

FBR-1
LIQUIDATED DAMAGE AMOUNTS FOR SERVICE CONTRACT

<u>Termination Date</u>	<u>Liquidated Damage Amount</u>	<u>Debt Portion of Liquidated Damage Amount</u>	<u>Equity Portion of Liquidated Damage Amount</u>
Apr 4 2038	55,172,156.50	9,992,553.09	45,179,603.41
May 4 2038	55,567,380.84	10,055,400.93	45,511,979.91
Jun 4 2038	55,965,202.63	10,118,248.76	45,846,953.86
Jul 4 2038	56,386,322.16	10,181,096.60	46,205,225.56
Aug 4 2038	56,810,241.51	10,243,944.43	46,566,297.07
Sep 4 2038	57,236,982.54	10,306,792.27	46,930,190.27
Oct 4 2038	57,687,247.31	10,369,640.11	47,317,607.21
Nov 4 2038	58,140,539.66	10,432,487.94	47,708,051.72
Dec 4 2038	58,596,883.24	10,495,335.78	48,101,547.46
Jan 4 2039	59,076,981.90	10,558,183.61	48,518,798.29
Feb 4 2039	38,888,720.73	0.00	38,888,720.73
Mar 4 2039	39,192,185.64	0.00	39,192,185.64
Apr 4 2039	39,498,022.05	0.00	39,498,022.05
May 4 2039	39,851,401.02	0.00	39,851,401.02
Jun 4 2039	40,207,541.55	0.00	40,207,541.55
Jul 4 2039	40,611,617.74	0.00	40,611,617.74
Aug 4 2039	41,018,851.68	0.00	41,018,851.68
Sep 4 2039	41,429,268.06	0.00	41,429,268.06
Oct 4 2039	41,888,044.25	0.00	41,888,044.25
Nov 4 2039	42,350,405.67	0.00	42,350,405.67
Dec 4 2039	42,816,380.33	0.00	42,816,380.33

RECEIVED

#32

JUN 20 2008

PUBLIC SERVICE
COMMISSION

**SURETY BOND
(FBR-1)**

Ambac Assurance Corporation
One State Street Plaza
New York, New York 10004
Telephone: (212) 668-0340

Effective Date: April 18, 2000

Policy No.: SF0326BE

Ambac Assurance Corporation (together with its successors and permitted assigns, "Ambac"), in consideration of the payment of the premium due on the date hereof, receipt of which is hereby acknowledged, and subject to the terms of this Surety Bond (FBR-1) (this "Surety Bond"), hereby unconditionally and irrevocably guarantees to FBR-1 OP Statutory Trust (together with its successors and assigns, the "Beneficiary"), the due and punctual payment by Ambac Credit Products, LLC (together with its successors and permitted assigns "ACP") or any entity substituted for ACP pursuant to paragraph 5(a)(i)(A) of the Credit Swap Transaction Confirmation referred to below (ACP or such entity, together with ACP's and such entity's successors or permitted assigns, as the case may be, the "Swap Counterparty") of any and all amounts (exclusive of the Lender A Amount and Lender B Amount (as defined in the Swap Agreement) specified as payable by the Swap Counterparty to the Beneficiary under the terms of the ISDA Master Agreement (Multicurrency-Cross Border), the Schedule to such ISDA Master Agreement, and the Credit Swap Transaction Confirmation relating to such ISDA Master Agreement, in each case dated April 18, 2000 (collectively, as amended and modified, the "Swap Agreement") by and between the Swap Counterparty and the Beneficiary, including any unpaid interest specified as payable pursuant to the Swap Agreement (collectively, the "Covered Obligations"). The amount payable with respect to the Covered Obligations hereunder for any particular date shall not exceed the Surety Bond Coverage (as herein defined) as of the date of the Demand for Payment (as hereinafter defined), plus interest as set forth in paragraph 1 hereof. Capitalized terms used herein but not defined herein shall have the meanings given such terms in the Swap Agreement and in Appendix A to the Participation Agreement, as such agreement is defined in the Swap Agreement. The "General Provisions" set forth in such Appendix A shall also apply to this Surety Bond.

1. Upon receipt by Ambac of a demand for payment in the form attached hereto as Attachment 1, with all blank spaces for variable information therein completed, and duly executed by the Beneficiary (a "Demand for Payment"), Ambac will pay in immediately available funds to the Beneficiary, on the Surety Bond Payment, the amount set forth in the Demand for Payment, to the account at the place of payment as set forth in such Demand for Payment (the "Claimed Amount"). Ambac shall pay interest, on demand, at the higher of the Equity Rate (as defined in the Swap Agreement) or the Overdue Rate on any Claimed Amount and (to the extent permitted by law) on accrued but unpaid interest thereon hereunder, from and after the date such amounts are due and payable hereunder through the date such amounts are paid in full.

2. A Demand for Payment hereunder may be personally delivered or made by telecopy of the executed Demand for Payment at the "Address for Notice" to Ambac set forth in paragraph 8 hereof. Any Demand for Payment so received by Ambac after 2:00 p.m. New York City time on any Business Day or on any day that is not a Business Day shall be deemed to have been received by Ambac prior to 2:00 p.m. New York City time on the next succeeding Business Day. As used herein, the term "Business Day" shall mean any day other than a Saturday, a Sunday or any day on which banking institutions in New York, New York are authorized or required by law to be closed. If a Demand for Payment made hereunder is not, in any instance, effected in accordance with the terms and conditions of this Surety Bond, Ambac shall give notice to the Beneficiary, as promptly as reasonably practicable, that such Demand for Payment was not effected in accordance with the terms and conditions of this Surety Bond and briefly state the reason(s) therefor. Upon being notified that such Demand for Payment was not effected in accordance with the terms and conditions of this Surety Bond, the Beneficiary may attempt to correct any such nonconforming Demand for Payment and to deliver a conforming Demand for Payment.

3. Each Claimed Amount payable by Ambac under this Surety Bond shall be limited to the Surety Bond Coverage as of the date of the Demand for Payment plus interest amounts payable as set forth in paragraph 1 hereof.

4. Any service of process on Ambac may be made to Ambac at the office of the General Counsel of Ambac at Ambac's "Address for Notice" set forth in paragraph 8 hereof, and such service of process shall be valid and binding as to Ambac. The General Counsel's office will act as agent for the acceptance of service of process on Ambac.

5. This Surety Bond is irrevocable and noncancelable for any reason. Subject to paragraph 6 below, this Surety Bond and the obligations of Ambac hereunder shall terminate on the earlier of (i) twenty (20) days after the Termination Date (as defined in the Swap Agreement) so long as Ambac is not in default with respect to its obligations hereunder and (ii) receipt by Ambac of written notice from the Beneficiary stating that Ambac is released from its obligations under this Surety Bond.

6. Notwithstanding any other provisions hereof, if the payment of any amount in respect of the Covered Obligations (including the payment of any amount in respect of (i) the Equity Portion of Termination Value, (ii) any payment of the Equity Portion of Basic Rent to the extent an amount equal thereto is included in the Covered Obligations and (iii) any sale of the Swap Counterparty's obligations under the Swap Agreement and Ambac's obligations hereunder pursuant to the paragraph captioned "Term Out Options" in Section 3(a) of the Swap Agreement but only, in the case of this subclause (ii), if such obligations have been reassigned to the Beneficiary) is voided or avoided (an "Avoidance Event") under any Insolvency Proceedings involving the Swap Counterparty, the Facility Lessee or any other Person, and, as a result of such Avoidance Event, the Beneficiary (or any permitted assignee or distributee thereof or any other Person) is required to return or turn over such voided or avoided payment, or any portion of such voided or avoided payment to the Swap Counterparty or any other Person (an "Avoided Payment"), Ambac will pay the amount of the Avoided Payment out of the funds of Ambac when due to be paid pursuant to the Order (as defined below), but in any event no earlier than the second Business Day following receipt by Ambac of (i) a certified copy of an order of a court or

other body exercising jurisdiction in such Insolvency Proceeding to the effect that the Beneficiary (or such assignee or distributee or other Person, as the case may be) is required to return or pay over such Avoided Payment because such payments were voided or avoided as a preferential or fraudulent transfer or conveyance or otherwise rescinded, reduced or required to be restored by the Beneficiary (or such assignee or distributee or other Person) (the "Order"), (ii) a certificate by or on behalf of the Beneficiary (or such assignee or distributee or other Person) that the Order has been entered and is not subject to any stay, (iii) an assignment, in form and substance reasonably satisfactory to Ambac, duly executed and delivered by the Beneficiary (and, if applicable, such assignee or distributee or other Person), irrevocably assigning to Ambac all rights and claims of the Beneficiary (and, if applicable, or such assignee or distributee) relating to or arising under the Swap Agreement and the other Operative Documents against the estate of the Swap Counterparty or other Person, as applicable or otherwise with respect to such Avoided Payment and (iv) a Demand for Payment in respect of such Avoided Payments appropriately completed and executed by the Beneficiary. Such payment shall be disbursed to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, and not to the Beneficiary (or such assignee or distributee or other Person) directly, unless and only to the extent the Beneficiary (or such assignee or distributee or other Person) has made a payment of the Avoided Payment to the court or such receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order, in which case Ambac will pay the Beneficiary (or such assignee or distributee or other Person), subject to the delivery of (a) the items referred to in clauses (i), (ii), (iii) and (iv) above to Ambac and (b) evidence satisfactory to Ambac that payment has been made to such court or receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order. "Insolvency Proceeding" means the commencement, after the date hereof, of any voluntary or involuntary bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or similar proceedings by or against the Swap Counterparty or any other Person, or the commencement, after the date hereof, of any voluntary or involuntary proceedings by or against the Swap Counterparty or any other Person for the winding up or the liquidation of its affairs, or the consent after the date hereof to the appointment of a trustee, conservator, receiver or liquidator in any voluntary or involuntary bankruptcy, insolvency, readjustment of debt, reorganization, marshalling of assets and liabilities or proceedings similar to the foregoing relating to the Swap Counterparty or any other Person.

Notwithstanding the foregoing, in no event shall Ambac be obligated to make any payment in respect of any Avoided Payment, which payment, when added to all prior payments (other than payments of interest that are not Avoided Payments) made under this Surety Bond would exceed the Surety Bond Coverage as of the date on which such payment otherwise would be made (after taking into account all prior payments made under this Surety Bond), plus interest amounts payable pursuant to paragraph 1 hereof.

The premium on this Surety Bond is not refundable for any reason, including payment and performance by any Person under the Operative Documents or the termination of the Swap Agreement or any of the other Operative Documents.

7. As used herein, the following capitalized terms shall have the following meanings: the term "Surety Bond Coverage" for any date on which a Demand for Payment shall be made under this Surety Bond means the amount set forth in Column A of Schedule A attached hereto with respect to the Reference Date (as defined in paragraph 2(a) of the Credit Swap

Transaction Confirmation constituting a part of the Swap Agreement), plus any unpaid interest specified as payable under the Swap Agreement, which in each case remains unpaid as of the date on which such Demand for Payment is made, but exclusive of interest amounts payable pursuant to paragraph 1 hereof; and the term "Surety Bond Payment Date" means, with respect to any Demand for Payment, the Business Day on which a Demand for Payment is received by Ambac.

8. All notices, requests and other communications provided for herein shall be given or made in writing (including, without limitation, by telecopy) delivered to the intended recipient at the "Address for Notices" specified below or, as to Ambac or the Beneficiary, at such other address as shall be designated by such Person in a notice to each other such Person. All such communications shall be deemed to have been duly given when transmitted by telecopier, telex, telegram or when personally delivered or, in the case of a mailed notice or a notice delivered by overnight delivery service, upon receipt, in each case given or addressed as aforesaid. Each "Address for Notice" is as follows:

Ambac

Ambac Assurance Corporation
One State Street Plaza
New York, New York 10004
Attention: General Counsel
Telecopier No.: (212) 344-5297
Confirmation No.: (212) 668-0430

Beneficiary

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

9. Notwithstanding any other provisions herein or any Applicable Law to the contrary, Ambac's obligations under this Surety Bond (a) are absolute and unconditional, (b) constitute a guaranty of payment and not a guaranty of collection, (c) constitute a continuing guaranty of all present and future Covered Obligations and all amendments, modifications, supplements, renewals of or extensions to the Covered Obligations, whether such amendments, modifications, supplements, renewals of or extensions are evidenced by new or additional instruments, documents or agreements, and (d) are irrevocable. The obligations of Ambac to make any payment hereunder constitute separate and independent obligations of Ambac and give rise to separate and independent causes of action against Ambac. Ambac specifically agrees that it shall not be necessary, and that Ambac shall not be entitled to require, before or as a condition

of enforcing the liability of Ambac under this Surety Bond or requiring payment or performance of the Covered Obligations by Ambac hereunder, or at anytime thereafter, that any Person: (i) file suit or proceed to obtain or assert a claim for personal judgment against the Swap Counterparty or any other Person that may be liable for any Covered Obligation, (ii) make any effort to obtain payment or performance of any Covered Obligation from the Swap Counterparty or any other Person that may be liable for such Covered Obligation, (iii) foreclose against or seek to realize upon any security now or hereafter existing for such Covered Obligation, (iv) exercise or assert any other right or remedy to which such Person is or may be entitled in connection with any Covered Obligation or any security or other guaranty therefor, or (v) assert or file any claim against the assets of the Swap Counterparty or any other Person liable for any Covered Obligation.

10. THE OBLIGATIONS OF AMBAC UNDER THIS SURETY BOND SHALL NOT BE REDUCED, LIMITED OR TERMINATED, NOR SHALL AMBAC BE DISCHARGED FROM ANY THEREOF, FOR ANY REASON WHATSOEVER (other than the indefeasible payment of the Covered Obligations), including (and whether or not the same shall have occurred or failed to occur once or more than once and whether or not Ambac shall have received notice thereof):

(a) (i) any increase of, (ii) any extension of the time of payment or performance of, (iii) any other amendment or modification of any of the other terms and provisions of, (iv) any release, composition or settlement (whether by way of acceptance of a plan of reorganization or otherwise) of, (v) any subordination (whether present or future or contractual or otherwise) of, or (vi) any discharge, disallowance, reduction, invalidity, illegality, voidness or other unenforceability of, the Covered Obligations; provided, however, in each case that Ambac's obligations to make payments hereunder shall in no event be greater than the Surety Bond Coverage plus interest amounts payable pursuant to paragraph 1 hereof;

(b) (i) any failure to obtain or any release of, (ii) any failure to protect or preserve, (iii) any release, compromise, settlement or extension of the time of payment of any obligations constituting, (iv) any failure to perfect or maintain the perfection or priority of any Lien upon, (v) any subordination (whether present or future, contractual or otherwise) of, or (vi) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of, any Lien or intended Lien upon, any collateral now or hereafter securing the Covered Obligations;

(c) any invalidity or unenforceability of the Swap Agreement or any other Operative Document for any reason whatsoever;

(d) any exercise of, or any election not or failure to exercise, delay in the exercise of, waiver of, or forbearance or other indulgence with respect to, any right, remedy or power available to the Beneficiary, including (i) any election not or failure to exercise any right of set-off, recoupment or counterclaim, (ii) any acceptance of partial payments on the Covered Obligations, and (iii) any election of remedies effected by the Beneficiary, whether or not such election affects the right to obtain a deficiency judgment;

(e) receipt by the Beneficiary or the Owner Participant (and holding thereby) of additional security or guaranties for the Covered Obligations or any part thereof;

(f) any bankruptcy, insolvency, reorganization, arrangement, adjustment, composition, dissolution, liquidation or the like with respect to, or in any manner affecting, the Swap Counterparty, Ambac or any other Person, or any obligation of the Swap Counterparty or any other Person under any Operative Document, or any application of any provision of the Bankruptcy Code that purports to limit the Swap Counterparty's or any other Person's obligations under the Operative Documents, or any application of any provision (including but not limited to Section 365(c)(2)) of the Bankruptcy Code that purports to render any Operative Document unenforceable or reduce any amount payable thereunder;

(g) the rejection or limitation in any Insolvency Proceeding of the Swap Counterparty, Ambac or any other Person of this Surety Bond, the Swap Agreement, any Operative Document, or any other document relating to this Surety Bond or the Swap Agreement or other agreement or instrument referred to herein (nothing herein being a concession that any obligation hereunder or thereunder is property classifiable as an executory obligation);

(h) any limitation of the remedies of the Beneficiary or the Owner Participant under the Swap Agreement or the other Operative Documents, or any limitation of the liability of the Swap Counterparty under the Swap Agreement, which may now or hereafter be imposed by any Applicable Law or any Insolvency Proceeding;

(i) any merger or consolidation of Ambac into or with any other Person, or any transfer, conveyance, sale, lease or other disposition of any or all of the assets of the Swap Counterparty or Ambac to any other Person, or any consent by the Beneficiary or the Owner Participant to any such merger, consolidation, transfer of assets or any other restructuring or termination of the corporate existence of the Swap Counterparty, Ambac or any other Person;

(j) any debt of the Swap Counterparty to any Person, including Ambac;

(k) any claim, set-off, deduction or defense Ambac may have against any of the Swap Counterparty, the Beneficiary, the Owner Participant or the other parties to the Operative Documents, whether hereunder or under the Swap Agreement or the other Operative Documents or independent of or unrelated to the transactions contemplated by the Swap Agreement or the other Operative Documents;

(l) any failure by the Beneficiary to perform its obligations under the Swap Agreement (other than its obligation to deliver a conforming Credit Event Notice as and when required under the Swap Agreement), except the failure to satisfy the requirements of clause (ii)(b) of the paragraph captioned "Actions to be taken on the Settlement Date" in Section 3 of the Swap Agreement, in the event the Beneficiary or the Owner Participant is subject to Insolvency Proceedings (as defined in the Swap Agreement) at the time a Demand for Payment is made hereunder, provided however, that in the event the Swap Counterparty is subject to Insolvency Proceedings (as defined in the Swap Agreement) at the time a Demand for Payment is made hereunder in which the Swap Agreement has been rejected or has not been assumed under Section 365 of the Bankruptcy Code, the preceding exception shall not apply; or

(m) ANY OTHER ACT OR FAILURE TO ACT OR ANY OTHER EVENT OR CIRCUMSTANCE THAT (i) VARIES THE RISK OF AMBAC UNDER THIS SURETY

BOND OR (ii) BUT FOR THE PROVISIONS HEREOF, WOULD, AS A MATTER OF STATUTE OR RULE OF LAW OR EQUITY, OPERATE TO REDUCE, LIMIT OR TERMINATE THE OBLIGATIONS OF AMBAC THEREUNDER OR DISCHARGE AMBAC FROM ANY THEREOF.

11. (a) Ambac waives any defense to, and any set-off, counterclaim and claim of recoupment against, the Covered Obligations that may at any time be available to Ambac, the Swap Counterparty or any other Person.

(b) Ambac agrees, and the Beneficiary by acceptance of this Surety Bond and by submission of any Demand for Payment hereunder agrees, that concurrently upon the payment in full by Ambac of the Deficiency, as defined in such Demand for Payment (up to but not in excess of the Surety Bond Coverage), together with any interest thereon due hereunder, Ambac shall be and is hereby subrogated, but only to the extent of the Claimed Amount and only to the extent that the Claimed Amount is actually paid by Ambac to or on behalf of the Beneficiary pursuant to this Surety Bond, to all of the rights and remedies of the Beneficiary with respect to the Covered Obligations giving rise to such Claimed Amount under the Swap Agreement.

(c) Ambac hereby irrevocably and absolutely waives (i) notice of acceptance of and intention to rely on this Surety Bond, (ii) notice of the incurrence, incidence or renewal of any of the Covered Obligations, (iii) notice of any of the matters referred to in paragraph 10 hereof, and (iv) all other notices that may be required by Applicable Law or otherwise to preserve any rights against Ambac under this Surety Bond, including any notice of default, demand, dishonor, presentment or protest. Ambac assumes the responsibility for being and keeping informed of the financial condition of the Swap Counterparty and of all other circumstances bearing upon the risk of nonpayment of the Covered Obligations which diligent inquiry would reveal, and agrees that the Beneficiary and the Owner Participant shall have no duty beyond its obligations, if any, in the Operative Documents to advise Ambac of information known to it regarding such condition or any such circumstances. It is not and shall not be necessary for the Beneficiary or the Owner Participant to inquire into the powers of the Swap Counterparty or any of its agents acting or purporting to act on behalf thereof, and any Covered Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

(d) Without limiting the requirement that Ambac receive a completed Demand for Payment duly executed by the Beneficiary, Ambac waives any requirement, and any right to require, that any right or power be exercised or any action be taken against the Swap Counterparty or any collateral for the Covered Obligations, and Ambac waives the right to have the property of the Swap Counterparty first applied to the discharge of the Covered Obligations. The Beneficiary may at its election exercise any right or remedy it may have against the Swap Counterparty or any collateral now or hereafter held by such Person, including, without limitation, the right to foreclose upon any such collateral by judicial or nonjudicial sale, without affecting or impairing in any way the liability of Ambac hereunder. Ambac hereby irrevocably and absolutely waives: (i) any defense arising by reason of any disability or other defense of the Swap Counterparty or by reason of the cessation from any cause whatsoever of the liability, either in whole or in part, of the Swap Counterparty to the Beneficiary for the Covered

Obligations, (ii) any defense based on the discharge of the Swap Counterparty by operation of law, notwithstanding any intervention or omission by the Beneficiary or the Owner Participant, (iii) any defense based on or arising out of the absence, impairment or loss of any right of reimbursement, contribution or subrogation or any other right or remedy of Ambac against the Swap Counterparty or any such collateral, whether resulting from such election by the Beneficiary or otherwise; and (iv) any legal or equitable discharge or defense for any circumstance whatsoever.

(e) Ambac hereby irrevocably and absolutely waives all rights, benefits or defenses under any Applicable Laws which: (i) reduce the obligation of a surety upon the acceptance by a creditor of anything in partial satisfaction of an obligation, (ii) exonerate the surety if by an act of the creditor, without the consent of the surety, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, are in any way suspended or impaired, (iii) exonerate the surety to the extent that the creditor does not proceed against the principal, or pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden, and (iv) reduce the guaranteed obligation in proportion to the principal obligation.

(f) AMBAC HEREBY IRREVOCABLY AND ABSOLUTELY WAIVES ALL OTHER RIGHTS, BENEFITS AND DEFENSES UNDER APPLICABLE LAW THAT WOULD, BUT FOR THIS SUBPARAGRAPH (f), BE AVAILABLE TO AMBAC AS A DEFENSE AGAINST OR A REDUCTION OR LIMITATION OF ITS OBLIGATIONS UNDER THIS SURETY BOND.

12. Ambac agrees to pay on demand all fees and out of pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel and the Owner Participant's counsel) in any way relating to the enforcement or protection of the rights of the Beneficiary hereunder; provided, that Ambac shall not be liable for any expenses of the Beneficiary or the Owner Participant if no payment under this Surety Bond is due.

13. Each of the rights and remedies of the Beneficiary under this Surety Bond shall be in addition to all of its other rights and remedies under Applicable Law, and nothing in this Surety Bond shall be construed as limiting any such rights or remedies.

14. Any term, covenant, agreement or condition of this Surety Bond may be amended, and any right under this Surety Bond may be waived, if, but only if, such amendment or waiver is in writing and is signed by the Beneficiary and, in the case of an amendment, by Ambac. No election not to exercise, failure to exercise or delay in exercising any right, nor any course of dealing or performance, shall operate as a waiver of any right of the Beneficiary under the Surety Bond or Applicable Law, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right of the Beneficiary under this Surety Bond or Applicable Law.

15. (a) Ambac may not assign any of its rights or obligations under this Surety Bond without the prior written consent of the Beneficiary, and (b) no assignment of any such obligation shall release Ambac therefrom unless the Beneficiary shall have consented to such

release in a writing specifically referring to the obligation from which Ambac is to be released; provided, however, that Ambac may procure any other surety to reinsure the Surety Bond.

16. THIS SURETY BOND AND ANY BREACH OR DISPUTE WITH RESPECT TO THIS SURETY BOND, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF EXCEPT NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1401.

17. Any provision of this Surety Bond that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by Applicable Law, Ambac hereby irrevocably and absolutely waives any provision of Applicable Law that renders any provision of this Surety Bond prohibited or unenforceable in any respect.

18. All of the provisions of this Surety Bond shall be binding upon Ambac and its successors and assigns and shall inure to the benefit of, and may be enforced by, the Beneficiary and its successors and permitted assigns under the provisions of the Operative Documents.

19. This Surety Bond may be assigned and transferred by the Beneficiary to any successor or permitted assigns under the provisions of the Operative Documents of the Beneficiary upon delivery to Ambac of a certificate of an authorized officer of the transferor Beneficiary and the transferee Beneficiary notifying Ambac of such transfer.


20. Nothing in paragraph 10(k), or in paragraph 11(a) or in paragraph 11(d) or 11(f) of this Surety Bond shall be deemed to prejudice Ambac's right, if any, to assert any claim it may have to seek recovery from the Beneficiary, any distributee or other recipient of assets of the Beneficiary, or the Owner Participant, as the case may be, of amounts paid under this Surety Bond (a "Recovery Claim") solely (i) to the extent the Recovery Claim is based upon an improper or incorrect determination by the Beneficiary (or, if applicable, the Owner Participant) that there exists a basis for the delivery thereof as expressly set forth in paragraphs (a), (b) or (c) of the Demand for Payment or (a "Misdraw") and (ii) to the extent such claim is asserted in a separate action unrelated to any action for enforcement of this Surety Bond or the Covered Obligations or for payment of the Claimed Amount; provided, however, that Ambac shall have no right to assert a Recovery Claim to the extent such claim arises out of or is based upon, or such Covered Obligation is not due as a result of, (x) sovereign immunity, bankruptcy, insolvency, reorganization or liquidation, (y) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of the Covered Obligations, the Operative Documents or any other obligation contained in the Operative Documents or (z) any reason specified in paragraph 10 (other than a Misdraw, subject however to the conditions outlined in subclauses (i) and (ii) above); and provided, further, that (A) nothing in this paragraph 20 shall permit Ambac to set-off or otherwise withhold the amount of any such claim from, or otherwise raise any defense to, its obligation to pay the Claimed Amount in accordance with the terms of this Surety Bond and (B) nothing in this Surety Bond shall limit or constitute a waiver of any claim, setoff,

deduction or defense that Ambac may have against the Beneficiary (or, if applicable, the Owner Participant) based on fraud by the Beneficiary or fraudulent direction of the Beneficiary by the Owner Participant, in the making of a Demand for Payment under this Surety Bond. For the avoidance of doubt, the Deficiency (as defined in Attachment 1 hereto) shall be payable notwithstanding the existence of a circumstance described in clauses (x), (y) or (z) of the preceding sentence (such circumstances, "Excluded Circumstances"), without prejudice to Ambac's rights under this paragraph 20.

21. Nothing in this Surety Bond, or in any other document or agreement, expressed or implied, shall give to any Person, other than the parties hereto and their successors and permitted assigns hereunder, and other than Persons entitled to payment in respect of an Avoided Payment as expressly provided in Section 6 hereof, any benefit or any legal or equitable right, remedy, or claim under this Surety Bond.

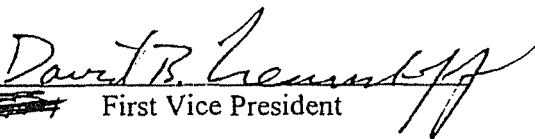
22. The insurance provided by this Policy is not covered by the New York Property/Casualty Insurance Security Fund (New York Insurance Code, Article 76).

IN WITNESS WHEREOF, Ambac has caused this Surety Bond to be executed and attested on its behalf this 18th day of April, 2000.

Attest: 
Assistant Secretary

SPECIMEN

AMBAC ASSURANCE CORPORATION

By: 
~~_____~~ First Vice President

FBR - 1
SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
18-Apr-00	25,082,162.92
18-May-00	28,122,073.12
18-Jun-00	28,385,247.58
18-Jul-00	28,643,744.47
4-Aug-00	28,904,035.75
4-Sep-00	29,166,133.90
4-Oct-00	29,423,546.99
4-Nov-00	29,682,746.97
4-Dec-00	29,943,746.21
4-Jan-01	30,200,052.79
4-Feb-01	30,458,138.56
4-Mar-01	30,718,015.86
4-Apr-01	30,979,697.16
4-May-01	31,233,931.79
4-Jun-01	31,489,931.25
4-Jul-01	31,738,444.60
4-Aug-01	31,988,683.04
4-Sep-01	32,240,658.56
4-Oct-01	32,485,120.06
4-Nov-01	32,731,278.51
4-Dec-01	32,979,145.72
4-Jan-02	33,219,470.38
4-Feb-02	33,461,463.30
4-Mar-02	33,705,136.05
4-Apr-02	33,950,500.29
4-May-02	34,188,836.29
4-Jun-02	34,428,826.75
4-Jul-02	34,661,751.66
4-Aug-02	34,896,293.46
4-Sep-02	35,132,463.37
4-Oct-02	35,361,541.22
4-Nov-02	35,592,209.24
4-Dec-02	35,824,478.50
4-Jan-03	36,049,628.61
4-Feb-03	36,276,341.64
4-Mar-03	36,504,628.43
4-Apr-03	36,734,499.92
4-May-03	36,957,715.79
4-Jun-03	37,182,481.17
4-Jul-03	37,400,555.48
4-Aug-03	37,620,143.60
4-Sep-03	37,841,256.02
4-Oct-03	38,055,652.04
4-Nov-03	38,271,536.31
4-Dec-03	38,488,919.19
4-Jan-04	38,699,559.77

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Feb-04	38,911,662.55
4-Mar-04	39,125,237.66
4-Apr-04	39,340,295.36
4-May-04	39,549,026.53
4-Jun-04	39,759,206.66
4-Jul-04	39,963,026.41
4-Aug-04	40,168,261.01
4-Sep-04	40,374,920.28
4-Oct-04	40,575,194.75
4-Nov-04	40,776,859.45
4-Dec-04	40,979,924.05
4-Jan-05	40,481,941.87
4-Feb-05	40,679,961.83
4-Mar-05	40,879,356.35
4-Apr-05	41,080,135.01
4-May-05	41,274,874.43
4-Jun-05	41,470,965.67
4-Jul-05	41,660,985.11
4-Aug-05	41,852,323.61
4-Sep-05	42,044,990.32
4-Oct-05	42,231,561.48
4-Nov-05	42,419,427.74
4-Dec-05	42,608,598.12
4-Jan-06	42,097,010.66
4-Feb-06	42,281,331.89
4-Mar-06	42,466,932.62
4-Apr-06	42,653,821.73
4-May-06	42,834,965.32
4-Jun-06	43,017,366.35
4-Jul-06	43,193,990.73
4-Aug-06	43,371,841.18
4-Sep-06	43,550,926.20
4-Oct-06	43,724,211.55
4-Nov-06	43,898,699.79
4-Dec-06	44,074,399.27
4-Jan-07	44,244,275.56
4-Feb-07	44,415,331.09
4-Mar-07	44,587,574.03
4-Apr-07	44,761,012.62
4-May-07	44,929,023.03
4-Jun-07	45,098,199.71
4-Jul-07	45,261,918.64
4-Aug-07	45,426,774.04
4-Sep-07	45,592,773.81
4-Oct-07	45,753,293.77
4-Nov-07	45,914,928.01

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Dec-07	46,077,684.25
4-Jan-08	46,234,938.17
4-Feb-08	46,393,283.68
4-Mar-08	46,552,728.40
4-Apr-08	46,713,279.91
4-May-08	46,868,381.39
4-Jun-08	47,024,559.55
4-Jul-08	47,175,257.32
4-Aug-08	47,327,001.18
4-Sep-08	47,479,798.39
4-Oct-08	47,627,091.76
4-Nov-08	47,775,407.59
4-Dec-08	47,924,752.98
4-Jan-09	48,068,570.54
4-Feb-09	48,213,386.45
4-Mar-09	48,359,207.61
4-Apr-09	48,506,041.03
4-May-09	48,647,881.44
4-Jun-09	48,790,706.46
4-Jul-09	48,928,510.67
4-Aug-09	49,067,271.46
4-Sep-09	49,206,995.49
4-Oct-09	49,341,677.16
4-Nov-09	49,477,293.75
4-Dec-09	49,613,851.75
4-Jan-10	49,745,345.42
4-Feb-10	49,877,751.88
4-Mar-10	50,011,077.45
4-Apr-10	50,145,328.54
4-May-10	50,274,440.65
4-Jun-10	50,404,449.03
4-Jul-10	50,529,288.98
4-Aug-10	50,654,995.55
4-Sep-10	50,781,574.73
4-Oct-10	50,902,961.67
4-Nov-10	51,025,191.27
4-Dec-10	51,148,269.33
4-Jan-11	51,266,130.87
4-Feb-11	51,384,810.56
4-Mar-11	51,504,314.10
4-Apr-11	51,624,647.18
4-May-11	51,739,676.16
4-Jun-11	51,855,503.65
4-Jul-11	51,965,995.74
4-Aug-11	52,077,254.85
4-Sep-11	52,189,286.28

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Oct-11	52,295,955.97
4-Nov-11	52,403,366.14
4-Dec-11	52,511,521.91
4-Jan-12	52,614,289.04
4-Feb-12	52,717,769.55
4-Mar-12	52,821,968.39
4-Apr-12	52,926,890.54
4-May-12	53,026,429.40
4-Jun-12	53,126,659.23
4-Jul-12	53,221,473.18
4-Aug-12	53,316,945.32
4-Sep-12	53,413,080.17
4-Oct-12	53,503,770.75
4-Nov-12	53,595,090.87
4-Dec-12	53,687,044.89
4-Jan-13	53,773,525.61
4-Feb-13	53,860,606.65
4-Mar-13	53,948,292.17
4-Apr-13	54,036,586.37
4-May-13	54,120,779.75
4-Jun-13	54,205,557.58
4-Jul-13	54,286,210.16
4-Aug-13	54,367,422.59
4-Sep-13	54,449,198.78
4-Oct-13	54,526,828.90
4-Nov-13	54,604,997.89
4-Dec-13	54,683,709.52
4-Jan-14	54,758,253.78
4-Feb-14	54,833,315.51
4-Mar-14	54,908,898.28
4-Apr-14	54,985,005.74
4-May-14	55,056,960.78
4-Jun-14	55,129,415.31
4-Jul-14	55,197,692.07
4-Aug-14	55,266,442.78
4-Sep-14	55,335,670.74
4-Oct-14	55,400,698.53
4-Nov-14	55,466,177.72
4-Dec-14	55,532,111.44
4-Jan-15	55,593,822.13
4-Feb-15	55,655,961.20
4-Mar-15	55,718,531.60
4-Apr-15	55,781,536.36
4-May-15	55,840,333.94
4-Jun-15	55,899,539.69
4-Jul-15	55,954,511.88

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Aug-15	56,009,865.67
4-Sep-15	56,065,603.71
4-Oct-15	56,117,084.14
4-Nov-15	56,168,921.93
4-Dec-15	56,221,119.55
4-Jan-16	56,269,034.99
4-Feb-16	56,317,283.04
4-Mar-16	56,365,866.01
4-Apr-16	56,414,786.23
4-May-16	56,459,440.35
4-Jun-16	56,504,404.45
4-Jul-16	56,545,075.01
4-Aug-16	56,586,027.87
4-Sep-16	56,627,265.02
4-Oct-16	56,664,182.75
4-Nov-16	56,701,356.75
4-Dec-16	56,738,788.80
4-Jan-17	56,771,875.00
4-Feb-17	56,805,190.89
4-Mar-17	56,838,738.04
4-Apr-17	56,872,518.06
4-May-17	56,901,967.89
4-Jun-17	56,931,622.15
4-Jul-17	56,956,917.58
4-Aug-17	56,982,388.59
4-Sep-17	57,008,036.42
4-Oct-17	57,029,297.61
4-Nov-17	57,050,706.38
4-Dec-17	57,072,263.76
4-Jan-18	57,089,406.10
4-Feb-18	57,106,667.45
4-Mar-18	57,124,048.60
4-Apr-18	57,141,550.43
4-May-18	57,154,653.10
4-Jun-18	57,167,846.76
4-Jul-18	57,176,611.36
4-Aug-18	57,185,436.79
4-Sep-18	57,194,323.50
4-Oct-18	57,198,751.28
4-Nov-18	57,203,209.79
4-Dec-18	57,207,699.25
4-Jan-19	57,207,699.25
4-Feb-19	57,207,699.25
4-Mar-19	57,207,699.25
4-Apr-19	57,207,699.24
4-May-19	57,207,699.24

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Jun-19	57,207,699.25
4-Jul-19	57,207,699.24
4-Aug-19	57,207,699.24
4-Sep-19	57,207,699.24
4-Oct-19	57,207,699.25
4-Nov-19	57,207,699.25
4-Dec-19	57,207,699.25
4-Jan-20	57,207,699.25
4-Feb-20	57,207,699.25
4-Mar-20	57,207,699.25
4-Apr-20	57,207,699.24
4-May-20	57,207,699.24
4-Jun-20	57,207,699.25
4-Jul-20	57,207,699.24
4-Aug-20	57,207,699.25
4-Sep-20	57,207,699.24
4-Oct-20	57,207,699.25
4-Nov-20	57,207,699.25
4-Dec-20	57,207,699.25
4-Jan-21	57,207,699.24
4-Feb-21	57,207,699.25
4-Mar-21	57,207,699.25
4-Apr-21	57,207,699.24
4-May-21	57,207,699.24
4-Jun-21	57,207,699.25
4-Jul-21	57,207,699.25
4-Aug-21	57,207,699.25
4-Sep-21	57,207,699.25
4-Oct-21	57,207,699.25
4-Nov-21	57,207,699.24
4-Dec-21	57,207,699.24
4-Jan-22	57,207,699.24
4-Feb-22	57,207,699.25
4-Mar-22	57,207,699.25
4-Apr-22	57,207,699.25
4-May-22	57,207,699.24
4-Jun-22	57,207,699.25
4-Jul-22	57,207,699.24
4-Aug-22	57,207,699.24
4-Sep-22	57,207,699.24
4-Oct-22	57,207,699.25
4-Nov-22	57,207,699.25
4-Dec-22	57,207,699.25
4-Jan-23	57,207,699.25
4-Feb-23	57,207,699.25
4-Mar-23	57,207,699.24

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Apr-23	57,207,699.25
4-May-23	57,207,699.24
4-Jun-23	57,207,699.25
4-Jul-23	57,207,699.25
4-Aug-23	57,207,699.24
4-Sep-23	57,207,699.25
4-Oct-23	57,207,699.25
4-Nov-23	57,207,699.25
4-Dec-23	57,207,699.25
4-Jan-24	57,207,699.24
4-Feb-24	57,207,699.25
4-Mar-24	57,207,699.25
4-Apr-24	57,207,699.24
4-May-24	57,207,699.24
4-Jun-24	57,207,699.25
4-Jul-24	57,207,699.25
4-Aug-24	57,207,699.24
4-Sep-24	57,207,699.24
4-Oct-24	57,207,699.25
4-Nov-24	57,207,699.25
4-Dec-24	57,207,699.24
4-Jan-25	57,207,699.24
4-Feb-25	57,207,699.25
4-Mar-25	57,207,699.24
4-Apr-25	57,207,699.24
4-May-25	57,207,699.25
4-Jun-25	57,207,699.25
4-Jul-25	57,207,699.25
4-Aug-25	57,207,699.24
4-Sep-25	57,207,699.25
4-Oct-25	57,207,699.25
4-Nov-25	57,207,699.25
4-Dec-25	57,207,699.24
4-Jan-26	57,207,699.25
4-Feb-26	57,207,699.25
4-Mar-26	57,207,699.25
4-Apr-26	57,207,699.24
4-May-26	57,207,699.25
4-Jun-26	57,207,699.25
4-Jul-26	57,207,699.25
4-Aug-26	57,207,699.25
4-Sep-26	57,207,699.24
4-Oct-26	57,207,699.24
4-Nov-26	57,207,699.24
4-Dec-26	57,207,699.24
4-Jan-27	55,818,424.25

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SURETY BOND COVERAGE

<u>Date</u>	<u>Column A</u>
4-Feb-27	55,818,424.25
4-Mar-27	55,818,424.25
4-Apr-27	55,818,424.25
15-Apr-27	55,818,424.25
15-May-27	55,818,424.25 *
15-Jun-27	55,818,424.25 *
15-Jul-27	55,818,424.25 *
15-Aug-27	55,818,424.25 *
15-Sep-27	55,818,424.25 *
15-Oct-27	55,818,424.25 *
15-Nov-27	55,818,424.25 *
15-Dec-27	55,818,424.25 *

* Amount in Column A from and after 15 April 2027 shall be reduced by amount of any reduction of the Party A Fixed Amount effected under the Qualifying Swap by virtue of payments in respect of the Fixed Purchase Option Price paid on each of the 15th of April, June, September and December 2027.

Attachment 1

Surety Bond (FBR-1) No. SF0326BE

DEMAND FOR PAYMENT

[Date]

Ambac Assurance Corporation
One State Street Plaza
New York, New York 10004
Attention: General Counsel

Reference is made to the Surety Bond (FBR-1) No. SF0326BE (the "Surety Bond") issued by Ambac Assurance Corporation ("Ambac"). The terms which are capitalized herein and not otherwise defined have the meanings specified in the Surety Bond unless the context otherwise requires.

The Beneficiary hereby certifies and agrees that [INDICATE WHICH ALTERNATIVE IS APPLICABLE TO THIS DEMAND FOR PAYMENT]:

[ALT. A – SWAP PAYMENT DEFICIENCY] [YES][NO]:

(a) Payment by the Swap Counterparty to the Beneficiary in an amount equal to \$_____ (the "Amount Due") either (i)(A) was due on or prior to the date hereof pursuant to the Swap Agreement (without regard to any defenses arising as a result of (x) sovereign immunity, bankruptcy, insolvency, reorganization or liquidation, (y) any discharge, disallowance, invalidity, illegality, voidness or other unenforceability of the Covered Obligations, the Operative Documents or any other obligation contained in the Operative Documents or (z) any reason specified in paragraph 10 of the Surety Bond (collectively, the "Excluded Circumstances")), (B) any notice or demand, or other action, expressly required by the provisions of the Swap Agreement to be given, made or taken to the Swap Counterparty as a condition to the Amount Due becoming due pursuant to the Swap Agreement was given, made or taken and (C) payment in full of the Amount Due has not been made, or (ii) if an Insolvency Proceeding with respect to the Swap Counterparty or any other Person is pending, is due under the terms of the Swap Agreement or the other Operative Documents or could be or could have been demanded under the Swap Agreement or the other Operative Documents but for the pendency of such Insolvency Proceeding or the existence of an Excluded Circumstance.

(b) \$_____ has been paid to the Beneficiary by the Swap Counterparty with respect to the Amount Due, which amount is \$_____ less than the Amount Due (the "Deficiency").

(c) The Beneficiary has not been paid any of the Deficiency by Ambac or any of the other Ambac Parties.

(d) The Beneficiary hereby requests that payment of the following amount be made under the Surety Bond: \$_____, being the amount of the Deficiency.

(e) The Deficiency shall be paid to the following account of the Beneficiary by bank wire transfer of federal or other immediately available funds in accordance with the terms of the Policy:

Account Name: _____
Bank: _____
Account No.: _____
ABA No.: _____

[ALT. B – AVOIDANCE EVENT] [YES][NO]

(a) An Avoidance Event has occurred, and, as a result of such Avoidance Event, the Beneficiary, or _____ [identify Person], which is its assignee, its distributee or another Person described in Section 6 of the Surety Bond [indicate which], has returned, or is required to return, an Avoided Amount.

(b) The Avoided Amount returned, or required to be returned, is in the amount of \$_____ (the "Avoided Payment"). Enclosed with this Demand for Payment are the items required by Section 6 of the Surety Bond to be delivered to Ambac in connection with the Avoided Payment.

(c) The Beneficiary has not heretofore made a conforming demand under the Policy for the Avoided Payment or any portion thereof, or the Beneficiary has made a Demand for Payment under the Policy for all or a portion of the Avoided Payment but neither the Beneficiary, nor its assignee, its distributee or such other Person has been paid all or any portion of the Avoided Payment by Ambac or any of the other Ambac Parties.

(d) The Beneficiary hereby requests that payment of the following amount be made under the Surety Bond: \$_____, being the amount of the Avoided Payment.

(e) The Avoided Payment shall be paid: [STRIKE ONE OF THE FOLLOWING CLAUSES (i) and (ii)]

(i) in accordance with the Order of the court or other body exercising jurisdiction which has been submitted with this Demand for Payment; or

(ii) to the account listed below by bank wire transfer of federal or other immediately available funds in accordance with the terms of the Surety Bond (the Beneficiary, its assignee or its distributee, or another Person pursuant to Section 6 of the Surety Bond, having paid such amount in accordance with such Order, evidence of such payment being submitted herewith):

Account Name: _____
Bank: _____
Account No.: _____
ABA No.: _____

[THE FOLLOWING IS APPLICABLE TO ALL DEMANDS FOR PAYMENT]

It is expressly understood and agreed that (a) this Demand for Payment is executed and delivered by the Trust Company, not individually or personally but solely as OP Trustee under the OP Trust Agreement, in the exercise of the powers and authority conferred and vested in it, (b) each of the certifications, statements and agreements herein made on the part of the OP Trustee is made and intended not as personal certifications, statements and agreements by the Trust Company, but is made and intended for the purpose of binding only the OP Trust, (c) nothing herein contained shall be construed as creating any liability on the Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by Ambac or by any Person claiming by, through or under Ambac and (d) under no circumstances shall the Trust Company be personally liable for the payment or indebtedness or expenses of the OP Trust or be liable for the breach or failure of any obligation, certification, statement or agreement made or undertaken by the OP Trust under this Demand for Payment.

THE FOLLOWING STATEMENT IS MANDATED BY NEW YORK STATE INSURANCE REGULATIONS (11 NYCRR PART 86):

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.

FBR-1 OP STATUTORY TRUST, as Beneficiary

By: State Street Bank and Trust Company of
Connecticut, National Association, not in
its individual capacity but solely as
OP Trustee,

By: _____
Title:

(Multicurrency—Cross Border)

ISDA[®]

International Swap Dealers Association, Inc.

MASTER AGREEMENT

(In Relation to FBR-1 Statutory Trust)

dated April 18, 2000

AMBAC CREDIT PRODUCTS, LLC

and

BIG RIVERS ELECTRIC
CORPORATION

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

1. Interpretation

(a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purposes of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) General Conditions.

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting.* If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) *Liability. If:—*

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(c) *Default Interest; Other Amounts.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) *Basic Representations.*

(i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) *Consents.* All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) *Obligations Binding.* Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated.

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) *Illegality.* Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) *Tax Event.* Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) *Tax Event Upon Merger.* The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) *Credit Event Upon Merger.* If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) *Additional Termination Event.* If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) *Event of Default and Illegality.* If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) *Right to Terminate Following Event of Default.* If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) *Right to Terminate Following Termination Event.*

(i) *Notice.* If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) *Transfer to Avoid Termination Event.* If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) *Two Affected Parties.* If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) *Right to Terminate. If:—*

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party.

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) *Calculations.*

(i) *Statement.* On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) *Payment Date.* An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) *Payments on Early Termination.* If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) *Events of Default.* If the Early Termination Date results from an Event of Default:—

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) *Separate Indemnities.* To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
 - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) *Service of Process.* Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) *Waiver of Immunities.* Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"Burdened Party" has the meaning specified in Section 5(b).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv).

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and *"lawful"* and *"unlawful"* will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non-defaulting Party" has the meaning specified in Section 6(a).

"Office" means a branch or office of a party, which may be such party's head or home office.

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meaning specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

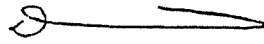
"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

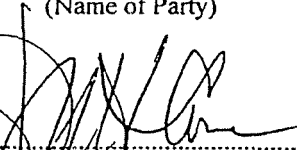
value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

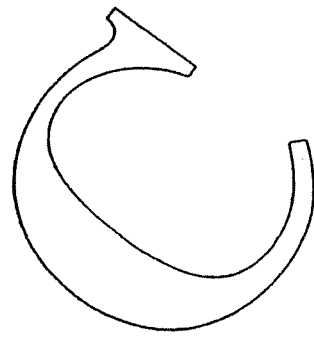
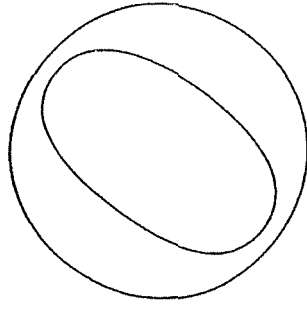
IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

AMBAC CREDIT PRODUCTS, LLC
(Name of Party)

BIG RIVERS ELECTRIC CORPORATION
(Name of Party)

By: 
Name: _____
Title: **DAVID J. WEISSMAN**
Date: **FIRST VICE PRESIDENT**

By: 
Name: _____
Title: **Michael H. Core**
Date: **President & CEO**
Big Rivers Electric Corporation



SCHEDULE

to the

ISDA Master Agreement

(Multicurrency-Cross Border)

(in relation to FBR-1 Statutory Trust)

dated April 18, 2000

between

AMBAC CREDIT PRODUCTS,
LLC

("Party A)

and

BIG RIVERS ELECTRIC
CORPORATION

("Party B")

Part 1

Termination Provisions

In this Agreement: -

- (a) "Specified Entity": Not Applicable
- (b) "Termination Currency" means United States Dollars.

Part 2

Tax Representations

- (a) **Payer Representations.** For the purpose of Section 3(e) of this Agreement, Party B will make the following representation:-

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representation made by the other party

pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement, and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement, and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, provided that it shall not be a breach of this representation where such reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement, Party B makes the following representation: Not applicable.

Part 3

Documents to be delivered

For the purpose of Section 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents as applicable:-

(a) Tax forms, documents or certificates to be delivered are:-

Party required to deliver documents	Form/Document/Certificate	Date by which to be delivered
Party A	None required	Not applicable
Party B	None required	Not applicable

(b) Other documents to be delivered are:

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>	<u>Covered by Section 3(d) Representation</u>
Party A/Party B	Certificate evidencing the authority of the party entering into this Agreement or a Confirmation, as the case may be; may be satisfied by document delivered under Participation Agreement.	On Closing Date	Yes
Party A/Party B	Opinions of counsel delivered under Participation Agreement on Closing Date regarding enforceability of this Agreement as against Party A/Party B.	On Closing Date	No

Part 4

Miscellaneous

(a) **Addresses for Notices:** For the purpose of Section 12(a) of this Agreement:-

Address for notices or communications to Party A:-

Address: One New York Plaza
New York, New York 10004

Attention: Managing Director, Financial Institutions, Specialized Finance

Facsimile No: (212) 208-3113 Telephone No: (212) 668-0340

Address for notices or communications to Party B:-

Address: 201 Third Street
Henderson, Kentucky 42420

Attention: President and Chief Executive Officer

Facsimile No: (270) 827-2558 Telephone No: (270) 827-2561

(b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:-

Party A appoints as its Process Agent: Not Applicable

Party B appoints as its Process Agent: Not Applicable

(c) **Offices.** The provisions of Section 10(a) will apply to this Agreement.

(d) **Multibranch Party.** For the purpose of Section 10 of this Agreement:-

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.

(e) **Credit Support Document.** Details of any Credit Support Document:-

Party A:- Not applicable.

Party B:- Not Applicable

(f) **Credit Support Provider.**

Credit Support Provider means in relation to Party A, not applicable.

Credit Support Provider means in relation to Party B, not applicable.

(g) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York without reference to choice of law provisions, except New York General Obligations Law 5-1401.

(h) **Netting of Payments.** Section 2(c) of this Agreement will not apply.

(i) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.

Part 5

Other Provisions

This Agreement is hereby amended, modified and supplemented as set forth in this Part 5 below:

(a) Amendment to the Introductory Paragraph of this Agreement. The first paragraph is deleted in its entirety and replaced with the following paragraph:

“Ambac Credit Products, LLC and Big Rivers Electric Corporation have entered into the Transaction referred to in Section 1(c) and said Transaction is governed by this Master Agreement, which includes the schedule (the ‘Schedule’) and the Confirmation (as defined in Section 1(c)) that has been exchanged between the parties confirming the Transaction.”

(b) Amendment to Section I of this Agreement. Sections 1(a), 1(b) and 1(c) of this Agreement are hereby deleted in their entirety and replaced with the following:

“(a) Definitions. This Agreement and the Transaction between the parties are subject to the definitions contained in the preprinted ISDA Master Agreement (Multicurrency-Cross Border) entered into by the parties (the “ISDA Master Definitions”) and will be governed by the provisions set forth in such definitions. In addition, capitalized terms (the “PA Definitions”) used herein are used in this Agreement with the meanings set forth in, or by reference in, the Participation Agreement (FBR-1), dated as of April 1, 2000 (as amended, modified or supplemented from time to time, the “Participation Agreement”) among Big Rivers Electric Corporation, ~~Big Rivers Electric Corporation, Inc.~~, AME Investments, LLC, CoBank, ACB, State Street Bank and Trust Company of Connecticut, National Association, FBR-1 OP Statutory Trust, acting through State Street Bank and Trust Company of Connecticut, National Association, as OP Trustee under the OP Trust Agreement and not in its individual capacity except to the extent provided in the Participation Agreement, and FBR-1 Statutory Trust, acting through State Street Bank and Trust Company of Connecticut, National Association, as Trustee under the Trust Agreement and not in its individual capacity except to the extent provided in the Participation Agreement. Any inconsistency among such definitions shall be resolved in following order of priority: *first*, the PA Definitions shall govern and *second*, the ISDA Master Definitions shall govern. The provisions of the ISDA Master Definitions and the PA Definitions are incorporated by reference in and shall be deemed a part of this Agreement.

(b) Inconsistency. In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of the Confirmation and this Master Agreement (including the Schedule), the Confirmation will prevail.

(c) Single Confirmation. Party A and Party B each agree and acknowledge that the only Transaction that is or will be governed by this Agreement is the Transaction evidenced by the Credit Swap Transaction Confirmation dated the date hereof between Party A and Party B (the “Confirmation”).

(d) No Set-Off. Party A and Party B each agree and acknowledge that all payments under this Agreement will be made without set-off or counterclaim in

respect of any amount which may be owed to such party (or any Affiliate of such party) by the other party (or any Affiliate of such party).

(e) Acknowledgements. Party B acknowledges and agrees that (i) Party A is acting solely in the capacity of an arm's-length contractual counterparty with respect to this Agreement and the Transaction hereunder, (ii) Party A is not acting as a financial advisor or fiduciary of Party B (or in any similar capacity) with respect to this Agreement and the Transaction hereunder and (iii) any advice given by Party A under or in connection with this Agreement or the Transaction is and will be merely incidental to the provision of Party A's services hereunder and does not and will not serve as a primary basis of any investment decision by Party B. Party B represents to Party A that its decision to enter into the Transaction has been based solely on the independent evaluation of Party B and its representatives."

(c) Amendments to Section 2 of this Agreement.

(1) Section 2(a)(i) is amended by deleting the word "each" which appears before the word "Confirmation" and replacing it with the word "the".

(2) Section 2(a)(ii) is amended by deleting the word "relevant" in each place that it appears prior to the word "Confirmation".

(3) Section 2(a)(iii) is amended by deleting the entire clause and replacing it with the following: "(iii) [Reserved]".

(4) Section 2(e) is amended by (A) deleting (i) the phrase "Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction," in both places where such phrase appears therein, (ii) the phrase "and subject to Section 6(c)" in the third line thereof, and (iii) the word "relevant" in the last line thereof and (B) inserting the words "the rate specified in the Confirmation or, if no rate is specified in the Confirmation, at" after the word "at" in the sixth line thereof.

(d) Amendments to Section 3 of this Agreement.

(1) Section 3(b) is hereby deleted in its entirety and replaced with "(b) [Reserved]".

(2) The Payer and Payee Tax Representations referenced in Sections 3(e) and 3(f) are set forth in Part 2 of the Schedule.

(3) Section 3 of the Agreement is hereby amended by adding at the end thereof the following subsection (g):

“(g) *Eligible Swap Participant.* It is an “eligible swap participant” within the meaning of Part 35.1(b)(2) of the General Regulations under the Commodity Exchange Act.”

(e) Deletion of Sections 5 and 6 of this Agreement. Sections 5 and 6 are deleted in their entirety and replaced with “5 [Reserved]” and “6 [Reserved]”, respectively.

(f) Amendments to Section 7 of this Agreement. Section 7 is amended by (1) deleting the phrase “Subject to Section 6(b)(ii),” in the first line thereof, (2) adding the words “assigned or” before the word “transferred” in the second line thereof and (3) deleting paragraphs (a) and (b) and replacing them with the following paragraphs (a) and (b):

(a) Party A shall be entitled to assign and transfer its obligations under this Agreement at any time and from time to time (and such transferee shall, without more, become obligated hereunder).

(b) This Agreement may be assigned and transferred by Party B only (i) in accordance with the provisions of the Operative Documents (including, without limitation, Section 7.2 and Section 13.7 of the Participation Agreement) and (ii) if (A) the transferee has succeeded to Party B’s rights and obligations under the Facility Lease and (B) Party A shall have received evidence reasonably satisfactory to it that the transferee has assumed and agreed to be bound by all of Party B’s obligations hereunder and that this Agreement is enforceable against the transferee in accordance with its terms.

(g) Amendments to Section 8 of this Agreement. Section 8 is amended by (1) deleting all words appearing after (and including) the word “except” in the second sentence of paragraph (a) thereof, and (2) deleting paragraphs (b), (c) and (d) thereof.

(h) Amendments to Section 9 of this Agreement.

(1) Section 9(c) is amended by (i) deleting the phrase “Without prejudice to Sections 2(a)(iii) and 6(c)(ii),” in the first line thereof and replacing such phrase with the phrase “Except to the extent expressly provided in this Agreement”, (ii) adding the word “not” between the words “will” and “survive” in the second line thereof and (iii) changing the word “any” before the word “Transaction” and replacing it with the word “the”.

(2) Section 9(e) is amended by changing the title thereof to “Counterparts” and by deleting clause (ii) thereof in its entirety.

(3) Section 9(g) is amended by adding the following parenthetical after the word “Agreement” in the second line thereof “(including the column headings contained on the left side of the pages of the Confirmation).”

(4) Section 9 of the Agreement is further amended by adding at the end thereof the following subsection (h):

(h) The parties hereto intend that this Agreement shall be a swap agreement as defined in Section 101 (53B)(C) of the U.S. Bankruptcy Code.

(i) Amendment to Section 11 of this Agreement. Section 11 is amended by deleting the phrase "or by reason of the early termination of any Transaction" therefrom.

(j) Amendment to Section 12 of this Agreement. Section 12(a) is amended by deleting clause (v) thereof in its entirety.

(k) Amendments to Section 14 of this Agreement.

(1) Section 14 is amended by deleting each of the following defined terms therefrom:

Additional Termination Event	Reference Market-makers
Affected Party	Scheduled Payment Date
Affected Transactions	Set-off
Applicable Rate	Settlement Amount
Burdened Party	Specified Indebtedness
Credit Event Upon Merger	Specified Transaction
Early Termination Date	Tax Event
Event of Default	Tax Event Upon Merger
Illegality	Terminated Transactions
Loss	Termination Currency Equivalent
Market Quotation	Termination Event
Non-default Rate	Termination Rate
Non-defaulting Party	Unpaid Amounts
Potential Event of Default	

(2) Section 14 is further amended by deleting each of the defined terms listed below therefrom and replacing them with the corresponding defined term set forth below:

(a) "Affiliate" has the meaning ascribed to "Affiliate" in Appendix A to the Participation Agreement.

(b) "Default Rate" has the meaning ascribed to the term "Overdue Rate" in Appendix A to the Participation Agreement.

(c) "Defaulting Party" means a party that has failed to meet any obligation to make payment or to make delivery on or after the Physical Settlement Date as required by this Agreement.

(d) "Local Business Day" has the meaning ascribed to the term "Business Day" in Appendix A to the Participation Agreement.

(l) Party B agrees that, to the extent that, under the Operative Documents to which Party B is a party, rights are granted to Party A or the consent of Party A is required, Party B will accord to Party A such granted rights and rights of consent and will, to the extent, at the times and for the time periods set forth in the Operative Documents, permit Party A to exercise all such rights.

(m) Party B shall neither propose nor agree nor consent to any amendment, modification or supplement to any of the Operative Documents to which it is a party, or as to which it has the right to grant or withhold its consent to any amendment, modification or supplement, which in any such case could reasonably be expected to increase the likelihood that Party A or any Affiliate of Party A will be called upon to make a payment or increase the amount of any such payment under any Operative Document to which it is a party, without the prior written consent of Party A; provided, however, that no consent of Party A shall be required for any ministerial amendment undertaken for the purpose of evidencing a permitted sublease or assignment pursuant to and in accordance with Section 18 of the Facility Lease.

(n) Party B hereby agrees to reimburse Party A immediately and unconditionally upon demand for all costs, fees and expenses (including fees, charges and expenses of counsel) incurred by Party A in connection with the enforcement by Party A of Party B's obligations under this Agreement, together with interest thereon from and including the date incurred to the date of payment at the Default Rate.

(o) Party B hereby confirms its agreement to indemnify Party A pursuant to, and subject to the terms and conditions of, the General Indemnity contained in Section 9.1 of the Participation Agreement and pursuant to, and subject to the terms and conditions of, the General Tax Indemnity contained in Section 9.2 of the Participation Agreement.

(p) Party B shall be jointly and severally liable for each and every obligation, covenant, agreement and undertaking of Big Rivers Subsidiary set forth in the Operative Documents, whether or not so specified as a joint and several obligation or as an obligation of both the Big Rivers Subsidiary and Party B.

(q) Party B will timely fulfill in accordance with its terms any and all obligations undertaken by it under each Operative Document to which it is a party unless otherwise waived by Party A or an Affiliate of Party A in accordance with the terms thereof, with the same effect as if set forth specifically herein for the benefit of Party A, and hereby makes such covenants to Party A, *mutatis mutandis*, with the same effect as if set forth herein.

(r) Party B agrees that it will, as a condition to closing, provide to Party A (i) the certificate or certificates referred to in Section 4.11 of the Participation Agreement in form reasonably satisfactory to Party A and (ii) the letter referred to in Section 4.14 of the Participation Agreement to be received by each Lender.

(s) Party B will provide Party A with copies of all notices required to be provided by it pursuant to the Operative Documents to any of the parties thereto relating to (i) any Event of Default or event which with the giving of notice or passage of time or both would constitute such an event, or any Event of Loss or (ii) any material breach of any representation, warranty or covenant by it hereunder or by it or the Big Rivers Subsidiary under any of the Operative Documents.

(t) Party B hereby agrees that, until the termination of this Agreement, without limiting the provisions of the preceding paragraph (t), Party B shall provide to Party A (i) the notices, reports and other communications provided or to be provided to any Person pursuant to Sections 7.3, 7.4, 7.8, 7.9, 7.18, 9.1 and 9.2 of the Participation Agreement concurrently with delivery to the other recipients thereof; (ii) written notice of any written assertion by any party to the Operative Documents that any indemnity payment or Supplemental Rent in an amount in excess of \$100,000 is owed by Party B pursuant to any of the Operative Documents, promptly and in any case within 30 days of any such assertion; (iii) a copy of any notices, notifications, reports, certificates and financial statements or similar information delivered by it to another party to the Operative Documents or received by it from another party to the Operative Documents promptly after delivery or receipt of any such item, and (iv) upon reasonable notice from time to time, and upon request at any time that an Event of Default has occurred and is continuing, the opportunity to meet during normal business hours with senior officers at the offices of Party B and to discuss the business and financial condition of Party B.

(u) Party B will name Party A as an "Additional Insured" in each policy of insurance carried in accordance with Section 11 of the Facility Lease, and fulfill all other obligations with respect to such insurance as if Party A were listed as an "Additional Insured" and named with the other parties in such section.

(v) Party B hereby acknowledges and consents to the creation of each and every interest in the Facility, the Site and any portion thereof contemplated by the Operative Documents to exist on or after the date hereof.

(w) Party B agrees that the performances to be rendered by it pursuant to this Agreement are of a special, unique, and unusual character, the loss of which performances cannot reasonably or adequately be compensated in damages in an action at law, that a breach of any of the covenants contained herein will result in irreparable damage and harm to Party A, that Party A has no adequate remedy at law in respect of any such breach and, as a consequence, agree that the covenants contained herein shall be specifically enforceable against Party B, and Party B hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

(x) Party B hereby expressly waives (a) demand for payment, notice of dishonor, nonpayment or nonperformance on any and all forms of the obligations hereunder; (b) all of its right to assert against Party A or any Party A Affiliate any claim against any Person for indemnification in any proceeding relating to this Agreement; (c) notice of acceptance of this Agreement and notice of any liability to which it may apply; (d) all other notices and demands of

any kind and description relating to the obligations hereunder now or hereafter provided for by any agreement, statute, law, rule or regulation; and (e) any and all defenses pertaining to the obligations hereunder except for the defense of discharge by payment. Party B shall not be exonerated with respect to its liabilities hereunder by any act or thing except irrevocable payment of the obligations hereunder, it being the purpose and intent of the Agreement that the obligations hereunder constitute the direct and primary obligations of Party B and that the covenants, agreements and all obligations of Party B hereunder be absolute, unconditional and irrevocable.

(y) Party B hereby irrevocably agrees that (to the maximum extent permitted by law), to the extent that it now has or may hereafter acquire any right of immunity as against Party A or its successors and assigns, whether characterized as sovereign immunity or otherwise, from legal proceedings, whether in the United States of America, or elsewhere, arising out of the Agreement or the subject matter hereof or any of the transactions contemplated hereby, including immunity from service of process or immunity from jurisdiction or judgment of any court or tribunal, Party B hereby expressly and irrevocably waives and agrees not to assert any such immunity and such waiver shall be irrevocable and not subject to withdrawal in any jurisdiction.

(z) Party B hereby covenants that, at its own cost, expense and liability, it will cause such financing statements and fixture filings (and continuation statements with respect thereto) as may be necessary and such other documents as Party A shall reasonably request to be recorded or filed at such places and times in such manner, and will take all such other actions or cause such actions to be taken, as may be necessary in order to establish, preserve, protect and perfect the right, title and interests of the Facility Lessor as set forth in Section 7.9 of the Participation Agreement.

(aa) Party B hereby agrees that it will obtain the permission of Party A as a precondition to assigning, selling or otherwise transferring the Facility or the Site or the Easement Sites to any Person in the same circumstances in which it is required, pursuant to the terms of Section 7.10 of the Participation Agreement, to obtain the permission of each Lender and the Owner Participant as a precondition to any such action.

(bb) Party B hereby grants to Party A: (i) the same rights accorded to the Series A Lender in Section 10.3(f)(4) and Section 10.3(f)(5) of the Facility Lease with respect to recordings, filings and opinions in connection with the Rebuilding Closing Date, as defined in Section 10.3(f) of the Facility Lease, (ii) the same rights accorded to the Series A Lender in Section 10.3(f) with respect to paying or reimbursing any costs or expenses (including reasonable legal fees and expenses) incurred in connection with the transactions contemplated by Section 10.3, (iii) the same rights accorded to the Series A Lender in Section 11.3 of the Facility Lease with respect to insurance, (iv) the same rights accorded to the Series A Lender in Section 11.4 of the Facility Lease with respect to insurance-related letters, certificates and other documents, (v) the same rights and immunities granted to the Series A Lender in Section 12 of the Facility Lease with respect to inspection rights and (vi) the same indemnification rights granted to the Series A Lender in Section 18.2(a)(xvi) of the Facility Lease.

CREDIT SWAP TRANSACTION CONFIRMATION
IN RELATION TO FBR-1 STATUTORY TRUST

Date: April 18, 2000

To: Big Rivers Electric Corporation
201 Third Street
Henderson, Kentucky 42420

From: Ambac Credit Products, LLC
One State Street Plaza
New York, New York 10004

Subject: Credit Swap Transaction

The purpose of this communication is to confirm the terms and conditions of the Transaction entered into on the Trade Date referred to below (the "Transaction"), between Ambac Credit Products, LLC (together with its successors and permitted assigns, "Party A") and Big Rivers Electric Corporation (together with its successors and permitted assigns, "Party B").

This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement dated April 18, 2000 (as amended by and including the Schedule thereto and as the same may be further amended, modified or supplemented from time to time, the "ISDA Master Agreement") between Party A and Party B. All provisions contained in the ISDA Master Agreement shall govern this Confirmation except as expressly modified herein.

Capitalized terms referenced in Part 5(b) of the Schedule to the ISDA Master Agreement (and the rules of construction and priorities contained therein), including terms referenced therein as being defined in the Participation Agreement, are hereby incorporated by reference herein, and said terms are used herein with the defined meanings referenced in said Part 5(b). Capitalized terms used herein which are not referenced in or pursuant to Part 5(b) of such Schedule shall have the meanings set forth herein.

This Confirmation and the Transaction to which it relates have been entered into by Party A and Party B in consideration of the mutual promises of the parties herein and the execution and delivery by the parties thereto of the Participation Agreement and the other Operative Documents (as defined in the Participation Agreement) and their entry into the transactions contemplated thereby (the "Overall Transaction").

The terms of the Transaction to which this Confirmation relates are as follows:

1. General Terms:

Type of Transaction:	Not applicable
Trade Date Defined:	The term " <u>Trade Date</u> " means the Closing Date.

Effective Date Defined: The term "Effective Date" means the Closing Date.

Specified Currency Defined: US Dollars (\$)

Business Day Defined: The term "Business Day" has the meaning specified in the Participation Agreement.

Termination Date Defined: Subject to the paragraph captioned "Reinstatement of Party B Payment Obligations" contained in Section 3 hereof, the term "Termination Date" means the earliest to occur of any of the following:

(i) the Scheduled Termination Date;

(ii) the Party B Payment Date (or, if it is decided that Party B shall make in installments payments due in respect of the Installment Payment Amount, the date on which Party B shall have completed its obligation to pay the Installment Payment Amount), if, in the case of this clause (ii), (A) each of the "Conditions to Payment of Party B Fixed Amount" specified in Section 2(a) have been satisfied or waived and (B) all Required Amounts have been paid to Party A;

(iii) the Party B Payment Date if, in the case of this clause (iii), Party A has exercised the Alternative Settlement Option referred to in the paragraph captioned "Alternative Settlement" in Section 3 below and Party B has paid the Net Amount Due (as such term is defined in said paragraph) in full to Party A; and

(iv) receipt by Party B of written notice from Party A stating that Party B is released from its obligations under the ISDA Master Agreement and this Confirmation.

On the Termination Date, this Agreement shall be of no further force or effect and the obligations of Party A to Party B and the obligations of Party B to Party A shall terminate. Notwithstanding the foregoing, the obligations of Party A pursuant to the

paragraph captioned "Actions to be taken on Physical Settlement Date" in Section 3 shall not terminate until performance of such obligations in full.

Required Amounts Defined:

The term "Required Amounts" means all amounts (i) payable to Party A hereunder in accordance with the terms hereof in respect of (a) the Party B Fixed Amount, (b) the Capitalized Interest Amount, if any, and (c) interest on the unpaid amount thereof (and on any overdue interest) at the rate applicable thereto and for the periods provided for in the paragraph captioned "Term Out Option" in Section 3, provided, that if the Term Out Option shall not be applicable, then at the Party B Overdue Rate.

Scheduled Termination Date Defined:

The term "Scheduled Termination Date" means, so long as no Event of Default under the Facility Lease has occurred and is continuing, the later of (a) a date 90 days after the Expiration Date or (b) if the Purchase Option has been exercised by the Facility Lessee pursuant to Section 15 of the Facility Lease, a date 30 days after the last payment of the Purchase Option Price is due under the Facility Lease.

Calculation Agent Defined:

The term "Calculation Agent" means Party A.

Calculation Agent City Defined: New York, New York

2(a). Party B Fixed Payment:

Party B Payment Date Defined:

The term "Party B Payment Date" means the Physical Settlement Date (as defined in Section 3 below).

Conditions to Payment of Party B Fixed Amount:

Notwithstanding any other provision of this Confirmation (other than as set forth in the Paragraph captioned "Reinstatement of Party B Payment Obligations" contained in Section 3 hereof), the obligation of Party B to make any payment to Party A on or after the Physical Settlement Date is subject to satisfaction (or waiver by Party B) of the following conditions

precedent: (i) either (x) Party A has executed and delivered a Credit Event Notice to Party B or (y) a Credit Event has occurred and Party A has been stayed or prevented by Applicable Law from delivering such a notice, in which case such notice shall be deemed to have been delivered on the date such Credit Event Notice was executed by Party A, and (ii) the requirements set forth in clause (ii), if applicable, of the paragraph captioned "Actions to be taken on Physical Settlement Date" in Section 3 below by Party A have been satisfied or waived.

Party B Fixed Amount Defined: The term "Party B Fixed Amount" means an amount equal to

(A) the excess (if any) of (i) the amount set forth in Column B1 of Schedule I to this Confirmation opposite the date set forth in Column A of such schedule corresponding to the Reference Date, over (ii) the sum of all amounts (other than due but unpaid interest on past due amounts or overdue interest) paid by Party B, in each case on or subsequent to the Reference Date but prior to the Physical Settlement Date, either (a) to Party A or other Affiliates of Ambac Assurance Corporation in respect of the Equity Portion of Termination Value or (b) to the Trustee or the OP Trustee in respect of either the Equity Portion of Termination Value or the Equity Portion of Purchase Option Price, plus

(B) the excess, if any, of (i) the sum of (a) the amount set forth in Column B2 of Schedule I to this Confirmation opposite the date set forth in Column A of such schedule corresponding to the Reference Date, plus (b) the Series A Lender's interest, if any, in any due but unpaid Basic Rent due before the Reference Date, plus (c) interest at the Overdue Rate with respect to the amounts referred to in the preceding clauses (a) and (b) from the Reference Date to the Physical Settlement Date, over (ii) the amount of any reduction with respect to the foregoing to which Party B is entitled by

reason of amounts previously paid by Party B which were applied to the Series A Loan, plus

(C) the excess, if any of (i) the sum of (a) the greater of (1) the amount set forth in Column B3 of Schedule I to this Confirmation opposite the date set forth in Column A of such schedule corresponding to the Reference Date (the "Scheduled B3 Amount") and (2) the fair market value of the Government Securities as of the Physical Settlement Date (but in no event more than the sum of the Scheduled B3 Amount and the Make Whole Amount, if any), plus (b) the Series B Lender's interest, if any, in any due but unpaid Basic Rent due before the Reference Date, plus (c) interest at the Overdue Rate with respect to the amounts referred to in the preceding clauses (a) and (b) from the Reference Date to the Physical Settlement Date, over (ii) the amount of any reduction with respect to the foregoing to which Party B is entitled by reason of amounts previously paid by Party B which were applied to the Series B Loan.

The amount to be paid on the Physical Settlement Date as the Party B Fixed Amount shall be determined by the Calculation Agent based upon Schedule I to this Confirmation and the certification of Party A in the Credit Event Notice with respect to the amounts referred to in clause (A)(ii), (B)(ii) and (C)(ii) of this paragraph. If the Alternative Settlement Option is utilized, the amount to be paid on the Physical Settlement Date by Party B shall be determined as provided in the paragraph captioned "Alternative Settlement" in Section 3 below. In the event that Section 11.1(d) of the Participation Agreement becomes applicable, Party A and Party B agree that Schedule I shall be adjusted as provided in such Section 11.1(d).

Reference Date Defined:

"Reference Date" shall mean the date (a) specified in, or determined pursuant to, a notice delivered by the Facility Lessor, the OP Trust or the Agent, as the case may be, to the

Facility Lessee, as the Termination Date (as defined in the Facility Lease), or (b) if delivery of such notice is legally precluded due to a Credit Event described in clause (h) or (i) of the definition of "Credit Event" herein, the date that such Person would be entitled to specify in, or that would be determined pursuant to, such a notice or (c) if such date cannot be so determined due to such preclusion, or for any other reason is not so determined, the Notification Date; provided, that if the date so determined would not be a date set forth in Column A of Schedule I to this Confirmation, then the Reference Date shall be the next succeeding date set forth in said Column A. In the event that the Facility Lessor, OP Trust and the Agent are entitled to, and do, specify inconsistent dates in accordance with the foregoing, the date specified by the Facility Lessor and OP Trust shall be determinative of the Reference Date with respect to the Column B1 Amount and the date specified by the Agent shall be determinative of the Reference Date with respect to the Column B2 Amount and the Column B3 Amount.

Notification Date Defined:

The term "Notification Date" means the date on which Party A delivers a Credit Event Notice to Party B (or the date on which Party A is stayed or prevented by Applicable Law from doing so, in which case such notice shall be deemed to have been delivered on the date such Credit Event Notice was executed by Party A).

Credit Event Notice Defined:

The term "Credit Event Notice" means an irrevocable written notice by Party A to Party B and the Calculation Agent substantially in the form of Exhibit A hereto (i) stating that a Credit Event has occurred and (ii) certifying (to the best of its knowledge with respect to amounts paid to any non-Affiliate of Party A), the amount and source of all amounts referred to in clauses (A)(ii), (B)(ii) and (C)(ii) of the definition of "Party B Fixed Amount", (iii) stating whether Party A has exercised the Alternative Settlement Option and, if so,

providing a statement of the Deliverable Obligations FMV (as calculated under the "Alternative Settlement" paragraph in Section 3 below) and (in its capacity as Calculation Agent) the Net Amount Due and (iv) if the Alternative Settlement Option is not applicable, confirming to Party B that Party A either (a) is the holder of the Deliverable Obligations or (b) has determined that Party A has sufficient contractual or other rights to permit Party A to obtain the interest in the Deliverable Obligations that Party A will be required to deliver to Party B under this Agreement (upon full performance hereunder by Party B) not later than the date such delivery will be so required hereunder. A Credit Event Notice may be delivered between 9:00 a.m. and 4:00 p.m., Calculation Agent City time, on a Business Day. If the Credit Event Notice is delivered after 4:00 p.m., Calculation Agent City time, on a Business Day, then that notice will be deemed delivered on the next following Business Day.

Credit Event Defined:

The term "Credit Event" means that any one or more of the following events or circumstances has occurred and is continuing on the Notification Date:

(a) Big Rivers shall fail to make any payment due under the Operative Documents and all applicable grace periods shall have expired; or

(b) any representation or warranty made by Big Rivers in any Operative Document (other than the Tax Indemnity Agreement) shall be untrue, inaccurate or misleading in any material respect both when made and at the time in question and any cure permitted by the Operative Documents shall not have been timely effected; or

(c) Big Rivers shall have failed to perform or observe any covenant, obligation or agreement to be performed or observed by it under any Operative Document (other than the Tax Indemnity Agreement) in any material respect

(other than any covenant, obligation or agreement referred to in clauses (a), (b), (c), (f), (g), (h), (j), (k), (l), (m), (n), (r) or (s) of Section 16 of the Facility Lease) and any cure permitted by the Operative Documents shall not have been timely effected, subject to such exceptions, in respect of Section 7.1 and 8.1 of the Facility Lease, as are provided under Section 16(e) of the Facility Lease; or

(d) Big Rivers shall fail to observe or perform its obligation to maintain the insurance required by Section 11 or its obligations under Section 5 of the Facility Lease; or

(e) the Expiration Date (or the date that is the Business Day next following the Expiration Date, if applicable, pursuant to Section 15.4(b) or Section 15.4(c) of the Facility Lease) shall have occurred and none of the following events shall have occurred on or prior to such date: (i) Big Rivers shall have made or shall cause to have been made all payments required in connection with its exercise of the Purchase Option pursuant to Section 15.1 of the Facility Lease; or (ii) consistent with the Return Option provisions of Section 15.3 of the Facility Lease, Big Rivers shall have delivered the Undivided Interest in accordance with the terms of the Facility Lease and shall have made the payments required to be made by it pursuant to Section 15.3 thereof; or (iii) Big Rivers shall have elected or shall have been deemed to have elected the Service Contract Option and shall have fully complied with the requirements of Section 12A of the Participation Agreement and Section 15.2 of the Facility Lease and the transactions contemplated by such sections shall have been consummated; or (iv) the circumstances described in Section 15.4(b) or (c) of the Facility Lease shall have occurred and Big Rivers shall have exercised the Purchase Option and paid all amounts required in connection therewith pursuant to Section 15.1 of the Facility Lease plus the amounts required to be paid by it in the proviso to

Section 15.4(b) or (c) of the Facility Lease; or

(f) Big Rivers shall have failed to observe or perform its obligations set forth in Section 7.1, 7.2, 7.5, 7.6, 7.7 or 7.21 of the Participation Agreement; or

(g) if (x) RUS as a First Mortgage Mortgagee under the First Mortgage shall have declared the principal and interest on any notes and bonds issued thereunder to be immediately due and payable, or (y) any other First Mortgage Mortgagee under the First Mortgage shall have made the declaration described in clause (x) and shall not have withdrawn such declaration within 30 days thereafter or (z) any mortgagee (including the RUS) under the First Mortgage shall have given notice of intent to, or taken action to, commence foreclosure or any other dispossessory remedy under the First Mortgage or under Applicable Law; or

(h) Big Rivers shall (i) commence a voluntary case or other proceeding seeking relief under Title 11 of the United States Code or liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) consent to, or fail to controvert in a timely manner, any such relief or the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, (iii) file an answer admitting the material allegations of a petition filed against it in any such proceeding, or (iv) fail to pay its debts generally as they become due or admit in writing its inability to do so or take any corporate steps with respect to the foregoing; or

(i) an involuntary case or other proceeding shall be commenced against Big Rivers seeking (i) liquidation, reorganization or other

relief with respect to it or its debts under Title 11 of the United States Code or any bankruptcy, insolvency or other similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property or (iii) the winding-up or liquidation of Big Rivers; and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or

(j) Big Rivers shall have failed to observe or perform its obligations set forth in Section 7.9 of the Participation Agreement and Big Rivers shall not cure such failure within 5 days after Big Rivers has Actual Knowledge or after notice from the Facility Lessor, Party B, the Owner Participant or a Lender; or

(k) Big Rivers shall have failed to perform its obligations in connection with its right to sublease or assign as set forth in Section 18 of the Facility Lease; or

(l) an LG&E Entity shall have commenced an action to foreclose or commenced any other dispossessing remedy under the LEM Mortgage or the LG&E Subordinated Mortgage; or

(m) WKEC shall have terminated the WKEC Lease in consequence of a default by Big Rivers thereunder; or

(n) LEM shall have terminated the LEM Power Purchase Agreement in consequence of a default thereunder by Big Rivers; or

(o) [Provision Deleted];

(p) the Ground Lease or the Head Lease shall have been terminated, revoked or rendered unenforceable for any reason or Big Rivers or any Person acting on behalf of Big Rivers shall seek to repudiate or disaffirm the validity or enforceability of the Ground Lease, the Head

Lease or any of the rights of Big Rivers thereunder, other than by reason of a default of the Head Lessee thereunder; or

(q) Big Rivers shall have failed to observe or perform its obligations set forth in Section 7.10 of the Participation Agreement; or

(r) an "Event of Default" shall have occurred and be continuing under the Facility Lease (FBR-2), dated as of April 1, 2000 between FBR-2 Statutory Trust and Big Rivers; or

(s) the exercise of rights or remedies is commenced to dispossess the Facility Lessee;

and if the existence of such Credit Event is conditioned on notice having been given to Big Rivers under any Operative Document either (i) such notice has been given or (ii) such notice has been stayed or giving such notice otherwise has been prevented by Applicable Law.

2(b). Party B Supplemental Payments:

Party B Supplemental
Payment Date Defined:

The term "Party B Supplemental Payment Date" means the first Business Day after which either of the following occurs:

(i)(a) the Payment Agreement is replaced as collateral for Party B's obligations under this Agreement in circumstances in which Party A's obligation under the Qualifying Swap is not dependent upon the Payment Undertaker's performance under the Payment Agreement, and (b) the replacement collateral, replacement financial guarantee insurance policy or replacement surety bond constitutes the obligation of an entity other than Ambac or an Affiliate of Ambac; or

(ii)(a) the Government Securities are replaced as collateral for Party B's obligations under this Agreement in circumstances in which Party A's obligation under the Qualifying Swap is not dependent upon the Government

Securities Issuer's performance under the Government Securities, (b) the replacement for the Government Securities is an obligation other than that of Ambac or an Affiliate thereof, and (c) the replacement collateral or financial guarantee insurance policy or surety bond constitutes the obligation of an entity other than Ambac or an Ambac Affiliate.

Party B Supplemental
Payment Amount Defined:

The term "Party B Supplemental Payment Amount" means an amount, to be paid by Party B to Party A on the Party B Supplemental Payment Date, equal to the sum of (a) an amount necessary to preserve the originally anticipated rate of return on capital of Party A, calculated in good faith and in keeping with reasonable commercial practice by Party A, taking into account the credit quality of the obligor under any collateral provided to Party A in connection with the replacement of one or both of the Payment Agreement and the Government Securities, and (b) a one-time fee of thirty (30) basis points on the maximum accreted value or the maximum amount drawable or payable under the item or items of replacement collateral (including any financial guarantee insurance policy or surety bond), calculated in good faith and in keeping with reasonable commercial practice by Party A; provided, however, that, if this Agreement does not reflect exposure of Party A to the credit of the issuer of the replacement for the Payment Agreement or the Government Securities, the Party B Supplemental Payment Amount shall consist of only the amount described in clause (b) above.

2(c). Party A Fixed Payment:

Party A Payment Date Defined: The term "Party A Payment Date" means the Closing Date.

Party A Payment Amount Defined: The term "Party A Payment Amount" means \$342,433.

Actions to be taken on the Party A Payment Date: On the Party A Payment Date, Party A shall pay the Party A Payment Amount in full to

Party B.

3. Settlement Terms:

Physical Settlement Date
Defined:

The term "Physical Settlement Date" means the third Business Day following the Notification Date.

Actions to be taken on
Physical Settlement Date:

Unless Party A exercises the Alternative Settlement Option (in which case the provisions of the paragraph captioned "Alternative Settlement" below in this Section 3 shall apply), and subject to the paragraphs captioned "Term Out Option" and "Actions to be Taken Upon Payment in Full of Installment Payment Amount" contained in this Section 3, on the Physical Settlement Date (i) Party B shall pay to Party A the Party B Fixed Amount by wire transfer, to the account set forth in the Credit Event Notice, on or before 1:00 p.m., New York City time; provided, however, that (x) with respect to the amount determined in accordance with clause (A) of the definition of Party B Fixed Amount, Party B will have no obligation to make payment pursuant to this clause (i) to the extent of any Underlying Contract Credit Event in respect of the amount determined in accordance with such clause (A), (y) with respect to the amount determined in accordance with clause (B) of the definition of Party B Fixed Amount, Party B will have no obligation to make payment pursuant to this clause (i) to the extent of any Underlying Contract Credit Event in respect of the amount determined in accordance with such clause (B), and (z) with respect to the amount determined in accordance with clause (C) of the definition of Party B Fixed Amount, Party B will have no obligation to make payment pursuant to this clause (i) to the extent of any Underlying Contract Credit Event in respect of the amount determined in accordance with such clause (C), (ii) Party A shall take each of the actions referred to in clause (a) below, and (iii) at the option of Party A, Party B shall take each of the actions referred to in clause (b) below:

(a) After the Party B Fixed Amount has been paid or provided for to Party A's satisfaction, Party A shall convey (or, if applicable, cause to be conveyed) all of Party A's right, title and interest in, to and under the Deliverable Obligations to Party B by executing an assignment agreement in the form of Exhibit B hereto and shall, if requested by Party B, execute and deliver to Party B, at Party B's expense, such other documentation and instruments of conveyance as may be necessary or (in the reasonable opinion of Party B) desirable to give effect to such assignment;

(b) At the option of Party A, in the event that Party B is subject to proceedings seeking (i) liquidation, reorganization or other relief with respect to it or its debts under Title 11 of the United States Code or any bankruptcy, insolvency or similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property, or (iii) the winding up or liquidation of Party B, Party B shall deliver to Party A an appropriate order made by the bankruptcy court (or other appropriate Governmental Entity) approving the Transaction and the performance by Party B of its obligations hereunder.

The term "Underlying Contract Credit Event" means (a) with respect to the amount determined in accordance with clause (A) of the definition of Party B Fixed Amount, a failure of the Funding Agreement Issuer to pay in full when due its obligations under the Funding Agreement and the failure of Ambac to pay in full when due its obligations under the Funding Agreement FGIP, (b) with respect to the amount determined in accordance with clause (B) of the definition of Party B Fixed Amount, a failure of AME Asset Funding, LLC to pay in full when due its obligations under the Payment Agreement and the failure

of Ambac to pay in full when due its obligations under the Payment Agreement FGIP and (c) with respect the amount determined in accordance with clause (C) of the definition of Party B Fixed Amount, a failure of the Government Securities Issuer to pay in full when due its obligations under the Government Securities.

Deliverable Obligations
Defined:

The term "Deliverable Obligations" means all right, title and interest in, to and under the Trust Estate, and all rights and obligations of the transferor of such interest under each of the Operative Documents and any other documents executed and delivered in connection therewith, including, if applicable, all rights and obligations therein and thereunder of any predecessor of Party A, as transferor of such interests in the Trust Estate; provided, however, that the term "Deliverable Obligations" shall not include any of the following rights and obligations of the transferor (and its Affiliates) of such interests in the Trust Estate, all of which rights and obligations shall be retained by such transferor and, if applicable, its Affiliates: (i) if Party A is such transferor, all rights and obligations of Party A and its Affiliates under (A) this Confirmation and the ISDA Master Agreement in respect of the Transaction, and (B) the Payment Agreement and the Payment Agreement Pledge Agreement (as assigned to the Lenders pursuant to the Leasehold Mortgage), the Funding Agreement (as pledged under the Funding Agreement Pledge) and the Government Securities (as pledged under the Government Securities Pledge Agreement) and (ii) all Excluded Obligations and Excluded Rights, where the term "Excluded Obligations" means all obligations of the transferor of such interests in the Trust Estate or, if applicable, any predecessor thereof, under the Operative Documents that accrue, or that are attributable to acts, omissions or events occurring, on or prior to the Physical Settlement Date; and the term "Excluded Rights" means all rights of the

transferor of such interests in the Trust Estate or, if applicable, any predecessor thereof, under Section 9 of the Participation Agreement, such portion of the Equity Portion of Basic Rent as may be due but unpaid prior to the Reference Date and interest at the Overdue Rate with respect thereto, and all rights under the Tax Indemnity Agreement to make claims, and to receive payments with respect to any such claims not yet made, that have accrued in respect of the period ending on, or that are attributable to acts, omissions, facts or events existing or occurring on or prior to, the Physical Settlement Date.

Application of Certain Amounts: Unless Party A has exercised the Alternative Settlement Option (in which case this sentence shall not apply), if, at any time after the Notification Date, either (x) Party A receives any payments or other consideration in respect of the Deliverable Obligations or otherwise in respect of the Equity Portion of Termination Value not reflected as a credit in the determination of the amount to be paid as the Party B Fixed Amount on the Physical Settlement Date, or (y) Party B makes any payment to the Trustee or the OP Trustee in respect of the Equity Portion of Termination Value not reflected in the determination of the amount to be paid as the Party B Fixed Amount on the Physical Settlement Date, Party A hereby agrees, in the case of payments or other consideration within the preceding subclauses (x) or (y) ("Other Party B Payments"), to apply such Other Party B Payments, when received in the case of subclause (x) and when paid by Party B in the case of subclause (y), in reduction of the Party B Fixed Amount (or the Installment Payment Amount, if applicable) then outstanding. With respect to either subclause (x) or (y), Party A shall pay to Party B any funds resulting from such Other Party B Payments that are held on the date the Deliverable Obligations are transferred to Party B hereunder by Party A, net of any Required Amounts then due but

unpaid hereunder by Party B. The obligations of Party A under the next preceding sentence shall survive the Termination Date.

Alternative Settlement:

At the option (the "Alternative Settlement Option") of Party A (which option, however, may be exercised by Party A only after the occurrence of a Credit Event described in any of subparagraphs (a), (c), (g), (l), (m), or (n), of the paragraph captioned "Credit Event Defined" in Section 2(a)), Party A may set-off and net (i) the fair market value (as determined by a nationally recognized independent appraisal firm, such independent appraisal firm to be in the business of appraising assets comparable to the assets constituting the Deliverable Obligations (the "Independent Appraiser"), reasonably and in good faith, based on the actual condition of the Deliverable Obligations (to the extent reasonably determinable by such firm at such time) and taking into account all Liens on the Facility (other than Party A Lessor's Liens)) as at the Notification Date (the "Deliverable Obligations FMV") against (ii) the Party B Fixed Amount as at the Notification Date, and may receive payment from Party B of the amount determined pursuant to such set-off or netting in accordance with the terms hereof; provided, however, that Party A will not deliver a Credit Event Notice which exercises the Alternative Settlement Option for a period of at least 45 days after Party A gives written notice to the OP Trust and Party B of its intention to exercise the Alternative Settlement Option; and provided, further, that Party A shall not exercise the Alternative Settlement Option prior to the settlement of the Qualifying Swap if the event permitting settlement of this Agreement is solely the consequence of a downgrade in the claims paying ability of Ambac and the failure of Big Rivers to effect a replacement of the Qualifying Swap or of Party A thereunder. The term "Party A Lessor's Lien" means Facility Lessor's Lien, substituting, however, for all purposes of the definition of Facility Lessor's Liens, Party A

for “the Owner Trust” or “the Trust Company” in such definition.

Within 3 Business Days after Party A gives notice to the OP Trust and Party B of its intention to exercise the Alternative Settlement Option, Party B shall notify Party A in writing as to whether, upon the occurrence of any Party B Insolvency Proceeding occurring thereafter, Party B intends to assume or reject the Facility Lease (a “Statement of Intended Assumption or Rejection”), which Statement of Intended Assumption or Rejection shall be binding on Party B and its successors and assigns. Whether Party B states in its Statement of Intended Assumption or Rejection that it intends to assume the Facility Lease or reject the Facility Lease, the Independent Appraiser shall determine both (a) the Deliverable Obligations FMV assuming the assumption and continuing performance of the Facility Lease by Party B (the “Assumption Deliverable Obligations FMV”) and (b) the Deliverable Obligations FMV assuming the rejection of the Facility Lease by Party B, the application of section 502(b)(6) of the Bankruptcy Code and the resulting limitation on the claim against Party B arising out of such rejection, and all other bankruptcy-related risks attendant to such rejection (the “Rejection Deliverable Obligations FMV”). The Deliverable Obligations FMV shall correspond to the Assumption Deliverable Obligations FMV if Party B, in its Statement of Intended Assumption or Rejection, states that it intends to assume and continue to perform under the Facility Lease, and the Rejection Deliverable Obligations FMV if Party B, in its Statement of Intended Assumption or Rejection, states either that it intends to reject the Facility Lease or that it is unwilling or unable at such time to commit to the assumption and continued performance of the Facility Lease.

If Party B states in its Statement of Intended Assumption or Rejection that it intends to assume the Facility Lease and subsequently the

Facility Lease is rejected in bankruptcy by Party B or a trustee or other party acting on behalf of Party B, then, notwithstanding that the Alternative Settlement Option was previously effected based on the Assumption Deliverable Obligations FMV, Party A shall have, and shall be entitled to assert, a claim against the bankruptcy estate of Party B for the amount by which (a) the Assumption Deliverable Obligations FMV exceeds (b) the Rejection Deliverable Obligations FMV, in each case as stated by the Independent Appraiser, together with interest thereon from the Physical Settlement Date to the date of the Party B Insolvency Proceeding, at the Party B Overdue Rate.

“Party B Insolvency Proceeding” means the commencement of any bankruptcy, insolvency, readjustment of debt, reorganization, marshaling of assets and liabilities or similar proceedings by or against Party B, or the consent after the date hereof to the appointment of a trustee, conservator, receiver or liquidator in any bankruptcy, insolvency, readjustment of debt, reorganization, marshaling of assets and liabilities or similar proceedings relating to Party B; provided, however, that an involuntary case or other proceeding shall constitute a “Party B Insolvency Proceeding” only if such involuntary case or other proceeding shall have remained undismissed and unstayed for a period of 60 days.

If Party A exercises the Alternative Settlement Option, (i) Party A shall so specify in the Credit Event Notice and shall include in the Credit Event Notice a statement as to the Deliverable Obligations FMV (as determined in accordance with the preceding paragraphs) and (ii) the provisions of the paragraph captioned “Actions to be taken on Physical Settlement Date” in this Section 3 shall not apply.

If the Party B Fixed Amount exceeds the

Deliverable Obligations FMV, Party B shall pay to Party A, on the Physical Settlement Date, an amount equal to such excess (the "Net Amount Due"). Upon receipt by Party A of the Net Amount Due, if any, Party A shall place such amount in escrow in a custodial account to be established pursuant to the Intercreditor Agreement for application pursuant to such agreement, any remainder to be paid on the termination of such escrow as provided for in such agreement.

If Party A exercises the Alternative Settlement Option, Party A shall have no obligation (whether on the Physical Settlement Date or otherwise) to convey (or cause to be conveyed) to Party B all or any portion of its right, title and interest in, to and under the Deliverable Obligations, and all rights under or in respect of the Deliverable Obligations shall be retained by Party A.

Term Out Option:

On the Physical Settlement Date, Party B shall pay to Party A the Party B Fixed Amount in accordance with the paragraph in this Section 3 captioned "Actions to be taken on Physical Settlement Date"; provided, however, that with respect to the amount determined in accordance with clause (A) of the definition of Party B Fixed Amount, Party B may elect to pay, as calculated by the Calculation Agent, (i) on the Physical Settlement Date, an amount equal to the greater of (a) the amount payable as of the Physical Settlement Date as set forth in Schedule II to this Confirmation and (b) the amount equal to the "Market Termination Amount" (as defined in the Funding Agreement) payable by the Funding Agreement Issuer under the Funding Agreement on the Physical Settlement Date determined as if such date were an "Early Termination Date" (as defined in the Funding Agreement) and (ii) in installments, an amount equal to the amount determined in accordance with clause (A) of the definition of Party B Fixed Amount minus the amount payable under clause (i) of this sentence (the

“Installment Payment Amount”), but only if (a) no voluntary or involuntary bankruptcy of Party B has occurred and is continuing, (b) no other mortgagee under the First Mortgage has accelerated its loans or is exercising remedies against the assets subject thereto, (c) the OP Trust has exercised the settlement under the Qualifying Swap, Party A under the Qualifying Swap is entitled to pay Party B under the Qualifying Swap in installments, and such obligation has not been accelerated and (d) all amounts in respect of the Party B Fixed Amount, other than the Installment Payment Amount, required to be paid by Party B on the Physical Settlement Date have been so paid or such payment has been provided for to the reasonable satisfaction of Party A. If any of the foregoing (a), (b) and (c) cease to be true or if Party B fails to make any installment payment with respect to the Installment Payment Amount when due as provided below, all amounts due but unpaid in respect of the Party B Fixed Amount and any other Required Amounts hereunder, and under the Ambac Credit Products Secured Note, shall be immediately due and payable to the payee (or other holder, if applicable) of the Ambac Credit Products Secured Note.

If Party A has not exercised the Alternative Settlement Option, and Party B elects to pay the Installment Payment Amount in installments and is entitled to do so, then Party B shall, in addition to paying the Installment Payment Amount, compensate Party A for the costs incurred by Party A as a result of being precluded from effecting delivery of the Deliverable Obligations to Party B on the Physical Settlement Date, as follows:

- (1) If the Physical Settlement Date occurs on or prior to December 31, 2006, Party B will pay the Installment Payment Amount (and any Capitalized Interest Amount), together with interest thereon at the Term Out Rate, to Party A in sixteen (16)

payments on the dates (each, a "Payment Date") hereinafter provided, the amount of each such payment to be calculated as provided below, commencing on the day that is three calendar months after the Physical Settlement Date (or, if such day is not a Business Day, on the first Business Day thereafter), and the remainder of such payments to occur on the last day of each of the fifteen (15) subsequent periods of three calendar months (or, if any such day is not a Business Day, on the first Business Day thereafter); and

- (2) If the Physical Settlement Date occurs after December 31, 2006, Party B will pay the Installment Payment Amount (and any Capitalized Interest Amount), together with interest thereon at the Term Out Rate, to Party A in twelve (12) payments on the Payment Dates hereinafter provided, the amount of each such payment to be calculated as provided below, commencing on the day that is three calendar months after the Physical Settlement Date (or, if such day is not a Business Day, on the first Business Day thereafter), and the remainder of such payments to occur on the last day of each of the eleven (11) subsequent periods of three calendar months (or, if any such day is not a Business Day, on the first Business Day thereafter).

The amount payable by Party B on each Payment Date under paragraph (1) or (2) above, as applicable, shall be calculated on the related Calculation Date, assuming a level payment mortgage amortization schedule, providing for quarterly payments of "principal" and interest in arrears at the Term Out Rate with respect to such Calculation Date, sufficient to fully amortize the Party B Principal Amount (to be treated as "principal" for purposes of such calculation) by the final Payment Date in the remaining number of

Payment Dates.

The "Calculation Date" means, with respect to the first Payment Date, the Physical Settlement Date, and with respect to each Payment Date thereafter, the preceding Payment Date.

The "Capitalized Interest Amount" means, with respect to any Calculation Date, the excess, if any, of (i) the cumulative amount in respect of interest at the Qualifying Swap Rate that Party A under the Qualifying Swap has paid to Party B under the Qualifying Swap (and/or, if applicable, to a purchaser of the right to payment of the Unpaid Qualifying Swap Amount, in accordance with the terms appearing under the caption "Sale of Obligations of Party A and the Party A Credit Support Provider" in Section 3(c) thereof), after giving effect to all payments made by Party A under the Qualifying Swap in reduction of the "Installment Payment Amount" (for purposes of this definition, as such term is used in the Qualifying Swap) (and accrued and unpaid interest thereon) through and including such Calculation Date, over (ii) the cumulative amount in respect of interest at the Term Out Rate that Party B has paid to Party A hereunder, after giving effect to all payments made by Party B hereunder in reduction of the Party B Principal Amount (and accrued and unpaid interest thereon) through and including such Calculation Date.

The "Party A Rate" means, with respect to any Calculation Date, the rate per annum equal to the sum of (i) the rate per annum on the United States Treasury 30-year Bond, as published in The Wall Street Journal (or, if unavailable, the financial section of another nationally-circulated newspaper) on such Calculation Date and (ii) 800 basis points.

The "Party A Shortfall Amount" means, with respect to any Calculation Date, the excess, if any, of (i) the Party B Principal Amount, over

(ii) the Unpaid Qualifying Swap Amount.

The “Party B Principal Amount” means, with respect to any Calculation Date, the amount equal to the sum of (i) the amount of the Installment Payment Amount Party B remains obligated to pay to Party A under this Agreement and (ii) the Capitalized Interest Amount, if any, after giving effect to all payments made by Party B (including, without limitation, any Other Party B Payments) in reduction of such Installment Payment Amount (and accrued and unpaid interest thereon) through and including such Calculation Date.

The “Term Out Rate” means, with respect to any Calculation Date, the rate per annum which is the sum of (i) the rate per annum equal to the product of (a) a fraction, the numerator of which shall equal the Unpaid Qualifying Swap Amount, and the denominator of which shall equal the Party B Principal Amount, and (b) the Qualifying Swap Rate, and (ii) the rate per annum equal to the product of (a) a fraction, the numerator of which shall equal the Party A Shortfall Amount, and the denominator of which shall equal the Party B Principal Amount, and (b) the Party A Rate.

The “Qualifying Swap Rate” means, with respect to any Calculation Date, the rate per annum equal to either (i) 12.85% or (ii) commencing with the Calculation Date, if any, next succeeding the date on which the right to receive payment of the Unpaid Qualifying Swap Amount is sold under the Qualifying Swap to a purchaser of such right to payment, in accordance with the terms appearing under the caption “Sale of Obligations of Party A and the Party A Credit Support Provider” in Section 3(c) thereof, the rate per annum actually payable to such purchaser in respect of the Unpaid Qualifying Swap Amount.

The “Unpaid Qualifying Swap Amount”

means, with respect to any Calculation Date, the amount of the "Installment Payment Amount" (for purposes of this definition, as such term is used in the Qualifying Swap) Party A under the Qualifying Swap remains obligated to pay to Party B under the Qualifying Swap (or, if applicable, to a purchaser of such right to payment, in accordance with the terms appearing under the caption "Sale of Obligations of Party A and the Party A Credit Support Provider" in Section 3(c) thereof), after giving effect to all payments made by Party A under the Qualifying Swap in reduction of such Installment Payment Amount through and including such Calculation Date.

Interest on any amount due and payable by Party B on any Payment Date but not timely paid (including overdue interest) shall accrue and be payable by Party B at the greater of (i) the Overdue Rate and (ii) the Term Out Rate otherwise in effect at such time as provided for above.

Party B Overdue Rate:

If Party B has not elected, or at any time in accordance with the terms hereof is not entitled, to pay or continue to pay the Installment Payment Amount in installments, then interest on the unpaid portion of the Party B Fixed Amount and any other Required Amounts due and owing by Party B hereunder shall accrue and be payable by Party B at the Party B Overdue Rate. The "Party B Overdue Rate" means the Term Out Rate, except that, solely for purposes of this definition, in calculating the Term Out Rate, the term "Installment Payment Amount" appearing in the definition of Party B Principal Amount shall be replaced by the term "Party B Fixed Amount".

**Actions to be Taken Upon
Payment in Full of
Installment Payment Amount:**

Upon payment in full by Party B of the Installment Payment Amount, if applicable, (i) Party A shall take each of the actions referred to in clause (a) below, and (ii) at the option of Party A, Party B shall take each of the actions referred to in clause (b) below:

(a) After the Installment Payment Amount has been provided for to Party A's satisfaction or paid to Party A, Party A shall convey (or, if applicable, cause to be conveyed) all of Party A's right, title and interest in, to and under the Deliverable Obligations to Party B by executing an assignment agreement in the form of Exhibit B hereto and shall, if requested by Party B, execute and deliver to Party B, at Party B's expense, such other documentation and instruments of conveyance as may be necessary or (in the reasonable opinion of Party B) desirable to give effect to such assignment;

(b) At the option of Party A, in the event that Party B is subject to proceedings seeking (i) liquidation, reorganization or other relief with respect to it or its debts under Title 11 of the United States Code or any bankruptcy, insolvency or similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property, or (iii) the winding up or liquidation of Party B, Party B shall deliver to Party A an appropriate order made by the bankruptcy court (or other appropriate Governmental Entity) approving the Transaction and the performance by Party B of its obligations hereunder.

**Additional Rights
and Remedies of Party A:**

In addition to, and not in limitation of, any and all other right, title and interest of Party A in, to and under the Deliverable Obligations, in order to secure the full payment of the Party B Fixed Amount (or the Installment Payment Amount, if applicable), together with all other Required Amounts, as and when due in accordance with the terms of this Agreement, Party B hereby mortgages, pledges and assigns to Party A a continuing lien on and security interest in any and all right, title and interest of Party B in, to and under the Deliverable Obligations that may arise pursuant to this Agreement and all Proceeds (as defined in

Section 9-306 of the Uniform Commercial Code as from time to time in effect in the State of New York (the "Code") (the "Collateral").

At any time and from time to time, upon the written request of Party A, and at the sole expense of Party B, Party B will promptly and duly execute and deliver such further instruments and documents and take such further action as Party A may reasonably request for the purpose of obtaining or preserving the full benefits of the lien and security interest created hereby and of the rights and powers granted herein, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the liens and security interest created hereby.

If Party B shall fail to pay any portion of the Party B Fixed Amount (or the Installment Payment Amount, if applicable) or any other Required Amounts, as and when due in accordance with the terms of this Agreement, and such failure shall be continuing, Party A shall have all of the rights and remedies of a secured creditor under the Code, such other rights and remedies which it may have at law and in equity, and all other rights and remedies granted under this Agreement, which shall include, without limitation, the rights to: (a) in its name or in the name of Party B or otherwise, demand, sue for, collect, or receive, any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement with respect to, any of the Collateral, and extend the time of payment for, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, Party B; (b) sell at a commercially reasonable price all or any portion of the Collateral at any broker's board or at a public or private sale, with ten Business Days' prior notice to Party B, at such place(s) and at such

time(s) and upon such terms, whether for cash or on credit; and in such manner as Party A may determine without assumption of any credit risk. Party A shall have the right upon any public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral sold, at a commercially reasonable price, free of any right or equity of redemption in Party B, which right or equity is hereby waived or released. Party B shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay all Required Amounts due and owing under this Agreement and the fees and disbursements of any attorneys employed by Party A to collect such deficiency.

Reinstatement of Party B
Payment Obligations:

Notwithstanding the occurrence of the Termination Date hereunder, if the payment of any amount by which the Party B Fixed Amount was reduced pursuant to the operation of clause (A)(ii), (B)(ii) or (C)(ii) of the definition thereof or any amount paid by Party B hereunder to Party A or to any Affiliate of Party A is voided or avoided (an "Avoidance Event") under any applicable Insolvency Proceedings, and, as a result of such Avoidance Event, Party A (or any Affiliate of Party A referred to in said clause (ii)) or any Person having received amounts which otherwise effectively reduced the Party B Fixed Amount is required to return such voided or avoided payment or any portion of such voided or avoided payment (an "Avoided Payment"), Party B will pay the amount of the Avoided Payment out of funds of Party B when due pursuant to the Order referred to below, but in any event no earlier than the second Business Day following receipt by Party B of (i) a certified copy of an order of a court or other body exercising jurisdiction in such Insolvency Proceeding to the effect that Party A (or such Affiliate) or such other Person is required to return such Avoided Payment because such payments were avoided as a preferential or fraudulent transfer or

conveyance or otherwise rescinded or required to be restored by Party A (or such Affiliate) or such other Person (the "Order"), (ii) a certificate by or on behalf of Party A (or such Affiliate) or such other Person (as may have been provided to Party A) that the Order has been entered and is not subject to any stay, (iii) an assignment, in form and substance satisfactory to Party B, duly executed and delivered by Party A (or such Affiliate) or such other Person (as may have been provided to Party A), irrevocably assigning to Party B all rights and claims relating to or arising under the Operative Documents against the estate of Party B (or any other Person who paid such Avoided Payment) or otherwise with respect to such Avoided Payment and (iv) a notice requesting payment thereof duly executed by Party A (or such Affiliate) or such other Person (as may have been provided to Party A). Such payment shall be disbursed to the receiver, conservator, debtor-in-possession or trustee in bankruptcy named in the Order (the "Order Party"), and not to Party A directly, unless Party A (or such Affiliate) has made a payment of the Avoided Payment to the court or the Order Party, in which case Party B will pay Party A or such Affiliate of Party A, subject to the delivery of (a) the items referred to in clauses (i), (ii), (iii) and (iv) above to Party B and (b) evidence satisfactory to Party B that payment has been made to the Order Party. "Insolvency Proceeding" means the commencement, after the date hereof, of any bankruptcy, insolvency, readjustment of debt, reorganization, marshaling of assets and liabilities or similar proceedings by or against any Person, or the commencement, after the date hereof, of any proceedings by or against any Person for the winding up or the liquidation of its affairs, or the consent after the date hereof to the appointment of a trustee, conservator, receiver or liquidator in any bankruptcy, insolvency, readjustment of debt, reorganization, marshaling of assets and liabilities or similar proceedings relating to any

Person who has paid the Avoided Payment; provided, however, that an involuntary case or other proceeding shall constitute an "Insolvency Proceeding" only if such involuntary case or other proceeding shall have remained undismissed and unstayed for a period of 60 days.

4. Notice and Account Details:

Telephone, Telex and/or
Facsimile Numbers and
Contract Details for Notices:

Party A:
Telephone: (212) 668-0340
Telecopier: (212) 208-3113

Party B:
Telephone: (270) 827-2561
Telecopier: (270) 827-2558

Account Details of Party A:
Account Details of Party B:

To be provided in the Credit Event Notice.
To be advised in writing by Party B.

5. Other Terms:

(a) Additional Representations and Agreements.

(i) Additional Agreements:

- (A) Except to the extent expressly provided herein, each party represents that, in connection with this Transaction, the other party has not made any representation whatsoever to it with respect to the value of the Trust Estate or of the Deliverable Obligations on which it is relying or is entitled to rely in connection with this Transaction.
- (B) Each of the parties hereby represents and warrants that it is entering into the Transaction for either investment, financial intermediation, hedging or other commercial purposes. Each of the parties hereby further acknowledges and agrees that the parties will be obligated to comply with the applicable Settlement Terms of this Transaction, irrespective of the existence or amount of the parties' credit exposure to each other.
- (C) Party A shall not have any obligation or liability to any Person with respect to any loss, cost or expense (including, without limitation, out-of-pocket expenses and attorney's fees and disbursements) incurred in connection with or as a result of replacement of the ISDA Master Agreement, this Confirmation or the Qualifying Swap and/or the Party A Credit Support Document

under the Qualifying Swap, in each case pursuant to the provisions of any Operative Document, or the circumstances giving rise thereto.

- (D) Notwithstanding any other provisions of this Agreement, if any stamp tax is payable in connection with the conveyance and delivery of the relevant Deliverable Obligations, payment of such stamp tax shall be made by Party B.
 - (E) Nothing contained in the ISDA Master Agreement shall impose on Party A or Ambac any obligation or responsibility to Big Rivers or the Series B Lender to ensure or pursue collection of any amounts under the Government Securities from the Government Securities Issuer.
 - (F) The ISDA Master Agreement, Section 21 and Section 37.7 of the Intercreditor Agreement, Appendix A to and Section 11.1(d) of the Participation Agreement represent the entire understanding and agreement of the parties hereto with respect to the matters herein and supersede any prior understanding with respect to such matters, written or oral.
- (ii) Concerning the Calculation Agent:
- (A) The Calculation Agent is not acting as a fiduciary for or as an advisor to either party in respect of its duties as Calculation Agent under this Agreement. Whenever the Calculation Agent is required to act hereunder, it will do so in good faith, and its determinations and calculations will be conclusive and binding on the parties hereto in the absence of manifest error.
- (iii) Party A Additional Covenant in respect of the Operative Documents:
- (A) Unless Party A exercises its Alternative Settlement Option (in which case this clause (A) shall not apply from and after the date of such exercise), Party A covenants and agrees that, without the prior written consent of Party B, it will not (i) amend, modify or supplement any of the Operative Documents to which it is a party, or consent or agree to any such amendment, modification or supplement, if such amendment, modification or supplement reasonably could be expected to have a material adverse effect on any of the rights and obligations of Party B hereunder, (ii) except as contemplated hereby or as permitted in accordance with Section 5.1 of the Participation Agreement, sell, assign, transfer, encumber or otherwise dispose of, in whole or in part, any of the Deliverable Obligations at any time after the date on which Party A obtains title to the Deliverable Obligations, or (iii) at any

time after the date on which Party A becomes a party to the Trust Agreement, amend, modify or supplement, or consent or agree to any amendment, modification or supplement of, the Trust Agreement in any manner that would materially adversely affect the interests thereunder of Party B as a prospective transferee of the Deliverable Obligations.

(iv) Party B Additional Covenants:

(A) Party B covenants and agrees that, prior to payment in full of all amounts payable to Party A hereunder, it will not, without the prior written consent of Party A, (i) amend or modify either the amount or the scheduled payment date of any portion of the Basic Rent under the Facility Lease, (ii) except to the extent required in connection with a transaction permitted under the following clause (iii), amend, modify or supplement any of the Operative Documents, or consent or agree to any such amendment, modification or supplement, if such amendment, modification or supplement reasonably could be expected to have a material adverse effect on any of the rights and obligations of Party A hereunder or (iii) except as contemplated hereby or as permitted by the other Operative Documents, including Section 18 of the Facility Lease, sell, assign, transfer, encumber or otherwise dispose of, in whole or in part, any of its present or future interest in the Deliverable Obligations. In addition, Party B covenants and agrees for the benefit of Party A and Ambac that, so long as any obligations are outstanding in respect of the Loan Certificates, Party B will not authorize or permit the Big Rivers Subsidiary to agree to or suffer any amendment, modification or supplement of the Government Securities Pledge Agreement that would alter the provisions of Section 4 thereof regarding payment of amounts due under the Government Securities to the Government Securities Account identified therein without the prior written consent of Party A and Ambac in their respective sole discretion.

(B) Party B further covenants and agrees for the benefit of Party A and Ambac that Party B will not enter into any arrangement or understanding by which Party B shall assume or become liable for (whether on a primary or a contingent basis) the obligations of any Person in respect of principal and interest due at any time under the Series B Loan Certificate without the prior written consent of Party A and Ambac in their respective sole discretion.

(v) Additional Representations:

(A) Party B hereby acknowledges and agrees that each of the representations and warranties provided by it in Section 3 of the

Participation Agreement, and in any certificate delivered by it on the Closing Date in connection with the Participation Agreement, is true and correct in all material respects as of the Effective Date and shall run to the benefit of Party A.

(b) Waiver of Defenses.

Party B's obligations under the ISDA Master Agreement are irrevocable, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Facility Lease or any other Operative Document or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any guarantee of or security for any payment obligations of Big Rivers under the Operative Documents (the "Big Rivers Obligations"), and, to the fullest extent permitted by Applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of Party B hereunder. Party B's obligations under the ISDA Master Agreement shall not be subject to any abatement, reduction, limitation, impairment, termination, setoff, defense, counterclaim or recoupment whatsoever or any right to any thereof except as expressly set forth in this Agreement, and shall not be released or discharged except by payment and performance in full. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following (with or without notice to Party B) shall not alter or impair Party B's liabilities and obligations hereunder, which shall remain absolute and unconditional as described above:

- (i) any lien or security interest granted to, or in favor of, Party A or the Trustee as security for any Big Rivers Obligation shall fail to be perfected;
- (ii) the bankruptcy or insolvency of Party A or Party B or any reorganization, arrangement, compromise, composition or plan affecting Party A or Party B shall occur; or
- (iii) the ISDA Master Agreement, this Confirmation, any documents relating to the ISDA Master Agreement and this Confirmation between Party A and Party B, any Operative Document or any other agreement or instrument referred to herein or therein shall be rejected or limited in any bankruptcy, insolvency or similar proceeding (nothing herein being a concession that any obligation hereunder or thereunder is properly classifiable as an executory obligation).

Party B hereby expressly waives diligence, presentment, protest and any requirement that Party A or any other Person exhaust any right, power or remedy or proceed against Party B or any other Person under the Facility Lease or any other Operative Document or any other agreement or instrument referred to herein or therein, or against any other Person under any guarantee of, or security for, any of the Big Rivers Obligations.

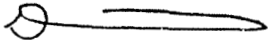
For purposes of this Agreement, except to the extent expressly set forth herein or in the other Operative Documents, neither Party A nor Party B shall have any obligation or duty to take any action or refrain from taking any action whatsoever under the Operative Documents or with respect to the transactions contemplated therein and either may take any action or omit to take any action with respect to the Operative Documents and the transactions contemplated therein free of any requirement to notify or obtain any consent from the other party hereto with respect thereto. Under no circumstances will any act or omission referred to in the preceding sentence affect Party A's or Party B's obligations pursuant to the terms and conditions hereof.

- (c) Interpretation. Each reference to the singular shall include the plural and vice versa.
- (d) Governing Law. The ISDA Master Agreement, this Confirmation and the Transaction shall be governed by and construed in accordance with the laws of the State of New York without reference to choice of law provisions (except New York General Obligations Law Sections 5-1401 and 5-1402).
- (e) Invalidity. If any provision of this Confirmation shall be invalid, illegal or unenforceable under Applicable Law of any jurisdiction, the validity, legality and enforceability of such provision in any other jurisdiction, and of the remaining provisions hereof in any jurisdiction, shall not be affected or impaired thereby or affect the validity, or enforceability of such provision in any other jurisdiction. To the extent permitted by Applicable Law, the parties hereby waive any provision of Applicable Law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect.

Please confirm that the foregoing correctly sets forth the terms of our agreement with respect to the Transaction by signing in the space provided below and sending a copy of the executed Confirmation by telecopier to Party A at (212) 208-3113.

Yours sincerely,

AMBAC CREDIT PRODUCTS, LLC

By: 

Name:

Title:

DAVID J. WEISSMAN
FIRST VICE PRESIDENT

Confirmed as of the date
first above written:

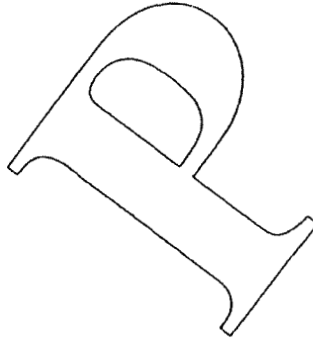
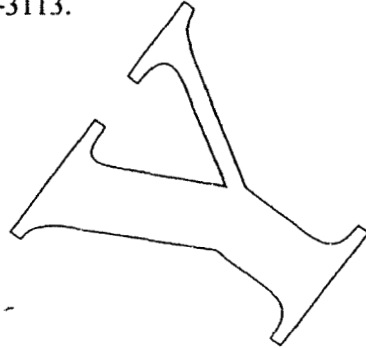
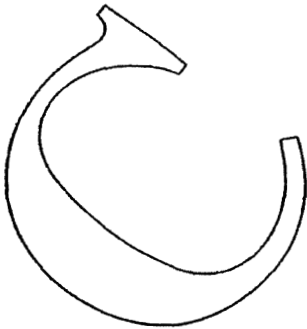
BIG RIVERS ELECTRIC CORPORATION

By: 

Name:

Title:

Michael H. Core
President & CEO
Big Rivers Electric Corporation



**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Apr 18 2000	25,082,162.92	90,100,724.50	10,011,191.61
May 18 2000	28,122,073.12	90,658,062.05	10,078,053.43
Jun 18 2000	28,385,247.58	91,215,399.60	10,144,915.25
Jul 18 2000	28,643,744.47	91,772,737.16	10,211,777.07
Aug 4 2000	28,904,035.75	92,075,499.90	10,233,292.17
Sep 4 2000	29,166,133.90	92,643,180.05	10,301,394.76
Oct 4 2000	29,423,546.99	93,210,860.20	10,369,497.34
Nov 4 2000	29,682,746.97	93,778,540.35	10,437,599.93
Dec 4 2000	29,943,746.21	94,346,220.50	10,505,702.52
Jan 4 2001	30,200,052.79	94,913,900.65	10,573,805.10
Feb 4 2001	30,458,138.56	92,840,115.91	10,320,622.65
Mar 4 2001	30,718,015.86	93,410,868.05	10,389,093.77
Apr 4 2001	30,979,697.16	93,981,620.19	10,457,564.89
May 4 2001	31,233,931.79	94,552,372.33	10,526,036.02
Jun 4 2001	31,489,931.25	95,123,124.47	10,594,507.14
Jul 4 2001	31,738,444.60	95,693,876.62	10,662,978.26
Aug 4 2001	31,988,683.04	96,264,628.76	10,731,449.38
Sep 4 2001	32,240,658.56	96,835,380.90	10,799,920.50
Oct 4 2001	32,485,120.06	97,406,133.04	10,868,391.62
Nov 4 2001	32,731,278.51	97,976,885.18	10,936,862.74
Dec 4 2001	32,979,145.72	98,547,637.32	11,005,333.86
Jan 4 2002	33,219,470.38	99,118,389.46	11,073,804.99
Feb 4 2002	33,461,463.30	93,824,361.16	10,430,036.82
Mar 4 2002	33,705,136.05	94,401,164.14	10,499,233.84
Apr 4 2002	33,950,500.29	94,977,967.11	10,568,430.85
May 4 2002	34,188,836.29	95,554,770.09	10,637,627.87
Jun 4 2002	34,428,826.75	96,131,573.06	10,706,824.89
Jul 4 2002	34,661,751.66	96,708,376.04	10,776,021.91
Aug 4 2002	34,896,293.46	97,285,179.01	10,845,218.93
Sep 4 2002	35,132,463.37	97,861,981.99	10,914,415.95
Oct 4 2002	35,361,541.22	98,438,784.96	10,983,612.96
Nov 4 2002	35,592,209.24	99,015,587.93	11,052,809.98
Dec 4 2002	35,824,478.50	99,592,390.91	11,122,007.00
Jan 4 2003	36,049,628.61	100,169,193.88	11,191,204.02
Feb 4 2003	36,276,341.64	94,882,247.83	10,547,637.37
Mar 4 2003	36,504,628.43	95,465,554.36	10,617,614.60
Apr 4 2003	36,734,499.92	96,048,860.89	10,687,591.83
May 4 2003	36,957,715.79	96,632,167.43	10,757,569.05
Jun 4 2003	37,182,481.17	97,215,473.96	10,827,546.28
Jul 4 2003	37,400,555.48	97,798,780.49	10,897,523.51
Aug 4 2003	37,620,143.60	98,382,087.03	10,967,500.74

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Sep 4 2003	37,841,256.02	98,965,393.56	11,037,477.96
Oct 4 2003	38,055,652.04	99,548,700.09	11,107,455.19
Nov 4 2003	38,271,536.31	100,132,006.62	11,177,432.42
Dec 4 2003	38,488,919.19	100,715,313.16	11,247,409.65
Jan 4 2004	38,699,559.77	101,298,619.69	11,317,386.87
Feb 4 2004	38,911,662.55	96,019,285.78	10,674,036.82
Mar 4 2004	39,125,237.66	96,609,582.47	10,744,852.63
Apr 4 2004	39,340,295.36	97,199,879.15	10,815,668.44
May 4 2004	39,549,026.53	97,790,175.84	10,886,484.26
Jun 4 2004	39,759,206.66	98,380,472.53	10,957,300.07
Jul 4 2004	39,963,026.41	98,970,769.22	11,028,115.88
Aug 4 2004	40,168,261.01	99,561,065.91	11,098,931.69
Sep 4 2004	40,374,920.28	100,151,362.60	11,169,747.50
Oct 4 2004	40,575,194.75	100,741,659.28	11,240,563.32
Nov 4 2004	40,776,859.45	101,331,955.97	11,311,379.13
Dec 4 2004	40,979,924.05	101,922,252.66	11,382,194.94
Jan 4 2005	40,481,941.87	102,512,549.35	11,453,010.75
Feb 4 2005	40,679,961.83	97,241,397.12	10,809,893.50
Mar 4 2005	40,879,356.35	97,839,206.97	10,881,610.64
Apr 4 2005	41,080,135.01	98,437,016.82	10,953,327.78
May 4 2005	41,274,874.43	99,034,826.67	11,025,044.92
Jun 4 2005	41,470,965.67	99,632,636.51	11,096,762.06
Jul 4 2005	41,660,985.11	100,230,446.36	11,168,479.20
Aug 4 2005	41,852,323.61	100,828,256.21	11,240,196.34
Sep 4 2005	42,044,990.32	101,426,066.06	11,311,913.48
Oct 4 2005	42,231,561.48	102,023,875.91	11,383,630.61
Nov 4 2005	42,419,427.74	102,621,685.76	11,455,347.75
Dec 4 2005	42,608,598.12	103,219,495.61	11,527,064.89
Jan 4 2006	42,097,010.66	103,817,305.45	11,598,782.03
Feb 4 2006	42,281,331.89	97,941,657.99	10,887,738.39
Mar 4 2006	42,466,932.62	98,543,772.82	10,959,971.98
Apr 4 2006	42,653,821.73	99,145,887.66	11,032,205.57
May 4 2006	42,834,965.32	99,748,002.49	11,104,439.17
Jun 4 2006	43,017,366.35	100,350,117.33	11,176,672.76
Jul 4 2006	43,193,990.73	100,952,232.16	11,248,906.35
Aug 4 2006	43,371,841.18	101,554,347.00	11,321,139.95
Sep 4 2006	43,550,926.20	102,156,461.83	11,393,373.54
Oct 4 2006	43,724,211.55	102,758,576.66	11,465,607.13
Nov 4 2006	43,898,699.79	103,360,691.50	11,537,840.72
Dec 4 2006	44,074,399.27	103,962,806.33	11,610,074.32
Jan 4 2007	44,244,275.56	104,564,921.17	11,682,307.91

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Feb 4 2007	44,415,331.09	97,941,657.99	10,887,738.39
Mar 4 2007	44,587,574.03	98,543,772.82	10,959,971.98
Apr 4 2007	44,761,012.62	99,145,887.66	11,032,205.57
May 4 2007	44,929,023.03	99,748,002.49	11,104,439.17
Jun 4 2007	45,098,199.71	100,350,117.33	11,176,672.76
Jul 4 2007	45,261,918.64	100,952,232.16	11,248,906.35
Aug 4 2007	45,426,774.04	101,554,347.00	11,321,139.95
Sep 4 2007	45,592,773.81	102,156,461.83	11,393,373.54
Oct 4 2007	45,753,293.77	102,758,576.66	11,465,607.13
Nov 4 2007	45,914,928.01	103,360,691.50	11,537,840.72
Dec 4 2007	46,077,684.25	103,962,806.33	11,610,074.32
Jan 4 2008	46,234,938.17	104,564,921.17	11,682,307.91
Feb 4 2008	46,393,283.68	97,941,657.99	10,887,738.39
Mar 4 2008	46,552,728.40	98,543,772.82	10,959,971.98
Apr 4 2008	46,713,279.91	99,145,887.66	11,032,205.57
May 4 2008	46,868,381.39	99,748,002.49	11,104,439.17
Jun 4 2008	47,024,559.55	100,350,117.33	11,176,672.76
Jul 4 2008	47,175,257.32	100,952,232.16	11,248,906.35
Aug 4 2008	47,327,001.18	101,554,347.00	11,321,139.95
Sep 4 2008	47,479,798.39	102,156,461.83	11,393,373.54
Oct 4 2008	47,627,091.76	102,758,576.66	11,465,607.13
Nov 4 2008	47,775,407.59	103,360,691.50	11,537,840.72
Dec 4 2008	47,924,752.98	103,962,806.33	11,610,074.32
Jan 4 2009	48,068,570.54	104,564,921.17	11,682,307.91
Feb 4 2009	48,213,386.45	90,728,638.31	10,085,899.08
Mar 4 2009	48,359,207.61	91,286,409.75	10,152,812.95
Apr 4 2009	48,506,041.03	91,844,181.18	10,219,726.82
May 4 2009	48,647,881.44	92,401,952.62	10,286,640.70
Jun 4 2009	48,790,706.46	92,959,724.05	10,353,554.57
Jul 4 2009	48,928,510.67	93,517,495.48	10,420,468.44
Aug 4 2009	49,067,271.46	94,075,266.92	10,487,382.31
Sep 4 2009	49,206,995.49	94,633,038.35	10,554,296.18
Oct 4 2009	49,341,677.16	95,190,809.79	10,621,210.05
Nov 4 2009	49,477,293.75	95,748,581.22	10,688,123.93
Dec 4 2009	49,613,851.75	96,306,352.65	10,755,037.80
Jan 4 2010	49,745,345.42	96,864,124.09	10,821,951.67
Feb 4 2010	49,877,751.88	91,554,902.41	10,177,751.18
Mar 4 2010	50,011,077.45	92,117,753.46	10,245,274.44
Apr 4 2010	50,145,328.54	92,680,604.51	10,312,797.69
May 4 2010	50,274,440.65	93,243,455.56	10,380,320.95
Jun 4 2010	50,404,449.03	93,806,306.61	10,447,844.20

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Jul 4 2010	50,529,288.98	94,369,157.66	10,515,367.46
Aug 4 2010	50,654,995.55	94,932,008.70	10,582,890.72
Sep 4 2010	50,781,574.73	95,494,859.75	10,650,413.97
Oct 4 2010	50,902,961.67	96,057,710.80	10,717,937.23
Nov 4 2010	51,025,191.27	96,620,561.85	10,785,460.48
Dec 4 2010	51,148,269.33	97,183,412.90	10,852,983.74
Jan 4 2011	51,266,130.87	97,746,263.95	10,920,506.99
Feb 4 2011	51,384,810.56	92,442,987.75	10,276,475.68
Mar 4 2011	51,504,314.10	93,011,298.47	10,344,653.91
Apr 4 2011	51,624,647.18	93,579,609.19	10,412,832.15
May 4 2011	51,739,676.16	94,147,919.91	10,481,010.38
Jun 4 2011	51,855,503.65	94,716,230.63	10,549,188.61
Jul 4 2011	51,965,995.74	95,284,541.35	10,617,366.84
Aug 4 2011	52,077,254.85	95,852,852.07	10,685,545.08
Sep 4 2011	52,189,286.28	96,421,162.79	10,753,723.31
Oct 4 2011	52,295,955.97	96,989,473.52	10,821,901.54
Nov 4 2011	52,403,366.14	97,557,784.24	10,890,079.77
Dec 4 2011	52,511,521.91	98,126,094.96	10,958,258.01
Jan 4 2012	52,614,289.04	98,694,405.68	11,026,436.24
Feb 4 2012	52,717,769.55	92,072,615.40	10,235,303.03
Mar 4 2012	52,821,968.39	92,638,649.19	10,303,208.11
Apr 4 2012	52,926,890.54	93,204,682.98	10,371,113.19
May 4 2012	53,026,429.40	93,770,716.76	10,439,018.27
Jun 4 2012	53,126,659.23	94,336,750.55	10,506,923.34
Jul 4 2012	53,221,473.18	94,902,784.34	10,574,828.42
Aug 4 2012	53,316,945.32	95,468,818.13	10,642,733.50
Sep 4 2012	53,413,080.17	96,034,851.91	10,710,638.57
Oct 4 2012	53,503,770.75	96,600,885.70	10,778,543.65
Nov 4 2012	53,595,090.87	97,166,919.49	10,846,448.73
Dec 4 2012	53,687,044.89	97,732,953.27	10,914,353.80
Jan 4 2013	53,773,525.61	98,298,987.06	10,982,258.88
Feb 4 2013	53,860,606.65	91,674,531.73	10,191,049.84
Mar 4 2013	53,948,292.17	92,238,118.22	10,258,661.33
Apr 4 2013	54,036,586.37	92,801,704.71	10,326,272.81
May 4 2013	54,120,779.75	93,365,291.21	10,393,884.29
Jun 4 2013	54,205,557.58	93,928,877.70	10,461,495.78
Jul 4 2013	54,286,210.16	94,492,464.19	10,529,107.26
Aug 4 2013	54,367,422.59	95,056,050.68	10,596,718.75
Sep 4 2013	54,449,198.78	95,619,637.18	10,664,330.23
Oct 4 2013	54,526,828.90	96,183,223.67	10,731,941.71
Nov 4 2013	54,604,997.89	96,746,810.16	10,799,553.20

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Dec 4 2013	54,683,709.52	97,310,396.65	10,867,164.68
Jan 4 2014	54,758,253.78	97,873,983.15	10,934,776.16
Feb 4 2014	54,833,315.51	91,246,663.36	10,143,485.62
Mar 4 2014	54,908,898.28	91,807,619.45	10,210,781.54
Apr 4 2014	54,985,005.74	92,368,575.54	10,278,077.47
May 4 2014	55,056,960.78	92,929,531.63	10,345,373.39
Jun 4 2014	55,129,415.31	93,490,487.72	10,412,669.32
Jul 4 2014	55,197,692.07	94,051,443.81	10,479,965.24
Aug 4 2014	55,266,442.78	94,612,399.91	10,547,261.16
Sep 4 2014	55,335,670.74	95,173,356.00	10,614,557.09
Oct 4 2014	55,400,698.53	95,734,312.09	10,681,853.01
Nov 4 2014	55,466,177.72	96,295,268.18	10,749,148.93
Dec 4 2014	55,532,111.44	96,856,224.27	10,816,444.86
Jan 4 2015	55,593,822.13	97,417,180.36	10,883,740.78
Feb 4 2015	55,655,961.20	90,786,781.80	10,092,362.63
Mar 4 2015	55,718,531.60	91,344,910.68	10,159,319.39
Apr 4 2015	55,781,536.36	91,903,039.56	10,226,276.14
May 4 2015	55,840,333.94	92,461,168.45	10,293,232.89
Jun 4 2015	55,899,539.69	93,019,297.33	10,360,189.65
Jul 4 2015	55,954,511.88	93,577,426.21	10,427,146.40
Aug 4 2015	56,009,865.67	94,135,555.09	10,494,103.15
Sep 4 2015	56,065,603.71	94,693,683.97	10,561,059.91
Oct 4 2015	56,117,084.14	95,251,812.86	10,628,016.66
Nov 4 2015	56,168,921.93	95,809,941.74	10,694,973.41
Dec 4 2015	56,221,119.55	96,368,070.62	10,761,930.17
Jan 4 2016	56,269,034.99	96,926,199.50	10,828,886.92
Feb 4 2016	56,317,283.04	90,292,491.81	10,037,414.61
Mar 4 2016	56,365,866.01	90,847,581.95	10,104,006.82
Apr 4 2016	56,414,786.23	91,402,672.09	10,170,599.03
May 4 2016	56,459,440.35	91,957,762.24	10,237,191.23
Jun 4 2016	56,504,404.45	92,512,852.38	10,303,783.44
Jul 4 2016	56,545,075.01	93,067,942.52	10,370,375.65
Aug 4 2016	56,586,027.87	93,623,032.66	10,436,967.85
Sep 4 2016	56,627,265.02	94,178,122.80	10,503,560.06
Oct 4 2016	56,664,182.75	94,733,212.94	10,570,152.27
Nov 4 2016	56,701,356.75	95,288,303.08	10,636,744.47
Dec 4 2016	56,738,788.80	95,843,393.22	10,703,336.68
Jan 4 2017	56,771,875.00	96,398,483.36	10,769,928.88
Feb 4 2017	56,805,190.89	89,761,218.95	9,978,355.37
Mar 4 2017	56,838,738.04	90,313,043.00	10,044,555.76
Apr 4 2017	56,872,518.06	90,864,867.04	10,110,756.14

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
May 4 2017	56,901,967.89	91,416,691.08	10,176,956.53
Jun 4 2017	56,931,622.15	91,968,515.12	10,243,156.91
Jul 4 2017	56,956,917.58	92,520,339.16	10,309,357.29
Aug 4 2017	56,982,388.59	93,072,163.20	10,375,557.68
Sep 4 2017	57,008,036.42	93,623,987.24	10,441,758.06
Oct 4 2017	57,029,297.61	94,175,811.28	10,507,958.45
Nov 4 2017	57,050,706.38	94,727,635.32	10,574,158.83
Dec 4 2017	57,072,263.76	95,279,459.36	10,640,359.21
Jan 4 2018	57,089,406.10	95,831,283.40	10,706,559.60
Feb 4 2018	57,106,667.45	89,190,196.16	9,914,877.31
Mar 4 2018	57,124,048.60	89,738,509.73	9,980,656.56
Apr 4 2018	57,141,550.43	90,286,823.30	10,046,435.80
May 4 2018	57,154,653.10	90,835,136.87	10,112,215.05
Jun 4 2018	57,167,846.76	91,383,450.44	10,177,994.29
Jul 4 2018	57,176,611.36	91,931,764.01	10,243,773.54
Aug 4 2018	57,185,436.79	92,480,077.58	10,309,552.78
Sep 4 2018	57,194,323.50	93,028,391.16	10,375,332.03
Oct 4 2018	57,198,751.28	93,576,704.73	10,441,111.27
Nov 4 2018	57,203,209.79	94,125,018.30	10,506,890.52
Dec 4 2018	57,207,699.25	94,673,331.87	10,572,669.76
Jan 4 2019	57,207,699.25	95,221,645.44	10,638,449.01
Feb 4 2019	57,207,699.25	88,576,449.34	9,846,649.81
Mar 4 2019	57,207,699.25	89,120,989.78	9,911,976.40
Apr 4 2019	57,207,699.24	89,665,530.23	9,977,303.00
May 4 2019	57,207,699.24	90,210,070.67	10,042,629.60
Jun 4 2019	57,207,699.25	90,754,611.12	10,107,956.19
Jul 4 2019	57,207,699.24	91,299,151.57	10,173,282.79
Aug 4 2019	57,207,699.24	91,843,692.01	10,238,609.39
Sep 4 2019	57,207,699.24	92,388,232.46	10,303,935.98
Oct 4 2019	57,207,699.25	92,932,772.90	10,369,262.58
Nov 4 2019	57,207,699.25	93,477,313.35	10,434,589.18
Dec 4 2019	57,207,699.25	94,021,853.80	10,499,915.77
Jan 4 2020	57,207,699.25	94,566,394.24	10,565,242.37
Feb 4 2020	57,207,699.25	87,916,781.86	9,773,317.51
Mar 4 2020	57,207,699.25	88,457,266.87	9,838,157.59
Apr 4 2020	57,207,699.24	88,997,751.89	9,902,997.67
May 4 2020	57,207,699.24	89,538,236.90	9,967,837.75
Jun 4 2020	57,207,699.25	90,078,721.92	10,032,677.83
Jul 4 2020	57,207,699.24	90,619,206.93	10,097,517.91
Aug 4 2020	57,207,699.25	91,159,691.95	10,162,357.99
Sep 4 2020	57,207,699.24	91,700,176.97	10,227,198.07

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Oct 4 2020	57,207,699.25	92,240,661.98	10,292,038.16
Nov 4 2020	57,207,699.25	92,781,147.00	10,356,878.24
Dec 4 2020	57,207,699.25	93,321,632.01	10,421,718.32
Jan 4 2021	57,207,699.24	93,862,117.03	10,486,558.40
Feb 4 2021	57,207,699.25	87,207,757.93	9,694,498.47
Mar 4 2021	57,207,699.25	87,743,884.09	9,758,815.64
Apr 4 2021	57,207,699.24	88,280,010.25	9,823,132.80
May 4 2021	57,207,699.24	88,816,136.40	9,887,449.96
Jun 4 2021	57,207,699.25	89,352,262.56	9,951,767.13
Jul 4 2021	57,207,699.25	89,888,388.72	10,016,084.29
Aug 4 2021	57,207,699.25	90,424,514.87	10,080,401.46
Sep 4 2021	57,207,699.25	90,960,641.03	10,144,718.62
Oct 4 2021	57,207,699.25	91,496,767.19	10,209,035.79
Nov 4 2021	57,207,699.24	92,032,893.35	10,273,352.95
Dec 4 2021	57,207,699.24	92,569,019.50	10,337,670.11
Jan 4 2022	57,207,699.24	93,105,145.66	10,401,987.28
Feb 4 2022	57,207,699.25	86,445,684.70	9,609,782.18
Mar 4 2022	57,207,699.25	86,977,125.87	9,673,537.30
Apr 4 2022	57,207,699.25	87,508,567.04	9,737,292.43
May 4 2022	57,207,699.24	88,040,008.21	9,801,047.55
Jun 4 2022	57,207,699.25	88,571,449.37	9,864,802.67
Jul 4 2022	57,207,699.24	89,102,890.54	9,928,557.79
Aug 4 2022	57,207,699.24	89,634,331.71	9,992,312.92
Sep 4 2022	57,207,699.24	90,165,772.88	10,056,068.04
Oct 4 2022	57,207,699.25	90,697,214.05	10,119,823.16
Nov 4 2022	57,207,699.25	91,228,655.21	10,183,578.28
Dec 4 2022	57,207,699.25	91,760,096.38	10,247,333.41
Jan 4 2023	57,207,699.25	92,291,537.55	10,311,088.53
Feb 4 2023	57,207,699.25	85,626,593.01	9,518,727.40
Mar 4 2023	57,207,699.24	86,152,998.66	9,581,878.43
Apr 4 2023	57,207,699.25	86,679,404.30	9,645,029.46
May 4 2023	57,207,699.24	87,205,809.95	9,708,180.49
Jun 4 2023	57,207,699.25	87,732,215.60	9,771,331.52
Jul 4 2023	57,207,699.25	88,258,621.25	9,834,482.55
Aug 4 2023	57,207,699.24	88,785,026.89	9,897,633.58
Sep 4 2023	57,207,699.25	89,311,432.54	9,960,784.60
Oct 4 2023	57,207,699.25	89,837,838.19	10,023,935.63
Nov 4 2023	57,207,699.25	90,364,243.84	10,087,086.66
Dec 4 2023	57,207,699.25	90,890,649.48	10,150,237.69
Jan 4 2024	57,207,699.24	91,417,055.13	10,213,388.72
Feb 4 2024	57,207,699.25	84,746,216.72	9,420,859.89

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Mar 4 2024	57,207,699.25	85,267,210.09	9,483,361.62
Apr 4 2024	57,207,699.24	85,788,203.46	9,545,863.36
May 4 2024	57,207,699.24	86,309,196.83	9,608,365.10
Jun 4 2024	57,207,699.25	86,830,190.19	9,670,866.83
Jul 4 2024	57,207,699.25	87,351,183.56	9,733,368.57
Aug 4 2024	57,207,699.24	87,872,176.93	9,795,870.31
Sep 4 2024	57,207,699.24	88,393,170.30	9,858,372.04
Oct 4 2024	57,207,699.25	88,914,163.66	9,920,873.78
Nov 4 2024	57,207,699.25	89,435,157.03	9,983,375.52
Dec 4 2024	57,207,699.24	89,956,150.40	10,045,877.25
Jan 4 2025	57,207,699.24	90,477,143.77	10,108,378.99
Feb 4 2025	57,207,699.25	84,873,874.88	9,435,051.08
Mar 4 2025	57,207,699.24	85,395,653.05	9,497,646.96
Apr 4 2025	57,207,699.24	85,917,431.22	9,560,242.85
May 4 2025	57,207,699.25	86,439,209.39	9,622,838.74
Jun 4 2025	57,207,699.25	86,960,987.56	9,685,434.62
Jul 4 2025	57,207,699.25	87,482,765.73	9,748,030.51
Aug 4 2025	57,207,699.24	88,004,543.90	9,810,626.40
Sep 4 2025	57,207,699.25	88,526,322.07	9,873,222.28
Oct 4 2025	57,207,699.25	89,048,100.24	9,935,818.17
Nov 4 2025	57,207,699.25	89,569,878.41	9,998,414.06
Dec 4 2025	57,207,699.24	90,091,656.58	10,061,009.94
Jan 4 2026	57,207,699.25	90,613,434.75	10,123,605.83
Feb 4 2026	57,207,699.25	91,173,943.79	10,135,401.71
Mar 4 2026	57,207,699.25	91,734,452.82	10,202,644.00
Apr 4 2026	57,207,699.24	92,294,961.85	10,269,886.29
May 4 2026	57,207,699.25	92,855,470.89	10,337,128.58
Jun 4 2026	57,207,699.25	93,415,979.92	10,404,370.88
Jul 4 2026	57,207,699.25	93,976,488.95	10,471,613.17
Aug 4 2026	57,207,699.25	94,536,997.99	10,538,855.46
Sep 4 2026	57,207,699.24	95,097,507.02	10,606,097.75
Oct 4 2026	57,207,699.24	95,658,016.05	10,673,340.04
Nov 4 2026	57,207,699.24	96,218,525.09	10,740,582.33
Dec 4 2026	57,207,699.24	96,779,034.12	10,807,824.63
Jan 4 2027	55,818,424.25	97,339,543.16	10,875,066.92
Feb 4 2027	55,818,424.25	0.00	0.00
Mar 4 2027	55,818,424.25	0.00	0.00
Apr 4 2027	55,818,424.25	0.00	0.00
Apr 15 2027	55,818,424.25	0.00	0.00
May 15 2027	55,818,424.25 *	0.00	0.00
Jun 15 2027	55,818,424.25 *	0.00	0.00

**FBR-1
BIG RIVERS SWAP
SCHEDULE I TO CREDIT SWAP
TRANSACTION CONFIRMATION**

**Maximum Amount of Party B Fixed Amount is the
Sum of Column B1, Column B2 and Column B3**

<u>Period</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Jul 15 2027	55,818,424.25 *	0.00	0.00
Aug 15 2027	55,818,424.25 *	0.00	0.00
Sep 15 2027	55,818,424.25 *	0.00	0.00
Oct 15 2027	55,818,424.25 *	0.00	0.00
Nov 15 2027	55,818,424.25 *	0.00	0.00
Dec 15 2027	55,818,424.25 *	0.00	0.00

* Amount in Column B1 from and after 15 April 2027 shall be reduced by the amount of any reduction of the Party B Fixed Amount effected hereunder by virtue of payments in respect of the Fixed Purchase Option Price paid on each of the 15th of April, June, September and December 2027.

SCHEDULE II TO CREDIT SWAP
TRANSACTION CONFIRMATION

FBR - 1
SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Apr 19 2000	3,792,351.73
May 18 2000	3,823,204.89
Jun 18 2000	3,855,121.95
Jul 18 2000	3,887,039.01
Aug 4 2000	3,904,061.45
Sep 4 2000	3,935,978.51
Oct 4 2000	3,967,895.57
Nov 4 2000	3,999,812.63
Dec 4 2000	4,031,729.69
Jan 4 2001	4,063,646.75
Feb 4 2001	4,097,847.08
Mar 4 2001	4,132,047.40
Apr 4 2001	4,166,247.73
May 4 2001	4,200,448.05
Jun 4 2001	4,234,648.38
Jul 4 2001	4,268,848.70
Aug 4 2001	4,304,776.04
Sep 4 2001	4,340,703.38
Oct 4 2001	4,376,630.72
Nov 4 2001	4,412,558.05
Dec 4 2001	4,448,485.39
Jan 4 2002	4,484,412.73
Feb 4 2002	4,522,154.29
Mar 4 2002	4,559,895.85
Apr 4 2002	4,597,637.41
May 4 2002	4,635,378.98
Jun 4 2002	4,673,120.54
Jul 4 2002	4,710,862.10
Aug 4 2002	4,750,509.49
Sep 4 2002	4,790,156.89
Oct 4 2002	4,829,804.29
Nov 4 2002	4,869,451.68
Dec 4 2002	4,909,099.08
Jan 4 2003	4,948,746.48
Feb 4 2003	4,990,395.95
Mar 4 2003	5,032,045.42
Apr 4 2003	5,073,694.89
May 4 2003	5,115,344.36
Jun 4 2003	5,156,993.83
Jul 4 2003	5,198,643.30
Aug 4 2003	5,242,395.95
Sep 4 2003	5,286,148.59

FBR - 1
SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Oct 4 2003	5,329,901.23
Nov 4 2003	5,373,653.88
Dec 4 2003	5,417,406.52
Jan 4 2004	5,461,159.17
Feb 4 2004	5,507,121.19
Mar 4 2004	5,553,083.21
Apr 4 2004	5,599,045.23
May 4 2004	5,645,007.25
Jun 4 2004	5,690,969.27
Jul 4 2004	5,736,931.29
Aug 4 2004	5,785,214.26
Sep 4 2004	5,833,497.22
Oct 4 2004	5,881,780.19
Nov 4 2004	5,930,063.15
Dec 4 2004	5,978,346.12
Jan 4 2005	6,026,629.08
Feb 4 2005	6,077,350.19
Mar 4 2005	6,128,071.30
Apr 4 2005	6,178,792.41
May 4 2005	6,229,513.52
Jun 4 2005	6,280,234.63
Jul 4 2005	6,330,955.74
Aug 4 2005	6,384,238.11
Sep 4 2005	6,437,520.49
Oct 4 2005	6,490,802.86
Nov 4 2005	6,544,085.23
Dec 4 2005	6,597,367.61
Jan 4 2006	6,650,649.98
Feb 4 2006	6,706,622.95
Mar 4 2006	6,762,595.92
Apr 4 2006	6,818,568.90
May 4 2006	6,874,541.87
Jun 4 2006	6,930,514.84
Jul 4 2006	6,986,487.82
Aug 4 2006	7,045,287.26
Sep 4 2006	7,104,086.70
Oct 4 2006	7,162,886.14
Nov 4 2006	7,221,685.58
Dec 4 2006	7,280,485.02
Jan 4 2007	7,339,284.46
Feb 4 2007	7,401,053.09
Mar 4 2007	7,462,821.73

FBR - 1
SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Apr 4 2007	7,524,590.36
May 4 2007	7,586,359.00
Jun 4 2007	7,648,127.63
Jul 4 2007	7,709,896.27
Aug 4 2007	7,774,784.03
Sep 4 2007	7,839,671.80
Oct 4 2007	7,904,559.56
Nov 4 2007	7,969,447.33
Dec 4 2007	8,034,335.09
Jan 4 2008	8,099,222.86
Feb 4 2008	8,167,387.26
Mar 4 2008	8,235,551.66
Apr 4 2008	8,303,716.06
May 4 2008	8,371,880.47
Jun 4 2008	8,440,044.87
Jul 4 2008	8,508,209.27
Aug 4 2008	8,579,815.77
Sep 4 2008	8,651,422.27
Oct 4 2008	8,723,028.77
Nov 4 2008	8,794,635.27
Dec 4 2008	8,866,241.77
Jan 4 2009	8,937,848.27
Feb 4 2009	9,013,070.68
Mar 4 2009	9,088,293.10
Apr 4 2009	9,163,515.51
May 4 2009	9,238,737.92
Jun 4 2009	9,313,960.34
Jul 4 2009	9,389,182.75
Aug 4 2009	9,468,203.67
Sep 4 2009	9,547,224.59
Oct 4 2009	9,626,245.51
Nov 4 2009	9,705,266.42
Dec 4 2009	9,784,287.34
Jan 4 2010	9,863,308.26
Feb 4 2010	9,946,319.50
Mar 4 2010	10,029,330.74
Apr 4 2010	10,112,341.98
May 4 2010	10,195,353.21
Jun 4 2010	10,278,364.45
Jul 4 2010	10,361,375.69
Aug 4 2010	10,448,578.74
Sep 4 2010	10,535,781.80

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Oct 4 2010	10,622,984.86
Nov 4 2010	10,710,187.91
Dec 4 2010	10,797,390.97
Jan 4 2011	10,884,594.02
Feb 4 2011	10,976,200.57
Mar 4 2011	11,067,807.12
Apr 4 2011	11,159,413.67
May 4 2011	11,251,020.21
Jun 4 2011	11,342,626.76
Jul 4 2011	11,434,233.31
Aug 4 2011	11,530,465.71
Sep 4 2011	11,626,698.12
Oct 4 2011	11,722,930.52
Nov 4 2011	11,819,162.92
Dec 4 2011	11,915,395.33
Jan 4 2012	12,011,627.73
Feb 4 2012	12,112,719.58
Mar 4 2012	12,213,811.43
Apr 4 2012	12,314,903.28
May 4 2012	12,415,995.13
Jun 4 2012	12,517,086.98
Jul 4 2012	12,618,178.83
Aug 4 2012	12,724,375.52
Sep 4 2012	12,830,572.21
Oct 4 2012	12,936,768.89
Nov 4 2012	13,042,965.58
Dec 4 2012	13,149,162.26
Jan 4 2013	13,255,358.95
Feb 4 2013	13,366,918.24
Mar 4 2013	13,478,477.54
Apr 4 2013	13,590,036.84
May 4 2013	13,701,596.14
Jun 4 2013	13,813,155.44
Jul 4 2013	13,924,714.74
Aug 4 2013	14,041,907.45
Sep 4 2013	14,159,100.15
Oct 4 2013	14,276,292.86
Nov 4 2013	14,393,485.57
Dec 4 2013	14,510,678.28
Jan 4 2014	14,627,870.99
Feb 4 2014	14,750,981.57
Mar 4 2014	14,874,092.16

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Apr 4 2014	14,997,202.75
May 4 2014	15,120,313.34
Jun 4 2014	15,243,423.92
Jul 4 2014	15,366,534.51
Aug 4 2014	15,495,861.81
Sep 4 2014	15,625,189.12
Oct 4 2014	15,754,516.42
Nov 4 2014	15,883,843.72
Dec 4 2014	16,013,171.02
Jan 4 2015	16,142,498.33
Feb 4 2015	16,278,356.27
Mar 4 2015	16,414,214.21
Apr 4 2015	16,550,072.15
May 4 2015	16,685,930.10
Jun 4 2015	16,821,788.04
Jul 4 2015	16,957,645.98
Aug 4 2015	17,100,364.34
Sep 4 2015	17,243,082.70
Oct 4 2015	17,385,801.06
Nov 4 2015	17,528,519.42
Dec 4 2015	17,671,237.78
Jan 4 2016	17,813,956.14
Feb 4 2016	17,963,881.35
Mar 4 2016	18,113,806.56
Apr 4 2016	18,263,731.77
May 4 2016	18,413,656.98
Jun 4 2016	18,563,582.18
Jul 4 2016	18,713,507.39
Aug 4 2016	18,871,003.37
Sep 4 2016	19,028,499.35
Oct 4 2016	19,185,995.34
Nov 4 2016	19,343,491.32
Dec 4 2016	19,500,987.30
Jan 4 2017	19,658,483.28
Feb 4 2017	19,823,932.33
Mar 4 2017	19,989,381.39
Apr 4 2017	20,154,830.44
May 4 2017	20,320,279.50
Jun 4 2017	20,485,728.55
Jul 4 2017	20,651,177.61
Aug 4 2017	20,824,981.34
Sep 4 2017	20,998,785.08

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Oct 4 2017	21,172,588.81
Nov 4 2017	21,346,392.55
Dec 4 2017	21,520,196.28
Jan 4 2018	21,694,000.02
Feb 4 2018	21,876,580.32
Mar 4 2018	22,059,160.62
Apr 4 2018	22,241,740.92
May 4 2018	22,424,321.22
Jun 4 2018	22,606,901.52
Jul 4 2018	22,789,481.82
Aug 4 2018	22,981,281.88
Sep 4 2018	23,173,081.94
Oct 4 2018	23,364,882.00
Nov 4 2018	23,556,682.05
Dec 4 2018	23,748,482.11
Jan 4 2019	23,940,282.17
Feb 4 2019	24,141,767.55
Mar 4 2019	24,343,252.94
Apr 4 2019	24,544,738.32
May 4 2019	24,746,223.70
Jun 4 2019	24,947,709.09
Jul 4 2019	25,149,194.47
Aug 4 2019	25,360,854.26
Sep 4 2019	25,572,514.05
Oct 4 2019	25,784,173.84
Nov 4 2019	25,995,833.64
Dec 4 2019	26,207,493.43
Jan 4 2020	26,419,153.22
Feb 4 2020	26,641,501.19
Mar 4 2020	26,863,849.16
Apr 4 2020	27,086,197.14
May 4 2020	27,308,545.11
Jun 4 2020	27,530,893.09
Jul 4 2020	27,753,241.06
Aug 4 2020	27,986,816.94
Sep 4 2020	28,220,392.82
Oct 4 2020	28,453,968.69
Nov 4 2020	28,687,544.57
Dec 4 2020	28,921,120.45
Jan 4 2021	29,154,696.33
Feb 4 2021	29,400,067.09
Mar 4 2021	29,645,437.85

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SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Apr 4 2021	29,890,808.60
May 4 2021	30,136,179.36
Jun 4 2021	30,381,550.12
Jul 4 2021	30,626,920.88
Aug 4 2021	30,884,682.12
Sep 4 2021	31,142,443.37
Oct 4 2021	31,400,204.61
Nov 4 2021	31,657,965.86
Dec 4 2021	31,915,727.10
Jan 4 2022	32,173,488.34
Feb 4 2022	32,444,265.76
Mar 4 2022	32,715,043.17
Apr 4 2022	32,985,820.58
May 4 2022	33,256,597.99
Jun 4 2022	33,527,375.41
Jul 4 2022	33,798,152.82
Aug 4 2022	34,082,603.68
Sep 4 2022	34,367,054.54
Oct 4 2022	34,651,505.39
Nov 4 2022	34,935,956.25
Dec 4 2022	35,220,407.11
Jan 4 2023	35,504,857.97
Feb 4 2023	35,803,672.74
Mar 4 2023	36,102,487.51
Apr 4 2023	36,401,302.28
May 4 2023	36,700,117.05
Jun 4 2023	36,998,931.83
Jul 4 2023	37,297,746.60
Aug 4 2023	37,611,650.62
Sep 4 2023	37,925,554.64
Oct 4 2023	38,239,458.66
Nov 4 2023	38,553,362.67
Dec 4 2023	38,867,266.69
Jan 4 2024	39,181,170.71
Feb 4 2024	39,510,925.94
Mar 4 2024	39,840,681.17
Apr 4 2024	40,170,436.40
May 4 2024	40,500,191.63
Jun 4 2024	40,829,946.86
Jul 4 2024	41,159,702.09
Aug 4 2024	41,506,108.97
Sep 4 2024	41,852,515.84

FBR - 1
SCHEDULE II(a)

<u>Date</u>	<u>Dollar Amount</u>
Oct 4 2024	42,198,922.72
Nov 4 2024	42,545,329.60
Dec 4 2024	42,891,736.47
Jan 4 2025	43,238,143.35
Feb 4 2025	43,602,042.74
Mar 4 2025	43,965,942.12
Apr 4 2025	44,329,841.50
May 4 2025	44,693,740.89
Jun 4 2025	45,057,640.27
Jul 4 2025	45,421,539.65
Aug 4 2025	45,803,814.86
Sep 4 2025	46,186,090.07
Oct 4 2025	46,568,365.28
Nov 4 2025	46,950,640.49
Dec 4 2025	47,332,915.70
Jan 4 2026	47,715,190.91
Feb 4 2026	48,116,769.86
Mar 4 2026	48,518,348.82
Apr 4 2026	48,919,927.78
May 4 2026	49,321,506.74
Jun 4 2026	49,723,085.70
Jul 4 2026	50,124,664.65
Aug 4 2026	50,546,522.14
Sep 4 2026	50,968,379.63
Oct 4 2026	51,390,237.12
Nov 4 2026	51,812,094.61
Dec 4 2026	52,233,952.10
Jan 4 2027	52,655,809.59
Feb 4 2027	53,098,969.61
Mar 4 2027	53,542,129.63
Apr 4 2027	53,992,749.08
Apr 15 2027	54,147,781.67
May 15 2027	40,522,127.38
Jun 15 2027	40,838,759.40
Jul 4 2027	27,033,642.22
Jul 15 2027	27,117,066.08
Aug 15 2027	27,344,585.69
Sep 15 2027	27,572,105.31
Oct 15 2027	13,729,868.18
Nov 15 2027	13,842,237.12
Dec 15 2027	13,954,606.06

EXHIBIT A TO
CONFIRMATION

[Form of Credit Event Notice]

Big Rivers Electric Corporation
[Address]

[or its successor or assign
as Party B under the Swap
Document referenced below]

Ladies & Gentlemen:

Reference is made to the Master Agreement, the related Schedule and the Credit Swap Transaction Confirmation in Relation to FBR-1 Statutory Trust, each dated April 18, 2000 (such Master Agreement, Schedule and Confirmation, collectively, the "Master Agreement") between Ambac Credit Products, LLC (together with its successors and permitted assigns, "Party A") and Big Rivers Electric Corporation (together with its successors and permitted assigns, "Party B"); capitalized terms used herein without definition have the respective meanings ascribed thereto in the Master Agreement.

Party A hereby notifies Party B, and certifies to Party B, that a Credit Event has occurred under the Master Agreement, or that the OP Trust has certified to Party A that a Credit Event under the Master Agreement has occurred, and Party A hereby further certifies to Party B that, to the best of its knowledge, as of the date hereof, (i) the amount referred to clause (A)(ii)(a) of the definition of "Party B Fixed Amount" is \$[____], and the source thereof is [____], (ii) the amount referred to clause (A)(ii)(b) of the definition of "Party B Fixed Amount" is \$[____] and the source thereof is [____], (iii) the amount referred to clause (B)(ii) of the definition of "Party B Fixed Amount" is \$[____] and the source thereof is [____], and (iv) the amount referred to clause (C)(ii) of the definition of "Party B Fixed Amount" is \$[____] and the source thereof is [____].

[Check I or II below, as appropriate]

___ I. [Party A hereby notifies Party B that Party A has exercised the Alternative Settlement Option, and states that (i) the Deliverable Obligations FMV is \$_____ and (ii) the Net Amount Due is \$_____.]

___ II. [Party A confirms to Party B that Party A either (i) is the holder of the Deliverable Obligations as of the date hereof or (ii) has determined that Party A has sufficient contractual or other rights to permit Party A to obtain the interest in the Deliverable Obligations that Party A will be required to deliver to Party B under the Master Agreement (upon full performance thereunder by Party B) not later than the date such delivery will be so required thereunder.]

The account details of Party A are as follows: [_____].

This Credit Event Notice shall be governed by and construed in accordance with the laws of the State of New York without reference to choice of law provisions (except New York General Obligations Law Sections 5-1401 and 5-1402).

Very truly yours,

AMBAC CREDIT PRODUCTS, LLC

By: _____

EXHIBIT B TO
CONFIRMATION

[Form of Assignment Agreement]

THIS ASSIGNMENT AGREEMENT, dated as of _____, _____
between Ambac Credit Products, LLC (the "Transferor") and Big Rivers Electric Corporation
(the "Transferee").

WITNESSETH:

WHEREAS, the Transferor and the Transferee are parties to the Master Agreement, the related Schedule and the Credit Swap Transaction Confirmation in Relation to FBR-1 Statutory Trust, each dated April 18, 2000 (collectively, the "Master Agreement");

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, the parties agree as follows:

I. Assignment. Effective as of the date hereof, the Transferor hereby irrevocably sells, assigns, transfers, conveys and sets over to the Transferee all its right, title and interest in, to and under the Deliverable Obligations (as defined in the Master Agreement), which Deliverable Obligations include the following: [specify].

II. Representations and Warranties of the Transferor. The Transferor represents and warrants that (i) it has whatever title to the Deliverable Obligations it has received from the OP Trust, (ii) the Deliverable Obligations are or will be free and clear of all Party A Lessor's Liens (as defined in the Master Agreement) attributable to the Transferor, (iii) the Trust Estate relating to the Deliverable Obligations is or will be free and clear of all Party A Lessor's Liens (as defined in the Master Agreement) attributable to the Transferor, (iv) it is conveying hereby all of its right, title and interest in, to and under the Deliverable Obligations (including, without limitation, any rights it may have under the Qualifying Swap) and (v) either the Deliverable Obligations are free and clear of the lien of the Leasehold Mortgage or the Lenders have been paid the amount required under the Leasehold Mortgage to allow the discharge of the lien of the Leasehold Mortgage pursuant to Section 8.01 thereof.

III. Assumption. The Transferee hereby assumes all of such Deliverable Obligations and confirms that it shall be bound by all the terms thereof as if it were named as the Transferor as of [_____].

IV. Further Assurances. The Transferor and Transferee shall, at any time and from time to time, upon the request of the Transferee or Transferor, promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Transferee or Transferor may reasonably request to obtain the full benefits of this Assignment and of the rights and powers herein granted.

V. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without reference to choice of law provisions (except New York General Obligations Law Sections 5-1401 and 5-1402).

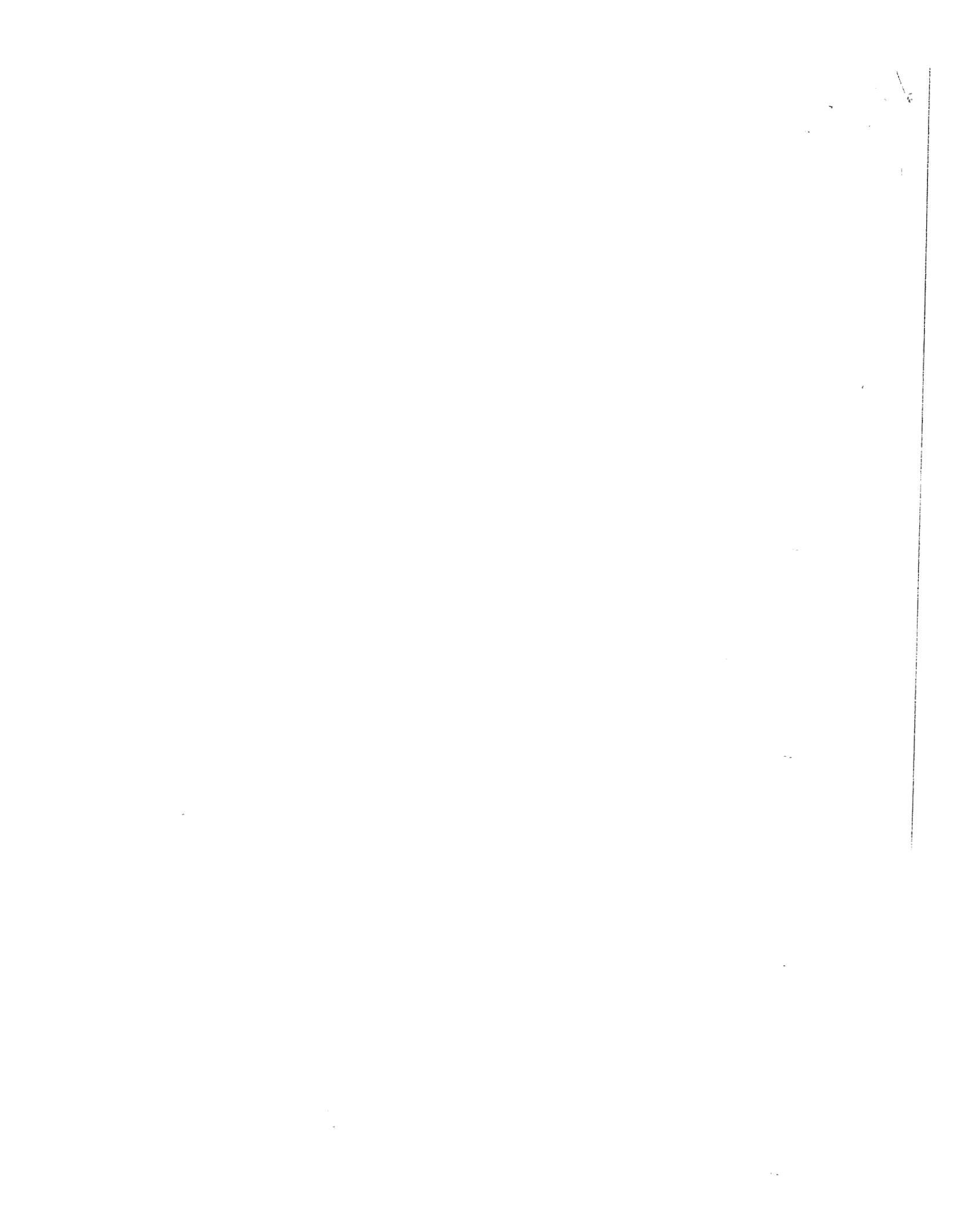
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered on the date first above written.

BIG RIVERS ELECTRIC CORPORATION,
Transferee

By: _____
Name:
Title:

AMBAC CREDIT PRODUCTS, LLC,
Transferor

By: _____
Name:
Title:



RECEIVED

JUN 20 2008

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S)
APPLICATION FOR APPROVAL OF A LEVERAGED) CASE NO. 99-450
LEASE OF THREE GENERATING UNITS)

O R D E R

On November 8, 1999, Big Rivers Electric Corporation ("Big Rivers") filed an application seeking authority, if needed, to implement a sale and leaseback transaction ("lease transaction") involving certain generating facilities owned by Big Rivers.¹ The application requested the Commission to disclaim jurisdiction over the lease transaction and the documents to be issued in connection with the lease transaction. In the alternative, Big Rivers sought Commission approval of the lease transaction and the documents considered to be "evidences of indebtedness," including amendments to the documents approved by the Commission in 1998 in conjunction with the LG&E Energy

¹ Specifically, Big Rivers proposed to consummate a leveraged lease of its ownership interest in the D. B. Wilson Unit No. 1 ("Wilson Unit"), the Robert D. Green Units No. 1 and 2 ("Green Units"), and the common facilities owned by Big Rivers that are located at the Green Units site. The Wilson Unit, Green Units, and the common facilities at the Green Units site are referenced as the "Facilities."

Corp. lease transaction ("LEC transaction").² Additionally, Big Rivers requests permission to deviate from the filing requirements of 807 KAR 5:001, Section 11, to the extent its application was not in compliance with that regulation. Finally, due to the complexity and timing of the lease transaction, Big Rivers requests that the Commission expedite its review of the proposed lease transaction and grant the requested approvals no later than November 24, 1999.

The Attorney General, Southwire Company, and Alcan Aluminum Corporation were granted intervention in this proceeding. An informal conference was held at the Commission's offices on October 21, 1999 to provide additional explanations about the proposed transaction.

The Wilson Unit is located in Ohio County, Kentucky, and was placed into commercial operation in November 1986. The Green Units are located in Webster County, Kentucky, and were placed into commercial operation in December 1979 and January 1981. The units are coal-fired steam electric generating stations that are equipped with sulfur dioxide scrubbers. The combined net rated capability of the units is 874 MW.

² Case No. 97-204, The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction, final Order dated April 30, 1998, and Case No. 98-267, The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson, final Order dated July 14, 1998. Under the terms of the LEC transaction, Big Rivers leases its generating assets to subsidiaries or affiliates of LG&E Energy Corp. Big Rivers has been operating under the terms of that agreement since July 15, 1998, the closing date of the LEC transaction.

Big Rivers states in the application that the purpose of the proposed lease transaction is to simultaneously sell and lease back certain ownership rights, and use the net cash benefit from the lease transaction to pay down approximately \$70 million of its debt. The proposed lease transaction will consist of up to six sales and leasebacks involving two equity investors and separate undivided interests in Big Rivers' ownership interest in the Facilities.

The form of the lease transaction will be a long-term lease ("Head Lease") of an undivided interest in the Facilities from Big Rivers to the trustee³ of a trust estate created for the benefit of the equity investor. The trustee will also lease from Big Rivers an undivided interest in the sites the Facilities are located on for a term identical to that of the Head Lease ("Ground Lease"). A Participation Agreement will set forth the terms of the closing conditions, the payment of transaction costs, certain covenants and indemnification of the parties, and other general matters relating to the lease transaction.

The Head Lease will be considered a sale of the undivided interest in the Facilities for federal income tax purposes because the term of the Head Lease extends beyond the entire expected economic useful life of the Facilities. The trustee will pay all the rent under the Head Lease on the closing date. The trustee will finance the rent

³ Exhibit 3 of the application identifies the trustee as the State Street Bank and Trust Company of Connecticut, N.A.

payment with a combination of equity from the equity investor and the proceeds of non-recourse loans to the trustee.⁴

The trustee will lease the trust's undivided interest in the Facilities back to Big Rivers under a shorter-term lease ("Facilities Lease") for a term that extends beyond the expiration of the LEC transaction.⁵ The Facilities Lease will be a conventional "triple net" lease, under which Big Rivers will have the obligation to maintain and insure the Facilities and will incur the risk of loss with respect to the Facilities. The trustee will also lease the Facilities' sites back to Big Rivers for the term of the Facilities Lease ("Ground Sublease").

The Facilities Lease will be subject to the terms of the LEC transaction. The lease transaction documents will provide that at the end of the term of the LEC transaction, or its early termination, Big Rivers will be responsible for the operation and maintenance of the Facilities through the end of the Facilities Lease term. At the end of the Facilities Lease, Big Rivers will have the option to either purchase the remaining leasehold interest of the trust under the Head Lease or operate the Facilities on behalf

⁴ These non-recourse loans will be secured by the trustee's interest in the Facilities under the Head Lease, the Facilities Lease, the Ground Lease and Sublease, Big Rivers' payment of rent, certain investment instruments purchased by Big Rivers and assigned to the trustee, and the trustee's interest in the Big Rivers Mortgage.

⁵ The term of the Facilities Lease for the Wilson Unit will be approximately 27 years and for the Green Units approximately 25 years.

of the trust and locate an unrelated, third party to purchase power generated from the Facilities.⁶

Big Rivers will economically defease its periodic rent obligations under the Facilities Lease by using a portion of the rent payment received under the Head Lease on the closing date to purchase investment instruments⁷ from affiliates of Ambac Assurance Corporation ("Ambac") and another institution. The payments under these investment instruments in the aggregate will be equal in timing and amount to Big Rivers' basic rent obligation under the Facilities Lease.⁸ In addition, these investments will provide for payment of an amount sufficient to fund Big Rivers' right to purchase the trustee's interest in the Facilities at the end of the Facilities Lease term.

Big Rivers will have the option to purchase the equity investor's interest in the trust if either the lease transaction becomes illegal with respect to Big Rivers and cannot be restructured in a manner acceptable to the parties or burdensome indemnities become due by Big Rivers. Big Rivers will pay the trustee a purchase price for the trustee's interest under the Head Lease equal to a specified amount ("Termination

⁶ Under the purchase option, Big Rivers would pay a fixed purchase price plus unpaid rent. The fixed purchase option price will be economically defeased. Under the continued operations option, the terms and conditions for the operation of the Facilities and the associated power purchase agreement will be governed by two additional documents, an Operating and Support Agreement and a Service Contract.

⁷ The investment instruments will take the form of guaranteed investment contracts, prepaid swap agreements, or interest bearing deposits.

⁸ In its application, Big Rivers states that the acquisition of the investment instruments will be made by a wholly owned, limited purpose corporate subsidiary of Big Rivers created for this transaction in order to limit the impact of certain state and local taxes. Big Rivers will use a portion of the rent payment under the Head Lease as a capital infusion to the new subsidiary, in order for the subsidiary to acquire these investment instruments.

Value"). In addition, involuntary termination of the Facilities Lease can occur in the event of loss or an event of default.⁹ Generally, a termination of the Facilities Lease due to an event of loss will require that Big Rivers purchase the equity investor's interest in the trust by payment of an amount equal to the Termination Value plus all unpaid rent. Following an event of default under the Facilities Lease, the equity investor will be entitled to put its beneficial interest in the trust under the Head Lease to an Ambac subsidiary for the full amount of Termination Value. Under the terms of an arrangement called a Lessor Swap, the obligations of the Ambac subsidiary will be guaranteed by Ambac pursuant to a surety bond. The Ambac subsidiary would then be entitled to put this beneficial interest in the trust to Big Rivers for the full amount of the Termination Value or an alternate cash settlement procedure. Under the terms of an arrangement called the Big Rivers Swap, Ambac will guarantee Big Rivers' obligations pursuant to a financial guarantee insurance policy.

Big Rivers will issue a promissory note to the trustee to evidence its obligation to pay the Termination Value under the Facilities Lease and to the Ambac subsidiary to pay the Termination Value under the Big Rivers Swap. Big Rivers will also grant to the trustee, the equity investor, the Ambac subsidiary, and the lenders, a mortgage and security agreement in Big Rivers' ownership interest in all of its property that is subject to the Big Rivers Mortgage to secure the performance of its obligations to pay certain contractual, tort, and other indemnities under the lease transaction. This mortgage and

⁹ An event of loss refers to either the physical destruction of the assets without rebuilding, condemnation by eminent domain, or public utility regulation of the equity investor by reason of the lease transaction. An event of default refers to performance defaults by various parties to the lease transaction agreements or the downgrading of Ambac. See the Response to the Commission's November 16, 1999 Order, Item 14.

security agreement will be subject and subordinate to the Big Rivers Mortgage, the Head Lease, the Facilities Lease, the Ground Lease and Sublease, the LEC transaction, and Big Rivers' arrangements with the city of Henderson, Kentucky ("Henderson").

The lease transaction will not affect the operation and maintenance of the Facilities by Western Kentucky Energy Corp. ("WKEC") pursuant to the LEC transaction. The affiliates of LG&E Energy Corp. associated with the LEC transaction ("LG&E Parties") have raised 11 specific concerns about the proposed lease transaction. Based on the information provided and statements made by Big Rivers, the LG&E Parties have stated that they have no objection to Big Rivers proceeding with the development of the proposed lease transaction.¹⁰

The LG&E Parties required as a condition to consenting to the proposed lease transaction that the parties to the transaction agree to subordinate their interest under the Head Lease to the interests of the LG&E Parties under the LEC transaction. In consideration for the subordination of interest, and in order for the equity investor and the associated lenders to enjoy the full economic benefit of the investments and loans, Big Rivers will partially assign the Power Purchase Agreement between Big Rivers and LG&E Energy Marketing, Inc. to the trustee. Big Rivers will also assign the right to receive a portion of the rent paid by WKEC under the lease of the Facilities in the LEC transaction to the trustee. The trustee will reassign these interests back to Big Rivers in

¹⁰ The LG&E Parties have reserved the right to withhold their final approval of the transaction until such time as the transaction documentation has been finalized and the concerns of the LG&E Parties have been satisfactorily addressed. See Response to the Commission's November 16, 1999 Order, Item 9.

the lease transaction for the term of the Facilities Lease and the trustee will have no rights or obligations under this assignment unless the Facilities Lease is terminated under specific circumstances.

The common facilities located at the Green Units' site are used jointly in the operation of the Green Units and the Station Two Facility owned by Henderson. The proposed lease transaction will not affect the continued access to these common facilities by Henderson or the LG&E Energy Corp. affiliate that operates the Station Two Facility under the LEC transaction. No consents or approvals will be required from Henderson for the proposed transaction.

Based on current information, Big Rivers has estimated that as a result of the lease transaction, it will receive approximately \$913 million. Payments to establish the debt and equity defeasance instruments are estimated to cost approximately \$825 million. Enhancement fees and expenses for legal, advisory, appraisal, and miscellaneous services are estimated to cost approximately \$18 million.¹¹ This results in a net cash benefit of \$70 million.¹² The final amount of the net cash benefit will vary based upon the interest rate obtained on the closing date for the defeasance deposits and changes in other assumptions.

Big Rivers' accumulated net operating losses will be used to offset federal income taxes that would be recognized on the net gain realized by Big Rivers as a

¹¹ The estimated proceeds and associated costs are shown in the Response to the Commission's November 16, 1999 Order, Item 14.

¹² Big Rivers has indicated that it will record the net cash benefit in Account No. 253 – Other Deferred Credits, and amortize the amount on a straight-line basis over the expected lease term of 27 years. See Response to the Commission's November 16, 1999 Order, Item 3.

result of the transaction. The total amount of the net cash benefit will be paid to the Rural Utilities Service ("RUS") and applied to the RUS New Note as a condition of receiving RUS consent to the lease transaction. The RUS New Note debt service schedule will be recalculated to reflect the lower principal balance.¹³ Big Rivers anticipates that this recalculation will reduce its annual debt service by approximately \$5 million. The Big Rivers' board of directors has deferred a decision on the use of the savings until the transaction is completed and the annual debt service savings can be accurately determined.

Big Rivers is seeking a written determination from the Kentucky Revenue Cabinet ("Revenue Cabinet") concerning certain state tax issues. As of the filing of its application, Big Rivers had not received this determination. In addition, Big Rivers' member cooperatives must approve the lease transaction. The proposed lease transaction will be submitted to the member cooperatives between November 8 and 20, 1999.

Big Rivers included with its application a motion requesting the Commission to disclaim jurisdiction over the proposed leveraged lease transaction. The motion states that the transaction is not a financing subject to Commission jurisdiction because no securities or evidences of indebtedness will be issued. Big Rivers asserts that, although it will execute two notes, an amendment to its existing mortgage, and a new subordinated mortgage, such documents only secure its performance under the

¹³ In its application, Big Rivers indicated it anticipated that RUS would also allow Big Rivers to receive a reduction in debt service costs that RUS would realize by using the net cash benefit it received to prepay high interest notes to the Federal Financing Bank on the underlying RUS debt. However, no written verification of this benefit has been received by Big Rivers.

leveraged lease and do not evidence current new or refinanced debt or securities. Alternatively, Big Rivers claims that the transaction falls within the exemption to the Commission's financing authority under KRS 278.300(10) because the financing is subject to the control of an agency of the federal government, the RUS.

The Commission finds no merit in this motion. Even though the purpose of the two new notes is to secure Big Rivers' performance of certain contractual obligations, the notes are evidences of indebtedness that require prior Commission approval under KRS 278.300(1). Furthermore, the mortgage amendment and new subordinated mortgage to be executed by Big Rivers must also be approved since they are modifications to documents previously reviewed and approved by the Commission.

Although the Commission has previously disclaimed jurisdiction over financings that are subject to the control of a federal agency, such as RUS, the leverage lease proposed here is not under the control of RUS. The terms and conditions of the transaction are not being established by RUS, but by private banks and non-governmental investors. The participation of RUS has been limited to granting requisite approval of the transaction and lien accommodations, activities that do not rise to the level of control that exists when RUS is the lender for the transaction.

In addition, the proposed transaction will require modifications to many of the documents previously approved by the Commission in conjunction with Big Rivers' 1998 lease of its generating assets to a subsidiary of LG&E Energy Corp.¹⁴ As such, these modifications to previously approved documents will need Commission approval.

¹⁴ Case No. 98-267, final Order dated July 14, 1998.

Big Rivers also included a motion for expedited consideration, stating that the Commission will need to approve the transaction by November 24, 1999 for a closing to be held by the end of the year. If the transaction does not close by the end of 1999, the benefits to Big Rivers and its members will be reduced by an estimated \$6-\$8 million. While this potential reduction in benefits amounts to only approximately 10 percent of the total estimated benefits, the absolute amount is very significant, particularly in light of Big Rivers' financial condition and its debt service requirements.

Based on the significant benefit reduction if a decision is not issued by November 24, 1999, the Commission has given this application a high priority status to ensure that a final decision is issued by that date. The Commission notes that at the suggestion of its Staff, an informal conference was held at our offices on October 21, 1999 to allow Big Rivers an opportunity to explain the details of the transaction to Staff and intervenors. The application was then filed on November 8, 1999, giving the Commission and intervenors only 16 days to investigate a highly complex and detailed financial transaction.

While Big Rivers maintains that its application could not have been filed earlier because the transaction was "susceptible to change" and "in flux,"¹⁵ the record demonstrates that on September 1, 1999, Big Rivers provided the Revenue Cabinet with a very detailed, written description of the proposed transaction.¹⁶ Had such a description been provided to the Commission at that time, our investigation would have been greatly facilitated and our attention would not have had to be diverted from other

¹⁵ Response to the Commission's November 16, 1999 Order, Item 7.

¹⁶ Id., Item 6.

pending cases. The Commission admonishes Big Rivers that such dilatory conduct will not be tolerated in the future. Big Rivers is put on notice that time-sensitive applications must be filed as early as possible, not weeks after the major parameters of the transaction are known with reasonable certainty.

The Commission has concerns about Big Rivers' potential financial exposure due to an early termination of the Facilities Lease. Based on the documents and responses in this record, it appears that adequate provisions have been made concerning the potential exposure from an early termination due to an event of loss or event of default. Big Rivers has acknowledged that an early termination at its direction would result in a financial exposure of as much as \$218 million.¹⁷

An example of an early termination initiated voluntarily by Big Rivers would be the situation where under the defeased lease transaction, burdensome indemnities become due by Big Rivers. Such a situation implies that Big Rivers' financial condition has deteriorated and it may not possess the financial resources to pay the Termination Value. However, Big Rivers has stated that it could only exercise this option if it possessed sufficient financial resources to pay the Termination Value. Big Rivers notes that the RUS has been kept apprised of all aspects of the proposed lease transaction, and the RUS is well aware that the potential early termination exposure exceeds the upfront net proceeds to be paid to the RUS. Big Rivers has concluded that it would be extremely unlikely RUS would acquiesce to the proposed lease transaction if it perceived there to be a significant possibility of an early termination of the Facilities

¹⁷ Id., Item 4.

Lease.¹⁸ Given Big Rivers' statements and assurances of the RUS's understanding of the potential exposure, the Commission finds this potential exposure to be reasonably addressed.

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that Big Rivers should be authorized to proceed with the proposed transaction. Based on the description of the proposed transaction, the primary benefit of the proposed lease transaction is the \$70 million net cash benefit and the estimated \$5 million reduction in Big Rivers' debt service obligations to the RUS. The reduction in debt service obligations results from both an additional interest rate reduction and a restructured debt service schedule. The RUS has given verbal assurances in face-to-face meetings with Big Rivers as recently as November 16, 1999 that both the interest rate reduction and the restructured debt service schedule will be reflected in the appropriate documents.¹⁹ The Commission advises Big Rivers that the Commission's approval of the lease transaction is predicated upon the inclusion of both an interest rate reduction and a debt service schedule restructuring.

IT IS THEREFORE ORDERED that:

1. The motion for a disclaimer of jurisdiction over the proposed lease transaction is denied.
2. Big Rivers is authorized to execute a lease of its Wilson and Green Units, along with the associated common facilities at the Green Units' site, pursuant to a sale and leaseback transaction as described in the application.

¹⁸ Id., Item 5.

¹⁹ Id., Item 3(d).

3. Big Rivers shall agree only to such terms, conditions, and prices that are consistent with said parameters as set out in the application.

4. Within 10 days of the date of this Order, Big Rivers shall file with the Commission copies of a letter from its lease counsel that the proposed lease transaction is in compliance with the applicable sections of the Internal Revenue Service Code and any guidelines, rules, or regulations promulgated by the Internal Revenue Service concerning such lease transactions.

5. Big Rivers shall file with the Commission copies of the Revenue Cabinet determination concerning Kentucky tax issues within 10 days of its receipt. If the Revenue Cabinet determination causes Big Rivers to abandon the proposed transaction, notice of that decision should be included with the filing.

6. Big Rivers shall file with the Commission copies of the final approvals of the lease transaction from its member cooperatives, the LG&E Parties, and the RUS within 10 days of their receipt. Any conditions included in the final approvals that were not a part of the record in this proceeding shall be identified and the effect of the conditions summarized.

7. Big Rivers shall, within 30 days of the completion of the sale and leaseback transaction, file two copies of all transaction documentation with the Commission. In addition, Big Rivers shall include an executive summary of the terms and conditions of the finalized transaction. The summary shall note and explain any terms and conditions that are different from those described in the application.

8. Big Rivers shall, in the first monthly financial report filed with the Commission after the booking of the benefits from the sale and leaseback transaction,

include notes to its respective financial statements explaining the determination of the benefits recognized from the transaction. This shall include the disclosure of the final transaction price, the gross up-front benefit amount received by Big Rivers, the total expenses to achieve the transaction, the total amount applied to the RUS New Note, and an explanation of any debt service revisions provided by the RUS.

Done at Frankfort, Kentucky, this 24th day of November, 1999.

By the Commission

ATTEST:

Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIG RIVERS ELECTRIC CORPORATION'S)
APPLICATION FOR APPROVAL OF A LEVERAGED) CASE NO. 99-450
LEASE OF THREE GENERATING UNITS)

O R D E R

On November 24, 1999, the Commission authorized Big Rivers Electric Corporation ("Big Rivers") to execute a lease of its D. B. Wilson Unit No. 1 ("Wilson Unit") and its Robert D. Green Units No. 1 and 2 ("Green Units"), along with the associated common facilities at the Green Units' site, pursuant to a sale and leaseback transaction ("lease transaction") as described in Big Rivers' November 8, 1999 application. As the final terms and conditions of the lease transaction had not been finalized, Big Rivers was authorized to agree only to such terms, conditions, and prices that were consistent with the parameters set out in its application. In addition, Big Rivers was advised that the Commission's approval of the lease transaction was predicated upon the inclusion of both an interest rate reduction and a debt service schedule reduction from the Rural Utilities Service ("RUS").¹

On January 24, 2000, Big Rivers filed a motion to reopen this docket for the purpose of reauthorizing the proposed lease transaction, due to the fact that certain assumptions and representations have changed since the Commission's November 24, 1999 Order. Big Rivers also requested that the Commission find that no further

¹ November 24, 1999 Order at 13.

approvals are required for the equity participants or the owner trust to participate in the lease transaction, provided that this finding did not constitute any approval under KRS Chapter 278 that may be required if either group assumed responsibility for the operation of one or more of the generating units. Finally, Big Rivers requested expedited consideration of the motion, noting that the optimum date for it to close the lease transaction was March 1, 2000, which would require Commission approval by January 28, 2000.

Exhibit A to Big Rivers' January 24, 2000 motion includes a description of the specific changes in the term sheet for the lease transaction. The most significant change is related to the reduction of Big Rivers' debt service obligations to the RUS. In its original application, Big Rivers stated that the RUS had agreed to reduce the interest rate on Big Rivers' debt and restructure the debt service in recognition of the total net cash benefit being paid to RUS and applied to the New RUS Note. However, the RUS has informed Big Rivers that because of changes in its debt due to the bankruptcy restructuring, the benefit of an interest rate reduction is not available.² In addition, RUS is requiring as a precondition to its approval of the lease transaction that it be paid at least \$70 million at the closing of the lease transaction, which will be reflected as a permanent reduction in like amount in the principal of the New RUS Note.

Because of the changes in the lease transaction terms, applicable interest rates, and the passage of time, Big Rivers currently estimates that the net cash benefit is

² "Because there is no longer a connection between BREC's direct obligations to RUS and RUS's guarantee of BREC's pre-bankruptcy obligations to FFB, there is no additional benefit to pass on to BREC in the form of an interest rate reduction on its indebtedness to RUS." See January 24, 2000 Motion to Reopen, Exhibit B.

\$68.1 million.³ As this estimate is below the RUS-required minimum of \$70 million, Big Rivers has indicated that it would make up the difference out of available cash or by the application of prepayments already made to RUS. In addition, Big Rivers now anticipates that its annual debt service will be reduced by \$4.0 million.⁴

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that Big Rivers should be authorized to proceed with the proposed lease transaction as revised. The early payment of \$70 million on the New RUS Note and the associated \$4 million annual reduction in Big Rivers' debt service obligation to the RUS are very significant benefits. The numerous changes to the terms and conditions of the proposed lease transaction do not appear to have increased Big Rivers' potential financial exposure.

The Commission further finds that the leasing of the Wilson and Green Units to the Owner Trust, with an immediate lease back to Big Rivers, does not constitute a change in control of a utility or of the units themselves. Thus, no additional approvals are needed under KRS 278.020(4) or (5). As acknowledged by Big Rivers, this finding does not constitute an approval under KRS Chapter 278, or obviate the need for such approval, if the equity participants, the Owner Trust, or any lender as assignee of the

³ In its November 8, 1999 application, Big Rivers had initially estimated that the net cash benefit would be \$70 million, but indicated it could be as high as \$77 million. See January 24, 2000 Motion to Reopen at 4-5.

⁴ Big Rivers had originally estimated the savings from the debt payment and interest rate reduction was approximately \$5.2 million. Of that total estimate, the interest rate reduction was worth approximately \$1.2 million annually over the balance of the term of the New RUS Note. The current estimate of \$4 million annually assumes a payment to RUS of \$70 million. See January 24, 2000 Motion to Reopen at 4.

Owner Trust, assumes present responsibility for the operation of one or more of the generating units.

IT IS THEREFORE ORDERED that:

1. Big Rivers is authorized to execute the proposed lease transaction, as originally authorized in the November 24, 1999 Order, subject to the changes in assumptions, representations, and term sheet as described in the January 24, 2000 motion to reopen.

2. Big Rivers shall agree only to such terms, conditions, and prices that are consistent with said parameters as set out in the application, as revised by the motion to reopen.

3. No further approvals are required under KRS Chapter 278 for the equity participants, the Owner Trust, or any lender as assignee of the Owner Trust to participate in the proposed lease transaction, as revised by the motion to reopen.

4. Within 10 days of the date of this Order, Big Rivers shall file with the Commission copies of a letter from its lease counsel providing positive assurance that the proposed lease transaction, as revised by the motion to reopen, is in compliance with the applicable sections of the Internal Revenue Service Code and any guidelines, rules, or regulations promulgated by the Internal Revenue Service concerning such lease transactions.

5. Big Rivers shall file with the Commission copies of any rulings or decisions concerning the applicability of the Kentucky real estate transfer tax under KRS 142.050 to the proposed lease transaction, as revised by the motion to reopen. If such ruling or

decision causes Big Rivers to abandon the proposed transaction, notice of that decision should be included with the filing.

6. Ordering Paragraph Nos. 6 through 8 of the November 24, 1999 Order shall remain in full force and effect as if separately ordered herein.

Done at Frankfort, Kentucky, this 28th day of January, 2000.

By the Commission

ATTEST:

Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS ELECTRIC CORPORATION, LG&E ENERGY MARKETING INC., WESTERN KENTUCKY ENERGY CORP., WKE STATION TWO INC., AND WKE CORP. FOR APPROVAL OF AMENDMENTS TO TRANSACTIONS DOCUMENTS)))))))	CASE NO. 2000-118
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O R D E R

On March 10, 2000, Big Rivers Electric Corporation ("Big Rivers") and the LG&E Parties¹ filed an application seeking expedited approval of proposed amendments to agreements between Big Rivers and the LG&E Parties that were originally approved by the Commission in Case Nos. 97-204² and 98-267.³ The proposed amendments have been consolidated into a document referred to as a "Letter Agreement." The changes contained in the Letter Agreement resolve numerous technical issues about the relationship between Big Rivers and WKEC under the lease transaction approved in

¹ The LG&E Parties are wholly-owned subsidiaries of LG&E Energy Corp. The subsidiaries that are co-applicants with Big Rivers are Western Kentucky Energy Corp. ("WKEC"), WKE Station Two Inc., LG&E Energy Marketing Inc. ("LEM"), and WKE Corp.

² Case No. 97-204, The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. for Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and for Approval of Transaction, final Order dated June 11, 1998.

³ Case No. 98-267, The Application of Big Rivers Electric Corporation for Approval of the 1998 Amendments to Station Two Contracts Between Big Rivers Electric Corporation and the City of Henderson, Kentucky and the Utility Commission of the City of Henderson, final Order dated July 14, 1998.

Case Nos. 97-204 and 98-267 ("LG&E Transaction"). These issues were either unresolved at the closing date of the LG&E Transaction or have arisen during the ordinary course of business since the closing date.

Big Rivers' board of directors has approved the Letter Agreement, as have the LG&E Parties. Big Rivers is seeking the approvals from the other parties to the LG&E Transaction. The LG&E Parties are requiring the Commission's approval of the Letter Agreement before Big Rivers can close the proposed leveraged sale and leaseback ("leaseback transaction") of certain Big Rivers' generating assets.⁴ Big Rivers has also indicated that other parties to the leaseback transaction want to know what changes will occur to the LG&E Transaction documents before the closing of the leaseback transaction. The leaseback transaction is scheduled to close on March 29, 2000.

The following summarizes the changes contained in the Letter Agreement:⁵

- 1) Section I – Deals with issues of capital budgeting, inclusion of certain capital projects and improvements, clarification of the parties rights and obligations with such capital projects and improvements, and dispute resolution. Establishes capitalization guidelines based on Federal Energy Regulatory Commission ("FERC") requirements, rather than the Rural Utilities Service ("RUS") requirements. Defines accounting practices as generally accepted

⁴ See Case No. 99-450, Big Rivers Electric Corporation's Application for Approval of a Leveraged Lease of Three Generating Units, final Orders dated November 24, 1999 and January 28, 2000. The leaseback transaction involves the sale and leaseback of Big Rivers' D. B. Wilson Unit No. 1 and its Robert D. Green Units No. 1 and 2, along with associated common facilities at the Green Units' site.

⁵ A detailed summary of all changes and the LG&E Transaction documents affected are contained in the Response to the Commission's March 17, 2000 Order, Items 1, 6, and 10.

accounting principles applied by companies required to report their accounts in accordance with the FERC Uniform System of Accounts (“USoA”) rather than the RUS USoA.

- 2) Section II – Establishes that generally the Letter Agreement does not apply to incremental capital costs, Henderson incremental capital costs, major capital costs, and Henderson capital costs. The Operative Documents currently in effect will continue to apply to these costs. Establishes the useful life for these types of costs and that no consideration will be given to these costs when determining the LG&E Parties’ Residual Value Payment (“RVP”).⁶
- 3) Section III – Establishes that the RVP for capital assets and Station Two improvements will be \$125 million, if the LG&E Parties spend their share of the capital budget limits in the aggregate during the lease term. Defines the circumstances under which the \$125 million RVP can be increased or decreased. Establishes that the RVP calculation contained in the Letter Agreement generally will not apply if the lease terminates prior to December 31, 2023. Provides for an additional residual value payment for incremental capital costs, Henderson incremental capital costs, major capital repairs, and Henderson major capital repairs, determined in accordance with existing LG&E Transaction document terms.
- 4) Section IV – Deals with issues associated with Big Rivers’ scheduling of power from the Southeastern Power Administration (“SEPA”). Affirms that LEM will continue to act as Big Rivers’ agent with SEPA.

⁶ The RVP is an end of lease term liability of Big Rivers to the LG&E Parties.

- 5) Section V – Addresses timing of payment issue for certain transmission services.
- 6) Section VI – Provides for the sale by Big Rivers of its central laboratory building, print shop, and telecommunications building to WKEC for \$325,000.
- 7) Section VII – Corrects a reference in an LG&E Transaction document.
- 8) Section VIII – Resolves a dispute over a contract issue relating to transferred employees and costs being billed by Big Rivers to WKEC. Big Rivers will refund \$268,464 to WKEC under the terms of this resolution.
- 9) Section IX – Provides that the LG&E Parties will include the equity participants in the leaseback transaction as additional insureds on insurance policies maintained by the LG&E Parties, and assurances that such policies are in place.

In its March 10, 2000 application, Big Rivers requested the Commission's approval on Sections I through V, VII, and IX of the Letter Agreement. In its responses to the Commission's March 17, 2000 Order, Big Rivers indicated that, if the Commission believes that approvals are also necessary for Sections VI and VIII of the Letter Agreement, Big Rivers seeks those approvals as well.⁷

In its Orders in Case Nos. 97-204 and 98-267, the Commission approved all the documents associated with the LG&E Transaction. The modifications, revisions, and clarifications contained in the Letter Agreement impact various LG&E Transaction documents in some manner. Consequently, the Commission finds that it should address all the sections contained in the Letter Agreement. In addition, by addressing

⁷ Response to the Commission's March 17, 2000 Order, Item 1.

all the sections of the Letter Agreement at this time, no party to the Letter Agreement or the leaseback transaction will be in doubt concerning the Commission's decision.

The Commission finds that the provisions contained in the Letter Agreement are reasonable and resolve outstanding issues associated with the LG&E Transaction. Resolution of these issues provides Big Rivers and the LG&E Parties with a degree of certainty that was not present in the LG&E Transaction documents previously. The immediate financial impact to Big Rivers is minimal, while the quantification of the RVP amount defines for Big Rivers what its obligations will be at the end of the LG&E Transaction. Therefore, the Commission approves the Letter Agreement in total.

The Commission is concerned about the continuing delays Big Rivers is experiencing with the closing of the leaseback transaction. When Big Rivers originally filed its November 1999 application for the approval of the leaseback transaction, it had estimated that the net cash benefit could be as high as \$77 million, with an annual reduction to its debt service of \$5.2 million. Due to changes in the leaseback transaction terms, applicable interest rates, and the passage of time, when Big Rivers requested the reauthorization of the leaseback transaction in January 2000, the net cash benefit estimate had dropped to \$68.1 million, and the annual reduction in debt service reduced to \$4.0 million.⁸ Big Rivers now estimates the annual reduction in its debt service from the leaseback transaction to be \$3.45 million, with the annual debt service reduction continuing to shrink for each additional month of delay in closing.⁹

⁸ See Case No. 99-450, January 28, 2000 Order, at 2-3.

⁹ Response to the Commission's March 17, 2000 Order, Item 4(d), and Application at 10. This update by Big Rivers did not include a revised estimate of the net cash benefit.

The Commission understands that the leaseback transaction is a very complex and complicated undertaking by Big Rivers. However, because the transaction benefits continue to diminish as the closing is delayed, and the RUS is still insisting on a \$70 million up-front debt payment,¹⁰ Big Rivers should evaluate the feasibility of continuing to pursue the leaseback transaction if it does not close by March 31, 2000. Therefore, the Commission will require Big Rivers to file a status report that will indicate whether Big Rivers is continuing to pursue the leaseback transaction and, if so, the current estimated net cash benefit, the current estimated reduction to its annual debt service, an explanation of any changes to the transaction, and the target date for closing the transaction. This status report will be due by the fifth day of each month, beginning on April 5, 2000, and will continue monthly until the transaction is closed, or Big Rivers determines it will no longer pursue it. The other reporting requirements ordered in Case No. 99-450 will remain in effect.

IT IS THEREFORE ORDERED that:

1. The amendments to the LG&E Transaction between Big Rivers and the LG&E Parties, as described in the Letter Agreement, are approved, and Big Rivers is authorized to execute those amendments, as described in the application.
2. The request of the LG&E Parties to deviate from any filing requirements associated with this application is granted.
3. Big Rivers shall, within 10 days of the execution of the Letter Agreement, file copies of the final executed Letter Agreement with the Commission.

¹⁰ See Case No. 99-450, January 28, 2000 Order, at 2.

4. Big Rivers shall, in the first monthly financial report filed with the Commission after the booking of the transactions described in Sections VI and VIII of the Letter Agreement, include notes to its respective financial statements explaining the effects of those transactions and the corresponding accounting entries.

5. Big Rivers shall file a monthly status report indicating whether Big Rivers is continuing to pursue the leaseback transaction approved by the Commission in Case No. 99-450. The status report shall provide the current estimated net cash benefit of the leaseback transaction, the current estimated reduction to annual debt service, an explanation of any changes to the transaction, and the target date for closing the transaction, if Big Rivers elects to continue to pursue the transaction. The first status report shall be filed with the Commission no later than April 5, 2000, and shall be filed by the fifth day of each subsequent month, until the leaseback transaction is closed or abandoned by Big Rivers.

Done at Frankfort, Kentucky, this 29th day of March, 2000.

By the Commission

ATTEST:


Executive Director