



*Legal Counsel.*

DINSMORE & SHOHL LLP  
101 South Fifth Street ^ Suite 2500 ^ Louisville, KY 40202  
www.dinsmore.com

Edward T. Depp  
502-540-2347  
tip.depp@dinsmore.com

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MAR 6 2013

PUBLIC SERVICE  
COMMISSION

March 6, 2013

**VIA U.S. MAIL**

Jeff Derouen  
Kentucky Public Service Commission  
211 Sower Blvd  
P.O. Box 615  
Frankfort, KY 40602-0615

***Re: Application of Big Rivers Electric Corporation for an Adjustment of Rates,  
P.S.C. Case No. 2012-00535; Revised Petition for Confidential Treatment and  
Additional Attachments***

Dear Mr. Derouen:

On February 28, 2013, Big Rivers Electric Corporation (“Big Rivers”) filed its responses to Kentucky Industrial Utilities Customers, Inc.’s (“KIUC”) Initial Request for Information, the Office of the Attorney General’s (“AG”) Initial Request for Information, Alcan Primary Products Corporation’s Initial Request for Information, and the Public Service Commission’s (“PSC”) Second Request for Information. Big Rivers also filed a petition for confidential treatment and a motion for deviation in connection with that filing. Due to the large volume of responses required in this round of requests for information, Big Rivers has learned that certain materials may have been inadvertently omitted.

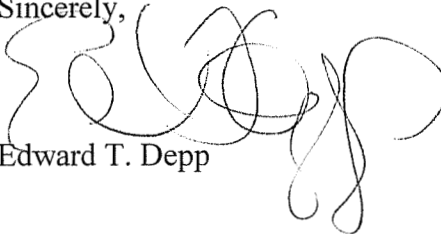
Enclosed are the following:

- A redacted, public version of the attachment to AG 1-212. This version should **replace** the original attachment to AG 1-212 filed on February 28, which was inadvertently included in the public filing without redaction.
- A highlighted, confidential version of the response to AG 1-278 to supplement the public version which was filed.
- A highlighted, confidential version of the attachment to KIUC 1-1 to supplement the public version which was filed.

- Confidential attachments to the responses to AG 1-39 and AG 1-233. These attachments are confidential in their entirety and do not have corresponding public versions.
- A revised Petition of Big Rivers Electric Corporation for Confidential Protection to replace the petition filed on February 28. The revised petition adds requests for confidential treatment related to the responses to AG 1-37, AG 1-58, AG 1-69, and AG 1-128 (all related documents were filed on February 28). The revised petition also removes requests for confidential treatment related to the responses to AG 1-171, AG 1-172, AG 1-190, AG 1-228, and AG 1-231.

Thank you, and if you have any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward T. Depp', with a stylized, cursive flourish extending to the right.

Edward T. Depp

ETD/lb  
Enclosure

Cc: James M. Miller, Esq.  
Billie J. Richert  
Service List

Service List  
PSC Case No. 2012-00535

Jennifer Black Hans  
Lawrence W. Cook  
Dennis G. Howard, II  
Assistant Attorneys General  
1024 Capital Center Dr.  
Suite 200  
Frankfort, KY 40601

Mr. David Brevitz  
3623 S.W. Woodvalley Terrace  
Topeka, KS 66614

Mr. Bion C. Ostrander  
1121 S.W. Chetopa Trail  
Topeka, KS 66615

Mr. Larry Holloway  
830 Romine Ridge  
Osage City, KS 66523

Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Boehn, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202

Lane Kollen  
J. Kennedy and Associates, Inc.  
570 Colonial Park Dr., Suite 305  
Roswell, Georgia 30075

Russell L. Klepper  
Energy Services Group, LLC  
316 Maxwell Road, Suite 400  
Alpharetta, Georgia 30009

David C. Brown, Esq.  
Banyan House #601  
1225 South Ocean Blvd.  
Delray Beach, FL 33483

Donald P. Seberger, Esq.  
Special Counsel  
Rio Tinto Alcan  
8770 West Bryn Mawr Avenue  
Chicago, Illinois 60631

Gregory Starheim  
President & CEO  
Kenergy Corp.  
6402 Old Corydon Road  
P.O. Box 18  
Henderson, Kentucky 42419-0018

J. Christopher Hopgood, Esq  
318 Second Street  
Henderson, Kentucky 42420

G. Kelly Nuckols  
President and CEO  
Jackson Purchase Energy Corporation  
2900 Irvin Cobb Drive  
P.O. Box 4030  
Paducah, KY 42002-4030

Melissa D. Yates  
Denton & Keuler, LLP  
555 Jefferson Street  
Suite 301  
Paducah, KY 42001

Burns Mercer  
Meade County RECC  
1351 Hwy. 79  
P.O. Box 489  
Brandenburg, KY 40108

Thomas C. Brite, Esq.  
Brite & Hopkins, PLLC  
83 Ballpark Road  
P.O. Box 309  
Hardinsburg, KY 40143-0309

David O'Brien Suetholz  
Neal R. Hayes  
Kircher Suetholz & Grayson PSC  
515 Park Avenue  
Louisville, KY 40208

1 COMMONWEALTH OF KENTUCKY  
2 BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY  
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RECEIVED

MAR 6 2013

PUBLIC SERVICE  
COMMISSION

5 In the Matter of:  
6

7 Application of Big Rivers Electric )  
8 Corporation for a General ) Case No. 2012-00535  
9 Adjustment in Rates )  
10  
11

12 **REVISED PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR**  
13 **CONFIDENTIAL PROTECTION**  
14

15 1. Big Rivers Electric Corporation (“Big Rivers”) hereby petitions the  
16 Kentucky Public Service Commission (“Commission”), pursuant to 807 KAR  
17 5:001 Section 13 and KRS 61.878, to grant confidential protection to certain  
18 information Big Rivers is filing with its responses to Kentucky Industrial Utility  
19 Customers, Inc.’s (“KIUC’s”) and the Office of the Attorney General’s (“AG’s”),  
20 Initial Requests for Information, and the Commission’s (“PSC’s”) Second  
21 Requests for Information. The information Big Rivers seeks to protect as  
22 confidential is hereinafter referred to as the “Confidential Information.”

23 2. On February 28, 2013, Big Rivers filed its responses to the  
24 intervenors’ initial requests for information and the PSC’s second request for  
25 information. With this petition, Big Rivers provides the following confidential  
26 documents referenced by those responses but inadvertently omitted from the  
27 February 28 filing: (i) a highlighted, confidential version of the response to AG  
28 1-278 to accompany the public version filed on February 28; (ii) a highlighted,  
29 confidential version of the attachment to the response to KIUC 1-1 to  
30 accompany the public version filed on February 28; and (iii) confidential

1 attachments to the responses to AG 1-39 and AG 1-233. All of these  
2 documents are provided pursuant to this petition for confidential treatment, as  
3 described more fully below.

4 3. This Revised Petition for Confidential Protection makes several  
5 minor changes to the February 28 Petition for Confidential Protection.  
6 Specifically, it adds requests for confidential treatment for the responses to AG  
7 1-37, AG 1-58, AG 1-69, and AG 1-128 (confidential and public versions of  
8 which were filed on February 28). It also removes unnecessary requests for  
9 confidential treatment related to the responses to AG 1-171, AG 1-172, AG 1-  
10 190, AG 1-212, AG 1-228, and AG 1-231.

11 4. The full list of Confidential Information included in the responses  
12 described in paragraph 1 is now as follows:

13 a. portions of the responses and/or attachments to the responses to  
14 Items 1, 2, 3, 6, 7, 13, 36(f), 38, 39, and 42 of KIUC’s First Request  
15 for Information (“KIUC 1-1,” “KIUC 1-2,” “KIUC 1-3,” “KIUC 1-6,”  
16 “KIUC 1-7,” “KIUC 1-13,” “KIUC 1-36(f),” “KIUC 1-38,” “KIUC 1-39”  
17 and “KIUC-1-42 respectively);

18 b. portions of the responses and/or attachments to the responses to  
19 Items 7, 10, 17, 18, 25(g), 31, 34, 37, 38, 39, 46, 50, 58, 60, 62,  
20 69, 88, 89, 93, 94, 96, 97, 100, 101, 102, 103, 104, 105, 107, 109,  
21 115, 116, 118, 119, 121, 128, 131, 143, 150, 152, 154, 165, 166,  
22 167, 186, 233, 236, 239, 246(o), 249, 267, 275, and 278 of the  
23 AG’s Initial Request for Information (“AG 1-7,” “AG 1-10,” “AG 1-

1 17,” “AG 1-18,” “AG 1-25(g),” “AG 1-31,” “AG 1-34,” “AG 1-37,” “AG  
2 1-38,” “AG 1-39,” “AG 1-46,” “AG 1-50,” “AG 1-58,” “AG 1-60,” “AG  
3 1-62,” “AG 1-69,” “AG 1-80,” “AG 1-85,” “AG 1-88,” “AG 1-89,” “AG  
4 1-93,” “AG 1-94,” “AG 1-96,” “AG 1-97,” “AG 1-100,” “AG 1-101,”  
5 “AG 1-102,” “AG 1-103,” “AG 1-104,” “AG 1-105,” “AG 1-107,” “AG  
6 1-109,” “AG 1-115,” “AG 1-116,” “AG 1-118,” “AG 1-119,” “AG 1-  
7 120,” “AG 1-121,” “AG 1-128,” “AG 1-131,” “AG 1-143,” “AG 1-  
8 150,” “AG 1-152,” “AG 1-154,” “AG 1-156,” “AG 1-165,” “AG 1-  
9 166,” “AG 1-167,” “AG 1-186,” “AG 1-233,” “AG 1-236,” “AG 1-  
10 239,” “AG 1-246(o),” “AG 1-249,” “AG 1-267,” “AG 1-275,” “AG 1-  
11 278,” respectively);

12 c. portions of the responses and/or attachments to the responses to  
13 Items 4, 6, 9, 15, 18, 21, 23, 26, 34, 36, 37, and 39 of the  
14 Commission’s Second Request for Information (“PSC 2-4,” “PSC 2-  
15 6,” “PSC 2-9,” “PSC 2-15,” “PSC 2-18,” “PSC 2-21,” “PSC 2-23,”  
16 “PSC 2-26,” “PSC 2-34,” “PSC 2-36,” “PSC 2-37,” and “PSC 2-39,”  
17 respectively).

18 5. Two (2) copies of the hardcopy pages containing Confidential  
19 Information, with the Confidential Information highlighted with transparent  
20 ink, printed on yellow paper, or otherwise marked “CONFIDENTIAL,” are being  
21 filed with this petition. A copy of those pages, with the Confidential  
22 Information redacted, is being filed with the original and each of the ten (10)



1 copies of the responses to the information requests filed with this petition. 807  
2 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b).

3         6. One (1) copy of the electronic attachments containing Confidential  
4 Information is contained on the CD marked “CONFIDENTIAL” that  
5 accompanies this petition. Because the Confidential Information is inextricably  
6 intertwined with non-confidential information in the electronic spreadsheet  
7 attachments in response to certain requests, Big Rivers cannot redact only the  
8 Confidential Information from the electronic spreadsheet attachments without  
9 making other cells in the spreadsheets unusable, and so, the entirety of the  
10 attachments must be made confidential. As such, the entirety of the  
11 confidential CDs has been redacted from the original and each of the ten (10)  
12 copies of the responses to the information requests filed with this petition. 807  
13 KAR 5:001 Sections 13(2)(a)(3), 13(2)(b). A motion for deviation from the  
14 requirement that Big Rivers file paper copies of the attachments accompanies  
15 this petition.

16         7. A copy of this petition with the Confidential Information redacted  
17 has been served on all parties to this proceeding. 807 KAR 5:001 Section  
18 13(2)(c). A copy of the Confidential Information has been served on all parties  
19 that have signed a confidentiality agreement with the exception of two of the  
20 attachments to PSC 2-18, which are being provided only to the Commission.

21         8. The Confidential Information is not publicly available, is not  
22 disseminated within Big Rivers except to those employees and professionals  
23 with a legitimate business need to know and act upon the information, and is

1 not disseminated to others without a legitimate need to know and act upon the  
2 information.

3 9. If and to the extent the Confidential Information becomes generally  
4 available to the public, whether through filings required by other agencies or  
5 otherwise, Big Rivers will notify the Commission and have its confidential  
6 status removed. 807 KAR 5:001 Section 13(10)(b).

7 10. As discussed below, the Confidential Information is entitled to  
8 confidential protection based upon KRS 61.878(1)(m) or KRS 61.878(1)(c)(1);  
9 807 KAR 5:001 Section 13(2)(a)(1).

10 **I. Information Protected by KRS 61.878(1)(m)**

11 11. KRS 68.878(1)(c)(1) protects “[p]ublic records the disclosure of  
12 which would have a reasonable likelihood of threatening the public safety by  
13 exposing a vulnerability in preventing protecting against, mitigating, or  
14 responding to a terrorist act. . . .”

15 12. The Confidential Information contained in the attachments to the  
16 response to KIUC 1-36(f) includes proprietary information regarding Big Rivers’  
17 system reliability.

18 13. The Confidential Information contained in the attachments to the  
19 response to AG 1-121 includes Big Rivers’ system mapping information.

20 **II. Information Protected By KRS 61.878(1)(c)(1)**

21 **A. Big Rivers Faces Actual Competition**

22 14. KRS 61.878(1)(c)(1) protects “records confidentially disclosed to an  
23 agency or required by an agency to be disclosed to it, generally recognized as

1 confidential or proprietary, which if openly disclosed would permit an unfair  
2 commercial advantage to competitors of the entity that disclosed the records.”

3 15. Big Rivers competes in the wholesale power market to sell energy  
4 excess to its members’ needs. Big Rivers’ ability to successfully compete in the  
5 wholesale power market is dependent upon a combination of its ability to get  
6 the maximum price for the power sold, and keeping the cost of producing that  
7 power as low as possible. Fundamentally, if Big Rivers’ cost of producing a  
8 kilowatt hour increases, its ability to sell that kilowatt hour in competition with  
9 other utilities is adversely affected. As is well documented in multiple  
10 proceedings before this Commission, Big Rivers’ margins are derived almost  
11 exclusively from its off-system sales.

12 16. Big Rivers also competes for reasonably priced credit in the credit  
13 markets, and its ability to compete is directly impacted by its financial results.  
14 Any event that adversely affects Big Rivers’ margins will adversely affect its  
15 financial results and potentially impact the price it pays for credit. As was  
16 described in the proceeding before this Commission in the Big Rivers Unwind  
17 Transaction, P.S.C. Case No. 2011-00036, Big Rivers expects to be in the credit  
18 markets on a regular basis in the future.<sup>1</sup>

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<sup>1</sup> See Order dated March 6, 2009, in *In the Matter of: Joint Application of Big Rivers, E.ON, LG&E Energy Marketing, Inc., and Western Kentucky Energy Corporation for Approval to Unwind Lease and Power Purchase Transactions*, PSC Case No. 2007-00455, pages 27-30 and 37-39.

1                   **B. The Confidential Information is Generally Recognized as**  
2                   **Confidential or Proprietary**

3  
4           17. The Confidential Information for which Big Rivers seeks  
5 confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as  
6 confidential or proprietary under Kentucky law.

7           18. The Confidential Information contained on pages 152 and 213 of  
8 the attachments to the response to KIUC 1-1 includes information regarding  
9 planned outages.

10          19. The Confidential Information contained in the attachments to the  
11 responses to KIUC 1-2 and 1-3 includes communications relating to terms of a  
12 loan Big Rivers is actively negotiating with National Rural Utilities Cooperative  
13 Finance Corporation (“CFC”), as well as negotiations with respect to its  
14 revolving credit agreement with CoBank ACB (“CoBank”).

15          20. The Confidential Information contained in the attachments to the  
16 response to KIUC 1-6 includes internal communications with its Members  
17 regarding ongoing negotiations of a sensitive nature.

18          21. The Confidential Information contained in the attachments to the  
19 response to KIUC 1-7 includes communications related to continuing  
20 negotiations that are subject to a confidentiality agreement for sale of excess  
21 capacity.

22          22. The Confidential Information contained in the response  
23 attachments to the response to KIUC 1-13 includes Big Rivers’ budgets,  
24 financial forecasts, and other documents, which contain Confidential  
25 Information including detailed financial information including projected

1 operating and maintenance (“O&M”) expenses, including fuel costs and  
2 information relating to generation levels. The Information also includes off-  
3 system sales volumes, revenues, and prices, and information obtained during  
4 confidential negotiations with other market participants or potential creditors.

5 23. The Confidential Information contained in the attachments to the  
6 response to KIUC 1-38 includes data related to off-system sales requirements.

7 24. The Confidential Information contained in the response to KIUC 1-  
8 39 includes production cost model outputs.

9 25. The Confidential Information contained in the attachments to the  
10 response to KIUC 1-42 includes production cost model non-fuel O&M  
11 forecasts.

12 26. The Confidential Information contained in the attachments to the  
13 response to AG 1-7 includes Big Rivers’ budgets, financial forecasts, and other  
14 documents, which contain Confidential Information detailing Big Rivers’  
15 projected O&M expenses, including fuel costs, information relating to  
16 generation levels and off-system sales volumes, revenues, and prices, and  
17 similar information in the Unwind Transaction that is the subject of PSC Case  
18 No. 2007-00455.

19 27. The Confidential Information contained in the attachments to the  
20 response to AG 1-10 includes financial presentations to ratings agencies.

21 28. The Confidential Information contained in the attachments to the  
22 response to AG 1-17 consists of current and future budgets and financial  
23 modeling including O&M expenses.

1           29. The Confidential Information contained in the attachments to the  
2 response to AG 1-18 includes data regarding Big Rivers' off-system sales  
3 revenues.

4           30. The Confidential Information contained in the attachments to the  
5 response to AG 1-25(g) includes minutes of Big Rivers' internal risk  
6 management committee meetings from January 2012 through January 2013.

7           31. The Confidential Information contained in the attachments to the  
8 response to AG 1-31 includes variable production costs analyses.

9           32. The Confidential Information contained in the attachments to the  
10 response to AG 1-34 includes O&M data and internal financial documents,  
11 including Big Rivers' general ledger.

12           33. The Confidential Information contained in the attachments to the  
13 response to AG 1-37 includes audit and financial information.

14           34. The Confidential Information contained in the attachments for the  
15 response to AG 1-38 includes Board meeting minutes from 2010-present and  
16 other documents considered at the Board meetings from 2010-present.

17           35. The Confidential Information contained in the attachments for the  
18 response to AG 1-39 and includes information relating to internal management  
19 reports and strategic planning.

20           36. The Confidential Information contained in the attachments to the  
21 response to AG 1-46 includes documents detailing Big Rivers' O&M expenses,  
22 budget and sales variances, production costs, and sales revenues and margins.

1           37. The Confidential Information contained in the attachments to the  
2 response to AG 1-50 includes future planned outage information.

3           38. The Confidential Information contained in the response to AG 1-58  
4 includes information protected under confidentiality agreements.

5           39. The Confidential Information contained in the attachments to the  
6 response for AG 1-60 includes details regarding negotiations between Big  
7 Rivers, Century Aluminum and Alcan.

8           40. The Confidential Information contained in the attachments to the  
9 response to AG 1-62 includes off-system sales information.

10          41. The Confidential Information contained in the attachments to the  
11 response to AG 1-69 includes information regarding projections of Big Rivers'  
12 finances.

13          42. The Confidential Information contained in the attachments to the  
14 response to AG 1-85 includes confidential production-related metrics and/or  
15 modeling.

16          43. The Confidential Information contained in the attachments to the  
17 response to AG 1-88 includes planned outage and risk assessment  
18 information.

19          44. The Confidential Information contained in the attachments to the  
20 response to AG 1-89 includes information related to Big Rivers' Load  
21 Concentration Analysis and Mitigation Plan.

22          45. The Confidential Information contained in the attachments to the  
23 response to AG 1-93 includes MISO transmission forecasts.

1           46. The Confidential Information contained in the attachments to the  
2 response to AG 1-94 includes a spreadsheet containing MISO charges for its  
3 sale of excess capacity.

4           47. The Confidential Information contained in the response  
5 attachments to the response to AG 1-96 includes TVA transmission revenue  
6 information.

7           48. The Confidential Information contained in the attachments to the  
8 response to AG 1-97 includes confidential production-related metrics and/or  
9 modeling.

10          49. The Confidential Information contained in the response to the  
11 response to AG 1-100 includes future planned outage information.

12          50. The Confidential Information contained in the response to AG 1-  
13 101 includes future planned outage information.

14          51. The Confidential Information contained in the attachments AG 1-  
15 102 includes projected expense and outage information.

16          52. The Confidential Information contained in the attachments to the  
17 response to AG 1-103 includes details about Big Rivers' Load Concentration  
18 Analysis and Mitigation Plan.

19          53. The Confidential Information contained in the attachments to the  
20 response to AG 1-104 includes information on future capital construction  
21 projects.



1           54. The Confidential Information contained in the attachments to the  
2 response to AG 1-105 includes information on future capital construction  
3 projects.

4           55. The Confidential Information contained in the response to AG 1-  
5 107 includes MISO forecast data.

6           56. The Confidential Information contained in the response to AG 1-  
7 109 includes details about Big Rivers' energy emergency alert event  
8 information.

9           57. The Confidential Information contained in the attachments to the  
10 response to AG 1-115 includes Big Rivers' engineering budget and financial  
11 plans.

12           58. The Confidential Information contained in the responses to AG 1-  
13 116 and AG 1-118 includes details about Big Rivers' Load Concentration  
14 Analysis and Mitigation Plan.

15           59. The Confidential Information contained in the attachments to the  
16 response to AG 1-119 includes engineering planning and forecasting.

17           60. The Confidential Information contained in the response to AG 1-  
18 120 includes details about Big Rivers' Load Concentration Analysis and  
19 Mitigation Plan.

20           61. The Confidential Information contained in the attachments to the  
21 response to AG 1-128 includes Big Rivers' proprietary financial data.

1           62. The Confidential Information contained in the attachments to the  
2 response to AG 1-131 includes current and future budgets and financial  
3 models, including O&M expenses.

4           63. The Confidential Information contained in the attachments to the  
5 response to AG 1-143 includes projected outage information.

6           64. The Confidential Information contained in the attachments to the  
7 response to AG 1-150 includes information on emissions projections.

8           65. The Confidential Information contained in the attachments to the  
9 response to AG 1-152 includes financial forecasts and O&M cost information.

10          66. The Confidential Information contained in the attachments to the  
11 response to AG 1-154 includes Big Rivers' budget and financial planning  
12 information.

13          67. The Confidential Information contained in the attachments to the  
14 response to AG 1-156 includes its rural and industrial power cost data from  
15 2010-2012.

16          68. The Confidential Information contained in the attachments to the  
17 response to AG 1-165 includes documents which contain information detailing  
18 Big Rivers' O&M expenses, budget and sales variances, production costs, and  
19 sales revenues and margins.

20          69. The Confidential Information contained in the attachments to the  
21 response to AG 1-166 includes off-system sales data.

1           70. The Confidential Information contained in the attachments to the  
2 response to AG 1-167 includes financial models presented to Big Rivers' Board  
3 of Directors.

4           71. The Confidential Information contained in the attachments to the  
5 response to AG 1-186 includes documents which contain information detailing  
6 Big Rivers' O&M expenses, operating budgets, and other proprietary financial  
7 data.

8           72. The Confidential Information contained in the attachments to the  
9 response to AG 1-233 includes an input file to the load forecast model.

10          73. The Confidential Information contained in the attachments to the  
11 response to AG 1-236 includes production cost model runs.

12          74. The Confidential Information contained in the first attachment to  
13 the response to AG 1-239 includes the 2013-2016 capital plan.

14          75. The Confidential Information contained in the attachments to the  
15 response to AG 1-246(o) includes information about Big Rivers' forecasted  
16 costs.

17          76. The Confidential Information contained in the attachment to the  
18 response to AG 1-249 includes budget forecasts and financial plans.

19          77. The Confidential Information contained in the attachments to the  
20 response to AG 1-267 includes descriptions of the inputs as well as the inputs  
21 for Big Rivers' budget forecasting model.

22          78. The Confidential Information contained in the response to AG 1-  
23 275 includes information about planned outages.

1           79. The Confidential Information contained in the response to AG 1-  
2 278 includes information about planned outages.

3           80. The Confidential Information contained in the attachments to the  
4 response to PSC 2-4 includes documents which contain information detailing  
5 Big Rivers' O&M expenses and operating budget data.

6           81. The Confidential Information contained in the response to PSC 2-6  
7 includes O&M expenses related to Big Rivers' Wilson plant.

8           82. The Confidential Information contained in the attachments to the  
9 response to PSC 2-9 includes off-system sales data.

10          83. The Confidential Information contained in the attachments to the  
11 response to PSC 2-15 includes planned outage and deferred maintenance  
12 schedules.

13          84. The Confidential Information contained in the attachments and  
14 response to PSC 2-18 includes communications related to proposals and  
15 negotiations for sale of excess capacity or other assets that are subject to one  
16 or more confidentiality agreements, documents relating to those proposals and  
17 negotiations, and financial valuation analyses prepared on behalf of Big Rivers.

18          85. The Confidential Information contained in the attachments to the  
19 response to PSC 2-21 includes production cost, variable cost, and capital cost  
20 information.

21          86. The Confidential Information contained in the attachments to the  
22 response to PSC 2-23 includes fixed transmission expenses and Big Rivers'  
23 three-year construction plan.

1           87. The Confidential Information contained in the attachments to the  
2 response to PSC 2-26 includes O&M costs and other budget information.

3           88. The Confidential Information contained in the response to PSC 2-  
4 34 includes data relating to Big Rivers' production costs.

5           89. The Confidential Information contained in the attachments to the  
6 response to PSC 2-36 includes recent and projected off-system sales prices,  
7 schedules and budgets for future planned outages, detailed information about  
8 projected O&M expenses, and projected revenues associated with Big Rivers'  
9 rights across the TVA transmission system.

10          90. The Confidential Information contained in the attachments to the  
11 response to PSC 2-37 includes recent and projected off-system sales prices,  
12 schedules and budgets for future planned outages, detailed information about  
13 projected O&M expenses, and projected revenues associated with Big Rivers'  
14 right to transmit across the TVA transmission system.

15          91. The Confidential Information contained in the attachments to the  
16 response to PSC 2-39 includes information relating to O&M costs.

17          92. Public disclosure of the Confidential Information would reveal  
18 detailed information relating to Big Rivers' recent and projected cost of  
19 producing power (including projected fuel and other O&M costs); recent and  
20 projected off-system sales volumes and prices; recent purchased power  
21 volumes and prices; and Big Rivers' future need for power or availability of  
22 excess power to sell into the market. Knowledge of such data will give Big  
23 Rivers' suppliers and competitors an unfair competitive advantage.

1           93. Public disclosure of the Confidential Information during the  
2 pending negotiations with CFC will impair Big Rivers' ability to negotiate with  
3 CoBank and other potential letters, leading to less favorable terms and higher  
4 prices to Big Rivers. In addition, public disclosure of Confidential Information  
5 relating to negotiations with Century and others subject to common interest/  
6 confidentiality agreements will impair Big Rivers' ability to remain competitive  
7 in the wholesale power market because competitors can use these previous  
8 confidential negotiations to impact future negotiations with either Big Rivers or  
9 Big Rivers' suppliers, customers, or creditors, leading to an unfair competitive  
10 advantage.

11           94. Public disclosure of the information relating to generation levels  
12 and planned outage schedules would help Big Rivers' suppliers, buyers, and  
13 competitors to determine when Big Rivers will have power available to sell into  
14 the market or when Big Rivers needs power, and the amount of power Big  
15 Rivers has to sell.

16           95. Public disclosure of the projected O&M costs and fuel costs, recent  
17 purchased power amounts and costs, and recent and projected off-system sales  
18 prices and revenues will give Big Rivers' suppliers, buyers, and competitors  
19 insight into Big Rivers' cost of producing power, and Big Rivers' view of future  
20 fuel prices and market power prices, which would indicate the prices at which  
21 Big Rivers is willing to buy or sell such items.

22           96. Information about a company's detailed inner workings is generally  
23 recognized as confidential or proprietary. *See, e.g., Hoy v. Kentucky Indus.*

1 *Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995) (“It does not take a  
2 degree in finance to recognize that such information concerning the inner  
3 workings of a corporation is ‘generally recognized as confidential or  
4 proprietary”); *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*,  
5 906 S.W.2d 318, 319 (Ky. 1995) (unfair commercial advantage arises simply  
6 from “the ability to ascertain the economic status of the entities without the  
7 hurdles systemically associated with the acquisition of such information about  
8 privately owned organizations”).

9 97. Moreover, the Commission has previously granted confidential  
10 treatment to similar information. *See, e.g.*, letters from the Commission dated  
11 July 28, 2011, and December 20, 2011, in *In the Matter of: Application of Big*  
12 *Rivers Electric Corporation for a General Adjustment in Rates*, PSC Case No.  
13 2011-00036 (granting confidential treatment to multi-year forecast); *Application*  
14 *of Big Rivers Electric Corporation for Approval of Its Environmental Compliance*  
15 *Plan*, P.S.C. Case No.2012-00063 (granting confidential treatment to the  
16 mitigation plan in the ECP Case); letter from the Commission dated December  
17 21, 2010, in *In the Matter of: The 2010 Integrated Resource Plan of Big Rivers*  
18 *Electric Corporation*, P.S.C. Case No. 2010-00443 (granting confidential  
19 treatment to fuel cost projections, revenue projections, market price  
20 projections, financial model outputs, *etc.*); letter from the Commission dated  
21 July 20, 2010, in Administrative Case No. 387 (granting confidential treatment  
22 to a list of future scheduled outages, which can give competitors insight into  
23 Big Rivers’ wholesale power needs); two letters from the Commission dated

1 December 11, 2012, in *In the Matter of: Application of Big Rivers Electric*  
2 *Corporation for Approval of its 2012 Environmental Compliance Plan, for*  
3 *Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for*  
4 *Certificates of Public Convenience and Necessity, and for Authority to Establish a*  
5 *Regulatory Account*, P.S.C. Case No. 2012-00063 (granting confidential  
6 treatment to Big Rivers' O&M expenses, and off-system sales and revenues).

7 **C. Disclosure of the Confidential Information Would Permit**  
8 **an Unfair Commercial Advantage to Big Rivers'**  
9 **Competitors**

10  
11 98. Disclosure of the Confidential Information would permit an unfair  
12 commercial advantage to Big Rivers' competitors. As discussed above, Big  
13 Rivers faces actual competition in the wholesale power market and in the credit  
14 market. It is likely that Big Rivers would suffer competitive injury if that  
15 Confidential Information was publicly disclosed.

16 99. The Confidential Information includes material such as Big Rivers'  
17 projections of fuel costs and power prices. If that information is publicly  
18 disclosed, market participants would have insight into the prices Big Rivers is  
19 willing to buy and sell fuel at and could manipulate the bidding process,  
20 leading to higher prices or lower revenues for Big Rivers and impairing its  
21 ability to compete in the wholesale power and credit markets. In PSC Case No.  
22 2003-00054, the Commission granted confidential protection to bids submitted  
23 to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the Commission  
24 implicitly accepted, that if the bids it received were publicly disclosed,  
25 contractors on future work could use the bids as a benchmark, which would



1 likely lead to the submission of higher bids. Order dated August 4, 2003, in *In*  
2 *the Matter of: Application of the Union Light, Heat and Power Company for*  
3 *Confidential Treatment*, PSC Case No. 2003-00054. The Commission also  
4 implicitly accepted ULH&P's further argument that the higher bids would  
5 lessen ULH&P's ability to compete with other gas suppliers. *Id.* Similarly,  
6 potential fuel and power suppliers manipulating Big Rivers' bidding process  
7 would lead to higher costs or lower revenues to Big Rivers and would place it at  
8 an unfair competitive disadvantage in the wholesale power market and credit  
9 markets.

10 100. Potential market power purchasers could use the information  
11 related to Big Rivers' projected off-system sales and revenues, generation levels,  
12 generator availability, planned outages, and future planning to know when Big  
13 Rivers is long on power and could use that information to manipulate their  
14 bids, leading to lower revenues to Big Rivers and placing it at an unfair  
15 competitive disadvantage in the credit markets.

16 101. Additionally, public disclosure of the fuel prices, other variable cost  
17 information, and information about Big Rivers' wholesale power needs would  
18 give the power producers and marketers with which Big Rivers competes in the  
19 wholesale power market insight into Big Rivers' cost of producing power and  
20 need for power and energy during the periods covered by the information.  
21 Knowledge of this information would give those power producers and marketers  
22 an unfair competitive advantage because they could use that information to  
23 potentially underbid Big Rivers in wholesale transactions. It would also give

1 potential suppliers to Big Rivers a competitive advantage because they will be  
2 able to manipulate the price of power bid to Big Rivers in order to maximize  
3 their revenues, thereby driving up Big Rivers' costs and impairing Big Rivers'  
4 ability to compete in the wholesale power and credit markets.

5 102. Moreover, the Commission has consistently recognized that board  
6 minutes, internal strategic planning information, and related materials are  
7 entitled to confidential treatment, as these documents typically relate to the  
8 company's economic status and business strategies. *See, e.g., In the Matter of:*  
9 *The Joint Application of Duke Energy Corp., Cinergy Corp., Duke Energy Ohio,*  
10 *Inc., Duke Energy Kentucky, Inc., Diamond Acquisition Corp., and Progress*  
11 *Energy, Inc., for Approval of the Indirect Transfer of Control of Duke Energy*  
12 *Kentucky, Inc., P.S.C Case No. 2011-00124 (Dec. 5, 2011); In the Matter of: The*  
13 *Joint Petition of Kentucky-American Water Co., Thames Water Aqua Holdings*  
14 *GmbH, RWE Aktiengesellschaft, Thames Water Aqua U.S. Holdings, Inc., and*  
15 *Am. Water Works Co., Inc. for Approval of a Change in Control of Kentucky-*  
16 *American Water Co., P.S.C. Case No. 2006-00197 (Aug. 29, 2006) (holding that*  
17 *reports from the joint applicants' financial advisors and all board of director*  
18 *minutes and information is confidential because competitors could use it to*  
19 *gain unfair competitive advantage). Accordingly, this information should be*  
20 *granted confidential treatment.*

### 21 **III. Time Period**

22 103. Big Rivers requests that the Confidential Information protected by  
23 KRS 61.878(1)(m) remain confidential indefinitely because as long as the

1 transmission remains in place, the information should be confidential for the  
2 reasons stated above. The rest of the confidential information remain  
3 confidential for a period of five (5) years from the date of this petition, which  
4 should allow sufficient time for the projected data to become historical and  
5 sufficiently outdated that it could not be used to determine similar confidential  
6 information at that time. 807 KAR 5:001 Section 13(2)(a)(2).

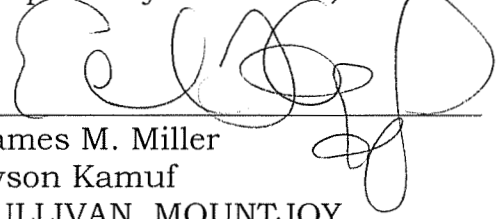
7 **IV. Conclusion**

8 104. Based on the foregoing, the Confidential Information is entitled to  
9 confidential protection. If the Commission disagrees that Big Rivers is entitled  
10 to confidential protection, due process requires the Commission to hold an  
11 evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky Water Serv. Co.,*  
12 *Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

13 WHEREFORE, Big Rivers respectfully requests that the Commission  
14 classify and protect as confidential the Confidential Information.

15 On this the 6<sup>th</sup> day of March, 2013.

16 Respectfully submitted,

17   
18 \_\_\_\_\_  
19 James M. Miller  
20 Tyson Kamuf  
21 SULLIVAN, MOUNTJOY,  
22 STAINBACK & MILLER, P.S.C.  
23 100 St. Ann Street  
24 P. O. Box 727  
25 Owensboro, Kentucky 42302-0727  
26 Phone: (270) 926-4000  
27 Facsimile: (270) 683-6694  
28 jmiller@smsmlaw.com  
29 tkamuf@smsmlaw.com  
30  
31

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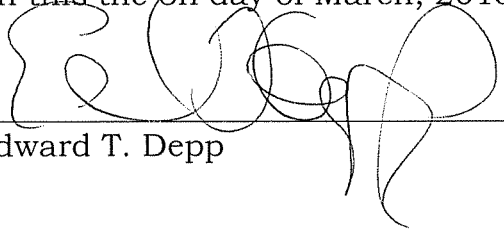
Edward T. Depp  
Dinsmore & Shohl LLP  
101 South Fifth Street  
Suite 2500  
Louisville, KY 40202  
Phone: (502) 540-2347  
Facsimile: (502) 585-2207  
tip.depp@dinsmore.com

Counsel for Big Rivers Electric  
Corporation

**Certificate of Service**

I certify that a true and accurate copy of the foregoing was or will be served by Federal Express or by hand delivery upon the persons listed on the attached service list, on the date this petition is filed with the Kentucky Public Service Commission or the following day.

On this the 6th day of March, 2013,

  
\_\_\_\_\_  
Edward T. Depp

Service List  
PSC Case No. 2012-00535

Jennifer Black Hans  
Lawrence W. Cook  
Dennis G. Howard, II  
Assistant Attorneys General  
1024 Capital Center Dr.  
Suite 200  
Frankfort, KY 40601

Mr. David Brevitz  
3623 S.W. Woodvalley Terrace  
Topeka, KS 66614

Mr. Bion C. Ostrander  
1121 S.W. Chetopa Trail  
Topeka, KS 66615

Mr. Larry Holloway  
830 Romine Ridge  
Osage City, KS 66523

Michael L. Kurtz, Esq.  
Kurt J. Boehm, Esq.  
Boehrn, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, Ohio 45202

Lane Kollen  
J. Kennedy and Associates, Inc.  
570 Colonial Park Dr., Suite 305  
Roswell, Georgia 30075

Russell L. Klepper  
Energy Services Group, LLC  
316 Maxwell Road, Suite 400  
Alpharetta, Georgia 30009

David C. Brown, Esq.  
Banyan House #601  
1225 South Ocean Blvd.  
Delray Beach, FL 33483

Donald P. Seberger, Esq.  
Special Counsel  
Rio Tinto Alcan  
8770 West Bryn Mawr Avenue  
Chicago, Illinois 60631

Gregory Starheim  
President & CEO  
Kenergy Corp.  
6402 Old Corydon Road  
P.O. Box 18  
Henderson, Kentucky 42419-0018

J. Christopher Hopgood, Esq  
318 Second Street  
Henderson, Kentucky 42420

G. Kelly Nuckols  
President and CEO  
Jackson Purchase Energy Corporation  
2900 Irvin Cobb Drive  
P.O. Box 4030  
Paducah, KY 42002-4030

Melissa D. Yates  
Denton & Keuler, LLP  
555 Jefferson Street  
Suite 301  
Paducah, KY 42001

Burns Mercer  
Meade County RECC  
1351 Hwy. 79  
P.O. Box 489  
Brandenburg, KY 40108

Thomas C. Brite, Esq.  
Brite & Hopkins, PLLC  
83 Ballpark Road  
P.O. Box 309  
Hardinsburg, KY 40143-0309

David O'Brien Suetholz  
Neal R. Hayes  
Kircher Suetholz & Grayson PSC  
515 Park Avenue  
Louisville, KY 40208

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EXECUTION VERSION

PUBLIC SERVICE  
COMMISSION

## LOCKBOX AGREEMENT

This **LOCKBOX AGREEMENT** (this "Agreement") is entered into as of July 16, 2009, by and among Big Rivers Electric Corporation, Old National Bank, as Lockbox Bank (the "Bank"), U.S. Bank National Association, not individually or personally but solely in its capacity as trustee (the "Trustee") under the Indenture (defined below) and the United States of America, acting by and through the Administrator of the Rural Utilities Service (together with any agency succeeding to the powers and rights of the Rural Utilities Service, the "RUS").

**WHEREAS**, the Company, as grantor, and the Trustee have entered into an Indenture, dated as of July 1, 2009 (such indenture, as from time to time amended, supplemented or restated, the "Indenture"), whereby, among other things, the Company has granted a security interest in certain contracts of the Company for the purchase or sale of, and transmission of, electric power and energy by or on behalf of the Company;

**WHEREAS**, the Company has entered into wholesale power contracts (the "Wholesale Power Contracts") as listed on Schedule I to the Loan Contract (as hereinafter defined);

**WHEREAS**, under the Indenture, the Company has also granted a security interest in the proceeds of the "Trust Estate" (as defined in the Indenture), including all proceeds of the Wholesale Power Contract;

**WHEREAS**, the Company and the RUS, have entered into an Amended and Consolidated Loan Contract, dated as of July 1, 2009 (such loan contract, as from time to time amended, supplemented or restated, the "Loan Contract") in which the Company has agreed, upon the occurrence of certain conditions and at the request of the RUS, to deposit cash proceeds of the Trust Estate as provided in the Indenture, the Loan Contract and this Agreement.

**NOW, THEREFORE**, the parties hereto agree as follows:

Section 1. Definitions. Terms used in this Agreement with initial letters capitalized that are defined in the Indenture and are not otherwise defined herein have the meanings assigned to them in the Indenture. In addition, the following terms have the meanings assigned to them below:

(a) "Applicable Period" shall mean any period commencing on the date the Company receives notice from the RUS in writing that a Highest Oversight Period (as defined in the Loan Contract) exists, and ending on the date the Company receives notice from the RUS in writing that such Highest Oversight Period no longer exists; and

(b) "Pledged Revenues" shall mean all cash proceeds (as defined in the Uniform Commercial Code) of the Trust Estate received or receivable by the Company in which the Indenture creates a security interest pursuant to the Uniform Commercial Code that are not deposited or required to be deposited with the Trustee



pursuant to the Indenture; provided, however, to ease administrative burdens of the Company, Pledged Revenues shall not include cash proceeds (other than cash proceeds from the Wholesale Power Contracts) in an amount equal to or less than \$10,000 from any Person during any one month period.

Section 2. Lockbox Account. There is hereby created and established with the Bank a special account to be titled the "Big Rivers Electric Corporation Special Cash Account" (the "Lockbox Account"), account number [REDACTED]. The money deposited into the Lockbox Account, together with all investments thereof and investment income therefrom, shall be applied solely as provided in this Agreement.

Section 3. Account Subject to Pledge of the Indenture. Amounts deposited into the Lockbox Account shall constitute a portion of the Trust Estate pledged pursuant to the Indenture for the equal and ratable security of all the Outstanding Secured Obligations in accordance with and as provided by the terms of the Outstanding Secured Obligations and the Indenture. The Bank shall hold all such amounts deposited in the Lockbox Account pursuant to this Agreement as agent of the Trustee to perfect the lien of the Indenture therein. Except as otherwise permitted under Section 12, the Lockbox Account shall not be closed without the written consent of the RUS.

Section 4. Partial Waiver of Right of Set Off. Except to the extent of any amounts due to the Bank on account of items credited to the Lockbox Account prior to collection that are not subsequently collected, the Bank hereby waives, and agrees that it shall not exercise, any right of set off or any banker's lien with respect to the Lockbox Account; provided, however, that nothing in this Agreement shall be deemed to constitute a waiver by the Bank of its right of set off or any banker's lien with respect to any other account of the Company.

Section 5. Payments to Be Made to Account. During any Applicable Period, the Company shall direct each of its members and each other Person obligated to make any payment to the Company of Pledged Revenues to make such payments to the Bank at the address or in such other manner as specified in Section 6 for deposit into the Lockbox Account. The Company agrees not to make, cause or permit to be made any deposits of moneys other than Pledged Revenues into the Lockbox Account. The Company shall use its best efforts to cause its members and each other Person obligated to make any payment of Pledged Revenues to make such payments in accordance with the provisions of this Agreement.

Section 6. Manner of Payment.

(a) During any Applicable Period, payments of Pledged Revenues made by mail shall be mailed to:

Old National Bank  
One Main Street  
Evansville, Indiana 47708  
Reference: Big Rivers Electric Corporation Special Cash Account

or to such other address as may be specified by the Bank to the Company at least thirty (30) days before the effective date of such change. During any Applicable Period, electronic payments of Pledged Revenues shall be made in the following manner:

Federal Reserve ABA Routing No.: [REDACTED]

All such payments of Pledged Revenues shall be accompanied by such references or other instructions to the Bank to deposit such payments in the Lockbox Account. The Bank shall have no responsibility or liability for failing to deposit any moneys in the Lockbox Account which are not accompanied by such references or other instructions to deposit such moneys in such account.

(b) All such payments received by the Bank shall be deposited into the Lockbox Account and held subject to the provisions hereof. The Bank is hereby authorized, empowered and directed by the Company to deposit all funds received as described in Section 6(a) into the Lockbox Account and to make all necessary endorsements and to take all other necessary actions to carry out the purposes of this Agreement. The Company hereby waives notice of presentment, protest and non-payment of any instrument so endorsed.

(c) During any Applicable Period, the Company shall promptly, and no event later than the Business Day following the receipt thereof, remit to the Bank in accordance with Section 6(a) for deposit into the Lockbox Account any Pledged Revenue that is received by the Company.

Section 7. Accounting. No less frequently than once each month, the Bank shall deliver by mail a statement to the Company, with copies to the Trustee, the RUS and such other Persons as may be designated by the Company, which shall identify the date, maker and amount of each deposit to the Lockbox Account, and the date, payee and amount of each withdrawal or other debit to the Lockbox Account.

Section 8. Disbursements.

(a) Upon written demand of the Trustee, accompanied by a statement that there has occurred and is continuing under the Indenture an Event of Default, and continuing until such demand is rescinded, the Bank shall pay to the Trustee all amounts then or thereafter on deposit in the Lockbox Account, to be applied by the Trustee as provided under the Indenture. Such amounts so paid shall be held and administered by the Trustee in accordance with general terms and conditions set forth in the Indenture.

(b) So long as the Bank shall not have received a written demand from the Trustee under paragraph (a) above, on the fifth (5th) Business Day preceding the end of each month during the Applicable Period, the Bank shall withdraw and pay (or deposit in another, unrestricted account, at the direction of the appropriate party listed below) from the amounts on deposit in the Lockbox Account the following amounts in the order indicated to the extent funds are available in the Lockbox Account:

(1) to the Bank, the amount of fees and expenses that are then payable to the Bank under Section 9;

(2) to the Trustee, the amount certified by the Trustee as the amount of any fees or expenses that are then payable to the Trustee under the Indenture;

(3) to the Company, the amount specified in a written request as the amount of ordinary and necessary payments due from the Company for the following month, including, without limitations, payments for operations and regularly scheduled debt service;

(4) to the Trustee, the amount certified by the Company as the amount necessary to provide for the payment of the principal and interest then due or (based on receipt by the Trustee on a monthly basis of a proportional amount of principal and accrued interest) becoming due on the Outstanding Secured Obligations during the following month, for deposit as Trust Moneys under the Indenture;

(5) to the Company, the amount specified in a written request as the amount of expenditures approved for the following month in accordance with a capital expenditure budget approved by the RUS;

(6) to the Company, the amount specified in a written request as the amount of expenditures for the following month approved in writing by the RUS for other purposes; and

(7) to the payment of any amounts due under Obligations to maintain the value of reserve funds established and maintained in connection with debt securities (A) secured by a pledge of certain Obligations, (B) issued on behalf of the Company and (C) with respect to which an opinion was delivered on the date of the issuance of such securities to the effect that the interest on such securities is excluded from the gross income of the holder of such securities pursuant to the Internal Revenue Code, as amended.

(c) Any amounts remaining on deposit in the Lockbox Account on the day following the end of the month in which (i) a Highest Oversight Period no longer exists (as evidenced by an Officers' Certificate and a notice from the RUS to such effect) or (ii) this Agreement terminates pursuant to Section 13, shall be paid to the Company in accordance with, and upon receipt of, a written request, to be used for any lawful purpose.

(d) Pending disbursements of the amounts on deposit in the Lockbox Account, the Bank shall promptly invest and reinvest such amounts in the Defeasance Securities specified in any Company Order or in a mutual fund consisting of Defeasance Securities, or in such other investments as may be approved in writing by the RUS.

(e) Any amounts deposited in the Lockbox Account that do not constitute Pledged Revenues, as identified to the Bank in writing by either of the RUS or the Trustee, shall be promptly paid to the Company (provided that during any period described in paragraph (a) above, in which case such amounts so identified shall be paid to the Trustee). The Company agrees to promptly notify both of the Trustee and the RUS of any deposits into the Lockbox Account of any amounts not constituting Pledged Revenues.

(f) The RUS agrees that, so long as a Highest Oversight Period exists, it shall promptly respond to any request made by the Company for expenditures pursuant to this Section. If the RUS has not responded within five (5) days (during which the offices of the RUS are open) of the receipt by the RUS of a written request for expenditures, such request will be deemed to have been approved by the RUS. In disbursing any such amounts that are subject to RUS approval, the Bank shall be able to conclusively rely on the Company's statement in writing that the RUS has approved such expenditure in writing or has been deemed to have approved such expenditure.

Section 9. Fees and Expenses of Bank. The Company agrees

(a) to pay to the Bank from time to time such compensation as may be specifically agreed upon with the Bank and, absent specific agreement, reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any provision of this Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Bank's negligence or bad faith; and

(c) to indemnify the Bank for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

All such payments and reimbursements shall be made with interest at the then prevailing prime rate of the Bank.

Section 10. Certain Rights of Bank.

(a) The Bank undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Bank. The Bank makes no representation or warranty as to the priority of any claim or the status, in the event of any insolvency,

bankruptcy or other similar proceeding affecting the Company, of amounts held in the Lockbox Account or paid therefrom.

(b) In the absence of bad faith on its part, the Bank may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Bank and appearing to conform to the requirements of this Agreement. The Bank shall have no liability for actions taken pursuant to this Agreement' other than as a result of its gross negligence or willful misconduct.

(c) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order approval or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties and shall not be required to verify the accuracy of any information or calculations required to be included therein or attached thereto. Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a written request and any resolution of the Board of Trustees may be sufficiently evidenced by a Board Resolution.

(d) Whenever in the administration of this Agreement, the Bank shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Bank (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate.

(e) The Bank may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and shall not be liable for the negligence or misconduct of such Persons appointed by the Bank with due care hereunder.

(g) The Bank shall not be liable for any errors of judgment made in good faith by it, unless it shall be proved that the Bank was grossly negligent or reckless in ascertaining the pertinent facts.

(h) The Bank shall not be required to give any bond or surety in respect of the execution of the obligations and trusts set forth in this Agreement or otherwise in respect hereof or of the Lockbox Account.

Section 11. Trustee's Rights, Obligations, Etc. The rights, duties, responsibilities and fees of the Trustee hereunder shall be governed by the provisions of Article IX of the Indenture relating to the Trustee and the indemnities provided for in the Indenture shall include all action by the Trustee taken hereunder.

Section 12. Removal, Resignation, Etc. The Bank may resign at any time upon thirty (30) days written notice to the Company, the Trustee and the RUS. The Company may remove the Bank, with the written consent of the RUS, upon thirty (30) days written notice to the Bank, the Trustee and the RUS. The RUS may remove the Bank upon thirty (30) days written notice to the Bank, the Company and the Trustee. Upon any such resignation or removal, the Company shall select another financial institution, with the approval of the RUS, with which to enter into a lockbox agreement substantially upon the terms contained in this Agreement and otherwise upon such terms as shall be permitted or required by the RUS. In the event the Company does not select a financial institution approved by the RUS, the RUS shall select such financial institution.

Section 13. Amendments with Consent of the RUS. Even though this Agreement establishes rights for the benefit of Holders of the Outstanding Secured Obligations, the terms, conditions and requirements of this Agreement are in addition to those found in the Indenture and have been required solely by the RUS. Accordingly, this Agreement can be terminated, amended, modified or supplemented in any way by the Company with the consent of only the RUS and without the consent of the Bank, the Trustee or the Holders of the Outstanding Secured Obligations; provided however that no amendment, modification or supplement to the obligations or rights of the Bank or the Trustee, or otherwise adversely affecting the Bank or the Trustee, shall be effective as to the Bank or the Trustee without the prior written consent of the Bank or the Trustee, or both, as the case may be. This Agreement shall automatically terminate on the date on which the RUS is no longer a Holder of any Outstanding Secured Obligation.

Section 14. Exculpation of the RUS. The RUS shall have no obligation or liability to any party to this Agreement.

Section 15. Benefits of Agreement. Nothing in this Agreement, express or implied, shall give to any Person, other than the parties hereto, and their successors hereunder and any separate trustee or co-trustee appointed under Section 9.14 of the Indenture, any benefit or any legal or equitable right, remedy or claim under this Agreement.

Section 16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Section 17. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 18. Specific Performance. Each of the Trustee and the RUS is hereby, to the maximum extent permitted by applicable law, to demand specific performance of this Agreement at any time when the Company shall have failed to comply with any provision of this Agreement applicable to it. The Company hereby irrevocably waives, to the maximum extent permitted by applicable law, any defense based on the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance.

Section 19. Waiver. No failure on the part of the Trustee, the Bank or the RUS to exercise, and no delay in exercising, any right hereunder, under the Indenture or under the Loan Contract, shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder or thereunder preclude any other or further exercise thereof. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

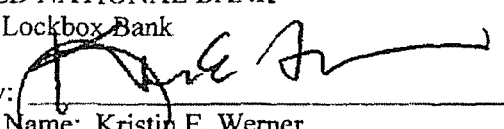
Section 20. Further Assurances. The Company agrees, at the cost and expense of the Company, to execute and deliver and file and record such further documents or instruments as the Trustee, the RUS or the Bank may reasonably request in order to carry out or confirm the respective rights of the Trustee, the RUS and the Bank under this Agreement.

Section 21. Entire Agreement. This written Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between parties.

[Signatures on next page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

OLD NATIONAL BANK  
as Lockbox Bank

By:   
Name: Kristin E. Werner  
Title: AVP, Cash Management Officer

BIG RIVERS ELECTRIC CORPORATION

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

U.S. BANK NATIONAL ASSOCIATION  
as Trustee under the Indenture identified herein

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

THE UNITED STATES OF AMERICA

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

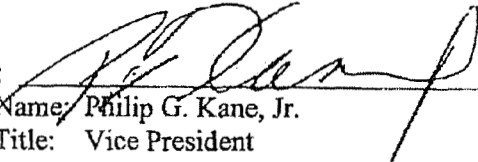


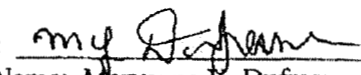
BIG RIVERS ELECTRIC CORPORATION

By: Mark A. Bailey  
Name: Mark A. Bailey  
Title: President and CEO

[Lockbox Agreement]


U.S. BANK  
as Trustee under the Indenture identified herein

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

By:   
Name: Maryanne Y. Dufresne  
Title: Vice President

[Lockbox Agreement]

THE UNITED STATES OF AMERICA

By:   
Name: James R. Newby  
Title: Acting Administrator

[Lockbox Agreement]