same rates, terms and conditions as provided by LEM and such other energy and/or capacity as permitted by contract, but subject in all cases to the applicable Distribution Cooperative fee; provided, however, that to the extent applicable, such rates, terms and conditions have been filed with and approved by the KPSC.

(c) **Bundled and Unbundled Services.** To the extent LEM is the wholesale supplier of energy sold to the Distribution Cooperatives for resale to the Smelters, LEM will, to the extent agreed to, as set forth in definitive documents, reserve and pay for transmission service for all power which it delivers to the Distribution Cooperatives. The Distribution Cooperatives will reimburse LEM, and the Smelters will reimburse the Distribution Cooperatives, for such transmission service in the manner provided in the Wholesale Agreements and the associated retail contract between each Distribution Cooperative and its Smelter ("Retail Agreement"). Pursuant to the Wholesale Agreements, the cost of transmission service and certain ancillary services consisting of Regulation and Frequency Response Service, Energy Imbalance Service, Operating Reserve - Spinning Reserve Service and Operating Reserve - Supplemental Reserve Service (the "Bundled Ancillary Services") are embedded in the stated energy rates applicable to Tier 1 Energy, Tier 2 Energy and Tier 3 Interruptible

Energy and also in the rate for Tier 3 Backup Energy but only to the extent that LEM charges the Distribution Cooperative a rate of \$0.0307 per kWh for such Tier 3 Backup Energy. LEM will charge for Tier 3 Backup Energy at a rate equal to the greater of \$0.0307 per kWh or 110% of amounts LEM pays to obtain and deliver such energy, including any amounts that LEM pays for transmission and ancillary services on any third-party transmission systems and 100% of the transmission costs on Big Rivers' transmission system, provided that LEM will not charge a rate for Tier 3 Backup Energy greater than the maximum rate for energy imbalance service permitted under its rate schedule for the sale of Ancillary Services as filed with FERC. Tier 3 Energy provided by LEM to the Distribution Cooperatives under the Wholesale Agreement will include Bundled Ancillary Services within the stated energy rates. Reactive Power will not be provided to the Distribution Cooperatives or the Smelters directly by LEM under the Wholesale Agreements (unless specifically agreed to in writing by LEM), but rather, will be provided as described in Paragraph 7 below.

(d) Amounts Owing To Big Rivers Prior to Transfer.

Notwithstanding section 3(a) above, Southwire and Alcan shall have the obligation to pay Green River Electric and Henderson Union, respectively, and Green River Electric and Henderson Union shall have the obligation to pay Big Rivers, amounts owing under Big Rivers' tariff for service rendered by Big Rivers to Green River Electric for resale to Southwire and by Big Rivers to Henderson Union for resale to Alcan prior to the termination of Big Rivers' power supply obligation.

4. Structure of Tier 3 Service.

(a) Rates. From the Date of Implementation up to and including December 31, 2000, the cost of Tier 3 power purchased by Southwire and Alcan from Green River Electric and Henderson Union, respectively, will be \$19.20 multiplied by the sum of one plus the applicable transmission loss factor. On and after January 1, 2001, through December 31, 2010 and 2011 for Southwire and Alcan, respectively, Tier 3 Energy shall be directly acquired by the Smelters from third party suppliers and outside of Tier 3 at such time as (1) such direct market access is permitted by applicable law and (2) there is no existing contractual obligation of Green River Electric or Henderson Union to acquire Tier 3 Energy for resale to Southwire or Alcan, as applicable. Subject to the terms of paragraph 24, on and after January 1, 2001, and until otherwise permitted by law through December 31, 2010 and 2011, for Southwire and Alcan, respectively, Tier 3 Energy will be made available by Green River Electric and Henderson Union for resale to Southwire and Alcan at rates which shall be filed with and approved by the KPSC. Such filings by Green River Electric and Henderson Union shall reflect a pass-through of Tier 3 Energy costs incurred by Green Rivers Electric and Henderson Union after consultation with the Smelters as to the Smelters' power needs in accordance with subparagraph 4(c).

(b) All Requirements Wholesale Contracts Amended. The all-requirements contracts between Big Rivers and each of the Distribution Cooperatives

will be amended to provide that the power supply to be sold to the Distribution Cooperatives for resale to the Smelters need not be provided by Big Rivers.

(c) **Consultation With Smelters.** For purchases of Tier 3 Energy for delivery after December 31, 2000, the Distribution Cooperatives shall consult with the Smelters with respect to specifications as to the type of service, terms, conditions and characteristics of Tier 3 power to be solicited from third-party suppliers.

5. **Bundled Rates Not Subject to Change.** The Tier 1 Energy Rate, Tier 2 Energy Rate, Tier 3 Interruptible Energy Rate and the rate for Tier 3 Back-Up Energy (when priced at \$30.70 per MWh) as charged by LEM to the Distribution Cooperatives through the expiration of the Wholesale Agreements are bundled rates and are not subject to change for any reason, including changes in the Transmission Provider's OATT. The Tier 3 Energy Rate charged by LEM to the Distribution Cooperatives during the period from the Date of Implementation through December 31, 2000 includes (1) a base energy component, which includes the Bundled Ancillary Services and is not subject to change for any reason, and (2) a component for transmission losses, based on the applicable transmission loss factor, which may be changed from time to time, under Big Rivers' OATT. All such rates, when charged by the Distribution Cooperatives to the Smelters, may be changed, upon a filing with and approval by the KPSC, only as a result of legislative, regulatory or legal actions that affect costs at the Distribution Cooperative level.

6. **Transmission of Tier 3 Power.**

(a) **Reservation of Transmission.** The transmission services to be provided by Big Rivers to LEM and/or the Distribution Cooperatives on behalf of the Smelters for Tier 3 service beginning on the Date of Implementation shall be reserved by LEM and/or the Distribution Cooperatives by means of Big Rivers' Open Access Same-time Information System ("OASIS") in accordance with the procedures contained in Big Rivers' OATT and the provisions of the Retail Agreements. Big Rivers agrees to offer all transmission services offered in its OATT to LEM and/or the Distribution Cooperatives, as applicable, on behalf of the Smelters (including network and firm and non-firm point-to-point service) at rates as they are then in effect in such tariff.

(b) **Transmission Rates; Right to Oppose.** Transmission rates for the transmission service on Big Rivers' transmission system used by LEM and/or the Distribution Cooperatives for the wholesale power sold to the Smelters as Tier 3 Service shall be provided in accordance with the then-applicable rates contained in Big Rivers OATT. The rates for firm point-to-point transmission service and network transmission service offered by Big Rivers shall include all charges for transmission based ancillary services, including scheduling and dispatch by Big Rivers and reactive power provided from the then-existing level of transmission capacitor banks on Big Rivers' transmission system. Big Rivers and the Distribution Cooperatives agree that Southwire and Alcan shall have the right to intervene and challenge at any regulatory

proceeding at the appropriate regulatory agency the applicable rate, the applicable transmission loss factor, and/or the appropriate methodology used to determine the applicable rate or transmission loss factor.

(c) **Ancillary Services.** Bundled Ancillary Services are included in the rate for Tier 3 Service sold by LEM to the Distribution Cooperatives for the benefit of the Smelter through December 31, 2000. Thereafter, the transmission of Tier 3 power will require the Distribution Cooperatives to acquire FERC-required generation-based ancillary services, either from Big Rivers through its OATT, from LEM, or from a third party supplier. LEM agrees that it or one of its affiliates will sell such generation-based ancillary services at FERC-approved tariff rates to the Distribution Cooperatives under Big Rivers' OATT.

(d) **Transmission Losses; Right to Oppose.** Transmission losses on Big Rivers transmission system with respect to Tier 3 service will be supplied to Big Rivers by LEM or any other third party power supplier at a level in accordance with the transmission loss factor specified in Big Rivers' OATT; provided that the Smelters and the Distribution Cooperatives do not waive and specifically reserve for themselves and recognize the other's right to intervene and fully participate in any FERC proceeding to challenge the loss factor or methodology to be adopted. The right of the Distribution Cooperatives, Southwire and Alcan to intervene and oppose transmission loss levels included in Big Rivers' OATT at FERC and/or the KPSC shall not be opposed by Big Rivers and shall apply to Big Rivers' initial filing and any subsequent filing. Southwire and Alcan shall be entitled to assert at the applicable regulatory commission their case for a different transmission loss factor or methodology applicable to their uses of the transmission system for Tier 3 service.

(e) **Mechanics.**

(i) **Right of First Refusal Over Existing Transmission Used to Serve the Smelters.** All Tier 3 transmission service shall be provided in accordance with Big Rivers' OATT and the applicable service agreement entered into by LEM and/or the Distribution Cooperatives during the initial sixty days after the filing of Big Rivers' OATT. Big Rivers agrees that LEM and/or the Distribution Cooperatives shall hold a right of first refusal for Big Rivers' transmission capacity currently used to provide the Distribution Cooperatives with wholesale power to supply the Smelters in accordance with Section 2.2 of Big Rivers' OATT. Should LEM or the Distribution Cooperatives, as applicable, desire at any time after the filing of the OATT to change the designated receipt point or points for the power that is to be delivered to them under a reserved firm point-to-point transmission contract, they shall be allowed to do so, provided that available transmission capacity then exists on Big Rivers' transmission system as reflected on Big Rivers' OASIS over the alternative path or paths desired. If such transmission capacity is not then available, either LEM or each Distribution Cooperative, as applicable, on behalf of its Smelter customer shall be given the option of retaining its current contract path and reserved amount of

transmission or taking such transmission as is available over the alternative transmission path selected, with the remainder to be left on the existing transmission path or paths.

(ii) **Transmission Planning and Service Obligation for Additional Smelter Capacity.** Through December 31, 2001, consistent with FERC Order No. 888, Big Rivers shall continue to have a transmission planning obligation with respect to the Southwire and Alcan loads served by Green River Electric and Henderson Union, and LEM or the respective Distribution Cooperative, as applicable, will cause Big Rivers to hold in reserve at no additional cost existing transmission capacity in an amount needed for Southwire and Alcan's reasonably forecasted load growth through December 31, 2001, provided such projections of forecasted load growth are made available to Big Rivers prior to the effective date of Big Rivers' OATT. Big Rivers will give each Smelter a written notice of filing and a copy of all filed materials at the time of any filing involving Big Rivers' OATT. The point-to-point transmission paths to be held in reserve for Southwire's and Alcan's reasonably forecasted load growth shall be those designated by Southwire and Alcan and supplied by LEM, Green River Electric and/or Henderson Union (as applicable) to Big Rivers. Transmission capacity held in reserve for Southwire's and Alcan's reasonably forecasted load growth during this period shall be posted on Big Rivers' OASIS and made available to third-parties by Big Rivers on a non-firm basis until such time as it is needed and contracted for at OATT rates by LEM or Green River Electric and Henderson Union, as applicable, on behalf of Southwire and Alcan; provided, however, that if such transmission capacity held in reserve by Big Rivers for Distribution Cooperative load growth attributable to the Smelters is not contracted for by LEM or Green River Electric or Henderson Union, as applicable, by December 31, 2001 Big Rivers shall thereafter be entitled to release such capacity held in reserve and post it for sale on a firm basis on its OASIS.

(f) **Rates No Less Favorable.** For transmission service to LEM or the Distribution Cooperatives (as applicable) on behalf of the Smelters, Big Rivers shall not charge LEM or the Distribution Cooperatives more than the lesser of (i) the amount that Big Rivers imputes to itself for its own off-system transactions, or (ii) the amount Big Rivers charges to any third-party after the effective date of its OATT for comparable transmission service and ancillary services. The terms and conditions of transmission service and ancillary services offered by Big Rivers to LEM, any third party power supplier or the Distribution Cooperatives on behalf of the Smelters shall not be (i) less favorable than those applied by Big Rivers to itself for its own off-system transactions under its OATT or (ii) less favorable than those applied by Big Rivers to any third-party taking service after the effective date of the OATT.

## 7. **Reactive Power.**

(a) **Power Factor Limitation.** Big Rivers, the Distribution Cooperatives and the Smelters have agreed that for all power taken by the Distribution Cooperatives on or before December 31, 2000 under Tier 1, Tier 2, and Tier 3, the

Distribution Cooperative shall maintain and shall require its respective Smelter customer to maintain a power factor at the point of delivery as nearly as practicable to unity and in no case shall the power factor be allowed to fall below 0.90 leading or lagging with respect to power delivered hereunder. Big Rivers, the Distribution Cooperatives and the Smelters have agreed that for all power taken after December 31, 2000 under Tier 1, Tier 2 and Tier 3 (including Tier 3 Interruptible and Tier 3 Backup Energy), the Distribution Cooperative shall maintain and shall require its respective Smelter customer to maintain its usage of reactive power at the point of delivery at a level such that the reactive power demand does not exceed the reactive power demand that would occur at a power factor of 0.90 lagging at the metered demand up to 339,000 kW for Southwire and 233,000 kW for Alcan. In the event that either Smelter's recorded reactive power demand exceeds the limitations set forth above, that Smelter thereafter shall instruct its respective Distribution Cooperative supplier (at that Smelter's expense) to purchase sufficient reactive power from a third-party source or from Big Rivers.

(b) New Alcan Facilities. The above described reactive power limits in subparagraph (a) shall not be applicable to any reactive power consumed over new facilities (such as a 4th potline) installed after the effective date of the OATT by Alcan at the Sebree Smelter, the reactive power requirements of which will need to be separately evaluated and assessed by Big Rivers, Henderson Union and Alcan at such time as the new facilities are constructed.

(c) New Southwire Facilities. The above described reactive power limits shall not be applicable to any reactive power consumed on the proposed fifth pot line at the Southwire smelter. Specifically, for all Energy that Southwire purchases and receives from Green River Electric with respect to any fifth pot line that may be constructed at the Southwire smelter, Southwire shall maintain a power factor at the point of delivery that shall be at unity or leading, but in no event shall be lagging. At its sole expense, Southwire shall install the necessary equipment, or acquire the necessary reactive power from third-party suppliers of generation-based ancillary services, to satisfy the limitation set forth in this subparagraph.

8. Southwire Contract. Southwire will be the contracting party for service from Green River Electric and all service for both the NSA smelter and the Southwire rod and cable mill will be consolidated into a single delivery point. Payments under this Retail Agreement will be due on the first working day after the 24th day of the month following the month of service. Payments for Tier 3 Energy purchased by Green River Electric for resale to Southwire other than from LEM shall be due two working days before payment is due to the Tier 3 Energy supplier. Southwire will agree to provide an undertaking to LEM that it will perform its obligation to Green River Electric under the Retail Agreement. Prior to December 31, 2000, Southwire will provide acceptable security to Green River Electric for Tier 3 third party purchases for energy, transmission and ancillary services.

9. **Alcan Contract.** Alcan will be the contracting party for service from Henderson Union. Payments under this Retail Agreement will be due on the first working day after the 24th day of the month following the month of service. Payments for Tier 3 energy purchased by Henderson Union for resale to Alcan other than from LEM shall be due two working days before payment is due to the Tier 3 Energy supplier. Alcan will provide an undertaking to Henderson Union and to LEM, similar to the 1990 undertaking, that if the net worth of Alcan falls below \$300 million, Alcan will provide an irrevocable standby letter of credit securing payment of its take-or-pay obligations during the term of the Retail Agreement. Alcan will also agree to provide an undertaking to LEM that it will perform its obligations to Henderson Union under its Retail Agreement. Prior to December 31, 2000, Alcan will provide acceptable security to Henderson Union for Tier 3 third party purchases for energy, transmission and ancillary services.

10. **No Stranded Investment or Exit Fee.**

(a) **Big Rivers' Costs.** Upon the closing of the LG&E Energy Transaction, the Smelters shall not be liable to Big Rivers, or to either Distribution Cooperative for any liability of the Distribution Cooperative to Big Rivers, for any stranded investment costs, exit fees or other costs, whether or not foreseeable, of any kind whatsoever related to the financing, construction, operation, maintenance or decommissioning of the Big Rivers generating assets or the Big Rivers transmission system or other assets, or related to the Distribution Cooperatives' contractual obligations to Big Rivers; provided, however, that nothing in the above language shall excuse any party from any new contractual obligations agreed to by that party after the Date of Implementation relating to the financing, construction, operation, maintenance or decommissioning of any new, dedicated transmission facilities on Big Rivers' transmission system used for the provision of transmission and associated services for the power sold to and consumed by the Smelters.

(b) **Contractual Obligation To Serve.** Neither Distribution Cooperative shall be under any contractual obligation to provide capacity, energy or transmission service to the Smelters beyond the expiration or earlier termination of its Retail Agreement.

11. **Take-or-Pay Power.** Take-or-pay power shall only be Tier 1 amounts priced at 14.0 mills per kWh. The participants agree that the Distribution Cooperatives, for the benefit of the Smelters, shall have the contractual right to sell to third parties power that is the subject of a take-or-pay obligation provided that it is not during the same hour purchasing Tier 2 or Tier 3 Energy. Tier 2 and Tier 3 Energy are not subject to resale except as provided in Paragraph 24 (c).

12. Tier 1 Volume.

(a) Tier 1 amounts and prices for service from LEM to the Distribution Cooperatives and from the Distribution Cooperatives to the Smelters are as set forth in Schedule 5.3(a). For Alcan, Tier 1 capacity is 98 MW for the period beginning on the Date of Implementation through December 31, 2002, and 48.5 MW for the next nine year period. For Southwire, Tier 1 capacity is 129.5 MW for the period beginning on the Date of Implementation through December 31, 2002 and 48 MW for the next eight-year period; provided, that if Southwire commits to construct a fifth potline, the Tier 1 capacity for Southwire will be 37 MW for the period 1/1/2003--12/31/2010.

(b) Southwire agrees to purchase firm transmission service (including all transmission based ancillary services) from Green River Electric for service to its fifth potline under the following terms and conditions. Green River Electric agrees to contract with Big Rivers under Big Rivers' OATT for transmission service to serve Southwire's fifth potline in an amount that assures that Big Rivers will receive at least \$83,300 per month over the ten (10) year life beginning January 1, 2001.

13. Distribution Cooperative Fee. Each kilowatt hour purchased by the Smelters under Tier 1, Tier 2, Tier 3, Tier 3 Interruptible and Tier 3 Backup shall be subject to a fee charged by Green River Electric and Henderson Union of one-tenth of a mill (\$0.0001), provided that, after December 31, 2000, the fee shall be subject to change by order of the KPSC upon application of either or both Parties.

14. Standstill Agreement. Big Rivers and the Smelters have agreed to a standstill agreement pursuant to which they will jointly suspend all proceedings in the dissolution, directors' fees, torts, rescission, and breach of contract suits pending in Henderson Circuit Court (No. 95-95-CI-00040, No. 95-CI-00404, and No. 95-CI-00495), Hancock Circuit Court (No. 94-CI-014) and Franklin Circuit Court (No. 94-CI-00584 and No. 95-CI-00299). Big Rivers and the Smelters agree to cooperate in making such agreements and obtaining such court orders as may be necessary to suspend or postpone all discovery, hearings, and other activity in such cases. It is contemplated that such actions will remain pending until other conditions precedent to closing of the LG&E Energy Transaction have been satisfied or until any party files a notice that any proceeding will be recommenced. Such actions shall be dismissed upon the effective date of the Plan.

15. KPSC Review of Fuels Cases. Upon entry of an order approving the Plan Modifications, and subject to the proviso below, the Smelters (a) agree to a moratorium of any proceedings related to the fuel cases until the earlier of (i) the closing of the LG&E Energy Transaction, (ii) December 31, 1998, or (iii) entry of a KPSC order that is unacceptable to the Smelters in the document approval case established under the April 30, 1998 KPSC Order or in the KPSC rehearing order in Case No. 97-204 (b) will not oppose, object to or interfere with the efforts of Big Rivers to seek and obtain such a moratorium; and (c) will not oppose, object to or interfere with the efforts of Big



Rivers to seek and obtain an order or orders from the KPSC and/or the Franklin Circuit Court providing that, upon the occurrence of the latter of the Effective Date or the closing of the LG&E Energy Transaction, all of the fuel cases shall be and shall be deemed to be dismissed with prejudice; PROVIDED, HOWEVER, that any such orders and any such moratorium shall be without prejudice to and shall not diminish, alter or affect the rights of smelters or Big Rivers in the fuel cases in the event the Effective Date or closing of the LG&E Energy Transaction does not occur, or the moratorium(s) entered under (a) above is withdrawn or there is an unacceptable KPSC order as provided in (a)(iii) above. Upon the closing of the LG&E Energy Transaction, all Smelter related claims asserted or that could have been asserted in the fuel cases, whether pending before the KPSC or the Franklin County Circuit Court, and any other possible fuel refund claims, are discharged, released and of no further force or effect, and Big Rivers will dismiss its application in Case No. 96-215. Any refunds from such cases received by the Smelters after May 31, 1998 will then be returned to Big Rivers. Upon the closing of the LG&E Energy Transaction, all of the fuel cases and any related proceedings shall be and shall be deemed to be dismissed with prejudice, and the Smelters will not oppose, object to or interfere with the effort of any party to have all of the fuel cases and any related proceeding dismissed with prejudice.

16. **Amendment No. 1.** Subject to the consensual Plan becoming effective and closing of the LG&E Energy Transaction, the Smelters will withdraw the appeal to the Commission's order in Case No. 95-011, concerning Amendment No. 1 for the period 1988-1990.

17. **Environmental Surcharge and Fuel Reviews.** The participants have settled the environmental surcharge review proceedings before the KPSC, Case No. 96-327 and subsequent proceedings under KRS 278.183.

18. **Restitution Case.** Subject to the closing of the LG&E Energy Transaction, amounts received by Big Rivers as restitution or payable on its fidelity policy or recovered as damages through the closing of the LG&E Energy Transaction will be divided 50-50 between RUS and the ratepayers, payable at closing of the LG&E Transaction. The Smelters will then dismiss their appeal of the KPSC restitution order (Case No. 94-453) now pending in the Franklin Circuit Court.

19. **Third-Party Claims in Coal Cases.** The participants agree to mutually evaluate claims against third parties in the coal cases pending in the Union Circuit Court and the United States District Court, Western District of Kentucky, and to cooperate in the pursuit and resolution of these and any other claims. All Post-Closing Date Fraud Recoveries will be divided 50-50 between RUS and the ratepayers (including the Smelters) after payment of Big Rivers' and the Smelters' legal costs, including attorney fees, incurred in pursuit and resolution of these claims after the Plan becomes effective.

20. **Refund Methodology.** Big Rivers will propose that amounts paid to ratepayers under paragraphs 18 and 19 shall be paid to the Smelters and other retail customers under a refund methodology approved by the KPSC which takes into account historic energy usage by the Smelters and other retail customers consistent with the time period in which the revenue for fuel purchases under the related coal contracts was collected.

21. **Patronage Capital and Payments.** Except to the extent not permitted by Kentucky law and Internal Revenue Service laws, regulations and promulgated rules regarding cooperative operation and tax accounting that become effective after the Date of Implementation, Big Rivers will record for financial reporting and tax accounting purposes patronage capital as follows:

- (1) Only margins from patronage source income will qualify for allocation as patronage capital. None of the LG&E Parties is a member or patron under the LG&E Energy Transaction. Big Rivers will not credit to any Patron's account any margin on Smelter sales or any other patronage capital that could be attributable to transactions involving LEM. Non-patronage income will be booked as equity of Big Rivers that shall be paid to members on liquidation as payments on account of property rights of members.
- (2) Upon liquidation, Big Rivers will pay all liabilities, including taxes, then pay the balances of capital accounts (membership fees and assigned capital credits) and, if monies remain, such monies will be paid to members on account of property rights for the benefit of the members of Distribution Cooperatives (including the Smelters) based upon historical patronage measured by kilowatt hours from Big Rivers over the life of the organization. The life of the organization is defined to begin at the date Big Rivers was created and is not redefined or otherwise modified by Big River's bankruptcy filing, reorganization, or the confirmation of the plan of reorganization, or otherwise.
- (3) Neither Big Rivers nor any of the Distribution Cooperatives will permit any amendments or modifications of its Bylaws that would adversely affect the Smelters' rights to distribution hereunder. The Distribution Cooperatives agree that the Smelters will share on a nondiscriminatory basis in the allocations of patronage capital and payments on account of property rights of members distributed by Big Rivers to the Distribution Cooperatives and that such allocations shall be promptly distributed to the Smelters.

22. **Enhancement and Finality.** The Smelters will support the Plan, as modified by the Plan Modifications, and will claim no portion of the enhanced value allocated to the Smelters by the Court's Memorandum-Opinion dated February 2, 1997. The Smelters will not be obligated to close the transaction unless all requisite orders of the KPSC approving the Smelters rates as set forth in Schedule 5.3 (a) and all portions of Schedule 5.4(a) over which the KPSC has jurisdiction and FERC's acceptance of

rates for LEM's sales to the Distribution Cooperatives have been entered, and none of such orders has been stayed, vacated or reversed.

23. **Non-Disclosure Agreements.** The participants agree that the non-disclosure letter dated December 14, 1995 is no longer in effect.

24. **Modifications.** For good and valuable consideration, LEM shall cause the following:

(a) As to Alcan, LEM will provide (i) \$1,300,000 per year beginning 2001 through and including 2011, payable in equal monthly installments of \$108,333 plus (ii) a variable monthly amount from the Date of Implementation through the end of 2003 equal to the monthly amounts of Tier 3 transmission charges multiplied by 34.3%.

(b) As to Southwire, LEM will provide the following: (1) \$350,000 per year beginning 2001 through and including 2010, with payment made in equal monthly installments of \$29,166, and (2) LEM will provide firm (non-interruptible) Tier 3 power service (anticipated to be 107 MW upon completion of the fifth potline currently under construction) to Green River Electric for service to Southwire under the following terms. For one-half of Southwire's Tier 3 requirements, for the period January 1, 2001 through December 31, 2002, the fixed price to Southwire for capacity, energy and Bundled Ancillary Services will be \$5.40 per kW per month for 53.5 MW of contract demand and \$0.01205 per kWh. For the other one-half of Southwire's Tier 3 requirements for the period January 1, 2001 through December 31, 2005, the fixed price to Southwire for capacity, energy and Bundled Ancillary Services will be \$6.35 per kW per month for 53.5 MW of contract demand and \$0.01205 per kWh. Both pricing agreements reflect a 98% load factor and do not include the Green River Electric adder. Transmission and transmission losses will be purchased and paid for separately by Southwire.

(c) As set forth in a definitive agreement to be entered into prior to closing, curtailed Tier 2 Energy and curtailed Tier 3 Energy may be sold by LEM to third parties for the benefit of the Smelters to the extent a Smelter curtails its operations to free up such energy. The distribution cooperative shall neither take title to nor exercise dominion and control over any power so curtailed. No distribution cooperative fee will be paid pursuant to Section 13 herein regarding such curtailed power.

25. **Cooperation.** The parties will reasonably cooperate in connection with efforts to fulfill conditions to closing of the LG&E Transaction. Big Rivers, RUS, Chase (at such time as the Smelters confirm to Chase that they are ready to close the transactions contemplated hereby (i.e., all documents, tariffs, etc., which they are required to sign or entitled to approve) are in final form and satisfactory to them) and the Distribution Cooperatives agree to support any applications filed by the Smelters before the KPSC and/or the Bankruptcy Court to extend to September 1, 1999 the interim rates which became effective on September 2, 1997. The Bank of New York

agrees to support any such applications to the extent that it seeks to extend the interim rates through December 31, 1998. The Bank of New York, Chase and Big Rivers agree to request the KPSC to hold in abeyance any action on the petitions for rehearing filed by them with respect to the KPSC order dated April 30, 1998, except the request by Big Rivers to maintain the interim rates in effect, and agree to dismiss said petitions upon the closing of the LG&E Energy Transaction.

26. Other Smelter Documents. The terms and conditions of the Assurances Agreement, Security and Lockbox Agreement, Systems Disturbance Agreement, the amendments to the existing Wholesale Agreements between Big Rivers and each of Henderson Union and Green River Electric and all Schedule 5.4(a) Documents including the Smelter Retail Agreements and tariffs, the Big Rivers Transaction Tariff, the Agreement for Tier 3 Electric Service (2001-2002) between LEM and Green River Electric, the Agreement for Tier 3 Electric Service (2001-2005) between LEM and Green River Electric and the Wholesale Agreements between LEM and the Distribution Cooperatives shall be reasonably satisfactory to the Smelters, LEM and the Distribution Cooperatives, as applicable.



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF KENTUCKY  
OWENSBORO DIVISION

IN RE: )  
 )  
BIG RIVERS ELECTRIC CORPORATION, )  
 )  
Debtor. )  
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CHAPTER 11  
CASE NO. 96-41168

**ORDER APPROVING MODIFICATIONS TO FIRST AMENDED PLAN OF REORGANIZATION PROPOSED BY DEBTOR BIG RIVERS ELECTRIC CORPORATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AS MODIFIED AND RESTATED JUNE 9, 1997**

The First Amended Plan of Reorganization Proposed by Debtor Big Rivers Electric Corporation ("Big Rivers" or the "Debtor") Under Chapter 11 of the Bankruptcy Code as Modified and Restated June 9, 1997 (the "Plan") having been confirmed, and the LG&E Energy Transaction<sup>1</sup> having been approved, by Order of this Court dated June 9, 1997 (the "Confirmation Order"); and, subsequent to entry of the Confirmation Order, Big Rivers and LG&E Energy having made the requisite application to the Kentucky Public Service Commission ("KPSC") for approval of the Proposed Rates under the Plan; and the KPSC having raised certain concerns regarding the allocation among Big Rivers' ratepayers of unforeseen costs arising out of future environmental, regulatory or legislative changes in the law; and Big Rivers, LG&E Energy, the RUS, the Banks, the Members and the Smelters having negotiated certain modifications to the Plan and the Transaction Agreements to resolve the unforeseen costs and other issues raised during the KPSC proceedings; and the KPSC having issued an Order dated April 30, 1998 (the "KPSC Order") approving the LG&E Transaction, subject to the filing with the KPSC of revised Transaction

<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed thereto in the Plan, as modified by the Plan Modifications (as defined below).

Agreements and other documents, and approving certain rates, as set forth in the KPSC Order; and this Court having entered an Order dated April 23, 1998 (as modified by Orders dated May 4, 1998 and May 27, 1998, the "Procedures Order") under Sections 105, 1125(b) and 1127 of the Bankruptcy Code and Rules 2002(a) and (b), 3017(d) and 9006(c) of the Bankruptcy Rules: (a) fixing the dates and establishing procedures for (i) hearings on approval of a short-form modified disclosure statement (as modified on May 21, 1998, the "Modified Disclosure Statement") and the modifications to the Plan (as have been and may be further modified at or prior to the hearing to consider approval of such modifications, the "Plan Modifications"), (ii) filing and service of objections to the Modified Disclosure Statement and the Plan Modifications, and (iii) service of notice upon the Debtor of any change in acceptance or rejection of the Plan, as modified by the Plan Modifications, by the Affected Parties (as defined below); (b) shortening the applicable notice periods for (i) hearings to approve the Modified Disclosure Statement and Plan Modifications, (ii) the time to file and serve objections to the Modified Disclosure Statement and Plan Modifications, and (iii) the time by which notices of any change in acceptance or rejection of the Plan, as modified by the Plan Modifications, must be served upon the Debtor by Affected Parties (as defined below); and (c) approving the form of notice and procedures for the distribution of notices and disclosure packages with respect to (a) and (b) above; and Big Rivers and LG&E Energy having filed with the Court, pursuant to and in accordance with the Procedures Order, each of: (i) on May 6, 1998 and May 21, 1998, the Plan Modifications, (ii) on May 6, 1998 and May 21, 1998, the Modified Disclosure Statement, (iii) on May 20, 1998, the Plan Supplement comprising the modified forms of the Transaction Agreements (the "Modified Plan Supplement"); (iv) on May 20, 1998, certain other exhibits and

schedules to the Plan Modifications; (v) on May 21, 1998, Exhibit B (the Feasibility Analysis) to the Modified Disclosure Statement and a list of any such exhibits, schedules or other documents (the "Designated Documents") yet to be filed; and (vi) at 10:00 a.m. of the day of the hearing to consider approval of the Plan Modifications (the "Plan Modifications Hearing"), the Designated Documents; and certificates of service having been filed with the Court demonstrating compliance with the notice and service requirements of the Procedures Order with respect to the Summary Notice (as defined in the Procedures Order) and each of the forms of the Modified Disclosure Statement (including any exhibits or schedules thereto), the Plan Modifications (including any exhibits or schedules thereto), the Modified Plan Supplement and the Designated Documents; and the Modified Disclosure Statement having been approved by Order of this Court dated May 21, 1998 under Sections 1125 and 1127(c) of the Bankruptcy Code; and certificates of service having been filed with the Court demonstrating compliance with the notice and service requirements of the Procedures Order with respect to the approved form of the Modified Disclosure Statement; and no notice of a change in acceptance or rejection of the Plan, as modified by the Plan Modifications, by Affected Parties (as defined below) having been received, as demonstrated by the record of the Plan Modifications Hearing; and the Court having considered the Plan Modifications and all pleadings filed in support of or in objection thereto; and all objections to the Plan Modifications having been voluntarily withdrawn or overruled by the Court; and upon all of the evidence adduced and the arguments of counsel made at the Plan Modifications Hearing; and upon the entire record of the Reorganization Case, including the hearings to consider approval of the Procedures Order and the Modified Disclosure Statement; and after due deliberation, and sufficient cause appearing therefor;



IT IS HEREBY FOUND AND DETERMINED that:

A. This Court has jurisdiction to consider approval of the Plan Modifications pursuant to 28 U.S.C. § 1334, notwithstanding the pending appeal of the Confirmation Order by PacifiCorp Kentucky Energy Company ("PKEC") and PacifiCorp Power Marketing, Inc. ("PPM" and, together with PKEC, the "PacifiCorp Entities"). The Court has carefully reviewed the Plan Modifications and each of the issues raised by the PacifiCorp Entities in their appeal of the Confirmation Order and finds that the Plan Modifications do not affect or impact in any way, nor will they require the Court to determine, any issue raised by the PacifiCorp Entities in such appeal. Approval of the Plan Modifications is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2), and this Court has jurisdiction to enter a Final Order with respect thereto. Venue of the Reorganization Case is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Plan has not been substantially consummated.

C. The Court has jurisdiction and expressly reserved jurisdiction to consider the Debtor's request for approval of the Plan Modifications pursuant to, *inter alia*, Section 1127(b) of the Bankruptcy Code and Paragraph 21(e), (g), (i), (k), (m) and (o) of the Confirmation Order.

D. This Court expressly finds that the PacifiCorp Entities lack standing to object to the Plan Modifications because PKEC is not a Creditor in this chapter 11 case, as its sole asserted Claim was disallowed by Orders of this Court dated January 2, 1998 and January 12, 1998, and in any event, such Claim and the Claims asserted by PPM would constitute Class 8 Unsecured Claims, the treatment of which under the Plan is not affected in any respect whatsoever by the Plan Modifications.

E. The Debtor, as the proponent of the Plan Modifications, has complied with the applicable provisions of the Procedures Order, the Bankruptcy Code, the Bankruptcy Rules and the local rules and Orders of this Court with respect to the requirements of notice and disclosure of the Plan Modifications and the modifications to the Transaction Agreements. Good, sufficient and timely notice of the Plan Modification Hearing was provided to all holders of Claims and interests and any other parties in interest to whom such notice was required. Accordingly, notice and disclosure of the Plan Modifications, the modifications made to the Transaction Agreements and the Plan Modification Hearing is adequate and appropriate, and no further or other notice or disclosure is necessary or required.

F. The treatment of the following types or Classes of Claims under the Plan will not be altered or affected in any manner (adverse or otherwise) by the Plan Modifications: (i) Administrative Claims, (ii) Tax Claims, (iii) Class 1 Claims (Priority Claims), (iv) Class 5 Claims (1985 Bonds and Related Claims), (v) Class 7 Claims (1983 Bonds and Related Claims), (vi) Class 8 Claims (General Unsecured Claims), (vii) the Hoosier Energy Rural Electric Cooperative Patronage Claim, and (viii) the Class 11 interests (Member interests) (each of the parties listed in (i) through (viii) an “Unaffected Party” and, collectively, the “Unaffected Parties”).

G. The treatment of the following Claims under the Plan has been affected or altered by the Plan Modifications: (i) the RUS Secured Claim (Class 2 Claim); (ii) the RUS Unsecured Claim (Class 3 Claim); (iii) the Chase Reimbursement Claim (Class 4 Claim); (iv) the BNY Reimbursement Claim (Class 6 Claim); (v) the Claims of the Members; and (vi) the Claims of the Smelters (each of the parties listed in (i) through (vi)

an "Affected Party" and, collectively, the "Affected Parties").

H. Each of the Affected Parties was actively involved in negotiating those elements of the Plan Modifications that affect their direct pecuniary interests.

I. The Plan Modifications do not affect or alter in any respect whatsoever any of the provisions of the Plan which the Court has already found in the Confirmation Order to satisfy and comply with Sections 1122 and 1123, 1129(a)(1), (4), (5), (6), (9), (12), (13) and 1129(d) of the Bankruptcy Code. Accordingly, the Plan, as modified by the Plan Modifications, continues to meet the requirements of these Sections of the Bankruptcy Code.

J. No Affected Party provided the Debtor or this Court with notice of a change in acceptance or rejection of the Plan, as modified by the Plan Modifications, under Section 1127(d) of the Bankruptcy Code. Hence, the holders of at least two-thirds in amount and one-half in number of the Claims in Classes 2, 3, 4, 6, 9 and 10, actually voting, continue to accept the Plan, as modified by the Plan Modifications, without including the votes of any insiders. Therefore, the Plan, as modified by the Plan Modifications, continues to satisfy the requirements of Section 1129(a)(2) of the Bankruptcy Code.

K. The Plan Modifications and the modifications to the Transaction Agreements were proposed in good faith and not by means forbidden by law, (i) as evidenced by, among other things, the totality of the circumstances surrounding the KPSC proceedings and the recoveries of holders of Claims and interests under the Plan, as modified by the Plan Modifications, and (ii) based upon the negotiations of the Plan Modifications and the modifications to the Transaction Agreements bargained for and undertaken in good faith, at arm's length and without collusion among or on behalf of the

Debtor, LG&E Energy, the RUS, the Banks, the Members and the Smelters. Therefore, the Plan Modifications meet the requirements of Section 1129(a)(3) of the Bankruptcy Code.

L. The Plan Modifications and the modifications to the Transaction Agreements do not alter the LG&E Energy Transaction in such a manner so as to affect in any manner the Court's prior findings of fact or conclusions of law with respect to approval of the LG&E Energy Transaction or the Transaction Agreements pursuant to Paragraphs K, Q, R, 6, 7, 8, 12, 14, 15, and 24 of the Confirmation Order.

M. The Plan Modifications and the modifications to the Transaction Agreements are warranted under the circumstances of this case and are in the best interests of the Debtor, its estate, and the holders of Claims and interests.

N. Section 1129(a)(7) of the Bankruptcy Code requires each holder of a Claim or interest in an impaired Class to accept the Plan, as modified by the Plan Modifications, or to receive or retain under the Plan, as modified by the Plan Modifications, property of a value, as of the Effective Date of the Plan, as modified by the Plan Modifications, that is not less than the amount that such holder would receive on account of such Claim or interest if the Debtor liquidated under chapter 7 of the Bankruptcy Code. In Paragraph V of the Confirmation Order, this Court found that each holder of a Claim or interest in an impaired Class under the Plan either voted to accept the Plan or would receive or retain under the Plan property having a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive on account of such Claim or interest if the Debtor liquidated under chapter 7 of the Bankruptcy Code, which finding remains unaffected by the Plan Modifications or the provisions of this Order. The Affected Parties are the only Creditors affected by the Plan Modifications, and thus, are the only

Creditors entitled to change their votes for acceptance or rejection of the Plan, as modified by the Plan Modifications, under Section 1127(d) of the Bankruptcy Code. No Affected Party provided the Debtor or this Court with notice of a change in acceptance or rejection of the Plan, as modified by the Plan Modifications, under Section 1127(d) of the Bankruptcy Code. Therefore, the Plan, as modified by the Plan Modifications, continues to satisfy the requirements of Section 1129(a)(7) of the Bankruptcy Code

O. Section 1129(a)(8) of the Bankruptcy Code requires that for each Class of Claims or interests under the Plan, as modified by the Plan Modifications, such Class either accepts such Plan, as modified by the Plan Modifications, or is not impaired under such Plan, as modified by the Plan Modifications. In Paragraph W of the Confirmation Order, this Court found that (i) the holders of Claims in impaired Classes 2, 3, 4, 6, 9 and 10 voted to accept the Plan in the requisite majorities, and (ii) the holders of Claims or interests in unimpaired Classes, including Class 8, were conclusively presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code or alternatively, that the requirements of Section 1129(b)(1) of the Bankruptcy Code were satisfied, which findings remain unaffected by the Plan Modifications or the provisions of this Order. The Affected Parties are the only Creditors affected by the Plan Modifications, and thus, are the only Creditors entitled to change their votes for acceptance or rejection of the Plan, as modified by the Plan Modifications, under Section 1127(d) of the Bankruptcy Code. No Affected Party provided the Debtor or this Court with notice of a change in acceptance or rejection of the Plan, as modified by the Plan Modifications, under Section 1127(d) of the Bankruptcy Code. The Unaffected Parties, holders of Claims or interests in Classes 1, 5A, 5B, 5C, 7A, 7B, 7C, 8, 11 and the Hoosier Energy Rural Electric Cooperative Patronage

Claim, are conclusively presumed to have accepted the Plan, as modified by the Plan Modifications, because their treatment under the Plan is unaffected by the Plan Modifications. Therefore, the Plan, as modified by the Plan Modifications, continues to satisfy Section 1129(a)(8) of the Bankruptcy Code.

P. The provisions of Section 1129(a)(10) of the Bankruptcy Code continue to be satisfied because no Affected Party provided the Debtor or this Court with notice of a change in acceptance or rejection of the Plan, as modified by the Plan Modifications. Accordingly, at least one impaired Class of Claims has accepted the Plan, as modified by the Plan Modifications, determined without inclusion of any acceptance of the Plan by any insider.

Q. Section 1129(a)(11) of the Bankruptcy Code requires that a plan must be "feasible" and for the Court to determine that the Debtor is not likely to require liquidation or further financial reorganization. Reliable evidence was presented at the Plan Modification Hearing demonstrating that the Plan, as modified by the Plan Modifications, is feasible and that the Debtor is not likely to require liquidation or further financial reorganization. Among other things, the evidence showed that the payments required to be made under the Plan, as modified by the Plan Modifications, can be made, and that the Debtor will be able to perform its obligations under such Plan and the LG&E Energy Transaction on and following the Effective Date. Therefore, the Plan, as modified by the Plan Modifications, continues to satisfy the requirements of Section 1129(a)(11) of the Bankruptcy Code.

R. The Debtor has complied with and satisfied the requirements of Section 1127 of the Bankruptcy Code.

S. Consummation of the Plan, as modified by the Plan Modifications, and the LG&E Energy Transaction without delay is imperative (a) for the benefit of ratepayers in Western Kentucky, and (b) if a healthy economy for Western Kentucky is to be ensured through a stable utility charging reasonable and competitive rates. Accordingly, the Court urges the KPSC and the Federal Energy Regulatory Commission to act promptly on all applications necessary to enable prompt consummation of the Plan, as modified by the Plan Modifications, and the LG&E Energy Transaction.

T. Nothing contained in this Order shall or shall be deemed to alter the Court's findings of fact or conclusions of law in the Confirmation Order or to affect, impact or determine any of the issues raised in the PacifiCorp Entities' appeal from the Confirmation Order.

THEREFORE IT IS HEREBY ORDERED that:

1. Pursuant to Section 1127 of the Bankruptcy Code, (a) the Plan Modifications (a copy of which is annexed hereto as "Exhibit A") are hereby approved, having satisfied all of the requirements of chapter 11 of the Bankruptcy Code, and (b) the Plan shall incorporate the Plan Modifications.

2. Each objection to the Plan Modifications and any response or request for continuance regarding approval of the Plan Modifications not otherwise withdrawn, waived, settled or resolved by the terms of this Order, by a separate order entered contemporaneously herewith, or by a stipulation announced on the record at the Plan Modification Hearing, is overruled and denied.

3. The record of the Plan Modification Hearing is closed.

4. The findings of fact and conclusions of law of the Court set forth

herein and at the Plan Modification Hearing shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, as made applicable herein by Bankruptcy Rule 9014, and are incorporated herein by reference.

5. The Plan, as modified by the Plan Modifications, is confirmed pursuant to Sections 1127 and 1129 of the Bankruptcy Code.

6. As is contemplated by the New RUS Agreement and the New RUS Mortgage, Big Rivers is authorized to enter into a secured revolving line of credit arrangement in an amount up to \$15 million with National Rural Utilities Cooperative Finance Corporation ("CFC") or other lender upon such terms as may be agreed upon by Big Rivers and CFC or such other lender, as applicable, on or after the Effective Date.

7. The Debtor is authorized and shall use reasonable efforts to finalize an agreement with Commonwealth Industries, Inc., f/k/a Commonwealth Aluminum Company ("Commonwealth") and to obtain approval of such agreement by the Kentucky Public Service Commission with respect to the terms and conditions upon which power above 35 MW will be provided at wholesale for resale to Commonwealth provided that (i) such agreement shall not result in a decrease in revenue to Big Rivers of more than \$504,000 per year for two years from the date any such agreement becomes effective as measured against the revenue Big Rivers would have received from Commonwealth based on the assumptions contained in the Feasibility Analysis dated May 21, 1998 filed as Exhibit B to the Modified Disclosure Statement, (ii) such agreement shall be in form and substance satisfactory to Debtor and Commonwealth, and (iii) the finalization and approval of a such agreement shall not be a condition to the Effective Date.



8. In order to effect the intent of the parties with respect to Sections 4.2.4(b) and 4.2.6(c) of the Plan, as modified by the Plan Modifications, and with respect to the related provisions of the Plan, as modified by the Plan Modifications, respecting the Chase Credit and the BNY Credit, (i) on June 1, 1998, the Debtor, in accordance with said Section 4.2.6(c) shall make a partial payment of interest on the 1983 Bonds in the amount of \$527,830.44; (ii) on the Effective Date, Chase shall pay to BNY the sum of \$288,453.47; (iii) each of the Banks acknowledges that, after the Debtor makes the partial payment referenced in the preceding clause (i), Debtor shall have no further obligations under said Sections 4.2.4.(b) and 4.2.6(c); (iv) Chase acknowledges that the Chase Credit is zero dollars (\$0.00); and (v) provided that Chase makes the \$288,453.47 payment to BNY on or before the Effective Date referenced in the preceding clause (ii), the BNY Credit shall be zero dollars (\$0.00). In addition to and without limiting any other matters concerning which the Court has retained jurisdiction, the Court specifically retains jurisdiction both before and after the Effective Date to resolve any issues or disputes concerning the Chase Credit, the BNY Credit, the Chase Effective Date Payment and the BNY Effective Date Payment and any matters related thereto.

9. Without limiting any provisions of the Confirmation Order or this Order, upon the occurrence of the Effective Date:

- a. All Claims respecting any right or entitlement concerning any overpayments or any right or entitlement of any Person against the Debtor concerning any refunds or adjustments of any nature, including, without limitation, any refunds or adjustments respecting fuel clauses, surcharges or rates under any applicable law, statute, regulation or document ("Refund Claims") including, without limitation, all Claims or causes of action that have been or may be asserted against the Debtor or the Reorganized Debtor, as the case may be, in the

matters shown on the attached Schedule (together with any related proceedings, the "Refund Proceedings") are discharged, released and of no further force and effect as of the Confirmation Date.

- b. All Creditors and other Persons shall be permanently barred and enjoined from taking any of the following actions on account of any Refund Claims or any related Claim: (i) commencing or continuing in any manner any action or other proceeding including, without limitation, the Refund Proceedings against the Debtor, the Reorganized Debtor or their respective successors and assigns or the assets and properties of any of the foregoing; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, the Reorganized Debtor or their respective successors and assigns or the assets and properties of any of the foregoing; (iii) creating, perfecting or enforcing any lien or encumbrance against the Debtor, the Reorganized Debtor or their respective successors and assigns or the assets and properties of any of the foregoing; (iv) asserting a setoff, right of subrogation, contribution, indemnification or recoupment of any kind against any claim, debt, liability or obligation due to the Debtor, the Reorganized Debtor, or their respective successors and assigns or the assets or properties of any of the foregoing; and (v) commencing or continuing in any manner or in any place any action that does not comply with or is inconsistent with the provisions of the Plan, as modified by the Plan Modifications, the Confirmation Order or this Order.

10. In order to facilitate implementation of the Plan, as modified by the Plan Modifications, as soon as practicable after the entry of this Order, the Debtor is authorized and directed to file pleadings in the Refund Proceedings for the entry of orders (the "Facilitating Orders") providing for, *inter alia*, (i) a moratorium of the Refund Proceedings until the earlier of the Effective Date, the entry of a KPSC order in the document approval case or rehearing order in Case No. 97-204 that is unacceptable to the Smelters or December 31, 1998 and, (ii) upon the Effective Date, a dismissal of the Refund Proceedings; provided, however, that the relief sought by the Debtor shall be consistent, and

in accordance with the terms and conditions set forth in paragraph 15 of Schedule 5.4(a) of the Plan, as modified by the Plan Modifications.

11. All Creditors, Persons asserting a Claim and parties-in-interest in the Reorganization Case having involvement with the Refund Proceedings are authorized and directed to not oppose, object to or interfere with the efforts of the Debtor in connection with seeking and obtaining entry of the Facilitating Orders.

12. Because, among other things, (i) consummation of the Plan, as modified by the Plan Modifications, and the transactions approved by the KPSC will promote the financial viability of Big Rivers and provide reliable, lower cost services for the benefit of its ratepayers in the western Kentucky region and (ii) entry of the Facilitating Orders will facilitate implementation of the Plan, as modified by the Plan Modifications, it is imperative (and the Court urges) that the KPSC ~~and the Franklin Circuit Court of Appeals~~ enter the Facilitating Orders. In addition to and without limitation upon any other matters concerning which the Court has retained jurisdiction, the Court specifically retains jurisdiction to issue any Orders that may be necessary or advisable to effect the dismissal of the Refund Proceedings, as of the Effective Date, and, both before and after the Effective Date, to decide or resolve any motions, adversary proceedings, contested or litigated matters or any other matters or issues relating to the discharge of the Refund Claims. JWR

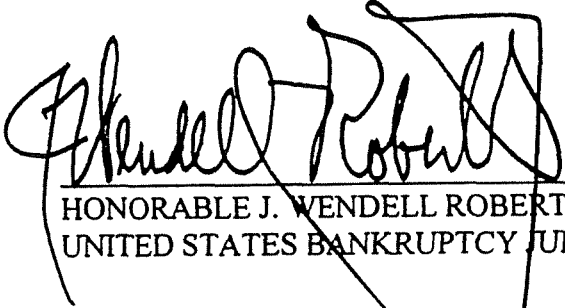
13. The Debtor, LG&E Energy, the RUS, to the extent applicable, the Members and the Smelters shall endeavor to complete and file with the KPSC, no later than June 4, 1998, the Transaction Agreements and any other documents required to be filed with the KPSC pursuant to the KPSC Order.

14. The Effective Date and the Closing of the LG&E Energy

Transaction shall occur on the same date.

15. This Order (without Exhibit A) shall be served as soon as reasonably practicable after the date hereof, by first-class mail, upon (a) the United States Trustee, (b) all Persons on the Short List, (c) all Persons on the Mailing Matrix, and (d) all Persons that have requested copies of the Plan Modifications or the Modified Disclosure Statement pursuant to and in accordance with the Procedures Order.

Dated: Louisville, Kentucky  
June 1, 1998

  
HONORABLE J. WENDELL ROBERTS  
UNITED STATES BANKRUPTCY JUDGE

ENTERED  
DIANE S. ROBL, Clerk  
BY SM

JUN 1 1998

U.S. Bankruptcy Court  
Western District of Kentucky



## MUTUAL RELEASE AGREEMENT

This Mutual Release Agreement (the "Agreement"), made and entered into on the 17th day of July, 1998, by and among The Chase Manhattan Bank, the successor of Manufacturers Hanover Trust Company and Chemical Bank, N.A. ("Chase"), Big Rivers Electric Corporation, Debtor and Debtor-in-Possession in Case No. 96-41168 in the United States Bankruptcy Court for the Western District of Kentucky ("Debtor") and the Debtor and its Estate as reorganized on the Effective Date under and pursuant to the confirmed Plan of Reorganization dated June 9, 1997, as modified by certain plan modifications approved by the Order Approving Plan Modifications dated June 1, 1998 ("Reorganized Debtor;" together with Chase and Debtor, the "Parties"),

### WITNESSETH:

**WHEREAS**, on September 25, 1996, Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Kentucky (Case No. 96-41168) (the "Bankruptcy Case"); and

**WHEREAS**, the Bankruptcy Court entered an Order on June 9, 1997 (the "Confirmation Order") confirming the First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code, As Modified And Restated June 9, 1997 ( the "Plan of Reorganization"), and entered an order on June 1, 1998 (the "Order Approving Plan Modifications") approving certain modifications to the Plan of Reorganization (the Plan of Reorganization as modified being the "Plan"); and

**WHEREAS**, Chase was a creditor of Debtor in the Bankruptcy Case whose claim was treated under the Plan; and

**WHEREAS**, the Plan provides that on the Effective Date, the Debtor, the Reorganized Debtor and Chase shall execute and deliver mutual releases relating to or concerning matters involving Debtor;

**NOW, THEREFORE**, in consideration of the payments, promises, covenants, and other consideration set forth in the Plan, the Confirmation Order and the Order Approving Plan Modifications, the receipt and sufficiency of which are hereby acknowledged, the undersigned Parties hereby agree as follows:

#### I. **DEBTOR AND REORGANIZED DEBTOR RELEASE OF CHASE**

- A. Debtor and Reorganized Debtor each agree to and hereby do release, discharge and forever hold harmless Chase and each of Chases' predecessors in interest or predecessors by corporate name change, every present or former director, officer, employee, agent, attorney, legal counsel, consultant, independent contractor,

representative, successor or assign (the "Chase Released Parties"), from and against any and all actions, causes of action, suits, claims, liabilities, obligations, losses, debts, demands, contentions, damages, expenses, judgments, levies and executions of any kind, whether in law or in equity, whether known or unknown, whether direct, indirect, or derivative in nature, whether liquidated or unliquidated, whether fixed or contingent, whether asserted or unasserted, and whether held personally or in a representative capacity, which either Debtor or Reorganized Debtor ever had or claimed to have, now has or claims to have, or in the future may have or claim to have, against any of the Chase Released Parties by reason of, arising out of, or related in any way to any event, occurrence, transaction, act, or omission relating to or concerning matters involving Debtor by any of the Chase Released Parties that has occurred from the beginning of the world through the date of this Agreement (the "Debtor/Reorganized Debtor Released Claims"), including, without limiting the generality of the foregoing, all claims that were asserted or could have been asserted in the Bankruptcy Case.

- B. Debtor and Reorganized Debtor each promise, agree and covenant that they will not institute, continue, or prosecute any action, suit or proceeding of any kind against any of the Chase Released Parties based upon any of the Debtor/Reorganized Debtor Released Claims.
- C. Debtor and Reorganized Debtor each agree and acknowledge that as of the date of this Agreement, Chase does not have any contractual, quasi-contractual, legal, equitable or other duty or obligation of any kind, whether matured or unmatured, fixed or contingent, express or implied, or oral or written, to either Debtor or Reorganized Debtor.

## II. CHASE RELEASE OF DEBTOR AND REORGANIZED DEBTOR

- A. Chase agrees to and hereby does release, discharge and forever hold harmless both Debtor and Reorganized Debtor and each of Debtor's and Reorganized Debtor's predecessors in interest or predecessors by corporate name change, every present or former director, officer, employee, agent, attorney, legal counsel, consultant, independent contractor, representative, successor or assign (the "Debtor/Reorganized Debtor Released Parties"), from and against any and all actions, causes of action, suits, claims, liabilities, obligations, losses, debts, demands, contentions, damages, expenses, judgments, levies and executions of any kind, whether in law or in equity, whether known or unknown, whether direct, indirect, or derivative in nature, whether liquidated or unliquidated, whether fixed or contingent, whether asserted or unasserted, and whether held personally or in a representative capacity, which Chase ever had or claimed to have, now has or claims to have, or in the future may have or claim to have, against any of the Debtor/Reorganized Debtor Released Parties by reason of, arising out of, or

related in any way to any event, occurrence, transaction, act, or omission relating to or concerning matters involving the Debtor by any of the Debtor/Reorganized Debtor Released Parties that has occurred from the beginning of the world through the date of this Agreement (the "Chase Released Claims"), including, without limiting the generality of the foregoing, all claims that were asserted or could have been asserted in the Bankruptcy Case.

- B. Chase promises, agrees and covenants that it will not institute, continue, or prosecute any action, suit or proceeding of any kind against any of the Debtor/Reorganized Debtor Released Parties based upon any of the Chase Released Claims.
- C. Chase agrees and acknowledges that as of the date of this Agreement, neither Debtor nor Reorganized Debtor has any contractual, quasi-contractual, legal, equitable or other duty or obligation of any kind, whether matured or unmatured, fixed or contingent, express or implied, or oral or written, to Chase.

### III. MISCELLANEOUS

- A. The Parties acknowledge and agree that notwithstanding any other provision herein (i) J. Baxter Schilling is not, and shall not be construed to be, a Released Party, and the Parties each specifically retain any and all claims against J. Baxter Schilling, and (ii) the Parties each reserve and retain the right to defend against, and raise any argument in opposition to, any obligation to pay any amounts relating to the claim filed by J. Baxter Schilling, the Examiner, in the Bankruptcy Case on or about June 5, 1997 entitled "Request for Payment Of An Administrative Expense" (including any argument that such claim should be payable by a Debtor/Reorganized Debtor Released Party or a Chase Released Party).
- B. Each of the Parties hereby acknowledges, represents, and warrants to each of the other Parties, as follows:
  - 1. It has had the opportunity to read, and has read, this Agreement and understands this Agreement, and has had sufficient opportunity to consult with and be represented by legal counsel of its choice in connection with the negotiation, drafting, execution and delivery of this Agreement.
  - 2. No representations, promises, agreements or inducements of any kind have been made or offered to it or relied upon by it in connection with this Agreement other than the terms set forth in the Plan, the Confirmation Order and the Order Approving Plan Modifications.



3. It has executed this Agreement voluntarily and pursuant to the Plan, the Confirmation Order and the Order Approving Plan Modifications, and intending to be bound according to its terms, and not being under any coercion or duress or undue influence by any person or circumstance.
  4. The person or persons signing this Agreement on behalf of such Party is or are duly authorized by law and has or have all required authority to sign this Agreement and to make it binding upon the Party.
- C. This Agreement may be executed in multiple identical counterparts, which taken together shall constitute an original, without the necessity of all Parties signing the same page or the same document, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

BIG RIVERS ELECTRIC CORPORATION,  
Debtor and Debtor-in-Possession

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

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

REORGANIZED BIG RIVERS ELECTRIC  
CORPORATION

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

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

THE CHASE MANHATTAN BANK

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

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

3. It has executed this Agreement voluntarily and pursuant to the Plan, the Confirmation Order and the Order Approving Plan Modifications, and intending to be bound according to its terms, and not being under any coercion or duress or undue influence by any person or circumstance.
  4. The person or persons signing this Agreement on behalf of such Party is or are duly authorized by law and has or have all required authority to sign this Agreement and to make it binding upon the Party.
- C. This Agreement may be executed in multiple identical counterparts, which taken together shall constitute an original, without the necessity of all Parties signing the same page or the same document, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

BIG RIVERS ELECTRIC CORPORATION,  
Debtor and Debtor-in-Possession

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

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

REORGANIZED BIG RIVERS ELECTRIC  
CORPORATION

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

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

THE CHASE MANHATTAN BANK

By: Patrick A. Donohue

Title: Vice President



## MUTUAL RELEASE AGREEMENT

This Mutual Release Agreement (the "Agreement"), made and entered into on the 17th day of July, 1998, by and among The Bank of New York ("BNY"), Big Rivers Electric Corporation, Debtor and Debtor-in-Possession in Case No. 96-41168 in the United States Bankruptcy Court for the Western District of Kentucky ("Debtor") and the Debtor and its Estate as reorganized on the Effective Date under and pursuant to the confirmed Plan of Reorganization dated June 9, 1997, as modified by certain plan modifications approved by the Order Approving Plan Modifications dated June 1, 1998 ("Reorganized Debtor;" together with BNY and Debtor, the "Parties"),

### W I T N E S S E T H:

**WHEREAS**, on September 25, 1996, Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Kentucky (Case No. 96-41168) (the "Bankruptcy Case"); and

**WHEREAS**, the Bankruptcy Court entered an Order on June 9, 1997 (the "Confirmation Order") confirming the First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code, As Modified And Restated June 9, 1997 ( the "Plan of Reorganization"), and entered an order on June 1, 1998 (the "Order Approving Plan Modifications") approving certain modifications to the Plan of Reorganization (the Plan of Reorganization as modified being the "Plan"); and

**WHEREAS**, BNY was a creditor of Debtor in the Bankruptcy Case whose claim was treated under the Plan; and

**WHEREAS**, the Plan provides that on the Effective Date, Debtor, Reorganized Debtor and BNY shall execute and deliver mutual releases relating to or concerning matters involving Debtor;

**NOW, THEREFORE**, in consideration of the payments, promises, covenants, and other consideration set forth in the Plan, the Confirmation Order and the Order Approving Plan Modifications, the receipt and sufficiency of which are hereby acknowledged, the undersigned Parties hereby agree as follows:

#### I. **DEBTOR AND REORGANIZED DEBTOR RELEASE OF BNY**

- A. Debtor and Reorganized Debtor each agree to and hereby do release, discharge and forever hold harmless BNY and each of BNY's predecessors in interest or predecessors by corporate name change, every present or former director, officer, employee, agent, attorney, legal counsel, consultant, independent contractor, representative, successor or assign (the "BNY Released Parties"), from and

against any and all actions, causes of action, suits, claims, liabilities, obligations, losses, debts, demands, contentions, damages, expenses, judgments, levies and executions of any kind, whether in law or in equity, whether known or unknown, whether direct, indirect, or derivative in nature, whether liquidated or unliquidated, whether fixed or contingent, whether asserted or unasserted, and whether held personally or in a representative capacity, which either Debtor or Reorganized Debtor ever had or claimed to have, now has or claims to have, or in the future may have or claim to have, against any of the BNY Released Parties by reason of, arising out of, or related in any way to any event, occurrence, transaction, act, or omission relating to or concerning matters involving Debtor by any of the BNY Released Parties that has occurred from the beginning of the world through the date of this Agreement, including, without limiting the generality of the foregoing, all claims that were asserted or could have been asserted in the Bankruptcy Case (the "Debtor/Reorganized Debtor Released Claims").

- B. Debtor and Reorganized Debtor each promise, agree and covenant that they will not institute, continue, or prosecute any action, suit or proceeding of any kind against any of the BNY Released Parties based upon any of the Debtor/Reorganized Debtor Released Claims.
- C. Debtor and Reorganized Debtor each agree and acknowledge that as of the date of this Agreement, BNY does not have any contractual, quasi-contractual, legal, equitable or other duty or obligation of any kind, whether matured or unmatured, fixed or contingent, express or implied, or oral or written, to either Debtor or Reorganized Debtor.

## II. **BNY RELEASE OF DEBTOR AND REORGANIZED DEBTOR**

- A. BNY agrees to and hereby does release, discharge and forever hold harmless both Debtor and Reorganized Debtor and each of Debtor's and Reorganized Debtor's predecessors in interest or predecessors by corporate name change, every present or former director, officer, employee, agent, attorney, legal counsel, consultant, independent contractor, representative, successor or assign (the "Debtor/Reorganized Debtor Released Parties"), from and against any and all actions, causes of action, suits, claims, liabilities, obligations, losses, debts, demands, contentions, damages, expenses, judgments, levies and executions of any kind, whether in law or in equity, whether known or unknown, whether direct, indirect, or derivative in nature, whether liquidated or unliquidated, whether fixed or contingent, whether asserted or unasserted, and whether held personally or in a representative capacity, which BNY ever had or claimed to have, now has or claims to have, or in the future may have or claim to have, against any of the Debtor/Reorganized Debtor Released Parties by reason of, arising out of, or

related in any way to any event, occurrence, transaction, act, or omission relating to or concerning matters involving Debtor by any of the Debtor/Reorganized Debtor Released Parties that has occurred from the beginning of the world through the date of this Agreement, including, without limiting the generality of the foregoing, all claims that were asserted or could have been asserted in the Bankruptcy Case (the "BNY Released Claims").

- B. BNY promises, agrees and covenants that it will not institute, continue, or prosecute any action, suit or proceeding of any kind against any of the Debtor/Reorganized Debtor Released Parties based upon any of the BNY Released Claims.
- C. BNY agrees and acknowledges that as of the date of this Agreement, neither Debtor nor Reorganized Debtor has any contractual, quasi-contractual, legal, equitable or other duty or obligation of any kind, whether matured or unmatured, fixed or contingent, express or implied, or oral or written, to BNY.

### III. MISCELLANEOUS

- A. J. Baxter Schilling, the Examiner in the Bankruptcy Case (the "Examiner"), is not and shall not be construed to be, a Released Party, and the Parties each specifically retain any and all claims against the Examiner.
- B. Debtor and Reorganized Debtor, on the one hand, and BNY, on the other hand, each reserve and retain the right to (a) oppose, on any grounds whatsoever, the request for payment of or the obligation resulting from the claim filed by J. Baxter Schilling, the Examiner, in the Bankruptcy Case on or about June 5, 1997 entitled "Request for Payment of An Administrative Expense" (the "Examiner's Claim"), and (b) make any and all arguments as to the source of the payment of the Examiner's Claim, if allowed.
- C. BNY shall reserve and retain the right to object to, or raise any argument in connection with, any portion of any application of any professionals whose fees and disbursements remain subject to final approval by the Bankruptcy Court or any other court.
- D. Nothing contained in this release shall be construed to constitute a consent by BNY to the jurisdiction of the Bankruptcy Court or any other court for the purpose of determining that BNY should pay any portion of the Examiner's Claim.
- E. Each of the Parties hereby acknowledges, represents, and warrants to each of the other Parties, as follows:

1. It has had the opportunity to read, and has read, this Agreement and understands this Agreement, and has had sufficient opportunity to consult with and be represented by legal counsel of its choice in connection with the negotiation, drafting, execution and delivery of this Agreement.
2. No representations, promises, agreements or inducements of any kind have been made or offered to it or relied upon by it in connection with this Agreement other than the terms set forth in the Plan, the Confirmation Order and the Order Approving Plan Modifications.
3. It has executed this Agreement voluntarily and pursuant to the Plan, the Confirmation Order and the Order Approving Plan Modifications, and intending to be bound according to its terms, and not being under any coercion or duress or undue influence by any person or circumstance.
4. The person or persons signing this Agreement on behalf such Party is or are duly authorized by law and has or have all required authority to sign this Agreement and to make it binding upon the Party.

[REMAINDER OF PAGE LEFT BLANK]

F. This Agreement may be executed in multiple identical counterparts, which taken together shall constitute an original, without the necessity of all Parties signing the same page or the same document, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

BIG RIVERS ELECTRIC CORPORATION,  
Debtor and Debtor-in-Possession

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

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

REORGANIZED BIG RIVERS ELECTRIC  
CORPORATION

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

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

THE BANK OF NEW YORK

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

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



THE BANK OF NEW YORK

By: 

Title: VICE PRESIDENT



## MUTUAL RELEASE AGREEMENT

This Mutual Release Agreement (the "Agreement"), made and entered into on the 17th day of July, 1998, by and among Alcan Aluminum Corporation ("Alcan"), NSA, Inc. ("NSA"), Southwire Company ("Southwire", together with NSA and Alcan, the "Smelters"), and Big Rivers Electric Corporation, Debtor and Debtor-in-Possession in Case No. 96-41168 in the United States Bankruptcy Court for the Western District of Kentucky ("Big Rivers"; together with the Smelters, the "Parties"),

### WITNESSETH:

**WHEREAS**, on September 25, 1996, Big Rivers filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Kentucky (Case No. 96-41168) (the "Bankruptcy Case"); and

**WHEREAS**, the Bankruptcy Court entered an Order on June 9, 1997 (the "Confirmation Order") confirming the First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code As Modified And Restated June 9, 1997 ( the "Plan of Reorganization"), and entered an Order on June 1, 1998 (the "Order Approving Plan Modifications") approving certain modifications to the Plan of Reorganization (the Plan of Reorganization as modified being the "Plan");

**WHEREAS**, each of the Smelters has asserted a claim against Big Rivers in the Bankruptcy Case which claims are treated under the Plan ;

**NOW, THEREFORE**, in consideration of the payments, promises, covenants, and other consideration set forth in the Plan, the Confirmation Order and the Order Approving Plan Modifications, the receipt and sufficiency of which are hereby acknowledged, the undersigned Parties hereby agree as follows:

#### **I. BIG RIVERS RELEASE OF THE SMELTERS**

- A. Big Rivers agrees to and hereby does release and discharge the Smelters and each of the Smelters' predecessors in interest or predecessors by corporate name change, every present or former director, officer, employee, agent, attorney, legal counsel, consultant, independent contractor, representative, successor or assign (the "Smelter Released Parties"), from and against any and all actions, causes of action, suits, claims, liabilities, obligations, losses, debts, demands, contentions, damages, expenses, judgments, levies and executions of any kind, whether in law or in equity, whether known or unknown, whether direct, indirect, or derivative in nature, whether liquidated or unliquidated, whether fixed or contingent, whether asserted or unasserted, and whether held personally or in a representative capacity, which Big Rivers ever had or claimed to have, now has or claims to have, or in

the future may have or claim to have, against any of the Smelter Released Parties by reason of, arising out of, or related in any way to any event, occurrence, transaction, act, or omission relating to or concerning matters involving Big Rivers by any of the Smelter Released Parties that has occurred from the beginning of the world through the date of this Agreement (the "Big Rivers Released Claims"), including, without limiting the generality of the foregoing, all claims that were asserted or could have been asserted in the Bankruptcy Case.

- B. Big Rivers promises, agrees and covenants that it will not institute, continue, or prosecute any action, suit or proceeding of any kind against any of the Smelter Released Parties based upon any of the Big Rivers Released Claims.

## II. THE SMELTERS RELEASE OF BIG RIVERS

- A. Each of the Smelters agrees to and hereby does release and discharge Big Rivers and each of Big Rivers' predecessors by corporate name change, every present or former director, officer, employee, agent, attorney, legal counsel, consultant, (except for William Thorpe and KPMG Peat Marwick who are not released), independent contractor, representative, successor or assign (the "Big Rivers Released Parties"), from and against any and all actions, causes of action, suits, claims, liabilities, obligations, losses, debts, demands, contentions, damages, expenses, judgments, levies and executions of any kind, whether in law or in equity, whether known or unknown, whether direct, indirect, or derivative in nature, whether liquidated or unliquidated, whether fixed or contingent, whether asserted or unasserted, and whether held personally or in a representative capacity, which any of the Smelters ever had or claimed to have, now has or claims to have, or in the future may have or claim to have, against any of the Big Rivers Released Parties by reason of, arising out of, or related in any way to any event, occurrence, transaction, act, or omission relating to or concerning matters involving Big Rivers by any of the Big Rivers Released Parties that has occurred from the beginning of the world through the date of this Agreement (the "Smelter Released Claims"), including, without limiting the generality of the foregoing, all claims that were asserted or could have been asserted in the Bankruptcy Case.

- B. Each of the Smelters promises, agrees and covenants that none of them will institute, continue, or prosecute any action, suit or proceeding of any kind against any of the Big Rivers Released Parties based upon any of the Smelter Released Claims.

## III. MISCELLANEOUS

- A. The Parties acknowledge and agree that notwithstanding any other provision herein (i) J. Dexter Schilling is not, and shall not be construed to be, a Released

Party, and the Parties each specifically retain any and all claims against J. Baxter Schilling, and (ii) the Parties each reserve and retain the right to defend against, and raise any argument in opposition to, any obligation to pay any amounts relating to the claim filed by J. Baxter Schilling, the Examiner, in the Bankruptcy Case on or about June 5, 1997 entitled "Request for Payment Of An Administrative Expense."

- B. Each of the Parties acknowledges and agrees that this Agreement does not affect, and each Party reserves and retains, any rights or obligations of the Parties provided for, by or under the Plan, the Confirmation Order, and the Order Approving Plan Modifications.
- C. Each of the Parties hereby acknowledges, represents, and warrants to each of the other Parties, as follows:
  - 1. It has had the opportunity to read, and has read, this Agreement and understands this Agreement, and has had sufficient opportunity to consult with and be represented by legal counsel of its choice in connection with the negotiation, drafting, execution and delivery of this Agreement.
  - 2. No representations, promises, agreements or inducements of any kind have been made or offered to it or relied upon by it in connection with this Agreement other than the terms set forth in the Plan, the Confirmation Order and the Order Approving Plan Modifications.
  - 3. It has executed this Agreement voluntarily and pursuant to the Plan, the Confirmation Order and the Order Approving Plan Modifications, and intending to be bound according to its terms, and not being under any coercion or duress or undue influence by any person or circumstance.
  - 4. The person or persons signing this Agreement on behalf of such Party is or are duly authorized by law and has or have all required authority to sign this Agreement and to make it binding upon the Party.
- D. This Agreement may be executed in multiple identical counterparts, which taken together shall constitute an original, without the necessity of all Parties signing the same page or the same document, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

BIG RIVERS ELECTRIC CORPORATION,  
Debtor and Debtor in Possession

By: [Signature]  
Title: Pres/CEO

ALCAN ALUMINUM CORPORATION

By: [Signature]  
Title: Vice President

NSA, INC.

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

SOUTHWIRE COMPANY

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

BIG RIVERS ELECTRIC CORPORATION,  
Debtor and Debtor-in-Possession

By: [Signature]  
Title: Pres/CEO

ALCAN ALUMINUM CORPORATION

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

NSA, INC.

By: [Signature]  
Title: President

SOUTHWIRE COMPANY

By: [Signature]  
Title: Vice President





## MUTUAL RELEASE AGREEMENT

This Mutual Release Agreement (the "Agreement"), made and entered into on the 17th day of July, 1998, by and among The Chase Manhattan Bank, the successor of Manufacturers Hanover Trust Company and Chemical Bank, N.A. ("Chase"), The Bank of New York ("BNY"), Alcan Aluminum Corporation ("Alcan"), NSA, Inc. ("NSA"), Southwire Company ("Southwire"), Rural Utilities Service, United States Department of Agriculture ("RUS"), Green River Electric Corporation ("Green River"), Henderson Union Electric Cooperative Corporation ("Henderson Union"), Meade County Rural Electric Cooperative Corporation ("Meade County"), and Jackson Purchase Electric Cooperative Corporation ("Jackson Purchase;" together with Chase, BNY, Alcan, NSA, Southwire, RUS, Green River, Henderson Union and Meade County, the "Releasing Parties"),

### W I T N E S S E T H:

**WHEREAS**, on September 25, 1996, Big Rivers Electric Corp. ("Big Rivers") filed a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Kentucky (Case No. 96-41168) (the "Bankruptcy Case"); and

**WHEREAS**, the Bankruptcy Court entered an Order on June 9, 1997 (the "Confirmation Order") confirming the First Amended Plan Of Reorganization Proposed By Debtor Big Rivers Electric Corporation Under Chapter 11 Of The Bankruptcy Code, As Modified And Restated June 9, 1997 ( the "Plan of Reorganization"), and entered an Order on June 1, 1998 (the "Order Approving Plan Modifications") approving certain modifications to the Plan of Reorganization (the Plan of Reorganization as modified being the "Plan"); and

**WHEREAS**, each of the Releasing Parties has asserted a claim against Big Rivers in the Bankruptcy Case which claims are treated under the Plan; and

**WHEREAS**, the Plan provides that on the Effective Date, each of the Releasing Parties shall execute and deliver mutual releases relating to or concerning matters involving Big Rivers;

**NOW, THEREFORE**, in consideration of the payments, promises, covenants, and other consideration set forth in the Plan, the Confirmation Order and the Order Approving Plan Modifications, the receipt and sufficiency of which are hereby acknowledged, the undersigned Releasing Parties hereby agree as follows:

#### I. DEFINITIONS

- A. As used herein, the term "Released Parties" means each and all of Chase, BNY, Alcan, NSA, Southwire, RUS, Green River, Henderson Union, Meade County and Jackson Purchase and every predecessor in interest or predecessor by corporate name change, every present or former director, officer, employee, agent,

attorney, legal counsel, consultant, independent contractor, representative, successor or assign of each of them; provided, however, J. Baxter Schilling is not, and shall not be construed to be, a Released Party, and the Releasing Parties specifically retain any and all claims against J. Baxter Schilling.

- B. As used herein, the term "Released Claims" means any and all actions, causes of action, suits, claims, liabilities, obligations, losses, debts, demands, contentions, damages, expenses, judgments, levies and executions of any kind, whether in law or in equity, whether known or unknown, whether direct, indirect, or derivative in nature, whether liquidated or unliquidated, whether fixed or contingent, whether asserted or unasserted, and whether held personally or in a representative capacity, which any of the Releasing Parties ever had or claimed to have, now has or claims to have, or in the future may have or claim to have, against any of the Released Parties by reason of, arising out of, or related in any way to any event, occurrence, transaction, act, or omission relating to or concerning matters involving Big Rivers by any of the Released Parties that has occurred from the beginning of the world through the date of this Agreement, including, without limiting the generality of the foregoing, all claims that were asserted or could have been asserted in the Bankruptcy Case.

## II. RELEASES

- A. Each of the Releasing Parties agrees to and hereby does release and discharge each and all of the Released Parties from and against the Released Claims.
- B. The Releasing Parties hereby promise, and each of them agrees and covenants that such Releasing Party shall not institute, continue, or prosecute any action, suit or proceeding of any kind against any of the Released Parties based upon any of the Released Claims.
- C. The Releasing Parties acknowledge that BNY and Chase are parties to an intercreditor agreement, the obligations under which are not released hereby. The Releasing Parties further acknowledge that RUS and Green River, RUS and Henderson Union, RUS and Meade County, and RUS and Jackson Purchase are parties to certain agreements, the rights and obligation under which are not released hereby.
- D. The Parties acknowledge and agree that this Agreement does not affect, and each Party specifically reserves and retains, any and all arguments (including the argument that all or a portion of any amounts found to be owing to J. Baxter Schilling, should be paid by another Released Party or by Big Rivers), contentions and defenses arising out of, relating to or concerning (i) any fee agreement, fee or claim asserted by J. Baxter Schilling, including, but not limited to, the claim filed

by J. Baxter Schilling in the Bankruptcy Case on or about June 5, 1997 entitled "Request For Payment Of An Administrative Expense," or (ii) any rights or obligations of the Releasing Parties provided for, by or under the Plan, the Confirmation Order or the Order Approving Plan Modifications; provided, however, notwithstanding any other provision herein, no Releasing Party shall have the right to make any claim against a Released Party for any payment of fees made by a Releasing Party to or for the benefit of J. Baxter Schilling.

### III. MISCELLANEOUS

- A. Each of the Releasing Parties hereby acknowledges, represents, and warrants to each of the other Releasing Parties, as follows:
1. It has had the opportunity to read, and has read, this Agreement and understands this Agreement, and has had sufficient opportunity to consult with and be represented by legal counsel of its choice in connection with the negotiation, drafting, execution and delivery of this Agreement.
  2. No representations, promises, agreements or inducements of any kind have been made or offered to it or relied upon by it in connection with this Agreement other than the terms set forth in the Plan, the Confirmation Order and the Order Approving Plan Modifications.
  3. It has executed this Agreement voluntarily and pursuant to the Plan, the Confirmation Order and the Order Approving Plan Modifications, and intending to be bound according to its terms, and not being under any coercion or duress or undue influence by any person or circumstance.
  4. The person or persons signing this Agreement on behalf of the Releasing Party is or are duly authorized by law and has or have all required authority to sign this Agreement and to make it binding upon the Releasing Party.

B. This Agreement may be executed in multiple identical counterparts, which taken together shall constitute an original, without the necessity of all Releasing Parties signing the same page or the same document, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents.

IN WITNESS WHEREOF, the Releasing Parties have executed this Agreement as of the date first set forth above.

THE CHASE MANHATTAN BANK

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

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

THE BANK OF NEW YORK

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

Title: ALBERT R. TAYLOR  
VICE PRESIDENT  
\_\_\_\_\_

ALCAN ALUMINUM CORPORATION

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

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

NSA, INC.

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

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

SOUTHWIRE COMPANY

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

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

B. This Agreement may be executed in multiple identical counterparts, which taken together shall constitute an original, without the necessity of all Releasing Parties signing the same page or the same document, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents.

IN WITNESS WHEREOF, the Releasing Parties have executed this Agreement as of the date first set forth above.

THE CHASE MANHATTAN BANK

By: Patrick A. Quinn

Title: V.P.

THE BANK OF NEW YORK

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

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

ALCAN ALUMINUM CORPORATION

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

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

NSA, INC.

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

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

SOUTHWIRE COMPANY

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

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

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IN WITNESS WHEREOF, the Releasing Parties have executed this Agreement as of the date first set forth above.

THE CHASE MANHATTAN BANK

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

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

THE BANK OF NEW YORK

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

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

ALCAN ALUMINUM CORPORATION

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

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

NSA, INC.

By: John B. Hillman

Title: President

SOUTHWIRE COMPANY

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

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

RURAL UTILITIES SERVICE, UNITED STATES  
DEPARTMENT OF AGRICULTURE

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

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

GREEN RIVER ELECTRIC CORPORATION

By: Dean Stanley

Title: President & CEO

HENDERSON UNION ELECTRIC  
COOPERATIVE CORPORATION

By: Josh West

Title: President + CEO

MEADE COUNTY RURAL ELECTRIC  
COOPERATIVE CORPORATION

By: Benn E. Allen

Title: PRES. DENT / CEO

JACKSON PURCHASE ELECTRIC  
COOPERATIVE CORPORATION

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

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



RURAL UTILITIES SERVICE, UNITED STATES  
DEPARTMENT OF AGRICULTURE

By: Larry Bell

Title: For Administrator

GREEN RIVER ELECTRIC CORPORATION

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

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

HENDERSON UNION ELECTRIC  
COOPERATIVE CORPORATION

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

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

MEADE COUNTY RURAL ELECTRIC  
COOPERATIVE CORPORATION

By: Bernard E. Spencer

Title: PRESIDENT / CEO

JACKSON PURCHASE ELECTRIC  
COOPERATIVE CORPORATION

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

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

RURAL UTILITIES SERVICE, UNITED STATES  
DEPARTMENT OF AGRICULTURE

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

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

GREEN RIVER ELECTRIC CORPORATION

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

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

HENDERSON UNION ELECTRIC  
COOPERATIVE CORPORATION

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

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

MEADE COUNTY RURAL ELECTRIC  
COOPERATIVE CORPORATION

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

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

JACKSON PURCHASE ELECTRIC  
COOPERATIVE CORPORATION

By: *J. Kelly Kunkle*

Title: *General Manager*